Victim Compensation Program (VCP) Regulations[1]

§ 649. Definitions.

(a) As used in this article:

(1) "Applicant" means a person submitting either an application as defined in subsection (a)(2) or a supplemental claim as defined in subsection (a)(23).

(2) "Application" means an initial application for assistance to the Victims of Crime Program (VCP) under Government Code sections 13950- 13974.5.

(3) "Board" means the Victim Compensation and Government Claims Board or VCGCB.

(4) "Certification under penalty of perjury" or "upon information and belief" as applied to the filing of an application or supplemental claim means a single signature under penalty of perjury or information and belief as required to certify that the contents of the application or supplemental claim are true and correct within the knowledge or belief of the applicant.

(5) "Code" means the California Government Code.

(6) "Denial of the application" as used in Section 13958 of the code and as construed for purposes of the Board hearing process means a preliminary determination and recommendation for disallowance by VCP staff and shall not be construed to mean a final administrative decision following a hearing by the Board to deny the application or supplemental claim.

(7) "Derivative victim" means the same as in Government Code section 13951(c).

(8) "Direct payment" as used in Section 13957.7(c)(1) of the code shall be those payments sent directly to providers when there is no objection by the victim or derivative victim, or when good cause is demonstrated, notwithstanding a victim's or derivative victim's objection.

(9) "Family member" means a person who is related to the victim at the time of the qualifying crime by blood, marriage, registered domestic partnership, or adoption.

(10) "Fianc" or "fiance" means a person who is engaged to be married or an unregistered domestic partner in a similar relationship.

(11) "File" or "filed" as it applies to an application or supplemental claim for VCP benefits means submitting the application or supplemental claim to the VCP or a joint powers victim witness center. An application or supplemental claim shall be deemed filed with the VCP or a joint powers victim witness center on the date that the application or supplemental claim is postmarked by the United States Postal Service or other private carrier postage prepaid and properly addressed, or on the date that it is personally delivered to the VCP or a joint powers victim witness center.

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[1] Includes regulatory changes effective 7-12-09.

(12) "Fund" means the Restitution Fund as set forth in Government Code section 13964.

(13) "Hearing" means the same as under article 2.5 of these regulations.

(14) "Joint powers victim witness center" means an agency under contract with the Board to process applications under Government Code section 13954(c).

(15) "Law enforcement agency" includes but is not limited to:

(A) an agency from California or another state that investigates or prosecutes violations of law that are comparable to agencies listed in Section 13951(d) and

(B) Federal agencies that investigate or prosecute violations of law.

(16) "May" means that the conduct or requirement is permissive and discretionary.

(17) "Qualifying crime" means a crime as defined in Government Code section 13951(b) that resulted in one of the following:

(A) injury to the victim;

(B) threat of injury to the victim; or

(C) the death of the victim.

(18) "reimbursement sources" shall include but not be limited to the following types of benefits:

(A) All forms of private and public insurance benefits paid to or on behalf of the insured victim, the victim's survivors, or derivative victim, including medical, disability, wage loss, funeral/burial insurance, liability and casualty insurance, including vehicle, commercial and residential insurance.

(B) All forms of public and private assistance paid to, or on behalf of, the victim, the victim's survivors, or derivative victim, including Medi-Cal, social security, state disability insurance, workers' compensation and Medicare.

(C) Any salary, sick leave, or bereavement leave.

(D) Any restitution paid by the criminal perpetrator directly to the victim or his or her survivors whether collected by public agencies and paid over to the recipient or collected directly by the recipient.

(19) "Related to the victim by blood, marriage, registered domestic partnership, or adoption" means:

(A) the victim's spouse or registered domestic partner;

(B) relatives within the 4th degree of the victim or the victim's spouse as follows:

1. first degree relatives include parent and child;

2. second degree relatives include grandparent, brother, sister, and grandchild;

3. third degree relatives include great-grandparent, uncle, aunt, nephew, niece, and great-grandchild;

4. fourth degree relatives include great-great- grandparent, great uncle, great aunt, first cousin, grandnephew, and grandniece;

(C) the spouse of a person or registered domestic partner described in subsection (a)(19)(B); or

(D) the victim's fianc or fiance.

(20) "Resident of California" means the person's place of residence is California as determined by one of the following:

(A) Government Code section 244 for adults; and

(B) Welfare and Institutions Code section 17.1 for minors.

(21) "Shall" means that the conduct or requirement is mandatory and not discretionary.

(22) "State" means the District of Columbia, the Commonwealth of Puerto Rico and any other possession or territory of the; United States.

(23) "Supplemental claim" means a request for payment submitted after the application is received.

(24) "Threat of physical injury" means conduct that meets both of the following:

(A) a reasonable person would feel threatened in the same circumstances as the victim; and

(B) a reasonable person in the same circumstances as the victim would believe both of the following:

1. the threat would be carried out; and

2. physical injury would result if the threat were carried out.

(25) "Victim" means a person who sustained injury or death as a direct result of a qualifying crime and is one of the following:

(A) a resident of California;

(B) a member of the military stationed in California;

(C) a family member living with a member of the military stationed in California; or

(D) a nonresident of California who is a victim of a qualifying crime occurring within

California if the Board determines that federal funds are available for compensation of victims of crime.

(26) "VCP" means the Board staff that implement the Victims of Crime Program as specified in Title 2, Division 3, Part 4, Chapter 5, Article 1 of the Government Code, commencing with Section 13950.

(27) "Water vehicle" means the same as "vessel" as defined in Harbors and Navigation Code section 651(g).

(28) "Witnessed the crime" as used in Section 13955(c)(4) of the code means actual physical presence at the scene of the qualifying crime such that the person was a percipient witness to the qualifying crime.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13950, 13951, 13952, 13952.5, 13953, 13954, 13955, 13956, 13957.7, 13958, 13959, 13964 and 13964, Government Code.

§ 649.1. Residency Requirements.

(a) A victim must be a resident of California if the qualifying crime occurred outside California.

(b) A victim need not be a resident of California if the qualifying crime occurred in California if the board determines that federal funds are available for compensation of victims of crime.

(c) A derivative victim of a qualifying crime prior to January 1, 1999, must be a resident of California.

(d) A derivative victim of a qualifying crime on or after January 1, 1999, must be a resident of California or another state.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951 and 13955, Government Code.

§ 649.2. Qualifying Crime Occurring Outside California.

(a) A; California resident who is a victim of a qualifying crime that occurred outside California shall apply first for assistance in the state where the qualifying crime occurred.

(1) Subsection (a) shall not apply if the qualifying crime occurred in a state that does not provide assistance to a non-resident victim.

(b) A California resident who is a victim of a qualifying crime outside California who is eligible for assistance shall not receive assistance until one of the following occurs:

(1) the program of the state in which the qualifying crime occurred determines that the person is not eligible for the program; or

(2) the program benefits of the state in which the qualifying crime occurred are exhausted or denied or requested benefits are not eligible for reimbursement by the other state.

(c) This section does not apply if the qualifying crime occurred both inside and outside California.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955, Government Code.

§ 649.4. Eligibility of Felons.

(a) The VCP shall accept an application or a petition for relief to file a late application from a person who has been convicted of a felony in the same manner as for other applicants. Neither that the applicant is presently incarcerated nor that the applicant has been convicted of a felony and has not been discharged from probation or released from a correctional institution and discharged from parole shall be reason for the VCP to refuse to accept an application.

