



To: Senate Appropriations Committee

From: **Coalition to Abolish Slavery & Human Trafficking (CAST) and Bet Tzedek**

Date: June 25, 2018

Subject: AB 900 Fiscal Analysis

The Coalition to Abolish Slavery & Human Trafficking (CAST) and Bet Tzedek write to provide additional cost analysis of AB 900. CAST is the largest nonprofit in the United States that exclusively provides comprehensive services to survivors of human trafficking and works to put an end to modern slavery and trafficking. Bet Tzedek is a nonprofit legal aid law firm that provides a range of services to vulnerable communities in California, including being a pioneer in providing civil legal assistance to human trafficking survivors. AB 900 is currently in the Senate Appropriations Committee. As co-sponsors of this legislation, we hope this memorandum can provide additional information about the expected fiscal cost of AB 900.¹

Introduction

Currently, recovery for lost income by crime victims is statutorily allowed, and the California Victim Compensation Board ("CalVCB") provides recovery for loss of income for crime victims. The CalVCB is intended to "compensat[e] for the pecuniary losses [victims] suffer as a direct result of criminal acts." Gov. Code § 13950(a). More specifically, the Board compensates "the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's or derivative victim's injury or the victim's death." Gov. Code § 13950(a)(3). Victims of human trafficking are injured by being forced into labor or sexual services for little or no compensation by their traffickers. The income loss in these cases is the direct result of the crime, which is at its core about economic

¹ We also note that the previous 2017 DOF analysis was based on an earlier version of the bill, and that subsequent amendments to the bill moot some of the concerns DOF raised.

exploitation, and AB 900 seeks to create a statutory framework so that trafficking victims, like other crime victims, can be compensated for lost income. The issue that AB 900 seeks to resolve for human trafficking victims is the standard of proof required at an administrative level to qualify for lost income relief. Existing regulations require victims to prove the amount of lost income by providing a statement of disability for the time period in question from the employer or tax documents to verify the amount of the loss. *See* Title 2 CCR §§ 649.7(b)(2), 649.32(d). The vast majority of human trafficking victims are unable to provide this type of proof since the income loss does not occur after the crime, but instead is the crime. The lack of required paperwork to prove the exact amount of loss is common in these cases solely because of the trafficker's form of commercial exploitation. As California takes steps to better address this criminal issue through a wide range of legislative reforms and practices given the specific nature of this crime, the administrative hurdle within CalVCB must be addressed so that human trafficking survivors are not prevented from accessing aid like other crime victims.

In the Assembly Appropriations Committee, language in AB 900 was amended to provide a \$10,000 annual cap for a maximum of 2 years. The overall cap for each individual victim's compensation from the fund remains at \$72,000. To simplify the claimant process AB 900 was also amended to base calculation for lost wage compensation for trafficking victims on minimum wage, for up to 40 hours per week. In 2018 Minimum Wage is \$10.50/hour. A 40 hour work week at this rate yield \$420 per week. Additionally under AB 900 it is important to note that CALVCP remains the payor of last resort.²

Finally, like with all CalVCB claims the federal government will pay 60% of the claims while CA will bear 40% of the claim.³

² The Legislature has already explicitly addressed the issue of "double dipping" for crime victims by providing that restitution "ordered pursuant to this subdivision shall be ordered to be deposited in the Restitution Fund to the extent that the victim ... has received assistance from the California Victim Compensation and Government Claims Board pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code." Penal Code 1202.4(f)(2). Thus, CalVCB may be reimbursed by a restitution order directed towards an offender by the courts, including lost wages under AB 900. Regulations also expressly prevent victims from receiving dual compensation by requiring disclosure of other forms of recovery prior to receiving benefits. *See* 2 C.C.R. § 649.31. The CalVCB remains the payer of last resort whether or not a victim can receive compensation or indemnity from other sources. AB 900 does nothing to change this standard.

³ The lost income provided for human trafficking victims in AB 900 is a covered benefit under VOCA (federal Victims of Crime Act) and thus eligible for reimbursement through the grant program. This means that like with all claims, California will receive reimbursement /matching federal funds under the established 40% State/60% Federal standard. General Counsel Wayne Strumpfer of CalVCB in 2016, confirmed to CAST, Bet Tzedek, and Pro Bono Legal Counsel Gibson Dunn that CALVCP had been told by CalVCB's Washington, DC counterparts and that in fact if California covered lost income in this way for human trafficking victims, it could be reimbursed by federal VOCA funding. Further, in conversations in June 2017 with Dan Eddy, the Executive Director of the National Association of Crime Victim Compensation Boards, CAST also received verbal confirmation from this national expert that there would be no issue with California receiving reimbursement /matching federal funds under the established 40% State/60% Federal standard.

I. AB 900 - Fiscal Analysis As Amended With \$10,000 Annual Cap

To create an accurate fiscal impact analysis, it is critical to consider the average duration of trafficking crimes because AB 900 proposes compensating victims based on the length of time in their trafficking situation, up to a maximum of \$10,000 a year for 2 years. CAST analyzed its data on approximately 1,500 victims that it has served to create an analysis of average length of time in their trafficking experience. It found that:

- 10% of victims work for 1 month or less (4 wks.)
- 15% of victims work for 3 months (13 wks.)
- 25% of victims work for 6 months (26 wks.)
- 25% of victims work for one year (52 wks.)
- 20% of victims work for two years (104 wks.)
- 5% of victims work for three years (156 wks.)

