

HOUSE BILL REPORT

ESSB 5329

As Reported by House Committee On:
Commerce & Labor

Title: An act relating to leave from employment for crime victims.

Brief Description: Allowing crime victims employment leave.

Sponsors: Senate Committee on Labor, Commerce & Financial Institutions (originally sponsored by Senators Costa, Fairley, Hargrove, Kline, Gardner, Eide, Kohl-Welles and Prentice).

Brief History:

Committee Activity:

Commerce & Labor: 2/20/02, 2/28/02 [DP].

Brief Summary of Engrossed Substitute Bill

- Requires an employer to allow a crime victim to take leave from work to obtain medical, legal, or other services.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 4 members: Representatives Conway, Chair; Wood, Vice Chair; Kenney and Lysen.

Minority Report: Do not pass. Signed by 3 members: Representatives Clements, Ranking Minority Member; Chandler and McMorris.

Staff: Jill Reinmuth (786-7134).

Background:

In general, neither federal law nor Washington law specifically require an employer to allow a crime victim to take leave from work to obtain medical, legal, or other services. The law in one other state, Maine, gives an employee the right to take leave to obtain services for victims of violence.

In specific cases, it is possible that federal law or Washington law would require an

employer to allow a crime victim to take leave or use his or her own accrued sick leave to obtain medical services. For example, the federal Family and Medical Leave Act might apply if the employee was a crime victim and had a "serious health condition" or the employee's child was subject to sexual abuse and had a "serious health condition." The state Family Care Law might apply if the employee's child was subject to sexual abuse and had a health condition that required treatment or supervision. It is also possible that Washington law would provide for payment of time loss compensation to a crime victim who suffered bodily injury as a result of a crime through the Crime Victims' Compensation Program.

Summary of Substitute Bill:

An employer must allow a crime victim to take leave from work to obtain medical, legal, or other services as follows:

Entitlement to Leave: An employee is entitled to take "reasonable and necessary" leave if he or she:

- is a crime victim, has been harassed or stalked, is a survivor of a homicide victim who was an immediate family member, or is a parent of a child who has been subject to sexual abuse; and
- needs to take leave to prepare for and attend court proceedings, receive medical treatment, or obtain other services necessary to remedy certain crises.

Exemptions from Leave: An employer is not required to grant crime victims' leave if:

- the employer would sustain undue hardship from the employee's absence; or
- the leave is not requested within a reasonable time, or is impractical, unreasonable, or unnecessary; or
- the criminal act has not been reported to the local police or sheriff.

Duration and Hours: An employee may take crime victims' leave for up to six weeks during a 12-month period. With his or her employer's approval, an employee may take leave on a reduced leave schedule. As noted above, leave must be "reasonable and necessary."

Wages and Benefits: Crime victims' leave may be paid or unpaid, but must not result in the loss of any accrued benefits.

Notice: An employee must request crime victims' leave from his or her employer in

writing and at least seven days in advance of the leave, unless shorter notice is reasonable under the circumstances. The Department of Labor and Industries must include notice of provisions governing crime victims' leave in the next reprinting of the poster describing the state Family Leave Law. (The state Family Leave Law requires an employer to display a poster furnished by the department that describes the law. Enforcement of this part of the law is currently suspended.)

Enforcement and Penalties: If an employee believes his or her employer has violated provisions governing crime victims' leave, he or she may file a complaint with the department. The department may issue a notice of infraction, and an employer found to have committed an infraction is subject to a penalty of up to \$200 for the first infraction, and up to \$1,000 for subsequent infractions.

Other Laws: The right to crime victims' leave is in addition to other rights provided by law. Obligations to provide greater leave rights under a collective bargaining agreement or an employment benefit program or plan are not affected.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on September 1, 2002.

Testimony For: Crime victims sometimes need to take time off from work. Their needs are not covered under the federal Family and Medical Leave Act or the federal Americans with Disabilities Act. Employers are required to allow employees to take leave from work to act as jurors or serve in the military, but not to participate in the criminal justice process. Crime victims should not be victimized again.

Testimony Against: Employees already have broad protections under federal law. This bill could result in an employee taking vacation leave, followed by six weeks of crime victims' leave, followed by 12 weeks of family and medical leave, and then disability leave. Employers should be allowed to choose which leave is being taken. Employers are confused about leave laws, and how leave taken under these laws may result in violations of wage and hour laws. Remedies should be limited to administrative penalties, and should preclude civil actions. Some terms should be clarified. The effective date should be delayed.

Testified: (In support) Senator Costa, prime sponsor; and Dora Trevino.

(Opposed) Clif Finch, Association of Washington Business.