(b)(1) The VCP shall not grant assistance to a person who has been convicted of a felony committed on or after January 1, 1989, when the assistance is to compensate for pecuniary loss sustained after the person is convicted of the felony and before the person is discharged from probation or has been released from a correctional facility and is discharged from parole, if any.

(2) The VCP shall grant assistance to a person otherwise eligible for assistance who has been convicted of a felony to compensate for pecuniary loss sustained as a result of victimization when the loss was incurred after discharge from probation or parole.

(3) The pecuniary loss for which reimbursement is barred because it was sustained after the person had been convicted of a felony and before the person was discharged from probation or released from a correctional institution and discharged from parole will not become reimbursable upon the person's discharge from probation or release from a correctional institution and discharge from parole.

(c) As used in this section, "parole" includes "supervised release."

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13951 and 13956, Government Code.

§ 649.5. Effect of Felon Status on the Eligibility of Victims and Derivative Victims.

(a) The fact that a victim is disqualified from receiving assistance under section 649.4(b) shall not affect the eligibility of a derivative victim of the same qualifying crime who is otherwise eligible for assistance.

(b) The fact that a derivative victim is disqualified from receiving assistance under section 649.4(b) shall not affect the eligibility of a victim of the same qualifying crime who is otherwise eligible for assistance.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951, 13952 and 13956(d), Government Code.

§ 649.7. Complete Application.

Applications for assistance as specified in Section 13952 of the code will be deemed to be complete within the meaning of Section 13952(c) of the code only if:

(a) The applicant provides all information as directed in the instructions to, and as elicited on, the application which the Board shall require to be certified under penalty of perjury or upon information and belief. As part of the application the Board shall require the following information:

(1) The name, residence address, and if different, mailing address, date of birth and telephone number of the applicant seeking restitution from the Fund.

(2) A designation as prescribed on the application as to whether the applicant is a victim or derivative victim, or in the event of a death caused by a crime, a person who legally assumed the obligation, or who voluntarily paid the medical or burial expenses incurred as a direct result of the qualifying crime (Section 13957(a)(9)(A) and (C) of the code).

(3) If the person signing the application as the applicant is a person other than the actual victim or derivative victim seeking assistance, some designation as to the legal authority of such person to apply for benefits on behalf of the victim or derivative victim (e.g. parent or legal guardian for a child; or court appointed conservator for adults adjudicated to be incompetent.)

(4) A description of the date, nature, location, and circumstances of the qualifying crime.

(5) Except in the case where the applicant has no pecuniary loss, a complete statement of losses and reimbursements directly related to the qualifying crime including but not limited to the cost of medical care or burial expense, the loss of wages the victim has incurred to date, or the loss of support the derivative victim has incurred to date, for which they claim assistance. This statement must include the date or dates that medical, mental health or other professional services were provided to the victim or derivative victim and a description of the services provided along with a statement that the services were in fact received and that such services were required as a direct result of the qualifying crime and for no other reason. If mental health counseling or psychotherapy services were provided, the statement must include a designation as to whether any counseling or psychotherapy provided was in an individual, family or group setting.

(6) A signed authorization permitting the VCP or a joint powers victim witness center, or both, to verify the contents of the application.

(7) If the applicant is represented by an attorney or other authorized person, the name, address and telephone number of such representative. If the representative is an attorney, the California State Bar license number and the tax payer identification number.

(8) A statement whether the victim, the victim's survivors, or the derivative victim have commenced or intend to commence a civil action to recover monetary damages from the perpetrator or perpetrators of the qualifying crime or any other parties in connection with the qualifying crime, along with the name, telephone number and address of any

attorney representing the applicant in such civil proceedings.

(9) A promise to contact and repay the VCP if the applicant receives any payments from the offender, a civil suit, an insurance policy, or any other governmental or private agency to cover expenses that the VCP has already paid.

(10) A statement disclosing all collateral benefits including any private or public insurance or benefits payable from private or public programs of assistance for which the victim, the victim's survivors, or the derivative victim have applied or for which they may be eligible.

(b) In addition to the information as specified in subparagraph (a) above, applicants seeking types of assistance as set forth in Section 13957 of the code shall provide the following information relative to each category of assistance claimed:

(1) If medical or mental health expenses are claimed to have been incurred as a direct result of the qualifying crime, an itemized statement from the professional provider for all medical or mental health expenses incurred as of the date of the application including the license number of the professional certificate issued by the State of California or other jurisdiction to the medical or mental health practitioner providing the service as well as his or her business address and telephone number. Providers of services who are authorized by law to offer such services as part of their on-going business activity, but who are not required to obtain a professional or occupational license must provide either their social security number, or their Federal Employer Identification Number. The VCP may require the submission of mental health treatment session or progress notes in order to determine whether the treatment will best aid the victim or derivative victim and is necessary as a direct result of the qualifying crime. Session notes will be kept in a confidential locked file and after review, shall be returned to the provider or destroyed by the VCP upon request of the treating provider.

(2) If loss of income is claimed to have occurred as a direct result of the qualifying crime, the applicant shall produce evidence of income loss as well as a statement of disability from the treating medical or mental health provider.

(3) If funeral or burial expenses are claimed as a direct result of the qualifying crime, an itemized statement for all funeral or burial expenses incurred.

(4) If rehabilitative services are claimed, the applicant shall produce that evidence of need, and documentation for rehabilitation as specified in Section 649.24(c) of these regulations.

(c) A copy of the crime report evidencing the commission of the qualifying crime and setting forth the circumstances and factual events surrounding it.

In order to expedite the processing of the application, applicants will be encouraged to obtain and submit, along with the application, a copy of the crime report as prepared by the law enforcement agency to which the qualifying crime was reported. In cases in which the applicant or his or her representative are unable or decline to obtain such crime report, VOC or joint powers victim witness centers shall obtain the crime report.

No application shall be deemed complete until VOC or its contract agencies have

received a copy of the crime report, unless VCP staff is otherwise able to verify that a qualifying crime occurred.

(d) All applications and supplemental claims must be certified under penalty of perjury by the victim or derivative victim where the victim or derivative victim is the applicant, or shall be attested to under information and belief if completed by an applicant other than the victim or derivative victim, or by an authorized representative.

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13951, 13952, 13952.5, 13954, 13956, 13957, 13957.2, 13957.5, 13957.7, 13957.9 and 13963, Government Code.

§ 649.8. Emergency Awards.

(a) An applicant may indicate on the application that he or she is applying for an emergency award.

(b) Upon receipt of an application for an emergency award, the VCP shall expedite the process of verifying the application to determine if an emergency award is appropriate. The VCP shall make telephone calls and transmit documents electronically or by facsimile to quickly obtain information necessary to evaluate an application for an emergency award. A decision regarding an application for an emergency award shall be promptly communicated to the applicant.

(c) An emergency award may be allowed when it is necessary to avoid or mitigate a substantial hardship to the applicant that is the direct result of the qualifying crime. Substantial hardship shall include the following:

(1) The inability to provide for the necessities of life, including but not limited to shelter, food, medical care, or personal safety, without the emergency award.

(2) The inability to pay for funeral and burial expenses or crime scene cleaning expenses without the emergency award.

(d) The amount of an emergency award shall be based on the applicant's immediate financial need as a direct result of the qualifying crime. Immediate financial need shall be determined by the financial assistance needed to avoid substantial hardship before the receipt of non-emergency assistance.

(e) An applicant for an emergency award shall provide sufficient information to substantiate both of the following:

(1) An emergency award is necessary to avoid substantial hardship as a direct result of the qualifying crime; and

(2) The applicant has an immediate financial need for an emergency award as a direct result of the qualifying crime.

