
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1140 **Hearing Date:** July 14, 2015
Author: Bonta
Version: May 28, 2015
Urgency: No **Fiscal:** Yes
Consultant: JM

Subject: *California Victim Compensation and Government Claims Board*

HISTORY

Source: California Victims Compensation and Government Claims Board

Prior Legislation: AB 1629 (Bonta), Chapter 535 of the Statutes of 2014
AB 2809 (Leno), Chapter 587, Statutes of 2008
AB 2869 (Leno), Chapter 582, Statutes of 2006
AB 2729 (Wesson), of the 2001-2002, vetoed
AB 606 (Jackson) Chapter 584, Statutes of 1999

Support: Alameda County District Attorney; Alliance for Boys and Men of Color; Legal Services for Prisoners with Children; Policy Link

Opposition: None known

Assembly Floor Vote: 79 - 0

PURPOSE

The purpose of this bill is to: 1) expand the category of persons who may act as a victim's authorized representative; 2) revise standards for determining if a victim failed to cooperate with the board; 3) authorize compensation for emotional harm suffered by minors in cases of nonconsensual distribution of sexual images; 4) authorize compensation for emotional injury for a victim of instilling fear through harassment by electronic means; 5) expand eligibility of derivative victims who are grandchildren or grandparents of the direct victim; 6) eliminate the requirement for compensation in child abduction that the crime continue for 30 days; 7) revise factors for determining whether a claim should be denied because the claimant was involved with the crime and eliminates such denials in sexual assault, domestic violence or unlawful sexual intercourse cases; 8) provide that a domestic violence victim is not deemed uncooperative based on interactions with at the crime scene, and a victim of domestic violence, sexual assault or human trafficking is not deemed uncooperative by a delay reporting the crime; a victim; 9) prohibit denial of compensation to a sexual assault victim solely because she or he did not file a police report and directs the board to adopt guidelines for reviewing other kinds of evidence in such claims; revises rules for consideration of claims by convicted felons; 10) deny compensation to registered sex offenders; authorizes reimbursement for

medical care only if provided by a person licensed to perform the particular service; 11) eliminate compensation for remedial care given in accordance with a religious healing method; 12) allow reimbursement for purchase of a vehicle by a permanently disabled victim; 13) authorize reimbursement for cleaning of a car that was a crime scene; 14) allow a claimant to request a telephonic hearing to contest denial of a claim; 15) authorize the board to seek repayment of relocation expenses if the victim allows the offender on the premises; 16) authorize requests for verification of legal services; 17) require the board to commence collection of overpayments within seven years, except for fraud; 18) authorize a claimant to contest an overpayment allegation; 19) provide that evidence provided after the board denied a request for reconsideration may be considered only at the discretion of the board; 20) provide that the board need not forward direct restitution to victims in an amount below \$25, unless the victim so requests; and 21) increase the compensation rate for innocent persons who were wrongly imprisoned from \$100 to \$130 per day.

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.)

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

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; and
- 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.

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.

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).)

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).)

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).)

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)):

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).)

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).)

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.)

This bill:

Expands the definition of a victim's "authorized representative" to include any person having written authorization by the victim or derivative victim, or any person designated by law such as a legal guardian, conservator, or social worker; but excluding any medical or mental health provider, or its agent, who has provided services to the victim or derivative victim

Provides that an applicant may be found to have been "uncooperative" for purposes of verifying information necessary to process a claim under the following circumstances:

- He or she has information, or reasonably-obtainable information, that is needed to process the claim but fails to do so after the board requests it. However, the board must take the applicant's economic, psycho-social, and post-crime traumatic circumstances under consideration, and cannot unreasonably reject an application solely for failure to provide information;
- He or she gives false information about the claim, or causes another person to do so;
- He or she refuses to apply for benefits from other sources to which he or she may be entitled, such as workers' compensation, Social Security, state disability insurance or unemployment insurance or;
- He or she threatens a board member or staff with violence or bodily harm.

