

Staff Memorandum 2022-02 Crime Victims' Rights and Services

At its February 2022 meeting, the Committee on Revision of the Penal Code will address rights and services available to victims of crimes.¹ This memorandum first gives statistical background around these issues and a brief history of victims' rights in California. It then explores areas of the law — victims compensation, restitution, and restorative justice — where revisions of the Penal Code could more directly center and address crime victims' needs.

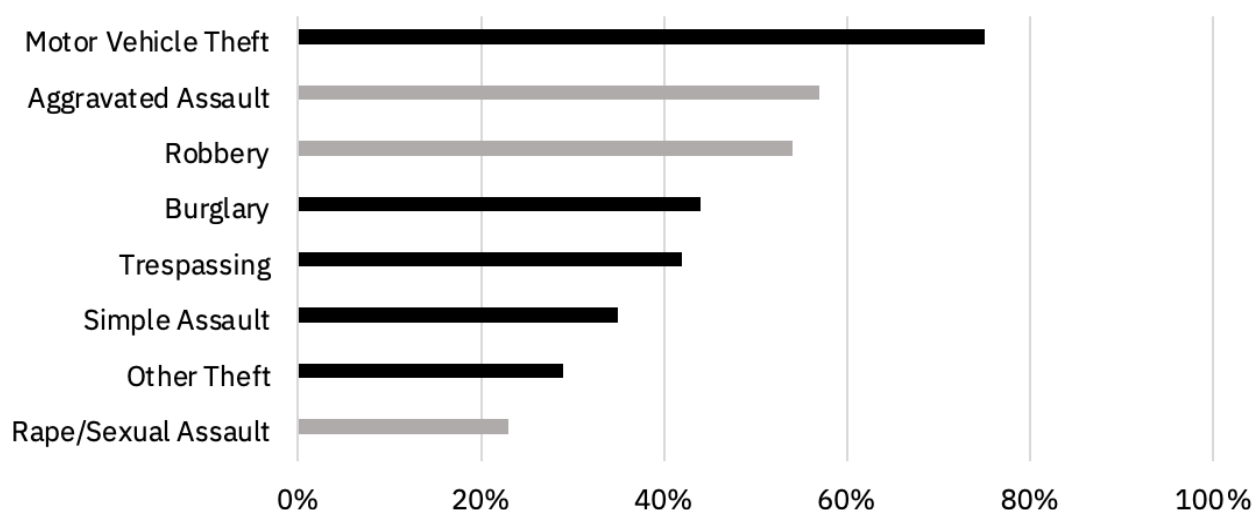
Background

1. Basic statistical background on crime victims

A large amount of crime goes unreported to law enforcement. According to the United States Department of Justice's Criminal Victimization Survey, less than 50% of violent victimizations and 33% of household property victimizations are reported to United States law enforcement.²

Percentage of crimes reported to law enforcement (2019–20)

Black bars are non-violent offenses; gray bars are violent offenses



Source: United States Department of Justice, *Criminal Victimization 2020*, Table 4.

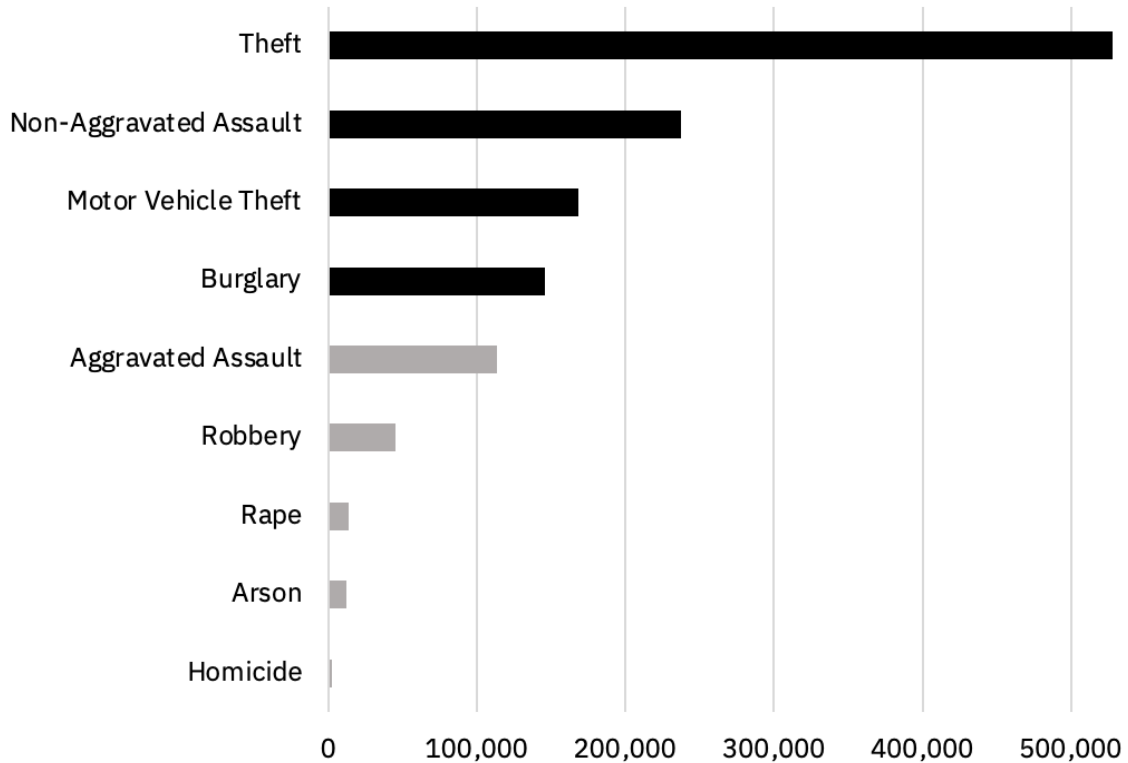
¹ This memorandum uses both the terms “victim” and “survivor” because both are ways that people who have been harmed by crime identify. See Dr. Gena Castro Rodriguez, *2020 Victim Impact Survey Report*, Office of the San Francisco District Attorney, 4 (2021).