(f) If sufficient information as required by subdivision (e) is not provided, an application for an emergency award shall be processed as an application for non-emergency assistance. The amount of the emergency award being requested shall be considered when determining the amount or type of information required to verify the application for an emergency award.

Note: Authority cited: Section 13920(c), Government Code. Reference: Section 13952.5, Government Code.

§ 649.11. Application Without Verified Pecuniary Loss.

When an applicant files an application for assistance supplying all of the required information as set forth in paragraph (a) of Section 649.7 but either fails or declines to provide any of the information needed to verify actual pecuniary loss as set forth in paragraph (b) of Section 649.7, the VCP may make an initial determination of eligibility. If the VCP determines that the applicant is eligible, the VCP shall treat the application as accepted for processing and so notify the applicant and his or her representative. The acceptance of an application does not obligate the VCP to pay claims until it has received fully verified evidence of pecuniary loss by the victim or derivative victim, and has satisfied itself that no other source of benefits or assistance is available to the victim or derivative victim to compensate for this loss.

Nothing in this section shall be construed to prevent the VCP from paying those claims for which documentation required by subparagraph (b) of Section 649.7 has been provided.

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13951, 13952, 13954 and 13957, Government Code.

§ 649.12. Third Party Applications.

Under the provisions of Government Code Section 13951(g), "victim" shall not include an "individual" who merely provides medical or medically related services, funeral and/or burial services, estates, or corporations. Further, providers, estates, or corporations are not eligible to file an application with the VCP.

Note: Authority cited: Section 13974, Government Code. Reference: Section 13951, Government Code.

§ 649.13. Derivative Victims Who Previously Had Relationship with Victim Substantially Similar to Family Member.

For the purpose of qualifying as a derivative victim under Government Code section 13951(c), the two-year period during which the person lived in the victim's household in a relationship substantially similar to that of a parent, sibling, spouse or child may be either cumulative or consecutive in the following instances:

(a) A person may be found to have a relationship with a victim that is substantially similar to that of a parent if the person provided a significant portion of the necessities of life for the victim, including but not limited to the following:

(1) financial support;

(2) food;

(3) clothing;

(4) shelter;

(5) medical expenses;

(6) educational expenses;

(7) emotional support.

(b) A person may be found to have a relationship with a victim that is substantially similar to that of a child if the victim provided the person a significant portion of the necessities of life as listed in subsection (a).

(c) A person may be found to have a relationship with a victim that is substantially similar to that of a sibling if the person:

(1) previosuly lived in the same household as the victim; and

(2) was under the care of the same parent or parents, primary caretaker, or legal guardian.

(d) Factors that may be considered when determining whether a person has a relationship with a victim that is substantially similar to that of a spouse include, but are not limited to:

(1) previously lived in the same household;

(2) joint ownership of a residence;

(3) joint ownership of a motor vehicle;

(4) use of a joint bank account;

(5) use of a joint credit card account;

(6) maintenance of a sexually or emotionally intimate relationship;

(7) a significant portion of the items listed in subsection (a) are shared with, or provided to the victim.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951 and 13955(c), Government Code.

§ 649.14. Minor Witnesses.

(a) A minor witness is a person under the age of 18 who suffers an emotional injury as a direct result of seeing or hearing a violent crime, and was in close physical proximity to the victim when he or she witnessed the crime.

(b) A minor witness does not include the following:

(1) A minor who knowingly and willingly participated in the commission of the crime that is the basis for the minor's application pursuant to section 13957(a)(2)(B)(iii);

(2) A minor who failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. However, in determining whether cooperation has been reasonable, the Board shall consider the witness' 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 witness or the witness' family, and giving due consideration to the degree of cooperation of which the witness is capable in light of the presence of any of these factors;

(3) A minor involved in the events leading to the crime. The Board shall consider the witness' age, physical condition, and psychological state, as well as any compelling health and safety concerns, in determining whether the witness' application should be denied; or

(4) A direct or derivative victim of the violent crime.

(c) For purposes of Government Code section 13957(a)(2)(B)(iii), a violent crime shall be found to have been committed in the following crimes:

(1) Murder and manslaughter (including vehicular manslaughter);

(2) Mayhem;

(3) Kidnapping;

(4) Carjacking;

(5) Assault with a deadly weapon;

(6) Battery resulting in great bodily injury;

(7) Rape and rape of spouse;

(8) Sodomy;

(9) Lewd and lascivious acts;

(10) Oral copulation;

(11) Robbery;

(12) Arson of inhabited dwelling; or

(13) Burglary of inhabited dwelling with physical injury to an inhabitant.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13956 and 13957(a)(2)(B)(iii), Government Code.

§ 649.15. Good Cause for Filing Late Applications.

(a) A petition for relief from the period of limitations on grounds of good cause must be filed with the Board in writing not more than 30 days following the date notice is mailed to the applicant and his or her representative of the late filing, and shall include the statement under penalty of perjury as specified in subsection (b). An applicant failing to petition for relief in writing within the 30 days set forth herein will have his or her application denied and shall be deemed to have waived any right to relief from the period of limitations.

(b) In determining whether good cause exists justifying the late filing of an application, the VCP staff must consider the following factors, including but not limited to:

(1) A preponderance of the evidence supports that a qualifying crime occurred;

(2) Circumstances of the qualifying crime;

(3) Age;

(4) Documented physical or mental disability to such an extent during the time specified for filing an application that the applicant could not have effectively pursued a claim and the victim did not have a conservator;

(5) Cultural or linguistic barriers; and

An applicant seeking relief from the period of limitations on the filing of an application may, with his or her petition for relief and accompanying statement, include any corroborating documents which serve to verify the stated justifications for late filing.

(c) If VCP staff does not find good cause for the late filing and recommends that the application be denied, the applicant may request a hearing to determine the existence or nonexistence of good cause.

(d) In all cases the determination by the Board as to the existence or nonexistence of good cause constitutes the final administrative determination on the issue, subject only to a proper motion for reconsideration upon a showing of new and additional evidence not reasonably available at the time of the initial hearing. Nothing in this section shall be construed to prevent an applicant or his or her representative from filing the above stated declaration and petition for relief upon a showing of good cause simultaneously with the late application.

(e) An application shall be determined to be timely filed if it is filed within 90 days of a victim incurring a reimbursable loss and no earlier reimbursable loss had previously been incurred.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13953 and 13954, Government Code.

§ 649.16. Applications by Derivative Victims.

(a) The period of limitations for filing an application is tolled for derivative victims when an application by a victim or on behalf of a victim for the same qualifying crime is accepted by the VCP.

(b) A person shall not be eligible as both a victim and a derivative victim for the same qualifying crime except with respect to income and/or support loss.

(c) A person shall only be eligible once as a derivative victim of a crime regardless of the number of direct victims for that same crime.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951, 13952 and 13953, Government Code.

§ 649.17. Relocation Benefits.

(a) All cash payments or reimbursement for expenses incurred in relocating must be necessary as a direct result of the crime. The amount of reimbursement paid by the Board shall not exceed the statutory maximum, less the amount of reimbursement available from other sources.

(b) Determinations by law enforcement or mental health providers may be provided in a manner determined by the Board, which may include, but are not limited to, in writing, by telephone, or other electronic means.

(c) One claimant per crime giving rise to the relocation means that only one member of a household may receive relocation benefits even if more than one member of a houshold is a direct victim of the qualifying crime.

