

CALIFORNIA VICTIM COMPENSATION BOARD

TEXT OF REGULATIONS

PROPOSED AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS

TITLE 2. ADMINISTRATION, DIVISION 2. FINANCIAL OPERATIONS

CHAPTER 1. CALIFORNIA VICTIM COMPENSATION BOARD

ARTICLE 2.5 GENERAL HEARING PROCEDURES

SECTIONS 615.2, 617.1, 617.4, 617.5, 617.6, 617.7, 617.8, 617.9, 619.4 & 619.5

ARTICLE 5.2 HEARINGS FOR INDEMNIFICATION OF CITIZENS BENEFITTING THE PUBLIC AND INDEMNIFICATION OF VICTIMS OF CRIME

SECTIONS 647.3, 647.4, 647.20, 647.20.1, 647.21, 647.22, 647.25, 647.26, 647.30 & 647.31

ARTICLE 5.6. INDEMNIFICATION OF VICTIMS OF CRIME

SECTIONS 649, 649.8, 649.32, 649.33, 649.41 & 649.48

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§ 615.2. Definitions.

(a) As used in this article:

- (1) "Applicant" means a person submitting an application as defined in subsection (a)(2);
- (2) "Application" means the following:
 - (A) an application for assistance or a supplemental claim in the Victims of Crime program under Government Code sections ~~13959-13969.4~~ 13950-13966;
 - (B) a claim for indemnification by persons benefiting the public under Government Code sections 13970-13974.1; or
 - (C) a claim for compensation for erroneously-convicted felons under Penal Code sections 4900-4906.
- (3) ~~"Bid protest" means a challenge to an award of a contract under Public Contract Code section 10306 or 12102, subdivision (h). "Attorney" means an active member of the California State Bar;~~
- (4) ~~"Claimant" means a person submitting an application or on whose behalf an application was submitted;~~
- (5) ~~"Final decision" means the last decision rendered by the Board before any action for judicial review may be instituted;~~
- (6) ~~"Hearing" means an evidentiary proceeding for the determination of facts upon which the ~~b~~Board makes its decision;~~
- (7) ~~"Hearing officer" means a person appointed by the Executive Officer under section 615.10 to preside at a hearing;~~
- (8) ~~"Informal hearing" means an informal proceeding in the nature of a conference during which the parties have an opportunity to be heard.~~
The following are informal hearings:
 - (A) ~~Any hearing over which the board presides; and~~
 - (B) ~~any hearing limited to submission of written materials; and Any hearing in which cross examination is not permitted.~~
 - (C) ~~any hearing in which cross examination is not permitted;~~
- (9) ~~"May" means the action or conduct is permissive;~~
- (10) ~~"Mail delivery service" means a mail delivery company or organization other than the United States Postal Service;~~
- (11) ~~"Party" means a person or their representative who has applied for compensation or reimbursement who is or entity permitted by the ~~b~~Board's regulations to participate in a hearing; and~~
- (12) ~~"Shall" means the action or conduct is mandatory. "Preponderance of the evidence" means evidence that is more likely true than not true;~~
- (13) ~~"Proposed decision" means a written decision containing the factual and legal bases for the hearing officer's recommendation that is submitted to the Board;~~
- (14) ~~"Representative" means an attorney or non-attorney who is authorized to represent an applicant in any proceeding before the Board;~~
- (15) ~~"Shall" means the action or conduct is mandatory;~~

- (15) "Subsequent application" means an application for a separate and unrelated crime that occurs after the initial application and is not a part of a series of related acts considered to be one crime; and
- (16) "Supplemental claim" means a bill or expense submitted in connection with a previously submitted application for assistance from the Board in the Victims of Crime program under Government Code sections 13950-13966.

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

Reference: Sections ~~11405.20, 11445.10(b)(2), 13959, 13968(a), 13973~~ and 13974, Government Code; and Section ~~4906~~ 4903, Penal Code.

§ 617.1. Public Hearing.

(a) Hearings shall be open to public observation, unless otherwise provided by law. This section applies to hearings held pursuant to Penal Code section 4900, et seq.

(b) A hearing conducted by telephone, television, or other electronic means as provided in section 617.4 complies with subdivision (a) of this section if: This section does not apply to hearings conducted pursuant to Government Code sections 13950-13966 or 13970-13974.1, except an applicant challenging a decision on an application filed pursuant to Government Code sections 13950-13966 may request that the hearing be open to the public, as provided in section 647.33, subdivision (a).

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

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

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

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

(c) This section shall not apply to any prehearing conference or settlement conference. All hearings shall be open to public observation unless otherwise provided by law.

(d) A hearing complies with subdivision (c) of this section if members of the public can observe the hearing at the time it is conducted or inspect the hearing record. A member of the public's request to inspect the hearing record shall be in writing and is governed by the provisions of the Public Records Act, Government Code sections 7920.000 et seq.

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

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

Reference: Sections ~~11425.10(a)(3)~~ and ~~11425.20~~ 13959 and 13973, Government Code; and Section 4903, Penal Code.

§ 617.4. Hearing by Electronic Means.

- (a) The ~~b~~Board or hearing officer may conduct all or part of a hearing by telephone, video conference, ~~television~~, or other simultaneous electronic means if each participant:
 - (1) has an opportunity to participate;
 - (2) can hear the entire hearing while it is taking place; and
 - (3) ~~may~~ can observe exhibits.
 - (A) ~~This requirement shall be satisfied if each participant has an opportunity prior to the hearing to see each exhibit to be used during a hearing conducted by electronic means.~~
- (b) For purposes of this section, a participant in a hearing includes:
 - (1) a party;
 - (2) a party's representative; and
 - (3) a witness whose testimony will be provided by telephone, video conference, ~~television~~, or other simultaneous electronic means.
- (c) No part of a hearing shall be conducted by telephone, video conference, ~~television~~ or other simultaneous electronic means if a party objects to it.
- (d) ~~The party that requested that all or part of a hearing be conducted by electronic means may be responsible for providing, operating, and paying for all equipment needed to comply with subdivision (a). All parties are responsible for their own costs if the hearing is conducted by electronic means.~~
 - (1) ~~The party shall consult with the board, hearing officer, or Executive Officer to arrange for the equipment to be set up and operated.~~
- (e) ~~The party that requested that all or part of a hearing be conducted by electronic means may be responsible for providing, operating, and paying for all equipment needed to comply with subdivision (a). The party shall consult with the Board, hearing officer, or Executive Officer to arrange for the equipment to be set up and operated.~~

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

Reference: Sections 11440.30 13959 and 13973, Government Code; and 4903, Penal Code.

