



Testimony on H. 611
An Act Relating to Compensation for Victims of Crime
Senate Committee on Judiciary
March 23, 2018

Cara Cookson, J.D.
Public Policy Director and Victim Assistance Program Coordinator

Thank you for considering this minor amendment to the Vermont Victims Compensation Program (“Comp Program”) authorization. The purpose of this bill is to ensure that the Comp Program has the statutory authority it needs to fully establish and enforce subrogation liens.

Background

For nearly 30 years, the Vermont Victims Compensation Program has provided limited financial assistance (up to \$10,000) for Vermonters who incur uninsured, crime-related expenses arising from violent crime. See 13 V.S.A. § 5351, et seq. Covered expenses might include medical co-pays that the victim owes for the treatment of a crime-related injury, mental health counseling necessary to address psychological harm, travel to and from medical appointments or court dates, or the cost of crime-scene cleanup or funeral expenses after a homicide. Victims can receive assistance as soon as law enforcement finds probable cause that a crime has occurred—typically when an affidavit is filed with the prosecutor—instead of waiting for the case to end in a conviction. For the many victims and survivors we serve who live paycheck-to-paycheck, even a small amount of financial assistance from the Comp Program can make a huge difference when it comes to mitigating the long-term impacts of crime.

The Victims Compensation Special Fund is the state funding source for both the financial benefit and administrative cost of the program. A federal Victims of Crime Act (VOCA) Victim Compensation formula grant annually reimburses the

State's expenditures at 60%. The Comp Program also recovers some restitution from offenders who are ordered to pay restitution for amounts the Comp Program paid on behalf of the victim. *See* 13 V.S.A. § 7043.

Subrogation Provision

Both federal and state law require the Comp Program to function as a "last payor" after all other sources of insurance or third-party payments have been exhausted, with limited exceptions for certain homicide claims. The subrogation provision at 13 V.S.A. § 5357 (enacted in 1989) establishes the State's right to "stand in the shoes" of the victim to the extent the Comp Program makes payments on a victim's behalf, and the victim later obtains insurance coverage or receives a civil settlement for damages arising from the same incident. The purpose of subrogation is to prevent victims from being reimbursed twice for the same expense, which ultimately helps to maintain the health of the Victims Compensation Special Fund for everyone who may need it.

Here's how the subrogation provision works in practice:

- When the victim applies for the Program, they sign an acknowledgment that explains how subrogation works.
- The Comp Program notifies any civil attorneys for the victim that the victim has accessed the program, reminds them about the subrogation provision, and works closely with them in the event any related civil matters settle or result in monetary awards to the victim to resolve the lien.

Proposed Language

The first amendment, adding the words "assignee" and "heir," clarifies that subrogation applies even where the estate of a homicide victim later recovers a civil settlement related to the crime and a family member/heir is seeking victims compensation.

The second amendment, "The State shall have a lien therefor . . ." clarifies the State's standing to bring an action or otherwise intervene to enforce the subrogation right, in the unlikely event that doing so might be necessary.