
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: SB 519 **Hearing Date:** April 28, 2015
Author: Hancock
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Urgency: No **Fiscal:** Yes
Consultant: JM

Subject: *Victims of Crime*

HISTORY

Source: San Francisco County District Attorney

Prior Legislation: AB 2685 (Cooley) - Ch. 508, Stats. 2014
AB 2809 (Leno) - Ch. 587, Stats. 2008
AB 2869 (Leno) - Ch. 582, Stats. 2006
AB 2413 (Spitzer) - Ch. 571, Stats. 2006
AB 105 (Cohn) - Ch. 539, Stats. 2006
SB 972 (Poochigian) - Ch. 238, Stats. 2005
SB 631 (McPherson) - Ch. 223, Stats. 2004
SB 1423 (Chesbro) - Ch. 1141, Stats. 2002
AB 2898 (Bowler) - Ch. 1077, Stats. 1996

Support: Legal Services for Prisoners with Children

Opposition: None known

PURPOSE

The purposes of this bill are to 1) prohibit the victims compensation and Government Claims Board (the "board") from requiring a claimant to submit documentation from the IRS, the Franchise Tax Board, or the State Board of Equalization; 2) require that all correspondence from the board to an applicant must be in English, Spanish and Chinese; 3) provides that an adult who witnesses a crime is eligible for reimbursement for counseling; 4) prohibit denial of a minor's claim because the minor did not cooperate with law enforcement; 5) provide that a crime victim who has been convicted of a felony is entitled to compensation for mental health counseling, regardless of whether he or she has been released from probation or parole; 6) provide that a victim of financial exploitation of an elder person by a relative or caretaker is eligible for counseling, as specified; 7) require reimbursement for burial expenses in the amount of \$7,500, rather than reimbursement not exceeding \$7,500; 8) require the board to approve or deny an application within 90 days, not within an average of 90 days;¹ 9) require the board to allow a claimant to be accompanied by a support animal at a hearing to contest

¹ Existing law requires the board to report quarterly to the Legislature until it has met the time requirements for two consecutive quarters. This bill retains the reporting requirement. (Gov. Code § 13958.)

denial of a claim; 10) provide that good cause for continuance of a criminal trial includes cases where a witness was previously a victim of elder abuse or a sex crime; 11) provides that a witness in a hearing to determine or modify restitution in a criminal case may testify by live audio and video transmission; and 12) provide that if a person has been granted dismissal of a conviction, or has been allowed to withdraw a guilty plea, the person still must pay a direct restitution order or a restitution fine.

Existing provisions in the California Constitution state that all crime victims have the right to seek and secure restitution from the perpetrators of these crimes. Restitution must be ordered in every case without exception. Where a defendant has been ordered to pay restitution, all money, or property collected from the defendant must be first applied to satisfy restitution orders. (California Constitution Article 1 § 28(b)(13)(A)-(C).)

Existing law requires the court to order a defendant to make restitution to the victim or victims of the defendant's crime, based on the amount of loss claimed by the victim or victims or any other showing to the court. The court shall order full restitution for the losses caused by the defendant's crime unless the court finds and states compelling and extraordinary reasons for not doing so. (Penal Code § 1202.4(f).)

Existing law establishes the Victims Compensation and Government Claims Board (VCGCB or board) to operate the California Victim Compensation Program (CalVCP). (Gov. Code §§ 13950 *et. seq.*)

Existing law provides that an application for compensation shall be filed with VCGCB in the manner determined by the board. (Gov. Code § 13952, subd.(a).)

Existing law states that except as provided by specified sections of the Government Code, a person shall be eligible for compensation when all of the following requirements are met (Gov. Code § 13955):

- The person from whom compensation is being sought who is any of the following; a victim; a derivative victim; or, a person who is entitled to reimbursement for funeral, burial or crime scene clean-up expenses pursuant to specified sections of the Government Code.
- Either of the following conditions is met: The crime occurred within California, whether or not the victim is a resident of California. This only applies when the VCGCB determines that there are federal funds available to the state for the compensation of crime victims.
- Whether or not the crime occurred within the State of California, the victim was any of the following: A California resident; a member of the military stationed in California; or, a family member living with a member of the military stationed in California.
- If compensation is being sought for a derivative victim, the derivative victim is a resident of California, or the resident of another state who is any of the following: At the time of the crimes was the parent, grandparent, sibling, spouse, child or grandchild of the victim; at the time of the crime was living in the household of the victim; at the time of the crime was a person who had previously lived in the house of the victim for a person of not less than two years in a relationship substantially similar to a previously listed relationship;

- Another family member of the victim including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime; or, is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

Existing law authorizes VCGCB to reimburse for pecuniary loss for the following types of losses (Gov. Code § 13957, subd. (a)):