(d) A higher level of scrutiny will apply to reimbursement requests if a significant amount of time has elapsed between the qualifying crime and the date of the relocation.

(e) Relocation expenses may include but are not limited to housing deposits, utility deposits, telephone deposits, connection fees, temporary lodging costs, food expenses, clothing costs, costs of personal items, and other necessary expenses.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13957, Government Code.

§ 649.18. Reimbursement of Funeral/Burial Expenses.

(a) All cash payments or reimbursement for expenses of the funeral/burial of the victim must have been incurred as a direct result of the crime.

(b) As funeral practices vary across cultures, the following traditional funeral and burial expenses or their equivalent expenses may be reimbursed up to the statutory maximum, less the amount of reimbursement available from other sources:

(1) Burial costs, including but not limited to expenses for: the burial vault; casket; costs associated with the transport of the body; cremation charges; labor cost for opening and closing the grave; headstone; marker, or tombstone and the charge for its setting; the single-width, single-depth grave site; and, endowment care--a one time charge controlled by state law that ensures permanent maintenance of the grave.

(2) Funeral service costs, including but not limited to expenses for: preparation of the body for viewing; newspaper notices; copies of the death certificate; flowers for gravesite, chapel and hearse; photography costs; musician's fees; burial clothing; cost of transport to the burial site; on-site funeral service fees for chapels or other memorial service locations; licensed security guard serivces; gravesite service fees and costs, including equipment charges; and, items necessary for performing services in other cultural traditions.

(3) Memorial service costs including flowers, and pictures and picture frames at the service. Additionally, costs of food and beverages up to $ 500.00 of the statutory maximum. Reimbursement for the purchase of alcoholic beverages is not permitted.

(4) If a double grave or headstone has been chosen, reimbursement may be made based upon an estimate of a single grave or headstone or half the cost of the double grave or headstone, whichever is the less expensive.

(c) The following expenses are not reimbursable by the VCP: coroner's charges, finance or interest charges or processing fees on a funeral/burial bill; a pre-purchased funeral or grave for the victim; any expenses based upon a VCP application filed by a mortuary, cemetery or other third party service provider.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13957(a)(9), Government Code.

§ 649.22. Verification for Payment of Supplemental Claim.

All supplemental claims shall contain the information required by section 649.7(b) and shall be verified in the same manner as an application under section 649.7.

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13951, 13952, 13954, 13957 and 13957.2, Government Code.

§ 649.23. Reimbursement of Medical-Related Services.

(a) All cash payments or reimbursement for medical-related services of the victim must have been incurred as a direct result of the qualifying crime. The amount of reimbursement paid by the Board shall not exceed the maximum rate set by the Board, if any, less the amount of reimbursement available from other sources.

(b) Reimbursable medical-related services include, but are not limited to: acupuncture, biofeedback, massage therapy, natural healing methods, and skilled and unskilled in-home supportive services.

(c) In order to be reimbursed for skilled and unskilled in-home supportive services, the victim must obtain verification from a treating physician specifying the reasons in-home supportive services are necessary, the duration the in-home services are needed, and the number of hours needed daily. A treating physician must re-certify the need for in-home supportive services at 60-day intervals.

(d) Skilled in-home supportive services must be provided by the following: licensed nurse, medical social worker, licensed therapists, or a state certified home health aide attendant.

(e) Unskilled in-home supportive services may be provided by family members or other persons to assist a victim that is unable to perform daily tasks such as walking, bathing, dressing, preparing meals or similar major-life functions. Unskilled in-home services are limited to eight hours a day and 40 hours per week.

(f) Medical-related expenses are reimbursable at the rates and within the limitations established by the Board pursuant to Government Code section 13957.2.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13957(a)(1) and 13957.2, Government Code.

§ 649.24. Authorized Indemnification.

(a) The amount of reimbursement paid by the Board shall not exceed the maximum rate set by the Board, if any, less the amount of reimbursement available from other sources.

(b) Any cash payments made in response to an application or supplemental claim, arising out of the same crime, shall not exceed the monetary limits permitted by statute for a single application.

(c) Personal Property. Except as provided for in Government Code section 13957(a)(1), the Board may not indemnify a victim for loss of money or loss or damage to personal property sustained in the crime giving rise to the application.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13957 and 13957.5, Government Code.

§ 649.25. Rehabilitative Services.

Cash payments for job retraining or similar employment-oriented services will be paid to or on behalf of a victim after the following verification:

(a) The victim first shall apply for assistance from the California Department of Rehabilitation ("DOR") and obtain an evaluation and assessment. If the victim is not a resident of California, the victim must apply to the equivalent public agency where he or she resides.

(b) If the DOR denies the victim job retraining or the victim has obtained all the job training opportunities available to the victim through DOR, the victim may seek job retraining from a private provider and will be reimbursed in accordance with the DOR or any other public agency evaluation.

(c) Persons requesting cash payment for private rehabilitative services shall clearly indicate the type of services or retraining contemplated, the intended provider, the cost, and the need for the services.

(d) The applicant shall also certify, to the satisfaction of the Board, that such assistance is not available from some other tax-supported program.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13957 and 13957.5, Government Code.

§ 649.26. Objection to Direct Payment.

The Board shall inform the victim or derivative victim of his or her right to object to direct payments by VCP to providers of services in accordance with Government Code section 13957.7(c)(1) of the code. In the event that the victim or derivative victim asserts such right the VCP may reimburse pecuniary loss to the victim or derivative victim only in amounts equal to sums actually paid out by the victim or derivative victim to the service provider and only upon submission by the victim, the victim's survivors, or derivative victim of evidence of such payments, subject to the rates and limitations set by the Board in accordance with applicable law. Following such an objection, direct payment shall be made to the provider only upon a demonstration of good cause as determined by the board.

Note: Authority cited: Section 13974, Government Code, Reference: Section 13957.7, Government Code.

§ 649.27. Third Party Verification.

In all cases where VCP requests verification from hospitals, physicians, law enforcement officials or other interested parties and these third parties fail to return the requested information within 10 (ten) days as specified in section 13954(a) of the code, the Board may through its staff, review the application and all attachments as filed by the applicant and may, in the exercise of its sound judgment, deem the application to be verified based solely on a review of those documents.

Note: Authority cited: Sections 13952.5, 13954 and 13974, Government Code.
Reference: Sections 13952.5 and 13954, Government Code.

§ 649.28. Mental Health Counseling Providers.

(a) A provider of outpatient mental health counseling related services who receives payment from, or whose services were reimbursed by, the Victim Compensation Program shall be subject to a clinical or fiscal audit, or both, to ensure that treatment and reimbursement were authorized by law.

(b) A provider shall make all necessary clinical and fiscal records available to Board staff for review upon request for up to three years after the date that reimbursement was paid.

(c) If a non-profit agency applies to enter into an agreement with the VCP as a qualified provider pursuant to Government Code section 13957.9, the VCP shall consider that the non-profit agency utilized the Restitution Fund at a significant level on a regular and constant basis if the non-profit agency has been reimbursed a minimum of $ 10,000 during the previous fiscal year for mental health services.

Note: Authority cited: Section 13920(c), Government Code. Reference: Sections 13954, 13957(a)(2) and 13957.2(a), Government Code.

§ 649.29. Authorized Mental Health Providers.