(Repeal)

§ 617.5. Informal Hearing

- (a) A party may object to having an informal hearing in writing within five days of receiving the hearing notice.
- (b) The Executive Officer or hearing officer shall rule on an objection to an informal hearing before evidence is taken at a hearing.
- (c) An objection to an informal hearing shall include:
 - (1) the specific facts and law upon which the objection is based; and
 - (2) specific facts and law relevant to the factors contained in subsection (f).
- (d) An objection to an informal hearing that is limited to written materials shall include the following, to the extent relevant to the basis for the objection, or as required by the Executive Officer or hearing officer:
 - (1) the identity of the witnesses that the party wishes to present;
 - (2) a summary of the testimony that is anticipated from each witness; and
 - (3) the issues to which each witness will testify.
- (e) An objection to an informal hearing that requests an opportunity to cross examine witnesses shall identify:
 - (1) the witnesses that the party wishes to cross examine; and
 - (2) the issues that the party wishes to explore during cross examination of each witness.
- (f) If confidential facts or sources are relevant to the information required under subsections (d) or (e), a party shall:
 - (1) state that confidential facts or sources are involved; and
 - (2) provide information that can be given without disclosing the confidential facts or sources.
- (g) The Executive Officer or hearing officer shall consider the following factors when ruling on an objection to an informal hearing:
 - (1) complexity of legal or factual issues;
 - (2) necessity to evaluate credibility of witnesses for a proper determination of issues;
 - (3) parties' representation by legal counsel;
 - (4) necessity of witnesses being subject to cross examination for the proper determination of issues; and
 - (5) any other factor likely to affect a just and proper determination of issues.
- (h) If the objection to an informal hearing is sustained, the Executive Officer or hearing officer may permit:
 - (1) testimony from parties;

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

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

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

~~Reference: Sections 11445.20(c), 11445.30, 11445.40, 11445.50, 11445.60 and 11470.10, Government Code; and Sections 10306 and 12102(h), Public Contract Code.~~

(Repeal)

§ 617.6. Presentation Limited to Written Materials

- ~~(a) If the board, Executive Officer, or hearing officer determine that only written evidence or argument shall be permitted as provided by these regulations, all parties shall receive a reasonable opportunity to submit written materials to the board or hearing officer.~~
- ~~(b) Written materials may include:~~
 - ~~(1) a statement of legal and factual issues;~~
 - ~~(2) supporting documentation; and~~
 - ~~(3) legal and factual arguments supporting the party's contentions.~~
- ~~(c) The board or hearing officer may request additional documentation or legal arguments from the parties if necessary in the board's or hearing officer's discretion.~~

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

~~Reference: Sections 11425.10(a)(1), 11445.10, 11445.20(c), 11445.40, 11445.50, 13963 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.~~

§ 617.7. Presentation of Oral Evidence.

- (a) Oral evidence shall be taken under oath or affirmation in all hearings, except an informal hearing.
- (b) Oral evidence may be taken under oath or affirmation in an informal hearing. An oath or affirmation may be administered by:
 - (1) A member of the Board;
 - (2) The hearing officer; and
 - (3) A staff member of the Board, as directed by the Board.
- (c) An oath or affirmation may be administered by: If oral evidence is permitted, each party has the following rights:
 - (1) a member of the board; To examine witnesses called by the party;
 - (2) the hearing officer; To introduce exhibits into the hearing record; and
 - (3) the hearing reporter; To rebut evidence.
 - (4) a staff member of the board, as directed by the board.
- (d) If oral evidence is permitted, each party has the following rights: The Board or hearing officer may question any party or witness.
 - (1) to examine witnesses called by the party;
 - (2) to introduce exhibits into the hearing record; and
 - (3) to rebut evidence.
- (e) The board or hearing officer may question any party or witness. A party shall not be permitted to cross examine witnesses unless provided by regulation, or permitted at the discretion of the Board, Executive Officer, or hearing officer.
 - (1) Cross examination of a witness may be permitted if it is necessary for a proper determination of the matter.
 - (2) In order to determine whether cross examination is necessary, the Board, Executive Officer, or hearing officer may require a party to identify the issues that would be explored in cross-examination.
 - (A) A party may be required to state that confidential facts or sources would be involved in the issues to be explored in cross examination but may not be required to disclose the confidential facts or sources.
 - (3) If cross examination is permitted, a witness may be cross-examined on any relevant matter even though the matter was not covered during the direct examination.
- (f) A party shall not be permitted to cross examine witnesses unless provided by regulation, or permitted by the discretion of the board, Executive Officer, or hearing officer. A party appearing at a hearing shall have the witnesses and evidence present and be ready to proceed when the matter is called.

- (1) ~~Cross examination of a witness may be permitted if it is necessary for a proper determination of the matter.~~
- (2) ~~In order to determine whether cross examination is necessary, the board, Executive Officer, or hearing officer may require a party to identify the issues that would be explored in cross examination.~~
 - (A) ~~A party may be required to state that confidential facts or sources would be involved in the issues to be explored in cross examination, but may not be required to disclose the confidential facts or sources.~~
- (3) ~~If cross examination is permitted, a witness may be cross examined on any relevant matter even though the matter was not covered during the direct examination.~~

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

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

Reference: Sections ~~11425.10(a)(1), 11445.10, 11445.20(c), 11445.30, 11445.40, 11445.50, 11445.60, 13908, 13910, 13911, 13963 13959~~ and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.

§ 617.8. Official Notice.

- (a) The ~~b~~Board or hearing officer shall take official notice of those matters which must be judicially noticed by a court under Evidence Code section 451.
- (b) The ~~b~~Board or hearing officer may take official notice of the policies adopted by the Board and those matters which may be judicially noticed by a court under Evidence Code section 452.
- (c) Evidence Code sections 455 and 459, subdivisions (c) and (d) shall not apply.

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

Reference: Sections ~~11425.10(a)(1), 11425.50(c), 13963~~ 13959 and 13973, Government Code; Section 4903, Penal Code; and ~~Sections 10306 and 12102(h), Public Contract Code.~~

§ 617.9. Failure to Appear or Proceed.