² Rachel E. Morgan and Alexandra Thompson, *Criminal Victimization 2020*, U.S. Department of Justice, Bureau of Justice Statistics, Table 4, November 2021. In 2020, 49% of violent crime excluding simple assault was reported to law enforcement. The survey does not include murder and commercial property crime. *Id.* at 6. It also does not include crimes against children age 11 or younger or people who are unhoused or in institutional settings such as nursing homes and prisons and jails. *Id.*

In California, property crime is the most reported type of crime, with more than 800,000 incidents reported in 2020, compared to more than 170,000 reported violent crimes and more than 230,000 simple assaults:

Crimes reported to California law enforcement (2020)

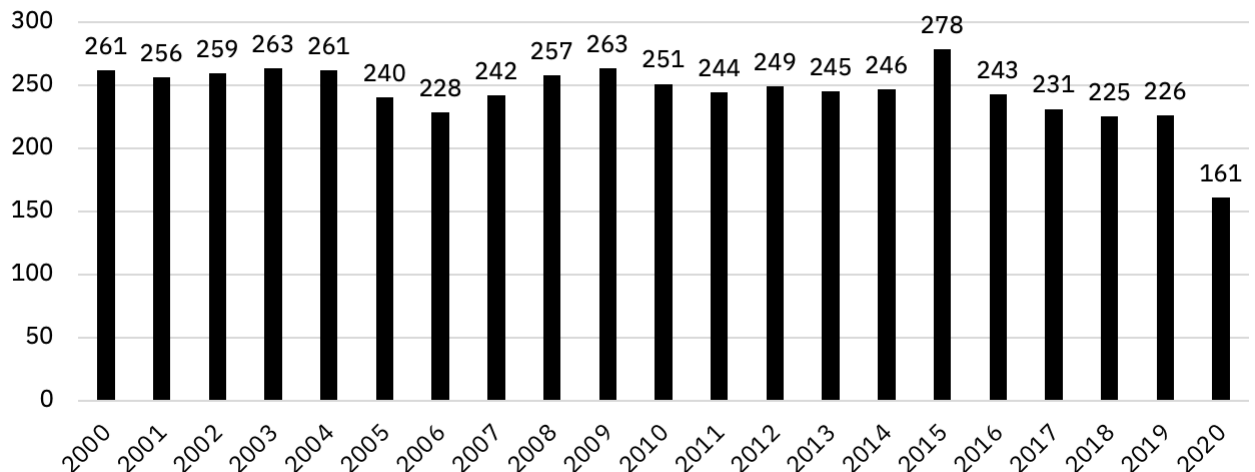
Black bars are non-violent offenses; gray bars are violent offenses



Source: California Department of Justice, *Crime in California 2020*, Tables 1 and 7. If multiple crimes occur during the same event, only the most serious (based upon a hierarchy) is counted.

California shoplifting rate (2000–2020)

Rate is crimes per 100,000 people

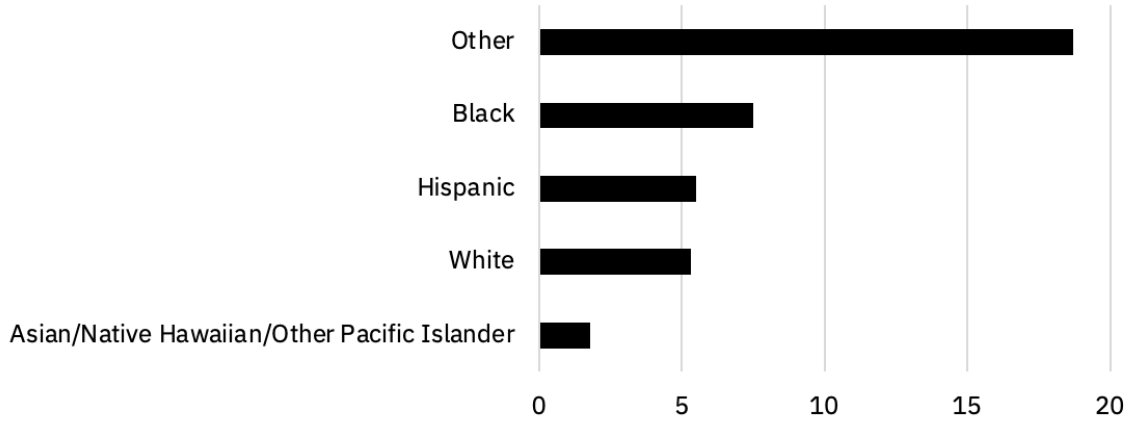


Source: California Department of Justice, *Crime in California* reports, Tables 11 and 52.