Psychiatric, psychological, or other mental health counseling related expenses that became necessary as a direct result of the crime may only be reimbursed if provided by any of the following individuals:

(a) A person licensed as a physician who is certified in psychiatry by the American Board of Psychiatry and Neurology or who has completed a residency in psychiatry.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2 of the Business and Professions Code.

(d) A person licensed as a marriage, family, and child counselor under Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(e) A person registered as a psychological assistant who is under the supervision of a licensed psychologist or Board certified psychiatrist as required by section 2913 of the Business and Professions Code.

(f) A person registered with the Board of Psychology who is providing services in a nonprofit community agency pursuant to subdivision (d) of section 2909 of the Business and Professions Code.

(g) A person registered as a marriage, family, and child counselor intern who is under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry, as specified in section 4980.44 of the Business and Professions Code.

(h) A person registered as an associate clinical social worker, as defined in Section 4996.18 of the Business and Professions Code, who is under the supervision of a licensed clinical social worker, a licensed psychologist, or a Board certified psychiatrist.

(i) A person who qualifies as a psychology intern as described in section 2911 of the Business and Professions Code who is under the supervision of a person licensed by the state to provide mental health services, as approved by the Board.

(j) A person who qualifies as a postdoctoral psychology trainee employed in an exempt setting pursuant to Business and Professions Code, section 2910, or employed pursuant to a State Department of Mental Health waiver pursuant to Welfare and Institutions Code, Section 5751.2, who is under the supervision of a person who is licensed by the state to provide mental health services as approved by the Board.

(k) A psychiatric resident who has completed at least the first year of residency and is under the supervision of a psychiatrist licensed by the state, as approved by the Board.

(l) A person licensed as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a

master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered nursing, or an advanced practice registered nurse certified as a clinical nurse specialist under Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code, who participates in expert clinical practice in the specialty of psychiatric-mental health nursing.

(m) Any mental health provider approved by the Board under Government Code section 13957(a)(2)(D)(ii).

(n) Nothing in this section shall prevent the VCP from reimbursing peer counseling services under Government Code section 13957(a)(2), subject to the rates and limitations set by the Board.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13957(a)(2)(D)(i), Government Code.

§ 649.30. Lien.

In all cases the victim, derivative victim, or applicant shall execute a lien in favor of the Restitution Fund, which shall be submitted with the application and may be utilized by the VCP to seek reimbursement in the event that civil proceedings based on the qualifying crime are commenced and result in any recovery of funds.

Note: Authority cited: Section 13974, Government Code. Reference: Section 13963, Government Code.

§ 649.31. Reimbursable Sources.

In the event that other reimbursable sources are disclosed as required during verification, the applicant shall obtain and provide a written explanation of such benefits from the insurer, or benefit program setting forth a determination of eligibility as regards the victim, the victim's survivors, or derivative victim as well as the dollar amount of assistance or reparations to which the victim, the victim's survivors, or derivative victim is entitled. In the event that the applicant is unable to obtain an explanation of benefits, the VCP or joint powers victim witness center shall take steps to obtain such explanation of benefits or other verification from the insurer or benefit program. If a supplemental claim or expense is directly related to the qualifying crime and requested information is not received after a reasonable amount of time, the supplemental claim or expense will be considered allowed. However, no payment will be made until the necessary information regarding reimbursement sources is received.

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13951, 13952, 13954 and 13957(b), Government Code.

§ 649.32. Verification of Income or Support Loss.

(a) All cash payments or reimbursement for income or support loss shall be necessary as a direct result of the crime.

(b) Income loss includes, but is not limited to, time lost from work for medical or mental health appointments necessary as a direct result of the crime.

(c) Evidence of income loss may include but not be limited to, documentation of earnings immediately preceding the date of the qualifying crime such as copies of all wage check stubs for periods immediately preceding the date of the qualifying crime, or copies of all state and federal income tax returns filed by the victim or applicant for the tax year immediately preceding the date of the crime or during the year of the crime, if available, or a Statement of Wages or Income as used to file with federal or state taxing authorities such as a W-2 IRS form actually filed with the taxing authorities, or a statement signed by the employer attesting to the payment of wages or income to the victim which statement shall include the name, telephone number and address of the employer or person who paid or would have paid the wages or income along with the employer's Federal Identification Number, or wage abstract from the Employment Development Department, or a profit/loss statement for self-employed victim or application generated and signed by a certified public accountant. For a self-employed victim or applicant, the income loss will be calculated based upon the adjusted gross income.

(d) Evidence of income loss may also include payment based upon a bona fide job offer, including but not limited to a job offer on the employer's letterhead with the employer's signature and federal tax identification number stating the terms of employment, work order or contracts for jobs in progress.

(e) The treating medical or mental health provider may verify disability within the scope of his or her licensure. A statement of disability provided by the treating medical or mental health provider shall include information concerning the prognosis for recovery, the extent and expected duration of the disability, and certification that the disability resulted directly from the qualifying crime.

(1) For physical injuries, a disability statement may come from the following treating providers: medical doctor, osteopath, optometrist, dentist, podiatrist, or a chiropractor. If a chiropractor provides the disability statement, it will only be accepted for a disability period of one year.

(2) For emotional injuries, a disability statement may come from any treating licensed social worker, marriage and family therapist, licensed clinical psychologist or treating psychiatrist for a disability period of six months. When the total disability period exceeds six months, the disability statement must be completed by a treating licensed clinical psychologist or psychiatrist.

(f) A disability statement should contain sufficient information to verify the disability period that is a direct result of the crime. The following methods may also be used to verify disability time period, including but not limited to:

(1) A disability period is presumed for a period of up to seven days for crime-related injuries, or

(2) The shortest time period in "The Medical Disability Adviser: Workplace Guidelines for Disability Duration" (5th Edition) for physical injuries and type of work done by the victim or applicant.

(g) The maximum income loss to be paid under Government Code section 13957.5 shall be calculated based upon the cumulative disability period that is no more than five years following the crime.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13957(a)(4) and 13957.5, Government Code.

§ 649.33. Derivative Victims Eligible for Support Loss.

(a) A derivative victim may be eligible for reimbursement of support loss if the derivative victim was legally dependant on the victim at the time of the crime.

(b) A derivative victim who is legally dependent on the victim at the time of the crime, includes but is not limited to:

(1) a minor child who is the legal dependent of each parent or legally adoptive parent unless the minor child is emancipated or parental rights have been terminated;

(2) each spouse or registered domestic partner is the dependent of the other spouse or registered domestic partner; or

(3) an incapacitated adult that is the legal dependent of another adult or an unborn child conceived before the date of the crime.

(c) Evidence of legal dependency includes but is not limited to, birth certificates, marriage certificates, certificate of domestic partnership, medical records, adoption records, child support records, orders granting legal custody, alimony awards, settlements or agreements for spousal support, income tax records, Social Security disability or survivor benefits, veteran's death benefits, workers' compensation disability or death benefits, or any court order finding legal dependency or ordering support.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13957(a)(4) and 13957.5(a)(4), Government Code.

§ 649.34. Eligibility of Law Enforcement Officers.

A law enforcement officer who is a victim of a qualifying crime while acting within the course and scope of the officer's employment shall receive assistance for which the officer is otherwise eligible.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951 and 13955, Government Code.

§ 649.35. Duty of Local Law Enforcement Agencies.

Notice of the Victims of Crime Act shall be given by local law enforcement agencies either in person or by mail, or in conjunction with local victim witness assistance centers, to all victims of crimes or their dependents at the time of the incident or as soon as possible thereafter. The notice as required by Government Code section 13962(b) shall be given in accordance with the written procedures developed by the agency pursuant to Section 649.36 of this article. In addition, new officers shall be advised by their superiors upon entering service of the particulars of the VCP Program. Instruction concerning the program shall be made a part of the training curriculum for all trainee officers.

