

STATE OF CALIFORNIA  
CALIFORNIA VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD  
(CalVCB) VICTIM COMPENSATION PROGRAM REGULATIONS

**Title 2, §§ 649, ~~649.1~~, 649.3, 649.4, 649.18, ~~649.46~~, 649.49, 649.50, ~~649.51~~, 649.52,  
649.57, 649.60, ~~649.62~~**

FINAL REGULATION TEXT

**§ 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~~ California Victim Compensation Board (CalVCBP) under Government Code sections 13950 - 13974.5.

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

(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 CalVCBP 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) "Fiance" or "fiancee" 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 CalVCBP benefits means submitting the application or supplemental claim to the CalVCBP. An application or supplemental claim shall be deemed filed with the CalVCBP 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 CalVCBP.

(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. Sick leave is not required to be used as a reimbursement source; however, if a claimant elects or did elect to use sick leave, he or she shall not be eligible for income loss while that sick leave is or was used.

(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 fiance or fiancée.

(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) "CalVCBP" 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, 13962 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.

### § 649.3. 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) The total award to or on behalf of each victim or derivative victim may not exceed \$63,000.~~

~~(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 qualifying crime giving rise to the application.

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

### § 649.4. Eligibility of Felons.

(a) The CalVCBP shall accept an application or a petition for relief to file a late application from a person who has been convicted of a violent felony or is required to register as a sex offender in the same manner as for other applicants. The CalVCBP shall not refuse to accept an application because the applicant is presently incarcerated, because the applicant is required to register as a sex offender, or has been convicted of a violent felony and has not been discharged from probation or released from a correctional institution and discharged from parole, or because the applicant has not been released from a county jail or county prison and discharged from post-release community supervision.

(b)(1) The CalVCBP shall not grant assistance to a person who has been convicted of a violent felony committed on or after January 1, 1989, when the assistance is to compensate for pecuniary loss sustained after the person is was convicted of the violent felony and before the person is discharged from probation, has been released from a correctional facility and is discharged from parole, or has been released from a county jail or county prison and discharged from post-release community supervision, if any.

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

(3) The pecuniary loss for which reimbursement is barred because it was sustained after the person was required to register as a sex offender or had been convicted of a violent felony and before the person was discharged from probation, released from a correctional institution and discharged from parole, or released from a county jail or county prison and discharged from post-release community supervision will not become reimbursable if the person is no longer required to register as a sex offender or 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.

**§ 649.18. Reimbursement of Funeral/Burial Expenses.**

~~(a) All cash payments or reimbursement for expenses of the funeral/burial of the victim are limited to a maximum of \$5,000, must have been incurred as a direct result of the qualifying crime.~~

~~(a)(b) As funeral practices vary across cultures, the following traditional funeral and burial expenses or their equivalent expenses may be reimbursed up to \$5,000, 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.

(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.

~~(b)(c) The following expenses are not reimbursable by the CalVCBP: 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 CalVCBP application filed by a mortuary, cemetery or other third party service provider, the cost of any food or beverages, and the cost for renting equipment and supplies such as tables and chairs.~~

Authority cited: Sections 13920, Government Code. Reference: Section 13957(a)(9)(8)(B), 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.

**§ 649.49 Evidence of the Qualifying Crime of Sexual Assault**

(a) Factors that may be considered as evidence of a sexual assault include, but are not limited to:

(1) The perpetrator was prosecuted for the qualifying crime.

(2) A report from law enforcement concluding that a sexual assault was committed against the victim.

(3) Physical evidence or medical documentation that demonstrates an injury consistent with sexual assault such as sexual assault examination findings.

(4) A letter or other written statement from a sexual assault counselor, as defined in Section 1035.2 of the Evidence Code, licensed therapist, or mental health provider, stating that the victim is seeking services related to the allegation of sexual assault.

(5) A restraining order from a court against the perpetrator of the sexual assault.

(6) Other behavior by the victim consistent with sexual assault, as verified by a mental health provider.

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

**§ 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;

(3) the victim or derivative victim was cited or arrested by law enforcement based on events leading to the qualifying crime or

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

~~(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.~~

~~(eb)~~ 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.

~~(ec)~~ Subsection ~~(eb)~~ does shall 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, or an adult who had responsibility for the victim; or

(3) the victim died and the applicant is requesting funeral/burial expenses incurred on behalf 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.

(d) 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 contributed to the events leading to the qualifying crime.

~~(fe)~~ 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 ~~(e)~~(b).

Note: Authority cited: Sections 13920 and 13974, Government Code. Reference: Sections 13955 and 13956, Government Code.

### **§ 649.51. Participation in the Commission of a Crime for Which Compensation is Being Sought.**

~~(a) A victim or derivative victim who knowingly and willingly participated in the commission of a crime that resulted in the pecuniary loss for which compensation is being sought shall not be eligible for assistance.~~

~~(1) This subsection shall not apply if the 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 crime knowingly and willingly participated in the commission of the crime.~~

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

- ~~(1) a perpetrator;~~
- ~~(2) a co-conspirator; or~~
- ~~(3) an accomplice.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) age;

(2) physical condition;

(3) psychological or emotional condition;

(4) compelling health or personal safety factors;

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

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

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

### **§ 649.57. 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.~~

(~~ba~~) If factors listed in Government Code section 13956(a)(2) overcome the victim or derivative victim's involvement, the application will be granted and the victim or any individual who pays the victim's expenses as stated in Government Code section 13957(a)(9) shall be eligible for Program benefits.

(~~cb~~) If factors listed in Government Code section 13956(a)(2) 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 any individual who pays the victim's expenses as stated in Government Code section 13957(a)(9) shall only be eligible for medical expenses incurred on behalf of the victim on or after the date of the qualifying crime and funeral/burial expenses incurred on behalf of the victim.

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.~~

(~~ba~~) 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.

(~~cb~~) 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.

**§ 649.62. 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 any 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;~~

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

~~(3) the applicant refused to apply for other benefits potentially available to him or her from other sources besides the VCP including, but not limited to, workers' compensation, state disability insurance, Social Security benefits, and unemployment insurance.~~

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

9-30-16

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