

2010 EDITION

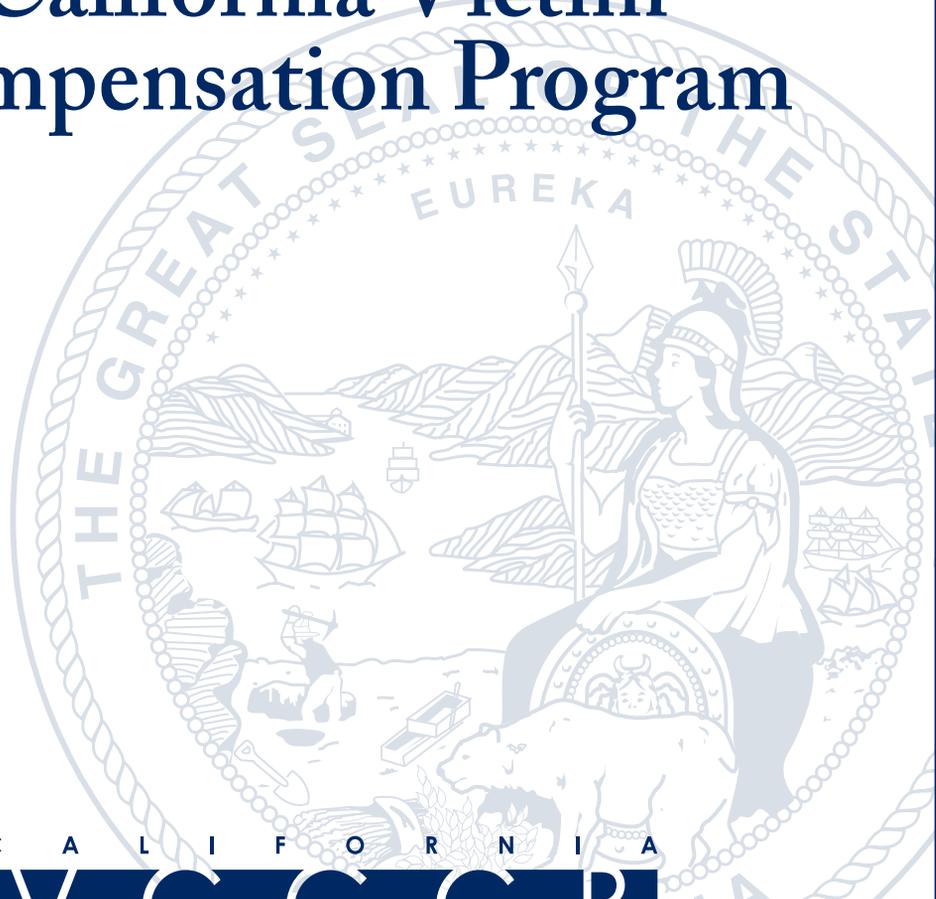
STATUTES & REGULATIONS

California Victim Compensation Program

C A L I F O R N I A

V C G C B

Victim Compensation & Government Claims Board



Preface

In 1965, the State of California became the first state to establish a victim compensation program. Today, the California Victim Compensation Program (CalVCP) is the nation's largest victim compensation program.

CalVCP provides compensation for victims of violent crime who are injured or threatened with injury. Crimes covered include domestic violence, child abuse, sexual and physical assault, homicide, robbery, drunk driving and vehicular manslaughter. CalVCP will compensate many types of services when the costs are not covered by other sources if a person meets eligibility criteria. Covered expenses include medical and dental care, mental health services, income and support loss, funeral/burial expenses, crime scene clean-up, rehabilitation, vehicle and home modification, home security, and relocation.

During the past two years, the California Victim Compensation and Government Claims Board conducted a comprehensive review of CalVCP Program and CalVCP Hearing Procedure regulations including soliciting feedback from joint-powers offices, victim witness assistance centers, providers and other stakeholders regarding regulatory changes to improve CalVCP. We were able to successfully complete the rulemaking process to update the regulations that govern Cal VCP.

This book includes the 2010 statutes and updated regulations governing the VCGCB and its programs, for easy reference. We are proud of our accomplishments and look forward to continuing to provide the best services possible to victims of crime.

Julie Nauman
Executive Officer

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Statutes Governing the Victim Compensation Program

§ 13950. Legislative findings and declarations; Application of Chapter

(a) The Legislature finds and declares that it is in the public interest to assist residents of the State of California in obtaining compensation for the pecuniary losses they suffer as a direct result of criminal acts.

(b) This chapter shall govern the procedure by which crime victims may obtain compensation from the Restitution Fund.

(c) Any reference in statute or regulations to Article 1 (commencing with Section 13959) of Chapter 5, as it read on December 31, 2002, shall be construed to refer to this chapter.

§ 13951. Definitions

As used in this chapter, the following definitions shall apply:

(a) "Board" means the California Victim Compensation and Government Claims Board.

(b)(1) "Crime" means a crime or public offense, wherever it may take place, that would constitute a misdemeanor or a felony if the crime had been committed in California by a competent adult.

(2) "Crime" includes an act of terrorism, as defined in Section 2331 of Title 18 of the United States Code, committed against a resident of the state, whether or not the act occurs within the state.

(c) "Derivative victim" means an individual who sustains pecuniary loss as a result of injury or death to a victim.

(d) "Law enforcement" means every district attorney, municipal police department, sheriff's department, district attorney's office, county probation department, and social services agency, the Department of Justice, the Department of Corrections, the Department of the Youth Authority, the Department of the California Highway Patrol, the police department of any campus of the University of California, California State University, or community college, and every agency of the State of California expressly authorized by statute to investigate or prosecute law violators.

(e) "Pecuniary loss" means an economic loss or expense resulting from an injury or death to a victim of crime that has not been and will not be reimbursed from any other source.

(f) "Peer counseling" means counseling offered by a provider of mental health counseling services who has completed a specialized course in rape crisis counseling skills development, participates in continuing education in rape crisis counseling skills development, and provides rape crisis counseling within the State of California.

(g) "Victim" means an individual who sustains injury or death as a direct result of a crime as specified in subdivision (e) of Section 13955.

(h) "Victim center" means a victim and witness assistance center that receives funds pursuant to Section 13835.2 of the Penal Code.

§ 13952. Requirements for Filing an Application for Compensation

(a) An application for compensation shall be filed with the board in the manner determined by the board.

(b)(1) The application for compensation shall be verified under penalty of perjury by the individual who is seeking compensation, who may be the victim or derivative victim, or an individual seeking reimbursement for burial, funeral, or crime scene cleanup expenses pursuant to subdivision (a) of Section 13957. If the individual seeking compensation is a minor or is incompetent, the application shall be verified under penalty of perjury or on information and belief by the parent with legal custody, guardian, conservator, or relative caregiver of the victim or derivative victim for whom the application is made. However, if a minor seeks compensation only for expenses for medical, medical-related, psychiatric, psychological, or other mental health counseling-related services and the minor is authorized by statute to consent to those services, the minor may verify the application for compensation under penalty of perjury.

(2) For purposes of this subdivision, "relative caregiver" means a relative as defined in subdivision (i) of Section 6550 of the Family Code, who assumed primary responsibility for the child while the child was in the relative's care and control, and who is not a biological or adoptive parent.

(c)(1) The board may require submission of additional information supporting the application that is reasonably necessary to verify the application and determine eligibility for compensation.

(2) The staff of the board shall determine whether an application for compensation contains all of the information

required by the board. If the staff determines that an application does not contain all of the required information, the staff shall communicate that determination to the applicant with a brief statement of the additional information required. The applicant, within 30 calendar days of being notified that the application is incomplete, may either supply the additional information or appeal the staff's determination to the board, which shall review the application to determine whether it is complete.

(d)(1) The board may recognize an authorized representative of the victim or derivative victim, who shall represent the victim or derivative victim pursuant to rules adopted by the board.

(2) For purposes of this subdivision, "authorized representative" means any of the following:

(A) An attorney.

(B) If the victim or derivative victim is a minor or an incompetent adult, the legal guardian or conservator, or an immediate family member, parent, or relative caregiver who is not the perpetrator of the crime that gave rise to the claim.

(C) A victim assistance advocate certified pursuant to Section 13835.10 of the Penal Code.

(D) An immediate family member of the victim or derivative victim, who has written authorization by the victim or derivative victim, and who is not the perpetrator of the crime that gave rise to the claim.

(E) Other persons who shall represent the victim or derivative victim pursuant to rules adopted by the board.

(3) Except for attorney's fees awarded under this chapter, no authorized representative described in paragraph (2) shall charge, demand, receive, or collect any amount for services rendered under this subdivision.

§ 13952.5. Emergency Awards

(a) An emergency award shall be available to a person eligible for compensation pursuant to this chapter if the board determines that such an award is necessary to avoid or mitigate substantial hardship that may result from delaying compensation until complete and final consideration of an application.

(b) The board shall establish the method for requesting an emergency award, which may include, but need not be limited to, requiring submission of the regular application as provided for in Section 13952.

(c)(1) The board may grant an emergency award based solely on the application of the victim or derivative victim. The board may refuse to grant an emergency award where it has reason to believe that the applicant will not be eligible for compensation under this chapter.

(2) By mutual agreement between the staff of the board and the applicant or the applicant's representative, the staff of the board may take additional 10-day periods to verify the emergency award claim and make payment.

(3) The board may delegate authority to designated staff persons and designated agencies, including, but not limited to, district attorneys, probation departments, victim centers, and other victim service providers approved by the board and under contract with the board, who shall use guidelines established by the board, to grant and disburse emergency awards.

(d) Disbursements of funds for emergency awards shall be made within 30 calendar days of application.

(e)(1) If an application for an emergency award is denied, the board shall notify the applicant in writing of the reasons for the denial.

(2) An applicant for an emergency award shall not be entitled to a hearing before the board to contest a denial of an emergency award. However, denial of an emergency award shall not prevent further consideration of the application for a regular award and shall not affect the applicant's right to a hearing pursuant to Section 13959 if staff recommends denial of a regular award.

(f)(1) If upon final disposition of the regular application, it is found that the applicant is not eligible for compensation from the board, the applicant shall reimburse the board for the emergency award pursuant to an agreed-upon repayment schedule.

(2) If upon a final disposition of the application, the board grants compensation to the applicant, the amount of the emergency award shall be deducted from the final award of compensation. If the amount of the compensation is less than the amount of the emergency award, the excess amount shall be treated as an overpayment pursuant to Section 13965.

(3) "Final disposition," for the purposes of this section, shall mean the final decision of the board with respect to the victim's or derivative victim's application, before any action for judicial review is instituted.

(g) The amount of an emergency award shall be dependent upon the immediate needs of the victim or derivative victim subject to rates and limitations established by the board.

§ 13953. Time Period for Filing an Application and Extensions for Good Cause

(a) An application for compensation shall be filed within one year of the date of the crime, one year after the victim attains 18 years of age, or one year of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained as a direct result of crime, whichever is later. An application based on any crime eligible for prosecution

under Section 801.1 of the Penal Code may be filed any time prior to the victim's 28th birthday.

(b) The board may for good cause grant an extension of the time period in subdivision (a). In making this determination, the board may consider any relevant factors, including, but not limited to, all of the following:

(1) A recommendation from the prosecuting attorney regarding the victim's or derivative victim's cooperation with law enforcement and the prosecuting attorney in the apprehension and prosecution of the person charged with the crime.

(2) Whether particular events occurring during the prosecution or in the punishment of the person convicted of the crime have resulted in the victim or derivative victim incurring pecuniary loss.

(3) Whether the nature of the crime is such that a delayed reporting of the crime is reasonably excusable.

(c) The period prescribed in this section for filing an application by or on behalf of a derivative victim shall be tolled when the board accepts the application filed by a victim of the same qualifying crime.

§ 13954. Verification of Applications

(a) The board shall verify with hospitals, physicians, law enforcement officials, or other interested parties involved, the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and any other pertinent information deemed necessary by the board. Verification information shall be returned to the board within 10 business days after a request for verification has been made by the board. Verification information shall be provided at no cost to the applicant, the board, or victim centers. When requesting verification information, the board shall certify that a signed authorization by the applicant is retained in the applicant's file and that this certification constitutes actual authorization for the release of information, notwithstanding any other provision of law. If requested by a physician or mental health provider, the board shall provide a copy of the signed authorization for the release of information.