National data indicates that many people of color experience higher rates of violent victimization than white people:

National rate of violent victimization by race of victim (2019–20)

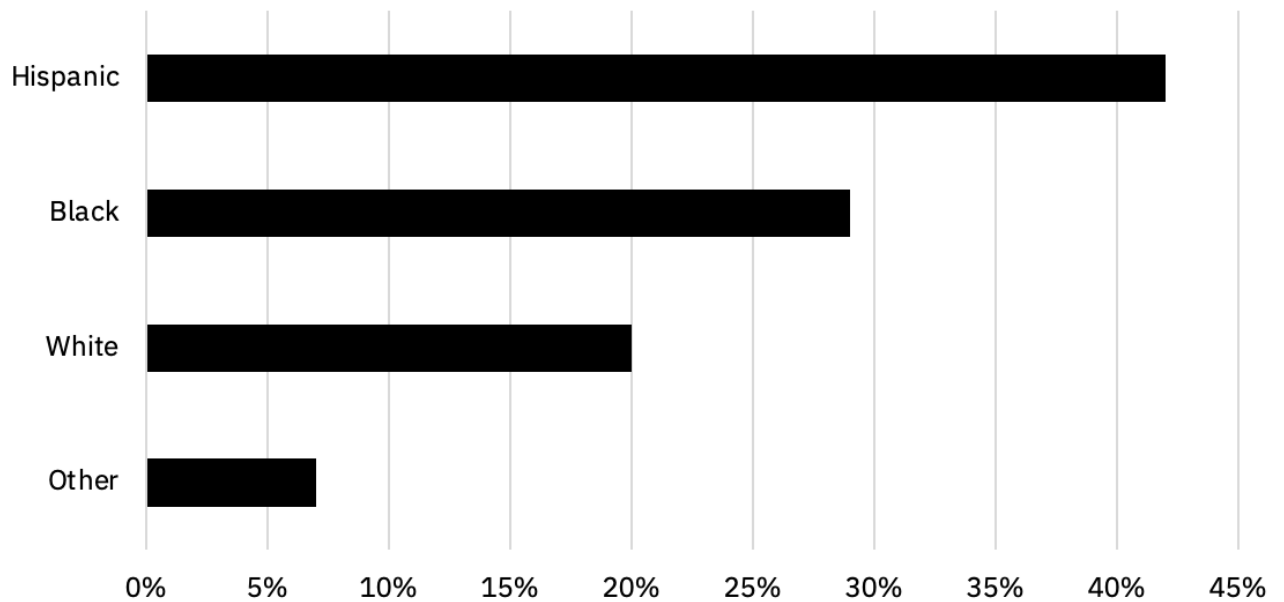
Rates are per 1,000 persons and exclude children 11 or younger



Source: United States Department of Justice, *Criminal Victimization 2020*, Table 6. “Other” includes American Indians and Alaska Natives and persons of two or more races.

And in California, homicide victims are predominantly people of color:

California homicide victim demographics (2010–2020)

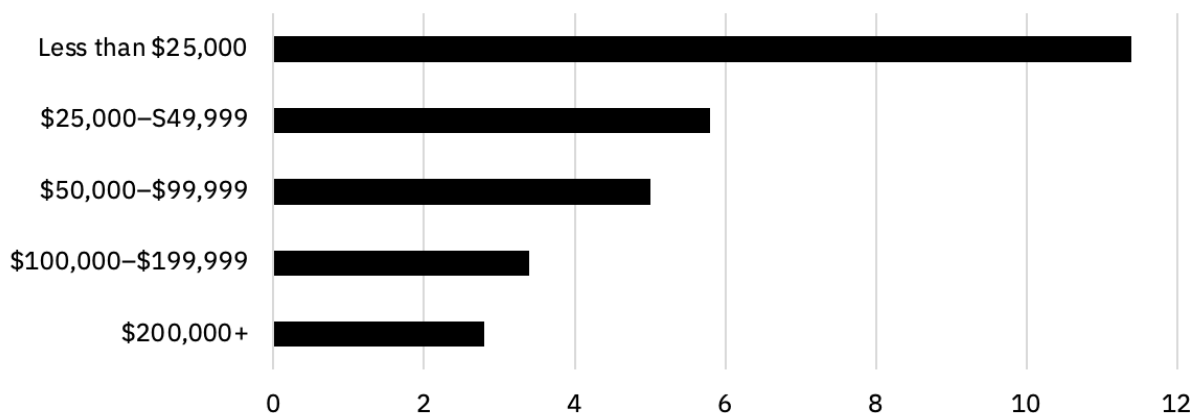


Source: California Department of Justice, *Homicide in California* reports, Table 6.

National data indicates that households with annual income of less than \$25,000 experience a violent victimization rate nearly double that of households with an annual income of \$50,000–\$99,999 a year. This data shows the importance of victims compensation programs, which give money to crime victims. California’s compensation program is discussed below.

National rate of violent victimization by household income (2019–20)

Rates are per 1,000 persons and exclude children 11 or younger



Source: United States Department of Justice, *Criminal Victimization 2020*, Table 4.

2. Victims’ rights in California

In 1982, California became one of the first states to create a “Victims’ Bill of Rights” through the passage of Proposition 8.³ To many voters, Proposition 8 served as a corrective for an excessive judicial focus on the rights of criminal defendants.⁴ Among other things, Proposition 8 gave victims a constitutional right to recover restitution from the defendant,⁵ required that they be notified of sentencing and parole hearings,⁶ and allowed them to give statements at those hearings.⁷

³ Office for Victims of Crime, *Landmarks in Victims’ Rights and Services*, United States Department of Justice (2021).

⁴ J. Clark Kelso and Brigitte A. Bass, *The Victims’ Bill of Rights: Where Did It Come From and How Much Did It Do*, 23 *Pacific Law Journal* 843, 878 (1992).

⁵ Cal. Const. Art. 1 § 28(b).

⁶ Penal Code §§ 1191.1, 3043.

