

HOUSE BILL REPORT

HB 1739

As Reported by House Committee On:
Public Safety

Title: An act relating to the crime victims' compensation program.

Brief Description: Concerning the crime victims' compensation program.

Sponsors: Representatives Gregerson, Goodman, Peterson, Orwall, Kilduff, Harris, Ryu, Ortiz-Self, Lovick, Sells, Stonier, Clibborn, Dolan, Sawyer, Stanford and Jinkins.

Brief History:

Committee Activity:

Public Safety: 2/6/17, 2/9/17 [DPS].

Brief Summary of Substitute Bill

- Requires payments to medical and health care providers under the Crime Victim Compensation Program (CVCP) to be no less than payments to providers for comparable services under the Workers' Compensation Program, except in specific circumstances where there is insufficient funds.
- Modifies the standards for Vehicular Assault victims to access CVCP benefits.
- Increases maximum burial cost benefits from \$5,750 to \$6,170, and requires the Department of Labor and Industries to adjust the amount for inflation every three years.
- Modifies eligibility criteria for accessing lost wage benefits from the CVCP.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Goodman, Chair; Pellicciotti, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Chapman, Griffey, Holy, Pettigrew and Van Werven.

Staff: Kelly Leonard (786-7147).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

The Crime Victims' Compensation Program (CVCP), within the Department of Labor and Industries (L&I) provides benefits to innocent victims of criminal acts. Generally, persons injured by a criminal act in Washington, or their surviving spouses and dependents, are eligible to receive certain benefits under the CVCP. This includes, for example, medical treatment, mental health treatment, lost wage replacement, and burial costs. Benefits under the CVCP are secondary to services available from any other public or private insurance, meaning the CVCP is the payer of last resort.

Individual victims are eligible for benefits if they sustain a bodily injury or severe emotional stress following a gross misdemeanor or felony crime and meet additional requirements. The crime must be verified by the CVCP.

Amount of Compensation to Providers. Providers must register with the CVCP to treat crime victims and receive payments. In consultation with interested persons, the CVCP establishes a fee schedule for payments to providers. The fee schedule changes based on the availability of funds. Currently, the CVCP fee schedule for providers is equal to 40 percent of payments for providers under the Workers' Compensation Program.

Vehicular Assault. Most offenses do not require a criminal conviction in order for a victim to receive CVCP benefits. However, the CVCP is not authorized to provide benefits to victims of Vehicular Assault unless a conviction has been obtained.

The CVCP may, by a preponderance of the evidence, establish that a Vehicular Assault was committed and authorize benefits if there is probable cause to determine that the perpetrator died in the incident, the perpetrator is unascertainable because he or she left the scene of the incident, or the perpetrator is incapable of standing trial as a result of a physical or mental infirmity or disability.

Counseling Services for Families of Homicide Victims. Immediate family members of a homicide victim are eligible to receive counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. The benefit is limited to 12 counseling sessions within one year after the crime victim's claim has been allowed.

Burial Costs. The CVCP is statutorily authorized to pay up to \$5,750 for the disposition of human remains or burial of a homicide victim. The CVCP must receive an itemized statement within 12 months of the date after the death is officially recognized as a homicide. If there is a delay in the recovery of remains or the release of remains for disposition or burial, an itemized statement must be received within 12 months of the date of the release of the remains.

Lost Wages. The CVCP pays for a portion of a victim's lost wages if a temporary or permanent total disability or death results from the crime. If the victim was not gainfully employed at the time of the criminal act, no financial support for lost wages will be paid to the victim or any beneficiaries. If the victim is voluntarily retired and is no longer attached to the workforce, he or she is not eligible for lost wage benefits.

Summary of Substitute Bill:

Amount of Compensation to Providers. Payments to providers of medical and health care services under the CVCP may not be less than payments for comparable services under the Workers' Compensation Program. The CVCP must notify the Governor and the Legislature and request additional funding if the CVCP projects a deficit in funding. If sufficient funding is not provided, the CVCP must reduce payments to treatment providers. However, reductions may not result in payments of less than 70 percent of the payments for comparable services under the Workers' Compensation Program. Payment levels must be restored after sufficient funding is provided or otherwise available.