Note: Authority cited: Section 13920, Government Code. Reference: Section 13962, Government Code.

§ 649.36. Victims of Crime Liaison Officer.

Each local law enforcement agency shall designate a Victims of Crime Liaison Officer. The VCP shall be advised of the name, business address and telephone number of the person appointed. In carrying out the agency's responsibility under California Government Code Section 13962(b) and Section 649.35 of this article, the Liaison Officer shall devise and implement written procedures whereby victims, or their dependents or family, are notified and provided forms for filing under the VCP. These procedures shall be available for examination, upon request, by the Board. It shall also be the responsibility of the Liaison Officers or their designees to respond to inquiries from interested persons concerning procedures for filing a claim under the VCP. Liaison Officers or their designees shall provide to interested persons applications supplied by the VCP explaining the VCP.

Note: Authority cited: Section 13920, Government Code. Reference: Section 13962, Government Code.

§ 649.37. Proof of the Qualifying Crime.

An applicant has the burden of proving each element of a qualifying crime.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951, 13956 and 13959, Government Code.

§ 649.38. Evidence of the Qualifying Crime.

(a) A conviction shall be sufficient proof that a crime occurred.

(b) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether or not a qualifying crime occurred.

(c) Factors that may be considered as evidence of a qualifying crime include, but are not limited to:

(1) an admission of guilt to law enforcement; and

(2) the filing of a criminal charge for the qualifying crime.

(d) Medical or mental health records alone may not be sufficient evidence that a qualifying crime occurred.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13952, 13956 and 13959, Government Code.

§ 649.39. Emotional Injury.

A victim or derivative victim may be compensated for emotional injury if the victim also sustained one of the following:

(a) physical injury; or

(b) threat of physical injury.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955(f), Government Code.

§ 649.40. Examples of Threat of Physical Injury.

A threat of physical injury includes, but is not limited to the following situations:

(a) the victim was directly threatened with a weapon;

(b) the victim was within sight of a person brandishing a weapon and reasonably felt threatened for his or her own safety;

(c) the victim was directly threatened verbally with serious bodily injury and there was a reasonable probability that:

(1) the threat would be carried out; and

(2) physical injury would result if the threat were carried out.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955, Government Code.

§ 649.41. Acts Constituting One Qualifying Crime.

(a) An act or series of acts by a perpetrator or perpetrators that is a continuing series of events, regardless of the time period over which the acts occur, may be considered one crime for the purpose of filing an application or eligibility.

(b) The following shall constitute one crime for the purpose of filing an application or for eligibility:

(1) the same or similar crime is repeatedly committed against the same victim over a period of time by a single perpetrator;

(2) the same or similar crime is repeatedly committed against the same victim over a period of time by more than one perpetrator acting in concert or with the knowledge of the conduct of the other perpetrator or perpetrators;

(3) a series of crimes is committed against the same victim by one or more perpetrators over a period of time with a continuity of purpose.

(c) An act or series of acts that is one crime under this section that continues after an application is submitted constitutes one crime for the purpose of filing an application or for eligibility.

(d) A qualifying crime may have more than one victim or derivative victim.

(e) When there is more than one victim of the same acts described in subsection (b)(1), (2) or (3), a victim shall not be eligible as both a victim and a derivative victim for the same acts.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13951, Government Code.

§ 649.42. Date of Qualifying Crime.

The date of a qualifying crime that is comprised of a series of acts under section 649.41 is the date on which the last act occurred prior to the date of the application.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13951, Government Code.

§ 649.43. Evidence of a Child Sexual or Physical Abuse Qualifying Crime.

(a) Factors that shall be considered evidence of a child sexual or physical abuse qualifying crime include, but are not limited to:

(1) a sustained juvenile court dependency petition containing allegations of sexual or physical abuse, unless the court finds that the allegations of sexual or physical abuse did not occur;

(2) medical or physical evidence consistent with child sexual or physical abuse;

(3) a written or oral report from a law enforcement agency or a child protective services agency concluding that child sexual or physical abuse occurred;

(4) a credible witness corroborated the child sexual or physical abuse;

(5) a juvenile court order removed the child from the home because of sexual or physical abuse;

(6) criminal charges of child sexual or physical abuse were filed.

(b) Factors that may be considered evidence of a child sexual or physical abuse qualifying crime include, but are not limited to:

(1) a mental health evaluation concluded that child sexual or physical abuse occurred;

(2) the child victim's statement to a law enforcement or child protective services staff;

(3) evidence of behavior consistent with child sexual or physical abuse;

(4) a final superior court order that finds that child sexual or physical abuse occurred.

(c) A report under subsection (a)(3) shall contain all of the following information:

(1) name, telephone number and title of the person making the report;

(2) specific facts that form the basis of the conclusion that a crime occurred;

(3) citation to the relevant criminal statute for the crime that occurred.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13954, 13956 and 13959, Government Code.

§ 649.44. Evidence of a Domestic Violence Qualifying Crime.

(a) Factors that may be considered as evidence of a domestic violence qualifying crime include, but are not limited to:

(1) the perpetrator was prosecuted for the qualifying crime;

(2) the perpetrator was enrolled in a batterers' program or its predecessor domestic violence diversion program as a result of the qualifying crime;

(3) a report from law enforcement concluded that a domestic violence crime was committed against the victim;

(4) a report from a battered women's program corroborates the allegation of domestic violence;

(5) medical records document injuries consistent with the allegation of domestic violence;

(6) a law enforcement officer obtained an emergency protective order under Family Code section 6250;

(7) a report from a law enforcement officer or prosecuting attorney concluded that a crime of domestic violence occurred;

(8) a violation of probation due to a domestic violence qualifying crime against the victim.

(b) For the purpose of this section, "domestic violence" shall have the same meaning as; in Penal Code section 13700(b).

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13954, 13956 and 13959, Government Code.

§ 649.45. Presumption of Physical Injury in a Domestic Violence Qualifying Crime.

(a) A minor is presumed to have sustained physical injury as a result of a domestic violence qualifying crime if the child witnessed a domestic violence qualifying crime.

(b) A minor witnessed a domestic violence qualifying crime if the minor saw or heard an act constituting a domestic violence qualifying crime.

(c) Factors that may be considered as evidence that a minor witnessed an act constituting a domestic violence qualifying crime include, but are not limited to:

(1) the minor placed a 911 call;

(2) a report from a counselor at a domestic violence agency concluded that the minor witnessed an act constituting a domestic violence qualifying crime;

(3) a report from an eyewitness corroborated that the minor witnessed an act constituting a domestic violence qualifying crime;

(4) a restraining order required the perpetrator to stay away from the minor and a declaration supporting the restraining order stated that the minor was the victim of, or was threatened with, physical injury;

(5) the minor's reliable statements;

(6) other credible evidence.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13951, Government Code.

§ 649.46. Presumption of Physical Injury in a Child Abduction Qualifying Crime.

The presumption of physical injury under Government Code section 13955(f)(3)(D) for violations of Penal Code sections 278 or 278.5 requires that the deprivation of custody continue for at least 30 consecutive days.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955, Government Code.

§ 649.47. Evidence of the Qualifying Crime of Stalking.

(a) Stalking (Penal Code section 646.9) may be a qualifying crime if the credible threat required by the crime was directed at the victim.