⁷ *Id.* See also *California Ballot Pamphlet, Primary Election, June 8, 1982*, at 32–35, 54–56. As part of the the Victims’ Bill of Rights, Proposition 8 also created the so-called “nickel prior” (which can add five years to a prison sentence for a serious offense if the person was previously convicted of a serious offense), modified rules around bail release, created a “truth-in-evidence” provision, and abolished the defense of diminished capacity.

In 2008, Californians again amended the state constitution with the passage of Proposition 9, known as “Marsy’s Law.”⁸ Marsy’s Law contains seventeen victims’ rights, such as rights to be notified of additional material events in a case, to confer in advance with the prosecutor about the charges and any pretrial dispositions, and additional participation in proceedings related to the crime, including bail setting, sentencing, and parole suitability hearings.⁹

In addition to these rights in the California constitution, the Penal Code contains other victims’ rights. These statutory rights primarily involve specific information that must be provided to victims and some are duplicative of the victims’ rights in the state constitution.¹⁰

Despite these rights, a recent survey by Crime Survivors for Safety & Justice found that only 14% of California crime victims reported feeling “very supported” by the criminal legal system.¹¹ Similarly, a 2020 survey by the San Francisco District Attorney’s Office found that many victims of crime did not know they have specific rights in California: more than a third of the responding victims said they had never been provided any information about their rights.¹²

3. Restitution and victim compensation

A recent survey by Crime Survivors for Safety & Justice found that less than 20% of crime victims reported receiving counseling, medical assistance, or financial support, despite California providing victims a right to restitution and a compensation fund.¹³

There are two separate but related mechanisms for getting financial assistance into the hands of crime victims: restitution and victims compensation. Restitution is what courts order people convicted of crime to pay to their victims for financial losses. Victim compensation refers to payments made by the government to crime victims. Both restitution and victim compensation can include the costs of lost wages and mental health treatment and other services to help repair the trauma of the crime.

⁸ The measure was passed after a woman named Marsy was killed by an ex-boyfriend. Shortly after her killer was arrested, Marsy’s mother ran into him at the grocery store because she hadn’t been notified of his release on bail. See *California Official Voter Information Guide, General Election, November 4, 2008*, 129 (Proposition 9 § 2, ¶ 7).

⁹ Cal. Const. Art. 1 § 28(b).

¹⁰ Compare Penal Code § 679.02(a)(12) with Cal. Const. Art. 1 § 28(b) (both giving victims the right to be notified of pretrial dispositions).

¹¹ *California Crime Survivors Speak*, Crime Survivors for Safety & Justice, 2 (2019).

¹² Dr. Gena Castro Rodriguez, *2020 Victim Impact Survey Report*, Office of the San Francisco District Attorney, 18 (2021).

¹³ *California Crime Survivors Speak*, Crime Survivors for Safety & Justice, 2 (2019).

Restitution

In California, crime survivors have a constitutional right to restitution from the people convicted of the crimes that caused the loss.¹⁴ Courts are required by statute to order those convicted of crimes to pay full restitution based on the amount of loss claimed by the victim.¹⁵ A person's inability to pay cannot be considered in determining the amount of the restitution order.¹⁶

Data indicate that the state's restitution system may be ineffective at compensating victims. A recent survey of crime survivors by the San Francisco District Attorney's Office found that only 27% of people ordered restitution received some or all of it.¹⁷ And a survey of 15 counties found that counties reported spending \$.64 to collect each dollar of victim restitution collected.¹⁸ According to the same survey, between 2010 and 2020, sampled counties reported ordering \$1.1 billion in direct restitution but collected only \$110 million (11%).¹⁹

Victim Compensation

California created the nation's first victim compensation program in 1965.²⁰ Today, every state has a compensation fund that victims of crime can apply to for financial assistance with expenses related to the crime.²¹ These programs fulfill a state's duty to protect its citizens from crime and its moral responsibility to make them whole when it failed to do so.²² Compensation programs also aim to improve public safety and to encourage cooperation with law enforcement.²³

¹⁴ Cal. Const. Art. I § 28(b)(13)(A). See also Penal Code § 1202.4(a)(1). Other state constitutions grant crime victims a right to restitution. See Ariz. Const. Art. 2 § 2.1(8), Mich. Const. Art. 1 § 24(1), and Texas Const. Art. 1 § 30(b)(4).

¹⁵ Penal Code § 1202.4(f).

¹⁶ Penal Code § 1202.4(g).

¹⁷ Dr. Gena Castro Rodriguez, *2020 Victim Impact Survey Report*, Office of the San Francisco District Attorney, 16 (2021). Of more than 500 people surveyed, only a small number (37) reported that restitution was ordered and 5 people said all the restitution was paid while 5 people said that some of the restitution was paid.

¹⁸ Delaney Green, *Victim Compensation in the Criminal-Legal System: Fiscal Data Summary*, Master's Thesis, University of California, Berkeley, 1 (2021). The 15 counties surveyed covered approximately 58% of California's population. *Id.* at 5.

¹⁹ *Id.* at 1.

²⁰ California Victim Compensation Board, *About the Board*.

²¹ National Association of Crime Victim Compensation Boards, *Victim Compensation: An Overview*.

²² See Lauren N. Hancock, *Another Collateral Consequence: Kicking the Victim When She's Down*, 77 Wash. & Lee L. Rev. 1319, 1325 (2020).

²³ Douglas Evans, *Compensating Victims of Crime*, 2, John Jay College of Criminal Justice, City University of New York (2014).