- The amount of medical or medical-related expenses incurred by the victim, subject to specified limitations;
- The amount of out-patient psychiatric, psychological or other mental health counseling-related expenses incurred by the victim, as specified, including peer counseling services provided by a rape crisis center;
- The expenses of non-medical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law;
- Compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's injury or the victim's death, subject to specified limitations;
- Cash payment to, or on behalf of, the victim for job retraining or similar employment-oriented services;
- The expense of installing or increasing residential security, not to exceed \$1,000, with respect to a crime that occurred in the victim's residence, upon verification by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim;
- The expense of renovating or retrofitting a victim's residence or a vehicle to make them accessible or operational, if it is medically necessary; and,
- Expenses incurred in relocating, as specified, if the expenses are determined by law enforcement to be necessary for the personal safety or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

Existing law limits the total award to or on behalf of each victim to \$35,000, except that this amount may be increased to \$70,000 if federal funds for that increase are available. (Gov. Code § 13957, subd. (b).)

Existing law states that an application shall be denied if VCGCB finds that the victim or derivative victim failed to cooperate reasonably with law enforcement. However, in determining whether cooperation was reasonable, VCGCB shall consider the victim's or derivative victim's age, physical condition, and psychological state, cultural or linguistic barriers and compelling health and safety concerns. These concerns include but not limited to, reasonable fear of retaliation or harm jeopardizing the well-being of the victim, victim's family, derivative victim or derivative victim's family. (Gov. Code § 13956, subd. (b)(1).)

Existing law provides that a domestic violence claim may not be denied solely because the victim did not make a police report. The board shall adopt guidelines to consider and approve domestic violence claims based on evidence other than a police report. The evidence may include, but is not limited to, relevant medical or mental health records, or the fact that the victim has obtained a temporary or permanent restraining order. (Gov. Code § 13956, subd. (b)(2).)

Existing law states that an application for a claim based on human trafficking, as defined, of the Penal Code may not be denied solely because no police report was made by the victim. VCGCB

shall adopt guidelines that allow the board to consider and approve applications for assistance based on human trafficking relying upon evidence other than a police report to establish that a human trafficking crime, as defined, has occurred. That evidence may include any reliable corroborating information approved by the board, including, but not limited to, the following:

- A Law Enforcement Agency Endorsement was issued, as specified;
- A human trafficking caseworker has attested by affidavit that the individual was a victim of human trafficking. (Gov. Code § 13956, subd. (b)(3)):

Existing law provides that a victim of violent crime who has been convicted of a felony may not receive compensation until released from parole or probation. Victims who are not felons have priority for compensation ahead of felons. (Gov. Code § 13956, subd. (d).)

Existing law provides that the board may deny a claim in whole or part if the claimant, or the victim of the crime for which a derivative victims seeks compensation, was involved in the events leading to the crime for which compensation is sought. (Gov. Code § 13956, subd. (c).)

Existing law provides that the board shall approve or deny applications within an average of 90 calendar days and no later than 180 from “of acceptance” of the application by the board or victim center.

- The board shall report quarterly to the Legislature until it has met the time requirements for two consecutive quarters.
- If the board does not approve or deny a claim within “180 days of the date it is accepted,” the board is advise the applicant in writing of the reasons for the failure to rule on the application. (Gov. Code § 13958.)

Existing law includes standards and consideration by the court in granting a motion for continuance of a criminal trial, including direction and guidance as to what constitutes good cause for a continuance. (Pen. Code § 1050.)

This bill provides that the board shall not require a claimant to submit documentation from the IRS, the Franchise Tax Board, or the State Board of Equalization.

This bill requires that all correspondence from the board to an applicant must be in English, Spanish and Chinese.

This bill provides that an adult who witnesses a crime is eligible for reimbursement for counseling.

This bill provides that if the victim is a minor, the board shall not deny a claim because the minor did not cooperate with law enforcement.

This bill provides that a crime victim who has been convicted of a felony is entitled to compensation for mental health counseling, regardless of whether he or she has been released from probation or parole.

This bill provides that a victim of financial exploitation by a caretaker or relative of a person 65 years of age or older, where there is a reasonable fear of continued exploitation is eligible for counseling.

This bill provides that an eligible claimant shall be granted reimbursement for burial expenses in the amount of \$7,500, rather than reimbursement not exceeding \$7,500.

This bill requires the board to approve or deny an application within 90 days, not within an average of 90 days, but no later than 180 days.²

This bill requires the board to allow a claimant to be accompanied and supported by an animal in a hearing to contest a staff recommendation that a claim be denied.

This bill provides that good cause for continuance of a criminal trial where a witness was previously a victim of elder abuse.

This bill provides that a witness in a hearing to determine restitution after conviction in a criminal case, including modification of an existing order, may testify by live audio and video transmission.

This bill provides that if a person, pursuant to Penal Code Section 1203.4³, has been granted dismissal of a conviction, or has been allowed to withdraw a guilty plea, the person is not relieved of the duty to pay a direct restitution order or a restitution fine.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight 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 February of this year the administration reported that as of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is

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³ This is commonly called "expungement," although the conviction is not truly expunged. Numerous consequences still flow from the conviction after relief has been granted under Section 1203.4. For example, a person convicted of a felony may not own a firearm and the conviction must be disclosed in connection with various applications for government employment and licensure.

now below the court-ordered reduction to 137.5% of design bed capacity.”(Defendants’ February 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).

