
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair

2021 - 2022 Regular

Bill No: SB 993 **Hearing Date:** April 26, 2022
Author: Skinner
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Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Victims and persons erroneously convicted*

HISTORY

Source: Californians for Safety and Justice
Crime Survivors for Safety and Justice
After Innocence
Youth Alive!

Prior Legislation: SB 299 (Leyva), Assembly Floor Inactive, 2021
AB 767 (Grayson), held in Sen. Appropriations, 2020
SB 329 (Kamlager), was not heard by Sen. Public Safety, 2020
SB 375 (Durazo), Ch. 375, Stats. 2019
AB 629 (Smith), Ch. 575, Stats. 2019
AB 415 (Maienschein), Ch. 572, Stats. 2019
SB 1232 (Bradford), Ch. 983, Stats. 2018
AB 2226 (Patterson), Ch. 142, Stats. 2018
AB 1140 (Bonta), Ch. 569, Stats. 2015
AB 2809 (Leno), Ch. 587, Stats. 2008
AB 2869 (Leno), Ch. 582, Stats. 2006

Support: Anti-Recidivism Coalition; Broken by Violence; California Families United 4 Justice; California Innocence Project; Californians United for A Responsible Budget; City of Berkeley; City of Emeryville; City of Oakland; Ella Baker Center for Human Rights; Essie Justice Group; Everytown for Gun Safety Action Fund; Faith in Action East Bay; Fresno Barrios Unidos; Initiate Justice; Justice Reform Coalition; Loyola Project for the Innocent; Moms Demand Action for Gun Sense in America; Northern California Innocence Project; Prosecutors Alliance of California; Santa Cruz Barrios Unidos INC.; Smart Justice California; Starting Over, Inc.; Students Demand Action for Gun Sense in America; Uncommon Law; United Communities for Peace

Opposition: None known

PURPOSE

The purpose of this bill is to: 1) establish the Flexible Assistance for Survivors of Violence (FASV) Pilot Grant Program to be administered by the Office of Emergency Services (OES); 2) make various changes to the California Victim Compensation Program; and 3) expand wrongful conviction compensation to include compensation for each day served on parole or supervised release and reasonable attorney fees.

Existing law establishes OES within the office of the Governor. (Gov. Code, § 8585, subd. (a).)

Existing law states that OES shall be responsible for the state's emergency and disaster response services for natural, technological, or manmade disasters and emergencies, including responsibility for activities necessary to prevent, respond to, recover from, and mitigate the effects of emergencies and disasters to people and property. (Gov. Code, §8585, subd. (e).)

This bill establishes the FASV pilot grant program to be administered by OES, with the goal of improving safety, healing, and financial stability for survivors of violent acts, and the loved ones of those violently injured or killed.

This bill provides the following definitions:

- “Community-based organization” (CBO) means a nonprofit organization, or organization fiscally sponsored by a nonprofit, that provides direct services to survivors of violence, and includes, but is not limited to, a trauma recovery center.
- “Family member” means any of the following: a person related by blood, adoption, or marriage; a household member or former household member of another; or a person who is not related by blood, adoption or marriage to another but who otherwise has a significant emotional relationship with another.
- “Survivor of violence” means any of the following:
 - A person who has been a victim of stalking, domestic violence, sexual violence, kidnapping, child abuse, human trafficking or elder abuse;
 - A person who has been physically injured by an act of force by another person. An act of force under this paragraph does not include an act involving the operation of a motor vehicle, aircraft, or water vehicle except when the injury from the act was intentionally inflicted, caused by a driver who fails to stop at the scene of an accident, caused by a person who is under the influence of alcohol or drugs, caused by a person who commits vehicular manslaughter, or caused by a law enforcement officer who is operating a motor vehicle during hours when the officer is on duty;
 - A person who has been threatened with physical injury or reasonably believes they were threatened with physical injury by another person;
 - A person who has suffered physical injury, as a result of a law enforcement officer's use of force;

- A person who suffers a threat of physical injury or reasonably believes they were threatened with physical injury as a result of a law enforcement officer's use of force;
- A person who has witnessed one of the acts described above and has experienced an emotional injury or feels threatened as a result; or;
- A family member of a person who is the victim of an act described above, including but not limited to, a family member of a person who is killed by the act.

This bill requires FASV grants to be made to qualifying CBOs for the purpose of establishing assistance funds to distribute in direct cash assistance to survivors of violence.

This bill requires OES to establish a grant selection advisory committee, consisting of 13 members, that includes, without limitation, persons who have been impacted by violence, formerly incarcerated persons, and persons with direct experience in implementing supportive services for marginalized survivors of violence. Racial, gender, and ethnic diversity, and representation of communities and identities described shall be considered for all appointments.

This bill provides that the 13 members shall consist of the following:

- Three representatives from community-based organizations providing direct services and recovery assistance such as housing, job placement, or economic support to vulnerable survivors of violence. One member shall be appointed by the Governor, one member shall be appointed by the Speaker of the Assembly, and one member shall be appointed by the Senate Committee on Rules;
- Three survivors of violence, at least one of which shall be formerly incarcerated, who have experience in advocacy, treatment, or service provision, and who are members of communities that experience disproportionately high rates of gun violence and imprisonment. One member shall be appointed by the Governor, one member shall be appointed by the Speaker of the Assembly, and one member shall be appointed by the Senate Committee on Rules;
- Three community providers or advocates with expertise in community-based violence reduction programs or initiatives with a public health approach. One member shall be appointed by the Governor, one member shall be appointed by the Speaker of the Assembly, and one member shall be appointed by the Senate Committee on Rules;
- Two mental health professionals with experience providing trauma recovery services that serve residents of communities that experience disproportionately high rates of gun violence and imprisonment. One member shall be appointed by the Governor and one member shall be appointed by the Speaker of the Assembly;
- Two public health professionals. One member shall be appointed by the Governor and one member shall be appointed by the Senate Committee on Rules.

This bill requires the advisory committee to establish rules for implementing this section and shall make grants under this chapter on a competitive basis to CBOs.

This bill provides that CBOs shall apply on a form prescribed by the committee, which shall include, but not be limited to, all of the following:

- A description of the organization's history serving one or more of the groups of vulnerable survivors as described;
- A description of how the community or communities the organization serves are impacted by violence and incarceration;
- The estimated number of survivors of violence the organization or program currently serves.
- The estimated number of survivors of violence to whom the organization or program anticipates it will distribute grant funds;
- How the organization plans to distribute cash assistance funds to survivors to meet immediate financial needs quickly; and,
- How the organization plans to minimize the burden on survivors to provide documentation or submit paperwork.

This bill requires the advisory committee to do all of the following:

- Strive to minimize the paperwork burden on grant applicants and grantees;
- Strive to develop an application, awards, and reporting process that is accessible to community-based organizations with smaller budgets or without past experience receiving a state grant award;
- Develop a plan to publicize the grant program in advance of an application deadline;
- Provide technical assistance to applicants and grantees;
- Work with the office to develop tools to support applicants applying for an award under this chapter, including, but not limited to, templates and sample applications, which shall be posted prominently on the office's internet website; and,
- Prior to an application deadline, work with the office to publicize and host at least two webinars that are open to the public detailing how to apply for a grant.

This bill states that a CBO shall be eligible to apply for a grant if the organization has a history of serving survivors of violence and the majority of people the organization, or a project within the organization that will administer the grant, serves are survivors of violence.

