
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 1754 **Hearing Date:** June 28, 2016
Author: Waldron
Version: May 31, 2016
Urgency: No **Fiscal:** Yes
Consultant: JM

Subject: *Crime Victim Compensation: Elder or Dependent Adult Financial Abuse*

HISTORY

Source: California Commission on Aging; California Elder Justice Coalition

Prior Legislation: SB 60 (Wright) – Ch. 147, Stats. 2013

Support: AARP; Arc and United Cerebral Palsy California Collaboration; California Association of Area Agencies on Aging; California Association for Health Services at Home; California Association of Marriage and Family Therapists; Crime Victim Compensation: Elder and Dependent Adult; Elder Law and Advocacy; Office of the State Long-Term Care Ombudsman; Professional Fiduciary Association of California; San Diego County District Attorney; San Diego Victim Compensation Pilot Project

Opposition: None known

Assembly Floor Vote: 80 - 0

PURPOSE

The purpose of this bill is to create a pilot program in San Diego County permitting the Victims of Crime Program (CalVCP) to reimburse victims of elder and dependent adult financial abuse for costs of financial and mental-health counseling.

Existing provisions in the California Constitution state that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the perpetrators. (Cal. Const. Art. 1 § 28(b).)

Existing law directs a sentencing court to order a defendant to make restitution to the victim or victims of the defendant's crime. (Pen. Code § 1202.4, subs. (a) and (f).)

Existing law requires the court to impose on each convicted criminal defendant a *restitution fine*:

- a) For a felony, the fine ranges from \$300 to \$10,000. The misdemeanor fine ranges from \$150 to \$1,000.

- b) Penalty assessments and state surcharges are not applied to restitution fines.
- c) The fines are deposited in the Victims of Crime Fund in the State Treasury. (Pen. Code § 1202.4, subs. (b)-(g).)

Existing law states that all persons who suffer loss as a result of criminal activity shall have the right to restitution from the perpetrators. (Cal. Const. Art. 1, § 28(b).)

Existing law establishes CalVCP administered by the board to reimburse crime victims for the pecuniary losses they suffer as a direct result of criminal acts. Indemnification is made from the Restitution Fund, which is continuously appropriated to the board for these purposes. (Gov. Code, §§ 13901 & 13950 et. seq.)

Existing law authorizes the board to reimburse victims of crimes causing physical injury or emotional injury with a threat of physical injury 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, §§ 13955, subd. (f), and 13957.)

Existing law authorizes the board to establish maximum rates and service limitations for medical and medical-related services, and for mental health and counseling services. (Gov. Code, § 13957.2)

Existing law defines an "elder" as "any person who is 65 years of age or older." (Pen. Code, § 368, subd. (g).)

Existing law defines a "dependent adult" as "any person who is between the ages of 18 and 64, who has physical or mental limitations which restrict his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have diminished because of age." (Pen. Code, § 368, subd. (h).)

Existing law specifies that any person who is not a caretaker who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to the property or personal identifying information of an elder or a dependent adult, and who knows or reasonably should know that the victim is an elder or a dependent adult, is punishable as follows:

- a) By a fine not exceeding \$2,500, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding \$10,000, or by imprisonment in the county jail for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950.
- b) By a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950. (Pen. Code, § 368, subd. (d).)

Existing law provides that any caretaker of an elder or a dependent adult who violates any provision of law proscribing theft, embezzlement, forgery, fraud, or identity theft, with respect to

the property or personal identifying information of that elder or dependent adult, is punishable as follows:

- a) By a fine not exceeding \$2,500, or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding \$10,000, or by imprisonment in the county jail for two, three, or four years, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding \$950; or
- b) By a fine not exceeding \$1,000, by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, when the moneys, labor, goods, services, or real or personal property taken or obtained is of a value not exceeding \$950. (Pen. Code, § 368, subd. (e).)

This bill contains legislative findings and declaration about the extent of financial abuse of the elderly and dependent adults, the response of other legislative bodies to the problem, of the need for a pilot program, and why San Diego County is well-situated for the pilot program.

This bill establishes the San Diego County Elder or Dependent Adult Financial Abuse Crime Victim Compensation Pilot Program.

This bill limits compensation to direct victims of theft, identity theft, embezzlement, forgery, or fraud of an elder or dependent adult and deems derivative victims ineligible.

This bill limits compensation to a particular victim to \$3,000.

This bill permits compensation for up to 10 sessions of mental health counseling and up to 10 session of financial counseling.

This bill limits the distribution of the total funds under the pilot program to one million dollars.

This bill states that funding authorization stops on January 1, 2019.

This bill sunsets the program on January 1, 2020.

