

|  |  |  |
| --- | --- | --- |
|  |  |  |
| To: |  | Members of the State Legislature |
| From: |  | **Coalition to Abolish Slavery & Human Trafficking (CAST) and Bet Tzedek** |
| Date: |  | March 1, 2019 |  |
| Subject: |  | AB 629 is Not A Significant Change in Board Policy And Will have Little Fiscal Impact on the Crime Victims Fund  |
|  |  |  |

The Coalition to Abolish Slavery & Human Trafficking (CAST) and Bet Tzedek write to address the concern raised in Governor Brown’s veto message of AB 900, the predecessor to AB 629, indicating that provisions in AB 900 “change[] the nature of the Board's system for compensating victims” and would place an “unsustainable burden on the Restitution Fund.” As co-sponsors of this legislation, we hope this memorandum can clarify existing law around victim compensation and provide additional information about the fiscal impact of AB 629.

1. **The policy in AB 900 (now AB 629) does not “fundamentally change” the way the California Victim's Compensation Board (CalVCB) compensates victims of crime.**

The governor’s veto message indicates that AB 900 is a “fundamental change” to the nature of the Board’s current system of compensating crime victims. However, recovery of lost income by crime victims is currently allowed under state[[1]](#footnote-1) and federal statute. In fact the Board paid almost 11 million dollars in lost income to crime victims last year in California.[[2]](#footnote-2)

The issue that AB 629 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 their 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 a direct result of the trafficker’s form of commercial exploitation, i.e., forced labor. As California take steps to better address the crime of trafficking through a range of legislative reforms and practices, the evidence of lost income CalVCB will accept must be updated and expanded so that human trafficking survivors are not prevented from accessing aid available to victims of other crimes.

1. **AB 629 will have little fiscal Impact on the Crime Victims Fund[[3]](#footnote-3)**

Last year in the Assembly Appropriations Committee, language in AB 900 (now AB 629) 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 claims process AB 900 was also amended to base the lost wage compensation calculation for trafficking victims on the minimum wage, for up to 40 hours per week. In 2019, the minimum wage for employers with fewer than 26 is $11.00/hour. A 40 hour work week at this rate yield $440 per week. It is also important to note that under AB 629, CalVCB remains the payor of last resort[[4]](#footnote-4) and that the federal government reimburses the state of California for 60% of crime victims state claims.[[5]](#footnote-5)

To understand AB 629’s realistic fiscal impact it is critical to consider the average duration of trafficking crimes because AB 629 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 who it has served, and found that on 25% of victims were enslaved for over two years and the majority were enslaved for 6 months or less. This means that the majority of human trafficking victims under AB 629 likely to file claims would be compensated between $**1,690 and $10,000 for their work or services during enslavement.** To date, the number of human trafficking victims applying to CalVCB annually has been modest, and has never totaled over 200 victims.

.

|  |  |
| --- | --- |
| ***Human Trafficking Claimants Received and Paid, CY2014 - CY2018[[6]](#footnote-6)***  |  |
|   | **CY2014** | **CY2015** | **CY2016** | **CY2017** | **CY2018** |   |
| **Applications Received** | **131** | **203** | **238** | **146** | **189** |   |
| **Applications Processed** | **132** | **186** | **241** | **133** | **210** |   |
| **Applications Allowed** | **124** | **171** | **224** | **123** | **188** |   |
| **Applications Receiving Payments** | **39** | **62** | **90** | **58** | **73** |   |

To create a point of reference the fund currently assists more than 40,000 crime victims a year.[[7]](#footnote-7) Further data indicates not only that less than 200 trafficking victims’ applications to the fund get approved in a year, but less than 100 actually receive any sort of pay out.

Therefore, the total payout if each victim received the full $10,000 for 1 year of enslavement of those who applied would be $1.6 million with the federal government reimbursing for $960,000 (60%), for a total of $**640,000** from the California Restitution fund annually.

More realistically, less than half of human trafficking victims who applied and were approved received a pay out so the actual number that might be paid out by the fund annually looking at the claimant rate over the last five years is about $**256,000**.

Again, it can be expected that over the years CalVCB might see an increase of human trafficking victims applying for the fund[[8]](#footnote-8) but given that five years of data has not shown a dramatic increase in numbers, with some years actually decreasing in applicants, it is reasonable to believe that this increase would be slow and would occur over years and that if it became an issue the legislature could easily take steps to address this issue in a timely manner—but only when actual data is available. This is a policy approach far more fair to crime victims.

**Conclusion**

In conclusion, CAST and Bet Tzedek believe that AB 629 proposes a modest change in existing law to allow victims of human trafficking fairer access to CalVCB funds to which they should be entitled.

1. 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 exploitation, and is consistent with the legislative intent behind CalVCB compensation. [↑](#footnote-ref-1)
2. California Victim Compensation Board Annual Report , Fiscal Year 2017-2018. Available at: <https://victims.ca.gov/docs/reports/AnnualReport-FY-17-18.pdf> [↑](#footnote-ref-2)
3. In fiscal year 2017-2018, CalVCB’s Restitution Recovery Program collected almost $65 million in funds: $784,153 from third party recovery sources, $311,964 from probate estates, $61 million from fines and orders collected by county partners and the California Department of  Corrections and Rehabilitation and, $2.9 million from fines and orders collected   through the Franchise Tax Board. The report further notes that $57,272,739 was paid in victim claims from the fund, with about 11 million being for lost income. This means that there was an excess of almost 8 million in the fund in 2018. Therefore it is hard to see how the fund is in an instable and cannot handle increased payments for crime victims. Further the 2017-2018 annual report mentions a significant decline in compensation paid between fiscal year 2013–2014 and 2014–2015 and notes this was largely due to the impact of the Affordable Care Act and the fact that more Californians were covered by health insurance and Medi-Cal. This decline was almost $10 million and would seem to show that the fund had been able to make pay outs in excess of $10 million or more in the past that it is no longer paying, and should not expect to pay. California Victim Compensation Board Annual Report , Fiscal Year 2017-2018. Available at: <https://victims.ca.gov/docs/reports/AnnualReport-FY-17-18.pdf> [↑](#footnote-ref-3)
4. 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. [↑](#footnote-ref-4)
5. The lost income provided for human trafficking victims in AB 629 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 matching federal funds under the established 40% State/60% Federal standard. General Counsel Wayne Strumpfer of CalVCB in 2016, confirmed that CALVCB had been told by CalVCB’s Washington counterparts that if California covered lost income 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 received verbal confirmation from this national expert that there would be no issue with California receiving reimbursement under the established 40% State/60% Federal standard. [↑](#footnote-ref-5)
6. Data received from Victims Public Records Act Request 3/23/2019. Email on file with CAST. [↑](#footnote-ref-6)
7. California Victim Compensation Board Annual Report , Fiscal Year 2017-2018. Available at: <https://victims.ca.gov/docs/reports/AnnualReport-FY-17-18.pdf> [↑](#footnote-ref-7)
8. In our experience this low rate is due to numerous reasons that have nothing to do with the change in policy proposed by AB 629. 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 629 does nothing to change these well-established and documented issues for trafficking victims. [↑](#footnote-ref-8)