This bill provides that when considering grant applications, the advisory committee shall give preference to organizations that are located in, serve, and employ members of communities that experience disproportionately high rates of gun violence and imprisonment.

This bill states that when considering grant applications, the advisory committee shall give preference to organizations that have a history of providing vulnerable survivors, as described.

This bill specifies that an organization receiving a grant may use the funds as follows:

- Unrestricted cash assistance to survivors of violence to meet the survivor's financial needs or to cover survivors' expenses, distributed at the discretion of the organization in amounts determined by the organization based on the needs of survivors and in a way that minimizes or eliminates the burden on survivors to provide external documentation of their needs or expenses; and,
- Up to 10 percent for the organization's expenses in administering the grant.

This bill requires a CBO receiving a grant to establish policies and procedures for distributing funds to survivors whom the organization serves that comply with all of the following:

- Allow survivors to attest to their experience of violence without obtaining external documentation of a violent victimization;
- Promote distribution of funds to survivors in a manner that meets the immediate needs of survivors quickly;
- Do not require survivors to engage in other services or programs as a condition of receiving funds;
- Do not require survivors to provide or maintain burdensome documentation of their need or spending;
- Do not require survivors to report a crime to a law enforcement agency as a condition of receiving cash assistance;
- Do not exclude survivors on the basis of citizenship or immigration status; and,
- Do not exclude survivors on the basis of an arrest or conviction record, nor on the basis of a survivor's status under correctional supervision.

This bill provides that, notwithstanding any other law, cash assistance received shall be treated in the same manner as the federal earned income refund for the purpose of determining eligibility to receive public benefits or amounts of those benefits.

This bill requires each grantee to annually report to OES both of the following:

- The aggregate number of survivors who received cash assistance through the grant program; and,
- The average amount of assistance each survivor received through the grant program.

This bill authorizes OES to use up to 5 percent of the funds appropriated for the grant program each year for the costs of administering the grant program, including, without limitation, employing personnel, providing technical assistance to grantees or prospective grantees, and issuing a report on the impacts of the grant program.

This bill requires, before July 1, 2027, OES to post on its website a public on the impact of the grant program, which shall include policy recommendations to provide guidance to the Legislature and Governor in fully implementing and scaling a permanent grant program.

This bill makes the provisions related to the FASV pilot program inoperative on July 1, 2027 and repealed as of January 1, 2028.

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 (CalVCB) to operate the California Victim Compensation Program (CalVCP). (Gov. Code, §§ 13950 *et. seq.*)

Existing law provides that the CalVCB consists of the Secretary of Government Operations or his or her designee and the Controller, both acting *ex officio*, and a third member who shall be appointed by and serve at the pleasure of the Governor. The third member may be a state officer who shall act *ex officio*. (Gov. Code, §13901, subd. (b).)

This bill adds a fourth member who shall be a person appointed by and serve at the pleasure of the Senate Committee on Rules who is a member of the public with expertise in restorative justice.

This bill specifies that a person shall not be prohibited from serving on the CalVCB solely because of that person's prior criminal record.

Existing law provides that an application for compensation shall be filed with CalVCB 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 authorizes CalVCB to require submission of additional information supporting the application that is reasonably necessary to verify the application and determine eligibility for compensation. (Gov. Code, § 13952, subd. (c)(1).)

This bill additionally provides that CalVCB shall not require the submission of additional information solely to verify that the crime occurred if the board has received an acceptable form of evidence that the crime occurred as described. Nothing in this paragraph shall be construed to limit the ability of CalVCB to contact an agency, organization, court, or individual from which a form of evidence that the board has received originates to confirm the evidence's authenticity.

Existing law requires the CalVCB staff to determine whether an application for compensation contains all of the information required by the board. If the staff determines that an application does not contain all of the required information, the staff shall communicate that determination to the applicant with a brief statement of the additional information required. (Gov. Code, § 13952, subd. (c)(2).)

Existing law states that the applicant, within 30 calendar days of being notified that the application is incomplete, may either supply the additional information or appeal the staff's determination to CalVCB, which shall review the application to determine whether it is complete. (Gov. Code, § 13952, subd. (c)(2).)

This bill extends the timeline for an applicant to respond to the notification of incomplete application from 30 days to 365 days.

This bill requires the notification to the applicant or the applicant's authorized representative to be in the language selected by the applicant by personal delivery or by all of the following means for which the board has access to an applicant's contact information and by which the applicant has consented to being contacted:

- Mail;
- Email;
- Text message; or

- Personal telephone call, as specified.

Existing law requires the initial application materials sent by the board to an applicant to be written in English, Spanish, Chinese, Vietnamese, Korean, East Armenian, Tagalog, Russian, Arabic, Farsi, Hmong, Khmer, Punjabi, and Lao. If the applicant selects one of the languages listed in this subdivision, CalVCB shall send all subsequent communications in that language. (Gov. Code, § 13952, subd. (d)(4).)

This bill clarifies that any supplemental forms set by CalVCB to the applicant shall also be in the languages required for the initial application.

Existing law authorizes an emergency award to be available to a person eligible for compensation if CalVCB 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).)

This bill specifies that if an emergency award is requested for relocation expenses or funeral and burial expenses, CalVCB shall presume that substantial hardship would result from delaying compensation until complete and final consideration of an application unless the board has received substantial evidence to the contrary.

Existing law requires disbursement of funds for emergency awards to be made within 30 calendar days of application.

This bill reduces the disbursement time frame for emergency awards to 15 calendar days.

Existing law states that if an application for an emergency award is denied, CalVCB shall notify the applicant in writing the reasons for the denial. (Gov. Code, § 13952.5, subd. (e)(1).)

This bill additionally requires CalVCB to clearly state in bold lettering at the top and bottom of the notification of an emergency award denial that the applicant's regular application is still being processed, the notification does not constitute a denial of the application as a whole, and the applicant may still be eligible for a regular award.

Existing law requires the CalVCB to verify with hospitals, physicians, law enforcement officials, or other interested parties involved, the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and any other pertinent information deemed necessary by the board. (Gov. Code, § 13954, subd. (a).)

This bill instead states that if the information provided to CalVCB is insufficient to reasonably verify the application or claim by a preponderance of the evidence, the board may verify with these entities the information deemed necessary by the board.

Existing law provides that verification information shall be returned to CalVCB within 10 business days after a request for verification has been made by the board. Verification information shall be provided at no cost to the applicant, the board, or victim centers. (Gov. Code, § 13954, subd. (a)).

This bill states that if verification information is not returned to CalVCB within 10 business days as required and the information CalVCB has received to date favors approval of the application or claim, the board shall presume the information it has received to date is accurate and proceed with approving the application or claim without further delay.

This bill states that CalVCB shall not seek nor require additional information from a law enforcement agency or another third party solely to verify that the crime occurred if the board has already received a valid form of verification as specified.

Existing law requires an applicant to cooperate with the staff of CalVCB or the victim center in the verification of the information contained in the application and states that failure to cooperate shall be reported to CalVCB, which, in its discretion, may reject the application solely on this ground. (Gov. Code, § 13954, subd. (b).)

This bill repeals the above provision.

Existing law states that an applicant's refusal to apply for other benefits potentially available to them from other sources, including, but not limited to, worker's compensation, state disability insurance, social security benefits, and unemployment insurance may be used to find that the applicant failed to cooperate with CalVCB. (Gov. Code, § 13954, subd. (b)(2)(C).)