The failure of a party to appear at a hearing, or to proceed with a hearing, shall constitute a withdrawal of the action or request for hearing, and the hearing officer will issue a decision based on the written record, unless the hearing officer finds good cause to grant an extension of time for submission of documents or a continuance of the hearing ~~has been granted~~.

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

Reference: Sections ~~13963, 13959~~ and 13973, Government Code; Section 4903, Penal Code; and ~~Sections 10306 and 12102(h), Public Contract Code~~.

§ 619.4. Notice and Public Comment on Proposed Decision.

- (a) Copies of the proposed decision and notice of the board meeting at which consideration of the proposed decision is scheduled shall be mailed or delivered to all parties. This section applies to hearings held pursuant to Penal Code section 4900, et seq.
- (b) A party may submit written argument concerning whether or not the board should adopt the proposed decision. This section does not apply to hearings conducted pursuant to Government Code sections 13950-13966 or 13970-13974.1.
 - (1) A written argument shall not exceed ten pages, including any attachments.
- (c) The Executive Officer may establish a schedule for the submission of written argument concerning the proposed decision. Copies of the proposed decision and notice of the Board meeting at which the proposed decision will be considered shall be mailed or delivered to all parties.
- (d) Written argument concerning the proposed decision may address the following issues, or any issue identified by the Executive Officer: The Executive Officer may establish a schedule for the submission of written argument concerning the proposed decision.
 - (1) are the facts stated in the proposed decision supported by the evidence in the hearing record?
 - (2) does the proposed decision contain an accurate statement of the applicable law?
 - (3) does the proposed decision correctly apply the applicable law?
 - (4) is there additional evidence that the board should consider?
 - (5) if the board should consider additional evidence, why was it not presented at the hearing?
 - (6) if the board rejects the proposed decision, what further actions should the board take to resolve the matter?
- (e) Written argument concerning the proposed decision may address the following issues, or any issue identified by the Executive Officer:
 - (1) Are the facts stated in the proposed decision supported by the evidence in the hearing record?
 - (2) Does the proposed decision contain an accurate statement of the applicable law?
 - (3) Does the proposed decision correctly apply the applicable law?
 - (4) Is there additional evidence that the Board should consider?
 - (5) If the Board should consider additional evidence, why was it not presented at the hearing?
 - (6) If the Board rejects the proposed decision, what further actions should the Board take to resolve the matter?

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

Reference: ~~Section 11125.7, Government Code~~ Sections 13908, 13959 and 13973, Government Code; and 4903, Penal Code.

§ 619.5. Action on Proposed Decision by Board.

- (a) The Executive Officer shall schedule consideration of a hearing officer's proposed decision on the agenda of a ~~b~~Board meeting.
- (b) ~~The board may take any of the following actions concerning the proposed decision: The Board shall deliberate in a closed session on the proposed decisions relating to any application submitted pursuant to Government Code sections 13950-13966 or 13970-13974.1.~~
 - (1) ~~adopt the proposed decision in whole or in part;~~
 - (2) ~~reject the proposed decision in whole or in part; or~~
 - (3) ~~defer decision and request the hearing officer to address specific issues or provide additional information.~~
- (c) ~~If the board rejects the proposed decision in whole or in part, it may take any of the following actions: The Board may take any of the following actions concerning the proposed decision:~~
 - (1) ~~decide the case itself after reviewing the record, including a transcript of the hearing; Adopt the proposed decision in whole or in part;~~
 - (2) ~~decide the case itself based upon a statement of facts agreed to by the parties; Reject the proposed decision in whole or in part; or~~
 - (3) ~~decide the case itself by conducting a hearing to take additional evidence or argument; Defer decision and request the hearing officer to address specific issues or provide additional information.~~
 - (4) ~~order the hearing officer to take additional evidence or argument; or~~
 - (5) ~~order the hearing officer to address specific issues in the proposed decision.~~
- (d) ~~If the ~~b~~Board rejects the proposed decision in whole or in part, and orders a hearing officer to take additional evidence under subsection (c)(4), or respond to specific issues under subsection (c)(5), the hearing officer: it may take any of the following actions:~~
 - (1) ~~may take additional evidence as directed by the board or as necessary in the hearing officer's discretion; and Decide the case itself after reviewing the record, including a transcript of the hearing;~~
 - (2) ~~shall prepare a proposed decision as required by section 619.3. Decide the case itself based upon a statement of facts agreed to by the parties;~~
 - (3) ~~Decide the case itself by conducting a hearing to take additional evidence or argument;~~
 - (4) ~~Order the hearing officer to take additional evidence or argument; or~~
 - (5) ~~Order the hearing officer to address specific issues in the proposed decision.~~
- (e) ~~If the board remands the matter to a hearing officer under subsection (c)(4) or (c)(5), it shall be returned to the hearing officer who prepared the proposed decision, if practicable. If the Board rejects the proposed decision in whole or in~~

part and orders a hearing officer to take additional evidence under subsection (d)(4), or respond to specific issues under subsection (d)(5), the hearing officer:

- (1) If the hearing officer who prepared the proposed decision is not reasonably available, the Executive Officer may assign it to another hearing officer. May take additional evidence as directed by the Board or as necessary in the hearing officer's discretion; and
- (2) If the matter is assigned to another hearing officer, the new hearing officer shall review the entire record, including a transcript, before taking additional evidence. Shall prepare a proposed decision as required by section 619.3.

(f) If the Board remands the matter to a hearing officer under subsection (d)(4) or (d)(5), it shall be returned to the hearing officer who prepared the proposed decision, if practicable.

- (1) If the hearing officer who prepared the proposed decision is not reasonably available, the Executive Officer may assign it to another hearing officer.
- (2) If the matter is assigned to another hearing officer, the new hearing officer shall review the entire record, including a transcript, before taking additional evidence.

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

Reference: Sections ~~11440.10, 13963, 13908 and 13973, Government Code; Section 4903, Penal Code; and Sections 10306 and 12102(h), Public Contract Code.~~ 13908, 13959 and 13973, Government Code; and 4903, Penal Code.

