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## SENATE COMMITTEE ON APPROPRIATIONS

Senator Anthony Portantino, Chair  
2019 - 2020 Regular Session

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### **AB 767 (Grayson) - Victim compensation: use of excessive force by a peace officer**

**Version:** August 3, 2020

**Urgency:** Yes

**Hearing Date:** August 17, 2020

**Policy Vote:** PUB. S. 6 - 1

**Mandate:** No

**Consultant:** Shaun Naidu

**Bill Summary:** AB 767, an urgency measure, would expand eligibility for compensation under the Victims Compensation Program (VCP) for injuries or death caused by use of force by a police officer. It also would make other reforms to VCP.

**Fiscal Impact:** The Victim Compensation Board (VCB) report annual costs of approximately \$200 million (including payments and administrative costs) associated with this measure. Additionally, the board estimates increased payments of about \$714 million for, and administrative costs of \$10.5 million to process, claims filed for incidents that took place within the past seven years. (Special fund\*/General Fund, federal funds)

\*Restitution Fund—structurally imbalanced

**Background:** According to the analysis of this bill by the Senate Committee on Public Safety:

The victim compensation program was created in 1965, the first such program in the country. The board provides compensation for victims of violent crime. It reimburses eligible victims for many crime-related expenses, such as counseling and medical fees. Funding for the board comes from restitution fines and penalty assessments paid by criminal offenders, as well as federal matching funds.

The CalVCB is considered the payer of last resort and can only pay treatment expenses after other available sources of payment have been applied to a bill. Those sources include, but are not limited to, health insurance, workers compensation insurance, automobile insurance, Medical, and Medicare.

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The CalVCP reimburses eligible victims for specified expenses such as counseling and medical fees. Eligible persons are victims and derivative victims and the crime either occurred in California or the victim is a resident of California or a member or a family member living with a member of the military stationed in California. The victim or derivative victim must have sustained either physical injury or emotional injury for specified crimes.

Once an application is filed, the board is required to verify with hospitals, physicians, law enforcement officials, or other interested parties involved,

the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and any other pertinent information deemed necessary by the board. Any verification information requested by the board must be returned within 10 days of the request. The applicant is also required to cooperate with the staff of the board or the victim center in the verification of the information contained in the application. Failure to cooperate may constitute grounds to reject the application. The board is required to approve or deny applications within an average of 90 days and no later than 180 calendar days of acceptance by the board or victim center.

Under existing law, the board may deny an application based on a finding that the victim was involved in the events leading to the crime or the victim's failure to reasonably cooperate with law enforcement. [Citations omitted.]

A victim may receive a total maximum payment of \$70,000 from VCB. Payments are paid from a combination of state funds and federal matching funds. Specifically, claims are paid from the Restitution Fund, which is a continuously-appropriated fund, and a 60-percent match (of state funds spent) from the federal Victims of Crime Act (VOCA) grant.

Existing law requires a victim or directive victim to file a claim for compensation within seven years of the date of the crime, seven years after the victim attains age 21, or seven years from the discovery that an injury or death had been sustained as a direct result of the crime, whichever is later.

**Proposed Law:** This bill would:

- Include in the definition of "crime," for purposes of VCP, the use of force by a peace officer that is beyond what is reasonable under the totality of the circumstances, and that causes the victim injury or death, regardless of whether the peace officer is arrested for or charged with the commission of a crime or a public offense.
- Redefine "crime," for purposes of VCP, to include any public offense, as specified, regardless of whether any suspect is arrested for or charged with the commission of the crime.
- Recast the factors that may be considered in determining whether the victim was involved in the events leading to the qualifying crime.
- Prohibit VCB, notwithstanding the prohibition to compensation due to a victim's involvement in the events leading to a qualified crime, from denying an application based upon the victim's involvement in the crime if the claim is for injury or death that happened as a result of the use of excessive force by a peace officer.
- Prohibit VCB from determining that a victim failed to cooperate with law enforcement based upon their conduct with law enforcement at the scene of the crime or in a hospital following the crime.
- Prohibit a determination that there was lack of cooperation by the victim solely because a victim delayed in reporting the qualifying crime.
- Prohibit VCB from denying an application based solely upon the victim's failure to cooperate if the claim is for injury or death that happened as a result of the use of excessive force by a peace officer.

- Prohibit VCB from denying an application for a claim based on injuries or death as a result of the use of excessive force by a peace officer based solely on a police report, or the lack thereof, or based upon whether the peace officer was arrested or charged with a crime. Absent a police report, these claims would be allowed to be supported by other evidence.
- Prohibit VCB from denying an application, in whole or in part, based solely upon the contents of a police report, or because a police report was not made by the victim, or based upon whether any suspect was arrested or charged with the qualifying crime. It would require VCB to consider other evidence to establish that a qualifying crime occurred.
- Take effect immediately as an urgency statute.

**Staff Comments:** According to the 2019 Crime in California report by the Department of Justice, there were 15,890 civilian complaints against peace officers, including 865 criminal complaints. The expansion to the definition of a crime involving use of force “that is beyond what is reasonable under the totality of the circumstances” in proposed Government Code section 13951, subdivision (b)(3) could be interpreted and applied in a variety of ways and, consequently, could lead to a larger number of compensation claims submitted that may not meet the general understanding of “excessive force” incidents. Moreover, VCB also may have difficulty in navigating the expanded definition in making eligibility determinations. Additionally, by including all peace officers as defined in Penal Code section 830, this measure would allow claims related to the injury or death of a victim when the incident involves a whole host of officers, including, but not limited to, correctional/custodial officers, California Highway Patrol officers, park officers, state hospital police officers, and Franchise Tax Board investigative specialists, thereby leading to a further increase in the number of claims that would be eligible for compensation through VCP. Using these factors as a guide of how many claims potentially could be submitted under this measure, if 1,000 individuals applied annually and received the maximum compensation amount of \$70,000, it would lead to \$70 million in compensation payouts to direct victims alone. This would be exclusive of compensation payments to derivative victims and costs for workload that would be necessary to handle the higher volume of claims. Additionally, as existing law provides victims seven years within which to submit a compensation claim, VCB likely would have to process, decide, and payout claims for incidents going as far back as 2013.

The Restitution Fund has been operating under a structural deficit for a number of years. In the Budget Act of 2020, the Legislature appropriated \$23.5 million from the General Fund to the Restitution Fund to address the imbalance and keep the fund solvent through the 2020-2021 fiscal year. Given the operational deficit of the Restitution Fund, added expenses (such as those associated with AB 767) would create greater cost pressure on the General Fund to backfill a larger shortage.

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