This bill instead provides that CalVCB may, in its discretion, reject a claim for compensation by an applicant if the applicant refuses to apply for these other benefits that may be potentially available to them.

Existing law requires the Department of Justice (DOJ) to furnish, upon application of CalVCB, all information necessary to verify the eligibility of any applicant for other available benefits, to recover any restitution fine or order obligations that are owed to the Restitution Fund or to any victim of crime, or to evaluate the status of any criminal disposition. (Gov. Code, § 13954, subd. (f).)

This bill limits the information to be furnished by DOJ to information necessary to recover any restitution fine or order obligations that are owed to the Restitution Fund or to any victim of crime.

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 defines "crime" for purposes of victim compensation to mean "a crime or public offense, wherever it may take place, that would constitute a misdemeanor or a felony if the crime had been committed in California by a competent adult. (Gov. Code, § 13951, subd. (b)(1).)

This bill amends the definition of "derivative victim" to require that the derivative victim did not commit the crime that caused the victim's injury or death.

This bill amends the definition of "victim" to provide that the injury or death is the direct result of an act or omission that is a crime.

This bill defines “victim services provider” to mean an individual, whether paid or serving as a volunteer, who provides services to victims under the supervision of either an agency or organization that has a documented record of providing services to victims, or a law enforcement or prosecution agency.

Existing law provides that a person shall not be eligible for compensation under the following conditions:

- If CalVCB finds that denial is appropriate because of the nature of the victim’s or other applicant’s involvement in the events leading to the crime, or the involvement of the person whose injury or death gives rise to the application. Factors that may be considered when making this determination 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;
 - The victim or derivative victim was committing a crime that could be charged as a felony and reasonably lead to them being victimized, unless the injury or death occurred as a direct result of specified crimes including rape, domestic violence, or statutory rape where the minor is under 16 and the perpetrator is over 20.
- If CalVCB finds that the victim or derivative victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. In determining whether cooperation has been reasonable, the board shall consider:
 - The victim’s or derivative victim’s age, physical condition, and psychological state, cultural or linguistic barriers, any compelling health and safety concerns, including but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or victim’s family or the derivative victim or derivative victim’s family, and giving due consideration to the degree of cooperation of which the victim or derivative victim is capable in light of the presence of any of these factors.
 - A victim of domestic violence shall not be determined to have failed to cooperate based on their conduct with law enforcement at the scene of the crime.
 - Lack of cooperation shall not be found solely because a victim of sexual assault, domestic violence, or human trafficking delayed reporting the qualifying crime.

(Gov. Code, § 13956, subs. (a) & (b).)

Existing law states that if the victim is determined to have been involved in the events leading to the qualifying crime, factors that may be considered 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 foreseeable by the victim or derivative victim; and,
- CalVCB shall consider the victim's age, physical condition, and psychological state, as well as any compelling health and safety concerns, in determining whether the application should be denied for this reason. (Gov. Code, § 13956, subd. (a)(2).)

This bill deletes the above provisions and instead provides that an application for a claim shall not be denied, in whole or in part, solely because a police report was not made; based solely on the contents of a police report; or based solely on whether a suspect was arrested or charged with the qualifying crime.

This bill requires CalVCB to adopt guidelines that allow it to consider and approve applications that rely on evidence other than a police report to establish that a crime occurred.

This bill requires CalVCB to accept any of the following forms of evidence, without limitation, to verify that a crime occurred:

- Medical records documenting injuries consistent with the allegation of the qualifying crime;
- A written statement from a victim services provider stating that the victim is seeking services related to the qualifying crime;
- A permanent restraining order or protective order issued by a court to protect or separate the victim or derivative victim from the person alleged to have committed the qualifying crime;
- A statement from a licensed medical professional, physician's assistant, nurse practitioner, or other person licensed to provide medical or mental health care documenting that the victim experienced physical, mental, or emotional injury as a result of the qualifying crime; or,
- A police report or another written or oral report from a law enforcement agency.

This bill states that a person making a statement or report to establish the qualifying crime may consider any information or evidence they deem relevant.

Existing law states that a person who is convicted of a violent felony shall not be granted compensation until.

Existing law provides that a person who has been convicted of a violent felony may apply for compensation at any time, but the award of that compensation may not be considered until that person has been discharged from probation been released from a correctional institution and has been discharged from parole or discharged from postrelease community supervision or mandatory supervision, if any for that violent crime. Compensation shall not be granted to an applicant during any period of time the applicant is held in a correctional institution or while an applicant is required to register as a sex offender. (Gov. Code, § 13956, subd. (c).)

This bill instead provides that compensation shall not be granted to an applicant while the applicant is required to register as a sex offender.

This bill requires CalVCB to post informational materials promoting victim cooperation with law enforcement agencies and criminal investigations on its website and make such materials available to applicants directly upon request. CalVCB shall include in these materials contact information for service providers that are available to help the victim contact and cooperate with law enforcement and information about victim rights regarding participation in an investigation

or prosecution. CalVCB shall state prominently in these materials that cooperation with law enforcement is not a requirement for eligibility to receive compensation.

This bill states that CalVCB shall not deny an application, in whole or in part, based on a lack of cooperation by a victim or derivative victim with a law enforcement agency.

Existing law authorizes CalVCB 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;
- 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 \$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;
- Funeral or burial expenses, not to exceed \$7,500;
- Costs to clean the scene of the crime, not to exceed \$1,000s; and,
- Costs of veterinary services. (Gov. Code, § 13957, subd. (a).)

This bill removes the \$10,000 limit for psychiatric, psychological, or other mental health-related counseling expenses incurred by the victim.

This bill increases the amount of cash payment or reimbursement available for relocation expenses from \$2,000 to \$7,500 and removes the requirement that law enforcement makes a determination of its necessity.

This bill allows a derivative victim to receive cash payment or reimbursement for relocation costs if the victim is deceased and the derivative victim resided with the victim at the time of the qualifying crime.

Existing law provides that when a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence and the identity of the offender is known to the victim, the victim shall agree not to inform the offender of the location of the victim's new residence and not to allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender. A victim may be required to repay the relocation payment or reimbursement to CalVCB if the victim violates these terms. (Gov. Code, §13957, subd. (a)(7)(D).)

This bill deletes the above provision.

This bill increases the maximum amount of compensation available for funeral expenses incurred as a direct result of the crime from \$7,500 to \$20,000.

This bill increases the maximum amount of compensation available for the costs to clean the scene of a crime when the crime occurs in a residence or inside a vehicle from \$1,000 to \$1,700.

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).)

This bill instead provides that the total award to or on behalf of each victim or derivative victim shall not exceed \$100,000.

Existing law authorizes CalVCB to establish maximum rates and service limitations for medical-related services and for mental health and counseling services.

This bill removes authority for CalVCB to establish service limitations.

Existing law authorizes CalVCB to request an independent examination and report from any provider of services or psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation, as provided, and states that when a reevaluation is requested, payments shall not be discontinued prior to completion of the reevaluation. (Gov. Code, §13957.2, subd. (b).)

This bill deletes the above provision and states that if CalVCB determines that payments to a provider will be discontinued, the board shall notify the provider of their discontinuance within 30 calendar days of its determination.

