
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Aisha Wahab, Chair

2023 - 2024 Regular

Bill No: AB 56 **Hearing Date:** June 13, 2023
Author: Lackey
Version: May 4, 2023
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Victim's compensation: emotional injuries*

HISTORY

Source: Author

Prior Legislation: AB 2809 (Leno), Ch. 587, Stats. 2008

Support: California Association of Highway Patrolmen; California District Attorneys Association; Ella Baker Center for Human Rights; Friends Committee on Legislation of California; Initiate Justice; Prosecutors Alliance California; Sister Warriors Freedom Coalition

Opposition: California Attorneys for Criminal Justice

Assembly Floor Vote: 72 - 0

PURPOSE

The purpose of this bill is to expand eligibility for victim compensation to include emotional injuries from specified felony violations including attempted murder, kidnapping, stalking, and sexual assault.

Existing law states that the Legislature finds and declares that it is in the public interest to assist residents of the State of California in obtaining compensation for the pecuniary losses they suffer as a direct result of criminal acts. (Gov. Code, § 13950, subd. (a).)

Existing law establishes the California Victims Compensation Claims Board (“the board”) to operate the California Victim Compensation Program. (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 requires an application be filed in accordance with the following timelines:

- Within seven years of the date of the crime;
- Seven years after the victim attains 21 years of age; or,

- Seven years of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained as a direct result of crime, whichever is later. (Gov. Code, § 13953, subd. (a).)

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

Existing law defines “victim” to mean an individual who sustains injury or death as a direct result of a crime as specified. (Gov. Code, § 13951, subd. (e).)

Existing law defines “derivative victim” to mean an individual who sustains pecuniary loss as a result of injury or death to a victim. (Gov. Code, § 13951, subd. (e).)

Existing law makes emergency awards available to a person eligible for compensation if the board determines that such an award is necessary to avoid or mitigate substantial hardship that may result from delaying compensation until complete and final consideration of an application. (Gov. Code, § 13952.5, subd. (a).)

Existing law provides that a person is eligible for compensation, if as a direct result of the crime, they sustained a physical injury or an emotional injury and a threat of physical injury. (Gov. Code, § 13955, subd. (f).)

Existing law authorizes the board to reimburse for pecuniary loss for the following types of losses:

- Medical or medical-related expenses incurred by the victim for services provided by a licensed medical provider;
- Out-patient psychiatric, psychological or other mental health counseling-related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center, not to exceed \$10,000;
- 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;
- 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;
- The expense of renovating or retrofitting a victim’s residence or a vehicle to make them accessible or operational, if it is medically necessary;
- Relocation expenses, not to exceed \$3,418, if the expenses are determined by law enforcement to be necessary for the victim's personal safety, or by a mental health treatment provider to be necessary for the emotional well-being of the victim;
- Funeral or burial expenses, not to exceed \$12,818;
- Costs to clean the scene of the crime, not to exceed \$1,709; and,
- Costs of veterinary services, not to exceed \$10,000. (Gov. Code, § 13957, subd. (a).)

Existing law makes eligible for compensation a victim or derivative victim who, as a direct result of the crime, sustained any of the following:

- Physical injury, as provided;
- Emotional injury and a threat of physical injury;
- Emotional injury where the crime was a violation of human trafficking, rape child abuse, lewd and lascivious acts with a child, continuous sexual abuse of a minor, cyber harassment, coercing a minor to appear in child pornography, statutory rape, child abduction, and deprivation of child custody;
- Child abandonment or neglect, where the emotional injury was a result of conduct other than failure to pay child support, and criminal charges were filed;
- Statutory rape and criminal charges were filed;
- Child abduction and criminal charges were filed;
- Injury to, or death of, a guide, signal, or service dog; or,
- Emotional injury to a victim who is a minor incurred as a direct result of the nonconsensual distribution of pictures or video of sexual conduct in which the minor appears. (Gov. Code, § 13955, subd. (f).)

This bill expands eligibility for compensation based on emotional injuries to include felony violations of the following:

- Murder or attempted murder;
- Mayhem;
- Torture;
- Kidnapping;
- Kidnapping to facilitate carjacking;
- Kidnapping for ransom;
- Assault with intent to commit specified felonies;
- Rape in concert;
- Sexual assault of a child;
- Incest;
- Stalking;
- One-strike sex offense or habitual sex offender offense.

COMMENTS

1. Need for This Bill

According to the author of this bill:

There is immediacy to assist crime victims seeking remedies to trauma. A victim-survivor's pain and suffering following violent crimes leave them shaken to their core. Access to resources would make therapies and other forms of care more readily available. As we reorient our justice system, we should look to implement trauma-informed policies.

Assembly Bill 56 expands compensation for psychological damage to help assist with developing a continuum of care for affected individuals. This is a necessary step in helping governmental systems serve victim-survivors, who too often feel as though the structure is set up against them.

2. History and Purpose of the California Victims Compensation Program

The victim compensation program was created in 1965, the first such program in the country. The program provides compensation for victims of violent crime. In order to be eligible, the crime must either occur in California or the victim must be a resident of California or a member of the military stationed in California, and the victim sustained physical or emotional injury as a direct result of the crime. The program reimburses eligible victims and derivative victims for many crime-related expenses, such as counseling and medical fees. Funding for the CalVCB comes from restitution fines and penalty assessments paid by criminal offenders, as well as federal matching funds. (See the California Victim Compensation Board's website <<http://www.vcgcb.ca.gov/board/>>.)

