

**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 in the Victims of Crime program under Government Code sections 13959-13969.4.

(3) "Board" means the State Board of Control.

(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) "Collateral benefits" 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, 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, Worker's Compensation and Medicare.

(C) 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.

(7) "Denial of the claim" as used in Section 13962(b) of the code and as construed for purposes of the board's hearing process means a preliminary determination and recommendation for disallowance by board 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.

(8) "Derivative victim" means the same as in Government Code section 13960(a)(2).

(9) "Direct cash payment" as used in Section 13965(a)(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.

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

(11) "File" or "filed" as it applies to an application or supplemental claim for VOC benefits means submitting the application or supplemental claim to the board or a joint powers victim witness center. An application or supplemental claim shall be deemed filed with the board 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 board or a joint powers victim witness center.

(12) "Fund" means the Restitution Fund as set forth in Government Code section 13960.1.

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

(14) "Injury" means the same as in Government Code section 13960(b).

(15) "Joint powers victim witness center" means an agency under contract with the board to process applications under Government Code section 13962(d).

(16) "Law enforcement agency" means:

(A) an agency authorized to investigate or prosecute violations of law, including but not limited to:

1. a city police department;
2. a county sheriff's department;
3. a district attorney's office;
4. the California Highway Patrol; and
5. the Office of the California Attorney General.

(B) an agency from another state that investigates or prosecutes violations of law that are comparable to agencies listed in subsection (a)(16)(A); and

(C) federal agencies that investigate or prosecute violations of law.

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

(18) "Qualifying crime" means a crime as defined in Government Code section 13960(c) 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.

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

(A) the victim's spouse;

(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 described in subsection (a)(19)(B); or

(D) the victim's fiancé 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 assistance 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) "VOC" means 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 13959.

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

(28) "Witnessed the crime" as used in Section 13960(a)(2)(D) 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.

(29) "Zero award" means a determination of eligibility for assistance that does not involve a determination concerning monetary assistance for any pecuniary loss.

#### **§ 649.1. Time for Presenting Applications.**

(a) A victim or derivative victim of a qualifying crime pursuant to Government Code section 13960 shall file the application for VOC assistance within one year of the date that the qualifying crime occurred or one year after the victim attains the age of 18 years, whichever is later.

(b) An application filed after the expiration of the period of limitations set forth in paragraph (a) of this section shall not be accepted. If: (i) The application is filed within three years of the date of the qualifying crime or three years after the victim attains the age of 18 years, whichever is later; or (ii) The application is filed on or before October 3, 1994, the applicant and his or her representative will be notified that the application has not been filed in a timely manner and that they have a right to petition the board for relief on grounds that good cause exists for the late filing as specified in Section 13961(c) of the code. Petitions for relief on such grounds shall be in the form of a written statement signed under penalty of perjury that sets forth the reasons why the applicant was unable to file his or her application within the one year period of limitations specified by Government Code section 13961(c).

(c) Upon a timely petition for relief under subsection (e), the board may either grant relief upon the recommendation of VOC staff, or the board shall schedule a hearing to determine the existence or nonexistence of good cause and shall notify the applicant and his or her representative of the time and place of the hearing.

(d) In all cases the determination by the board as to the existence or nonexistence of good cause shall constitute 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) A petition for relief from the period of limitations on grounds of good cause shall 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 shall have his or her application returned and shall be deemed to have waived any right to relief from the period of limitations.

(f) An applicant seeking relief from the period of limitations on the filing of a claim 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.

(g) For purposes of the period of limitations as stated herein, the timely filing of an application, signed and dated, including the name, address and telephone number of the applicant, and the victim if different, prior to the expiration of the period of limitations shall be sufficient to perfect an application as against the period of limitations.

(h) If the application as filed is deemed to be incomplete, it shall be returned to the applicant in accordance with the terms of Section 13962(a) of the code and the period of limitations shall be deemed suspended during the 30 days specified in that section as well as during any period pending a hearing by the board as set forth therein. If no action is taken by the applicant on the application during the 30 days as specified in the code, the application shall be deemed abandoned and the period of limitations shall again commence to run.