Existing law provides that in authorizing compensation for loss of income and support, CalVCB may take any of the following actions:

- Compensate the victim for loss of income directly resulting from the injury, except that loss of income may not be paid for more than five years following the crime as a direct result of the injury, except as specified;
- Compensate an adult derivative victim for loss of income who is the parent or legal guardian of a victim under 18 years of age that is hospitalized as a direct result of the crime and the treating physician certifies in writing that the presence of the victim's parent or legal guardian at the hospital is necessary for the treatment of the victim. Reimbursement for loss of income under this paragraph may not exceed the total value of the income that would have been earned by the adult derivative victim during a 30-day period.
- Compensate an adult derivative victim for loss of income who is the parent or legal guardian of a victim under 18 years of age who died as a direct result of the crime. Loss of income under this paragraph shall not be more than 30 calendar days from the date of the victim's death. (Gov. Code, §13957.5, subd. (a).)

Existing law limits the total amount payable to all derivative victims for loss of income and support as the result of one crime to \$70,000. (Gov. Code, §13957.5, subd. (a).)

This bill provides that for adult victims, loss of income shall be based on the actual loss the victim sustains or the wages an employee would earn if employed for 35 hours per week at the minimum wage required during the period that the victim is unable to work or seek work as a result of the injury, whichever is greater. For victims who are under 18 years of age at the time of

the crime, loss of income under this paragraph shall be based upon the actual loss the victim sustains.

This bill expands eligible compensation for parents and legal guardians of a minor victim who is hospitalized or dies as a result of the crime to all victims regardless of age and expands derivative adult victims to additionally include a spouse or any person who is present at the hospital during the period the victim is hospitalized as a direct result of the crime.

This bill amends the physician certification requirement to also include when the derivative victim's presence at the hospital is reasonably necessary for the victim's psychological well-being.

This bill authorizes eligibility for a derivative victim to receive compensation for loss of income regardless of whether the derivative victim is employed or receiving earned income benefits at the time of the crime.

This bill provides that CalVCB shall determine the value of the income that would have been earned based upon the actual loss that the derivative victim sustains or the derivative victim would earn if employed for 35 hours per week at the required minimum wage during the period in which the derivative victim was required to be present at the hospital, whichever is greater.

This bill expands the persons eligible as an adult derivative victim where the victim died as a direct result of the crime to include spouse of victim, person living with the victim at the time of the crime, and legal guardians of the victim and requires CalVCB to pay for loss of income to these derivative victims not more than 30 calendar days occurring within 90 calendar days of the victim's death.

Existing law authorizes CalVCB to compensate a derivative victim who was legally dependent on the victim at the time of the crime for the loss of support incurred by that person as a direct result of the crime, subject to the following:

- Loss of support shall be paid by the board for income lost by an adult for a period up to, but not more than, five years following the date of the crime; and,
- Loss of support shall not be paid by the board on behalf of a minor for a period beyond the child's attaining 18 years of age. (Gov. Code, § 13957.5, subd. (a)(4).)

This bill specifies that loss of support under this paragraph shall be based on the actual loss the derivative victim sustains or the wages an employee would earn if employed 35 hours per week at the required minimum wage, whichever is greater.

This bill states that if the victim is a minor at the time of the crime, the victim shall be eligible for future loss of income due to disability from future employment directly resulting from the injury at a rate an employee would earn if employed for 35 hours per week at the minimum wage required at the time of the crime for a maximum of one year.

This bill states that a victim or derivative victim who is eligible for loss of income as provided shall be eligible for loss of income if they were employed or receiving earned income benefits at the time of the crime. If adult victim or derivative victim was not employed or receiving earned income benefits at the time of the crime, they shall be eligible for loss of income if the victim or

derivative victim was fully or partially employed or receiving income benefits for a total of at least 2 weeks in the 12 months preceding the qualifying crime, or had an offer of employment at the time of the crime and was unable to begin employment as a result of the crime.

This bill states that a derivative victim who was a legal dependent on the victim at the time of the crime shall be eligible for loss of support if the victim was employed or receiving earned income benefits at the time of the crime. If the victim was not employed or receiving earned income benefits at the time of the crime, the derivative victim shall be eligible if the victim was fully or partially employed or receiving earned income benefits for a total of at least 2 weeks in the 12 months preceding the qualifying crime, or if the victim had an offer of employment at the time of the crime and was unable to begin employment as a result of the crime.

This bill requires, by July 1, 2023, CalVCB to adopt new guidelines for accepting evidence that may be available to the victim or adult derivative victim in considering and approving a claim of loss of income which shall require the board to accept any form of reliable corroborating information approved by the board, including but not limited to, all of the following:

- A statement from the employer;
- A pattern of deposits into a bank or credit union account of the victim or derivative victim;
- Pay stubs or copies of checks received as payment;
- A copy of a job offer letter from an employer;
- Income tax records;
- Verification through a vendor, if the employer contracts with a vendor for employment verification; and,
- Information related to eligibility or enrollment from any of the following:
 - CalFresh program;
 - CalWORKs program;
 - The state's children's health insurance program, as specified;
 - California Health Benefit Exchange;
 - Electronic service established to verify public health eligibility; or,
 - Records from the Employment Development Department.

This bill requires, on or before July 1, 2023, CalVCB to adopt new guidelines for accepting evidence that may be available to the applicant in considering and approving a claim for loss of support for dependent derivative victims which shall require CalVCB to accept any form of reliable corroborating information regarding income received by the victim or support provided to the dependent that is approved by the board, including but not limited to, all of the following:

- All of the forms of documentation listed for adult derivative victims to prove loss of income;
- A court order finding legal dependency or ordering support;
- Workers' compensation disability or death benefits;
- Veterans death benefits;
- Social security disability or survivor benefits;
- Settlements or agreements for spousal support;

- Child support records;
- Orders granting legal custody; or,
- Records of the victim making payments for living expenses for the derivative victim, including, but not limited to, full or partial rental or mortgage payments for a residential dwelling unit where the dependent derivative victim resides, utilities payments, childcare supplies, clothing, medical payments, or food.

Existing law provides that the total amount payable to all derivative victims for loss of support or income as the result of one crime shall not exceed \$70,000. (Gov. Code, § 13957.5, subd. (b).)

This bill increases the maximum payment amount to \$100,000.

Existing law states that CalVCB shall approve or deny applications, based on recommendations of the board staff, within an average of 90 calendar days and no later than 180 calendar days of acceptance by the board or victim center. (Gov. Code, § 13958.)

Existing law provides that if CalVCB does not meet the 90 day average standard, the board shall, thereafter, report to the Legislature, on a quarterly basis, its progress and its current average time of processing applications. These quarterly reports shall continue until CalVCB meets the 90 day average standard for two consecutive quarters. (Gov. Code, § 13958, subd. (a).)

Existing law states that if CalVCB fails to approve or deny an individual application within 180 days of the date it is accepted, the board shall advise the applicant and the applicant's representative, in writing, of the reason for the failure to approve or deny the application. (Gov. Code, § 13958, subd. (b).)

This bill reduces the statutory average from 90 days to 30 days and the maximum time frame for approving or denying claims from 180 days to 60 days.

This bill states that the 30-day and 60-day requirements shall be tolled during a period in which CalVCB has requested information from the applicant if it has been longer than 10 days since the board first communicated the request for additional information to the applicant and the board has not yet received the requested information.

This bill requires CalVCB to communicate a determination made to approve or deny an application for compensation in writing to the applicant or the applicant's authorized representative in the language selected by the applicant by personal delivery or all of the following means for which the board has access to an applicant's contact information and by which the applicant has consented to being contacted:

- Mail;
- Email; and,
- Either text message or personal phone call.

