
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: AB 629 **Hearing Date:** June 25, 2019
Author: Smith
Version: February 15, 2019
Urgency: No **Fiscal:** Yes
Consultant: SC

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

HISTORY

Source: Bet Tzedek Legal Services
Coalition to Abolish Slavery & Trafficking

Prior Legislation: AB 900 (Gonzalez), vetoed, 2018
SB 1005 (Atkins), vetoed, 2018
AB 1824 (Committee on Budget), Ch. 38, Stats. 2018
AB 1939 (Steinorth), vetoed, 2018
SB 1232 (Bradford), Ch. 983, Stats. 2018
AB 1140 (Bonta), Ch. 569, Stats. 2015
AB 2264 (Levine), Ch. 502, Stats. 2014
SB 1299 (Wright), Ch. 870, Stats. 2012

Support: California Catholic Conference; California District Attorneys Association;
California Legislative Women's Caucus; California State Controller Betty T. Yee;
Children's Law Center of California; Dignity Health; Jewish Public Affairs
Committee of California; Los Angeles County Sheriff's Department; National
Council of Jewish Women California; Religious Sisters of Charity; Riverside
Sheriffs' Association; San Diego County District Attorney's Office; Sisters of St.
Joseph of Carondelet Los Angeles Province; Worksafe

Opposition: None known

Assembly Floor Vote: 75 - 0

PURPOSE

The purpose of this bill is to authorize the Victim Compensation Board (board) to provide compensation equal to loss of income or support to victims of human trafficking.

Existing law provides that a person who deprives or violates another person's personal liberty with the intent to obtain forced labor or services or who deprives or violates another person's personal liberty for the purpose of prostitution or sexual exploitation is guilty of human trafficking. (Pen. Code, § 236.1.)

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 board to operate the California Victim Compensation Program (Cal VCP). (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 authorizes the board to reimburse for pecuniary loss for the following types of losses:

- 1) Medical or medical-related expenses incurred by the victim for services provided by a licensed medical provider;
- 2) Out-patient psychiatric, psychological or other mental health counseling-related expenses incurred by the victim or derivative victim;
- 3) 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;
- 4) Cash payment to, or on behalf of, the victim for job retraining or similar employment-oriented services;
- 5) The expense of installing or increasing residential security, not to exceed \$1,000;
- 6) The expense of renovating or retrofitting a victim's residence or vehicle to make them accessible or operational, if it is medically necessary;
- 7) Relocation expenses up to \$2,000 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;
- 8) Funeral or burial expenses;
- 9) Reasonable costs to clean the scene of the crime in an amount not to exceed one thousand dollars;
- 10) The expense of veterinary services, replacement costs, or other reasonable expenses, as ordered by the court when the injury or death is to a guide, signal or service dog; and,
- 11) Mental health counseling for 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, §§ 13957, subd. (a) & 13957.5, subd. (a).)

Existing law limits the total award to or on behalf of each victim or derivative victim to \$35,000, except this award may be increased up to \$70,000, if federal funds for that increase are available (Gov. Code, §§ 13957, subd. (b), & 13957.5, subd. (b).)

This bill states that the board may authorize compensation equal to loss of income or support that a human trafficking victim incurs as a direct result of the victim's deprivation of liberty during the crime if the victim has not been and will not be compensated from any other source.

This bill limits the compensation amount to \$10,000 per year that the services were performed, for a maximum of two years.

This bill specifies that loss of income in human trafficking cases should be calculated based on the value of the victim's labor as guaranteed under California law at the time that the services were performed, for the number of hours that the services were performed, for up to 40 hours per week.

This bill requires the board to adopt guidelines on or before July 1, 2020, allowing it to rely on evidence other than official employment documentation in considering and approving an application for that compensation.

This bill states that evidence to support compensation may include any reliable corroborating information approved by the board, including, but not limited to, a statement under penalty of perjury from the applicant, a human trafficking caseworker, a licensed attorney, or a witness to the circumstances of the crime.

This bill provides that if the victim is a minor at the time of the application, the board shall distribute payment when the minor reaches the age of 18.

COMMENTS

1. Need for This Bill

According to the author of this bill:

California's Victim Compensation Program provides assistance to victims who have suffered physical injury or the threat of physical injury as a result of violent crime, including covering unforeseen expenses such as medical bills, mental health treatment, funeral and burial expenses, and income loss. The way current law is written does not acknowledge the circumstances human trafficking victims endure while being trafficked, nor the challenges victims face in recovery. Victims of human trafficking often are subjected to physical and psychological abuse. Victims are also taken out of the legal workforce by the very nature of the crime committed against them. Victims' wages are frequently stolen, withheld, or much lower than they would have been paid, had they not been trafficked. As a result, they do not possess pay-stubs, W-2 forms, or other documentation to demonstrate the economic losses sustained while trafficked. The complicated nature of human trafficking and the difficult situations which victims find themselves in that lead them to trafficking situations in the first place leaves victims extremely vulnerable to being re-trafficked.