(b) The victim and the applicant, if other than the victim, shall cooperate with the staff of the board or the victim center in the verification of the information contained in the application. Failure to cooperate shall be reported to the board, which, in its discretion, may reject the application solely on this ground.

(c) The board may contract with victim centers to provide verification of applications processed by the centers pursuant to conditions stated in subdivision (a). The board and its staff shall cooperate with the Office of Criminal Justice Planning and victim centers in conducting training sessions for center personnel and shall cooperate in the development

of standardized verification procedures to be used by the victim centers in the state. The board and its staff shall cooperate with victim centers in disseminating standardized board policies and findings as they relate to the centers.

(d) Notwithstanding Section 827 of the Welfare and Institutions Code or any other provision of law, every law enforcement and social service agency in the state shall provide to the board or to victim centers that have contracts with the board pursuant to subdivision (c), upon request, a copy of a petition filed in a juvenile court proceeding, reports of the probation officer, any other document made available to the probation officer or to the judge, referee, or other hearing officer, a complete copy of the report regarding the incident, and any supplemental reports involving the crime, public offense, or incident giving rise to a claim, for the specific purpose of the submission of a claim or the determination of eligibility to submit a claim filed pursuant to this chapter. The board and victim centers receiving records pursuant to this subdivision may not disclose a document that personally identifies a minor to anyone other than the minor who is so identified, his or her custodial parent or guardian, the attorneys for those parties, and any other persons that may be designated by court order. Any information received pursuant to this section shall be received in confidence for the limited purpose for which it was provided and may not be further disseminated. A violation of this subdivision is a misdemeanor punishable by a fine not to exceed five hundred dollars (\$500).

(e) The law enforcement agency supplying information pursuant to this section may withhold the names of witnesses or informants from the board, if the release of those names would be detrimental to the parties or to an investigation in progress.

(f) Notwithstanding any other provision of law, every state agency, upon receipt of a copy of a release signed in accordance with the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code) by the applicant or other authorized representative, shall provide to the board or victim center the information necessary to complete the verification of an application filed pursuant to this chapter.

(g) The Department of Justice shall furnish, upon application of the board, all information necessary to verify the eligibility of any applicant for benefits pursuant to subdivision (d) of Section 13956, to recover any restitution fine or order obligations that are owed to the Restitution Fund or to any victim of crime, or to evaluate the status of any criminal disposition.

(h) A privilege is not waived under Section 912 of the Evidence Code by an applicant consenting to disclosure of an otherwise privileged communication if that disclosure is deemed necessary by the board for verification of the application.

(i) Any verification conducted pursuant to this section shall be subject to the time limits specified in Section 13958.

§ 13955. Eligible Applicants

Except as provided in Section 13956, a person shall be eligible for compensation when all of the following requirements are met:

(a) The person for whom compensation is being sought is any of the following:

- (1) A victim.
- (2) A derivative victim.

(3)(A) A person who is entitled to reimbursement for funeral, burial, or crime scene cleanup expenses pursuant to paragraph (9) of subdivision (a) of Section 13957.

(B) This paragraph applies without respect to any felon status of the victim.

(b) Either of the following conditions is met:

(1) The crime occurred within this state, whether or not the victim is a resident of the state. This paragraph shall apply only during those time periods during which the board determines that federal funds are available to the state for the compensation of victims of crime.

(2) Whether or not the crime occurred within the State of California, the victim was any of the following:

- (A) A resident of the state.
- (B) A member of the military stationed in California.
- (C) A family member living with a member of the military stationed in this state.

(c) If compensation is being sought for a derivative victim, the derivative victim is a resident of this state, or resident of another state, who is any of the following:

- (1) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.
- (2) At the time of the crime was living in the household of the victim.
- (3) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in paragraph (1).

(4) Is another family member of the victim, including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime.

(5) Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime.

(d) The application is timely pursuant to Section 13953.

(e)(1) Except as provided in paragraph (2), the injury or death was a direct result of a crime.

(2) Notwithstanding paragraph (1), no act involving the operation of a motor vehicle, aircraft, or water vehicle that results in injury or death constitutes a crime for the purposes of this chapter, except when the injury or death from such an act was any of the following:

(A) Intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(B) Caused by a driver who fails to stop at the scene of an accident in violation of Section 20001 of the Vehicle Code.

(C) Caused by a person who is under the influence of any alcoholic beverage or drug.

(D) Caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

(E) Caused by a person who commits vehicular manslaughter in violation of subdivision (b) of Section 191.5, subdivision (c) of Section 192, or Section 192.5 of the Penal Code.

(F) Caused by any party where a peace officer is operating a motor vehicle in an effort to apprehend a suspect, and the suspect is evading, fleeing, or otherwise attempting to elude the peace officer.

(f) As a direct result of the crime, the victim or derivative victim sustained one or more of the following:

(1) Physical injury. The board may presume a child who has been the witness of a crime of domestic violence has sustained physical injury. A child who resides in a home where a crime or crimes of domestic violence have occurred may be presumed by the board to have sustained physical injury, regardless of whether the child has witnessed the crime.

(2) Emotional injury and a threat of physical injury.

(3) Emotional injury, where the crime was a violation of any of the following provisions:

(A) Section 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code.

(B) Section 270 of the Penal Code, where the emotional injury was a result of conduct other than a failure to pay child support, and criminal charges were filed.

(C) Section 261.5 of the Penal Code, and criminal charges were filed.

(D) Section 278 or 278.5 of the Penal Code, where the deprivation of custody as described in those sections has endured for 30 calendar days or more. For purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(g) The injury or death has resulted or may result in pecuniary loss within the scope of compensation pursuant to Sections 13957 to 13957.9, inclusive.

§ 13956. Denial of Eligibility

Notwithstanding Section 13955, a person shall not be eligible for compensation under the following conditions:

(a) An application shall be denied if the board finds that the victim or, where compensation is sought by or on behalf of a derivative victim, either the victim or derivative victim, knowingly and willingly participated in the commission of the crime that resulted in the pecuniary loss for which compensation is being sought pursuant to this chapter. However, this subdivision shall not apply if the injury or death occurred as a direct result of a crime committed in violation of Section 261, 262, or 273.5 of, or a crime of unlawful sexual intercourse with a minor committed in violation of subdivision (d) of Section 261.5 of, the Penal Code.

(b)(1) An application shall be denied if the board finds that the victim or, where compensation is sought by, or on behalf of, a derivative victim, either the victim or derivative victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. However, in determining whether cooperation has been reasonable, the board shall consider the victim's or derivative victim's age, physical condition, and psychological state, cultural or linguistic barriers, any compelling health and safety concerns, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family or the derivative victim or the derivative victim's family, and giving due consideration to the degree of cooperation of which the victim or derivative victim is capable in light of the presence of any of these factors.

(2) An application for a claim based on domestic violence may not be denied solely because no police report was made by the victim. The board shall adopt guidelines that allow the board to consider and approve applications for assistance based on domestic violence relying upon evidence other than a police report to establish that a domestic violence crime has occurred. Factors evidencing that a domestic violence crime has occurred may include, but are not limited to, medical records documenting injuries consistent with allegations of domestic violence, mental health records, or the fact that the victim has obtained a temporary or permanent restraining order, or all of these.

(3) An application for a claim based on human trafficking as defined in Section 236.1 of the Penal Code may not be denied solely because no police report was made by the victim. The board shall adopt guidelines that allow the board to consider and approve applications for assistance based on human trafficking relying upon evidence other than a police report to establish that a human trafficking crime as defined in Section 236.1 has occurred. That evidence may include any reliable corroborating information approved by the board, including, but not limited to, the following:

(A) A Law Enforcement Agency Endorsement issued pursuant to Section 236.2 of the Penal Code.

(B) A human trafficking caseworker as identified in Section 1038.2 of the Evidence Code, has attested by affidavit that the individual was a victim of human trafficking.

(c) An application for compensation may be denied, in whole or in part, if the board finds that denial is appropriate because of the nature of the victim's or other applicant's involvement in the events leading to the crime or the involvement of the persons whose injury or death gives rise to the application. In the case of a minor, the board shall consider the minor's age, physical condition, and psychological state, as well as any compelling health and safety concerns, in determining whether the minor's application should be denied pursuant to this section. The application of a derivative victim of domestic violence under the age of 18 years of age or a derivative victim of trafficking under 18 years of age may not be denied on the basis of the denial of the victim's application under this subdivision.

(d)(1) Notwithstanding Section 13955, no person who is convicted of a felony may be granted compensation until that person has been discharged from probation or has been released from a correctional institution and has been discharged from parole, if any. In no case shall compensation be granted to an applicant pursuant to this chapter during any period of time the applicant is held in a correctional institution.

(2) A person who has been convicted of a felony may apply for compensation pursuant to this chapter at any time, but the award of that compensation may not be considered until the applicant meets the requirements for compensation set forth in paragraph (1).

(3) Applications of victims who are not felons shall receive priority in the award of compensation over an application submitted by a felon who has met the requirements for compensation set forth in paragraph (1).

§ 13957. Covered Benefits

(a) The board may grant for pecuniary loss, when the board determines it will best aid the person seeking compensation, as follows:

(1) Subject to the limitations set forth in Section 13957.2, reimburse the amount of medical or medical-related expenses incurred by the victim, including, but not limited to, eyeglasses, hearing aids, dentures, or any prosthetic device taken, lost, or destroyed during the commission of the crime, or the use of which became necessary as a direct result of the crime.

(2) Subject to the limitations set forth in Section 13957.2, reimburse the amount of outpatient psychiatric, psychological, or other mental health counseling-related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code, and including family psychiatric, psychological, or mental health counsel-

ing for the successful treatment of the victim provided to family members of the victim in the presence of the victim, whether or not the family member relationship existed at the time of the crime, that became necessary as a direct result of the crime, subject to the following conditions:

(A) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed ten thousand dollars (\$10,000):

(i) A victim.

(ii) A derivative victim who is the surviving parent, sibling, child, spouse, fiancé, or fiancée of a victim of a crime that directly resulted in the death of the victim.

(iii) A derivative victim, as described in paragraphs (1) to (4), inclusive, of subdivision (c) of Section 13955, who is the primary caretaker of a minor victim whose claim is not denied or reduced pursuant to Section 13956 in a total amount not to exceed ten thousand dollars (\$10,000) for not more than two derivative victims.

(B) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed five thousand dollars (\$5,000):

(i) A derivative victim not eligible for reimbursement pursuant to subparagraph (A), provided that mental health counseling of a derivative victim described in paragraph (5) of subdivision (c) of Section 13955, shall be reimbursed only if that counseling is necessary for the treatment of the victim.

(ii) A victim of a crime of unlawful sexual intercourse with a minor committed in violation of subdivision (d) of Section 261.5 of the Penal Code. A derivative victim of a crime committed in violation of subdivision (d) of Section 261.5 of the Penal Code shall not be eligible for reimbursement of mental health counseling expenses.

(iii) A minor who suffers emotional injury as a direct result of witnessing a violent crime and who is not eligible for reimbursement of the costs of outpatient mental health counseling under any other provision of this chapter. To be eligible for reimbursement under this clause, the minor must have been in close proximity to the victim when he or she witnessed the crime.

(C) The board may reimburse a victim or derivative victim for outpatient mental health counseling in excess of that authorized by subparagraphs (A) or (B) or for inpatient psychiatric, psychological, or other mental health counseling if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(D) Expenses for psychiatric, psychological, or other mental health counseling-related services may be reimbursed only if the services were provided by either of the following individuals:

(i) A person who would have been authorized to provide those services pursuant to former Article 1 (commencing with Section 13959) as it read on January 1, 2002.

(ii) A person who is licensed by the state to provide those services, or who is properly supervised by a person who is so licensed, subject to the board's approval and subject to the limitations and restrictions the board may impose.

(3) Reimburse the expenses of nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(4) Subject to the limitations set forth in Section 13957.5, authorize compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's or derivative victim's injury or the victim's death. If the victim or derivative victim requests that the board give priority to reimbursement of loss of income or support, the board may not pay medical expenses, or mental health counseling expenses, except upon the request of the victim or derivative victim or after determining that payment of these expenses will not decrease the funds available for payment of loss of income or support.