This bill requires CalVCB to adopt guidelines governing the information to include in the board's communication to the applicant or the applicant's authorized representative regarding an approval of an application in whole or in part which shall require the board to include, at minimum, all of the following:

- Information about the status of each claim for coverage for each pecuniary loss for which the applicant has requested compensation to date;
- If the board requires additional information or verification from the applicant to approve an existing claim for a pecuniary loss, a request for that information from the applicant;
- A list of all of the types of pecuniary loss the board can statutorily cover and information or hyperlinks to information regarding eligibility requirements for each category of pecuniary loss; and,
- Instructions describing how the applicant can submit supplemental claims for compensation.

This bill requires CalVCB to adopt guidelines for communicating a denial in a manner that is trauma informed and sensitive to the psychological well-being of the applicant or victim, which shall include, but not be limited to, all of the following:

- A process for clearly explaining the basis for denial;
- A process for providing applicants or victims a list of other services for which they may be eligible; and,
- A process for providing an applicant or victim information contesting a denial or filing a petition for judicial review.

Existing law requires CalVCB to publicize through the board, law enforcement agencies, victim centers, hospitals, medical, mental health or other counseling service providers, and other public or private agencies, the existence of the victim compensation program, including the procedures for obtaining compensation under the program. (Gov. Code, § 13962, subd. (a).)

Existing law states that it shall be the duty of every local law enforcement agency to inform crime victims of the victim compensation program, of the existence of victim centers, and in counties where no victim center exists, to provide application forms to victims who desire to seek compensation. (Gov. Code, §13962, subd. (b).)

This bill additionally requires every local law enforcement agency to inform crime victims of the existence of trauma recovery centers and to provide application forms to victims who desire to seek compensation regardless of whether a victim center exists in the county.

This bill requires CalVCB to provide every general acute hospital in the state that operates an emergency department with both of the following:

- A poster developed by CalVCB describing the existence of the program, including the procedures for obtaining compensation under the program; and,
- Application forms to distribute to victims and their family members who desire to seek compensation.

This bill states that it shall be the duty of every general acute care hospital to display a poster provided by CalVCB prominently in the lobby or waiting area of its emergency department.

This bill requires every law enforcement agency investigating a criminal act and every agency prosecuting a criminal act at the time of initial contact with a crime victim, during follow-up investigation, or as soon thereafter as deemed appropriate by investigating officers or prosecuting attorneys:

- Inform each victim, or the victim's next of kin if the victim is deceased, of the rights they may have under applicable laws relating to the victimization, including rights relating to housing, employment, compensation, and immigration relief; and,
- Provide or make available to each victim of the criminal act without charge or cost a "Victim Protections and Resources" card as required by this bill.

This bill requires, by June 1, 2023, DOJ to design and make available in PDF or other imaging format to every law enforcement agency and prosecuting agency a "Victim Protections and Resources" card, which shall contain specified information in lay terms about victim rights and resources.

Existing law authorizes an person who, having been convicted of any crime amounting to a felony and imprisoned in the state prison or county jail, is granted a pardon by the Governor for the reason that the crime with which they were charged was either not committed at all or, if committed, was not committed by the person, or who, being innocent of the crime with which they were charged for either of those reasons, were imprisoned in state prison or county jail, may present a claim against the state to the CalVCB for the wrongful conviction. (Pen. Code, § 4900, subd. (a).)

Existing law states that the amount of compensation shall be a sum equivalent to \$140 per day of incarceration served, and shall include any time spent in custody, including in a county jail, that is considered to be part of the term of incarceration. That appropriation shall not be treated as gross income to the recipient under the Revenue and Taxation Code. (Pen. Code, § 4904.)

This bill authorizes compensation for wrongful convictions to include a sum equivalent to \$70 per day served on parole or on supervised release and reasonable attorney fees and costs incurred by or on behalf of the claimant as specified.

This bill provides that the appropriation amounts for wrongful conviction compensation shall be updated annually to reflect changes in the Consumer Price Index commencing one year after this bill becomes law.

This bill provides that a person who served time on parole or on supervised release before the effective date of this bill and who is eligible for wrongful conviction compensation may present a claim to CalVCB within 3 years of the effective date of this bill.

This bill provides that if a person has previously brought a claim for wrongful conviction compensation prior to the effective date of this bill, they may present a supplementary claim within three years of the effective date of this bill.

This bill states that if CalVCB recommended that the Legislature make an appropriation for the purpose of indemnifying the claimant for the previous claim, the board shall recommend that the Legislature make an appropriation for the purpose of indemnifying the claimant for the supplementary claim presented if the claimant establishes that compensation is required.

Existing law requires the Department of Corrections and Rehabilitation (CDCR) to provide notice to specified persons, including a victim or next of kin who has submitted a request for notice with CDCR, as soon as placement of an inmate in any reentry or work furlough program is planned, as specified. (Pen. Code § 11155, subd. (a).)

This bill states that if the victim of the crime for which the incarcerated person was convicted, or the victim's next of kin if the crime was a homicide, has submitted a request for notice with CDCR, CDCR shall provide the required notice to the victim or next of kin by the later of:

- 30 days after CDCR receives the request; or,
- 30 days after the defendant's entry into CDCR custody.

This bill requires the notice to include specified information including:

- How to access information about the defendant's sentence and projected parole eligibility date;
- General information not specific to the defendant that a parole eligibility date and actual release date may be affected by credit earning or other factors in current or future law;
- General educational information about rehabilitative programming offered to incarcerated individuals, the purpose of that programming, how release or parole decisions are made and factors considered, credit earning, and safety precautions generally taken concerning release;
- General information regarding the process for the convicted person to appeal the verdict or sentence and how an appeal can change the verdict or sentence;
- Contact information for, or direct referrals to, peer support groups and nonprofit CBOs that support victims, witnesses, and family members;
- Information about victim civil legal rights, federal immigration relief available to victims of crime, restorative justice programs within CDCR, victim compensation, and available services including the trauma recovery center closest to survivor; and,
- Information, if available, about direct referrals community-based or governmental programs that can provide victims with flexible cash assistance to cover expenses related to the crime.

This bill states that CDCR shall provide the above notice by a telephone call from a live representative or by certified mail, email, or text message from a live representative, if and as requested by the victim or victim's next of kin.

This bill provides that if a victim's or victim's next of kin's contact information provided to CDCR that is no longer current, the department shall make a diligent, good faith effort to learn the whereabouts of the victim or next of kin to comply with these notification requirements.

This bill provides that if a victim or victim's next of kin has submitted a request for notice with CDCR, information regarding the victim's or victim's next of kin's request and the notice provided to the victim or the victim's next of kin shall be confidential and shall not be available to the incarcerated person.

This bill authorizes CDCR to contract with one or more nonprofit CBOs that have a documented record of providing trauma-informed services to victims of crime and their families to provide notices by this bill, however CDCR shall ensure that the nonprofit CBO has sufficient procedures and protocols in place to maintain the confidentiality of information about victims and victims' next of kin.

COMMENTS

1. Need for This Bill

According to the author of this bill:

If you are the victim of a crime, CA law provides you the ability to seek financial compensation and services through the Victim Compensation Board (VCB). The VCB also funds trauma counseling, funeral expenses, and medical expenses. However, cumbersome administrative processes and unnecessarily stringent eligibility requirements prevent many crime survivors from accessing these services or subject them to a lengthy and burdensome application process.

