

File No. 210264

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Comm: Public Safety & Neighborhood Services

Date: April 22, 2021

Board of Supervisors Meeting:

Date: _____

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OTHER

- Legislation Text - SB 299 – March 4, 2021
- _____
- _____
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Prepared by: John Carroll

Date: April 16, 2021

Prepared by: John Carroll

Date: _____

Prepared by: John Carroll

Date: _____

1 [Supporting California State Senate Bill No. 299 (Leyva) - Victim Compensation: Use of Force
2 by a Peace Officer]

3 **Resolution supporting California State Senate Bill No. 299, authored by Senator Connie**
4 **Leyva (SD-20) and introduced on February 3, 2021, to remove barriers faced by victims**
5 **and families of peace officer violence with the California Victim Compensation Board**
6 **Fund.**

7
8 WHEREAS, 2020 was a tumultuous year for the United States of America regarding
9 race relations and criminal justice reform; and

10 WHEREAS, Thousands of San Franciscans marched in support of greater
11 accountability for peace officers; and

12 WHEREAS, Victim compensation is an important pathway for survivors to access
13 support, as it can cover specific expenses such as medical bills, funeral burial expenses,
14 counseling and overall economic devastation; and

15 WHEREAS, Compensation of these services and support can only be received when a
16 survivor has no other avenue for covering these costs; and

17 WHEREAS, Existing law requires the California Victim Compensation Board (CALVCB)
18 to verify that a crime occurred based on the police report and denies applications if it finds that
19 the victim was involved in the events that gave rise to the application, which gives significant
20 deference and height to peace officers prior to a thorough investigation; and

21 WHEREAS, Countless survivors and/ or derivative victims are denied access to the
22 California Victim Compensation Board because of this requirement; and

23 WHEREAS, Senate Bill 299 (SB 299) would ensure that the definition of “crime” and
24 “victim” for the purpose of compensation presumptively include victims who are seriously
25

1 injured or compensation to the family if the victim is killed by a peace officer due to use of
2 force, regardless of whether an officer is arrested or charged; and

3 WHEREAS, SB 299 would bar exclusions based on a victim's alleged actions leading
4 to the injury, or on whether the victim or their family cooperates with police following the
5 crimes and therefore ensuring no survivor is denied coverage for mental healthcare based on
6 these restrictions; and

7 WHEREAS, SB 299 would prohibit denial of California Victim Compensation based
8 solely on the contents of a police report in cases of peace officer violence; and

9 WHEREAS, SB 299 would also clarify the California Victim Compensation Board's
10 decisions regarding compensation eligibility are not admissible in any other civil or criminal
11 proceeding, or, for cases of police use of force, in related employment proceedings; and

12 WHEREAS, During the height of Black Lives Matter movement, San Francisco State
13 Senator Wiener and Assembly Member Chiu were in the forefront on an unsuccessful push of
14 a similar bill, AB 767 during the 2019-2020 legislative session; and

15 WHEREAS, The San Francisco District Attorney's office now allows victims of peace
16 officer violence medical and mental health coverage and funeral burial expenses at the local
17 level; now, therefore, be it

18 RESOLVED, That the City and County of San Francisco supports Senate Bill No. 299
19 which would ensure that the definition of "crime" and "victim" for the purpose of compensation
20 presumptively include victims who are seriously injured or killed by peace officer use of force,
21 regardless of whether an officer is arrested or charged; and, be it

22 FURTHER RESOLVED, That the San Francisco Board of Supervisors supports Senate
23 Bill No. 299 and the removal of barriers faced by victims of police violence and other violent
24 crimes with California Victim Compensation Board; and, be it

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1 FURTHER RESOLVED, That the Clerk of the Board of Supervisors of the City and
2 County of San Francisco distribute this Resolution to San Francisco’s State Legislative
3 Delegation and to California Governor Gavin Newsom.

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AMENDED IN SENATE MARCH 4, 2021

SENATE BILL

No. 299

**Introduced by Senator Leyva
(Coauthor: Senator Laird)**

(Coauthors: Assembly Members Chiu, Friedman, and Cristina Garcia)

February 3, 2021

An act to amend ~~Section 13956~~ *Sections 13951, 13954, 13956, and 13960* of the Government Code, relating to ~~victim-compensation-~~ *compensation, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 299, as amended, Leyva. ~~Victim-compensation-~~ *compensation: use of force by a peace officer.*

(1) Existing law provides for the compensation of victims and derivative victims of specified types of crimes by the California Victim Compensation Board from the Restitution Fund, a continuously appropriated fund, for specified losses suffered as a result of those crimes. Existing law defines various terms for purposes of these provisions, including "crime," which includes any public offense wherever it may take place that would constitute a misdemeanor or felony.

