



COALITION TO
ABOLISH SLAVERY
& TRAFFICKING



Human Trafficking – Compensating Victims for Lost Income

AB 629 (Smith)

Crime victims: the California Victim Compensation Board

FACT SHEET

PURPOSE

Assembly Bill 629 would amend current law to give the California Victim Compensation Board express guidance that a **human trafficking victim is eligible to receive compensation from California's Victim Compensation Program for income losses incurred as a result of their trafficking** (i.e., while they are being trafficked), regardless of whether they can prove that they were employed before the crime occurred.

BACKGROUND – The Crime Victim Compensation Fund

The California Crime Victim Compensation Fund (VCP), administered by the California Victim Compensation Board, is a source of reimbursement for crime-related expenses to victims who suffer physical injury or the threat of physical injury as the result of violent crime. The fund is not supported by taxpayer dollars, but instead is funded through the State Restitution Fund from restitution fines and orders, and penalty assessments levied on those who have been convicted of crimes and traffic offenses. In its FY 2017-18 Annual Report¹, the Board reported that it had collected nearly \$65 million that year to replenish the Fund through a variety of sources, none of which come from taxpayer dollars. During the same reporting period, the Board paid claims to eligible crime victims of approximately \$57 million. In addition the state of California receives federal funds under the Victims of Crime Act to support VCP pay outs to crime victims in California. The federal government reimburses California for 60% of its payout to crime victims for the previous year. Therefore, these federal funds, which are also from fines and costs levied in criminal prosecutions and not taxpayer dollars, supplement state victim compensation programs that provide financial assistance and reimbursement to victims for crime-related expenses, including lost wages and income².

CURRENT LAW AND REGULATIONS

Federal and state laws and regulations currently allow crime victims to be compensated for lost income that is directly related to the crime perpetrated against them. Through discretionary regulation, the California Victim Compensation Board has elected to interpret the law in an unnecessarily narrow way, choosing to promulgate state regulations that close the door on the ability of human trafficking victims to receive compensation for lost wages.

Current regulations are written specifically for a crime victim who was employed and then stopped working in the aftermath of the crime. The regulations require formal evidence of employment, e.g., documentation from the Tax Board, workers' compensation carriers, or employers (which could be the victim's traffickers). In nearly

¹ <https://victims.ca.gov/docs/reports/AnnualReport-FY-17-18.pdf>

² <https://ojp.gov/ovc/grants/types.html#formulagrants>



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every single human trafficking case it is impossible to satisfy this evidentiary requirement. AB 629 poses another scenario where a person, as the result of a crime of violence, is forced to work in slave-like conditions without compensation. Requiring those victims who are exploited commercially under slavery-like conditions to provide this type of evidence effectively precludes them from obtaining lost income

compensation. To ensure that the statute and regulations do not require documentary evidence that trafficking victims cannot realistically provide, the bill also directs the Board to adopt guidelines that allow it to rely on evidence other than official employment documentation in considering and approving trafficking victims' applications for lost income compensation.

NEED FOR ACTION

Due to the unique labor-oriented nature of human trafficking (both sex and labor trafficking), every trafficking victim is forced to labor for sustained periods with limited or no pay, regardless of their prior employment status. These victims suffer lost income in an even more direct and prolonged manner than victims of other violent crimes because they are deprived of wages during the commission of the crime and after they are released from bondage and cannot immediately return to work.

Victims that manage to escape their trafficking situation are often far from home and without any community support systems. As victims of a horrific crime that preys on society's most vulnerable and leaves them even more vulnerable, they are very much in need of assistance to rebuild their lives. Unable to meet even their most basic necessities, they also do not have access to the types of documents that victims of other crimes may use to establish income loss and move forward with their recovery.

In our 2018 Impact Report³, we report that we served over 1,300 survivors and their family members. Under currently regulatory guidance Cast has **NO** clients who can recover for lost income, despite the fact that they suffer economic loss as a direct result of the violent crime committed against them.

AB 629 IS CONSISTENT WITH PUBLIC POLICY

The California Legislature already recognizes the unique nature of this horrific crime and its acutely vulnerable victims. As a matter of public policy, the Legislature has adopted a protective and supportive stance towards these victims with laws that serve as a national model for ensuring that they are able to access crime victim compensation. For example, the Crime Victim Compensation Board statute accepts a lower evidentiary standard as proof of the crime of human trafficking and also accepts emotional injury as sufficient injury for recovery.

Consistent with public policy, **the Legislature should clarify its statutory intent to cover human trafficking victims who were not compensated for labor they performed as a direct result of the crime and the statute should further direct the VCP Board to adopt guidelines allowing the use of any reliable corroborating evidence, including victim and case worker affidavits, when verifying income loss for trafficking victims.** Accepting this alternative evidence for a victim to claim compensation for lost wages would not be a departure from California's previous public policy allowing for flexibility in supporting survivors of human trafficking reclaim their lives.

PRIOR SUPPORT FOR THIS MEASURE

In 2017 in public statements made to VCP in an attempt to update the regulations, this issue had the support of the State Controller's Office, Attorney General's Office, Labor Commissioner's Office, Survivors of trafficking, and numerous organizations statewide that provide services to victims of human trafficking. The State Controller, the co-sponsor of this measure with CAST, is a member of the VCP Board. Following the

³ <http://www.castla.org/wp-content/themes/castla/assets/files/Cast-Impact-Report-2018.pdf>



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introduction of AB 900 (2018), the Chairperson of the Board recognized that the “need is obvious” for lost income compensation for trafficking victims, and expressed that she “strongly” supports the reform. The Board has previously conveyed that it will support a legislative solution to compensate human trafficking victims for their earned but unpaid lost income.

AB 900 (as amended), the predecessor to AB 629 in the 2017-2018 Legislature, passed with unanimous support of both the Assembly and Senate. Unfortunately, it was vetoed by the Governor in 2018 because of the stated “instability” of the crime victim funding. In fact, as detailed above, the crime victim funds at both the state and federal levels, have both always operated with a surplus.

FISCAL IMPACT

AB 629 recognizes the tremendous need for these funds, and the equally tremendous good that they do. AB 629 is fiscally conservative, expressly stating that the VCP Board may authorize compensation for income loss suffered by human trafficking victims for the period of time that they are forced to labor with little or no pay. To value the income lost, the bill directs the Board to calculate the value of the victim’s labor as guaranteed under California law (i.e., minimum wage) for the number of hours that services were performed, up to 40 hours per week. **Compensation for lost income under this bill is limited to \$10,000 per year, for a maximum of two years (\$20,000).** Cast has calculated the number of trafficking victims currently accessing the Crime Victim Fund and submits that it would cost no more than \$150,000 annually for this increased protection for trafficking victims. In relation to the size of the fund, allowing for lost wage compensation for this group of crime victims is a small price to pay for the enormous impact it will have on the lives of trafficking survivors looking for a new start on the road to freedom and autonomy.

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Coalition to Abolish Slavery & Trafficking

Systemic change is at the core of Cast’s mission. Taking a survivor-centered approach to ending modern slavery, Cast has a proven track record of working directly with survivors of human trafficking, which builds an important bridge between practice and policy to inform effective policy initiatives. By developing broad-based partnerships, Cast effectively advocates for policies that work to end human trafficking and help survivors rebuild their lives.

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