

HOUSE BILL REPORT

ESHB 1739

As Passed House:
March 6, 2017

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

Brief Description: Concerning the crime victims' compensation program.

Sponsors: House Committee on Public Safety (originally sponsored by 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];
Appropriations: 2/23/17, 2/24/17 [DPS(PS)].

Floor Activity:

Passed House: 3/6/17, 96-2.

Brief Summary of Engrossed 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.
- Expands 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.

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.

Staff: Kelly Leonard (786-7147).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Public Safety be substituted therefor and the substitute bill do pass. Signed by 28 members: Representatives Ormsby, Chair; Robinson, Vice Chair; MacEwen, Assistant Ranking Minority Member; Stokesbary, Assistant Ranking Minority Member; Bergquist, Buys, Caldier, Cody, Fitzgibbon, Haler, Hansen, Harris, Hudgins, Jinkins, Kagi, Lytton, Manweller, Nealey, Pettigrew, Pollet, Sawyer, Senn, Springer, Stanford, Sullivan, Tharinger, Volz and Wilcox.

Minority Report: Do not pass. Signed by 4 members: Representatives Chandler, Ranking Minority Member; Schmick, Taylor and Vick.

Staff: Jordan Clarke (786-7123).

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 are limited to an overall cap of \$190,000 for each claim, which includes a maximum of \$150,000 for medical benefits and a maximum of \$40,000 for nonmedical benefits. 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.

The lost wage benefit is equal to 60 percent of the victim's monthly wage and is disbursed to the victim or beneficiary during the period of disability. However, monthly payments may not be less than \$500 and more than the state's average monthly wage.

Summary of Engrossed 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 payment levels. The CVCP may also reduce payments levels if a catastrophic event results in insufficient funding. 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 expanded. A victim may access benefits if the victim was employed at least 12 weeks in the six months preceding the crime, regardless if he or she was employed at the time of the criminal act.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony (Public Safety):

(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.

Staff Summary of Public Testimony (Appropriations):

(In support) This is a small but critical part of the state's safety net for crime victims. The Crime Victim Compensation Program (CVCP) is a payor of last resort for medical and support services for victims of violent crime. If a victim has additional support or access to services, they do not make use of the CVCP. For those who do use it, it is the only line of support. In 2010 the Department of Labor and Industries reduced the compensation to providers of the CVCP to 40 percent of what the agency pays for the same services for injured workers.

The CVCP was founded on the principal that the state should treat victims of crime the same way it treats injured workers, and acknowledging that the state was taking care of the basic needs of offenders while the victims were left to deal with the crime's consequences on their own. The state has not seen a decrease in violent crime, but it has seen a decrease in the services provided by the CVCP because network adequacy is not there. It is difficult to find providers who will accept the current rates. This bill would keep the CVCP viable.

Families are suffering because of lack of reimbursements, especially for the counseling benefits. There are not adequate counselors to see families who have suffered tragic losses or injury because of these rates. The cap of the one-year period for counseling benefits is difficult. One year does not provide enough time to think about completing counseling when a victim is walking through the grief process after a loved one has been murdered. The grief process goes on for years. The stress level is high, and the state should not tell families that they only get one year for the grief period. The burial cost benefits have lowered and made it difficult for families to come up with money to bury their loved ones. This is particularly important for families with religious beliefs who must have their loved ones buried.

(Opposed) None.

Persons Testifying (Public Safety): 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 Testifying (Appropriations): Brad Tower, Washington Coalition of Crime Victims Advocates; and Terrie Noble, Violent Crime Victim Services.

Persons Signed In To Testify But Not Testifying (Public Safety): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.