This bill would revise the definition of "crime" to include any public offense described above regardless of whether any person is arrested for, charged with, or convicted of the commission of the crime. The bill would also include in the definition of "crime" an incident occurring on or after January 1, 2022, in which an individual sustains serious bodily injury or death as a result of a peace officer's use of force, regardless of whether the peace officer is arrested for, charged with, or convicted of committing a crime. By expanding the types of crime

for which compensation can be paid from a continuously appropriated fund, the bill would make an appropriation.

(2) Existing law requires every law enforcement and social service agency in the state to provide to the board or to a contracted victim center reports involving the crime or incident giving rise to a claim, for the specific purpose of determining the eligibility of a claim, except as provided.

This bill would prohibit a determination made by the board as to the eligibility of a victim or applicant for compensation from being used as evidence that, among other things, any person committed a crime. In the case of a claim based on a victim's serious bodily injury or death that resulted from a peace officer's use of force, as described above, the bill would further prohibit the eligibility determination from being used as evidence in any action, disciplinary investigation, or proceeding relating to the employment or duties of the peace officer, as provided.

(3) Existing law requires that a person be ineligible for compensation under specified conditions, including, among other things, if the board determines that denial of the claim for compensation is appropriate because of the nature of the victim's involvement in the events leading to the crime, or the involvement of the person whose injury or death gives rise to the application. Existing law requires the board to deny an application if it finds that the victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

This bill, in the case of a claim based on a victim's serious bodily injury or death that resulted from a peace officer's use of force, as described above, would prohibit the board from denying an application based on certain circumstances, including the victim's or other applicant's involvement in the crime, except as specified, the victim's failure to cooperate, or the contents of a police report, or the lack thereof. The bill would, absent a police report, authorize the board to consider other evidence that a crime occurred, as specified. The bill, in the case of a claim based on a victim's death as a result of a crime, would prohibit the board from denying an application based on the deceased victim's involvement in the crime or the victim's or derivative victim's failure to cooperate. The bill would additionally prohibit the board from denying a claim for psychiatric, psychological, or mental health counseling-related expenses, or for funeral and burial expenses, based on a victim's or derivative victim's involvement in the crime or failure to cooperate.

(4) Existing law authorizes the filing of a petition for a writ of mandate, as provided, in seeking judicial review of a final decision by the board.

This bill would prohibit a writ of mandate from being used as evidence that, among other things, any person committed a crime. In the case of a claim based on a victim’s serious bodily injury or death that resulted from a peace officer’s use of force, as described above, the bill would further prohibit the writ from being used as evidence in any action, disciplinary investigation, or proceeding relating to the employment or duties of the peace officer, as provided.

~~Existing law provides for the indemnification of victims of specified types of crimes, subject to specified criteria. Existing law excludes a person from eligibility for compensation as a victim of crime under specified circumstances.~~

~~This bill would make a nonsubstantive change to those provisions.~~

Vote: ~~majority~~^{2/3}. Appropriation: ~~no~~-yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13951 of the Government Code is
2 amended to read:

3 13951. As used in this chapter, the following definitions shall
4 apply:

5 (a) “Board” means the California Victim Compensation Board.

6 (b) (1) “Crime” means a crime or public offense, wherever it
7 may take place, that would constitute a misdemeanor or a felony
8 if the crime had been committed in California by a competent
9 ~~adult~~: *adult, regardless of whether any person is arrested for,*
10 *charged with, or convicted of committing the crime or public*
11 *offense.*

12 (2) “Crime” includes an act of terrorism, as defined in Section
13 2331 of Title 18 of the United States Code, committed against a
14 resident of the state, whether or not the act occurs within the state.

15 (3) “Crime” includes an incident occurring on or after January
16 1, 2022, in which an individual sustains serious bodily injury or
17 death as a result of a peace officer’s use of force, regardless of
18 whether the peace officer is arrested for, charged with, or convicted
19 of committing a crime.

1 (c) “Derivative victim” means an individual who sustains
2 pecuniary loss as a result of injury or death to a victim.

3 (d) “Law enforcement” means every district attorney, municipal
4 police department, sheriff’s department, district attorney’s office,
5 county probation department, and social services agency, the
6 Department of Justice, the Department of Corrections, the
7 Department of the Youth Authority, the Department of the
8 California Highway Patrol, the police department of any campus
9 of the University of California, California State University, or
10 community college, and every agency of the State of California
11 expressly authorized by statute to investigate or prosecute law
12 violators.

13 (e) (1) “Peace officer” has the same meaning as in Section 830
14 of the Penal Code, except as otherwise provided in paragraph (2).

15 (2) “Peace officer” does not include any of the following:

16 (A) Investigators of the Public Employees’ Retirement System.

17 (B) Investigators of the office of the Controller.