Such barriers can prohibit crime survivors who are most at need from applying or receiving assistance. To be eligible for benefits, a victim must report the incident to law enforcement and be deemed to have adequately cooperated. A criminal record, regardless of the time since conviction, can also be a disqualifier. Crime survivors currently on parole or probation are disqualified, as well as some who may be deemed to have contributed to their own victimization. Finally, the process to apply for benefits is cumbersome, leaving many victims so discouraged they discontinue seeking support.

These factors contribute to unequal access to support and a disproportionate number of denials for Black victims and families who may have less trust in law enforcement. Data shows that less than 1 in 5 California crime victims report receiving financial help, counseling, medical assistance, or other types of services – and only 11% say they received financial assistance for crime losses. Of those that successfully access benefits from the VCB, benefits take an average of 10 months to reach the victim.

The VCB is also responsible for compensating wrongfully incarcerated individuals. These exonerees have been robbed of their lives, families, educations, careers, and more, and deserve swift access to services and compensation.

SB 993 would:

- Increase the compensation cap for victims, improve access to financial assistance for mental health services and expand access to lost income or support services.
- Allow community organizations to provide direct cash assistance to violent crime survivors with minimal administrative burden.
- Streamline the claims process for VCB benefits.
- Remove barriers that contribute to denials and racial disparities in VCB claim awards, including correctional supervision disqualification, denials related to law enforcement cooperation, and discretionary denials that blame the victim for their own victimization.
- Improve support for exonerees, including compensation for time spent on parole or probation and for attorney's fees associated with overturning a conviction or securing a pardon.

2. OES and CalVCB

In October 2018, OES and CalVCB issued a report to the Governor and the Department of Finance titled “Victim Services in California: A Recommendation for Combining the State’s Victims’ Programs.” According to the report, since as early as 2002 various entities in the state have contemplated combining victim services programs, including the possibility of creating a single-state entity to oversee such programs, to ensure victims receive the services they need, as those needs have evolved over the years.

Upon passage of the Budget Act of 2018, the state established the Consolidation Working Group, which examined the numerous studies, reports, and analyses conducted on victim services programs dating back to 2002; sought input from key stakeholders via a survey and facilitated input forums throughout California; and, surveyed other states and conferenced with leaders in Pennsylvania, New York, South Carolina, and Washington—states that offer different examples of coordination of victim assistance and compensation programs.

While the report does not identify which entity would assume ultimate responsibility for victim service programs, the report generally recommends a phased-in approach to consolidating OES and CalVCB programs to ensure a smooth transition and to mitigate disruption to victim services, such as regular meetings between the two entities, cross training of staff at each entity, and representation of both entities on standing committees.

3. FASV Pilot Grant Program

This bill establishes, until July 1, 2027, the FASV Pilot Grant Program with the goal of “improving safety, healing, and financial stability for survivors of violent acts and the loved ones of those violently injured or killed.” Grants would be awarded by a grant selection advisory committee established by OES consisting of 13 members with experience being impacted by violence, formerly incarcerated persons, and persons with direct experience in implementing supportive services for marginalized survivors of violence. Racial, gender, and ethnic diversity, and representation of specified communities and identities shall be considered for all appointments

Specifically, the selection committee’s 13 members will consist of: 3 representatives from community-based organizations providing direct services and recovery assistance such as housing, job placement, or economic support to vulnerable survivors of violence, as specified; 3 survivors of violence who have experience in advocacy, treatment, or service provision, and who are members of communities that experience disproportionately high rates of gun violence and imprisonment; 3 community providers or advocates with expertise in community-based violence reduction programs or initiatives with a public health approach; 2 mental health professionals with experience providing trauma recovery services that serve residents of communities that experience disproportionately high rates of gun violence and imprisonment; and 2 public health professionals.

This bill requires the selection advisory committee to publicize the grant program and provide technical assistance including hosting webinars open to the public on the application process. The committee is also required to strive to minimize the paperwork burden on grant applicants and grantees and strive to develop an application, awards, and reporting process that is accessible to CBOs with smaller budgets or without past experience receiving a state grant award;

In considering grant applications, the selection committee must give preference to CBOs that are located in, serve, and employ members of communities that experience disproportionately high rates of gun violence and imprisonment, and CBOs that have a history of providing services to vulnerable survivors, as specified. CBOs receiving a grants from the pilot program must use the funds for unrestricted cash assistance to survivors of violence to meet their financial needs and for reimbursement of expenses.

CBOs receiving a grant for the FASV pilot grant program may use the funds to provide unrestricted cash assistance to survivors of violence to meet their financial needs or to cover their expenses, distributed at the discretion of the organization in amounts determined by the organization, as specified. Up to 10 percent of the grant may be used for the organization's expenses in administering the grant.

Each grantee would be required to annually report to OES the aggregate number of survivors who received cash assistance through the grant program and the average amount of assistance each survivor received through the program. Before July 1, 2027, OES would be required to post on its internet website a public report on the impact of the program, which shall include policy recommendations to provide guidance to the Legislature and Governor in fully implementing and scaling a permanent grant program.

4. History and Purpose of California Victim 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. It reimburses eligible 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.

This bill increases the current statutory limits on several reimbursable expenses and increases the maximum available to a victim or derivative victim to \$100,000.

5. Condition of the Restitution Fund

The Restitution Fund, which funds CalVCB 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 CalVCB 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 CalVCB.

6. Recent Legislative Changes to CalVCB and Changes Made by This Bill

CalVCB underwent various changes in 2016 through AB 1140 (Bonta), Chapter 569, Statutes of 2015. That 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 to CalVCB 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); 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); expanding compensation for loss of income for

victims of human trafficking (AB 629 (Smith), Ch. 575, Stats. 2019; and adjusting the application deadline for adult victims (SB 329 (Durazo), Ch. 375, Stats. 2019).

This bill makes various changes to the CalVCB. First, it adds a fourth member to the board. Currently, the VCB consists of the Secretary of the Government Operations Agency, the Controller, and a member of the public appointed by the Governor. This bill adds a public member to the CalVCB, appointed by the Senate Committee on Rules, with expertise in restorative justice. The bill specifies that a person shall not be prohibited from serving on the board solely because of that person's prior criminal record.

Under existing law, once an application is filed, CalVCB is required to verify with hospitals, physicians, law enforcement officials, or other interested parties involved, the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and any other pertinent information deemed necessary by the board. (Gov. Code, § 13954, subd. (a).) Any verification information requested by the board must be returned within 10 days of the request. (*Ibid.*)

This bill changes CalVCB's verification process by stating that the board may, but is not required to, verify information provided by the applicant but prohibits the board from seeking or requiring additional information solely to verify that the crime occurred if the board has already received a valid form of verification. This bill limits the information that DOJ is required to furnish to CalVCB, upon CalVCB's request, to information necessary to recover any restitution fine or order obligations that are owed to the Restitution Fund or to any victim of crime. This bill also makes changes to how CalVCB must communicate with applicants by including specified forms of communication (mail, email, text message or personal phone call) and requiring the board to adopt guidelines on the information to be included in communications with the applicant.