(5) Authorize a cash payment to or on behalf of the victim for job retraining or similar employment-oriented services.

(6) Reimburse the claimant for the expense of installing or increasing residential security, not to exceed one thousand dollars (\$1,000). Reimbursement shall be made either upon verification by law enforcement that the security measures are necessary for the personal safety of the claimant or verification by a mental health treatment provider that the security measures are necessary for the emotional well-being of the claimant. For purposes of this paragraph, a claimant is the crime victim, or, if the victim is deceased, a person who resided with the deceased at the time of the crime. Installing or increasing residential security may include, but need not be limited to, both of the following:

(A) Home security device or system.

(B) Replacing or increasing the number of locks.

(7) Reimburse the expense of renovating or retrofitting a victim's residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by a victim upon verification that the expense is medically necessary for a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total.

(8)(A) Authorize a cash payment or reimbursement not to exceed two thousand dollars (\$2,000) to a victim for expenses incurred in relocating, if the expenses are determined by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(B) The cash payment or reimbursement made under this paragraph shall only be awarded to one claimant per crime

giving rise to the relocation. The board may authorize more than one relocation per crime if necessary for the personal safety or emotional well-being of the claimant. However, the total cash payment or reimbursement for all relocations due to the same crime shall not exceed two thousand dollars (\$2,000). For purposes of this paragraph a claimant is the crime victim, or, if the victim is deceased, a person who resided with the deceased at the time of the crime.

(C) The board may, under compelling circumstances, award a second cash payment or reimbursement to a victim for another crime if both of the following conditions are met:

(i) The crime occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(ii) The crime does not involve the same offender.

(D) When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence and the identity of the offender is known to the victim, the victim shall agree not to inform the offender of the location of the victim's new residence and not to allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender.

(E) Notwithstanding subparagraphs (A) and (B), the board may increase the cash payment or reimbursement for expenses incurred in relocating to an amount greater than two thousand dollars (\$2,000), if the board finds this amount is appropriate due to the unusual, dire, or exceptional circumstances of a particular claim.

(9) When a victim dies as a result of a crime, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay any of the following expenses:

(A) The medical expenses incurred as a direct result of the crime in an amount not to exceed the rates or limitations established by the board.

(B) The funeral and burial expenses incurred as a direct result of the crime, not to exceed seven thousand five hundred dollars (\$7,500).

(10) When the crime occurs in a residence, the board may reimburse any individual who voluntarily, and without anticipation of personal gain, pays or assumes the obligation to pay the reasonable costs to clean the scene of the crime in an amount not to exceed one thousand dollars (\$1,000). Services reimbursed pursuant to this subdivision shall be performed by persons registered with the State Department of Public Health as trauma scene waste practitioners in accordance with Chapter 9.5 (commencing with Section 118321) of Part 14 of Division 104 of the Health and Safety Code.

(b) The total award to or on behalf of each victim or derivative victim may not exceed thirty-five thousand dollars (\$35,000), except that this amount may be increased to

seventy thousand dollars (\$70,000) if federal funds for that increase are available.

§ 13957.2. Service limitations and Maximum Rates; Filing with Secretary of State.

(a) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related services and for mental health and counseling services. The adoption, amendment, and repeal of these service limitations and maximum rates shall not be subject to the rulemaking provision of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1). An informational copy of the service limitations and maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service. To ensure service limitations that are uniform and appropriate to the levels of treatment required by the victim or derivative victim, the board may review all claims for these services as necessary to ensure their medical necessity.

(b) The board may request an independent examination and report from any provider of medical or medical-related services or psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. The victim or derivative victim shall be notified of the name of the provider who is to perform the evaluation within 30 calendar days of that determination. In cases where the crime involves sexual assault, the provider shall have expertise in the needs of sexual assault victims. In cases where the crime involves child abuse or molestation, the provider shall have expertise in the needs of victims of child abuse or molestation, as appropriate. When a reevaluation is requested, payments shall not be discontinued prior to completion of the reevaluation.

(c) Reimbursement for any medical or medical-related services shall, if the application has been approved, be paid by the board within an average of 90 days from receipt of the claim for payment. Payments to a medical or mental health provider may not be discontinued prior to completion of any reevaluation. Whether or not a reevaluation is obtained, if the board determines that payments to a provider will be discontinued, the board shall notify the provider of their discontinuance within 30 calendar days of its determination.

§ 13957.5. Income and Support Loss

(a) In authorizing compensation for loss of income and support pursuant to paragraph (4) of subdivision (a) of Section 13957, the board may take any of the following actions:

(1) Compensate the victim for loss of income directly resulting from the injury, except that loss of income may not be paid by the board for more than five years following the crime, unless the victim is disabled as defined in Section 416(i) of Title 42 of the United States Code, as a direct result of the injury.

(2) Compensate an adult derivative victim for loss of income, subject to all of the following:

(A) The derivative victim is the parent or legal guardian of a victim, who at the time of the crime was under the age of 18 years and is hospitalized as a direct result of the crime.

(B) The minor victim's treating physician certifies in writing that the presence of the victim's parent or legal guardian at the hospital is necessary for the treatment of the victim.

(C) Reimbursement for loss of income under this paragraph may not exceed the total value of the income that would have been earned by the adult derivative victim during a 30-day period.

(3) Compensate an adult derivative victim for loss of income, subject to all of the following:

(A) The derivative victim is the parent or legal guardian of a victim who at the time of the crime was under the age of 18 years.

(B) The victim died as a direct result of the crime.

(C) The board shall pay for loss of income under this paragraph for not more than 30 days from the date of the victim's death.

(4) Compensate a derivative victim who was legally dependent on the victim at the time of the crime for the loss of support incurred by that person as a direct result of the crime, subject to both of the following:

(A) Loss of support shall be paid by the board for income lost by an adult for a period up to, but not more than, five years following the date of the crime.

(B) Loss of support shall not be paid by the board on behalf of a minor for a period beyond the child's attaining the age of 18 years.

(b) The total amount payable to all derivative victims pursuant to this section as the result of one crime may not exceed seventy thousand dollars (\$70,000).

§ 13957.7. Time Limit for Payment of Expenses, Procedures for Payment, and Payment of Attorney Fees.

(a) No reimbursement may be made for any expense that is submitted more than three years after it is incurred by the victim or derivative victim. However, reimbursement may be made for an expense submitted more than three years after the date it is incurred if the victim or derivative victim

has affirmed the debt and is liable for the debt at the time the expense is submitted for reimbursement, or has paid the expense as a direct result of a crime for which a timely application has been filed.

(b) Compensation made pursuant to this chapter may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of compensation according to the applicant's need, subject to the maximum limits provided in this chapter.

(c)(1) The board may authorize direct payment to a provider of services that are reimbursable pursuant to this chapter and may make those payments prior to verification. However, the board may not, without good cause, authorize a direct payment to a provider over the objection of the victim or derivative victim.

(2) Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services shall, if the application has been approved, be paid by the board within 90 days of the date of receipt of the claim for payment, with subsequent payments to be made to the provider within one month of the receipt of a claim for payment.

(d) Payments for peer counseling services provided by a rape crisis center may not exceed fifteen dollars (\$15) for each hour of services provided. Those services shall be limited to in-person counseling for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(e) The board shall develop procedures to ensure that a victim is using compensation for job retraining or relocation only for its intended purposes. The procedures may include, but need not be limited to, requiring copies of receipts, agreements, or other documents as requested, or developing a method for direct payment.

(f) Compensation granted pursuant to this chapter shall not disqualify an otherwise eligible applicant from participation in any other public assistance program.

(g) The board shall pay attorney's fees representing the reasonable value of legal services rendered to the applicant, in an amount equal to 10 percent of the amount of the award, or five hundred dollars (\$500), whichever is less, for each victim and each derivative victim. An attorney receiving fees from another source may waive the right to receive fees under this subdivision. Payments under this subdivision shall be in addition to any amount authorized or ordered under subdivision (b) of Section 13960. An attorney may not charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this chapter except as awarded under this chapter.

(h) A private nonprofit agency shall be reimbursed for its services at the level of the normal and customary fee charged by the private nonprofit agency to clients with adequate means of payment for its services, except that this reimbursement may not exceed the maximum reimburse-

ment rates set by the board and may be made only to the extent that the victim otherwise qualifies for compensation under this chapter and that other reimbursement or direct subsidies are not available to serve the victim.

§ 13957.9. Expedite Claims Payments for qualified Mental Health Providers

(a) Notwithstanding Section 13954, the board shall develop a simplified and expedited procedure for paying claims of a qualified provider of mental health services.

(b) A simplified and expedited procedure for paying claims specified in subdivision (a) shall include all of the following:

(1) An agreement by the provider to subject its claims to audit procedures established by the board and to request payment only for qualified services.

(2) An agreement by the board to pay claims on a regular and timely basis to a qualified provider for services without requiring further documentation beyond that required to initially qualify the claim.

(3) Additional methods of simplifying the claims process as agreed upon between the board and the qualified provider.

(c) Simplified and expedited procedures for mental health services may be instituted when both of the following conditions are met:

(1) The board has determined that the crime has occurred and that the victim qualifies for compensation pursuant to this chapter.

(2) Services to the victim or derivative victim, or both, are being provided by a qualified provider.

(d) A nonprofit agency may apply to the board for a determination that the nonprofit agency is a qualified provider for purposes of this section. The board shall approve or reject an application from a qualified provider for participation in an agreement pursuant to this section within 90 days of receipt of a complete application as required by the board.

(e) An agreement made pursuant to this section shall not be deemed to be a contract subject to the requirements of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(f) For purposes of this section, “qualified provider” means a nonprofit agency with extensive experience in providing mental health services and that has utilized reimbursement from the Restitution Fund at a significant level on a regular and constant basis. Upon request of a nonprofit agency, the board shall determine if the nonprofit agency is a qualified provider for purposes of this section.

§ 13958. Average time for approving or denying application

The board shall approve or deny applications, based on recommendations of the board staff, within an average of 90 calendar days and no later than 180 calendar days of acceptance by the board or victim center.

(a) If the board does not meet the 90-day average standard prescribed in this subdivision, the board shall, thereafter, report to the Legislature, on a quarterly basis, its progress and its current average time of processing applications. These quarterly reports shall continue until the board meets the 90-day average standard for two consecutive quarters.

(b) If the board fails to approve or deny an individual application within 180 days of the date it is accepted, pursuant to this subdivision, the board shall advise the applicant and his or her representative, in writing, of the reason for the failure to approve or deny the application.

§ 13959. Hearing to Contest Staff Recommendation to Deny Compensation

(a) The board shall grant a hearing to an applicant who believes he or she is entitled to compensation pursuant to this chapter to contest a staff recommendation to deny compensation in whole or in part.

(b) The board shall notify the applicant not less than 10 days prior to the date of the hearing. Notwithstanding Section 11123, if the application that the board is considering involves either a crime against a minor, a crime of sexual assault, or a crime of domestic violence, the board may exclude from the hearing all persons other than board members and members of its staff, the applicant for benefits, a minor applicant’s parents or guardians, the applicant’s representative, witnesses, and other persons of the applicant’s choice to provide assistance to the applicant during the hearing. However, the board shall not exclude persons from the hearing if the applicant or applicant’s representative requests that the hearing be open to the public.

(c) At the hearing, the person seeking compensation shall have the burden of establishing, by a preponderance of the evidence, the elements for eligibility under Section 13955.

(d) Except as otherwise provided by law, in making determinations of eligibility for compensation and in deciding upon the amount of compensation, the board shall apply the law in effect as of the date an application was submitted.

(e) The hearing shall be informal and need not be conducted according to the technical rules relating to evidence and witnesses. The board may rely on any relevant evidence if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law or statutory rule that

might make improper the admission of the evidence over objection in a civil action. The board may rely on written reports prepared for the board, or other information received, from public agencies responsible for investigating the crime. If the applicant or the applicant's representative chooses not to appear at the hearing, the board may act solely upon the application for compensation, the staff's report, and other evidence that appears in the record.

(f) Hearings shall be held in various locations with the frequency necessary to provide for the speedy adjudication of the applications. If the applicant's presence is required at the hearing, the board shall schedule the applicant's hearing in as convenient a location as possible.

(g) The board may delegate the hearing of applications to hearing officers.