While significant gains have been made in reducing the prison population, the state now 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:

In 2004, a National Institute of Justice report estimated that the annual nationwide costs of crime are \$105 billion in medical expenses, lost earnings, and victims’ services costs. When factoring in usual court-awarded amounts for pain and suffering as well as reduced quality of life, those costs explode to \$450 billion. Ensuring that crime victims are monetarily compensated for what perpetrators do to them is not only sound economic policy, but also morally sound.

In March 2015, the Legislative Analyst’s Office released a report outlining ongoing issues with the Victim Compensation and Government Claims Board (VCGCB) and recommended that it be drastically reorganized. But this was not the first time a state agency noted that there were problems with the Board. In 2008, the California State Auditor released a report criticizing the Board. The Auditor noted that frequently, the Board took longer than the statutorily required 90 day time period to disburse payments to victims. In one instance, the Board did not disburse payment until 255 days after receiving the victim’s application. This delay in disbursing payment persists 7 years after the Auditor’s report was released.

In addition, the Board communicates with applicants solely in written English. Applicants who do not speak English or are illiterate are unable to respond to

Board requests, for instance, for more information on their application. This lack of communication accommodation also adds to application processing time. Over half the time, for an application was denied, the reason stated was the applicant did not “cooperate” with law police because he or she failed to file a police report. This requirement, in particular, disproportionately affects minors. Often, an applicant who is a minor does not file a police report with good reason: in many of the cases, the applicant either did so to avoid retaliation by the perpetrator, or was suffering from post-traumatic stress because of the crime.

In addition, under current law adult witnesses to a crime are not entitled to compensation. Even though a witness may not have been a crime victim per se, the trauma of having to witness and experience the crime—especially if it involves sexual assault or homicide—can be extreme. For instance, an individual may be witness to a gruesome drive-by shooting which results in a death, but not be entitled to compensation because he or she was not the victim.

Current law also does not reflect current funeral costs. Under the Board’s current regulations, a victim’s family is entitled to up to \$5000 for funeral expenses. However, the average funeral now costs between \$7000 and \$1000, which would force a victim’s family to pay for a large sum of the costs.

2. Purpose and History of the Victims of Crime Program (VCP)

The victims’ compensation program was created in 1965, the first such program in the country. VCGCB provides compensation for victims of violent crime. It 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. Audit of the VCP

The Bureau of State Audit (BSA) report in 2008 included the following highlights:

- From fiscal years 2001-02 through 2004-05, program compensation payments decreased from \$123.9 million to \$61.6 million — a 50 percent decline. Despite the significant decline in payments, the costs to support the program increased.
- Administrative costs make up a significant portion of the Restitution Fund disbursements — ranging from 26 percent to 42 percent annually.
- The program did not always process applications and bills as promptly or efficiently as it could have. Board staff took longer than 180 days to process applications in two instances out of 49, and longer than 90 days to pay bills for 23 of 77 paid bills.
- The board did not adequately investigate alternative sources of funding for victim reimbursement, such as insurance and public aid.
- The program’s numerous problems with the transition to a new application and bill processing system led to a reported increase in complaints regarding delays in processing applications and bills.

- Some payments in CaRES appeared to be erroneous. Although board staff provided explanations for the erroneous payments, the fact that they were unaware of these items indicated an absence of controls that would prevent erroneous payments.
- The board lacks the necessary system documentation for CaRES.
- There are no benchmarks, performance measures, or formal written procedures for workload management.

In 2010, BSA found that the program had partially corrected five of the problems noted in the audit and corrected five others. The BSA urged the board to continue correcting the problems noted in the report. For example:

- The board reduced administrative costs, but processing times for claims had increased.
- The board increased collections, but it had not determined whether outreach programs had been successful and satisfaction with the program had increased.
- The board implemented better training program for employees who examined claims submitted by crime victims.
- The board developed an inventory monitoring system and set performance benchmarks. The monitoring should improve identification and understanding of eligibility requirements.
- Board training does include an emphasis on alternative funding sources.
- The board did complete a chapter on appeals of denials in its manual.
- The board did improve its use of the CaRES computer system. However, claims were still more quickly processed in the local agencies with which the board contracts.

It appears that the BSA has not issued a progress report or update on the program since 2010.

4. Legislative Analyst's Report

As noted in the author's statement, the Legislative Analyst issued a report on the board. LAO did recommend major changes to the entire program. At this point, a bill has not been introduced to implement the LAO recommendations. It does appear that changes made in this bill to the existing operation of the program could be integrated into any re-organization of the board and its functions.

5. Related Bills

AB 1140 (Bonta) and SB 556 (DeLeon), which is on consent before the committee, both propose changes related to victim compensation and the board's operations.

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