(i) An incomplete application returned to the applicant with notice as to the deficiency as specified in Section 13962(a) shall be deemed received by the applicant five days after it is deposited in the United States mail properly addressed and postage prepaid. Return of information sufficient to complete the application shall be deemed filed on the date postmarked by the United States Postal Service or other carrier, postage prepaid and properly addressed.

#### **§ 649.1.1. Timely Filing of Application for Derivative Victim.**

(a) The period of limitations for filing an application under section 649.1 shall be tolled when a derivative

victim is listed on an application that was timely filed under section 649.1 by or on behalf of a victim of the same qualifying crime.

(b) In order for the period of limitations for filing an application under section 649.1 to be tolled under subsection (a), the following information shall be provided about the derivative victim with the application filed by or on behalf of a victim of the same qualifying crime:

- (1) name;
- (2) date of birth;
- (3) sex;
- (4) social security number;

(A) The derivative victim's social security number is mandatory, authorized by Government Code section 13961(d)(5), and will be used for identification purposes.

(5) address; and

(6) relationship to victim or other facts that show eligibility for assistance as a derivative victim.

(c) Board staff need not review, verify, or act upon an application under Government Code section 13962 from a derivative victim whose period of limitations for an application under section 649.1 was tolled under subsection (a) until a request for monetary assistance or reimbursement is submitted by or on behalf of the derivative victim.

#### **§ 649.2. Third Party Applications.**

Under the provisions of Government Code Section 13960(a) (1) "victim" shall not include an "individual" who merely provides medical or medically related services, funeral and/or burial services, estates, or corporations. Further, the aforementioned providers, estates, or corporations shall not file claims for indemnification with the Board. All such expenses shall be paid based upon the submission of such expenses through the particular qualifying victim or his or her representative.

#### **§ 649.3. Authorized Indemnification.**

(a) 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 filed pursuant thereto.

(b) Personal Property. Except as provided for in Government Code Section 13960, the Board shall not indemnify a victim for loss of money or loss or damage to personal property sustained in the crime giving rise to the application.

(c) Rehabilitative Services. Cash payments for job retraining or similar employment-oriented services will be paid to or on behalf of the person sustaining the physical injury, or in the event of his death or continuing disability, only to or on behalf of those persons who were directly dependent on him for their major support. Persons requesting cash payment for rehabilitative services must clearly indicate the type of services or retraining contemplated, the intended provider of the services, the cost thereof, and the need for the services. The applicant must also certify, to the satisfaction of the Board, that such assistance is not available from some other tax-supported program.

#### **§ 649.7. 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 13968(c) shall be given in accordance with the written procedures developed by the agency pursuant to Section 649.8 of this article. In addition, new officers shall be advised by their superiors upon entering service of the particulars of the VOC Program. Instruction concerning the program shall be made a part of the training curriculum for all trainee officers.

#### **§ 649.8. Victims of Crime Liaison Officer.**

Each local law enforcement agency shall designate a Victims of Crime Liaison Officer. The State Board of Control 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 13968(c) and Section 649.7 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 VOC Program. 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 this program. Liaison Officers or their designees shall provide to interested persons applications supplied by the board explaining the VOC Program.

#### **§ 649.9. Complete Application.**

Applications for assistance as specified in Section 13961 of the code shall be deemed to be complete within the meaning of Section 13962(a) 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, social security number, 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 13965(a)(6) 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 and circumstances of the qualifying crime.

(5) Except in the case of a request for "zero awards," 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 shall constitute the "financial statement" as required by Section 13961 (e)(2) of the code. This statement shall 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 psychotherapy services were provided, the statement shall 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 board 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 person, the name, address and telephone number of such representative.

(8) A statement whether the victim, the victim's survivors, or the derivative victim have conunenced or

intend to conunence 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 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 13965 of the code shall provide the following information relative to each category of assistance claimed:

(1) If medical or mental health expenses are claimed to have been incurred as a direct result of the qualifying crime, an itemized statement from the professional provider for all medical or mental health expenses incurred as of the date of the application including the license number of the professional certificate issued by the State of California or other jurisdiction to the medical or mental health practitioner providing the service as well as his or her business address and telephone number. Providers of services who are authorized by law to offer such services as part of their on-going business activity, but who are not required to obtain a professional or occupational license must provide either their social security number, or their Federal Employer Identification Number.