(Repeal)

§ 647.3. Definitions

(a) As used in this article:

- (1) "Attorney" shall mean an active member of the California Bar; and
- (2) "Applicant" means a person submitting an application as defined in subsection (a)(3);
- (3) "Application" means the following:
 - (A) an application for assistance or a supplemental claim to the Victim Compensation Program under Government Code sections 13950-13966;
 - (B) an application for assistance as a minor witness under Government Code section 13957(a)(2)(B)(iii); or
 - (C) an application for indemnification by persons benefiting the public under Government Code sections 13970-13974.1.
- (4) "Hearing" means an evidentiary proceeding for the determination of facts upon which the Board makes its decision;
- (5) "Hearing officer" means a person appointed by the Executive Officer to preside at a hearing;
- (6) "Shall" means the action or conduct is mandatory.

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

Reference: Sections 13952(d), 13957.7(g), 13959 and 13973, Government Code.

(Repeal)

§ 647.4. Consideration of Applications and Supplemental Claims

- (a) Following the verification process, VCP staff shall make a recommendation to the Board regarding the application or supplemental claim. Staff may recommend that the Board allow the application or supplemental claim, deny the application or supplemental claim, or allow the application or supplemental claim in part and deny the application or supplemental claim in part.
- (b) In the event that VCP staff recommends denial of an application or supplemental claim in whole or in part, the staff of VCP shall prepare a notice of staff recommendation. Such notice shall include a statement as to why the matter is recommended for denial and shall be mailed to the affected applicant and his or her representative at their last known address of record. The notice shall inform the applicant and his or her representative of the right to a VCP hearing and how to request a hearing.
- (c) If the VCP staff recommends denial of an application or supplemental claim in whole or in part, the applicant has 45 calendar days from the date of the mailing of the notice of the staff recommendation to request in writing that the matter be set for hearing to contest the staff recommendation. All written requests for hearing shall be mailed or delivered to the headquarters office of the VCP in Sacramento, California, the address for which shall be provided on this notice.
- (d) Nothing in this section shall be construed to prevent an applicant or his or her representative from communicating with VCP staff during the period between notice of the staff recommendation and the date of hearing in order to supply additional information. Nothing in this section shall be construed to prevent VCP staff from amending the initial recommendation where additional documentation or information provides the necessary evidence to recommend approval of an application or supplemental claim.

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

Reference: Sections 13956, 13958 and 13959, Government Code.

§ 647.20. Right to Hearing Appeal.

(a) An applicant may request a hearing to contest any of the following actions: After an application or supplemental claim is verified, Board staff shall recommend the application or supplemental claim be allowed or denied in whole or in part.

- (1) a staff recommendation that the Board deny an application because there is not good cause for the late filing of an application;
- (2) a staff recommendation that the Board deny, in whole or in part, an application or supplemental claim; and
- (3) a staff determination that an applicant should reimburse the Program for an overpayment of benefits.

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

- (1) A staff recommendation that the Board deny an application because there is not good cause for the late filing of an application;
- (2) A staff recommendation that the Board deny, in whole or in part, an application or supplemental claim; and
- (3) A staff assessment that a recipient of any overpayment should reimburse the Board.

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

(d) When the applicant has the right to appeal a staff recommendation or assessment, the Board staff shall provide notice of the recommendation or assessment to the applicant, the applicant's representative, or a recipient of an overpayment.

- (1) Notice of the recommendation or assessment and the applicant's right to appeal shall be sent to the applicant or the applicant's representative using the last address provided by the applicant.
- (2) To appeal the recommendation or assessment, the applicant or their representative must submit the appeal to the Board in writing within 45 calendar days of the date on the notice.

(e) If a party fails to appeal, the staff recommendation or assessment will become a final decision.

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

(Repeal)

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

- (a) ~~The Executive Officer or Hearing Officer may limit a hearing to the written record if the request for a hearing fails to state a basis upon which the applicant may be granted relief.~~
- (b) ~~Prior to making a determination that the hearing will be limited to the written record, the applicant shall be:~~
 - (1) ~~notified that the request fails to state a basis upon which the applicant may be granted relief; and~~
 - (2) ~~given thirty (30) calendar days to submit written materials that either refute the reason for the denial, or show that there is a basis upon which relief may be granted.~~
- (c) ~~If applicant fails within thirty (30) calendar days to show that there is a basis upon which relief may be granted, the Executive Officer or Hearing Officer shall write a proposed decision based upon the written record.~~

~~Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.~~

~~Reference: Sections 13959 and 13973, Government Code.~~

§ 647.21. Notice of Hearing Request for Hearing; Notice of Hearing on Appeal.

(a) The Board shall send a notice to the applicant and, if applicable, to the applicant's representative of the following: If an applicant or representative timely appeals a staff recommendation or determination, as stated in section 647.20, the Board will assign a hearing officer to review the application and appeal.

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

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

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

(b) A notice of hearing shall be sent at least 20 calendar days before the start of the hearing. After the appeal is reviewed, Board staff shall send the applicant or the applicant's representative a notice containing the following:

(1) The factual and legal bases for the hearing officer's recommendation;

(2) Notice of the applicant's right to a hearing; and

(3) Instructions on how to request a hearing.

(c) To obtain a hearing, the applicant or representative must request a hearing, in writing, within 20 calendar days of the date on the notice of the hearing officer's recommendation. An applicant or representative who requests a hearing may request to be physically present, or request to appear by telephone or video conference.

(d) The applicant or representative may submit additional evidence for consideration on appeal within 30 calendar days of the date on the notice pursuant to subdivision (b) regardless of whether a hearing is requested. If the applicant or representative submits additional evidence but does not choose to have a hearing, the hearing officer will issue a proposed decision based on the evidence in the record.

(e) If a hearing is requested, the hearing officer shall set the date and time of the hearing. Notice of the date and time for the hearing will be provided to the applicant or representative.

(f) A notice of hearing shall be sent to the applicant and, if applicable, to the applicant's representative at least 20 calendar days before the start of the hearing. The notice shall contain:

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

(2) Instructions on how to attend the hearing.

(g) If the applicant does not request a hearing or submit additional evidence to be considered with the appeal, the hearing officer's recommendation, which was sent to the applicant or the representative pursuant to subdivision (b), will be submitted to the Board for adoption as a final decision.