18 (C) Persons employed by the Contractors State License Board
19 designated by the Director of Consumer Affairs pursuant to Section
20 7011.5 of the Business and Professions Code.

21 (D) Investigators of the office of the Secretary of State.

22 (E) Investigators employed by the Employment Development
23 Department pursuant to Section 317 of the Unemployment
24 Insurance Code.

25 (F) Security officers of Hastings College of the Law.

26 ~~(e)~~

27 (f) “Pecuniary loss” means an economic loss or expense resulting
28 from an injury or death to a victim of crime that has not been and
29 will not be reimbursed from any other source.

30 ~~(f)~~

31 (g) “Peer counseling” means counseling offered by a provider
32 of mental health counseling services who has completed a
33 specialized course in rape crisis counseling skills development,
34 participates in continuing education in rape crisis counseling skills
35 development, and provides rape crisis counseling within the State
36 of California.

37 ~~(g)~~

38 (h) “Victim” means an individual who sustains injury or death
39 as a direct result of a crime as specified in subdivision (e) of
40 Section 13955.

1 ~~(h)~~

2 (i) “Victim center” means a victim and witness assistance center
3 that receives funds pursuant to Section 13835.2 of the Penal Code.

4 (j) “Victim services provider” means an individual, whether
5 paid or serving as a volunteer, who provides services to victims
6 under the supervision of either an agency or organization that has
7 a documented record of providing services to victims, or a law
8 enforcement or prosecution agency.

9 SEC. 2. Section 13954 of the Government Code is amended to
10 read:

11 13954. (a) The board shall verify with hospitals, physicians,
12 law enforcement officials, or other interested parties involved, the
13 treatment of the victim or derivative victim, circumstances of the
14 crime, amounts paid or received by or for the victim or derivative
15 victim, and any other pertinent information deemed necessary by
16 the board. Verification information shall be returned to the board
17 within 10 business days after a request for verification has been
18 made by the board. Verification information shall be provided at
19 no cost to the applicant, the board, or victim centers. When
20 requesting verification information, the board shall certify that a
21 signed authorization by the applicant is retained in the applicant’s
22 file and that this certification constitutes actual authorization for
23 the release of information, notwithstanding any other provision of
24 law. If requested by a physician or mental health provider, the
25 board shall provide a copy of the signed authorization for the
26 release of information.

27 (b) (1) The applicant shall cooperate with the staff of the board
28 or the victim center in the verification of the information contained
29 in the application. Failure to cooperate shall be reported to the
30 board, which, in its discretion, may reject the application solely
31 on this ground.

32 (2) An applicant may be found to have failed to cooperate with
33 the board if any of the following occur:

34 (A) The applicant has information, or there is information that
35 ~~he or she~~ *the applicant* may reasonably obtain, that is needed to
36 process the application or supplemental claim, and the applicant
37 failed to provide the information after being requested to do so by
38 the board. The board shall take the applicant’s economic,
39 psychosocial, and postcrime traumatic circumstances into

1 consideration, and shall not unreasonably reject an application
2 solely for failure to provide information.

3 (B) The applicant provided, or caused another to provide, false
4 information regarding the application or supplemental claim.

5 (C) The applicant refused to apply for other benefits potentially
6 available to ~~him or her~~ *the applicant* from other sources besides
7 the board including, but not limited to, worker's compensation,
8 state disability insurance, social security benefits, and
9 unemployment insurance.

10 (D) The applicant threatened violence or bodily harm to a
11 member of the board or staff.

12 (c) The board may contract with victim centers to provide
13 verification of applications processed by the centers pursuant to
14 conditions stated in subdivision (a). The board and its staff shall
15 cooperate with the Office of Criminal Justice Planning and victim
16 centers in conducting training sessions for center personnel and
17 shall cooperate in the development of standardized verification
18 procedures to be used by the victim centers in the state. The board
19 and its staff shall cooperate with victim centers in disseminating
20 standardized board policies and findings as they relate to the
21 centers.

22 (d) (1) Notwithstanding Section 827 of the Welfare and
23 Institutions Code or any other provision of law, every law
24 enforcement and social service agency in the state shall provide
25 to the board or to victim centers that have contracts with the board
26 pursuant to subdivision (c), upon request, a complete copy of the
27 law enforcement report and any supplemental reports involving
28 the crime or incident giving rise to a claim, a copy of a petition
29 filed in a juvenile court proceeding, reports of the probation officer,
30 and any other document made available to the probation officer
31 or to the judge, referee, or other hearing officer, for the specific
32 purpose of determining the eligibility of a claim filed pursuant to
33 this chapter.

