
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1639 **Hearing Date:** June 13, 2017
Author: Eduardo Garcia
Version: June 1, 2017
Urgency: No **Fiscal:** No
Consultant: SC

Subject: *Crime Victims: The California Victim Compensation Board*

HISTORY

Source: Youth Justice Coalition
Fathers and Families of San Joaquin

Prior Legislation: SB 556 (De León), of the 2015-16 Legislative Session,
SB 1324 (Hancock), Ch. 730, Stats. 2016
AB 1563 (Rodriguez), Ch. 121, Stats. 2016
AB 1140 (Bonta), Ch. 569, Stats. 2015
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: Alliance for Boys and Men of Color; California Attorneys for Criminal Justice;
California Catholic Conference; National Center for Youth Law; PolicyLink; W.
Haywood Burns Institute; Youth Alive

Opposition: None received

Assembly Floor Vote: 66 - 0

PURPOSE

The purpose of this bill is to prohibit the California Victim Compensation Board from denying an application made to the California Victim Compensation Program solely because of the victim's or victim's family member's connection or suspected connection with a gang, or a victim's or victim's family member's immigration status.

Existing law establishes the California Victims Compensation Claims Board (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 the board in the manner determined by the board. (Gov. Code, § 13952, subd. (a).)

Existing law states that, except as specified, a person shall be eligible for compensation when all of the following requirements are met:

- The person from whom compensation is being sought any of the following:
 - A victim;
 - A derivative victim; and,
 - 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 in California, but only when the board determines that there are federal funds available to the state for the compensation of crime victims; or,
 - Whether or not the crime occurred in 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 derivative victim, the derivative victim is a resident of California or any other state who is any of the following:
 - At the time of the crimes was the victim's parent, grandparent, sibling, spouse, child or grandchild;
 - At the time of the crime was living in the victim's household;
 - At the time of the crime was a person who had previously lived in the victim's household for at least two years in a relationship substantially similar to a previously listed relationship;
 - Another family member of the victim who witnessed the crime, including, but not limited to, the victim's fiancé or fiancée;
 - Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.
- And other specified requirements. (Gov. Code, § 13955.)

Existing law 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. (Gov. Code, § 13956, subd. (a).)

Existing law 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. 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. (Gov. Code, § 13956, subd. (a)(1).)

Existing law 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. (Gov. Code, § 13956, subd. (a)(2).)

Existing law requires denial of a claim if the board finds that the victim failed to cooperate reasonably with law enforcement in the apprehension and conviction of the perpetrator. (Gov. Code, § 13956, subd. (b)(1).)

Existing law 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.
(Gov. Code, § 13956, subd. (c)(1).)

Existing law denies compensation to a person who is required to register as a sex offender.
(Gov. Code, § 13956, subd. (c)(1).)

This bill prohibits the board from denying an application made to the CalVCP solely because of the victim's or victim's family member's membership in, affiliation with, or association with, a gang, or suspected membership in, association with, or affiliation with, a gang.

This bill prohibits the board from denying an application made to the CalVCP solely because of the victim's or victim's family member's immigration status.

This bill makes the following Legislative findings and declarations:

- People and their families are often excluded from victims' compensation and related services based upon their own, or their family's alleged gang membership, affiliation, or association, or their or their family's immigration status. Without standard regulations governing the distribution of compensation and victims' services, exclusion will continue to grow violence and victimization—rather than heal our state's most vulnerable residents and communities; and,
- Denying victims and their families the resources that they need to heal increases trauma, exacerbates suffering, increases the resulting physical health and mental health costs, and unintentionally increases the risk of future victimization in connection with, or in retaliation for, the unaddressed harm.

This bill states that this act shall be known as the Healing of All Act of 2017.

COMMENTS

1. Need for This Bill

According to the author:

The premise of this bill is that some crime victims and derivative victims are being denied compensation because they are listed in the CalGang Database System.

The statute listing disqualification from compensation, Government Code Section 13956, does not list gang affiliation as a disqualifier. Under current law, the only people automatically disqualified are registered sex offenders and individuals on parole for a violent felony. Additionally, claims can be denied if the board determines that the applicant was involved in the events leading to the crime, or if the applicant failed to reasonably cooperate with law enforcement in prosecution of the case.

Moreover, according to the Attorney General's Website, "Only specifically trained Law Enforcement Officers and Support Staff may access CalGang information. Release of CalGang® Criminal Intelligence Information is on a Right-to-Know (A Law Enforcement Officer) and Need-to-Know (Legitimate Law Enforcement Purpose) basis only." (See <https://oag.ca.gov/calgang>.) Thus, CalVCP staff does not have access to the CalGang Database. Nevertheless, it is possible that CalVCP staff can learn information about gang affiliation based on contents of police reports.

2. History and Purpose of CalVCP

The victim compensation program was created in 1965, the first such program in the country. The board provides compensation for victims of violent crime. It reimburses eligible victims for many crime-related expenses, such as counseling and medical fees. Funding for the board comes

from restitution fines and penalty assessments paid by criminal offenders, as well as federal matching funds. (See the California Victim Compensation Board website <<http://www.vcgc.ca.gov/board/>> (as of Mar. 8, 2017).)

