



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873
Email: fiscal.bureau@legis.wisconsin.gov • Website: <http://legis.wisconsin.gov/lfb>

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Joint Committee on Finance

Paper #420

Crime Victim Compensation Hearings and Sexual Assault Forensic Exam Hearings (Justice and Administration)

[LFB 2015-17 Budget Summary: Page 277, #15 and Page 42, #3]

CURRENT LAW

The Department of Justice's (DOJ) Office of Crime Victim Services administers the state's crime victim compensation program. Under the program, DOJ compensates victims of certain crimes, as well as dependents of deceased victims, for some of the costs related to: (a) medical treatment; (b) lost wages; (c) crime scene clean-up; (d) replacement of property held for evidentiary purposes; (e) funeral and burial expenses; and (f) if the victim is a homemaker, securing homemaker services. In addition, DOJ may provide compensation to family members of victims, or individuals who live in the same household as the victim, who incur economic losses as a result of their reaction to the victim's death.

The Office also administers the state's sexual assault forensic exam (SAFE) program. Under the SAFE program, medical providers may be reimbursed for the costs of examining victims of sex offenses in order to gather evidence. Examination costs reimbursable under the SAFE program include: (a) an examination that is done to gather evidence regarding a sex offense; (b) any procedure performed during the examination process that tests for or prevents a sexually transmitted disease; and (c) any medication provided or prescribed during the examination process that prevents or treats a sexually transmitted disease that the medical provider performing the examination believes could be a consequence of the sex offense. The SAFE program does not reimburse administrative costs, attorney fees, or other expenses.

Potential recipients under the crime victim compensation program or the SAFE program may file a petition with DOJ to contest the Department's decision relating to the award, or lack thereof. In the event of a contested case hearing under the crime victim compensation program or the SAFE program, the Department of Administration's (DOA) Division of Hearing and Appeals

(DHA) is required to appoint a hearing examiner to conduct the hearing, make findings, and issue orders.

Under current law, if DOA's Division of Hearing and Appeals is not required by statute to assign a hearing examiner to preside over a contested case, an agency may designate an official of the agency or a staff member from another agency to act as a hearing examiner. Subject to the rules of the agency, a hearing examiner may: (a) administer oaths and affirmations; (b) issue and enforce subpoenas authorized by law; (c) rule on offers of proof and receive relevant evidence; (d) take depositions and have depositions taken; (e) regulate the course of the hearing; (f) hold conferences for the settlement or simplification of the issues by consent of the parties; (g) dispose of procedural requests or similar matters; (h) make or recommend findings of fact, conclusions of law, and decisions to the extent permitted by law; and (i) take other action authorized by agency rule consistent with the statutory provisions regarding administrative procedure and review.

The Department of Administration's hearings and appeals fees annual appropriation provides partial support for the operations of the Division of Hearings and Appeals. Program revenue funding is generated from charges to state agencies for services provided by the Division. Base funding for the appropriation is \$3,377,100 PR annually.

GOVERNOR

Repeal the requirement that DOA's Division of Hearings and Appeals appoint a hearing examiner for contested cases relating to crime victim compensation. Further, repeal the requirement that DHA appoint a hearing examiner for contested cases relating to payments made under the SAFE program. In addition, increase the expenditure authority of DOA's hearings and appeals fees by \$50,000 PR annually.

DISCUSSION POINTS

1. The crime victim compensation program reimburses victims of crimes for some of the actual expenses incurred as a result of the crime. Further, the SAFE program reimburses medical providers for the costs of examining victims of sex offenses in order to gather evidence. If a potential awardee of crime victim compensation or a medical provider seeking reimbursement under the SAFE program disputes the amount provided by DOJ under the either program, the individual or medical provider may file a petition with DOJ for a contested case hearing. Since the passage of 1985 Wisconsin Act 242, DHA has been required to appoint a hearing examiner to conduct hearings relating to either crime victim compensation or reimbursements under the SAFE program. Prior to 1985 Act 242, the Attorney General was authorized to appoint a hearing examiner to conduct these hearings.

2. Due to DHA's current statutory requirement to conduct contested case hearings, the Department of Justice does not reimburse DOA for its costs to conduct these hearings. The bill repeals DHA's statutory requirement to conduct these contested case hearings. As a result, in the event of a contested case hearing relating to either program, DOJ could either: (a) contract with

DHA, under which DOJ would pay DHA to appoint a hearing examiner to conduct the hearing; or (b) designate an official within DOJ, or a staff member from another agency, to act as a hearing examiner and conduct the hearing.

3. In calendar year 2013, there were 19 contested case hearings related to crime victim compensation. In calendar year 2014, 25 cases relating to crime victim compensation were referred to DHA, resulting in 14 hearings. Generally, a referral to DHA may not lead to a contested case hearing if: (a) the matter is settled during a prehearing conference; (b) the petitioner affirmatively withdraws the hearing request; or (c) the petitioner fails to appear in person or by attorney at a prehearing conference and, as a result, the petition is dismissed.