(b) Evidence of a qualifying crime of stalking (Penal Code section 646.9) includes, but is not limited to law enforcement's identification of the victim in the application as the victim in the crime report.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13951, 13954 and 13956, Government Code.

§ 649.48. Human Trafficking.

Factors that may be considered evidence of human trafficking include, but are not limited to:

(a) certification or eligibility letter from a government agency for a special visa as a refugee due to human trafficking or other government benefits as a result of human trafficking;

(b) medical records documenting injuries consistent with human trafficking.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956(b)(3), Government Code.

§ 649.50. Involvement in a Vehicle-Related Qualifying Crime.

(a) A victim or derivative victim who was the driver of a vehicle, aircraft, or water vehicle may be found to have been involved in the events leading to the qualifying crime if one of the following was present:

(1) the victim or derivative victim was driving the vehicle with a blood alcohol content exceeding the legal limit;

(2) the victim or derivative victim was driving while under the influence of alcohol and/or drugs; or

(3) the victim or derivative victim was cited or arrested by law enforcement as based on the qualifying crime.

(b) If any of the factors listed in subsection (a) caused the qualifying crime, the application may be denied for participation in the qualifying crime under section 649.51.

(c) A victim or derivative victim who was the passenger in a vehicle driven by a person under the influence of alcohol or drugs may be found to have been involved in the events leading to the vehicle-related qualifying crime if one of the following was present:

(1) the victim or derivative victim knew or reasonably should have known that the driver was under the influence of alcohol or drugs; or

(2) the victim or derivative victim was under the influence of alcohol or drugs and if sober should have reasonably known that the driver was under the influence of alcohol or drugs.

(d) Subsection (c) does not apply if:

(1) the victim is under 14 years of age; or

(2) the victim is under 18 years of age and the driver of the vehicle was the parent or guardian of the victim.

(e) Subsection (c) may not apply if the victim is under 18 years of age and the driver of the vehicle is an adult who had responsibility for the victim other than the victim's parent or guardian.

(f) A victim or derivative victim may be found to have been involved in the events leading to the qualifying crime of a hit and run (Vehicle Code section 20001) if both of the following are present:

(1) the victim or derivative victim acted in a blatant, wrongful or provoking manner; and

(2) the victim's or derivative victim's conduct was the primary cause of the vehicle collision.

(g) Significant weight may be given to the evidence from and conclusions of a law

enforcement agency after investigation of the qualifying crime when evaluating the factors listed in subsections (a) and (f).

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13955, Government Code.

§ 649.51. Participation in a Crime.

(a) A victim or derivative victim who knowingly and willingly participated in the commission of a crime shall not be eligible for assistance.

(1) This subsection shall not apply if the qualifying crime is a violation of Penal Code section 261.5 [Unlawful sexual intercourse with a minor] occurring on or after January 1, 1999.

(b) A derivative victim is not eligible for assistance if the victim of the same qualifying crime knowingly and willingly participated in the commission of a crime.

(c) A victim or derivative victim knowingly and willingly participated in the commission of a crime if the victim or derivative victim was any of the following:

(1) a perpetrator;

(2) a co-conspirator; or

(3) an accomplice.

(d) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim participated in the commission of a crime.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

§ 649.52. Involvement in the Events Leading to the Qualifying Crime.

(a) An application from a victim may be denied, in whole or in part, because of the involvement of the victim in the events leading to the qualifying crime.

(b) An application from a derivative victim may be denied, in whole or in part, because of the involvement of the victim or derivative victim in the events leading to the qualifying crime.

(c) Factors that may be considered when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime include, but are not limited to:

(1) the conduct of the victim or derivative victim caused, resulted in, or reasonably could have led to the qualifying crime;

(2) the conduct of the victim or derivative victim was negligent and placed himself or herself, or another person in a position to be injured or victimized;

(3) the victim or derivative victim intentionally created, entered, or stayed in a situation or environment in which it was reasonably foreseeable that he or she would be victimized;

(4) the level of responsibility of the victim or derivative victim for the qualifying crime;

(5) the qualifying crime was a reasonably foreseeable consequence of the conduct of the victim or derivative victim;

(6) the reasonable ability of the victim or derivative victim to avoid the involvement in the events leading to the qualifying crime;

(7) the extent of harm to the victim or derivative victim resulting from the crime;

(8) future harm to the victim or derivative victim that may occur if assistance is not awarded.

(d) A victim or derivative victim need not participate in the qualifying crime or engage in conduct that is illegal in order to be found to be involved in the events leading to the qualifying crime.

(e) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime.

(f) Factors that shall be considered when determining whether a minor victim or derivative victim was involved in the events leading to a qualifying crime under subsection (a) or (b) include, but are not limited to:

(1) age;

(2) physical condition;

(3) psychological or emotional condition;

(4) compelling health or personal safety factors;

(5) reasonable fear of retaliation or harm to self or family.

(g) The eligibility of a minor derivative victim of a domestic violence qualifying crime shall not be affected by the victim's involvement in the events leading to the domestic violence qualifying crime.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

§ 649.53. Involvement in the Qualifying Crime Due to Mutual Combat.

(a) Factors that may be considered when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime as a result of mutual combat include, but are not limited to:

(1) there was an implicit or explicit agreement to fight;

(2) the victim or derivative victim made a deliberate threat;

(3) the victim or derivative victim engaged in conduct indicating the intention of carrying out a deliberate threat;

(4) the deliberate conduct of the victim or derivative victim reasonably provoked the other party into starting a physical altercation that lead to the qualifying crime;

(5) the victim or derivative victim initiated a physical altercation that lead to the qualifying crime.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13956 and 13964, Government Code.

§ 649.54. Involvement in the Qualifying Crime Due to Illegal Drug-Related Activity.

(a) Involvement in the events leading to the qualifying crime by the victim or derivative victim may be found if the victim or derivative victim was either of the following:

(1) involved in an illegal drug transaction at the time the qualifying crime occurred; or

(2) victimized as a result of involvement in a prior illegal drug transaction.

(b) An illegal drug transaction includes, but is not limited to the following:

(1) the illegal purchase of a drug;

(2) the illegal sale of a drug;

(3) the illegal possession of a drug for sale;

(4) the illegal delivery or transportation of a drug;

(5) the illegal manufacture of a drug.

(c) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime under subsection (a).

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

§ 649.55. Involvement in the Qualifying Crime Due to Gang Involvement.

(a) Involvement in the events leading to the qualifying crime by the victim or derivative victim may be found if the victim or derivative victim was involved in and was injured from a qualifying crime that was a result of gang activity or prior gang activity in which the victim or derivative victim participated.

(b) Gang activity may include, but is not limited to the following:

(1) gang initiation;

(2) gang retaliation;

(3) gang fighting;

(4) intentionally provoking gang-related activity.

(c) Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim was involved in the events leading to the qualifying crime under subsection (a).

(d) Gang membership alone shall not be sufficient for a finding of involvement in the events leading to the qualifying crime under subsection (a).

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section, 13956, Government Code.

§ 649.56. Involvement in the Qualifying Crime of Prostitution.

(a) Involvement in the events leading to the qualifying crime of prostitution by the victim or derivative victim may be found if the victim or derivative victim was:

(1) engaged in activity related to prostitution; and

(2) the crime occurred as a direct result of the activity related to prostitution.