Vehicular Assault. Vehicular Assault victims may access CVCP benefits if:

- the victim submits a copy of the certificate of probable cause filed by the prosecutor stating that there is probable cause to believe the offense occurred; or
- criminal charges have been filed.

Counseling Services for Families of Homicide Victims. The one-year time limit for families of homicide victims to access counseling services is removed, thereby authorizing use of the 12 counseling sessions any time after the claim is allowed.

Burial Costs. The one-year time limit for accessing burial cost benefits is removed. Claimants must submit itemized statements from a provider of burial services within two years of the date of the release of the remains or of the date of the claim allowance, whichever is later. The maximum benefit for burial costs is increased to \$6,170, and the L&I is required to adjust the amount for inflation every three years based on the consumer price index.

Lost Wages. The lost wages benefit is modified. A victim may not access benefits if the victim was not employed for a total of 12 weeks in the six months preceding the crime.

Substitute Bill Compared to Original Bill:

The substitute bill creates a process for the L&I to reduce payments to providers in some circumstances. The L&I must notify the Governor and the Legislature and request additional funding if there is a projected deficit in funding for the CVCP. The L&I must reduce payments to treatment providers if sufficient funding is not provided; however, reductions may not result in payments of less than 70 percent of the payments for comparable services under the Workers' Compensation Program. Payment levels must be restored after sufficient funding is provided or otherwise available.

The substitute bill requires claimants to submit itemized statements from a provider of burial services within 24 months of the date of the release of the remains or of the date of the claim allowance, whichever is later.

The substitute bill restores current law authorizing benefits for victims of Vehicular Homicide when the crime can be established by a preponderance of the evidence (rather than

the bill's requirement that a victim submit a certification letter from a prosecuting attorney). The substitute bill authorizes a victim of Vehicular Assault to access benefits if he or she submits a copy of the certificate of probable cause filed by the prosecutor stating that the offense occurred (rather than a letter from the prosecutor certifying there is a probable cause to believe that the injury was the result of the offense). The substitutes bill also authorizes benefits for victims of Vehicular Assault when charges are filed.

The substitute bill specifies that decisions on claims are appealable to the Board of Industrial Insurance Appeals (rather than the L&I). Subsections are reorganized and other technical changes are made.

Appropriation: None.

Fiscal Note: Requested on February 13, 2017.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Since the compensation rate for CVCP treatment providers was cut in 2011, treatment providers have stopped participating in the CVCP and stopped providing services to victims. The CVCP has hit rock bottom. The current payment rates do not even cover costs. There are victims in need of services, particularly dental treatment and mental health treatment, but they are unable to find a provider who will accept them as patients. Victims' advocates find themselves making calls to help find counselors and mental health providers still active in the CVCP provider network, which is nearly an impossible task. The CVCP, which was meant to help victims, is now a barrier in their healing process.

It is time to restore the rates to pre-recession levels. The bill restores the CVCP to the level of funding that is fair and necessary for victims. However, there are also safeguards built into the bill to reduce the rate if there are shortfalls.

The one-year time limit for accessing counseling services should be eliminated. It takes time for victims to recover from shock. People need time and space to heal.

The burial benefit should also be increased. Prior to 2004, the benefit was over \$7,000, and it is currently \$5,750. Adjusting it for inflation is inadequate, but it is a good start. Homicide victims' families should be able to dress their loved ones, host a viewing, and buy a headstone. The time limit for burial costs should also be removed. Some homicide victims are not found for many years, and it can be hard for their families to plan a funeral within one year. Homicides are beyond what is common, and the state should be accommodating in these circumstances.

The Vehicular Assault provisions are an important step forward. Victim advocates would like to see Vehicular Assault victims treated like all other victims, but they understand that this is a compromise. The stakeholders are in favor of this bill.

The CVCP is the payer of last resort. Victims only go to the CVCP when there is no other option for coverage. With this bill, you are telling victims that they matter.

(Opposed) None.

Persons Testifying: Representative Gregerson, prime sponsor; Brad Tower, Washington Coalition of Crime Victims Advocates; Terrie Noble; Twyla Cunha; and Stanley Phillips, Thurston County Prosecuting Attorney's Office.

Persons Signed In To Testify But Not Testifying: None.