(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.

Evidence of loss of income 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.

A statement of disability shall be signed by the medical or mental health provider and shall include information concerning the prognosis for recovery, the extent and expected duration of disability, and certification that the disability resulted directly from the qualifying crime.

(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 through the date of the application.

(4) If rehabilitative services are claimed, the applicant shall produce that evidence of need, and documentation for rehabilitation as specified in Section 649.3(c) of these regulations.

(c) A copy of the crime report or substitute reports as set forth herein evidencing the commission of the qualifying crime and setting forth the circumstances and factual events surrounding it has been received.

In order to expedite the processing of the application, applicants shall 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.

In cases in which the law enforcement agency deems it advisable to withhold a copy of the crime report from public disclosure in order to assure the security of innocent parties or the integrity of on-going criminal investigations, such agency may substitute a report that provides the facts of the qualifying crime, whether the victim or derivative victim participated in the commission of the qualifying crime, was involved in the events leading to the qualifying crime and whether the victim or derivative victim cooperated with law enforcement. In the event that no crime report was prepared, a declaration must be provided, signed under penalty of perjury by the victim or derivative victim, or in the case of a minor, by the adult having lawful supervision and custody of the minor upon information and belief, stating whether the qualifying crime was reported to a law enforcement agency, and if not, the reasons why, and providing information on all measures taken by the victim or derivative victim, or parties exercising custody and control of the victim or derivative victim to cooperate with law enforcement. In the event that no crime report was prepared the declaration shall include a narrative of the events leading up to and including the actual perpetration of the qualifying crime giving rise to the claim as well as the names of all witnesses.

#### § 649.10. Supplemental Claim Process.

(a) All supplemental claims shall be deemed complete within the meaning of Section 13962(a) of the code only if the applicant or authorized representative provides the following information:

(1) The name of the applicant, and if different the name of the victim or derivative victim.

(2) The mailing address and telephone number of the applicant, or any named representative of the applicant if such information has changed since the filing of the application.

(3) The claim or file number assigned by VOC to the application filed on behalf of the victim or derivative victim.

(4) A statement that invoices for services received which are appended to the supplemental claim are for services directly related to injuries sustained as a result of the qualifying crime and for no other reason and that such services were actually received by the victim or derivative victim.

(5) If, since the date of the application, commencement of a civil action is contemplated or has been filed, a statement whether the victim, the victim's survivors, or 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 from any other party in connection with the qualifying crime, along with the name, telephone number and address of any attorney representing the applicant, victim, or derivative victim in such civil proceedings.

(6) In the event that collateral benefits have been applied for or received since the time of filing the application, a disclosure as to these collateral benefits or assistance.

(b) In addition to the above, a request for supplemental assistance shall contain the following documentation attached to the supplemental claim:

(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 claimed, including the license number of the professional certificate issued by the State of California or other jurisdiction to the medical or mental health practitioner providing the service as well as his or her business address and telephone number. If mental health psychotherapy services were provided, a designation as to whether any counseling or psychotherapy provided was in an individual, family or group setting. Providers of services who are authorized by law to offer such services as part of their on-going business activity, but who are not required to obtain a professional or occupational license

must provide either their social security number, or their Federal Employer Identification Number.

(2) If loss of income is claimed to have occurred as a direct result of the qualifying crime and the applicant has not previously made a claim for loss of income, he or she shall produce evidence of income loss as well as a statement of disability as required by Section 649.9(b)(2) of these regulations. Where documentation of income loss has previously been submitted with the application and no change as to the level of income or earnings has occurred, no further documentation of income loss shall be required to be submitted. Where a statement of disability was previously submitted with the application, but the prognosis for recovery has changed or the term of disability is changed, a new statement of disability shall be required, to be signed by the treating medical or mental health provider. Such statement of disability shall provide that information as is required by Section 649.9(b)(2) of these regulations.

(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 as of the date of the supplemental claim and not previously submitted.

(4) If rehabilitative services are claimed, the applicant shall produce that evidence of need, and documentation for rehabilitation as specified in Section 649.3(c) of these regulations.

(c) Providers may submit the supplemental claims directly to the board in only the following two instances:

(1) When the victim or derivative victim is a minor; or

(2) When the provider certifies that they are unable to obtain the applicant's signature, they performed the services billed and the services are related to the qualifying crime.