Under existing law, CalVCB is required to approve or deny applications within an average of 90 days and no later than 180 days. (Gov. Code, § 13958.) This bill shortens the statutory timeline for when applications should be approved or denied to an average of 30 days and no later than 60 days. This bill would toll new 30-day and 60-day requirements during a period in which CalVCB has requested information from the applicant if it has been longer than 10 days since the board first communicated the request for additional information to the applicant and the board has not yet received the requested information. Currently, the average time for processing applications is approximately 32 days but some applications take longer depending on the need to gather missing information or verify certain information.

Existing law authorizes an applicant who is denied compensation to petition for a hearing and reconsideration with CalVCB or to request judicial review of a final decision made by CalVCB. (Gov. Code, §§ 13959, 13960.) Existing law states that the board shall not consider any request for reconsideration filed with the board more than 30 days after personal delivery of its decision or 60 days after mailing the original decision. (Gov. Code, § 13959, subd. (i).) A similar 30-day and 60-day deadline exists for filing a petition for judicial review of the board's decision. (Gov. Code, § 13960, subd. (a).) This bill extends the timeframe to consider requests for reconsideration or to file a petition for judicial review to 365 days after personal delivery or mailing of the board's decision.

Existing law also requires CalVCB to conduct outreach and training to law enforcement agencies, victim centers, hospitals, medical, mental health or other counseling service providers,

and other public or private agencies regarding the existence of the victim compensation program and any duties imposed on these agencies under the law. (Gov. Code, § 13962, subs. (a) & (b).) This bill additionally requires every local law enforcement agency to inform crime victims of the existence of trauma recovery centers and to provide application forms to victims who desire to seek compensation regardless of whether a victim center exists in the county. This bill also requires CalVCB to provide every general acute hospital in the state that operates an emergency department with a poster developed by CalVCB describing the existence of the program including the procedures for obtaining compensation under the program; and application forms to distribute to victims and their family members who desire to seek compensation. This bill requires every general acute care hospital to display a poster provided by CalVCB prominently in the lobby or waiting area of its emergency department.

This bill also makes changes to the existing eligibility requirements and calculation of compensation for loss of support and income which are discussed in detail below.

7. Current Eligibility Requirements for Victim Compensation and Changes Made by this Bill

Persons eligible to receive victim compensation are victims and derivative victims where the crime either occurred in California or the victim is a resident of California or a member or a family member living with a member of the military stationed in California. The victim or derivative victim must have sustained either physical injury or emotional injury for specified violent crimes. Compensation is not available for a person who is convicted of a violent felony until that person has been discharged from probation or has been released from a correctional institution and has been discharged from parole, or has been discharged from postrelease community supervision or mandatory supervision, if any, for that violent crime. Compensation is also not available during any period of time the applicant is held in a correctional institution or while an applicant is required to register as a sex offender. (Gov. Code, § 13956, subd. (c).)

Once an application is filed, the applicant is required to cooperate with the staff of the board or the victim center in the verification of the information contained in the application. Failure to cooperate may constitute grounds to reject the application. (Gov. Code, § 13954, subd. (b)(1).)

Under existing law, CalVCB may deny an application based on a finding that the victim was involved in the events leading to the crime or the victim's failure to reasonably cooperate with law enforcement. (Gov. Code, § 13956.) If a victim is determined to have been involved in the events leading to the qualifying crime, factors that may be considered to mitigate or overcome involvement include, but are not limited to: (A) the victim's injuries were significantly more serious than reasonably could have been expected based on the victim's level of involvement; (B) a third party interfered in a manner not reasonably foreseeable by the victim or derivative victim; and (C) the board shall consider the victim's age, physical condition, and psychological state, as well as any compelling health and safety concerns, in determining whether the application should be denied pursuant to this section. (Gov. Code, § 13956, subd. (a)(2).) Similarly, existing law provides that in determining whether cooperation with law enforcement has been reasonable, CalVCB shall consider the victim's or derivative victim's age, physical condition, and psychological state, cultural or linguistic barriers, any compelling health and safety concerns, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family or the derivative victim or the derivative victim's family, and giving due consideration to the degree of cooperation of which the victim or derivative victim is capable in light of the presence of any of these factors. (Gov.

Code, § 13956, subd. (b).) The law specifies that a victim of domestic violence shall not be determined to have failed to cooperate based on the victim's conduct with law enforcement at the scene of the crime. Lack of cooperation shall also not be found solely because a victim of sexual assault, domestic violence, or human trafficking delayed reporting the qualifying crime. (*Ibid.*)

This bill deletes the provisions that authorize CalVCB to deny an application based on a victim's involvement in the events leading to the crime or the victim's failure to reasonably cooperate with law enforcement or CalVCB staff. This bill instead states that an application for compensation shall not be denied, in whole or in part, solely because or solely based on: (A) a police report was not made, (B) the contents of a police report, or (C) whether a suspect was arrested or charged with the qualifying crime. This bill provides that CalVCB shall not deny an application, in whole or in part, based on lack of cooperation by a victim or derivative victim with a law enforcement agency. This bill requires CalVCB to adopt guidelines that allow it to consider and approve applications that rely on evidence other than a police report to establish that a crime has occurred, and specifies forms of evidence that the board must accept to verify that a crime has occurred. These provisions are similar to how the board already determines whether that the commission of domestic violence, sexual assault and human trafficking crimes has occurred. (Gov. Code, § 13956, subds. (c)-(e).)

This bill also removes the ineligibility provisions in existing law for persons who are incarcerated or on supervision for a violent felony conviction, but maintains ineligibility of persons while required to register as a sex offender.

8. Compensation for Loss of Income and Loss of Support

CalVCB is authorized to pay a victim 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> > [as of Apr. 18, 2022].) Since CalVCB is the payor of last resort, lost income the victim incurs as a direct result of the crime will only be paid if the victim has not been and will not be compensated from any other source, such as insurance, criminal restitution, or civil lawsuits.

Loss of income may apply to direct victims as described above and to derivative victims who are the parent or legal guardian of a minor victim who is in the hospital or dies. (Gov. Code, § 13957.5, subd. (a).) Both requires evidence that the victim was working at the time of the qualifying crime and the amount of the lost income. The maximum reimbursement for loss of income to a victim is for a period of five years. The maximum reimbursement for a parent or legal guardian of a minor in the hospital or who dies is 30 days of lost income. (Gov. Code, § 13957.5, subd. (a)(1)-(3).)

CalVCB also reimburses for loss of support for derivative victims who had been legally dependent on the victim at the time of the qualifying crime. (Gov. Code, § 13957.5, subds. (a)(4) and (b).) An application for loss of support requires evidence of the support the derivative victim was receiving from the victim at the time of the qualifying crime. CalVCB may reimburse for loss of support for income lost by an adult for a period up to five years following the date of the crime, and loss of support on behalf of a minor for a period up to the child attaining 18 years of age.

This bill provides that for adult victims, loss of income shall be based on the actual loss the victim sustains or the wages an employee would earn if employed for 35 hours per week at the minimum wage required during the period that the victim is unable to work or seek work as a result of the injury, whichever is greater. For victims who are under 18 years of age at the time of the crime, loss of income shall be based upon the actual loss the victim sustains.

This bill makes eligible for compensation for lost income for derivative adult victims of a minor victim who is hospitalized or dies as a result of the crime to all victims regardless of age and expands derivative adult victims to additionally include a spouse or any person who is present at the hospital during the period the victim is hospitalized as a direct result of the crime. This bill also authorizes eligibility for a derivative victim to receive compensation for loss of income regardless of whether the derivative victim is employed or receiving earned income benefits at the time of the crime.