34 (2) The board and victim centers receiving records pursuant to
35 this subdivision may not disclose a document that personally
36 identifies a minor to anyone other than the minor who is so
37 identified, ~~his or her~~ *the minor's* custodial parent or guardian, the
38 attorneys for those parties, and any other persons that may be
39 designated by court order. Any information received pursuant to
40 this section shall be received in confidence for the limited purpose

1 for which it was provided and may not be further disseminated. A
2 violation of this subdivision is a misdemeanor punishable by a fine
3 not to exceed five hundred dollars (\$500).

4 (3) The law enforcement agency supplying information pursuant
5 to this section may withhold the names of witnesses or informants
6 from the board, if the release of those names would be detrimental
7 to the parties or to an investigation in progress.

8 (e) Notwithstanding any other provision of law, every state
9 agency, upon receipt of a copy of a release signed in accordance
10 with the Information Practices Act of 1977 (Chapter 1
11 commencing with Section 1798) of Title 1.8 of Part 4 of Division
12 3 of the Civil Code) by the applicant or other authorized
13 representative, shall provide to the board or victim center the
14 information necessary to complete the verification of an application
15 filed pursuant to this chapter.

16 (f) The Department of Justice shall furnish, upon application of
17 the board, all information necessary to verify the eligibility of any
18 applicant for benefits pursuant to subdivision (c) of Section 13956,
19 to recover any restitution fine or order obligations that are owed
20 to the Restitution Fund or to any victim of crime, or to evaluate
21 the status of any criminal disposition.

22 (g) A privilege is not waived under Section 912 of the Evidence
23 Code by an applicant consenting to disclosure of an otherwise
24 privileged communication if that disclosure is deemed necessary
25 by the board for verification of the application.

26 (h) Any verification conducted pursuant to this section shall be
27 subject to the time limits specified in Section 13958.

28 (i) Any county social worker acting as the applicant for a child
29 victim or elder abuse victim shall not be required to provide
30 personal identification, including, but not limited to, the applicant's
31 date of birth or social security number. County social workers
32 acting in this capacity shall not be required to sign a promise of
33 repayment to the board.

34 (j) *Notwithstanding any other provision of statute, administrative*
35 *rule, local ordinance, or other law, a determination made by the*
36 *board as to the eligibility of a victim or applicant for compensation*
37 *shall be used for the limited purposes described in this chapter,*
38 *or in a proceeding related to determining the amount of restitution*
39 *a person who has been convicted of a crime owes, pursuant to*
40 *Section 1202.4 of the Penal Code. A determination of eligibility*

1 *made by the board shall not otherwise be admissible as evidence*
2 *that any person committed a crime or is liable for a victim's injury*
3 *or death in any civil action or proceeding, in any criminal action*
4 *or proceeding including pretrial motions and hearings and*
5 *postconviction motions and hearings, in any trial or hearing of a*
6 *juvenile for a criminal offense, whether heard in juvenile or adult*
7 *court, or in any court of law. This subdivision shall not be*
8 *construed to limit or in any way affect the board's subrogation*
9 *and recovery rights under Sections 13963 or 13966, and shall not*
10 *be construed to limit or in any way affect the ability of a court to*
11 *consider the amount of assistance provided by the Restitution Fund*
12 *to a victim in a determination relating to a restitution order*
13 *following a conviction, in accordance with Section 1202.4 of the*
14 *Penal Code.*

15 *(k) Notwithstanding any other provision of statute,*
16 *administrative rule, local ordinance, or other law, for claims based*
17 *on a victim's serious bodily injury or death that resulted from a*
18 *peace officer's use of force, as provided in Section 13951, a*
19 *determination made by the board as to the eligibility of a victim*
20 *or applicant for compensation shall not be admissible as evidence*
21 *in any action, disciplinary investigation, or proceeding relating*
22 *to the employment or duties of the peace officer, nor used as*
23 *evidence to support any punitive action or denial of promotion of*
24 *a peace officer.*

25 **SECTION 1.**

26 **SEC. 3.** Section 13956 of the Government Code is amended
27 to read:

28 13956. Notwithstanding Section 13955, a person shall not be
29 eligible for compensation under the following conditions:

30 (a) An application may be denied, in whole or in part, if the
31 board finds that denial is appropriate because of the nature of the
32 victim's or other applicant's involvement in the events leading to
33 the crime, or the involvement of the person whose injury or death
34 gives rise to the application.

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

38 (A) The victim or derivative victim initiated the qualifying
39 crime, or provoked or aggravated the suspect into initiating the
40 qualifying crime.

1 (B) The qualifying crime was a reasonably foreseeable
2 consequence of the conduct of the victim or derivative victim.

3 (C) The victim or derivative victim was committing a crime
4 that could be charged as a felony and reasonably lead to them being
5 victimized. However, committing a crime shall not be considered
6 involvement if the victim's injury or death occurred as a direct
7 result of a crime committed in violation of Section 261, 262, or
8 273.5 of, or for a crime of unlawful sexual intercourse with a minor
9 in violation of subdivision (d) of Section 261.5 of, the Penal Code.