#### § 649.11. Applications for Emergency Awards.

~~Applications for emergency awards shall be completed by the applicant or their representative and shall provide that information specified in Section 13961.1(f) of the code. Applications which fail to provide the stated information shall be deemed incomplete and shall not be accepted, but shall be returned to the applicant in accordance with the terms of Section 13962(a) of the code.~~

(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 Board shall expedite the process of verifying the application to determine if an emergency award is appropriate. Board staff 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.

This emergency regulation is effective on 2/3/03, and will expire by operation of law on June 3, 2003, unless a final regulation is filed before that date.

#### § 649.12. Incomplete Applications.

Incomplete applications for emergency awards and supplemental claims shall be returned to the applicant for completion or appeal in the same manner as an incomplete application is returned to the applicant pursuant to Section 13962(a) of the code.

#### § 649.13. Certification.

All applications and supplemental claims shall 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, by a provider or by an authorized representative.

#### § 649.14. Third Party Verification.

In all cases where VOC 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 13962(b) 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.

#### § 649.15. 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 649.9 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 649.9, the VOC shall treat the application as an application for a zero award and so notify the applicant and his or her representative. Nothing in this section shall be construed to prevent VOC from paying those claims for which documentation required by subparagraph (b) of Section 649.9 has been provided while treating the balance of any claims for which information required by that regulation has not been submitted as an application for a zero award.

#### § 649.16. Lien.

In all cases the victim or derivative victim shall execute a lien in favor of the fund, which lien shall be submitted with the application and may be utilized by the VOC to seek reimbursement in the event that subsequent civil proceedings are commenced and successfully prosecuted.

#### § 649.17. Collateral Benefits.

In the event that other collateral benefits 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 VOC or joint powers victim witness center shall take steps to obtain such explanation of benefits and the application or portion of the application governed by

such explanation of benefits shall be treated as a "zero award" until such time as the explanation of benefits is received.

#### § 649.18. Objection to Direct Payment.

The Board shall inform the victim or derivative victim of his or her right to object to direct payments by VOC to providers of services in accordance with Section 13965(a) of the code. In the event that the victim or derivative victim asserts such right the VOC shall 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. Following such an objection, direct payment shall be made to the provider only upon a demonstration of good cause as determined by the board.

#### § 649.20. Consideration of Applications.

(a) Verification of applications and supplemental claims shall take place within the average 90 days prescribed by Section 13962(b) of the code.

(b) Following the verification process, VOC 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, disallow the application or supplemental claim, or allow the application or supplemental claim in part and disallow the application or supplemental claim in part.

(c) If the VOC staff recommends that the Board allow the application or supplemental claim, the matter shall be placed on the Board's consent hearing agenda. Notice of the hearing and staff recommendation for approval shall be given.

(d) In the event that VOC staff recommends disallowance of an application or supplemental claim, the staff of VOC shall prepare a "Notice of Staff Recommended Disallowance," or in the case of approval of payment in some amount less than that for which the application or supplemental claim was made, a "Notice of Staff Recommended Partial Disallowance." Such notice shall include a statement as to why the matter is recommended for disallowance and shall be mailed to the affected applicant and his or her representative at their last known address of record as set forth on the application or most recent supplemental claim on file with the VOC, or more current notice of address change from the applicant or his or her representative. Such notice shall be mailed within the average 90 days prescribed by Section 13962(b) of the code. Every "Notice of Staff Recommended Disallowance" or "Notice of Staff Recommended Partial

Disallowance" shall contain the following statement in bold upper case type:

**"THIS STAFF RECOMMENDED DISALLOWANCE DOES NOT CONSTITUTE A FINAL ADMINISTRATIVE DETERMINATION BY THE BOARD OF CONTROL TO DENY YOUR APPLICATION OR CLAIM. IT MERELY CONSTITUTES NOTICE THAT THE STAFF OF THE BOARD FOLLOWING ITS VERIFICATION PROCESS HAS RECOMMENDED DISALLOWANCE OR PARTIAL DISALLOWANCE. THIS RECOMMENDATION IS SUBJECT TO HEARING BY THE BOARD OF CONTROL. TO PARTICIPATE IN SUCH HEARING AND TO ENSURE A FULL DISCUSSION OF ALL RELEVANT ISSUES YOU SHOULD FOLLOW THE PROCEDURES SET FORTH IN THIS NOTICE."**