4. There have not been any contested case hearings relating to the SAFE program. The Department indicates that the only instance in which a claim under the SAFE program would be denied is if: (a) the claim is not filed within one year after the date of the examination; or (b) the crime that causes the need for an examination did not occur in Wisconsin.

5. The Division of Hearings and Appeals is currently supported by a combination of GPR and PR. Base funding and position authority for the Division is \$2,641,800 GPR, \$3,377,100 PR, 22.10 GPR positions, and 29.85 PR positions (a total of 51.95 full-time equivalent positions). [In a separate provision of the bill, all GPR funding and position authority provided to DHA is converted to program revenue.] Current staff for DHA include: (a) 33.95 attorney and attorney supervisor positions; (b) 15.5 legal associate and legal associate supervisor positions; (c) 0.5 legal secretary position, and (d) 2.0 other supervisory and support personnel positions. Program revenue for DHA is generated from fees charged by the Division to state agencies to which the Division provides services.

6. The Division currently charges a variety of state agencies for its services. The Division does not, however, charge for all of the services it provides. As previously indicated, DHA does not currently charge DOJ for the Division's costs to conduct crime victim compensation hearings. In addition, DHA does not charge for some of the services provided to the following state agencies: the Departments of Corrections; Natural Resources; Transportation; Health Services; and the Historical Society. Funding for the services the Division does not charge for is generally supported by the Division's GPR appropriation.

7. The administration indicates that, for 2013-14, DHA utilized an estimated 0.69% of its total funding and position authority to conduct crime victim compensation hearings. Further, since DHA does not charge DOJ for its services, DHA utilized GPR funding to support its expenses. As a result, it is estimated that DHA utilized \$40,200 GPR and 0.36 full-time equivalent GPR position in 2013-14 to conduct crime victim compensation hearings. Since there have not been any contested case hearings associated with the SAFE program, DHA does not have any associated expenses. [It should be noted that DHA does not track its GPR expenditures by agency or by case type, and as a result, actual expenditures related to crime victim compensation hearings could differ from the estimate identified above.]

8. The bill increases the expenditure authority of DOA's hearings and appeals fees annual PR appropriation by \$50,000 annually. The increase in expenditure authority is associated with an assumption that, if DHA's statutory requirement to conduct crime victim compensation and SAFE

program hearings is repealed, DOJ would enter into a contract with DHA, under which DHA would appoint a hearing examiner to conduct the hearings. The administration indicates that DHA anticipates it would charge DOJ \$50,000 annually during the 2015-17 biennium for its services.

9. Given that repealing DHA's statutory requirement to conduct crime victim compensation and SAFE program hearings would allow DHA to charge DOJ for its services in a manner similar to how DHA charges other state agencies, the Committee could approve the Governor's recommendation [Alternative 1]. Under this alternative, the expenditure authority of the Department of Administration's hearings and appeals fees annual PR appropriation would be increased by \$50,000 PR annually.

10. As previously indicated, the bill increases DHA's PR expenditure authority in anticipation of DHA charging DOJ for its services during the 2015-17 biennium. Currently, it is estimated that DHA utilizes \$40,200 GPR annually to support its expenses related to crime victim compensation hearings. In a separate provision of the bill, DHA's base GPR resources are converted to PR, including the \$40,200 GPR DHA utilized in 2013-14 to conduct crime victim compensation hearings (a separate paper will be prepared on this issue). As a result, the bill increases DHA's PR expenditure authority related to crime victim compensation hearings in two separate provisions. In order to appropriately account for current base resources allocated to crime victim compensation hearings, the Committee could reduce the program revenue provided to DHA under the bill by \$40,200 PR annually [Alternative 2]. This alternative would provide DHA a net \$50,000 PR annually for DOJ-related hearings during the 2015-17 biennium.

11. The Department of Justice indicates that it, "has not yet decided if we [DOJ] would continue to use DHA or designate a DOJ official or another agency to act as hearing examiner" if the requirement that DHA appoint a hearing examiner for crime victim compensation and SAFE program hearings is repealed. The Department is currently authorized 96.40 assistant attorney general positions (including supervisor positions). As a result, the Department may have qualified staff that would be able to act as a hearing examiner in the event of a contested case relating to crime victim compensation or the SAFE program. Since it is unclear at this time whether DOJ would enter into a contract with DHA, DHA may not require the \$50,000 annual increase in PR expenditure authority provided under the bill. Further, DHA's PR expenditure authority could be decreased by an additional \$40,200 annually to account for the base funding DHA currently utilizes to support DOJ-related hearings.