The next data point that is necessary for this analysis is how many human trafficking victims CalVCB expects to apply for this form of compensation. To date, the number of human trafficking victims applying to CalVCP annually has been modest, and has never totaled over 200 victims.

- In 2015 141 human trafficking victims sought benefits.
- In 2016 183 human trafficking victims sought benefits.⁴

The final data needed for the fiscal analysis is the claimant rate. Department of Finance (DOF)'s fiscal analysis last year stated that the annual CalVCP human trafficking claimant rate, at present, is **17.5%**.⁵ As highlighted above Data provided by CalVCP reports that 183 human trafficking victims applied to the CalVCP in 2016. If this figure represents 17.5% of possible claimants, the total number of possible trafficking claimants is 1,046 annually.

In the same memorandum DOF projected that passage of AB 900 would increase the claimant rate significantly, such that trafficking victims' lost income payments could increase from a projected \$6.7 million to \$22 million annually. Thus, DOF projected that the **claimant rate would increase from 17.5% to 57.5%**.

- At the DOF's claimant rate of 57.5%, approximately **600 trafficking victims** (57.55 of 1,046) would apply each year for benefits available under AB 900.

⁴ No data has been provided to advocates for CalVCB 2017, so we must use the 2016 number of 183 victims as a starting point.

⁵ Source: http://www.dof.ca.gov/legislative_analyses/LIS_PDF/17/AB-900-20170502044915PM-AB00900.pdf.

- Although there would be a ramp-up period before reaching this claimant level, this fiscal analysis assumes 600 victim-claimants to provide a “worst-case” fiscal-impact analysis, with the new \$10,000 annual cap, minimum wage rate, and 40-hour work week-limitations which were not present in DOF’s initial analysis.
- The analysis uses CAST data regarding the average duration of trafficking crimes as detailed in Section I above.
- Minimum wage in 2018 is \$10.50/hour, at 40 hours/week equals \$420/week.

Calculation:

- 60 victims x 4 wks x \$420 = \$100,800

- 90 victims x 13 wks x \$420 = \$491,400

- 150 victims x 26 wks x \$420 = \$1,638,000, reduced to \$1,500,000 due to \$10,000 annual cap

- 150 victims x 52 wks x \$420 = \$3,276,000, reduced to \$1,500,000 due to \$10,000 annual cap

- 120 victims x 104 weeks x \$420 = \$5,241,600, reduced to \$2,400,000 due to \$10,000 annual cap

- 30 victims x 156 weeks x \$420 = \$1,965,600, reduced to \$600,000 due to \$10,000 annual cap

= \$6,592,200

In sum, the total “worst case” cost to California, which would be 40% of the above total with the remaining 60% reimbursed by the federal government, would be **\$2,636,880** (\$6,592,200 x 40%).

II. The DOF analysis overestimates the expected rate of recovery under AB 900.

Although above we used the worst case increase that DOF predicated, we think that based on barriers that trafficking victims experience in accessing CAIVCP benefits, the predicated increased cost of \$2.63 million would be lower. As stated above, at present the DOF estimates that the annual rate of human trafficking victims seeking funds from the CalVCB is the low rate of 17.5%. In our experience this low rate is due to numerous reasons that have nothing to do with the change in policy proposed by AB 900. For example, victims often require assistance to access services through the CalVCB and often do not self-identify as trafficking victims for many years after these crimes, given factors such as

feeling like they somehow consented to their own enslavement, the stigma around being forced to commit criminal acts or being undocumented, and a general fear of police and government agencies instilled by their traffickers.

Additionally, the fact that CalVCB claims are time-limited (generally applicants must apply within three years of the criminal activity) means that many trafficking victims who escape from their traffickers will never be able to seek CalVCB funds, because they often are not able to apply in time due to lack of access to services or because they often do not self-identify as a crime victim and seek services. AB 900 does nothing to change these well-established and documented issues for trafficking victims.

Finally, as the DOF analysis is based on a dramatic increase in applicants **over the years**, if CalVCB begins to gather data that does show a higher level of trafficking victims suddenly accessing CalVCB because of AB 900 benefits, the Legislature can easily act to address this issue in a timely manner before any issues occur—but only when actual data is available.

For all the above listed reasons, there is strong justification for questioning the incredible increase of 57.5% that DOF asserts will occur and to feel confident that the framework provided by AB 900, while creating some new state expenditures to compensate trafficking victims for the horrific crimes committed against them, will be at a workable rate given CalVCB's budget and expenditures.

Conclusion

In conclusion, CAST and Bet Tzedek believe that AB 900 proposes a modest change in existing law to allow victims of human trafficking better access to CalVCB funds to which they should be entitled. We would be happy to provide additional information and materials on these issues based on our specific expertise with these programs and trafficking victims specifically. We look forward to further discussions on AB 900.