10 (2) If the victim is determined to have been involved in the
11 events leading to the qualifying crime, factors that may be
12 considered to mitigate or overcome involvement include, but are
13 not limited to:

14 (A) The victim's injuries were significantly more serious than
15 reasonably could have been expected based on the victim's level
16 of involvement.

17 (B) A third party interfered in a manner not reasonably
18 foreseeable by the victim or derivative victim.

19 (C) The board shall consider the victim's age, physical
20 condition, and psychological state, as well as any compelling health
21 and safety concerns, in determining whether the application should
22 be denied pursuant to this section. The application of a derivative
23 victim of domestic violence under 18 years of age or derivative
24 victim of trafficking under 18 years of age shall not be denied on
25 the basis of the denial of the victim's application under this
26 subdivision.

27 *(3) Notwithstanding paragraphs (1) and (2), for a claim based*
28 *on a victim's serious bodily injury or death that resulted from a*
29 *peace officer's use of force, as provided in Section 13951, the*
30 *board shall not deny the application based on the victim's or other*
31 *applicant's involvement in the qualifying crime that gave rise to*
32 *the claim, except that the board may deny the application if the*
33 *victim is convicted of a crime that resulted in serious bodily injury*
34 *to or death of the officer or a civilian, and the crime occurred at*
35 *the time of the incident on which the claim is based. The board*
36 *shall not consider a claim for compensation while charges are*
37 *pending alleging that a victim subject to this paragraph committed*
38 *the crime, except that the board may approve a claim for*
39 *psychiatric, psychological, or mental health counseling-related*
40 *expenses at any time. A victim or applicant subject to this*

1 *paragraph may apply for compensation pursuant to this chapter*
2 *at any time for any expense other than psychiatric, psychological,*
3 *or mental health counseling-related expenses, but the award of*
4 *that compensation shall not be granted until the charges are no*
5 *longer pending against the victim. If the victim is deceased, charges*
6 *shall not be considered pending against the victim for the purposes*
7 *of this paragraph.*

8 *(4) Notwithstanding paragraphs (1), (2), and (3), for a claim*
9 *based on a victim's death as a result of a crime, the board shall*
10 *not deny the application, in whole or in part, based on the deceased*
11 *victim's involvement in the crime that gave rise to the claim.*

12 *(5) Notwithstanding paragraphs (1), (2), and (3), the board*
13 *shall not deny a claim for psychiatric, psychological, or mental*
14 *health counseling-related expenses, or for funeral and burial*
15 *expenses, based on a victim's or derivative victim's involvement*
16 *in the crime that gave rise to the claim.*

17 (b) (1) An application shall be denied if the board finds that
18 the victim or, if compensation is sought by, or on behalf of, a
19 derivative victim, either the victim or derivative victim failed to
20 cooperate reasonably with a law enforcement agency in the
21 apprehension and conviction of a criminal committing the crime.
22 In determining whether cooperation has been reasonable, the board
23 shall consider the victim's or derivative victim's age, physical
24 condition, and psychological state, cultural or linguistic barriers,
25 any compelling health and safety concerns, including, but not
26 limited to, a reasonable fear of retaliation or harm that would
27 jeopardize the well-being of the victim or the victim's family or
28 the derivative victim or the derivative victim's family, and giving
29 due consideration to the degree of cooperation of which the victim
30 or derivative victim is capable in light of the presence of any of
31 these factors. Victims of domestic violence shall not be determined
32 to have failed to cooperate based on their conduct with law
33 enforcement at the scene of the crime. Lack of cooperation shall
34 also not be found solely because a victim of sexual assault,
35 domestic violence, or human trafficking delayed reporting the
36 qualifying crime.

37 *(2) Notwithstanding paragraph (1), for a claim based on a*
38 *victim's serious bodily injury or death that resulted from a peace*
39 *officer's use of force, as provided in Section 13951, the board shall*
40 *not deny the application based on the victim's failure to cooperate.*

1 (3) *Notwithstanding paragraph (1), for a claim based on a*
2 *victim's death as a result of a crime, the board shall not deny the*
3 *application based on a victim's or derivative victim's failure to*
4 *cooperate.*

5 (4) *Notwithstanding paragraph (1), the board shall not deny a*
6 *claim for psychiatric, psychological, or mental health*
7 *counseling-related expenses, or for funeral and burial expenses,*
8 *based on a victim's or derivative victim's failure to cooperate.*

9 ~~(2)~~

10 (5) An application for a claim based on domestic violence shall
11 not be denied solely because a police report was not made by the
12 victim. The board shall adopt guidelines that allow the board to
13 consider and approve applications for assistance based on domestic
14 violence relying upon evidence other than a police report to
15 establish that a domestic violence crime has occurred. Factors
16 evidencing that a domestic violence crime has occurred may
17 include, but are not limited to, medical records documenting
18 injuries consistent with allegations of domestic violence, mental
19 health records, or that the victim has obtained a permanent
20 restraining order.