12. Therefore, the Committee could approve the Governor's recommendation to repeal the requirement that DHA appoint a hearing examiner for hearings related to crime victim compensation and the SAFE program, and reduce DHA's PR expenditure authority by \$90,200 PR annually [Alternative 3]. If DOJ decides to contract with DHA in the future, the Department could request that the Committee increase DHA's PR expenditure authority under s. 16.515 of the statutes, if necessary.

13. On the other hand, it might be prudent to retain the requirement that DHA appoint a hearing examiner for these contested case hearings. If the requirement is repealed, rather than contracting with DHA, DOJ could decide to designate an official from within the Department to act as a hearing examiner and conduct the hearings. One could argue that the hearing examiner

conducting hearings related to either the crime victim compensation program or the SAFE program should be independent of DOJ, since DOJ is the administering agency of both of these programs.

14. If DHA were to continue to be required to appoint a hearing examiner to conduct these hearings, it might be reasonable that DOJ should be required to reimburse DHA for its expenses in a manner similar to how other state agencies reimburse DHA for its costs. If DOJ did not reimburse DHA for its costs (and DHA is converted to exclusively PR funding as proposed under the bill), DHA would need to support its expenses related to crime victim compensation and SAFE program hearings through increased charges assessed to other state agencies.

15. For the reasons discussed above, the Committee could decide to retain the requirement that DHA appoint a hearing examiner for hearings relating to crime victim compensation and the SAFE program, but require that DOJ reimburse DHA for its actual costs to conduct the hearings [Alternative 4]. Under this alternative, the Committee could reduce annual program revenue expenditure authority provided under the bill by \$40,200 in order to appropriately account for current base resources in DHA noted in Discussion Point #10.

16. While the bill increases DHA's program revenue expenditure authority by \$50,000 annually in anticipation of DHA charging DOJ, the bill does not provide DOJ additional funding to support the charges. As a result, DOJ would need to utilize base resources to support any charges from DHA. State support for the crime victim compensation program is supported by a combination of GPR and PR. Program revenue for the program is supported by restitution payments received by the state from defendants. [The federal government also provides the state funding under the Victims of Crimes Act (VOCA) to support payments to victims under the program.]

17. Given that the bill does not provide DOJ funding to support potential charges from DHA, the Committee could provide DOJ \$50,000 GPR annually in order to support these charges [Alternative 5]. This alternative could be considered in conjunction with any alternative under which DOJ could enter into a contract with DHA for services related to hearings associated with the crime victim compensation program or the SAFE program (Alternatives 1, 2, or 4). [Note that this alternative should not be considered in conjunction with Alternative 3 since Alternative 3 deletes DHA's PR expenditure authority associated with DOJ-related hearings.]

18. Alternatively, the Committee could delete the Governor's recommendation [Alternative 6]. Under this alternative, the requirement that DHA appoint a hearing examiner for hearings relating to crime victim compensation or the SAFE program would be retained, and DHA would have to continue to absorb the costs of conducting these hearings. As indicated above, the bill does not provide DOJ any additional funding to support the costs of reimbursing DHA for its services. As a result, to the extent that DHA charges DOJ if the requirement is repealed, DOJ would have to utilize base resources to support these charges.

ALTERNATIVES

1. Approve the Governor's recommendation to repeal the requirement that DOA's Division of Hearings and Appeals appoint a hearing examiner to conduct a contested case hearing relating to either crime victim compensation or reimbursements provided to medical providers

under the SAFE program. Further, increase the expenditure authority of the Department of Administration's hearings and appeals fees annual PR appropriation by \$50,000 PR annually.

2. Approve the Governor's recommendation, but reduce the program revenue provided to DOA under the bill by \$40,200 PR annually.

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| ALT 2 | Change to Bill |
| PR | - \$80,400 |

3. Approve the Governor's recommendation, but reduce the program revenue provided to DOA under the bill by \$90,200 PR annually.

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|--------------|-----------------------|
| ALT 3 | Change to Bill |
| PR | - \$180,400 |

4. Retain the current law requirement that DHA appoint a hearing examiner to conduct a hearing relating to either crime victim compensation or reimbursements under the SAFE program. Further, add statutory language that would require the Department of Justice to reimburse DHA for its actual costs to conduct these hearings. Finally, reduce program revenue provided to DOA under the bill by \$40,200 PR annually.

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| ALT 4 | Change to Bill |
| PR | - \$80,400 |

5. In addition to Alternatives 1, 2, or 4, provide DOJ \$50,000 GPR annually.

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| ALT 5 | Change to Bill |
| GPR | \$100,000 |

6. Delete provision. As a result, DHA would continue to be required to appoint a hearing examiner to conduct a hearing relating to crime victim compensation and awards under the SAFE program.

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| ALT 6 | Change to Bill |
| PR | - \$100,000 |

Prepared by: Michael Steinschneider