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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** AB 1563                      **Hearing Date:** May 10, 2016  
**Author:** Rodriguez  
**Version:** January 4, 2016  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** JM

**Subject:** *Victim's Compensation: Claims: Appeal*

### HISTORY

Source: Author

Prior Legislation: AB 1140 (Bonta) – Ch. 569 Stats. of 2015  
AB 1629 (Bonta) – Ch. 535 Stats. of 2014  
AB 2809 (Leno) – Ch. 587, Stats. of 2008  
AB 2869 (Leno) – Ch. 582, Stats. of 2006  
AB 2729 (Wesson) – Vetoed 2002  
AB 606 (Jackson) – Ch. 584, Stats. of 1999

Support: California Catholic Conference; Crime Victims United of California

Opposition: None known

Assembly Floor Vote: 76 - 0

### PURPOSE

*The purpose of this bill is to: 1) direct the Victims Compensation and Government Claims Board (board) to consider a request for reconsideration of the denial of a claim within six months of receipt of the appeal unless the request contains insufficient information for the board to make a decision; and 2) require the board to notify a claimant within six months that the request or appeal includes insufficient information.*

*Existing law* establishes the board to operate the California Victim's Compensation Program (CalVCP). (Gov. Code, § 13950 et. seq.)

*Existing law* provides that an application for compensation shall be filed with the board in the manner determined by the board. (Gov. Code, § 13952, subd. (a).)

*Existing law* states that, except as provided by specified sections of the Government Code, a person shall be eligible for compensation when all of the following requirements are met:

- The person from whom compensation is being sought any of the following:
  - A victim;
  - A derivative victim; or,
  - A person who is entitled to reimbursement for funeral, burial or crime scene clean-up expenses pursuant to specified sections of the Government Code.
  
- Either of the following conditions is met:
  - The crime occurred within California, whether or not the victim is a resident of California. This only applies when the board determines that there are federal funds available to the state for the compensation of crime victims; or
  - Whether or not the crime occurred within the State of California, the victim was any of the following: A California resident; a member of the military stationed in California; or a family member living with a member of the military stationed in California.
  
- If compensation is being sought for derivative victim, the derivative victim is a resident of California, or the resident of any state, who is any of the following:
  - At the time of the crimes was the parent, grandparent, sibling, spouse, child or grandchild of the victim;
  - At the time of the crime was living in the household of the victim;
  - At the time of the crime was a person who had previously lived in the house of the victim for a person of not less than two years in a relationship substantially similar to a previously listed relationship;
  - Another family member of the victim including, but not limited to, the victim's fiancé or fiancée, and who witnessed the crime; or
  - Is the primary caretaker of a minor victim, but was not the primary caretaker at the time of the crime. (Gov. Code, § 13955.)

*Existing law* authorizes the board to reimburse for pecuniary loss for specified types of losses, including medical expenses, mental-health counseling, loss of income or loss of support, and installing or increasing residential security. (Gov. Code, § 13957.)

*Existing law* requires the board to approve or deny applications, based on recommendations by the board staff, within an average of 90 calendar days and no later than 180 calendar days of acceptance by the board. (Gov. Code, § 13958, subd. (a).)

*Existing law* requires the board to grant a hearing to an applicant who contests a staff recommendation to deny compensation in whole or in part. (Gov. Code, § 13959, subd. (a).)

*Existing law* states that at such a hearing, the person seeking compensation shall have the burden of establishing, by a preponderance of the evidence, the elements for eligibility. (Gov. Code, § 13959, subd. (c).)

*Existing law* establishes protocols for reconsideration hearings, and specifies that they are informal and not subject technical rules of evidence. (Gov. Code, § 13959, subd. (e).)

*Existing law* equires the board's post-hearing decision to be in writing. A copy of the decision must be personally delivered to the applicant or his or her representative, or sent by mail. (Gov. Code, § 13959, subd. (h).)