(h) The decisions of the board shall be in writing. Copies of the decisions shall be delivered to the applicant or to his or her representative personally or sent to him or her by mail.

(i) The board may order a reconsideration of all or part of a decision on written request of the applicant. The board shall not grant more than one request for reconsideration with respect to any one decision on an application for compensation. The board shall not consider any request for reconsideration filed with the board more than 30 calendar days after the personal delivery or 60 calendar days after the mailing of the original decision.

(j) The board may order a reconsideration of all or part of a decision on its own motion, at its discretion, at any time.

§ 13960. Filing Petition for Writ of Mandate

(a) Judicial review of a final decision made pursuant to this chapter may be had by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure. The right to petition shall not be affected by the failure to seek reconsideration before the board. The petition shall be filed as follows:

(1) Where no request for reconsideration is made, within 30 calendar days of personal delivery or within 60 calendar days of the mailing of the board's decision on the application for compensation.

(2) Where a timely request for reconsideration is filed and rejected by the board, within 30 calendar days of personal delivery or within 60 calendar days of the mailing of the notice of rejection.

(3) Where a timely request for reconsideration is filed and granted by the board, or reconsideration is ordered by the board, within 30 calendar days of personal delivery or within 60 calendar days of the mailing of the final decision on the reconsidered application.

(b)(1) In an action resulting in the issuance of a writ of mandate pursuant to this section the court may order the board

to pay to the applicant's attorney reasonable attorney's fees or one thousand dollars (\$1,000), whichever is less. If action is taken by the board in favor of the applicant in response to the filing of the petition, but prior to a judicial determination, the board shall pay the applicant's costs of filing the petition.

(2) In case of appeal by the board of a decision on the petition for writ of mandate that results in a decision in favor of the applicant, the court may order the board to pay to the applicant's attorney reasonable attorney fees.

(3) Nothing in this section shall be construed to prohibit or limit an award of attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure.

§ 13962. Publicizing Program and Law Enforcement's Duty to Inform Victims of the Program.

(a) The board shall publicize through the board, law enforcement agencies, victim centers, hospitals, medical, mental health or other counseling service providers, and other public or private agencies, the existence of the program established pursuant to this chapter, including the procedures for obtaining compensation under the program.

(b) It shall be the duty of every local law enforcement agency to inform crime victims of the provisions of this chapter, of the existence of victim centers, and in counties where no victim center exists, to provide application forms to victims who desire to seek compensation pursuant to this chapter. The board shall provide application forms and all other documents that local law enforcement agencies and victim centers may require to comply with this section. The board, in cooperation with victim centers, shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with the board a description of the procedures adopted by each agency to comply with the standards.

§ 13963. Subrogation Rights of Board and Board Liens Against Any Judgment or Settlement for Sums Paid by the Board.

(a) The board shall be subrogated to the rights of the recipient to the extent of any compensation granted by the board. The subrogation rights shall be against the perpetrator of the crime or any person liable for the losses suffered as a direct result of the crime which was the basis for receipt of compensation, including an insurer held liable in accordance with the provision of a policy of insurance issued pursuant to Section 11580.2 of the Insurance Code.

(b) The board shall also be entitled to a lien on any judgment, award, or settlement in favor of or on behalf of the recipient for losses suffered as a direct result of the crime that was the basis for receipt of compensation in the amount of

the compensation granted by the board. The board may recover this amount in a separate action, or may intervene in an action brought by or on behalf of the recipient. If a claim is filed within one year of the date of recovery, the board shall pay 25 percent of the amount of the recovery that is subject to a lien on the judgment, award, or settlement, to the recipient responsible for recovery thereof from the perpetrator of the crime, provided that the total amount of the lien is recovered. The remaining 75 percent of the amount, and any amount not claimed within one year pursuant to this section, shall be deposited in the Restitution Fund.

(c) The board may compromise or settle and release any lien pursuant to this chapter if it is found that the action is in the best interest of the state or the collection would cause undue hardship upon the recipient. Repayment obligations to the Restitution Fund shall be enforceable as a summary judgment.

(d) No judgment, award, or settlement in any action or claim by a recipient, where the board has an interest, shall be satisfied without first giving the board notice and a reasonable opportunity to perfect and satisfy the lien. The notice shall be given to the board in Sacramento except in cases where the board specifies that the notice shall be given otherwise. The notice shall include the complete terms of the award, settlement, or judgment, and the name and address of any insurer directly or indirectly providing for the satisfaction.

(e)(1) If the recipient brings an action or asserts a claim for damages against the person or persons liable for the injury or death giving rise to an award by the board under this chapter, notice of the institution of legal proceedings, notice of all hearings, conferences, and proceedings, and notice of settlement shall be given to the board in Sacramento except in cases where the board specifies that notice shall be given to the Attorney General. Notice of the institution of legal proceedings shall be given to the board within 30 days of filing the action. All notices shall be given by the attorney employed to bring the action for damages or by the recipient if no attorney is employed.

(2) Notice shall include all of the following:

(A) Names of all parties to the claim or action.

(B) The address of all parties to the claim or action except for those persons represented by attorneys and in that case the name of the party and the name and address of the attorney.

(C) The nature of the claim asserted or action brought.

(D) In the case of actions before courts or administrative agencies, the full title of the case including the identity of the court or agency, the names of the parties, and the case or docket number.

(3) When the recipient or his or her attorney has reason to believe that a person from whom damages are sought is receiving a defense provided in whole or in part by an insurer, or is insured for the injury caused to the recipient, no-

tice shall include a statement of that fact and the name and address of the insurer. Upon request of the board, a person obligated to provide notice shall provide the board with a copy of the current written claim or complaint.

(f) The board shall pay the county probation department or other county agency responsible for collection of funds owed to the Restitution Fund under Section 13967, as operative on or before September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04 of the Penal Code, as operative on or before August 2, 1995, or Section 730.6 of the Welfare and Institutions Code, 10 percent of the funds so owed and collected by the county agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within 45 days of the end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The 10-percent rebates shall be used to augment the budgets for the county agencies responsible for collection of funds owed to the Restitution Fund, as provided in Section 13967, as operative on or before September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04 of the Penal Code, operative on or before August 2, 1995, or Section 730.6 of the Welfare and Institutions Code. The 10-percent rebates shall not be used to supplant county funding.

(g) In the event of judgment or award in a suit or claim against a third party or insurer, if the action or claim is prosecuted by the recipient alone, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of the action or claim, together with reasonable attorney's fees when an attorney has been retained. After payment of the expenses and attorney's fees, the court or agency shall, on the application of the board, allow as a lien against the amount of the judgment or award, the amount of the compensation granted by the board to the recipient for losses sustained as a result of the same incident upon which the settlement, award, or judgment is based.

(h) For purposes of this section, "recipient" means any person who has received compensation or will be provided compensation pursuant to this chapter, including the victim's guardian, conservator or other personal representative, estate, and survivors.

§ 13964. Claims Paid From Restitution Fund

(a) Claims under this chapter shall be paid from the Restitution Fund.

(b) Notwithstanding Section 13340, the proceeds in the Restitution Fund are hereby continuously appropriated to the board, without regard to fiscal years, for the purposes of this chapter. However, the funds appropriated pursuant to this section for administrative costs of the board shall be subject to annual review through the State Budget process.

(c) A sum not to exceed 15 percent of the amount appropriated annually to pay claims pursuant to this chapter may be withdrawn from the Restitution Fund, to be used as a revolving fund by the board for the payment of emergency awards pursuant to Section 13961.

§ 13965. Overpayments

(a) A person who has been overpaid or on whose behalf any provider or other person has been overpaid under this chapter is liable for that amount unless both of the following facts exist:

(1) The overpayment was not due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient.

(2) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience.

(b) All overpayments exceeding two thousand dollars (\$2,000) shall be reported to the Legislature pursuant to Section 13928 and the relief from liability described in subdivision (a) shall be subject to legislative approval.

§ 13966. Board Authority to Recover Moneys Owed

The board may do all of the following to recover moneys owed to the Restitution Fund:

(a) File a civil action against the liable person for the recovery of the amount of moneys owed. This action shall be filed within one year of either of the following events, or within three years of either of the following events if the liable person was overpaid benefits due to fraud, misrepresentation, or nondisclosure as described in paragraph (1) of subdivision (a) of Section 13965:

(1) The mailing or personal service of the notice of the moneys owed if the person affected does not file an appeal with the board or person designated by the board.

(2) The mailing of the decision of the board if the person affected does not initiate a further appeal.

(b)(1) Initiate proceedings for a summary judgment against the liable person. However, this subdivision shall apply only where the board has found, pursuant to Section 13965, that the overpayment may not be waived. The board may, not later than three years after the overpayment became final, file with the clerk of the proper court in the county from which the overpayment of benefits was paid or in the county in which the claimant resides, a certificate containing all of the following:

(A) The amount due, plus interest from the date that the initial determination of the moneys owed was made.

(B) A statement that the board has complied with all the provisions of this chapter prior to the filing of the certificate.

(C) A request that the judgment be entered against the liable person in the amount set forth in the certificate.

(2) The clerk, immediately upon the filing of the certificate, shall enter a judgment for the state against the liable person in the amount set forth in the certificate.

Good Samaritans

§ 13970. Recognition and Indemnification of Good Samaritans

Direct action on the part of private citizens in preventing the commission of crimes against the person or property of others, or in apprehending criminals, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, benefits the entire public. In recognition of the public purpose served, the state may indemnify such citizens, their surviving spouses, their surviving children, and any persons dependent upon such citizens for their principal support in appropriate cases for any injury, death, or damage sustained by such citizens, their surviving spouses, their surviving children, and any persons dependent upon such citizens for their principal support as a direct consequence of such meritorious action to the extent that they are not compensated for the injury, death, or damage from any other source. A claim shall be denied if an award has been made under Article 1 (commencing with Section 13960) of this chapter for the same incident.

§ 13971. Definition of “Private citizen”

As used in this article, “private citizen” means any natural person other than a peace officer, fireman, lifeguard, or person whose employment includes the duty to protect the public safety acting within the course and scope of such employment.

§ 13972. Requirements for Filing of claim

(a) If a private citizen incurs personal injury or death or damage to his or her property in preventing the commission of a crime against the person or property of another, in apprehending a criminal, or in materially assisting a peace officer in prevention of a crime or apprehension of a criminal, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, the private citizen, his or her surviving spouse, his or her surviving children, a person dependent upon the citizen for his or her principal support, or a public safety or law enforcement agency acting on behalf of any of the above may file a claim with the California Victim Compensation and Government Claims Board for indemnification to the extent that the claimant is not compensated from any other source for the injury, death, or damage. The claim shall generally show all of the following:

(1) The date, place, and other circumstances of the occurrence or events that gave rise to the claim.

(2) A general description of the activities of the private citizen in prevention of a crime, apprehension of a criminal, or rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe.

(3) The amount or estimated amount of the injury, death, or damage sustained for which the claimant is not compensated from any other source, insofar as it may be known at the time of the presentation of the claim.

(4) Any other information that the California Victim Compensation and Government Claims Board may require.

(b) A claim filed under subdivision (a) shall be accompanied by a corroborating statement and recommendation from the appropriate state or local public safety or law enforcement agency.

§ 13973. Hearing Procedures and Burden of Proof

(a) Upon presentation of a claim pursuant to this chapter, the California Victim Compensation and Government Claims Board shall fix a time and place for the hearing of the claim, and shall mail notices of the hearing to interested persons or agencies. At the hearing, the board shall receive recommendations from public safety or law enforcement agencies, and evidence showing all of the following:

(1) The nature of the crime committed by the apprehended criminal or prevented by the action of the private citizen, or the nature of the action of the private citizen in rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe, and the circumstances involved.

(2) That the actions of the private citizen substantially and materially contributed to the apprehension of a criminal, the prevention of a crime, or the rescuing of a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe.

(3) That as a direct consequence, the private citizen incurred personal injury or damage to property or died.

(4) The extent of the injury or damage for which the claimant is not compensated from any other source.