(e) If the application or supplemental claim is recommended by staff for disallowance or partial disallowance, the applicant shall have 45 days from the date of such notice to request in writing, that the matter be set for hearing to contest the staff recommendation. Nothing in this section shall be construed to prevent an applicant or his or her representative from communicating with VOC staff during the period between notice of disallowance and the date of hearing in order to supply additional information. Nothing in this section shall be construed to prevent VOC staff from amending their initial recommendation where additional documentation or information provides the necessary evidence to recommend approval of an application or supplemental claim. All written requests for hearing shall be mailed or delivered to the headquarters office of the Victims of Crime Program at Sacramento, California, the address for which shall be provided on this notice. Failure to request a hearing within the stated 45 days shall result in the matter being placed on the board's consent hearing agenda with a staff recommendation for disallowance or partial disallowance. Such items may be removed from the consent agenda and made subject to a hearing only upon request by a member of the board. Board staff shall notify the applicant or his or her representative of such hearing.

(f) Upon receipt of a written request for a hearing as specified in Paragraph (e) of this section and after considering the convenience to the applicant as to location for hearing, the staff of the board shall set a hearing to consider the disputed application or supplemental claim, and shall notify the applicant or his or her representative of the hearing.

#### **§ 649.21. Requests for Reconsideration.**

Requests for reconsideration filed by applicants or their representatives in accordance with Section 13969.1 of the 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 Recommended Disallowance" or a "Notice of Staff Recommended Partial Disallowance." Requests for reconsideration shall not be granted unless the applicant produces 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.

#### **§ 649.22. Zero Awards.**

In cases where VOC determines that the application filed by the applicant merely seeks an initial determination of eligibility without reference to specific pecuniary loss, or where the applicant fails to produce evidence of pecuniary loss as required in Section 649.9(b) of these regulations, the board shall process the application as a "zero award". In such cases the VOC notice of eligibility to the applicant and his or her representative within a period of 90 days from the acceptance of a complete application shall constitute compliance with the average 90 day processing requirement as set forth in Section 13962(b) of the code. The issuance of a zero award shall not obligate the board 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.

#### **§649.23 Service Limitations for Mental Health Counseling**

##### **(a) Reimbursement for outpatient mental health**

**counseling related expenses shall be limited as follows:**

**(1) A victim who is a minor at the time of the qualifying crime may receive up to 40 sessions, except that a victim described in Government Code section 13957(a)(2)(B)(ii) may receive up to 30 sessions.**

**(2) A victim who is an adult at the time of the qualifying crime may receive up to 30 sessions.**

**(3) A derivative victim may be eligible for only one of the following, whichever provides the greatest assistance:**

**(A) A derivative victim described in Government Code section 13957(a)(2)(A)(ii) may receive up to 30 sessions.**

**(B) A derivative victim eligible to receive reimbursement for mental health counseling related expenses may receive up to 15 sessions.**

**(C) A derivative victim described in Government Code section 13957(a)(2)(A)(iii) may receive up to a total of 30 sessions for not more than two derivative victims. A**

derivative victim may receive more than 15 sessions under this subsection only if the additional sessions are necessary for the treatment of the victim.

(b) The outpatient mental health counseling related service limitations described in subsection (a) shall be deemed to be appropriate to the level of treatment medically necessary for a victim or derivative victim unless additional reimbursement is authorized by the Board.

(c) The following shall apply when determining the number of authorized sessions:

(1) An individual mental health counseling session lasting from 45 minutes to one hour and 14 minutes is one session.

(2) An individual mental health counseling session lasting from one hour and 15 minutes to one hour and 44 minutes is one and one-half session.

(3) An individual mental health counseling session lasting from one hour and 45 minutes to two hours is two sessions.

(4) One group mental health counseling session is counted as one-half of an individual mental health counseling session of the same length as the group mental health counseling session.

(5) No more than three of the sessions authorized by subsection (a) shall be permitted for meetings or discussions between the treating therapist and collateral contacts of the person being treated, including but not limited to: school counselor or teacher; religious leader; physician or other medical provider; or social worker.