*Existing law* allows the board to order a reconsideration of all or part of a decision on written request of the applicant. The board may not grant more than one request for reconsideration with respect to any one decision on an application for compensation. (Gov. Code, § 13959, subd. (i).)

*Existing law* prohibits the board from considering any request for reconsideration if the request is filed with the board more than 30 calendar days after the personal delivery or 60 calendar days after the mailing of the original decision. (Gov. Code, § 13959, subd. (i).)

*Existing law* permits judicial review of a final decision of the board by filing a petition for writ of mandate. (Gov. Code, § 13960.)

*This bill* requires the board to evaluate an application for reconsideration of compensation within six months of the date the board receives the application, unless it determines that there was insufficient information to make a decision.

*This bill* provides that if the board determines that there was insufficient information to make a decision, it shall notify the applicant in writing within six months of the date the application was received.

#### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed

capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

Victims of crime often suffer long-term after a criminal offense has taken place, and without adequate treatment or services, are likely to become re-victimized. In the past, the Victim's Compensation Program has demonstrated a lack of management of appeals cases, leaving many victims waiting for answers and footing the bill for services that could have been compensated earlier and more efficiently. AB 1563 seeks to address this problem by making sure the Board makes a decision on an appeal within six months of receiving an application and informing an applicant if anything is missing from their application. This measure will ensure that victim applicants are not waiting indefinitely for a response, and have a fair opportunity to submit information that would complete their applications. This will allow victims to successfully move on with their lives with the treatment and services they need.

### 2. Background

The victims' compensation program was created in 1965, the first such program in the country. The program provides compensation for victims of violent crime. It reimburses eligible victims for many crime-related expenses, such as medical treatment, mental health services, funeral expenses, home security, and relocation services. Funding for the board comes from restitution fines and penalty assessments paid by criminal offenders, as well as federal matching funds. (See the board's Website: <<http://www.vcgcb.ca.gov/board>>.)

The other core function of the board is to review claims against the state and request payment of claims by the Legislature in annual legislation. A person must present a claim for damages against the state to the board before filing a lawsuit.

### **3. Appeal of Board Decision**

The board explains the appeals process as follows: "An applicant has a right to file an appeal if a claim is recommended for denial, or if any part of the claim is recommended for denial. An appeal must be filed within 45 days of the date the Board mailed the notice to deny the claim and/or expense. In some cases, if new information is provided, the denial may be reconsidered immediately. Otherwise, most appeals are scheduled for a hearing before a Hearing Officer. This hearing will give the applicant the opportunity to present information supporting the claim. Hearings are not held to contest the denial of an emergency award.

"If the applicant does not agree with the outcome of the Board's final decision, a Petition for a Writ of Mandate may be filed in the Superior Court." (See board Website <http://vcgcb.ca.gov/victims/faq/lawsandinfo.aspx#Appeal>.)

Existing law does not state a timeframe or deadline to decide an appeal by an applicant. This bill would establish a six-month deadline for which to process an appeal, except in cases where the board determines that there is insufficient information to resolve the matter. As to those cases, this bill requires the board to provide written notice to the applicant within six months of the date the appeal was received.

The board has informed this committee that several years ago there was a backlog of about 2,000 appeals. The board enacted changes to address the backlog. Two analysts were assigned to triage the appeals to resolve any that could be handled expeditiously and without a hearing. Additionally, for one month several years ago all hearing attorneys were assigned to handle appeals. These actions dropped the backlog from 2,000 to less than 500 cases. In the recent past, the backlog has run between 240-280 cases. As of January 2016, there is a backlog of 260 appeals: 221 of these are less than 6 months old, 34 are less than 9 months old, and 5 are up to a year old. The only cases that are not handled within the first six months are complex ones, such as those which may involve fraud, or those which are waiting for documents from a third party, such as a provider or police department.

Given the information provided by the board, it should generally be able to comply with the deadlines imposed by this bill. In fact, it appears the board is already doing so.

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