The California Victim Compensation Board (CalVCB) administers victim compensation in California. Compensation from CalVCB is limited to victims who suffered either physical injury or emotional injury accompanied by the threat of physical injury²⁴ and will only compensate for expenses not paid by other sources like insurance or restitution. Reimbursable expenses include medical fees, counseling, and funeral services.²⁵

In 2020 and 2021, CalVCB paid out more than \$50 million to crime victims annually in Fiscal Year 2019–20 and Fiscal Year 2020–21.²⁶ In Fiscal Year 2020–21 CalVCB processed more than 40,000 claims for compensation — over 20% less than in the previous year.²⁷ More than 35,000 claims were allowed, while nearly 5,800 claims (12%) were denied — an increase from 8.5% in Fiscal Year 2018–19.²⁸ Notably, the average time required for CalVCB to process an application fell from 65 days in spring 2020 to 39 days in July 2021.²⁹

The most frequent type of crimes that people submitted claims for were assault (15,185), child abuse (7,579), and homicide (5,618).³⁰ CalVCB administered the most money to compensate for expenses related to mental health care, funeral burial, and income support loss.³¹

CalVCB also funds the operation of 19 Trauma Recovery Centers (TRC) throughout the state.³² TRCs provide more immediate counseling and assistance to crime victims and serve those who may not be eligible for victim compensation or are reluctant to participate in the traditional criminal legal process.³³ Though TRCs address victims' needs outside of the criminal legal system, studies have found that TRC clients were 44% more likely to cooperate with prosecutors and that victims of sexual assault served by TRCs were 69% more likely to file a police report.³⁴

²⁴ Gov. Code § 13955(f).

²⁵ Gov. Code § 13957.

²⁶ California Victim Compensation Board, *Annual Report FY 20-21 Supplemental Statistics*.

²⁷ *Id.*

²⁸ *Id.*

²⁹ California Victim Compensation Board, *Annual Report 2020-21*.

³⁰ *Id.*

³¹ *Id.*

³² California Victim Compensation Board, *Annual Report 2020-21*. See also Gov. Code § 13963.1.

³³ *Id.*

³⁴ National Alliance of Trauma Recovery Centers, *Trauma Recovery Centers: Addressing the Needs of Underserved Crime Survivors*, 14 (2020) (citing R. Okin and A. Boccellari, *Recommendations to the State of California Victim Compensation Program Based on Findings From the UCSF Trauma Recovery Center Demonstration Model Program*, 6 (2007) and A. Boccellari and S. Wiggall, *The UCSF Trauma Recovery Center Manual: A Model for Removing Barriers to Care and Transforming Services for Survivors of Violent Crime* (2017)).

Funding victim compensation

When a person is convicted of a crime, courts are required to impose a separate “restitution fine” in addition to direct restitution ordered to crime victims.³⁵

Unlike a direct restitution order, the money collected from a restitution fine does not flow directly to crime victims but instead supplements the state Restitution Fund which is a source of funding for CalVCB.³⁶

These restitution fines are set by a court within a statutory range: \$150 to \$1,000 for misdemeanors and \$300 to \$10,000 for felony offenses.³⁷ Courts can choose not to impose a restitution fine for “compelling and extraordinary reasons.”³⁸ A defendant’s inability to pay cannot be a compelling and extraordinary reason not to impose the fine but can be considered when picking the amount of the fine within the range.³⁹

When a person sentenced to prison owes direct restitution or a restitution fine, the California Department of Corrections and Rehabilitation must deduct up to 50% of the person’s wages and trust account deposits and transfer that amount to CalVCB for direct payment to the victim or payment to the Restitution Fund.⁴⁰ County jails have the same authority, but deductions are not mandatory.⁴¹

While a significant source of funding for CalVCB, the amount of money in the state Restitution Fund has been inconsistent over the years. The Restitution Fund provided over \$85 million dollars in funding for victim compensation for Fiscal Year 2018–2019 but only \$55 million dollars in funding for Fiscal Year 2020–2021.⁴² And survey results have found that counties are collecting much less restitution fines than ordered — between 2010 and 2020, 15 surveyed counties reported ordering \$131 million in restitution fines, but collected just

³⁵ Penal Code § 1202.4(b). If a court decides not to impose a restitution fine, it is required to order the defendant to perform community service as a condition of probation, unless it finds compelling and extraordinary reasons not to. Penal Code § 1202.4(n).

³⁶ See Gov. Code § 13964.

³⁷ Penal Code § 1202.4(b)(1)-(2).

³⁸ Penal Code § 1202.4(c).

³⁹ *Id.*

⁴⁰ Penal Code § 2085.5. The Penal Code requires that money collected from incarcerated people be applied to payment of direct restitution orders before it is applied to restitution fines. *Id.* When money is transferred to CalVCB from an incarcerated person’s account, CalVCB is required to make a payment to the victim within 60 days of receiving the money, so long as the payment is \$25 dollars or more. *Id.*

⁴¹ *Id.*

⁴² Data provided by CalVCB in the February 7, 2022 Agenda for the Assembly Budget Subcommittee No. 5 on Public Safety at page 4. As the amount of funding from the Restitution Fund decreased, contributions from the General Funds increased significantly beginning in Fiscal Year 2020–21.