(A) Additional sessions for meetings or discussions between the therapist and collateral contacts may be approved under section 649.24.

(d) A victim or derivative victim who is eligible for reimbursement for outpatient mental health counseling related expenses may receive five initial sessions.

(e) No expenses for sessions beyond the initial sessions described in subsection (d) shall be reimbursed without submission of a treatment plan and approval of additional treatment by the Board.

(1) A treatment plan shall include the following information:

(A) A description of the presenting complaint, symptoms and issues;

(B) A description of the crime for which the mental health provider is providing mental health counseling services;

(C) An evaluation on all five axes using criteria in the *Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition (DSM IV)*;

(D) An evaluation of functioning using criteria in the *Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition (DSM IV)*, including an evaluation of overall functioning, social and occupational functioning, and relational functioning, including all of the following:

(i) Global Assessment of Functioning (GAF);

(ii) Social and Occupational Functioning Assessment Scale (SOFAS); and

(iii) Global Assessment of Relational Functioning (GARF).

(E) A description of the focus of treatment, including the symptoms or cluster of symptoms.

(F) A description of the plan of treatment, including a specific description of the method by which the symptoms or diagnoses will be specifically treated.

(G) A description of the means by which the progress of treatment will be measured.

(H) An estimate of the treatment that is necessary as a direct result of the qualifying crime.

(2) The Board may require the submission of any other information required to determine whether the treatment will best aid the person and is necessary as a direct result of the qualifying crime.

(f) No expenses for sessions beyond the 15<sup>th</sup> session shall be reimbursed without submission of a treatment progress report and approval of additional treatment by the Board.

(1) A treatment progress report shall include the following information:

(A) An evaluation of the progress made toward meeting the goals of the treatment plan; and

(B) An evaluation of the factors that are hindering progress toward meeting the goals of the treatment plan.

(g) Notwithstanding subsection (a), reimbursement for outpatient mental health counseling related expenses for treatment begun and applications submitted prior to the effective date of this regulation shall be limited as follows:

(1) For purposes of this section, the transition period is defined as 30 days after the effective date of this regulation.

(2) The limitations of this section and section 649.24 shall not apply to mental health services received before or during the transition period.

(3) If mental health services received have not reached the limits described in subsection (a) by the end of the transition period, the service limitations of this section and section 649.24 shall apply to services received after the end of the transition period.

(4) If mental health services received have reached or exceeded the service limitations described in subsection (a) by the end of the transition period, the service limitations of section 649.24 shall apply to services received after the end of the transition period.

(A) Reimbursement for up to five additional sessions may be awarded for the purposes of terminating treatment or applying for additional treatment under section 649.24.

(h) This section does not authorize the payment of expenses in excess of the limits in Government Code section 13957(a)(2).

This emergency regulation is effective on 2/3/03, and will expire by operation of law on June 3, 2003, unless a final regulation is filed before that date.

#### § 649.24 Service Limitations for Additional Mental Health Counseling

(a) No expenses for sessions beyond those authorized by section 649.23 shall be reimbursed without submission of an additional treatment plan and approval of additional treatment by the Board.

(1) The additional treatment plan shall include the following information:

(A) An update on all information required by section 649.23(e)(1) or included in the treatment plan submitted under section 649.23(e).

(B) An update on all information required by section 649.23(f)(1) or included in the treatment progress note submitted under section 649.23(f).

(C) A detailed description of the factors supporting the request for reimbursement for additional treatment.

(2) The Board may require the submission of any other information required to determine whether the treatment will best aid the person and is necessary as a direct result of the qualifying crime.

(b) When determining whether a person is eligible for reimbursement for additional outpatient mental health counseling related expenses, the factor to be weighted most heavily is the circumstances of the crime as described in subsection (e).

(c) For the first request for reimbursement for additional outpatient mental health counseling related expenses, the following factors shall be considered:

(1) the circumstances of the qualifying crime as described in subsection (e);

(2) the diagnosis;

(3) the progress of treatment;

(4) the effectiveness of treatment; and

(5) the severity of functional impairment directly attributed to the qualifying crime.