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

(Repeal)

§ 647.22. Information about Hearing Procedures

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

~~Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.~~

~~Reference: Sections 11425.10(a)(2), 13959 and 13973, Government Code.~~

(Repeal)

§ 647.25. Hearing by Electronic Means

- (a) ~~The Board or hearing officer may conduct all or part of a hearing by telephone, videoconference, or other simultaneous electronic means if the applicant:~~
 - (1) ~~has an opportunity to participate; and~~
 - (2) ~~has an opportunity prior to the hearing to request copies of the documentation that is considered by the hearing officer.~~
- (b) ~~If an applicant objects to having a hearing conducted by telephone, videoconference or other electronic means, the Board must receive the objection no less than 10 calendar days before a scheduled hearing. If an applicant objects to having a hearing by electronic means, the hearing shall be rescheduled to take place in person in a location as convenient to the applicant as is practical and the applicant shall receive a notice stating the new date, time, and location of the hearing.~~

~~Note: Authority cited: Sections 11400.20, 13920 and 13974, Government Code.~~

~~Reference: Section 11440.30, Government Code.~~

(Renumber and Relocate to § 647.22)

§ 647.26. 647.22. Request for Continuance Request to Reschedule a Hearing.

- (a) A request for a continuance of a hearing must be in writing and submitted to the Executive Officer as soon as the need for the request is known to the party. An applicant or representative may request that a hearing be rescheduled by contacting the Board at the telephone number or email address on the notice of hearing.
- (b) A request for a continuance that is made less than ten calendar days prior to the date of the hearing may be granted only if good cause exists. An applicant's or representative's request to reschedule a hearing must be made as soon as the need for the request is known to the party and no later than five calendar days before the hearing.
- (c) A request for a continuance cannot be based on the applicant or representative's cellular phone not functioning at the time of a hearing that is being conducted by telephone. An applicant's or representative's request to reschedule a hearing shall be granted only if good cause to reschedule the hearing exists.

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

Reference: Sections 13959 and 13973, Government Code.

§ 647.30. Conduct of Hearing.

- (a) ~~The Executive Officer or hearing officer shall determine whether the hearing shall:~~
~~The issues to be addressed at the hearing shall be limited to those issues noticed in the hearing officer's recommendation sent to the applicant or the representative, as described in 647.21, and issues that are reasonably related to the request for a hearing. Other issues will only be discussed at the hearing officer's discretion.~~
~~(1) be based upon the written record, by electronic means, or in person; or~~
~~(2) include oral evidence taken under oath or affirmation in a hearing.~~
- (b) ~~If the hearing officer determines that oral evidence will be taken, any oral evidence shall be audio recorded. Subject to the limitations of section 647.31, when oral evidence is presented, it shall be given under oath and may be recorded.~~
- (c) ~~No additional evidence or argument shall be considered as a part of the hearing after the hearing record is closed by the hearing officer. The hearing officer retains the discretion to re-open the record, if necessary. The Board must be provided with a copy of any exhibits relied on at the hearing.~~
- (d) ~~The hearing officer may terminate, postpone, reschedule, or order another manner of hearing at the request of the applicant or on the hearing officer's own motion if needed to ensure due process.~~
- (e) ~~No additional evidence or argument shall be considered as a part of the hearing after the hearing record is closed by the hearing officer. The hearing officer retains the discretion to re-open the record and request, accept or consider additional documentation or legal arguments, if necessary.~~

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

Reference: Sections ~~11445.10(a), 11445.20(e)~~, 13959 and 13973, Government Code.

§ 647.31. Evidence.

- (a) The technical rules of evidence relating to evidence and witnesses shall not apply.
- (b) The Board or hearing officer shall control the taking of testimony and evidence in any manner suited to learning the relevant facts and safeguarding the rights of the parties, including the limitation or exclusion of:
 - (1) repetitious evidence;
 - (2) irrelevant evidence;
 - (3) evidence that is tangential to the issues to be determined;
 - (4) evidence that is of limited probative value; or
 - (5) evidence that is unreliable.
- (c) The Board or hearing officer may rely on evidence that is:
 - (1) reliable; and
 - (2) the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in a civil action.
- (d) The Board or hearing officer may rely on written reports and other information received from the law enforcement agency or other governmental agency responsible for investigating the crime.
- (e) The Board or hearing officer may review and consider:
 - (1) the application for assistance;
 - (2) the report and recommendation of staff;
 - (3) evidence obtained by staff;
 - (4) evidence submitted by the applicant;
 - (5) testimony provided by the applicant; and
 - (6) testimony provided by witnesses.
- (f) ~~The Board or hearing officer may take official notice of the following:~~
 - ~~(1) the Board's written policies;~~
 - ~~(2) those matters which must be judicially noticed by a court under Evidence Code section 451;~~
 - ~~(3) those matters which may be judicially noticed by a court under Evidence Code section 452. Evidence Code sections 455 and 459, subdivisions (c) and (d) shall not apply.~~

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

Reference: Sections ~~11425.10(a)(1), 11425.50(c), 13959(e)~~ and 13973, Government Code.

§ 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 California Victim Compensation Board (CalVCB) under Government Code sections 13950-13974.5.
- (3) "Board" means the California Victim Compensation Board or 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 CalVCB 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) "Fiancé" or "fiancée" 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 CalVCB benefits means submitting the application or supplemental claim to the CalVCB. An application or supplemental claim shall be deemed filed with the CalVCB 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 CalVCB.
- (12) "Fund" means the Restitution Fund as set forth in Government Code section 13964.
- (13) "Hearing" means the same as under articles 2.5 and 5.2 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~~ 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) ~~i~~Injury to the victim;
- (B) ~~f~~Threat of injury to the victim; or
- (C) ~~f~~Ihe 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, ~~S~~ocial ~~S~~ecurity ~~I~~nsurance (~~SSDI~~), ~~S~~tate ~~d~~isability ~~i~~nsurance (~~SDI~~), workers' compensation, and Medicare.
- (C) Any salary 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.
- (E) SDI from the Employment Development Department (EDD) is not considered a reimbursement source for self-employed individuals unless they have opted into an EDD program or otherwise qualify for benefits through prior employment.

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

- (A) ~~f~~Ihe victim's spouse or registered domestic partner;
- (B) Relatives within the 4th degree of the victim or the victim's spouse as follows:
 1. ~~f~~First degree relatives include parent and child;
 2. ~~s~~Second degree relatives include grandparent, brother, sister, and grandchild;
 3. ~~f~~Third degree relatives include great-grandparent, uncle, aunt, nephew, niece, and great-grandchild; or
 4. ~~f~~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 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 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) "CalVCB" 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(~~gaf~~).

(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, 13957.2, 13957.5, 13957.7, 13958, 13959, 13962, ~~and~~ 13964, and 13966, Government Code.