\$42.6 million (32%).⁴³ The same survey found that counties spent \$.49 for each dollar of restitution fines collected.⁴⁴

Several other states, including Illinois, Massachusetts, Minnesota, New Mexico, and Wisconsin rely less on restitution fines and more heavily on general funds to support victim compensation than California does.⁴⁵

Limits to victim compensation

There are several statutory eligibility requirements that can prevent a crime survivor from being granted compensation.⁴⁶

- State law requires an application to be denied if the applicant did not “reasonably cooperate” with law enforcement.⁴⁷ A recent Grand Jury investigation in Alameda County found that over a five-year period, Black applicants were more than twice as likely as white applicants to be denied compensation for this reason.⁴⁸

Hawaii and Vermont do not require cooperation with law enforcement to receive victim compensation, and Illinois recently changed its law to specify that the cooperation requirement can be met when a victim seeks medical care.⁴⁹

⁴³ Delaney Green, *Victim Compensation in the Criminal-Legal System: Fiscal Data Summary*, Master’s Thesis, University of California, Berkeley (2021).

⁴⁴ *Id.*

⁴⁵ Douglas N. Evans, *Compensating Victims of Crime*, Appendix A, John Jay College of Criminal Justice, Research & Evaluation Center (2014).

⁴⁶ Many of the statutory eligibility requirements stem from the federal Victim of Crimes Act of 1984, which established the federal Crime Victims’ Fund to distribute money to states in support of victim assistance and compensation programs. Dean G. Kilpatrick, *Interpersonal Violence and Public Policy: What About the Victims?*, 32 J. L. Med. & Ethics 73, 78 (2004). Congress imposed several limitations on the use of the funds, such as only covering costs not covered by other sources, only compensating “innocent” victims, and requiring cooperation with law enforcement. Julie Goldscheid, *Crime Victim Compensation in a Post-9/11 World*, 79 Tul. L.Rev. 167, 183 (2004). The VOCA Fix Act, passed in July 2021, clarified that states can waive the requirement that victim compensation programs promote cooperation with law enforcement. See H.R.1652 — 117th Congress (2021–2022) (amending 34 U.S.C. § 20102(b)(2)).

⁴⁷ Gov. Code § 13956(b). To determine whether cooperation has been reasonable, CalVCB must consider the person’s age, physical condition, psychological state, cultural or linguistic barriers, and compelling health and safety concerns, including a reasonable fear of retaliation or harm. *Id.* California has special rules for applications based on domestic violence, sexual assault, or human trafficking that specify that they shall not be denied solely because a police report was not made by the victim. Gov. Code § 13956(b)(2)–(4).

⁴⁸ *Id.*

⁴⁹ Hawaii requires reporting to police but does not require any cooperation beyond reporting. See Hawaii Rev. Stat. §§ 351-31 – 351-88; Vermont requires that a law enforcement official has filed a

- A crime survivor who has been convicted of a violent felony is eligible to receive compensation but cannot be granted compensation for expenses incurred while incarcerated, on probation, parole, or post-release community supervision.⁵⁰ Crime survivors who are also required to register as a sex offenders cannot be granted compensation.⁵¹

Other states, including Illinois, Louisiana, Missouri, and Ohio have recently passed legislation to eliminate restrictions based on prior felony convictions and have no specific restrictions based on sex offender status.⁵²

- An application can be denied in whole or in part if CalVCB determines that the victim was involved in the events leading to the crime.⁵³ The Alameda County Grand Jury investigation cited above found that Black applicants were nearly twice as likely as white applicants to have their applications denied for this reason.⁵⁴

report but is otherwise silent on victim cooperation. See 13 V.S.A. §§ 5351-5358a; 740 ILCS 45/6.1(c).

⁵⁰ Gov. Code § 13956(c)(1).

⁵¹ *Id.*

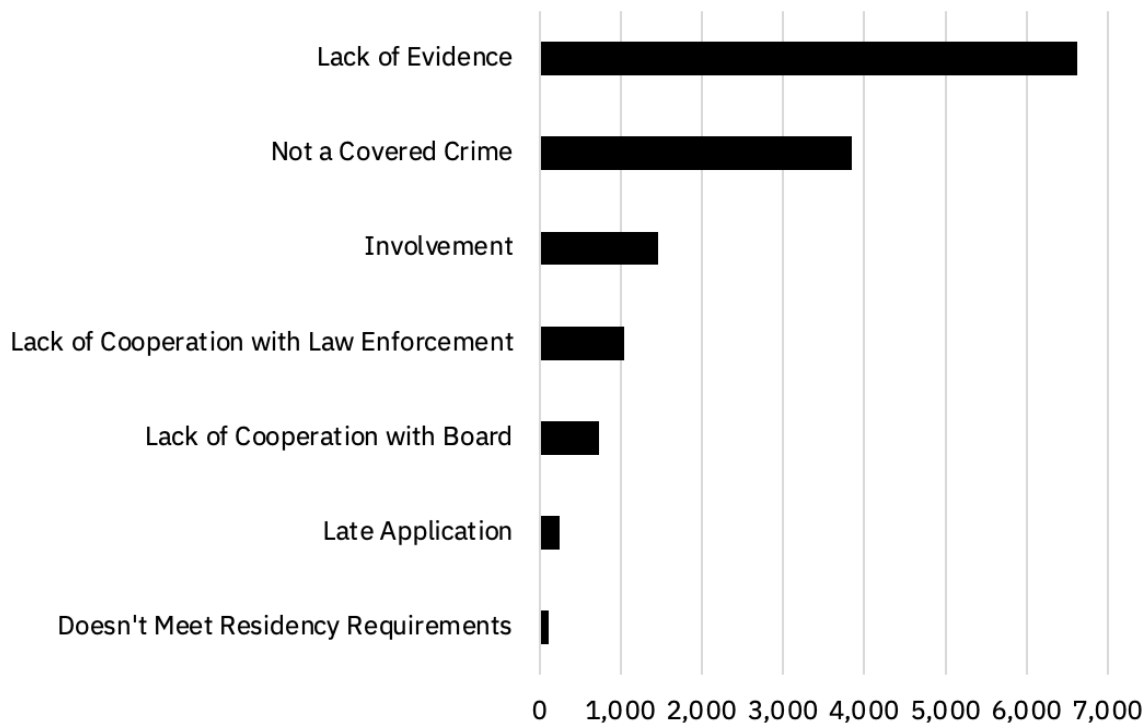
⁵² Illinois, HB 3653 (2021); Louisiana, HB 85 (2019); Missouri, SB 966 (2018); Ohio, SB 36 (2021).