(d) For any subsequent request for reimbursement for additional outpatient mental health counseling related expenses for a victim, the following factors shall be considered:

(1) any extreme circumstances of the qualifying crime as described in subsection (e);

(2) the diagnosis;

(3) the progress of treatment;

(4) the effectiveness of treatment; and

(5) the severity of functional impairment directly attributed to the qualifying crime.

(e) The following factors shall be considered when assessing the circumstances of the qualifying crime to

determine if reimbursement for additional outpatient mental health counseling related expenses shall be authorized:

(1) The qualifying crime resulted in permanent and substantial impairment to the applicant's activities of daily living.

(2) The qualifying crime resulted in permanent and substantial disfigurement.

(3) The qualifying crime resulted in injuries that permanently and severely impaired the applicant's ability to successfully engage in an occupation commensurate with his or her experience, education and training, and his or her occupation or activities immediately before the qualifying crime.

(4) The qualifying crime continued over an extended period of time.

(5) The perpetrator of the qualifying crime was a person in a position of trust or authority with the victim including, but not limited to a parent, teacher, or religious leader.

(6) Other members of the victim's immediate family were victims of the same qualifying crime.

(7) The qualifying crime destroyed the integrity of the victim's immediate family.

(A) Financial hardship resulting from the qualifying crime alone is not sufficient.

(B) Removal of the perpetrator from the victim's household alone is not sufficient.

(8) The qualifying crime resulted in pregnancy.

(9) The qualifying crime resulted in a sexually-transmitted disease with significant, long-term consequences.

(10) The qualifying crime resulted in significant public notoriety and publicity.

(11) Photographs of a minor victim were made public.

(12) The perpetrator threatened to kill the victim during the qualifying crime, or threatened to kill the victim if the victim reported the crime or participated in the investigation or prosecution of the crime.

(13) The presence of cultural factors that exacerbate and perpetuate the trauma of the qualifying crime.

(14) The qualifying crime involved a hate crime.

(f) Notwithstanding subsections (b), (c) and (d) reimbursement for additional outpatient mental health counseling related expenses may be authorized for a limited duration if:

(1) The victim or derivative victim is called to testify as a witness in any criminal proceeding related to the qualifying crime.

(2) The perpetrator is released from custody.

(3) A minor victim reaches a developmental stage or a stage of cognitive development which results in impairment as a direct result of the qualifying crime.

(g) Expenses in excess of the limits in Government Code section 13957(a)(2) shall not be reimbursed without

complying with this section and without determining that the factors listed in subsection (d) of this regulation, evaluated in their totality, indicate that dire or exceptional circumstances require more extensive treatment. This emergency regulation is effective on 2/3/03, and will expire by operation of law on June 3, 2003, unless a final regulation is filed before that date.

**§ 649.25 Audit of 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.

This emergency regulation is effective on 2/3/03, and will expire by operation of law on June 3, 2003, unless a final regulation is filed before that date.

**§ 649.71. Reimbursement Calculation.**

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.

**§ 649.72. Eligibility of Felons.**

(a) The Board 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 [sic] a correctional institution and discharged from parole shall be reason for the Board to refuse to accept an application.

(b)(1) The Board 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 Board 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 occurring after conviction and before discharge from probation or release from [sic] a

correctional facility and discharge from parole, 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."

**§ 650.1. Effective Date of Substantive Changes.**

(a) Unless otherwise required by law, a substantive change to eligibility shall be effective for applications resulting from a qualifying crime that occurred on or after the effective date of the substantive change.

(b) An effective date or date of limitation included in the express provisions of a regulation section shall apply if there is any conflict or inconsistency with this section.

**§ 651.1. 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.

**§ 651.2. Victim or Derivative Victim Election.**

A person shall not be eligible as both a victim and a derivative victim for the same qualifying crime.

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

(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 sibling if the person:

- (1) 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.
- (c) 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) residence in the same household for at least 6 months;
- (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.

(d) In order to be found to have a relationship with a victim that is substantially similar to that of a spouse under subsection (c), neither party to the relationship shall have a relationship that is substantially similar to that of a spouse with any other person.

(e) 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).

(f) For the purpose of qualifying as a derivative victim under Government Code section 13960(a)(2)(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.