§ 649.8. Emergency Awards.

- (a) An applicant may indicate on the application, ~~subsequent application, or bill~~ that he or she is applying for an emergency award.
- (b) Upon receipt of an application, ~~subsequent application, or bill~~ for an emergency award, the ~~VCPBoard~~ shall expedite the process of verifying the application, ~~subsequent application, or bill~~ to determine if an emergency award is appropriate. The ~~VCPBoard~~ shall make telephone calls and transmit documents electronically or by facsimile to obtain information necessary to evaluate an application, ~~subsequent application, or bill~~ for an emergency award. ~~A decision regarding an application, subsequent application, or bill 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, ~~and the Board has no reason to believe the applicant will be ineligible for compensation~~. Substantial hardship shall include the following: ~~means an inability to meet the immediate needs of the applicant, which may include but is not limited to an immediate need for assistance with:~~
 - (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; and or crime scene cleaning expenses without the emergency award.~~
 - (3) ~~Crime scene cleaning expenses as described in Government Code section 13957, subdivision (a)(9).~~
- (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 an emergency award is necessary to avoid substantial hardship, or 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.

(g) If an emergency award is allowed, payment shall be issued within 30 days of the date the application is received, unless the applicant consents to a delay in payment.

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

Reference: Section 13952.5, Government Code.

§ 649.32. Verification of Income or Support Loss.

(a) ~~The Board shall only pay income or support loss if the victim was employed or receiving earned income benefits at the time of the qualifying crime. The Board will not pay income or support loss if the victim, or derivative victim in the limited cases where a derivative is eligible for income loss, had only a job offer at the time of the qualifying crime but had not begun working.~~ Definitions and Applicability.

(1) The Board shall only pay income or support loss if the victim or derivative victim was receiving documented earned income as an employee or from self-employment, as described in subdivision (d), at the time the qualifying crime occurred.

(A) "Earned income" includes wages, salaries, and tips that are reflected on the victim's paystubs or tax returns, sick leave, and vacation leave.
"Earned income" does not include overtime, commissions, income derived from passive investments, retirement accounts, unemployment benefits, or disability benefits. Passive investments include gross receipts derived from royalties, rents, dividends, interest, and annuities.

(B) "Support loss" includes, but is not limited to, the victim's earned income or child support paid by the victim, or both.

(C) Income loss includes time lost from work for medical or mental health appointments that became necessary as a direct result of the qualifying crime.

(D) "Gig economy" is the economic system by which a workforce of people engage in freelance and/or independent contract work. This includes, but is not limited to, ridesharing, delivery services, on-demand labor and repair services, and the sale of crafts and personal items. A victim whose income was based on gig economy activity is considered to be self-employed.

(E) "Scope of employment" means reasonably related to the kinds of tasks that the employee was employed to perform or was reasonably foreseeable to perform in light of the employer's business or the employee's job responsibilities.

(F) The Board may pay income or support loss based on a documented job offer and acceptance, with a start date within 30 days of the qualifying crime.

(2) All reimbursements for income or support loss shall be necessary as a direct result of the qualifying crime.

(b) All cash payments or reimbursement for income or support loss shall be necessary as a direct result of the qualifying crime. Written Request for Income Loss.

(1) Requirements for Making Income Loss Request. A request for income loss must include:

(A) Date of injury;
(B) Dates of disability period for which the victim is requesting income loss;
(C) Name and contact information for the treating healthcare provider; and

(D) The legal name of the employer, the employer's contact information, and the victim's work site at the time the qualifying crime occurred. The employer's legal name and contact information should be determined from the victim's itemized wage statement or Form W-2, Wage and Tax Statement.

(E) Signature under penalty of perjury. A request for income loss that is made after the CalVCB application was submitted must be signed under penalty of perjury.

(2) Six-month Renewal Requirement. A request for income loss must be renewed every six months, except when the treating provider certifies that the disability is permanent and the victim has reached the point in the healing process when they are not expected to further improve with generally accepted medical treatment.

(3) State Disability Insurance and Social Security Disability Insurance. An employed victim who is disabled for one year or less must apply for State Disability Insurance (SDI) from the Employment Development Department (EDD). A self-employed victim is not required to apply for SDI. All victims whose disability lasts beyond one year must apply for Social Security Disability Insurance (SSDI) from the Social Security Administration (SSA). A victim must provide the Board with proof of the EDD or SSA claim and the response showing approval or denial of the claim, and the amount of benefits paid or to be paid.

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

(1) General Requirements.

(A) When the victim is disabled as a direct result of the qualifying crime and unable to work, either short-term or long-term, the Board must receive a disability statement that meets all of the following criteria:

(i) Signed by a licensed medical or mental health provider who treated the victim's injuries or disabilities that were a direct result of the qualifying crime (treating provider).

(ii) Must contain sufficient information to verify that the disability period is a direct result of the crime-related injury, or the direct result of an exacerbation of a pre-existing condition and shall include the information identified in subdivision (c)(3).

(iii) A disability statement is only valid for six months, except when the treating provider certifies that the disability is permanent and the victim has reached the point in the healing process when they are not expected to further improve with generally accepted medical treatment.

(B) Requests for income loss due to time lost from work for intermittent or periodic mental health or medical appointments do not require a disability statement. Acceptable documentation for income loss due to mental health or medical appointments includes:

- (i) Evidence of time missed from work, which may include a timesheet that confirms time missed from work, check stubs showing the loss of income due to time missed, or a statement from the employer that demonstrates time was missed; and
- (ii) Documentary evidence that corresponds to the time missed from work from the medical or mental health provider showing the date and time of the appointment and that it was an appointment to treat the physical and/or emotional injuries resulting from the qualifying crime.

(2) Acceptable Providers.

- (A) Physical Injuries. For physical injuries, the disability statement must be signed by one of the following providers: medical doctor, physician assistant, nurse practitioner, osteopath, optometrist, dentist, podiatrist, or chiropractor. A chiropractor's disability statement shall only be accepted for the period of time the chiropractor is providing treatment. Diagnosing the victim's disability must be within the scope of the treating provider's licensure.
- (B) Emotional Injuries. For emotional injuries with a disability period of up to six months, the disability statement must be signed by one of the following providers: licensed social worker, licensed marriage family therapist, licensed clinical psychologist, psychiatrist, physician assistant, or nurse practitioner. When the total disability period lasts beyond six months, any new disability statements submitted in support of a longer disability period must be signed by a licensed clinical psychologist or psychiatrist. Diagnosing the victim's disability must be within the scope of the treating provider's licensure.
- (C) Out-of-State Providers. Disability statements submitted by out-of-state health care providers are acceptable if the medical or mental health provider's licensure is comparable to the licensure of one of the authorized California medical or mental health providers as identified in subdivisions (c)(2)(A) and (c)(2)(B). Their licensure must be valid under the governing authority regulating the provider's practice in the state or country where the service is provided at the time the service was provided.