Authorizes compensation for a victim's emotional injury incurred as a direct result of the nonconsensual distribution of pictures or video of sexual conduct in which the victim appeared, if the victim is a minor; although compensation for derivative victims is not allowed.

Revises provisions allowing compensation for emotional injury suffered in child abduction cases to delete the requirement that the deprivation of custody lasted for 30 calendar days, and instead requires only that criminal charges be filed in the case.

Authorizes denial of a claim, in whole or in part, if the board finds that denial is appropriate because of the nature of the applicant's involvement in the events leading to the crime, or the involvement of the person whose injury or death gave rise to the claim. This limitation does not apply if the victim's injury or death occurred as a direct result of the crimes of rape, spousal rape, domestic violence, or unlawful sexual intercourse with a minor.

States that factors to be considered for determining involvement in the crime include, but are not limited to:

- The victim or derivative victim initiated the qualifying crime, or provoked or aggravated the suspect into initiating the qualifying crime;
- The qualifying crime was a reasonably foreseeable consequence of the conduct of the victim or derivative victim; and,
- The victim or derivative victim was committing a crime that could be charged as a felony and that reasonably lead to him or her being victimized.

States that if the board finds that the victim or derivative victim was involved in events leading to the crime, factors that may be used to mitigate or overcome involvement, include, but are not limited to:

- The victim's injuries were significantly more serious than reasonably could have been expected based on the victim's level of involvement;
- A third party interfered in a manner not reasonably foreseeable by the victim or derivative victim; and,
- The victim's age, physical condition, and psychological state, as well as any compelling health and safety concerns.

Prohibits a domestic violence victim from being found to be uncooperative based on his or her conduct with law enforcement at the scene of a crime.

Prohibits a victim of domestic violence, sexual assault, or human trafficking from being found to be uncooperative because of a delay in reporting the crime.

Prohibits the denial of an application for a claim arising from a sexual assault based solely on the failure to file a police report.

Requires the board to adopt guidelines allowing it to consider and approve applications for assistance in sexual assault cases by relying upon evidence other than a police report. Factors

evidencing a sexual assault has occurred, may include medical records, mental health records, and a sexual assault examination.

Denies compensation to any person convicted of a violent felony, as specified, until that person is no longer incarcerated and discharged from parole, probation, post-release community supervision, or mandatory supervision.

Denies compensation to any person who is required to register as a sex offender.

Removes current provisions which prioritize the applications of victims who are not felons.

Removes limits for statutory rape counseling.

Expands eligibility to recoup the costs of mental health counseling to grandparents and grandchildren.

Limits reimbursement for medically-related expenses to those that were provided by a licensed medical provider.

Eliminates the board's authority to reimburse for expenses of nonmedical remedial care and treatment given in accordance with a religious method of healing recognized under state law.

Eliminates verification requirements for reimbursement of increased residential-security measures.

Allows reimbursement for the purchase of a vehicle for a victim who becomes permanently disabled.

Specifies that, as to reimbursement of costs for a victim's relocation, the victim may be required to repay the reimbursement if the victim notifies the perpetrator of his or her new address or allows the offender on the premises.

Provides that if a security deposit is required for relocation services, the board shall be named as the recipient of the security deposit.

Expands reimbursement to cover cleaning expenses when the crime scene is a vehicle.

Allows the board to request verification before it reimburses for attorney's fees.

Permits an applicant who seeks a hearing on the denial of compensation to request a telephonic hearing.

Provides that evidence submitted after the board has denied a request for reconsideration shall not be considered unless the board chooses to reconsider the decision on its own motion.

Requires any board actions to collect overpayments be commenced within seven years of the date of the overpayment, except there is no statute of limitation for the action if overpayment was a result of fraud, misrepresentation or willful non-disclosure of the applicant.

Authorizes the recipient of an alleged overpayment to contest that finding.

Provides that the board need only forward restitution proceeds collected from a prisoner or parolee to a victim when the payment is \$25 or more, unless the victim requests payments of a lesser amount.