- (5) Any other evidence that the board may require.
- (b) If the board determines, on the basis of a preponderance of the evidence, that the state should indemnify the claimant for the injury, death, or damage sustained, it shall approve the claim for payment. In no event shall a claim be approved by the board under this article in excess of ten thousand dollars (\$10,000).
- (c) In addition to any award made under this chapter, the board may award, as attorney's fees, an amount representing the reasonable value of legal services rendered a claimant, but in no event to exceed 10 percent of the amount of the award. No attorney shall charge, demand, receive, or collect for services rendered in connection with any proceedings under this chapter any amount other than that awarded as attorney's fees under this section. Claims approved under

this chapter shall be paid from a separate appropriation made to the California Victim Compensation and Government Claims Board in the Budget Act and as the claims are approved by the board.

§ 13974. Board's Authority to Make Needed Rules and Regulations

The California Victim Compensation and Government Claims Board is hereby authorized to make all needful rules and regulations consistent with the law for the purpose of carrying into effect this article.

Missing Children Reward

§ 13974.1. Establishment Missing Children Reward Fund and Recommendation by the Attorney General

- (a) The board shall utilize the provisions of this article, insofar as they may be made applicable, to establish a claim and reward procedure to reward persons providing information leading to the location of any child listed in the missing children registry compiled pursuant to former Section 11114 of the Penal Code or maintained pursuant to the system maintained pursuant to Sections 14201 and 14202 of the Penal Code.
- (b) Awards shall be made upon recommendation of the Department of Justice in an amount of not to exceed five hundred dollars (\$500) to any one individual. However, as a condition to an award, in any particular case, an amount equal to or greater in nonstate funds shall have been first offered as a reward for information leading to the location of that missing child.
- (c) The Missing Children Reward Fund is hereby created in the State Treasury and is continuously appropriated to the California Victim Compensation and Government Claims Board to make awards pursuant to this section.

§ 13974.2. Application of Chapter

Any reference to Article 2 (commencing with Section 13970) of Chapter 5, as it read on December 31, 2002, shall be construed to refer to this chapter.

California Code of Regulations

Title 2. Administration

Division 2. Financial Operations

Chapter 1. Victim Compensation and Government Claims Board

Article 2.5 General Hearing Procedures

§ 615.1. Applicable Law

(a) The formal hearing provisions of the Administrative Procedure Act (Gov. Code, §§ 11500-11529) do not apply.

(b) The alternative dispute procedures of the Administrative Procedure Act (Gov. Code, §§ 11420.10-11420.30) do not apply.

(c) The declaratory decision provisions of the Administrative Procedure Act (Gov. Code, §§ 11465.10-11465.70) do not apply.

Note: Authority cited: Sections 11400.20, 13920, 13968(a)(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11420.10(c), 11425.10(a)(2) and 11465.70(c), Government Code.

§ 615.2. Definitions

(a) As used in this article:

(1) "Applicant" means a person submitting an application as defined in subsection (a)(2);

(2) "Application" means the following:

(A) an application for assistance or a supplemental claim in the Victims of Crime program under Government Code sections 13959-13969.4;

(B) a claim for indemnification by persons benefiting the public under Government Code sections 13970-13974.1; or

(C) a claim for compensation for erroneously-convicted felons under Penal Code sections 4900-4906.

(3) "Bid protest" means a challenge to an award of a contract under Public Contract Code section 10306 or 12102, subdivision (h).

(4) "Hearing" means an evidentiary proceeding for the determination of facts upon which the board makes its decision;

(5) "Hearing officer" means a person appointed by the Executive Officer under section 615.10 to preside at a hearing;

(6) "Informal hearing" means an informal proceeding in the nature of a conference during which the parties have an opportunity to be heard. The following are informal hearings:

(A) any hearing over which the board presides;

(B) any hearing limited to submission of written materials; and

(C) any hearing in which cross examination is not permitted;

(7) "May" means the action or conduct is permissive;

(8) "Mail delivery service" means a mail delivery company or organization other than the United States Postal Service;

(9) "Party" means a person or entity permitted by the board's regulations to participate in a hearing; and

(10) "Shall" means the action or conduct is mandatory.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11405.20, 11445.10(b)(2), 13968(a) and 13974, Government Code; and Section 4906, Penal Code.

§ 615.10. Assignment of Hearing

(a) The Executive Officer may refer a hearing to:

(1) the board; or

(2) a hearing officer.

(b) A hearing officer may be:

(1) a board member;

(2) an employee of the board;

- (3) an Administrative Law Judge of the Office of Administrative Hearings; or
- (4) any person appointed by the board.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 13907, 13908 and 13963, Government Code.

§ 615.11. Separation of Functions

(a) A board member or hearing officer may not preside at a hearing if the board member or hearing officer:

- (1) has functioned as an investigator or advocate concerning the application or bid protest that is the subject of the hearing; or
 - (2) is directly supervised by a person who has functioned as an investigator or advocate concerning the application or bid protest that is the subject of the hearing.
- (b) A board member or hearing officer has functioned as an investigator or advocate concerning an application or bid protest if the person personally performed and was substantially involved with an application or bid protest, including:
- (1) personally gathered facts or information upon which a staff recommendation was made about the final disposition of the application or bid protest; or
 - (2) personally participated in the development of a staff recommendation about the final disposition of the application or bid protest.
- (c) A board member or hearing officer is directly supervised by a person who has functioned as an investigator or advocate concerning an application or bid protest if the work of the board member or hearing officer was assigned, evaluated, and directed, on a regular basis, by a person who engaged in the conduct listed in subdivision (b) of this section.
- (d) A person is not substantially involved with an application or bid protest if the person:
- (1) engaged in the conduct listed in subdivision (b) of this section only to a marginal or trivial extent; or
 - (2) has not developed a commitment to a particular outcome concerning the application or bid protest.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(4) and 11425.30, Government Code.

§ 615.12. Disqualification of Board Member or Hearing Officer

(a) A board member or hearing officer shall disqualify

himself or herself and withdraw from participating in any hearing if he or she:

- (1) cannot provide a fair and impartial hearing;
 - (2) has bias;
 - (3) has prejudice; or
 - (4) has a personal or financial interest in the outcome of the hearing.
- (b) A board member or hearing officer, who receives a communication in violation of section 618.1 may disqualify himself or herself from participating in the hearing.
- (c) The parties may waive a disqualification of a board member or hearing officer in writing or on the record at the hearing.
- (1) If the parties sign a written waiver of disqualification, it shall be included in the hearing record.
 - (2) A party may request the disqualification of a board member or hearing officer from participating in a hearing for any of the reasons listed in subdivisions (a) and (b) of this section.
 - (3) A request to disqualify a board member or hearing officer must:
 - (1) be filed prior to the taking of any evidence at a hearing; and
 - (2) include a declaration under penalty of perjury stating specific facts to prove that a basis to disqualify the person exists under subdivisions (a) or (b) of this section.
 - (3) When the board is conducting the hearing, the other board members or designees who are not being challenged shall determine if the request to disqualify shall be granted or denied.
 - (4) When a hearing officer is conducting the hearing, the hearing officer shall determine whether the request to disqualify shall be granted or denied.
 - (5) Notwithstanding subsections (f) and (g), the board or hearing officer may refer the request to disqualify to the Executive Officer for determination.
 - (6) Unless there is additional evidence of bias, prejudice or interest in the outcome of the hearing, it shall not be grounds for disqualification that the board member or hearing officer:
 - (1) is or is not a member of a racial, ethnic, religious, sexual, or similar group whose rights are involved in the hearing;
 - (2) has experience, technical competence, or specialized knowledge of, or has in any capacity expressed a view on, a legal, factual, or policy issue presented in the hearing; or
 - (3) has as a lawyer or public official participated in the drafting of laws or regulations, or attempted to pass or de-

feet laws or regulations that are to be applied, interpreted or implemented in the hearing.

(j) If a board member or hearing officer is disqualified for the reason stated in subsection (b), the disqualified board member or hearing officer may order that the part of the hearing record concerning the ex parte communication shall be sealed by a protective order.

(1) The sealed portion of the hearing record shall not be considered when deciding the matters at issue in the hearing.

(2) The sealed portion of the hearing record is part of the record for the purposes of subsequent judicial review.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(5), 11425.40 and 11430.60, Government Code.

§ 616.1. Copy of Hearing Procedure

A copy of the hearing procedures shall be provided at reasonable cost upon request.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Section 11425.10(a)(2), Government Code.

§ 616.2. Duty to Furnish Correct Address

(a) A party shall inform the board and all other known parties of the party's correct address.

(b) A representative of a party shall inform the board and all other known parties of the representative's correct address.

(c) A party or representative of a party shall promptly inform the board and all other known parties of any change of address of the party or representative.

Note: Authority cited: Sections 11400.20, 11440.20(a), 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 13963 and 13973, Government Code; Section 4902, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

§ 616.3. Manner of Service of Notice or Documents

(a) A written notice or document required to be given shall be delivered personally, by mail, or by facsimile transmission to a party or representative at the address provided by the party or representative under section 616.2.

(1) Documents that exceed ten pages, including attachments, shall not be served upon or filed with the board or hearing officer by facsimile transmission.

(b) Delivery by mail may include:

- (1) first-class mail via the United States Postal Service;
 - (2) registered mail via the United States Postal Service;
 - (3) certified mail via the United States Postal Service; and
 - (4) mail delivery service.
- (c) A notice or document delivered personally shall be considered filed, served and received on the date of delivery.
- (d) A notice or document delivered by mail shall be considered filed or served on the mailing date if:
- (1) the postage was prepaid; and
 - (2) the envelope containing the notice or document was addressed correctly.
- (e) The mailing date shall be presumed to be the date of the postmark or the date the envelope containing the notice or document was accepted by a mail delivery service if the mailing complied with subsection (d)(1) and (2).
- (f) A notice or document delivered by mail shall be presumed to be received five days after the mailing date if the mailing complied with subsection (d)(1) and (2).
- (g) A notice or document delivered by facsimile shall be presumed to be filed, served and received upon completion of the facsimile transmission.

(1) Documents for which the facsimile transmission is not completed before 5:00 p.m. shall be presumed to be filed, served and received at 8:00 a.m. the next day.

(h) The party serving or filing the notice or document has the burden of proving that the party complied with this section.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11440.20, 13963 and 13973, Government Code; and Sections 10306 and 12102(h), Public Contract Code.

§ 616.4. Notice of Hearing

(a) The Executive Officer shall send a notice to each party of the following:

- (1) the date, time and location of the hearing;
 - (2) notice that the informal hearing procedures will be used, if applicable; and
 - (3) information about requesting a copy of the hearing procedures under section 616.1.
- (b) A notice of hearing shall be sent at least ten days before the start of the hearing.

Note: Authority cited: Sections 11400.2, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11445.30(a), 13963(b) and 13973, Government Code; Section 4902, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

§ 617.1. Public Hearing

(a) Hearings shall be open to public observation, unless otherwise provided by law.

(b) A hearing conducted by telephone, television, or other electronic means as provided in section 617.4 complies with subdivision (a) of this section if:

(1) members of the public may be physically present at the location where the board or hearing officer is conducting the hearing; and

(2) members of the public may inspect the hearing record and inspect any transcript obtained by the board or hearing officer.

(A) A request to inspect the hearing record or any transcript obtained by the board or hearing officer shall be in writing and is governed by the provisions of the Public Records Act, Government Code sections 6250-6270.

(B) The hearing record and any transcript obtained by the board or hearing officer shall be available for public inspection during regular business hours at the headquarters of the board.

(c) This section shall not apply to any prehearing conference or settlement conference.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(3) and 11425.20, Government Code.

§ 617.2. Powers and Duties of Board or Hearing Officer

(a) The board or hearing officer shall have the following powers and duties:

(1) the power to regulate the course of the hearing, including the power to permit or limit:

(A) opening statements;

(B) re-direct examination;

(C) re-cross examination;

(D) presentation of rebuttal witnesses;

(E) allocation of time for each party to present its case, including the time allowed for cross examination of witnesses;

(F) oral or written closing arguments; and

(G) opening or closing briefs.

(2) the power to regulate the conduct of the parties and their representatives;

(3) the power to administer oaths and affirmations;

(4) the power to examine witnesses;

(5) the power to rule on evidentiary and procedural motions;

(6) the duty to conduct a fair and impartial hearing;

(7) the duty to maintain order;

(8) the duty to avoid unnecessary delay; and

(9) all powers and duties reasonably necessary to perform the functions contained in subsections (1) through (8).