To combat human trafficking, the United Nations International Organization for Migration (IOM) put forth the "3P" paradigm of "Prevention", "Prosecution" and

“Protection.” While the California State Legislature has worked to build a legal framework to prevent trafficking and prosecute traffickers, California is still behind in protection, particularly in victims’ assistance. Under existing state law, human trafficking victims may not be compensated for income loss. AB 629 creates parity within California’s Victim Compensation Program (VCP) for victims of human trafficking by allowing them to receive compensation from the for economic losses incurred as a direct result of their being trafficked, commensurate with the benefit levels that are granted to victims of other crimes. This bill will help victims to get on their feet and out of the human trafficking cycle, so they can reintegrate into their communities.

2. History and Purpose of Cal VCP

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’s website <<http://www.vcgcb.ca.gov/board/>>.)

3. Compensation for Loss of Income

While the board is authorized to pay a victim for loss of income, the compensation is for lost income “as a direct result of the victim’s injury.” For example, the board is currently authorized to compensate a victim for loss of income due to unpaid time off work after the crime due to recovery from injuries, for doctor’s or counseling appointments, or to attend court to assist in the prosecution of the case. (See Compensation Benefit Guide <<http://vcgcb.ca.gov/docs/forms/victims/CalVCPBenefitReferenceGuide.pdf>>.)

However, a person who suffers loss of income by virtue of the commission of the crime is not in the same situation. While the crime is being committed, the lost income is more akin to theft because wages have been stolen. The board currently does not reimburse losses resulting from a theft. Reimbursement for the value of the stolen property is covered by direct victim restitution, which is paid by the perpetrator of the crime.

This bill specifies that a victim of human trafficking may be compensated for lost income the victim incurs as a direct result of the victim’s deprivation of liberty during the crime if the victim has not been and will not be compensated from any other source. Thus, if the victim is being compensated, or will be compensated, through another source such as restitution paid by the perpetrator, the victim would not be eligible for additional compensation from the Cal VCP.

4. Recent Changes to Cal VCP

The Cal VCP 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 including reimbursement for the modification or purchase of a vehicle for a victim who becomes permanently disabled and reimbursement for mental health counseling for grandparents and grandchildren of the victim. The bill also 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.

Other recent changes include: authorizing compensation when a victim's guide, signal, or service dog is disabled or killed (AB 2264 (Levine) Ch. 502, Stats. 2014); establishment of a deadline for the board to respond to an appeal by a crime victim who has had an application for compensation denied (AB 1563 (Rodriguez), Ch. 121, Stats. 2016); extension of the application deadline for minor victims (AB 1232 (Bradford), Ch. 983, Stats. 2018); and authorizing compensation to victims who incur emotional harm or pecuniary loss as a result of the identification of the "East Area Rapist," also known as the "Golden State Killer" (AB 1824 (Committee on Budget), Ch. 38, Stats. 2018).

5. Condition of the Restitution Fund

The restitution fund which funds the Cal VCP is facing insolvency due to declining revenue. (LAO, *The 2017-18 Budget: Governor's Criminal Fine and Fee Proposals*, p. 17.) According to a recent Senate Appropriations analysis of a bill that expands eligibility of persons who may apply for compensation:

The Restitution Fund has been operating under a structural deficit for a number of years. From FY 2017-18 to FY 2018-19, fund revenues dropped by 12 percent; proposed revenue for FY 2019-20 is projected to remain consistent with 2018-19, however. The FY 2019-20 proposed budget anticipates a beginning balance of \$41 million, revenues of \$68.5 million, expenditures of \$92.2 million, and an ending reserve of \$17.3 million. Given the operational deficit of the Restitution Fund, added expenses . . . would create cost pressure on the General Fund to backfill any shortage.

(Sen. Com. On Appropriations, Analysis of Sen. Bill No. 375 (2019-2020 Reg. Sess.) as amended Mar. 25, 2019, p. 3.)

While this bill does not increase the total amount a victim can be reimbursed by Cal VCP (\$35,000, or \$70,000 if federal funding is available), it does provide for payment by the board for a new type of expense which in some cases would increase the total compensation amount. Increasing eligible services while the fund is nearing insolvency would place additional strains on the fund.

6. Veto of Similar Prior Legislation

AB 900 (Gonzalez-Fletcher) of the 2017-2018 Legislative Session was similar to this bill allowing human trafficking victims to be compensated by the board for loss of income. AB 900 was vetoed and in his veto message, Governor Brown said:

While I appreciate the author's intent, this bill fundamentally changes the nature of the Board's system for compensating victims, and places an unsustainable burden on the Restitution Fund which is already imbalanced. The proposed compensation is more akin to restitution, which expands the program beyond its intended purpose, and beyond the scope of other states' programs.

For the past three years the state budget has provided a line item to support services for human trafficking victims ranging up to \$10 million. Any future expansion in scope of services for these victims should not rely on an already over-committed funding source.”

7. Argument in Support

According to Bet Tzedek Legal Services, a co-sponsor of this bill:

Once human trafficking survivors escape their situations, they must confront the realities of securing housing, food, medical and mental health care, and other support – often without personal savings or support systems. Survivors robbed of income while they were trafficked face a steep climb to self-sufficiency. They cannot get there without assistance – and compensation for their economic losses.

Currently, California human trafficking survivors, like other survivors of violent crime in California, can recover crime-related expenses, such as medical and mental health services or relocation costs, from the VCP. However, most trafficking survivors, unlike other crime victims, cannot receive compensation for income lost because of the crimes committed against them.

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