The victim compensation program is the payor of last resort, which means applicants are compensated for covered expenses that have not been and will not be compensated from any other source. The types of expenses that may be reimbursed include:

- Medical, medical-related, dental.
- Outpatient mental health treatment or counseling.
- Funeral and burial.
- Wage or income loss up to five years following the date of the crime due to the victim's disability resulting from the qualifying crime. If the victim is permanently disabled, wage or income loss may be extended.
- Support loss for legal dependents of a deceased or injured victim.
- Up to 30 days wage loss for the parent or legal guardian of a minor victim who is hospitalized or dies as a direct result of a crime.
- Job retraining.
- Medically necessary renovation or retrofitting of a home or vehicle for a person permanently disabled as a result of the crime.
- Home security installation or improvements
- In-patient psychiatric hospitalization costs.
- Relocation.
- Crime scene clean-up.
- Veterinary fees, or replacement costs for a guide, signal or service dog.
- Roundtrip mileage reimbursement to medical, dental or mental health appointments.
- Minors who suffer emotional injuries from witnessing a violent crime may be eligible for mental health counseling. To qualify, the minor witness must have been in close proximity to the crime.

Reimbursement is limited to the actual amount paid out-of-pocket or bills accrued by the victim. The maximum amount reimburse a victim or derivative victim is \$35,000, except this amount may be increased to \$70,000 if federal funds are available. Additionally, there are specified limits for certain expenses.

Last year, AB 160 (Committee on Budget), Chapter 771, Statutes of 2022, raised the maximum reimbursable amount, from \$70,000 to \$100,000, and the individual limits for specified expenses which will go into effect July 1, 2024, contingent on funds being available and appropriated in the 2024-2025 fiscal year.

3. Compensation for Emotional Injuries

As mentioned briefly above, the Victim Compensation Program reimburses victims of crime for emotional injuries as specified in statute. Currently, the law generally requires that there either be an emotional injury combined with a threat of physical injury. Gov. Code, § 13955, subd. (f)(2). Existing law also allows compensation for emotional injuries for specific crimes, which include human trafficking, rape child abuse, lewd and lascivious acts with a child, continuous sexual abuse of a minor, cyber harassment, coercing a minor to appear in child pornography, statutory rape, child abduction, and deprivation of child custody. (Gov. Code, § 13955, subd. (f)(3)(A)-(D).)

Compensation may consist of reimbursement for mental health counseling, home security and relocation fees, among other things. (Gov. Code, § 13957, subd. (a).)

This bill expands the list of crimes eligible for compensation based on emotional injuries only. Specifically, this bill allows compensation for emotional injuries for felony violations of mayhem, torture, kidnapping, aggravated kidnapping, kidnapping in the commission of a carjacking, extortion by posing as a kidnapper, assault with intent to commit a sex offense, rape in concert, aggravated sexual assault of a child, sexual acts with a child under 10, stalking, attempted murder, and murder.

4. Condition of the Restitution Fund

The Restitution Fund, which funds the Victim Compensation Program reimbursements, has been operating under a structural deficiency for a number of years. In 2015, the Legislative Analyst's Office reported the Restitution Fund was depleting and would eventually face insolvency. Although revenue has remained consistent, expenditures have outpaced revenues since FY 2015-16. The Governor's 2021-22 budget proposed \$33 million dollars in one-time General Fund monies to backfill declining fine and fee revenues in the Restitution Fund, and \$39.5 million annually afterwards. This amount will allow the board to continue operating at its current resource level.

Furthermore, the Budget Act allows for additional backfill if a determination is made that revenues are insufficient to support the board. (Department of Finance, *California State Budget – 2023-24* at 90 <<https://ebudget.ca.gov/2023-24/pdf/BudgetSummary/CriminalJustice.pdf>> [as of Feb. 8, 2023].) In addition, the 2022 Budget prioritized changes to the victim compensation program and the elimination of the restitution fine, if a determination is made in the spring of 2024 that the General Fund over the multiyear forecast is available to support this ongoing augmentation. (*Ibid.*)

5. Argument in Support

According to California District Attorneys Association:

The California Constitution provides: “It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to seek and secure restitution from the persons convicted of the crimes causing the losses they suffer.” (California Constitution article I, § 28, section (b).) This constitutional provision does not differentiate between economic and non-economic losses. Your bill will bring the Penal Code into closer alignment with our Constitution and ensure just compensation for those who suffer psychological harm from a criminal’s violent acts.

6. Argument in Opposition

According to the California Attorneys for Criminal Justice (CACJ):

CACJ asks the Legislature to reject AB 56 and instead follow the lead of the Committee on Revision of the Penal Code and adopt a more functional way to help victims by creating a state-funded system of victim restitution. (2022 Report at pp. 14-18.) Such a system would expedite getting payments to victims and offer judge’s discretion they currently lack to consider a defendant’s ability to pay before imposing a restitution order.

AB 56 would expand an already-dysfunctional system that fails to make victims whole. For all the reasons stated above, CACJ opposes AB 56.

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