(b) Activity related to prostitution includes, but is not limited to the following:

(1) soliciting or participating in the solicitation of an act of prostitution;

(2) purchasing or participating in the purchase of an act of prostitution;

(3) engaging in an act of prostitution;

(4) pimping as defined in Penal Code section 266h;

(5) pandering as defined in Penal Code section 266i.

(c) For the purpose of this section, prostitution has the same meaning as defined in Penal Code section 647(b).

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

§ 649.57. Mitigation of Involvement in the Events Leading to the Qualifying Crime.

(a) Factors that may be considered to mitigate or overcome involvement in the events leading to the qualifying crime include, but are not limited to:

(1) the victim suffered an injury that was significantly more serious than reasonably could have been expected as a result of his or her involvement in the events leading to the qualifying crime;

(2) another person involved in the events leading to the qualifying crime escalated his or her conduct in a manner not reasonably foreseeable by the victim or derivative victim;

(3) a third party interfered in a manner not reasonably foreseeable by the victim or derivative victim.

(b) If factors overcome the victim or derivative victim's involvement, the application will be granted and the victim or derivative victim shall be eligible for Program benefits.

(c) If factors mitigate the victim or derivative victim's involvement but do not overcome that involvement, the application will be granted in part, and the victim or derivative victim shall only be eligible for medical expenses incurred from the date of the qualifying crime and funeral/burial expenses.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

§ 649.58. Self Defense.

A victim shall not be found to be involved in the events leading to the qualifying crime if the sole involvement of the victim was in self-defense.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

§ 649.59. Failure to Cooperate with Law Enforcement.

(a) A victim or derivative victim shall reasonably cooperate with any law enforcement agency in its investigation of the qualifying crime and the apprehension and prosecution of any person involved in the qualifying crime.

(b) A victim or derivative victim who knowingly and willingly failed to reasonably cooperate with a law enforcement agency in the investigation of the qualifying crime and the apprehension and conviction of any person involved in the qualifying crime is not eligible for assistance.

(c) A victim or derivative victim who initially cooperated with a law enforcement agency as required by subsection (a), and was determined to be eligible for assistance, and subsequently knowingly and willingly failed to cooperate with a law enforcement agency, may be found eligible for assistance only during the period the victim or derivative victim cooperated with a law enforcement agency.

(d) A derivative victim is not eligible for assistance if the victim of the same qualifying crime failed to cooperate with a law enforcement agency as required by subdivision (a).

(e) Cooperation with a law enforcement agency includes, but is not limited to:

(1) reporting the qualifying crime;

(2) completely and truthfully responding to requests for information in a timely manner;

(3) cooperating with identifying and apprehending any person involved in the qualifying crime; and

(4) testifying in all proceedings, including restitution proceedings, as required.

(f) A victim or derivative victim whose conduct adversely affected the ability of a law enforcement agency either to investigate a qualifying crime, or to apprehend or convict any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement agency.

(1) A victim or derivative victim whose action or failure to act required a law enforcement agency to expend additional effort to apprehend or convict any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement agency.

(2) A victim or derivative victim whose action or failure to act unreasonably impeded or impaired the investigation of the qualifying crime, or the apprehension or conviction of any person involved in the qualifying crime may be found to have failed to cooperate with a law enforcement agency.

(g) In order to determine that a victim or derivative victim failed to cooperate with a law enforcement agency for a delay in reporting the qualifying crime, the delay must have adversely affected a law enforcement agency as described in subsection (f).

(h) The failure of a victim or derivative victim to perform any of the duties described in

subsection (e)(2) through (4) may be found to be a failure to cooperate with a law enforcement agency even if the failure did not adversely affect a law enforcement agency as described in subsection (f).

(i) Factors that may be considered when assessing a victim's or derivative victim's cooperation with a law enforcement agency include, but are not limited to:

(1) age;

(2) physical condition;

(3) psychological or emotional condition;

(4) compelling health or personal safety factors;

(5) reasonable fear of retaliation or harm to self or family.

(j) The factors listed in subsection (i) shall be considered when assessing a minor victim's cooperation with a law enforcement agency.

(k) The assessment of a victim's or derivative victim's cooperation with a law enforcement agency shall be based on all available evidence, including supplemental crime reports. Significant weight may be given to the evidence from and conclusions of a law enforcement agency after investigation of the qualifying crime when determining whether the victim or derivative victim cooperated with law enforcement.

(l) The eligibility of a minor victim shall not be affected by the failure of the minor victim's parent, legal custodian, or legal guardian to cooperate with a law enforcement agency.

(m) A minor derivative victim is not eligible if both of the following are true:

(1) the minor derivative victim's parent, legal custodian, or legal guardian is the victim through whom the minor seeks to qualify as a derivative victim; and

(2) the person described in subsection (m)(1) failed to cooperate reasonably with a law enforcement agency.

(n) An application from a non-offending parent concerning a child sexual abuse qualifying crime shall not be denied under subsection (a) for failing to timely report the qualifying crime to a law enforcement agency if the non-offending parent otherwise cooperated with a law enforcement agency.

(o) For the purposes of this section, "law enforcement agency" includes a child protective services agency.

(p) For the purposes of this section, "prosecution" shall include the imposition of restitution.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

§ 649.60. Failure to Cooperate with Law Enforcement in a Domestic Violence Qualifying Crime.

(a) Factors that may be considered when determining whether a victim of a domestic violence qualifying crime cooperated with a law enforcement agency under section 649.59 include, but are not limited to:

(1) the qualifying crime was reported to law enforcement;

(2) the perpetrator was prosecuted for the qualifying crime;

(3) the perpetrator was enrolled in a batterers' program or its predecessor domestic violence diversion program as a result of the qualifying crime;

(4) the perpetrator was not prosecuted due to factors not related to the victim's actions.

(b) A victim of a domestic violence qualifying crime who engaged in any of the following conduct may be found to have failed to cooperate with a law enforcement agency in the investigation of the qualifying crime, and the apprehension and conviction of any person involved in the qualifying crime:

(1) requested in writing that the suspect not be prosecuted for the qualifying crime;

(2) refused to testify when legally served with a subpena in a proceeding related to the prosecution of the qualifying crime;

(3) committed perjury relating to the qualifying crime;

(4) did not completely and truthfully respond to a request for information, evidence or assistance in a timely manner, unless circumstances beyond the victim's control prevented the victim from complying.

(c) For the purpose of this section, "domestic violence" shall have the same meaning as in Penal Code section 13700(b).

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

§ 649.61. Denial for Failure to File or Dismissal of a Criminal Complaint.

(a) An application shall not be denied solely because a criminal complaint was not filed.

(b) An application may be denied if a criminal complaint was not filed due to the victim's or derivative victim's failure to cooperate with a law enforcement agency.

(c) An application shall not be denied solely because a criminal complaint was dismissed.

(d) An application may be denied if the criminal complaint was dismissed as a result of the victim's or derivative victim's failure to cooperate with a law enforcement agency.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13956, Government Code.

§ 649.62. Failure to Cooperate with Board or Staff.

(a) An application or supplemental claim may be denied based on an applicant's failure to cooperate with the Board, VCP staff, or the staff of a joint powers victim witness center in the verification of all information necessary to determine eligibility.

(b) An applicant may be found to have failed to cooperate if either of the following are present:

(1) the applicant has information available to him or her, or which the applicant may reasonably obtain, that is needed to process the application or supplemental claim; and the applicant failed to provide the information after being requested to do so; or

(2) the applicant provided or caused another to provide false information regarding the application or supplemental claim.

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Section 13954, Government Code.