21 ~~(3)~~

22 (6) An application for a claim based on a sexual assault shall
23 not be denied solely because a police report was not made by the
24 victim. The board shall adopt guidelines that allow it to consider
25 and approve applications for assistance based on a sexual assault
26 relying upon evidence other than a police report to establish that
27 a sexual assault crime has occurred. Factors evidencing that a
28 sexual assault crime has occurred may include, but are not limited
29 to, medical records documenting injuries consistent with allegations
30 of sexual assault, mental health records, or that the victim received
31 a sexual assault examination.

32 ~~(4)~~

33 (7) An application for a claim based on human trafficking as
34 defined in Section 236.1 of the Penal Code shall not be denied
35 solely because no police report was made by the victim. The board
36 shall adopt guidelines that allow the board to consider and approve
37 applications for assistance based on human trafficking relying
38 upon evidence other than a police report to establish that a human
39 trafficking crime as defined in Section 236.1 of the Penal Code
40 has occurred. That evidence may include any reliable corroborating

1 information approved by the board, including, but not limited to,
2 the following:

3 (A) A Law Enforcement Agency Endorsement issued pursuant
4 to Section 236.2 of the Penal Code.

5 (B) A human trafficking caseworker, as identified in Section
6 1038.2 of the Evidence Code, has attested by affidavit that the
7 individual was a victim of human trafficking.

8 ~~(5)~~

9 (8) (A) An application for a claim by a military personnel victim
10 based on a sexual assault by another military personnel shall not
11 be denied solely because it was not reported to a superior officer
12 or law enforcement at the time of the crime.

13 (B) Factors that the board shall consider for purposes of
14 determining if a claim qualifies for compensation include, but are
15 not limited to, the evidence of the following:

16 (i) Restricted or unrestricted reports to a military victim
17 advocate, sexual assault response coordinator, chaplain, attorney,
18 or other military personnel.

19 (ii) Medical or physical evidence consistent with sexual assault.

20 (iii) A written or oral report from military law enforcement or
21 a civilian law enforcement agency concluding that a sexual assault
22 crime was committed against the victim.

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

27 (v) A credible witness to whom the victim disclosed the details
28 that a sexual assault crime occurred.

29 (vi) A restraining order from a military or civilian court against
30 the perpetrator of the sexual assault.

31 (vii) Other behavior by the victim consistent with sexual assault.

32 (C) For purposes of this subdivision, the sexual assault at issue
33 shall have occurred during military service, including deployment.

34 (D) For purposes of this subdivision, the sexual assault may
35 have been committed off base.

36 (E) For purposes of this subdivision, a “perpetrator” means an
37 individual who is any of the following at the time of the sexual
38 assault:

39 (i) An active duty military personnel from the United States
40 Army, Navy, Marine Corps, Air Force, or Coast Guard.

1 (ii) A civilian employee of any military branch specified in
2 clause (i), military base, or military deployment.

3 (iii) A contractor or agent of a private military or private security
4 company.

5 (iv) A member of the California National Guard.

6 (F) For purposes of this subdivision, “sexual assault” means an
7 offense included in Section 261, 262, 264.1, 286, 287, formerly
8 288a, or Section 289 of the Penal Code, as of the date the act that
9 added this paragraph was enacted.

10 *(c) Notwithstanding any provision of this section, for*
11 *applications based on a victim’s serious bodily injury or death*
12 *that resulted from a peace officer’s use of force as provided in*
13 *Section 13951, the board shall not deny an application, in whole*
14 *or in part, based solely upon the contents of a police report, or*
15 *because a police report was not made, or based on whether any*
16 *suspect was arrested or charged with the crime that gave rise to*
17 *the claim. The board shall consider other evidence to establish*
18 *that a qualifying crime occurred. Factors evidencing that a*
19 *qualifying crime occurred may include, but are not limited to, all*
20 *of the following:*

21 *(1) Medical records documenting injuries consistent with the*
22 *allegation of the qualifying crime.*

23 *(2) A written statement from a victim services provider stating*
24 *that the victim is seeking services related to the qualifying crime.*

25 *(3) A permanent restraining order or protective order issued*
26 *by a court to protect or separate the victim or derivative victim*
27 *from the person who is responsible for the qualifying crime.*