⁵³ Gov. Code § 13956(a).

⁵⁴ *Id.*

Reasons for claim denials by CalVCB (2020 & 2021)

Claims can be denied for more than one reason



Source: Data provided by CalVCB in the February 7, 2022 Agenda for the Assembly Budget Subcommittee No. 5 on Public Safety at page 6. “Lack of evidence” includes incidents that CalVCB is unable to confirm are crimes.

Though victim compensation programs were created in part to encourage cooperation with the criminal legal system, they have not been shown to improve crime reporting, crime rates, clearance rates, or victim satisfaction with the criminal legal process.⁵⁵ One explanation for these findings is that many crime survivors are unaware of victim compensation programs. Though every law enforcement agency is required to have procedures to notify victims of the availability of compensation,⁵⁶ a recent survey of crime victims conducted by the San Francisco District Attorney’s Office, reported that only 45% of victims had been told about victim compensation.⁵⁷

⁵⁵ Eric J. Fritsch, et. al., *Police Referrals of Crime Victims to Compensation Sources: An Empirical Analysis of Attitudinal and Structural Impediments*, *Police Quarterly* Vol. 7 No. 3, 374, (2004) (citing six studies conducted between 1980 and 1998).

⁵⁶ Gov. Code § 13962(b).

⁵⁷ Dr. Gena Castro Rodriguez, *2020 Victim Impact Survey Report*, Office of the San Francisco District Attorney, 20 (2021). The vast majority of the survey respondents reported they were victims of the type of crimes that would be eligible for victims compensation. *Id.* at 14.

4. Restorative justice and civil compromise

In contrast to the dissatisfaction with the traditional criminal legal system noted above, restorative justice resolutions — which center a victim’s needs by allowing them a direct voice in a mediation with the person who caused them harm — often have very high satisfaction rates. For example, in one program in Alameda County, more than 90% of victim-participants said they would participate in another conference or recommend the process to a friend.⁵⁸

Unlike the traditional criminal legal process, which places its focus on the defendant in an adversarial process to determine culpability and punishment, restorative justice focuses on understanding the harm done to the victim and giving them agency to determine what must be done to make them whole again.⁵⁹

There are a variety of approaches to restorative justice but elements common to all models include a trained facilitator who leads a conference between a victim and the person who caused harm that tries to produce a voluntary agreement designed to acknowledge and repair the harm.⁶⁰

In California, restorative justice programs have shown promising results:

- In Yolo County, people who completed the Neighborhood Courts Program, which handles lower-level cases, were 37% less likely to recidivate than similarly-situated people whose cases were resolved through other means.⁶¹

⁵⁸ sujatha baliga, Sia Henry, Georgia Valentin, *Restorative Justice Conferencing: A Study of Community Works West’s Restorative Justice Youth Diversion Program in Alameda County*, Impact Justice, 8, Summer 2017. Other jurisdictions had similarly high ratings of satisfaction from participants. See, e.g., Mark S. Umbreit, Robert B. Coates, and Betty Vos, *The Impact of Victim-Offender Mediation: Two Decades of Research*, 65 Federal Probation 29, 30, Dec. 2001; Mary P. Koss, *The Restore Program of Restorative Justice for Sex Crimes: Vision, Process, and Outcome*, Journal of Interpersonal Violence, Vol. 29(0), 1647 (2013) (90% of participants were satisfied with restorative justice program in Arizona that handled sex crimes); American Bar Association, Resolution 106A, Adopted August 2020, Report at 2 (reporting data from a program in Washington DC); Lynn S. Branham, *The Overlooked Victim Right: According Victim-Survivors a Right of Access to Restorative Justice*, 98 Denver Law Review Forum 1, 15 (August 11, 2021) (collecting studies).

⁵⁹ See, e.g., Lara Bazelon and Bruce A. Green, *Victims’ Rights from a Restorative Perspective*, Ohio St. J. Crim. L. 293, 308 (2020).

⁶⁰ See, e.g., Reese Frederickson, Alissa Marque Heydari, Chloe Marmet, *Restorative Justice: A Best Practice Guide for Prosecutors in Smaller Jurisdictions*, Institute for Innovation in Prosecution, 3–6, January 2022; American Bar Association, Resolution 106A, adopted August 2020; Impact Justice, *Restorative Justice Project Diversion Toolkit for Communities*, 4, June 2019.

⁶¹ Submission of Nicole Kirkaldy, Program Coordinator for the Yolo County District Attorney’s Office’s Neighborhood Courts Program, to Committee on Revision of the Penal Code, April 2020.