(3) Content of disability statement. The Board may accept a disability statement that is on either a CalVCB approved disability statement or a treating medical or mental health provider's letterhead. The disability statement must include the following information:

- (A) Date of injury;
- (B) Current diagnosis;
- (C) Prognosis for recovery;
- (D) Extent and expected duration of the disability;
- (E) Certification that the disability resulted directly from the qualifying crime and no other reason;
- (F) Provider's professional license number or National Provider Identifier (NPI);
- (G) The provider's contact information; and
- (H) The provider's signature under penalty of perjury.

(d) Acceptable evidence of income loss for employed individuals shall be in the form of the following: Income Loss – Verification Requirements.

(1) documentation for the tax year preceding the date of the qualifying crime or during the year of the qualifying crime from the California Franchise Tax Board (FTB), and either (2) or (3). Employed Victims and Derivative Victims.

(A) To demonstrate eligibility for income loss for employed victims and derivative victims, they must submit one of the following documents:

- (i) Wage Statements. At least one month of itemized wage statements (i.e. paystubs) for the pay periods immediately preceding the disability period; or
- (ii) Employer Payroll Records. At least one month of employer payroll records for the pay periods immediately preceding the disability period; or
- (iii) Bank Records. At least one month of bank records evidencing deposits from earned income for the month immediately preceding the disability period. The deposit must reflect that it came from the victim's employer.

(B) CalVCB's Verification Requirements. Following receipt of a Disability Statement and one of the three documents identified in subdivision (d)(1)(A), CalVCB staff must obtain at least one of the following to verify income loss before income loss may be paid:

- (i) Tax Returns. Tax returns for the tax year preceding the date the qualifying crime occurred or the tax year the qualifying crime occurred. If tax returns are used as a verification source, they must come directly from the appropriate jurisdiction's taxing authority. If CalVCB cannot obtain tax returns from the appropriate jurisdiction's taxing authority, the Board may accept tax returns directly from the victim or derivative victim as long as they provide evidence they filed the tax return. Acceptable evidence may consist of a receipt from a tax preparer, documentation showing that the victim or derivative victim received a refund or made a payment that matches the amount reflected on the tax return, or copies of receipts, cashed checks, or money orders in the amount indicated on the tax return.
- (ii) EDD Employment Documentation. Employment documentation from the EDD reflecting the victim's employment during the tax year preceding the date the qualifying crime occurred or the tax year the qualifying crime occurred.
- (iii) Employer Verification. A statement under penalty of perjury from the employer providing all of the following information:
 - (I) Acknowledgement that the victim or derivative victim was employed by the employer;
 - (II) The dates of employment;
 - (III) The time missed from work as a direct result of the qualifying crime;

(IV) The rate of pay; and

(V) All paid leave (sick leave, vacation time, annual leave, or personal time off) utilized as a direct result of the qualifying crime.

(2) Verification through the Work Number, or similar vendor, if the employer contracts with a vendor for employment verification, or Self-Employed Victims and Derivative Victims.

(A) To verify eligibility for income loss for self-employed victims and derivative victims, the Board must receive:

(i) Tax Returns. Tax returns for the tax year preceding the date the qualifying crime occurred or the tax year the qualifying crime occurred. If tax returns are used as a verification source, they must come directly from the appropriate jurisdiction's taxing authority. If CalVCB cannot obtain tax returns from the appropriate jurisdiction's taxing authority, the Board may accept tax returns directly from the victim or derivative victim as long as they provide evidence they filed the tax return. Acceptable evidence may consist of a receipt from a tax preparer, documentation showing that the victim or derivative victim received a refund or made a payment that matches the amount reflected on the tax return, or copies of receipts, cashed checks, or money orders in the amount indicated on the tax return.

(B) Calculations Based on Annual Net Profit. To determine the amount of income loss for self-employed individuals, the Board shall calculate their income based on their annual net profit from their business. The Board shall not calculate income loss based on the annual gross income from their business. (If using IRS tax documentation, the net annual income is found on Line 31 of form Schedule C: Profit or Loss from Business.)

(3) a statement under penalty of perjury from the employer acknowledging that the applicant was employed, the dates of employment, the time missed from work as a direct result of the qualifying crime, the rate of pay, and all benefits the applicant received from the employer.

(e) Acceptable evidence of income loss for self-employed individuals or individuals receiving earned income benefits shall be in the form of documentation from the tax year preceding the date of the qualifying crime or during the year of the qualifying crime received from the California Franchise Tax Board (FTB). If FTB cannot provide documentation, the documentation will be required from the Social Security Administration, California Employment Development Department, the Board of Equalization, or the individual's applicable government tax agency. Support Loss – Verification Requirements.

(1) Employed Victim's Survivors or Dependents – Basis for Calculations.

(A) Support loss for survivors or dependents who lived with the victim at the time the qualifying crime occurred is based on the victim's income.

(B) Support loss for minor dependents who did not live with the victim at the time the qualifying crime occurred is based on the victim's income, child support, or both. To verify a loss of child support payments, the Board must

receive a copy of the court's current child support order and evidence demonstrating receipt of payment within the last 45 days.

(C) Support loss for adult dependents who did not live with the victim at the time the qualifying crime occurred is based on the victim's income. To verify dependency of an adult who did not live with the victim, the Board must receive tax returns demonstrating that the victim declared the adult as a dependent in either the tax year preceding the date the qualifying crime occurred or the tax year the qualifying crime occurred.

(D) To verify an employed victim's income loss, Board staff must follow the verification requirements in subdivision (d)(1).

(2) Self-Employed Victim's Survivors or Dependents – Basis for Calculations.

(A) Support loss for survivors or dependents who lived with the victim at the time the qualifying crime occurred is based on the victim's annual net income less self-employment tax.