28 *(4) A statement from a licensed medical provider, physician’s*
29 *assistant, nurse practitioner, or other person licensed to provide*
30 *medical or mental health care documenting that the victim*
31 *experienced physical, mental, or emotional injury as a result of*
32 *the qualifying crime.*

33 *(5) A written or oral report from a law enforcement agency*
34 *stating that a qualifying crime was committed against the victim.*

35 *(6) Evidence that the qualifying crime was reported under*
36 *Section 12525.2 to the Department of Justice as an incident in*
37 *which the use of force by a peace officer against a civilian resulted*
38 *in serious bodily injury or death.*

39 *(d) A person making a statement or report regarding a*
40 *qualifying crime under paragraph (2), (4), or (5) of subdivision*

1 (c) may consider any information they deem relevant based on
2 their knowledge, skill, experience, or training, including, but not
3 limited to, a statement provided by a credible witness, video
4 recording of the incident, an assessment of the victim's injuries,
5 or other relevant evidence.

6 (e)

7 (e) (1) Notwithstanding Section 13955, no person who is
8 convicted of a violent felony listed in subdivision (c) of Section
9 667.5 of the Penal Code may be granted compensation until that
10 person has been discharged from probation or has been released
11 from a correctional institution and has been discharged from parole,
12 or has been discharged from postrelease community supervision
13 or mandatory supervision, if any, for that violent crime. In no case
14 shall compensation be granted to an applicant pursuant to this
15 chapter during any period of time the applicant is held in a
16 correctional institution, or while an applicant is required to register
17 as a sex offender pursuant to Section 290 of the Penal Code.

18 (2) A person who has been convicted of a violent felony listed
19 in subdivision (c) of Section 667.5 of the Penal Code may apply
20 for compensation pursuant to this chapter at any time, but the award
21 of that compensation may not be considered until the applicant
22 meets the requirements for compensation set forth in paragraph
23 (1).

24 *SEC. 4. Section 13960 of the Government Code is amended to*
25 *read:*

26 13960. (a) Judicial review of a final decision made pursuant
27 to this chapter may be had by filing a petition for a writ of mandate
28 in accordance with Section 1094.5 of the Code of Civil Procedure.
29 The right to petition shall not be affected by the failure to seek
30 reconsideration before the board. The petition shall be filed as
31 follows:

32 (1) Where no request for reconsideration is made, within 30
33 calendar days of personal delivery or within 60 calendar days of
34 the mailing of the board's decision on the application for
35 compensation.

36 (2) Where a timely request for reconsideration is filed and
37 rejected by the board, within 30 calendar days of personal delivery
38 or within 60 calendar days of the mailing of the notice of rejection.

39 (3) Where a timely request for reconsideration is filed and
40 granted by the board, or reconsideration is ordered by the board,

1 within 30 calendar days of personal delivery or within 60 calendar
2 days of the mailing of the final decision on the reconsidered
3 application.

4 (b) (1) In an action resulting in the issuance of a writ of mandate
5 pursuant to this section the court may order the board to pay to the
6 applicant's attorney reasonable attorney's fees or one thousand
7 dollars (\$1,000), whichever is less. If action is taken by the board
8 in favor of the applicant in response to the filing of the petition,
9 but prior to a judicial determination, the board shall pay the
10 applicant's costs of filing the petition.

11 (2) In case of appeal by the board of a decision on the petition
12 for writ of mandate that results in a decision in favor of the
13 applicant, the court may order the board to pay to the applicant's
14 attorney reasonable attorney fees.

15 (3) Nothing in this section shall be construed to prohibit or limit
16 an award of attorney's fees pursuant to Section 1021.5 of the Code
17 of Civil Procedure.

18 (c) (1) *Notwithstanding any other provision of statute,*
19 *administrative rule, local ordinance, or other law, a writ of*
20 *mandate issued pursuant to this section shall apply for the limited*
21 *purposes of compelling the board to award compensation pursuant*
22 *to this chapter, or in a proceeding related to determining the*
23 *amount of restitution a person who has been convicted of the crime*
24 *owes, pursuant to Section 1202.4 of the Penal Code. A writ of*
25 *mandate issued pursuant to this section shall not otherwise be*
26 *admissible as evidence that any person committed a crime or is*
27 *liable for a victim's injury or death in any civil action or*
28 *proceeding, in any criminal action or proceeding including pretrial*
29 *motions and hearings and postconviction motions and hearings*
30 *in criminal proceedings, in any trial or hearing of a juvenile for*
31 *a criminal offense, whether heard in juvenile or adult court, or in*
32 *any court of law. This subdivision shall not be construed to limit*
33 *or in any way affect the board's subrogation and recovery rights*
34 *under Sections 13963 or 13966, and shall not be construed to limit*
35 *or in any way affect the ability of a court to consider the amount*
36 *of assistance provided by the restitution fund to a victim in a*
37 *determination relating to a restitution order following a conviction,*
38 *in accordance with Section 1202.4 of the Penal Code.*

