
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1802 **Hearing Date:** June 28, 2016
Author: Chávez
Version: May 27, 2016
Urgency: No **Fiscal:** Yes
Consultant: JM

Subject: *California Victim Compensation and Government Claims Board: Membership*

HISTORY

Source: Author

Prior Legislation: AB 1140 (Bonta) – Ch. 569, Stats. 2015
SB 635 (Nielsen) – Ch. 422, Stats. 2015
SB 618 (Leno) – Ch. 800 Stats. 2013
SB 60 (Wright) – Ch. 147, Stats. 2013
AB 2809 (Leno) – Ch. 587, Statutes of 2008
AB 2869 (Leno) – Ch. 582, Statutes of 2006
AB 2729 (Wesson) 2001-2002, vetoed
AB 606 (Jackson) – Chapter 584, Statutes of 1999

Support: Crime Victims United

Opposition: Northern California Innocence Project (unless amended); California Innocence Project (unless amended)

Assembly Floor Vote: 80 - 0

PURPOSE

The purpose of this bill is to: 1) add the following members to the Victims Compensation and Government Claims Board (VCGCB – “board”) – an expert in the rights of crime victims or a victims rights advocate; a physician, psychiatrist or psychologist with experience in the treatment of crime victims; and 2) provide that any board member who is not a state officer shall receive \$50 in compensation, plus reasonable expenses, for each day of attendance at board hearings, for up to eight hearings per months.

Existing law establishes the Victims Compensation and Government Claims Board (board), which, in pertinent part, operates the California Victim's Compensation Program (CalVCP). (Gov. Code, §§ 13901 & 13950 et. seq.)

Existing law states that the board consists of the Secretary of Government Operations or his or her designee, the Controller, and a third member to be appointed by the Governor. (Gov. Code, § 13901, subd. (b).)

Existing law provides that if the board's third member is not a state officer acting ex officio, that person shall be compensated \$50 per day of actual attendance at board meetings, not to exceed eight meetings per month. (Gov. Code, § 13902.)

Existing law authorizes the board to reimburse victims of crimes for pecuniary loss for specified types of losses, including medical expenses, mental-health counseling, loss of income or loss of support, and installing or increasing residential security. (Gov. Code, § 13957.)

Existing law requires the board to approve or deny applications, based on recommendations by the board staff, within an average of 90 calendar days and no later than 180 calendar days of acceptance by the board. (Gov. Code, § 13958, subd. (a).)

Existing law requires the board to grant a hearing to an applicant who contests a staff recommendation to deny compensation in whole or in part. (Gov. Code, § 13959, subd. (a).)

This bill adds an expert in the rights of crime victims or a representative of a recognized organization that advocates for the rights of crime victims to the board's membership. This person shall be appointed by, and serve at the pleasure of, the Governor.

This bill adds a physician, psychiatrist, or psychologist with expertise in treating or providing services to crime victims to the board's membership. This person shall be appointed by, and serve at the pleasure of, the Governor.

This bill compensates any board member, who is not a state officer acting ex officio, \$50 per day of actual attendance at board meetings, not to exceed eight meetings per month, as well as necessary traveling expenses to attend the meetings.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-

Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Need for This Bill

According to the author:

The Legislative Analyst's Office (LAO), in a report released in 2015, recommended that the composition of the California Victim Compensation and Government Claims Board (VCGCB) be restructured to more effectively focus on victim programs and issues. The current board does not have the expertise to effectively or adequately consider claims by victims. The LAO further recommended that all major victim programs be shifted from the Office of Emergency Services (OES) to the VCGCB because of a lack of coordination and duplication of many victim programs under OES. This bill would essentially give the board the framework to carry out this recommendation.

The Governor's proposal to reorganize the VCGCB to primarily handle victims programs is a step in the right direction. This bill will help ensure that the composition of the board is best suited to take the lead as the primary administrator of victims programs.

2. Purpose and History of the Victims of Crime Program (VCP) Administered by the Victims Compensation and Government Claims Board

The victims compensation program was created in 1965, the first such program in the country. The Victims Compensation and Government Claims Board (board) provides compensation for victims of violent crime. Specifically, the board reimburses eligible victims for many crime-related expenses. Funding for the board comes from restitution fines and penalty assessments paid by criminal offenders, as well as federal matching funds.

The other core function of the board is to review claims against the state and request payment of claims by the Legislature in annual legislation. A person must present a claim for damages against the state to the board before filing a lawsuit.

3. Audits and Substantial Changes to Board Procedures and Policies

In 2008, the Bureau of State Audit (BSA) issued an audit report that was critical of many board procedures and operations. The issues included high administrative costs, which increased when payments declined, inadequate investigation of alternative funding sources for victim services, delays in processing claims. In 2010, the BSA reported that the board had made many improvements in response to the audit, but still recommended significant reforms. The BSA was not alone in criticizing the Victims Compensation Program. The program had been the subject of a number of informational and bill hearings in the Legislature. In 2015, the board sponsored AB 1140 (Bonta) Ch. 569, Stats. 2015 which instituted a number of the changes that the BSA and others had urged the board to make. AB 1140 also incorporated provisions that had been in a previous version of Senator Hancock's SB 519.