(b) The board or hearing officer shall control the taking of evidence in any manner suited to learning the relevant facts and safeguarding the rights of the parties, including the limitation or exclusion of:

(1) repetitious evidence;

(2) irrelevant evidence;

(3) evidence that is tangential to the issues to be determined;

(4) evidence that is of limited probative value; or

(5) evidence that is unreliable.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(1), 13910, 13911, 13963 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

§ 617.3. Representation of Parties

(a) A party may represent himself or herself, or be represented by an attorney or other person.

(b) Notwithstanding subsection (a), the board or hearing officer may refuse to allow any person to represent a party in any hearing if the person at any hearing before the board or hearing officer:

(1) engaged in unethical, disruptive or contemptuous conduct;

(2) intentionally failed to comply with the proper instructions or orders of the board or hearing officer; or

(3) engaged in conduct that provides a basis for contempt under section 618.3 or sanctions under section 618.4.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 13963 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

§ 617.4. Hearing by Electronic Means

(a) The board or hearing officer may conduct all or part

of a hearing by telephone, television, or other simultaneous electronic means if each participant:

- (1) has an opportunity to participate;
- (2) can hear the entire hearing while it is taking place; and
- (3) may observe exhibits.

(A) This requirement shall be satisfied if each participant has an opportunity prior to the hearing to see each exhibit to be used during a hearing conducted by electronic means.

(b) For purposes of this section, a participant in a hearing includes:

- (1) a party;
- (2) a party's representative; and
- (3) a witness whose testimony will be provided by telephone, television, or other electronic means.

(c) No part of a hearing shall be conducted by telephone, television or other electronic means if a party objects to it.

(d) The party that requested that all or part of a hearing be conducted by electronic means may be responsible for providing, operating, and paying for all equipment needed to comply with subdivision (a).

(1) The party shall consult with the board, hearing officer, or Executive Officer to arrange for the equipment to be set up and operated.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Section 11440.30, Government Code.

§ 617.5. Informal Hearing

(a) A party may object to having an informal hearing in writing within five days of receiving the hearing notice.

(b) The Executive Officer or hearing officer shall rule on an objection to an informal hearing before evidence is taken at a hearing.

(c) An objection to an informal hearing shall include:

- (1) the specific facts and law upon which the objection is based; and
- (2) specific facts and law relevant to the factors contained in subsection (f).

(d) An objection to an informal hearing that is limited to written materials shall include the following, to the extent relevant to the basis for the objection, or as required by the Executive Officer or hearing officer:

- (1) the identity of the witnesses that the party wishes to present;

- (2) a summary of the testimony that is anticipated from each witness; and

- (3) the issues to which each witness will testify.

(e) An objection to an informal hearing that requests an opportunity to cross examine witnesses shall identify:

- (1) the witnesses that the party wishes to cross examine; and
- (2) the issues that the party wishes to explore during cross examination of each witness.

(f) If confidential facts or sources are relevant to the information required under subsections (d) or (e), a party shall:

- (1) state that confidential facts or sources are involved; and
- (2) provide information that can be given without disclosing the confidential facts or sources.

(g) The Executive Officer or hearing officer shall consider the following factors when ruling on an objection to an informal hearing:

- (1) complexity of legal or factual issues;
- (2) necessity to evaluate credibility of witnesses for a proper determination of issues;
- (3) parties' representation by legal counsel;
- (4) necessity of witnesses being subject to cross examination for the proper determination of issues; and

(5) any other factor likely to affect a just and proper determination of issues.

(h) If the objection to an informal hearing is sustained, the Executive Officer or hearing officer may permit:

- (1) testimony from parties;
- (2) testimony from witnesses who are not parties; or
- (3) cross examination of witnesses.

(i) If the Executive Officer sustains an objection to an informal hearing over which the board was to preside, the Executive Officer shall assign the hearing to a hearing officer.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11445.20(c), 11445.30, 11445.40, 11445.50, 11445.60 and 11470.10, Government Code; and Sections 10306 and 12102(h), Public Contract Code.

§ 617.6. Presentation Limited to Written Materials

(a) If the board, Executive Officer, or hearing officer determine that only written evidence or argument shall be permitted as provided by these regulations, all parties shall

receive a reasonable opportunity to submit written materials to the board or hearing officer.

(b) Written materials may include:

- (1) a statement of legal and factual issues;
- (2) supporting documentation; and
- (3) legal and factual arguments supporting the party's contentions.

(c) The board or hearing officer may request additional documentation or legal arguments from the parties if necessary in the board's or hearing officer's discretion.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(1), 11445.10, 11445.20(c), 11445.40, 11445.50, 13963 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

§ 617.7. Presentation of Oral Evidence

(a) Oral evidence shall be taken under oath or affirmation in all hearings, except an informal hearing.

(b) Oral evidence may be taken under oath or affirmation in an informal hearing.

(c) An oath or affirmation may be administered by:

- (1) a member of the board;
- (2) the hearing officer;
- (3) the hearing reporter;
- (4) a staff member of the board, as directed by the board.
- (d) If oral evidence is permitted, each party has the following rights:

- (1) to examine witnesses called by the party;
- (2) to introduce exhibits into the hearing record; and
- (3) to rebut evidence.

(e) The board or hearing officer may question any party or witness.

(f) A party shall not be permitted to cross examine witnesses unless provided by regulation, or permitted by the discretion of the board, Executive Officer, or hearing officer.

(1) Cross examination of a witness may be permitted if it is necessary for a proper determination of the matter.

(2) In order to determine whether cross examination is necessary, the board, Executive Officer, or hearing officer may require a party to identify the issues that would be explored in cross examination.

(A) A party may be required to state that confidential facts

or sources would be involved in the issues to be explored in cross examination, but may not be required to disclose the confidential facts or sources.

(3) If cross examination is permitted, a witness may be cross-examined on any relevant matter even though the matter was not covered during the direct examination.

(g) A party appearing at a hearing shall have the witnesses and evidence present and be ready to proceed when the matter is called.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(1), 11445.10, 11445.20(c), 11445.30, 11445.40, 11445.50, 11445.60, 13911, 13963 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

§ 617.8. Official Notice

(a) The board or hearing officer shall take official notice of those matters which must be judicially noticed by a court under Evidence Code section 451.

(b) The board or hearing officer may take official notice of those matters which may be judicially noticed by a court under Evidence Code section 452.

(c) Evidence Code sections 455 and 459, subdivisions (c) and (d) shall not apply.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(1), 11425.50(c), 13963 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

§ 617.9. Failure to Appear or Proceed

The failure of a party to appear at a hearing, or to proceed with a hearing, shall constitute a withdrawal of the action or request for hearing, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 13963 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

§ 618.1. Prohibited Communication

(a) If the board is a party to a pending proceeding, no board employee shall communicate about any issue in the proceeding to the board, a board member, or hearing officer.

(1) A communication is not prohibited by this subsection as long as all parties to the proceeding were given reasonable notice of, and an opportunity to participate in, the communication.

(b) No person or representative who has an interest in the outcome of a pending proceeding shall communicate about any issue in the proceeding with the board, a board member, or the hearing officer while the proceeding is pending before the board.

(1) A communication is not prohibited by this subsection as long as all parties to the proceeding were given reasonable notice of, and an opportunity to participate in, the communication.

(c) A hearing officer who is not a board member shall not communicate about any issue in the proceeding with the board or a board member while the proceeding is pending before the board.

(d) The following communications are not prohibited by subsection (a):

(1) a communication required to resolve an ex parte matter that is authorized by statute; or

(2) a communication concerning a matter of procedure or practice that is not in dispute.

(e) The following communications from a board employee are not prohibited by subsection (a):

(1) an employee who has not served as an investigator or advocate in the proceeding, as defined in section 615.11 may:

(A) provide assistance and advice about the issues to be resolved; or

(B) evaluate the evidence in the record;

(2) a communication about a settlement proposal that is advocated by the board employee.

(f) For the purpose of this section, a proceeding is pending before the board from the time an application or bid protest is submitted to the board until the board makes a final decision about it.

(1) For the purpose of this section, a final decision is made by the board upon adoption of a decision under sections 619.2 or 619.5.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(8), 11430.10, 11430.20, 11430.30, 11430.70 and 11430.80, Government Code.

§ 618.2. Disclosure of Prohibited Communication

(a) A board member or hearing officer, who received a communication about a pending proceeding prior to serving as a board member or hearing officer that would violate section 618.1 if it had been received while presiding at a hearing, shall promptly:

(1) disclose the content of the communication on the record; and

(2) give all parties an opportunity to respond under subdivision (d).

(b) If the board, a board member, or hearing officer receives a communication in violation of section 618.1 the board or hearing officer shall include the following in the record of the hearing:

(1) a copy of any written communication;

(2) a copy of any written response to a written or oral communication;

(3) a memorandum about an oral communication that shall include:

(A) the substance of the oral communication;

(B) the substance of any oral response to the communication; and

(C) the identity of each person from whom the communication was received.

(c) The board or hearing officer shall notify all parties that:

(1) an impermissible ex parte communication was received; and

(2) that the materials required by subsection (b) have been included in the hearing record.

(d) A party may comment on the prohibited ex parte communication if the party requests to comment within ten days of receiving the notice required by this section.

(1) The board or hearing officer may allow a party who makes a timely request to present evidence about the subject of the communication.

(2) The board or hearing officer may reopen the record of a hearing that has been concluded in order to take evidence permitted by subsection (d)(1).

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11430.40 and 11430.50, Government Code.

§ 618.3. Contempt

(a) A person is subject to a contempt sanction for any of the following:

(1) disobedience of or resistance to a lawful order;

(2) refusal to take the oath or affirmation as a witness;

(3) obstruction or interruption of a hearing by:

(A) disorderly, contemptuous, or insolent behavior during a hearing toward the board, a board member, or a hearing officer;

(B) breach of the peace, boisterous conduct or violent disturbance during a hearing; or

(C) other unlawful interference with the process or proceedings;

(4) violating the rules against ex parte communication in section 618.1; and

(5) failure or refusal, without substantial justification, to comply with an order of the board or hearing officer.

(b) The board or hearing officer may certify the facts that justify a contempt sanction to the superior court in the county where the hearing is held.

(c) Copies of the following shall be served on the person subject to the contempt sanction:

(1) the certified statement required by subsection (b); and

(2) the order to show cause issued by the superior court.

(d) A contempt proceeding is governed by Code of Civil Procedure, sections 1209-1222.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11455.10 and 11455.20, Government Code.

§ 618.4. Sanctions

(a) The board or hearing officer may order a party, the party’s representative, or both, to pay reasonable expenses, including attorney’s fees, as a result of:

(1) bad faith or frivolous actions or tactics; or

(2) actions or tactics solely intended to cause unnecessary delay.

(b) For the purpose of this section, actions include, but are not limited to:

(1) the making or opposing of motions, objections, or requests; and

(2) the failure to comply with a lawful order of the board or hearing officer.

(c) For the purpose of this section, frivolous means:

(1) totally without merit; or

(2) for the sole purpose of harassing another party or the board.

(d) Before imposing sanctions under this section, the board or hearing officer shall provide the party notice and an opportunity to be heard.

(1) The notice and opportunity to be heard may occur either at the time the issue of sanctions is raised, or at another time.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Section 11455.30, Government Code.

§ 619.1. Decision

(a) This section applies to decisions of the board and proposed decisions of hearing officers.

(b) All hearing decisions and proposed decisions shall:

(1) be written; and

(2) contain a statement of the factual and legal bases for the decision.

(c) If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the decision shall identify any specific evidence of the demeanor, manner or attitude of the witness that supports the credibility determination.

(d) The decision shall be based on evidence in the hearing record and on matters subject to official notice under section 617.8.

(e) The board members or hearing officer may use relevant experience, technical competence and specialized knowledge to evaluate the evidence.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(6), 11425.50(c) and 13969.1(a), Government Code.

§ 619.2. Decision by Board

(a) A decision of the board about a hearing it conducted shall be made by the board.

(b) The board shall make its decision either at the conclusion of the hearing, or at another board meeting.

(c) The board may adopt in whole the written recommendation of board staff as its decision if the recommendation complies with section 619.1.

(d) If the board does not adopt in whole the staff recommendation:

(1) the board shall make a statement of decision that includes:

(A) the decision made about the application; and

(B) the reasons for the decision; and

(2) board staff shall prepare a written decision consistent with the board’s statement of decision.