39 (2) *Notwithstanding any other provision of statute,*
40 *administrative rule, local ordinance, or other law, for a claim*

1 *based on a victim's serious bodily injury or death that resulted*
2 *from a peace officer's use of force, as provided in Section 13951,*
3 *a writ of mandate issued pursuant to this section shall not be*
4 *admissible as evidence in any action, disciplinary investigation,*
5 *or proceeding relating to the employment or duties of the peace*
6 *officer, nor used as evidence to support any punitive action or*
7 *denial of promotion of a peace officer.*

O

Senate Bill 299

Equal Access for Victims of Police Violence

Senator Connie M. Leyva (D-Chino)

SUMMARY

SB 299 removes barriers faced by victims of police violence and other violent crimes in accessing California's Victim Compensation program.

BACKGROUND

Victim compensation is an important pathway for survivors to access support, as it can cover specific expenses such as medical bills, funeral and burial expenses, and counseling. Compensation is available only when a survivor has no other avenue for covering these costs (e.g. insurance or Medi-Cal). There are also limits on how much can be paid for each expense, and expenses must result directly from the crime.

PROBLEM

Current eligibility restrictions can lock victims of police violence and their families out of necessary and important compensation.

Existing law requires the California Victim Compensation Board (CalVCB) to verify that a crime occurred based on the police report and deny applications if it finds that the victim was involved in the events that gave rise to the application, giving significant weight to law enforcement opinion. Survivors may be denied for noncooperation with police, and—for most victims—CalVCB cannot approve a claim without a police report. Yet data collected by the U.S. Department of Justice in 2019 found that 6 in 10 violent victimizations (59%) are never reported to police. CalVCB may use other evidence to establish that a crime occurred for victims of sexual assault, domestic violence, and human trafficking, but other victims are currently not afforded the same flexibility.

These restrictions are especially wrong for survivors of police violence and loved ones of those killed by police, as a police report documenting the victimization is often elusive, and officers are rarely charged. CalVCB must also typically rely on the opinion of police when assessing a victim's responsibility—so the very people responsible for the injury may be tasked with documenting it and assigning blame.

These policies can also entrench racialized perceptions of survivors as “deserving” or “undeserving”, and compound trauma for victims and loved ones who receive the message that their experience or loss is not worthy of support.

SOLUTION

SB 299 is critically important, as it ensures that more survivors receive the support needed to address their trauma, regardless of who caused that harm. Survivors of police violence and other violent crimes should not have to overcome unjust barriers to compensation. Ultimately, this bill will improve access to this crucial program for survivors.

First, this bill would ensure that the definitions of “crime” and “victim” for the purposes of compensation presumptively include victims who are seriously injured or killed by police use of force, regardless of whether an officer is arrested or charged.

Second, in cases involving police use of force and in homicide cases, SB 299 would bar exclusions based on a victim's alleged actions leading to the injury, or on whether the victim or their family cooperated with police following the crime. SB 299 would also ensure no survivor is denied coverage for mental healthcare based on these restrictions.

Third, SB 299 would allow survivors of police use of force to use documentation other than a police report to verify that a crime occurred, extending flexibility already available to domestic violence, sexual assault, and human trafficking survivors. It would also prohibit denial based solely on the contents of a police report in cases of police violence.

Lastly, SB 299 would clarify that CalVCB's decisions regarding compensation eligibility are not admissible in any other civil or criminal proceeding, or, for cases of police use of force, in related employment proceedings.

STATUS

Amended – March 4, 2021

SUPPORT

California State Controller Betty Yee (Co-sponsor)
Californians for Safety and Justice (Co-sponsor)
Prosecutors Alliance of California (Co-Sponsor)
San Francisco District Attorney Chesa Boudin (Co-Sponsor)
Youth ALIVE! (Co-sponsor)

CONTACT

Jessica Golly
Office of Senator Connie M. Leyva
State Capitol, Room 4061
(916) 651-4020

Print Form

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. []
- 9. Reactivate File No. []
- 10. Topic submitted for Mayoral Appearance before the BOS on []

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Safai

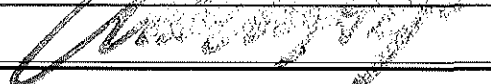
Subject:

Supporting California State Senate Bill SB 299 (Leyva)- Victim compensation: use of force by a peace officer

The text is listed:

Resolution supporting California State Senate Bill (SB) 299 was introduced on February 3, 2021, by Senator Connie Leyva (SD- 20) and SB 299 would remove barriers faced by victims and families of peace officer violence with California Victim Compensation Board Fund.

Signature of Sponsoring Supervisor:



For Clerk's Use Only