(B) Support loss for minor dependents who did not live with the victim at the time the qualifying crime occurred is based on the victim's annual net income less self-employment tax, child support, or both. To verify a loss of child support payments, the Board must receive a copy of the court's current child support order and evidence demonstrating receipt of payment within the last 45 days.

(C) Support loss for adult dependents who did not live with the victim at the time the qualifying crime occurred is based on the victim's annual net income less self-employment tax. To verify dependency of an adult who did not live with the victim, the Board must receive tax returns demonstrating that the victim declared the adult as a dependent in either the tax year preceding the date the qualifying crime occurred or the tax year the qualifying crime occurred.

(D) To verify a self-employed victim's income loss, Board staff must follow the verification requirements in subdivision (d)(2).

(3) Derivative Victim – Eligibility when Direct Victim Received Income Loss. If the direct victim is eligible for income loss, the Board shall not pay any derivative victims for support loss during the time period that the direct victim is being fully compensated for income loss.

(f) If the qualifying crime occurred at the individual's work place, in addition to either (d) or (e), documentation from a workers' compensation carrier or Uninsured Employer's Benefits Trust Fund showing benefits paid or available and the duration of payment must be submitted. Crimes Committed While Victim was Acting in the Scope of Employment.

(1) If the qualifying crime occurred at the victim's workplace or while the victim was acting in the scope of their employment, the victim or derivative victim must submit the documentation specified in subdivisions (d)(1) or (d)(2); and documentation showing that the victim filed a claim with their employer's worker's compensation carrier or the Uninsured Employer's Benefits Trust Fund (UEBTF). If the claim is resolved, the Board must receive a copy of the

Compromise and Release, Stipulation and Award, Finding and Order, or Finding and Award.

(2) Restrictions on Income Loss.

(A) The Board shall not pay income loss for any period of time the victim receives loss of earnings through worker's compensation or the UEBTF.

(B) A victim who receives compensation for lost wages through worker's compensation or the UEBTF shall be considered fully reimbursed and ineligible for income loss from the Board.

(g) The treating medical or mental health provider may verify disability within the scope of his or her licensure. A statement of disability provided by the treating medical or mental health provider should contain sufficient information to verify the disability period that is a direct result of the qualifying crime and shall include information concerning the current diagnosis, prognosis for recovery, the extent and expected duration of the disability, and certification that the disability resulted directly from the qualifying crime. Use of Paid Leave. A victim shall not be required to utilize paid leave (sick leave, vacation time, annual leave, or personal time off) as a reimbursement source. However, if the victim has already received full or partial compensation from paid leave or uses such leave during the period for which they have requested reimbursement for income loss, those payments will be considered a reimbursement source.

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

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

(3) When a disability statement pursuant to subsection (h) is not available or does not contain sufficient information to verify the disability period, the Board may consult the following sources to verify a disability time period to ensure the disability time period is appropriate, including but not limited to:

- The Medical Disability Advisor: Workplace Guidelines for Disability Duration (most recent edition)
- WebMD

(h) The maximum income loss cannot exceed the statutory time period in Government Code section 13957.5, even if there are gaps in the victim's disability, or other reimbursement sources which partially or fully cover any income or support loss. If the documentation the Board receives is insufficient to verify income loss or support loss, Board staff may contact the victim or derivative victim's employer or treating provider for additional information.

(i) The Board shall not pay income loss beyond the statutory timeframes set forth in Government Code section 13957.5, regardless of whether there are gaps in the victim's total disability period, or whether the victim or derivative victim has been partially or fully compensated for their income or support loss through other reimbursement sources.

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

§ 649.33. Derivative Victims Eligible for Support Loss.

- (a) A derivative victim may be eligible for reimbursement of support loss if the derivative victim was legally ~~dependent~~ dependent on the victim at the time of the crime occurred.
- (b) A derivative victim who is legally dependent on the victim at the time of the crime occurred, includes but is not limited to:
 - (1) ~~a minor child who is the legal dependent of each parent or legally adoptive parent natural born or adopted child of the victim, or the minor child of a legal spouse or registered partner who is primarily living in the household.~~
 - (2) ~~each spouse or registered domestic partner is the dependent of the other spouse or registered domestic partner; or~~
 - (3) ~~a incapacitated adult that is the legal dependent of another adult, or an unborn child conceived before the date of the crime.~~
- (c) Evidence of legal dependency includes, but is not limited to, birth certificates, marriage certificates, voluntary declarations of parentage/paternity, certificates of domestic partnership, ~~medical records~~, adoption records, child support records, orders granting legal custody, ~~alimony awards, settlements or agreements for spousal support, income tax records, Social Security disability or survivor benefits, veteran's death benefits, workers' compensation disability or death benefits, or any court order finding legal dependency or ordering support.~~

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

Reference: Sections 13955, 13957(a)(4) and 13957.5(a)(4), Government Code.

§ 649.41. Acts Constituting One Qualifying Crime.

- (a) An act or series of acts by a perpetrator or perpetrators that is a continuing series of events, regardless of the time period over which the acts occur, may be considered one crime for the purpose of filing an application or eligibility.
- (b) The following shall constitute one crime for the purpose of filing an application or for eligibility:
 - (1) ~~I~~the same or similar crime is repeatedly committed against the same victim over a period of time by a single perpetrator;
 - (2) ~~I~~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) ~~e~~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.
- (f) Applicants may file only one application per crime or series of related acts. Applications submitted after the Board has already received an application from the same person that is based on the same incident or series of related acts will be denied as duplicates.

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

Reference: Section 13951, Government Code.

§ 649.48. Human Trafficking.

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

- (a) Law Enforcement Agency Endorsement issued pursuant to Section ~~236.2~~ 236.5 of the Penal Code;
- (b) ~~h~~Human trafficking caseworker as identified in Section 1038.2 of the Evidence Code, has attested by affidavit that the individual was a victim of human trafficking;
- (c) ~~e~~Certification or eligibility letter from a government agency for a ~~special visa as a refugee due to human trafficking~~ U Visa that is specifically based on a finding that the applicant was a victim of human trafficking, a T Visa, or other government benefits as a result of human trafficking; or
- (d) ~~m~~Medical records documenting injuries consistent with human trafficking. Medical or mental health records alone shall not be sufficient evidence that the qualifying crime of human trafficking occurred.

Note: Authority cited: Sections ~~13920 and 13974~~, Government Code.

Reference: Section 13956(b)(34), Government Code.