- In San Francisco County, the Make It Right program, which addressed juveniles facing serious charges such as burglary and assault, showed a 44% reduction in rearrests compared to a control group.⁶²
- In Alameda County, Community Works West's Restorative Community Conferencing program, which also addressed juveniles facing serious charges, showed a 48% reduction in recidivism rates where the original offense involved a crime against a person.⁶³

California has also experimented with restorative justice principles in more serious cases by providing “victim-offender dialogues” for people in prison.⁶⁴ Though these programs do not avoid prosecution or convictions, they create meaningful opportunities for healing and closure to both victims and people who have committed serious offenses.⁶⁵

The Penal Code does not currently provide a clear path for using restorative justice to resolve adult criminal cases or to help survivors heal after a person has been convicted.⁶⁶ Some other states have done more to formally incorporate restorative justice into its laws, including Colorado which requires prosecutors to notify all crime victims of the “availability of restorative justice practices.”⁶⁷ Vermont has a statute directing that “principles of restorative justice be included in shaping how the criminal justice system responds to persons charged with or convicted of criminal offenses”⁶⁸ and a series of “community justice centers” to administer restorative justice programs.⁶⁹ Minnesota law also authorizes the

⁶² Yotam Shem-Tov, Steven Raphael, and Alissa Skog, *The Impacts of the Make-it-Right Program on Recidivism*, California Policy Lab, January 2022.

⁶³ sujatha baliga, Sia Henry, and Georgia Valentin, *Restorative Justice Conferencing: A Study of Community Works West's Restorative Justice Youth Diversion Program in Alameda County*, Impact Justice, 8, Summer 2017.

⁶⁴ CDCR, Office of Victim & Survivor Rights & Services, Victim Offender Dialogue. See also Penal Code § 1170(a)(2) (restorative justice programs should be available to incarcerated people).

⁶⁵ See Ike Dodson, *Surviving San Quentin: How the Victim Offender Dialogue Helps Inspire Hope, Understanding*, CDCR Victim & Survivor Rights & Services, April 24, 2020.

⁶⁶ For juvenile cases, Welfare and Institutions Code § 202(f) specifically authorizes restorative justice as an appropriate resolution of some cases. The Penal Code contains general acknowledgement and encouragement of restorative justice programs. Penal Code §§ 17.5(a)(8)(E), 3450 (b)(8)(E) (encouraging the use of “community-based punishment,” including “[r]estorative justice programs such as mandatory victim restitution and victim-offender reconciliation”); Penal Code § 1170(a)(1) (“The Legislature finds and declares that the purpose of sentencing is public safety achieved through punishment, rehabilitation, and restorative justice.”).

⁶⁷ Colorado Rev. Stat. 24-4.1.303(11)(g). See also Thalia González, *The State of Restorative Justice in American Criminal Law*, Wisconsin Law Review, Issue 6, 1158 (2020) (Colorado has “the highest level of legalization of restorative justice across all jurisdictions”).

⁶⁸ 28 V.S.A. § 2a(a).

⁶⁹ 24 V.S.A. § 1961(3). See also Community Justice Network of Vermont, cijnvt.org.

creation of community-based restorative justice programs.⁷⁰ In Massachusetts, many offenses are eligible for resolution with restorative justice, if the victim and prosecutor consent.⁷¹

While traditional restorative justice resolutions are not deeply integrated into California's system, the Penal Code does allow for "civil compromises" that allow a court to dismiss a misdemeanor case if a victim "acknowledges that he has received satisfaction."⁷² These provisions date to at least 1872 and typically allow resolutions when a crime victim has received funds from a defendant to repair physical damage. At least nine other states have civil compromise statutes similar to California's.⁷³ Civil compromise has the potential to produce some of the same benefits as a traditional restorative justice process by placing a victim in control of tailoring a resolution. And the streamlined process allowed by civil compromise may be more attractive to some victims who do not have the resources or interest in engaging in the more involved restorative justice process.

Areas for further exploration

- Increase state funding for victim compensation and allow compensation to be awarded as direct cash aid in some circumstances.
- Reduce barriers to victim compensation by eliminating restrictions based on cooperation with law enforcement, prior convictions, and involvement in the crime.
- Incorporate restorative justice resolutions more deeply into the Penal Code, possibly by making it a victims' right that would allow a victim to request it in appropriate cases.
- Revise the civil compromise statute to more precisely define "satisfaction" and expand the statute to cover a greater range of cases, including some felonies.

⁷⁰ Minnesota Stat. § 611A.775.

⁷¹ Mass. Gen. Laws Ch. 276B § 2. Sex offenses, certain domestic offenses, and any offense "resulting in serious bodily injury or death" are ineligible for restorative justice. Massachusetts Gen. Laws ch. 276B § 3.

⁷² Penal Code §§ 1377–1379.

⁷³ See Alaska Stat. §§ 12.45.120–12.45.140; Ariz. Rev. Stat. Ann. § 13-3981; Idaho Code §§ 19-3401, 19-3403; Mass. Gen. Laws. Ch. 276 § 55; Miss. Code. Ann. §§ 99-15-51, 19-15-53; Nev. Rev. Stat. Ann. §§ 178.564–178.568; N.D. Cent. Code §§ 29-01-16–29-01-19; Or. Rev. Stat. §§ 135.703–135.705; Wash. Rev. Code §§ 10.22.010–10.22.020. These statutes use nearly-identical language and limit civil compromise to misdemeanor cases. The statutes appear to all be based on an 1813 statute from New York state. *People v. Moulton*, 131 Cal.App.3d Supp. 10, 17 (Ct. App. 1982).

Conclusion

California has led the nation in creating victims' compensation and victims' rights, but decades of experience shows that more can be done to better serve victims and provide for their immediate needs after a criminal offense. Restorative justice, civil compromise, and updates to the victims compensation and restitution systems all have the potential to give crime victims more choice and quicker recovery than California's current approach to these issues.

Respectfully submitted,

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