

TITLE 2. VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD
VICTIM COMPENSATION PROGRAM REGULATIONS
Title 2, §§ 647.4, 649-649.62

[Notice Published February 6, 2009]

The Victim Compensation and Government Claims Board (Board) proposes to adopt the proposed regulations described below after considering all comments, objections and recommendations regarding the proposed action.

PUBLIC HEARING

The Board has not scheduled a public hearing on this proposed action; however, the Board will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested individual, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period closes at 5:00 p.m. on March 23, 2009. The Board will consider only comments received at the Board's office by that time. Submit written comments to:

Geoff Feusahrens, Regulations Analyst
Victim Compensation and Government Claims Board
400 R Street
Sacramento, CA 95811

Comments may also be submitted by facsimile (FAX) at (916) 491-6439 or by e-mail to regulations@vcgcb.ca.gov.

AUTHORITY AND REFERENCE

Government Code sections 13920 and 13974 authorizes the Board to adopt these proposed regulations. The proposed regulations implement, interpret and make specific Government Code sections 13950, 13951, 13952, 13952.5, 13953, 13954, 13955, 13955, 13956, 13957, 13957.2, 13957.5, 13957.7, 13957.9, 13958, 13959, 13962, 13963, 13964, 13974.5, and Family Code sections 297 and 297.5.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

This rulemaking action clarifies and makes specific the Victim Compensation Program (Program) regulations and clarifies the Board's current practices. The current Program regulations are outdated. The rulemaking action includes numerous revisions for clarity and consistency with statutes or case law, including recommending the repeal of several regulations. It also deletes language that repeats the statute.

The rulemaking action reorganizes the requirements of an application and supplemental claim for better organization. It clarifies that applications and supplemental claims are considered in the same manner and addresses the notice requirements for decisions to approve or deny an application or supplemental claim. It also clarifies the content of an application, including sensitive documents such as complete police reports or mental health treatment notes. It further addresses the factors that may be considered as good cause for late applications.

The rulemaking action clarifies the process for verifying claims and other sources of payments. It redefines the term "collateral benefits" to "reimbursement sources" and expands the definition to include salary, sick leave, and bereavement leave. It requires that victims execute a lien to allow the Program to seek reimbursement when a civil case based on the crime results in any recovery of funds.

Several provisions clarify the status of derivative victims. The rulemaking clarifies that an applicant may only be a victim and derivative victim for the same qualifying crime for the purposes of income or support loss. The rulemaking also clarifies that a person may only be eligible once as a derivative victim for a crime, regardless of the number of victims.

The rulemaking action amends the definitions related to the Program to ensure the equal treatment of domestic partners applying for Program benefits. It also amends the regulation regarding derivative victims who previously had a relationship with the victim substantially similar to a family member to be consistent with the statutory time period of two years. It also allows benefits to any person that was in a relationship similar to a spouse, including situations where one of the parties had another relationship.

Several new provisions address mental health providers. For example, one new regulation identifies mental health providers authorized to receive reimbursement under the Program. Another regulation was amended to state that the Program will only contract for a simplified and expedited procedure for paying claims with a qualified mental health provider who is reimbursed at a minimum of \$10,000 in the previous fiscal year for mental health services.

The proposed rule-making action includes several new regulations to codify the Board's interpretation of its statutes and current practices and provide guidance regarding the following areas: relocation expenses, funeral/burial expenses, income and support loss, medical-related expenses, human trafficking, and rehabilitation. The proposed rulemaking action allows for alternative methods for verifying the disability period for income and support loss, including reference to The Medical Disability Advisory, 5th edition, a commonly used reference guide for evaluating disabilities.

The proposed rulemaking action also address newly enacted Government Code section 13957(a)(2)(B)(iii) (AB 2809, Leno). It includes a new regulation that defines a minor witness and specifies the types of crimes that a minor witness must observe in order to receive compensation for mental health counseling.

The proposed rulemaking further clarifies how the Program evaluates involvement in a vehicle related crime. It clarifies how the Board evaluates whether an application should be denied in whole or in part because of the nature of an applicant's involvement in the events leading up to the crime, as well as the factors that mitigate or overcome any involvement. Under the proposed rule-making, an applicant's participation in any crime at the time that they became a victim would be a basis for denial.

The rule-making action also states that the Program staff may give significant weight to the conclusions of law enforcement when determining whether to deny an application for failure to cooperate with law enforcement. It allows the Program staff to deny an application or supplemental claim when the applicant does not cooperate with the Program staff or provides or causes others to provide false information related to an application or supplemental claim.

Last, there are a number of proposed revisions to reflect the commonly used program name "VCP" and other terms used by the VCP staff. The language of the regulations was also revised to plain English.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has made the following initial determinations:

Mandate on local agencies and school districts: None

Cost or savings to any state agency: None

Cost to any local agency or school district which must be reimbursed in accordance with Government Code 17500 through 17630: None

Other nondiscretionary cost or savings imposed on local agencies: None

Cost or savings in federal funding to the state: None

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None

Cost impacts on a representative private individual or business: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Adoption of these regulations will not:

- (1) create or eliminate jobs within California;
- (2) create new businesses or eliminate existing businesses within California; or
- (3) affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None

SMALL BUSINESS DETERMINATION

The Board has determined that the proposed regulations do not affect small businesses because the regulations only apply to individuals who apply to the program.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private individuals than the proposed action.

The Board invites interested individuals to present statements or arguments with respect to alternatives to the proposed regulations during the written comment period.

CONTACT PERSON

Inquiries concerning the proposed administrative action may be directed to:

Geoff Feusahrens
Victim Compensation and Government Claims Board
400 R Street
Sacramento, CA 95811
Telephone: (916) 491-3863

The backup contact person for these inquiries is:

Roslyn Mack
Victim Compensation and Government Claims Board
400 R Street
Sacramento, CA 95811
Telephone: (916) 491-3605

Please direct requests for copies of the proposed text of the regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based to Geoff Feusahrens at the above address.

AVAILABILITY OF STATEMENT OF REASONS, TEXT PROPOSED REGULATIONS AND RULEMAKING FILE

The Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the

proposed text of the regulations and the Initial Statement of Reasons. Copies may be obtained by contacting Geoff Feusahrens at the address or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing, if requested, and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text available to the public at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Geoff Feusahrens at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Geoff Feusahrens at the above address.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons and the text of the regulations in underline and strikeout can be accessed through our website at www.vcgcb.ca.gov.

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