4. Legislative Analyst's Office Recommendations

In its report on improving programs for crime victims, the LAO recommended changing the composition of the board. The LAO noted:

Two of the three members of the board have expertise that is primarily applicable to the Government Claims Program and not related to victim services—the Government Operations Agency Secretary and the State Controller. Accordingly, we recommend that the Legislature change the membership of the board. First, we recommend removing the Secretary of the Government Operations Agency and the State Controller from the board. Second, we recommend that additional members be added to the board to provide expertise in victim issues. For example, the Legislature could consider requiring the board to include an expert in providing trauma-informed services or a victim of crime, as well as representatives from the other state departments that administer victim programs (such as the Attorney General or the Secretary of CDCR). We also recommend that the Legislature appoint some of the board members in addition to having the Governor's appointees on the board. Finally, we recommend that the appointed members serve fixed terms to increase their independence." (*Improving State Programs for Crime Victims, supra*, pp. 18-19).

<http://www.lao.ca.gov/reports/2015/budget/crime-victims/crime-victims-031815.pdf>>.)

This bill partially adopts the recommendations of the LAO by adding to the membership of the board a victims' advocate and a victims' services provider in the medical or mental-health field.

5. Governor's Budget Proposal

As noted above, the board currently administers not only the VCP, but also processes claims for money damages against the state. The board also considers claims for wrongfully convicted.

The Governor's Budget for 2015-16 proposes to reorganize the board beginning in 2016-17. The proposed change would have the board primarily administer victim programs, including some currently handled by other agencies, such as the Office of Emergency Services. Government claims would be moved to the Department of General Services. The board would still retain the responsibility for administering claims for the wrongfully convicted. The addition of a victim's advocate and a treatment provider to the board is consistent with the Governor's plan to reorganize the board as the primary administrator for victims' programs.

6. Concerns about Claims by Wrongly Convicted and Imprisoned Persons

California law allows a factually innocent person -- an "exonoree" -- who has been wrongfully convicted and imprisoned to apply for compensation at a rate of \$140 per day. In 2013, the exonoree compensation law was amended by SB 618 (Leno) Ch. 800, Stats. 2013, to provide that an exonoree whose factual innocence was determined by a court, generally in a contested hearing with consideration of a wide range of evidence, need not separately and additionally prove his or her innocence in an administrative proceeding before the VCGCB. The state is represented in these matters by the Attorney General. Prior to enactment of SB 618, an exonoree who had prevailed in a habeas corpus petition under a standard requiring him or her to prove that the evidence "undermines the entire prosecution case and point unerringly to innocence,"¹ was required to begin anew and file a petition where the evidence and findings from the habeas corpus proceeding could not be considered.

Exonorees who seek compensation in a VCGCB hearing are not entitled to counsel at state expense. These persons are highly likely to have no resources after spending years in prison and pursuing relief in the courts. In cases where an exonoree has counsel, counsel was typically not compensated by the exonoree, but worked pro-bono.

Representatives of the California Innocence Project and the Northern California Innocence Project-- the entities that often represented exonorees -- have argued that the Attorney General effectively treated the administrative hearings as adversary hearings.² The innocence projects noted that the board almost always followed the recommendation of the Attorney General, and that the recommendation was usually to deny compensation.

The innocence projects have argued that the claims process presents an inherent bias against claimants, with lingering suspicions that the original conviction was accurate. This is perhaps

¹ *In re Hall* (1981) 30 Cal.3d 408, 417, italics in original; see also, *In re Lindley* (1947) 29 Cal.2d 709 and *In re Hardy* (2008) 42 Cal.4th 1231. The burden of establishing actually innocent is much higher than a preponderance of the evidence. (*In re Lawley* (2008) 42 Cal.4th 1231 1239-1240.)

² The California Innocence Project is housed at California Western School of Law in San Diego; the Northern California Innocence Project is housed at Santa Clara School of Law

not unexpected, as vast majority of claims the board hears are from victims who were harmed by a violent crime.

A claim by an exonerated person arises from very different circumstances and procedures than a claim by a crime victim. “Home Free,” an article in the June 20, 2016 of the New Yorker, describes the unique and very lengthy struggles of wrongly imprisoned inmates in proving their innocence.³ Arguably, a crime victims’ advocate or a professional who treats victims would not have the expertise to review claims by exonorees. The projects have thus argued that if the composition of the board is changed, the board should include a member with expertise in wrongful convictions or be directed to consult with an expert in cases of wrongful conviction in reviewing a claim for compensation.

-- END --

³ <http://www.newyorker.com/magazine/2016/06/20/derrick-hamilton-jailhouse-lawyer>