



## Children's Advocacy Institute

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Geoff Feusahrens, Regulations Analyst  
Victim Compensation and Government Claims Board  
400 R Street  
Sacramento, CA 95811

March 20, 2009

Re: Title 2. Victim Compensation and Government Claims Board  
Victim Compensation Program Regulations  
Title 2, §§ 647.4, 649-649.62  
[Notice Published February 6, 2009]

Dear Mr. Feusahrens,

The Children's Advocacy Institute (CAI), located at the University of San Diego School of Law, seeks to improve the health, safety, and well-being of California's children. CAI advocates in the Legislature, in the courts, before administrative agencies, and in the public forum to educate and build support for laws and policy decisions that improve the status of children. CAI's education and advocacy efforts cover the wide range of issues impacting the health and well-being of children, including their needs for economic security, appropriate nutrition, health care, education, quality child care, and protection from abuse, neglect, and injury.

CAI supports the overall goal of the above-referenced rulemaking package. Specifically, CAI understands that proposed § 649.14 implements, interprets, and makes specific Gov. Code § 13957(a)(2)(B)(iii), as added by AB 2809 (Leno) (Chapter 587, Statutes of 2008). That measure sought to ensure that all children, regardless of their familial relationship to the victim, can seek reimbursement for the cost of out-patient mental health counseling if they suffer an emotional injury as a direct result of witnessing a violent crime.

We have three concerns with proposed § 649.14 — two regarding proposed § 649.14(a) and one regarding proposed § 649.14(c). In addition to identifying those concerns below, we respectfully submit suggested revisions for your consideration.

- (1) Gov. Code § 13957(a)(2)(B)(iii) does not specify the means by which a minor might witness a violent crime. Proposed § 649.14(a) interprets the term witness to mean "seeing or hearing" a violent crime. We believe that this is too narrow an interpretation of the term "witnessing", as there are other possible — albeit less common — ways in which a minor might witness a violent crime using other sensory capabilities.

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- (2) Gov. Code § 13957(a)(2)(B)(iii) requires that a minor witness be in “close proximity” to the victim when he or she witnessed the crime. Proposed § 649.14(a) instead requires that the minor be in “close physical proximity” to the victim. We believe that the statutory language of § 13957 is broad enough to include other situations where a minor is in “close proximity” to the victim, such as if the minor is speaking to the victim on the phone when the crime occurs. When enacting § 13957(a)(2)(B)(iii), the Legislature specifically used the broader term “close proximity” instead of more limited phrases such as “close physical proximity” or “close geographic proximity.” The Legislature has in fact used these more limited phrases in other provisions of law (*see, e.g.*, Bus. & Prof. §§ 7670, 23038.1, Civil Code § 1742, Ed. Code § 58522, Gov. Code § 13994.12, etc.). Because § 13957 uses the broader “close proximity” language, the Legislature did not intend to limit this term to physical or geographical proximity.

Accordingly, we propose that § 649.14(a) be amended as follows:

- (a) A minor witness is a person under the age of 18 who suffers an emotional injury as a direct result of seeing or hearing or otherwise witnessing a violent crime and was in close ~~physical~~ proximity to the victim when he or she witnessed the crime.
- (3) Gov. Code § 13957(a)(2)(B)(iii) does not specify what constitutes a “violent crime” for purposes of the minor witness provision. Proposed § 649.14(d) lists 13 specific crimes that would constitute the qualifying violent crimes for purposes of § 13957(a)(2)(B)(iii). We believe that attempting to explicitly list each qualifying violent crime is problematic and unnecessarily limiting, as it allows for the omission of other violent crimes that could be witnessed by minors. For example, although “assault with a deadly weapon” and “battery resulting in great bodily injury” are listed, we believe that any assault or battery involves a violent element and should be included as qualifying violent crimes for purposes of this provision. In fact, the statutory definitions of these two crimes includes elements of violence.<sup>1</sup> Further, the list in proposed § 649.14(d) does not include violent crimes such as sexual assault or penetration by foreign object, nor does it include *attempted* murder, *attempted* manslaughter, *et al.* — all of which are violent crimes that would be traumatic for a minor to witness.

We believe that a better solution would be to define the term “violent crime” as **a crime that, upon evaluation of the code section violated or the reports regarding the underlying offense, presents a risk of harm or violence.** This language, borrowed from an unrelated regulatory provision (22 CCR 80019.1), provides the breadth and inclusion that is warranted for § 649.14.

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<sup>1</sup> An assault is “an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another” (Pen. Code § 240). A battery is “any willful and unlawful use of force or violence upon the person of another” (Pen. Code § 242).

Accordingly, we propose that § 649.14(d) be amended as follows:

(c) For purposes of Government Code section 13957(a)(2)(B)(iii), a violent crime is a crime that, upon evaluation of the code section violated or the reports regarding the underlying offense, presents a risk of harm or violence. ~~shall be found to have been committed in the following crimes:~~

- ~~(1) Murder and manslaughter (including vehicular manslaughter);~~
- ~~(2) Mayhem;~~
- ~~(3) Kidnapping;~~
- ~~(4) Carjacking;~~
- ~~(5) Assault with a deadly weapon;~~
- ~~(6) Battery resulting in great bodily injury;~~
- ~~(7) Rape and rape of spouse;~~
- ~~(8) Sodomy;~~
- ~~(9) Lewd and lascivious acts;~~
- ~~(10) Oral copulation;~~
- ~~(11) Robbery;~~
- ~~(12) Arson of inhabited dwelling; or~~
- ~~(13) Burglary of inhabited dwelling with physical injury to an inhabitant.~~

The Children's Advocacy Institute appreciates the opportunity to comment on the proposed changes to these regulations. Please feel free to contact me with questions or concerns.

Sincerely,



ELISA WEICHEL

Administrative Director / Staff Attorney