- (e) The decision of the board is effective upon its vote.
- (f) The board shall send a copy of its written decision to the parties.
- (1) The board need not send a copy of its written decision under subsection (c) to the parties if the parties received, prior to the hearing, a copy of the staff recommendation that was adopted in whole as the board decision.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(6), 11425.50, 13908 and 13969.1(a), Government Code.

§ 619.3. Proposed Decision by Hearing Officer

- (a) The hearing officer may take the matter under submission at the conclusion of the hearing.
- (b) The hearing officer shall prepare a proposed decision for the board that complies with section 619.1.
- (c) The proposed decision shall be submitted to the Executive Officer.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections 11425.10(a)(6) and 11425.50, Government Code.

§ 619.4. Notice and Public Comment on Proposed Decision

- (a) Copies of the proposed decision and notice of the board meeting at which consideration of the proposed decision is scheduled shall be mailed or delivered to all parties.
- (b) A party may submit written argument concerning whether or not the board should adopt the proposed decision.
 - (1) A written argument shall not exceed ten pages, including any attachments.
 - (c) The Executive Officer may establish a schedule for the submission of written argument concerning the proposed decision.
 - (d) Written argument concerning the proposed decision may address the following issues, or any issue identified by the Executive Officer:
 - (1) are the facts stated in the proposed decision supported by the evidence in the hearing record?
 - (2) does the proposed decision contains an accurate statement of the applicable law?
 - (3) does the proposed decision correctly apply the applicable law?
 - (4) is there additional evidence that the board should con-

sider?

- (5) if the board should consider additional evidence, why was it not presented at the hearing?
- (6) if the board rejects the proposed decision, what further actions should the board take to resolve the matter?

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Section 11125.7, Government Code.

§ 619.5. Action on Proposed Decision by Board

- (a) The Executive Officer shall schedule consideration of a hearing officer's proposed decision on the agenda of a board meeting.
- (b) The board may take any of the following actions concerning the proposed decision:
 - (1) adopt the proposed decision in whole or in part;
 - (2) reject the proposed decision in whole or in part; or
 - (3) defer decision and request the hearing officer to address specific issues or provide additional information.
- (c) If the board rejects the proposed decision in whole or in part, it may take any of the following actions:
 - (1) decide the case itself after reviewing the record, including a transcript of the hearing;
 - (2) decide the case itself based upon a statement of facts agreed to by the parties;
 - (3) decide the case itself by conducting a hearing to take additional evidence or argument;
 - (4) order the hearing officer to take additional evidence or argument; or
 - (5) order the hearing officer to address specific issues in the proposed decision.
- (d) If the board rejects the proposed decision in whole or in part and orders a hearing officer to take additional evidence under subsection (c)(4), or respond to specific issues under subsection (c)(5), the hearing officer:
 - (1) may take additional evidence as directed by the board or as necessary in the hearing officer's discretion; and
 - (2) shall prepare a proposed decision as required by section 619.3.
- (e) If the board remands the matter to a hearing officer under subsection (c)(4) or (c)(5), it shall be returned to the hearing officer who prepared the proposed decision, if practicable.
 - (1) If the hearing officer who prepared the proposed decision is not reasonably available, the Executive Officer may assign it to another hearing officer.

(2) If the matter is assigned to another hearing officer, the new hearing officer shall review the entire record, including a transcript, before taking additional evidence.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Sections, 11440.10, 113963, 13908 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

(A) The availability of the index shall be publicized annually in the California Regulatory Notice Register.

Note: Authority cited: Sections 11400.20, 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Section 11425.60, Government Code.

§ 619.6. Correction of Decision

(a) The board may modify a decision or proposed decision before or after adoption to correct a mistake or clerical error.

(b) A copy of the modified decision shall be sent to all parties.

Note: Authority cited: Sections 11400.20, 11415.10(a), 13920, 13968(a) and 13974, Government Code; and Section 4906, Penal Code. Reference: Section 11518.5(d), Government Code.

§ 619.7. Precedent Decisions

(a) The board may designate any of its decisions in whole or in part as a precedent decision.

(b) The board may designate a prior decision as a precedent decision.

(c) A decision may be designated as a precedent decision if it:

- (1) addresses a legal or factual issue of general public interest;
- (2) resolves a conflict in the law;
- (3) provides an overview of existing law or policy;
- (4) clarifies existing law or policy;
- (5) establishes a new rule of law or policy; or
- (6) contains a significant legal or policy determination of general application.

(d) A precedential decision may be used as legal authority to interpret and implement the law in subsequent board decisions.

(e) The board may reverse in whole or in part the prior designation of a decision as a precedent decision.

(f) The board shall maintain an index of significant legal and policy determinations contained in precedent decisions.

(1) The index shall be updated annually, unless no new precedent decisions were designated.

(2) The index shall be available for purchase by the public.

Article 5.2. Hearings for Indemnification of Citizens Benefiting the Public and Indemnification of Victims of Crime

§ 647.1. Applicability

(a) This article applies to:

- (1) an application for assistance to the Victim Compensation Program under Government Code sections 13950- 13966;
- (2) an application for assistance as a minor witness under Government Code section 13957(a)(2)(B)(iii); and
- (3) an application for indemnification by persons benefiting the public under Government Code sections 13970- 13974.1.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 13959 and 13973, Government Code.

§ 647.2. Applicable Law

- (a) The formal hearing provisions of the Administrative Procedure Act (Gov. Code, §§ 11500- 11529) do not apply.
- (b) The alternative dispute procedures of the Administrative Procedure Act (Gov. Code, §§ 11420.10- 11420.30) do not apply.
- (c) The declaratory decision provisions of the Administrative Procedure Act (Gov. Code, §§ 11465.10- 11465.70) do not apply.
- (d) If there is any inconsistency or conflict between the provisions of California Code of Regulations, title 2, article 2.5 and this article, the provisions of this article shall apply to the applications stated in section 647.1.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 11420.10(c), 11425.10(a)(2), 11465.70(c), 13959 and 13973, Government Code.

§ 647.3. Definitions

(a) As used in this article:

(1) "Attorney" shall mean an active member of the California Bar; and

(2) "Applicant" means a person submitting an application as defined in subsection (a)(3);

(3) "Application" means the following:

(A) an application for assistance or a supplemental claim to the Victim Compensation Program under Government Code sections 13950- 13966;

(B) an application for assistance as a minor witness under Government Code section 13957(a)(2)(B)(iii); or

(C) an application for indemnification by persons benefiting the public under Government Code sections 13970- 13974.1.

(4) "Hearing" means an evidentiary proceeding for the determination of facts upon which the Board makes its decision;

(5) "Hearing officer" means a person appointed by the Executive Officer to preside at a hearing;

(6) "Shall" means the action or conduct is mandatory.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 13952(d), 13957.7(g), 13959 and 13973, Government Code.

§ 647.4. Consideration of Applications and Supplemental Claims

(a) Following the verification process, VCP staff shall make a recommendation to the Board regarding the application or supplemental claim. Staff may recommend that the Board allow the application or supplemental claim, deny the application or supplemental claim, or allow the application or supplemental claim in part and deny the application or supplemental claim in part.

(b) In the event that VCP staff recommends denial of an ap-

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plication or supplemental claim in whole or in part, the staff of VCP shall prepare a notice of staff recommendation. Such notice shall include a statement as to why the matter is recommended for denial and shall be mailed to the affected applicant and his or her representative at their last known address of record. Every notice of staff recommendation to deny shall contain the following:

“This staff recommendation does not constitute a final administrative determination by the Victim Compensation and Government Claims Board (VCGCB) to deny your application or claim. You have a right to a hearing. To request a hearing and to ensure a full discussion of all relevant issues, you should follow the procedures set forth in this notice.”

(c) If the VCP staff recommends denial of an application or supplemental claim in whole or in part, the applicant has 45 calendar days from the date of the mailing of the notice of the staff recommendation to request in writing that the matter be set for hearing to contest the staff recommendation. All written requests for hearing shall be mailed or delivered to the headquarters office of the VCP in Sacramento, California, the address for which shall be provided on this notice.

(d) Nothing in this section shall be construed to prevent an applicant or his or her representative from communicating with VCP staff during the period between notice of the staff recommendation and the date of hearing in order to supply additional information. Nothing in this section shall be construed to prevent VCP staff from amending the initial recommendation where additional documentation or information provides the necessary evidence to recommend approval of an application or supplemental claim.

Note: Authority cited: Section 11400.20, 13920 and 13974, Government Code. Reference: Sections 13956, 13958 and 13959, Government Code.

§ 647.5. Duty to Furnish Correct Address

(a) An applicant shall inform the Board of the applicant's correct address.

(b) A representative of an applicant shall inform the Board of the representative's correct address.

(c) An applicant or representative of an applicant shall promptly inform the Board of any change of address of the party or representative.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code; Reference: Sections 13959 and 13973, Government Code.

§ 647.20. Right to Hearing

(a) An applicant may request a hearing to contest any of the following actions:

(1) a staff recommendation that the Board deny an application because there is not good cause for the late filing of an application;

(2) a staff recommendation that the Board deny, in whole or in part, an application or supplemental claim; and

(3) a staff determination that an applicant should reimburse the Program for an overpayment of benefits.

(b) An applicant does not have a right to a hearing where benefits are approved and the applicant's sole objection is to the rates and limitations set by the Board.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 13957.2(a), 13959, 13965 and 13973, Government Code.

§ 647.20.1. Hearing on the Written Record for Failure to State Basis to Grant Relief

(a) The Executive Officer or Hearing Officer may limit a hearing to the written record if the request for a hearing fails to state a basis upon which the applicant may be granted relief.

(b) Prior to making a determination that the hearing will be limited to the written record, the applicant shall be:

(1) notified that the request fails to state a basis upon which the applicant may be granted relief; and

(2) given thirty (30) calendar days to submit written materials that either refute the reason for the denial, or show that there is a basis upon which relief may be granted.

(c) If applicant fails within thirty (30) calendar days to show that there is a basis upon which relief may be granted, the Executive Officer or Hearing Officer shall write a proposed decision based upon the written record.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 13959 and 13973, Government Code.

§ 647.21. Notice of Hearing

(a) The Board shall send a notice to the applicant and, if applicable, to the applicant's representative of the following:

(1) the date, time and location of the hearing;

(2) notice that the hearing will be conducted electronically, if applicable; and

(3) information about how to request a copy of the hearing procedures.

(b) A notice of hearing shall be sent at least 20 calendar days before the start of the hearing.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 11445.30, 13959 and 13973, Government Code.

§ 647.22. Information About Hearing Procedures

The Board shall provide information about the hearing rules and procedures upon request to applicants and representatives.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 11425.10(a)(2), 13959 and 13973, Government Code.

§ 647.23. Representation of Applicant

(a) A representative shall provide written disclosure to an applicant if the person represents any other person or entity with a financial interest in the outcome of the application.

(1) The applicant must provide written acknowledgment of receiving the disclosure and written consent to the representation.

(2) The representative’s written disclosure and the acknowledgment and consent shall be available upon request by the Board, Board staff, or the hearing officer.

(3) A person who does not have a written disclosure, acknowledgment of disclosure and consent to representation as required by this section shall be prohibited from representing an applicant at a hearing.

(b) No person shall charge, receive or collect any amount from an applicant for services rendered in connection with any proceeding under this article except as provided in Government Code section 13957.7(g).

(c) The Board shall not pay any fees for representation by a person who is not an attorney.

(d) An attorney shall not recover any attorney fees for representing himself or herself.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 13959, 13957.7(g) and 13973, Government Code.

§ 647.24. Access to Application Information

(a) A representative may receive access to personal information about an applicant in connection with a hearing if:

- (1) the applicant authorizes it in writing;
- (2) an original authorization is submitted to the Board;
- (3) the applicant is entitled to have access to the information; and
- (4) access is authorized by Government Code section 13954(d), if applicable.

(b) Written authorization under this section must include:

- (1) the name, address and phone number of the applicant;

- (2) the name, address and phone number of the representative;

- (4) the signature of the applicant;

- (5) the date on which the authorization was signed;

- (6) a description of the information or documents that are authorized to be released; and

- (7) an expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure.

(c) “Personal information” shall have the same meaning as in Civil Code section 1798(a).

