

**SUBJECT:** Obtaining certain information held by crime victims compensation fund

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 6 ayes — Moody, Hunter, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

1 absent — Canales

**WITNESSES:** For — Aaron Setliff, The Texas Council on Family Violence; (*Registered, but did not testify*: Jennifer Tharp, Comal County Criminal District Attorney; Katija Gruene, Green Party of Texas; Tiana Sanford, Montgomery County District Attorney's Office; Vincent Giardino, Tarrant County Criminal District Attorney's Office; Chris Kaiser, Texas Association Against Sexual Assault)

Against — Ed Heimlich, Honor Quest

On — Kristen Huff, Attorney General Crime Victims' Compensation Program

**BACKGROUND:** Code of Criminal Procedure, ch. 56 governs the Crime Victims' Compensation Fund, which awards financial assistance to victims of violent crime for certain expenses not reimbursed by insurance or other sources. Revenue for the fund includes criminal court costs, fees, and fines. The program is administered by the Office of the Attorney General.

Government Code, ch. 552 is the state's Public Information Act. Under sec. 552.132(b), certain information held by the crime victim's compensation program is confidential, including a crime victim's name, Social Security number, address, telephone number, and any other identifying information of the victim or person making a claim. If compensation is awarded, the name of the victim or claimant and the amount of compensation awarded are public information.

DIGEST:

CSHB 2387 would establish when applications for compensation from the crime victims compensation fund and related documents could be released under the Public Information Act and when this information would be subject to disclosure, discovery, or subpoena related to legal proceedings.

Applications for compensation and related documents would be exempt from disclosure under the Public Information Act, except for current law requirements that when an award is made, the name and amount are public information.

Applications and related documents would not be subject to disclosure, discovery, or subpoena unless conditions in the bill were met. The attorney general could release this information only:

- by court order, for good cause shown, if the order included a finding that the information was unavailable from other sources;
- with consent of the victim, claimant, or person who provided the information to the attorney general;
- to an employee of the attorney general;
- to another crime victims' compensation program;
- to someone authorized by the attorney general to conduct an audit, review applications, prevent or punish fraud, or to handle subrogation and restitution issues;
- as necessary to enforce the statute, including presenting an application or information in a court; or
- in response to a subpoena issued in a criminal proceeding that requests an application, subject to certain conditions.

In response to a subpoena in a criminal proceeding that requested an application, the attorney general would be required to release only the official application after redacting the name, Social Security number, address, or telephone number of a crime victim or claimant and any other information that could identify victim or claimant. The release of the application would not affect a court's authority to order the release of additional information.

The bill would take effect September 1, 2017, and would apply only to requests for information received on or after that date.

SUPPORTERS  
SAY:

CSHB 2387 would improve the privacy protection given to crime victims who use the state's Crime Victims' Compensation Fund. Victims can apply to the fund for reimbursement for crime-related expenses that are not paid by other sources. These can include counseling expenses, medical bills, relocation expenses, funeral costs, and more. The fund is administered by the attorney general's office, and victims must submit an application and extensive documentation of the expenses to the office when applying for compensation.

While victims' names and other identifying information held by the fund are confidential under the state's Public Information Act, other information can be obtained by using a subpoena issued during routine discovery in civil or criminal litigation. For example, a defendant standing trial for sexual assault might try to obtain the victim's medical records, or someone suing an insurance company might want to access medical records held by the fund.

This method of obtaining information is increasing in use and can result in sensitive information being released. The detailed documentation of expenses can include doctors' notes, descriptions of an offense, counseling notes, and victims' addresses and phone numbers. Having this information released can infringe on victims' privacy, re-victimizing them and making them feel vulnerable and unsafe.

The bill would balance victims' privacy with the needs of the legal process to obtain certain information and the goals of open records laws. The bill would establish a uniform, fair process for those seeking the information, and, if appropriate, courts could order the information released. Those legitimately needing information for a legal proceeding could obtain information through this process. The requirement for a court order to release information would help prevent unneeded, excessive, or highly sensitive information from being released, as can happen now. The bill would limit information released through a criminal proceeding that

requested an application by redacting personal information but also would allow the disclosure of additional information if ordered by a court.

The bill would not be a significant departure from current state policy that allows sensitive information held by the fund to be kept confidential while making awards public. It would not decrease transparency because when awards from the fund were made, the amount and the victim or claimant would still be public. In addition, information could be released for audits and fraud investigations. Other information would continue to be accessible, once the conditions in the bill were met.

**OPPONENTS  
SAY:**

The state should be cautious about restricting public information when the government is paying out public funds to private individuals. Restricting information can reduce transparency and make it more difficult to uncover fraud or other information.

**NOTES:**

A companion bill, SB 843 by Perry, was approved by the Senate on March 29 and referred to the House Criminal Jurisprudence Committee on April 18.

The committee substitute added provisions relating to subpoenas issued in criminal proceedings.