This bill states that a victim or derivative victim who is eligible for loss of income as provided shall be eligible for loss of income if they were employed or receiving earned income benefits at the time of the crime. If adult victim or derivative victim was not employed or receiving earned income benefits at the time of the crime, they shall be eligible for loss of income if the victim or derivative victim was fully or partially employed or receiving income benefits for a total of at least 2 weeks in the 12 months preceding the qualifying crime, or had an offer of employment at the time of the crime and was unable to begin employment as a result of the crime.

For a derivative victim who was a legal dependent on the victim at the time of the crime, this bill states that they shall be eligible for loss of support if the victim was employed or receiving earned income benefits at the time of the crime. If the victim was not employed or receiving earned income benefits at the time of the crime, the derivative victim shall be eligible if the victim was fully or partially employed or receiving earned income benefits for a total of at least 2 weeks in the 12 months preceding the qualifying crime, or if the victim had an offer of employment at the time of the crime and was unable to begin employment as a result of the crime.

This bill also requires, by July 1, 2023, CalVCB to adopt new guidelines for accepting evidence that may be available to the victim or adult derivative victim in considering and approving a claim of loss of income which shall require the board to accept any form of reliable corroborating information approved by the board, including such information as income tax records, pattern of depositions into the victim or derivative victim's banking account, a copy of a job offer letter, and information related to eligibility for public benefits. CalVCB is also required to adopt new guidelines for accepting evidence that may be available to the applicant in considering and approving a claim for loss of support for dependent derivative victims which shall require CalVCB to accept any form of reliable corroborating information regarding income received by the victim or support provided to the dependent that is approved by the board, including such information as a court order finding legal dependency or ordering support, social security or survivor benefits, workers compensation disability, child support records, spousal support agreements, and any records that show the victim making payments for living expenses for the derivative victim.

Guidelines adopted as regulations by CalVCB would go through the normal rulemaking process which includes public notice and comment requirements and approval by the Office of Administrative Law and transmittal to the Secretary of State before regulations can become effective. Generally, regulations become effective on one of four quarterly dates based on when

the final regulations are filed with the Secretary of State: January 1, if filed between September 1 and November 30; April 1, if filed between December 1 and February 29; July 1, if filed between March 1 and May 31; and October 1, if filed between June 1 and August 31. (Office of Administrative Law’s website, https://oal.ca.gov/rulemaking_participation/ [as of Apr. 19, 2022].)

9. Wrongful Conviction Compensation

Existing law allows a person who has been wrongfully convicted of a felony and imprisoned to file a claim against the state with the CalVCB for compensation at a rate of \$140 per day of imprisonment. (Pen. Code, §§ 4900, 4904.) If a claimant has first obtained a declaration of factual innocence from a court, CalVCB is required to recommend to the Legislature to make a payment to the claimant within 30 days of the claim.

For claimants who have not obtained a declaration of factual innocence, if a state or federal court grants a writ of habeas corpus or if a state court grants a motion to vacate based on newly discovered evidence, as specified, and as a result of either or those actions the charges are dismissed or the person is acquitted of the charges on a retrial, the person is also entitled to payment on their claim without a separate hearing, unless the Attorney General (AG) objects in writing within 45 days of the filing of the claim for compensation. (Pen. Code, § 4902.) CalVCB would then be required to hold a hearing where the AG has the burden of proving by clear and convincing evidence that the claimant committed the acts constituting the offense. If the AG fails to meet this burden, CalVCB shall recommend to the Legislature payment of the compensation sum. (Pen. Code, § 4903.)

This bill expands wrongful conviction compensation to include \$70 per day served on parole or on supervised release and reasonable attorney fees and costs incurred by or on behalf of the victim. This bill also provides that the appropriation amounts for compensation based on a daily rate shall be updated annually to reflect changes in the Consumer Price Index, as specified, commencing one year after this bill becomes effective.

This bill authorizes persons who have already served time on parole or supervised release to file a claim for wrongful compensation to include this additional compensation for \$70 per day on parole or supervised release within three years of the effective date of this bill. This bill also authorizes a person who has already filed a claim for wrongful compensation or who was already approved for compensation to file a supplementary claim within three years of the effective date of this bill.

10. Information to Victims

Existing law requires, pursuant to Marsy’s Law, approved by California voters on November 4, 2008, requires a law enforcement agency investigating a criminal act and an agency prosecuting a criminal act to, at the time of initial contact with a crime victim, during followup investigation, or as soon thereafter as deemed appropriate, provide or make available to the victim a “Marsy Rights” card that contains the constitutional rights of crime victims without charge or cost to the victim. (Pen. Code, § 679.026.)

This bill would also require a law enforcement agency investigating a criminal act and an agency prosecuting a criminal act to provide each victim a “Victim Protections and Resources” card that contains information about the rights they may have under applicable laws relating to the

victimization, including rights relating to housing, employment, compensation, and immigration relief. This card is to be designed by the DOJ and made available in PDF or other imaging format to these agencies.

Existing law requires CDCR to provide notice to specified persons, including a victim or next of kin who has submitted a request for notice with CDCR, as soon as placement of an inmate in any reentry or work furlough program is planned, as specified. (Pen. Code § 11155, subd. (a).)

This bill states that if the victim of the crime for which the incarcerated person was convicted, or the victim's next of kin if the crime was a homicide, has submitted a request for notice with CDCR, CDCR shall provide the notice to the victim or next of kin that shall include information on how to access information about the defendant's sentence, and general information not specific to the defendant about credits, rehabilitative programming, and how release decisions are made. This notification shall also include information about victim civil legal rights, restorative justice programs within CDCR, victim compensation, and available services including the trauma recovery center closest to victim.

Additionally, this bill requires CalVCB to provide every general acute hospital in the state that operates an emergency department a poster describing the compensation program, including the procedures for obtaining compensation under the program, designed by the board, and application forms to distribute to victims and their family members who desire to seek compensation. This bill states that it shall be the duty of every general acute care hospital to display a poster provided by CalVCB prominently in the lobby or waiting area of its emergency room.

11. Argument in Support

According to Californians for Safety and Justice, a co-sponsor of this bill:

Research has found that eligibility restrictions in the compensation program – including conviction-based restrictions, denials for alleged lack of cooperation, and subjective determinations about the victim's innocence – contribute to inequitable rates of denials for our state's most vulnerable populations, and specifically result in disproportionate denials for Black victims and families.

All survivors of crime deserve help and support. We know that racial disparities still exist within our criminal justice system. A 2021 report showed that despite reductions in rates of incarceration, black men are still 9.6 times more likely to be incarcerated in a state prison than their white counterparts, while Latinx men are 2.4 times more likely. A past conviction does not preclude an individual from being victimized nor does it deem them any less deserving of support. However, California is one of only eight states that excludes some survivors from receiving support because of their status on probation or parole.

Those survivors who do qualify must navigate overwhelming paperwork and restrictions that limit the kinds of resources they are eligible for. Many become so discouraged they discontinue their efforts to seek support. It takes VCB months on average to disburse benefits, during which time survivors could be without funding needed to move or bury a loved one, or may lose employment and consequently, income.

SB 993 would remove barriers that prevent many crime survivors from receiving assistance, reduce red tape in the application process, improve outreach about the program and other survivor resources, and lessen racial disparities that have impacted access to services.

-- END --