Increases the rate of compensation for a wrongfully convicted person from \$100 per day to \$130 per day.

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 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:

To address ongoing issues with outdated restrictions and the need to modernize the program to reflect changing technologies and crimes, the CalVCP conducted a Statute Modernization Project, bringing various stakeholder groups together to make recommendations on revising and updating the state compensation program to better serve victims.

AB 1140 would implement many of the recommendations made by the CalVCP Statute Modernization Project to modernize the existing statutes. For example, current law restricts compensation of victims of domestic violence if the victim fails to cooperate with law enforcement or report the assault in a timely fashion. AB 1140 would update that law to comport with current understandings of domestic violence and the many reasons a victim may fail to immediately report or cooperate. Current law also restricts compensation to persons on probation or parole and those who have participated in a crime that resulted in their injuries. AB 1140 would delete those restrictions and allow compensation unless the person is on probation or parole for a violent crime or is a sex offender and allow compensation to those who participated in a crime unless the crime was a felony.

The bill would also make a number of other improvements to address emerging issues in law. For example, the bill would include online harassment as a compensable crime and also allow compensation to a minor who sustains emotional injury as a direct result of the distribution of pictures or video of sexual conduct.

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. VCGCB (board) 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 Victims of Crime Program

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 board 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

The Legislative Analyst issued a report on March 18, 2015 about services for crime victims, with an emphasis on the Victims of Crime Program as administered by the board. LAO recommended 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. Board Responses to Issues Raised in Reports and Hearings

As noted above, the board has faced criticism for inefficiency, overly strict standards for denying claims, particularly in sexual assault or domestic violence claims. There have also been criticisms that claims were denied because the forms were missing information or included mistakes, rather than because the victim was underserving of compensation and that communication with victims was incomplete or not sufficiently helpful. In addition to the BSA audit and LAO reports, there have been a number of legislative hearings on the services provided by the board.

In response to these criticisms, the board has sought to reduce claim processing and payment times, has implemented statutory directives to change claim review standards in domestic violence and sexual assault cases. The board, as noted in Comment #3, moved to address problems identified in the audit by the BSA.

The board has stated that it faces constant funding pressure, noting that it often operates with a structural deficit. Further, some problems with reviewing claims and communicating with claimants may be inherent in the compensation system. In comparison with joint powers agencies - usually in a county district attorney office - board personnel in Sacramento do not have direct contact with victims. They review claims on paper and cannot know the background of each case and each victim.

This bill appears to be an attempt by the board to address a wide range of issues in a single piece of legislation. It further appears that the board has done a fairly thorough internal review in order to propose these statutory changes. Prior to introduction of the bill, the board met with legislative staff and other interested parties.

6. Proposed Amendments to Include Provisions for SB 519 (Hancock) in this Bill

The author and the board has also agreed to include in this bill a number of the provisions in SB 519 (Hancock) - pending in Assembly Public Safety - another bill that concerns victim compensation issues. For example, SB 519 addresses communication problems by requiring the board to translate responses to victims into numerous languages. While informational materials and claim forms are translated into Spanish, direct correspondence with a claimant is currently only written in English. A victim who speaks and reads a language other than English cannot respond to any correspondence from the board - including requests for additional information necessary to decide the claim from - if the correspondence to the victim is only written in English.

7. Concerns about the Claims Appeals Process

It appears that the sponsor of SB 519 - the San Francisco District Attorney - still has concerns that the appeals process for denied claims takes too long and that claimants are not adequately informed about the status of their cases. The board has stated that it has increased staffing for appeals and that much progress has been made. It is the understanding of committee staff that the board and the District Attorney are continuing to discuss the appeals issues

Committee members may wish to ask board representatives to describe what steps the board is taking to improve the process for appeals of denied claims. Committee members may also wish to ask the board to informally review the overall status of the process and separate appeals into categories. This could reveal patterns or specific issues that the board could address. Committee staff understands that the amendments AB 1140 described in this comment will be taken in Appropriations. The authors are discussing the details of other possible amendments.

-- END --