3. Recent Changes to CalVCP

The CalVCP underwent various changes after AB 1140 (Bonta), Chapter 569, Statutes of 2015, was enacted. The bill required the application to be written in several languages other than English, and once an applicant chooses his or her preferred language, any subsequent communications must be in the chosen language. The bill provided more guidance on how to deal with applications involving victims of domestic violence, rape, and human trafficking so that these victims will not have their applications denied for failing to provide information at the scene of the crime or failing to report the crime immediately. The bill provided ways to mitigate or overcome the disqualifying factor of involvement in a crime by providing factors that the board should consider. The bill also added new expenses that may be covered and changed the disqualifying factor of a victim who is on parole or probation so that only a person who is a registered sex offender or convicted of a violent felony and currently on parole or probation may be denied.

4. CalGang Database Audit

In August 2016, the California State Auditor presented a report concerning the CalGang Database to the Joint Legislative Audit Committee. The State Auditor concluded:

CalGang's current oversight structure does not ensure that law enforcement agencies (user agencies) collect and maintain criminal intelligence in a manner that preserves individuals' privacy rights. Although the California Department of Justice funds it, CalGang is not established in state statute and consequently receives no state oversight. Instead, the CalGang Executive Board and the California Gang Node Advisory Committee (CalGang's governance) oversee CalGang and function independently from the State and without transparency or meaningful opportunities for public input.

Inadequate oversight contributed to the numerous instances in which the four user agencies we examined could not substantiate the validity of CalGang entries. Specifically, the agencies lacked adequate support for 13 of 100 people we reviewed in CalGang and for 131 of 563 (23 percent) of the CalGang criteria entries we reviewed. Although a person's CalGang record must be purged after five years unless updated with subsequent criteria, we found more than 600 people in CalGang whose purge dates extended beyond the five-year limit, many of which were more than 100 years in the future. Finally, the user agencies have poorly implemented a 2014 state law requiring notifications before adding a juvenile to CalGang. Two agencies we reviewed did not provide juveniles and parents with enough information to reasonably contest the juveniles' gang designations, thereby denying many people their right to contest a juvenile's gang designation.

Although it asserts compliance with federal regulations and state guidelines—standards designed to protect privacy and other constitutional rights—little evidence exists that CalGang's governance has ensured these standards are met.

As a result, user agencies are tracking some people in CalGang without adequate justification, potentially violating their privacy rights. Further, by not reviewing information as required, CalGang’s governance and user agencies have diminished the system’s crime-fighting value. Although CalGang is not to be used for expert opinion or employment screenings, we found at least four appellate cases referencing expert opinions based on CalGang and three agencies we surveyed confirmed they use CalGang for employment screenings. Although these practices do not appear to be common place, they emphasize the effect CalGang can have on a person’s life.

We believe that CalGang needs an oversight structure that ensures that information is reliable and that users adhere to requirements that protect individuals’ rights. Thus, we recommend that the Legislature adopt state law assigning Justice the responsibility for CalGang oversight and specifying that CalGang must operate under defined requirements, such as supervisory and periodic record reviews.” (See *The CalGang Criminal Intelligence System: As the Result of Its Weak Oversight Structure, It Contains Questionable Information That May Violate Individuals’ Privacy Rights*, <<https://www.auditor.ca.gov/pdfs/reports/2015-130.pdf>>.)

As stated in the author’s statement above, only law enforcement agencies and support staff are authorized to access the CalGang database, however, it is possible that CalVCP staff can learn information about gang affiliation based on contents of police reports. Additionally, it is possible that a law enforcement officer or district attorney working on a particular case may refrain from telling a victim about possible compensation through CalVCP because of the victim’s alleged gang connections. This bill would make it clear that an application shall not be denied solely due to a victim’s or victim’s family member’s connections with, or suspected connections with, a gang.

4. Argument in Support

The Alliance for Boys and Men of Color, in support of this bill, writes:

Excluding formerly incarcerated, “gang-affiliated,” or undocumented individuals and their family members from receiving critical mental health treatment and victim of crime resources results in their systemic re-traumatization – in that, “trauma-informed practices” are supposed to provide a new paradigm for organizing services and supports that recognize the central role that trauma plays in people’s lives, and shifts the focus from “what is wrong with you?” to “what happened to you?”

Furthermore, this practice traps people in further desperation, unresolved hurt and anger – the very circumstances that can lead to retaliation and further victimization of oneself or others.

....

A comprehensive and holistic, trauma-informed approach to Cal VCB eligibility expansion encompasses a broad, system-wide effort that challenges notions of victimization which discriminate against the recovery of ALL individuals of our

communities impacted by crime and violence; in other words, trauma-recovery and crime survivor coordination of care must include those most at risk to perpetuate crime [and] violence in order to embody a holistic solution that sustains long-term violence prevention and crime reduction efforts which address the benefits of restorative practices that utilize and expand access to healing resources while re-investing in disadvantaged communities that have suffered socio-economic consequences due to high rates of crime [and] violence.

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