#### **§ 651.4. 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.

#### **§ 651.5. Eligibility of Felons.**

(a) The fact that a victim is disqualified from receiving assistance under section 649.72(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 649.72(b) shall not affect the eligibility of a victim of the same qualifying crime who is otherwise eligible for assistance.

#### **§ 652.1. 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.

#### **§ 652.2. 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.

#### **§ 653.1. Date of Qualifying Crime.**

The date of a qualifying crime that is comprised of a series of acts under section 653.3 is the date on which the last act occurred prior to the date of the application.

#### **§ 653.2. Qualifying Crime Occurring Outside California.**

(a) A California resident who is a victim of a qualifying crime outside California shall first apply 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.
- (c) This section shall not apply if the qualifying crime occurred both inside and outside California.

### **§ 653.3. 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.

### **§ 653.4. Proof of the Qualifying Crime.**

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

### **§ 653.5. 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.

### **§ 653.6. 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.

### **§ 654.1. Vehicle-Related Qualifying Crime.**

- (a) No act involving the operation of a motor vehicle, aircraft, or water vehicle constitutes a qualifying crime except as provided in subsection (b).
- (b) Notwithstanding subsection (a), the following shall constitute qualifying crimes:
  - (1) injury or death intentionally inflicted through the use of:
    - (A) a motor vehicle;
    - (B) an aircraft; or
    - (C) a water vehicle.
  - (2) injury or death caused by a driver in violation of Vehicle Code section 20001 [Hit and run];
  - (3) injury or death by a person who is under the influence of an alcoholic beverage or drug;
  - (4) injury or death by a driver of a motor vehicle while fleeing the scene of a crime in which the driver knowingly or willingly participated;
  - (5) murder [Penal Code section 187] when a motor vehicle, aircraft or water vehicle is the instrumentality of the murder;
  - (6) gross vehicular manslaughter while intoxicated [Penal Code section 191.5];

(7) injury or death caused by a driver in violation of Penal Code section 192(c) [Vehicular manslaughter];

(8) causing bodily injury while driving under the influence of alcohol or drugs [Vehicle Code section 23153];

(9) injury or death caused by a driver in violation of Penal Code section 192.5 [Vehicular manslaughter in a vessel].

#### **§ 654.2. 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.

#### **§ 654.3. Presumption of Physical Injury in a Child Abduction Qualifying Crime.**

The presumption of physical injury under Government Code sections 13960(b)(1) and (2) for violations of Penal Code sections 278 or 278.5 requires that the deprivation of custody continue for at least 30 consecutive days.

#### **§ 654.4. 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).

#### **§ 654.5. 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.

**§ 654.6. 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.

**§ 655.1. Participation in the Qualifying Crime.**

(a) A victim or derivative victim who knowingly and willingly participated in the commission of the qualifying 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 the qualifying crime.

(c) A victim or derivative victim knowingly and willingly participated in the commission of the qualifying 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 the qualifying crime.

**§ 656.1. 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.

**§ 656.2. 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).

**§ 656.3. 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).

**§ 656.4. 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.

**§ 656.5. 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 266 i.

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

**§ 656.6. Involvement in a Vehicle-Related Qualifying Crime.**

(a) A victim or derivative victim who was the driver of a vehicle 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; or

(2) the victim or derivative victim was driving while under the influence of drugs.

(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 655.1.

(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) shall not apply if:

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

(2) the victim is between 14 and 17 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 between 14 and 17 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 contributed to the events leading to the qualifying crime.

(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).

**§ 656.7. Self Defense.**

A victim or derivative victim shall not be found to be involved in the events leading to the qualifying crime if

the sole involvement of the victim or derivative victim was in self-defense.

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

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

(a) 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;

(b) 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;

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

**§ 657.1. 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 conviction 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 shall not be 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.

(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 shall not be 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 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, "conviction" shall include the imposition of restitution.

#### **§ 657.2. 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 657.1 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).

**§ 657.3. Failure to Cooperate with Board or Staff.**

(a) An applicant shall cooperate with the Board and its staff, and the staff of a joint powers victim witness center in the verification of all information necessary to determine eligibility.

(b) An application may be denied for an applicant's failure to comply with subsection (a).

(c) An applicant may be found to have failed to cooperate under subsection (a) if both of the following are present:

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