(d) Members of the public may not inspect applications or application materials that may be withheld under the Public Records Act, Government Code section 6250- 6270 unless the inspection or disclosure is authorized by this section or pursuant to a court order.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 13952(d), 13959 and 13973, Government Code.

§ 647.25. Hearing by Electronic Means

(a) The Board or hearing officer may conduct all or part of a hearing by telephone, videoconference, or other simultaneous electronic means if the applicant:

- (1) has an opportunity to participate; and
- (2) has an opportunity prior to the hearing to request copies of the documentation that is considered by the hearing officer.

(b) If an applicant objects to having a hearing conducted by telephone, videoconference or other electronic means, the Board must receive the objection no less than 10 calendar days before a scheduled hearing. If an applicant objects to having a hearing by electronic means, the hearing shall be rescheduled to take place in person in a location as convenient to the applicant as is practical and the applicant shall receive a notice stating the new date, time, and location of the hearing.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Section 11440.30, Government Code.

§ 647.26. Request for Continuance

(a) A request for a continuance of a hearing must be in writing and submitted to the Executive Officer as soon as the need for the request is known to the party.

(b) A request for a continuance that is made less than ten calendar days prior to the date of the hearing may be granted only if good cause exists.

- (c) A request for a continuance cannot be based on the ap-

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PLICANT or representative's cellular phone not functioning at the time of a hearing that is being conducted by telephone.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 13959 and 13973, Government Code.

§ 647.30. Conduct of Hearing

(a) The Executive Officer or hearing officer shall determine whether the hearing shall:

(1) be based upon the written record, by electronic means, or in person; or

(2) include oral evidence taken under oath or affirmation in a hearing.

(b) If the hearing officer determines that oral evidence will be taken, any oral evidence shall be audio recorded.

(c) No additional evidence or argument shall be considered as a part of the hearing after the hearing record is closed by the hearing officer. The hearing officer retains the discretion to re-open the record, if necessary.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 11445.10(a), 11445.20(c), 13959 and 13973, Government Code.

§ 647.31. Evidence

(a) The technical rules of evidence relating to evidence and witnesses shall not apply.

(b) The Board or hearing officer shall control the taking of testimony and evidence in any manner suited to learning the relevant facts and safeguarding the rights of the parties, including the limitation or exclusion of:

(1) repetitious evidence;

(2) irrelevant evidence;

(3) evidence that is tangential to the issues to be determined;

(4) evidence that is of limited probative value; or

(5) evidence that is unreliable.

(c) The Board or hearing officer may rely on evidence that is:

(1) reliable; and

(2) the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in a civil action.

(d) The Board or hearing officer may rely on written reports

and other information received from the law enforcement agency or other governmental agency responsible for investigating the crime.

(e) The Board or hearing officer may review and consider:

(1) the application for assistance;

(2) the report and recommendation of staff;

(3) evidence obtained by staff;

(4) evidence submitted by the applicant;

(5) testimony provided by the applicant; and

(6) testimony provided by witnesses.

(f) The Board or hearing officer may take official notice of the following:

(1) the Board's written policies;

(2) those matters which must be judicially noticed by a court under Evidence Code section 451;

(3) those matters which may be judicially noticed by a court under Evidence Code section 452.

Evidence Code sections 455 and 459, subdivisions (c) and (d) shall not apply.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 11425.10(a)(1), 11425.50(c), 13959(e) and 13973, Government Code.

§ 647.32. Burden of Proof

(a) The applicant shall have the burden of proof on all issues necessary to establish eligibility.

(b) The Board shall have the burden of proof on all issues necessary to disqualify an applicant under Government Code section 13956, subsections (a), (b), or (c).

(c) The standard of proof is a preponderance of the evidence.

(d) If there is insufficient evidence that the crime identified in the application occurred, the application may still be considered eligible if there is a preponderance of evidence that a qualifying crime occurred to the victim, even if it is not the crime for which the application was submitted.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 13959(e) and 13973, Government Code; and Graham v. State Board of Control (1995) 33 Cal.App.4th 253, 39 Cal. Rptr.2d 146.

§ 647.33. Exclusion of Public

(a) A hearing based upon an application under Government Code sections 13950- 13966 shall be closed to the pub-

lic unless the applicant or the applicant's representative requests that the hearing be open to the public.

(b) The Board or hearing officer shall not exclude:

- (1) Board members;
- (2) the hearing officer;
- (3) Board staff;
- (4) the applicant;
- (5) a minor applicant's parents or guardians;
- (6) the applicant's representative;
- (7) witnesses during their testimony;
- (8) translator or interpreter; and
- (9) other persons of the applicant's choice to provide assistance to the applicant during the hearing.

(c) The Board or hearing officer may exclude an applicant, representative, or witness if the individual is threatening, abusing, or harassing the Board member, the hearing officer, or others.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 6254.17, 11125.8, 11425.20, 13954(d) and 13959, Government Code.

§ 647.35. Failure to Appear or Proceed

(a) If an applicant or representative either fails to appear at a hearing, or fails to proceed, the Board or hearing officer may base its decision on any material listed in section 647.31(e)(1)-(4).

(b) If an applicant does not answer the telephone at the time of a scheduled telephone hearing, the Board or hearing officer may base its decision on any material listed in section 647.31(e)(1)-(4).

(c) If an applicant or representative's cellular telephone stops working during a scheduled telephone hearing and the hearing officer is unable to reach the applicant or representative by telephone, the hearing will be based on the material in the record up to that point in time.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 13959(e) and 13973, Government Code.

§ 647.36. Proposed Decision by Hearing Officer

(a) The hearing officer may take the matter under submission at the conclusion of the hearing.

(b) The hearing officer shall prepare a proposed decision that is:

- (1) written; and
- (2) contains a statement of the factual and legal bases for the decision.
- (c) If the factual basis for the decision includes a determination based substantially on the credibility of a witness, the decision shall identify any specific evidence of the demeanor, manner or attitude of the witness, or other facts that support the credibility determination.
- (d) The decision shall be based on evidence in the hearing record and on matters subject to official notice under section 647.31.
- (e) The Board members or hearing officer may use relevant experience, technical competence and specialized knowledge to evaluate the evidence.
- (f) The proposed decision shall be submitted to the Executive Officer.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 11425.10(a)(6), 11425.50 and 13959, Government Code.

§ 647.37. Notice and Public Comment on Proposed Decision

Section 619.4 shall not apply to hearings under this article.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Section 11125.7(d), Government Code.

§ 647.37.1. Action on Proposed Decision by Board

(a) The Executive Officer shall schedule consideration of a hearing officer's proposed decision on the agenda of a Board meeting.

(b) The Board shall deliberate regarding the proposed decision in a closed session.

(c) The Board may take any of the following actions concerning the proposed decision:

- (1) adopt the proposed decision in whole or in part;
- (2) reject the proposed decision in whole or in part; or
- (3) defer decision and request the hearing officer to address specific issues or obtain additional information.
- (d) If the Board rejects the proposed decision in whole or in part, it may take any of the following actions:

(1) decide the case itself after reviewing the record, including a transcript of the hearing;

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- (2) decide the case itself based upon a statement of facts agreed to by the parties;
 - (3) decide the case itself by conducting a hearing to take additional evidence or argument;
 - (4) order the hearing officer to take additional evidence or argument; or
 - (5) order the hearing officer to address specific issues in the proposed decision.
- (e) If the Board rejects the proposed decision in whole or in part and orders a hearing officer to take additional evidence under subsection (d)(4), or respond to specific issues under subsection (d)(5), the hearing officer:
- (1) shall take additional evidence as directed by the Board or as necessary in the hearing officer's discretion; and
 - (2) shall prepare a proposed decision as required by section 647.36.
- (f) If the Board remands the matter to a hearing officer under subsection (d)(4) or (d)(5), it shall be returned to the hearing officer who prepared the proposed decision, if practicable.
- (1) If the hearing officer who prepared the proposed decision is not reasonably available, the Executive Officer may assign it to another hearing officer.
 - (2) If the matter is assigned to another hearing officer, the new hearing officer shall review the entire record, including a transcript, before taking additional evidence.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Sections 11125.8, 11126(c)(3), 13959 and 13973, Government Code.

§ 647.38. Requests for Reconsideration

Requests for reconsideration filed by applicants or their representatives in accordance with Section 13959(i) of the Government code shall be accepted by the Board only after the Board has acted on the application or supplemental claim at a hearing following a notice of staff recommendation to the Board to deny or deny in part. Requests for reconsideration shall not be granted unless the applicant produces to the Board new and additional evidence not reasonably available to the applicant at the time of the hearing. Nothing in this section shall be construed to prevent the Board from granting reconsideration on its own motion.

Note: Authority cited: Section 13974, Government Code. Reference: Sections 13954, 13956, 13959 and 13960, Government Code.

Article 5.5. Indemnification of Citizens Benefiting the Public

§ 648.1. Time for Presenting Claims

There shall be presented to the Board all claims filed by citizens who have benefited the public through their actions as “good Samaritans” to the people around them. A claim filed under this article shall be presented to the Victim Compensation and Government Claims Board no later than one year after occurrence of the injury or damage. A claim filed after such shall not be considered unless the Board determines that, for good sufficient reason, the claim was not filed within said period.

Note: Authority cited: Section 13974, Government Code. Reference: Section 13970, Government Code.

§ 648.2. Contents of Claims

All claims shall be filed in duplicate, shall be signed and verified by the claimant, or claimant’s parent or guardian if claimant is a minor, and shall state the facts constituting the claim in simple, concise language. In the event the claim is filed on behalf of the claimant by a law enforcement or public safety agency, the claim shall be signed by such agency and need not be verified.

Note: Authority cited: Section 13974, Government Code. Reference: Section 13970, Government Code.

§ 648.3. Form of Claims

All claims or amendments filed with the Victim Compensation and Government Claims Board under this article shall be filed on forms, (identified as Form BC-VOC-100--APPLICATION FOR VICTIM OF CRIME COMPENSATION), provided by the Board.

Note: Authority cited: Section 13974, Government Code. Reference: Section 13952, Government Code.

§ 648.4. Disallowance

A claim for indemnification will not be allowed if the crime prevented, or the crime committed by the criminal was against the person or property of the person who prevented the crime, apprehended the criminal, or who substantially and materially assisted a peace officer for this purpose.

Note: Authority cited: Section 13974, Government Code. Reference: Section 13973, Government Code.

§ 648.5. Indemnification

The maximum amount of any claim the Victim Compensation and Government Claims Board shall approve for payment shall not exceed the amount necessary to indemnify or reimburse the claimant for:

- (a) The actual value of property damaged or destroyed, or the cost of repairing such property.
- (b) Necessary expenses incurred for hospitalization or medical treatment, loss of wages, or other necessary expenses directly related to the injury or death. If continued hospitalization or medical treatment is necessary, a partial award may be made and the claim subsequently reconsidered for the purpose of recommending an additional award.

Note: Authority cited: Section 13974, Government Code. Reference: Section 13957(a), Government Code.

§ 648.6. Issues for Hearing on Application to Indemnify Citizens Benefiting the Public

- (a) An applicant must prove all of the following:
 - (1) the nature of the crime committed by the apprehended criminal or prevented by the action of the applicant; or

- (A) the nature of the action of the applicant in rescuing a person in immediate danger of injury or death as a result of fire, drowning, or other catastrophe; and
 - (B) the circumstances involved;
- (2) the applicant's action substantially and materially contributed to:
- (A) the apprehension of a criminal;
 - (B) the prevention of a crime; or
 - (C) the rescue of a person in immediate danger of injury or death due to fire, drowning, or other catastrophe;
- (3) as a direct consequence of subdivision (a)(2), the applicant suffered:
- (A) personal injury;
 - (B) property damage; or
 - (C) death; and
- (4) the extent of the injury or damage under subdivision (a)(3) for which applicant was not compensated from any other source.

Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code. Reference: Section 13973, Government Code.

Article 5.6 Indemnification of Victims of Crime

§ 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.
- (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 profes-

sional 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 ongoing 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) previously 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 household 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 services; 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 of 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, li-

censed 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 re-

training 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 dependent 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.¹

(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.*

¹ Here crime refers to the crime that resulted in the pecuniary loss for which compensation is sought. Gov. Code, §13956(a)

§ 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 subpoena 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.*