Existing law requires the California Victim Compensation and Government Claims Board (board) to report to the Legislature and the Governor, by July 1, 2020, the following:

- a) The number of victims who received payment under the pilot program
- b) The number of victims who received mental health counseling;
- c) The average payment for mental health counseling per recipient;
- d) The number of victims who received financial counseling;
- e) The average payment for financial counseling per recipient; and,
- f) Any other data on the pilot program that the board wishes to include.

This bill states that a compensation program for elderly victims of financial abuse is applicable to San Diego County alone because San Diego is unique in the particularly high number of reported elder and dependent adult financial abuse crimes.

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:

This bill would establish a pilot program for victims of elder and dependent adult financial abuse in San Diego County to be eligible for financial assistance through the California Victims' Compensation program. Elder and dependent adult financial abuse can lead to large costs to victims, families, and society. The Penal Code specifically cites the increased vulnerability of the elderly and dependent adult victims as a justification for higher criminal penalties for perpetrators of financial crimes. In the Welfare and Institutions Code, the Elder and Dependent Adult Civil Protection Act cites the Legislature's responsibility to protect this vulnerable population from criminal acts.

2. Compensation Issues for Elderly and Dependent Victims of Theft and Fraud

Nature and Extent of Abuse of the Elderly

There has been a growing amount of research into the nature and extent of elder and dependent adult abuse. One study suggests that approximately 6% of the population of those age 65 and older will report physical, financial, mental and other forms of abuse in any given year. The Department of Social Services (DSS) which oversees the Adult Protective Services (APS) program found that approximately 9,500 cases per month of elder and dependent adult abuse are reported and investigated. About 1,600 of the reports reflect financial abuse or exploitation. In 2014-2015, San Diego County's Adult Protective Services confirmed a total of 1,148 unique reports of elder and dependent adult financial abuse. The San Diego District Attorney estimates approximately 600 elderly and dependent adult victims are served annually, averaging about 50 clients per month. It is estimated that elder victims of financial abuse suffer upwards of \$2.9 billion annual financial loss. Data from the National Center on Elder Abuse shows that women are about twice as likely as men to be abused, and that the older one is, the greater the risk is for suffering abuse.

Vulnerability of Elderly Financial Crime Victims

Many elderly persons have fixed minimal incomes. A loss of income or assets could severely limit an elderly person's ability to pay for basic needs, such as utilities and rent. Elderly persons who are the victims of theft or fraud may have difficulty dealing with the stress of victimization¹ leading to rapid declines in health. Further, research¹ has found that changes in the brains of the elderly render them less able to recognize a fraudulent scheme or scam. A dependent adult who has a limited ability to care for himself or herself, or who has an intellectual disability, may also be especially vulnerable to thieves and perpetrators of fraudulent schemes. SB 60 (Wright) Ch. 147, Stats. 2013, was originally drafted to extend compensation to dependent adult and elderly

¹ Why It's Easier to Scam the Elderly, NPR Morning Edition, December 6, 2012:
<http://www.npr.org/blogs/health/2012/12/06/166609270/why-its-easier-to-scam-the-elderly>

victims of financial abuse. The bill was amended to only extend eligibility to victims of human trafficking.

Specific Issues Concerning Compensation for Financial Crimes against the Elderly

Two major issues or objections have been raised to an extension of compensation to elderly and dependent adult victims of financial fraud. One concern was that compensation through the fund has always been limited to victims of violent crime. Supporters of compensation for elderly victims of financial fraud that the physical and mental harm experienced by elderly and dependent adult victims of financial fraud can be similar or equivalent to the harm suffered by victims of crimes covered by the program.

Further, supporters of both this bill and the introduced version of SB 60 in 2013 have noted that federal law authorizes compensation to victims of financial crimes and that the state would receive federal matching funds for reimbursement of elderly fraud victims. The 2001 Federal Register² on victim compensation notes: “States may choose to broaden the range of compensable crimes to include those involving threats of injury or economic crime where *victims are traumatized but not physically injured*.” The Final Program Guidelines issued by the Department of Justice, Office for Victims of Crime³ explains: “Although VOCA-funded programs cannot restore the financial losses suffered by victims of fraud, victims are eligible for the counseling, criminal justice advocacy, and other support services offered by VOCA-funded victim assistance programs.”

The second major concern was that the fund is chronically low on reserves or heading toward a deficit. However, it has been noted that the compensation program has long been criticized for overspending on administrative costs and for being inefficient in evaluating and processing claims. Arguably, changes in the program could allow extension of compensation to the victims covered by this bill. AB 1140 (Bonta) Ch. 569, Stats. 2015, codified many suggestions for reform that the board has heard over the 10 to 15 years. The Senate Floor analysis of AB 1140 lists 34 separate changes made to the law governing victim compensation in the bill.

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² http://ojp.gov/ovc/voca/pdfxt/voca_guidelines2001.pdf

³ <http://ojp.gov/ovc/voca/vaguide.htm>