

RECOVERING COMPENSATION FOR VICTIMS OF ELDER ABUSE IN CALIFORNIA

A GUIDE FOR PROFESSIONALS
HELPING VICTIMS OF PHYSICAL
AND FINANCIAL ABUSE



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CANHR
Long Term Care Justice and Advocacy

Recovering Compensation for Victims of Elder Abuse in California

*A Guide for Professionals Helping Victims of
Physical and Financial Abuse*

2018

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Every year, hundreds of thousands of seniors become victims of elder abuse. Their losses can range from a few hundred dollars to hundreds of thousands to even millions. Under certain circumstances, victims may receive reimbursement for their losses following a criminal conviction, recover compensation through a civil lawsuit, or receive some compensation from certain government victim funds. This guidebook is designed to help professionals who work with victims of elder abuse navigate the system and recover losses.

Table of Contents

Elder Abuse Overview	7
Criminal Restitution.....	8
Overview.....	8
Establishing the Amount of Restitution	8
Restitution and the Defendant’s Insurance Coverage	9
The Restitution Order.....	9
<i>Changing or Modifying the Restitution Order—Notice.....</i>	<i>10</i>
<i>Enforcing Restitution.....</i>	<i>10</i>
<i>Collecting Criminal Restitution</i>	<i>11</i>
Restitution Not Discharged or Stayed by Bankruptcy	11
Freezing and Seizing Assets	11
Civil Compensation	13
Overview.....	13
The Elder Abuse and Dependent Adult Civil Protection Act.....	13
<i>Protective Orders—Stopping the Abuse</i>	<i>13</i>
<i>Recovering Damages.....</i>	<i>14</i>
<i>Costs, Attorney’s Fees, and Exemplary Damages.....</i>	<i>14</i>
<i>Prohibited Settlement Conditions</i>	<i>15</i>
<i>Pre-Judgment Attachment</i>	<i>16</i>
Other Helpful Authorities	16
Non-Judicial Remedies	21
Making Complaints to the Proper Licensing Authority.....	21
<i>Financial Services</i>	<i>21</i>
<i>Real Estate</i>	<i>21</i>
<i>Legal Assistance</i>	<i>22</i>
<i>Services and Products.....</i>	<i>22</i>
California Victim Compensation Board (CalVCB)	23
Overview.....	23
Benefits for Victims of Violent Crimes	23
<i>Medical Health Treatment.....</i>	<i>23</i>
<i>Mental Health Treatment</i>	<i>24</i>
Locating a Victim Witness Assistance Center.....	24
Endnotes	26

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Elder Abuse Overview

Elder abuse is a particularly insidious and reprehensible crime because the victim is unlikely to recover from the physical injuries and financial losses in his or her lifetime. In most cases, the abuser has no significant assets and has spent or sold the proceeds derived from the abusive conduct. Therefore, the sooner the abuser's assets are examined and evaluated, the better the possibility of recovering some compensation for the victim.

A victim of physical or financial elder abuse may seek to recover financial losses resulting from physical injuries incurred through criminal misconduct, or seek to recover lost property or money from the responsible person through other avenues. For example, elder abuse victims may be able to obtain compensation for their losses by filing a civil lawsuit against the perpetrator. If the perpetrator has been identified and criminally prosecuted, the victim may also be entitled to criminal restitution. Some state licensing agencies maintain mandatory victim reimbursement funds for the benefit of persons injured by their licensees; while other licensing agencies require licensees to post bonds to protect consumers from misconduct. The victim of a violent crime who suffers physical or emotional injuries may also apply to the California Victim Compensation Board (CalVCB) to receive compensation for those injuries directly related to the crime.¹

Criminal Restitution

Overview

[I]n every case in which a victim has suffered economic loss as a result of the defendant's [criminal] conduct [for which he or she was convicted], the court shall require that the defendant make restitution to the victim or victims in a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct.^[2]

Pursuant to Penal Code section 1202.4(f)(3), restitution may include, but is not limited to, the following:

- (A) Full or partial payment for the value of stolen or damaged property.
- (B) Medical [and dental] expenses.
- (C) Mental health counseling expenses.
- (D) Wages or profits lost due to injury incurred by the victim.
- (E) Wages or profits lost by the victim.
- (F) Noneconomic losses, including but not limited to, psychological harm.
- (G) Interest, at the rate of 10 percent per annum.
- (H) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.
- (I) Expenses incurred by an adult victim in relocating away from the defendant [in some cases].
- (J) Expenses to install or increase residential security.
- (K) Expenses to retrofit a residence or vehicle ... if the victim is permanently disabled.
- (L) Expenses ... to monitor the credit report of, and for the costs to repair credit of, a victim of identity theft.

Establishing the Amount of Restitution

The procedure for establishing the amount of restitution often varies from county to county. In many cases, a probation officer will prepare a pre-sentencing investigative report that may include information and recommendations pertaining to victim restitution.³ The court may consider the recommendations in the pre-sentencing report despite their hearsay character.⁴ In support of the victim's statement, the probation officer may, but is not required to, include supporting evidence of loss such as receipts, estimates for repair, and in appropriate cases, expert appraisals and opinions. The amount of restitution must be proved by a preponderance of the evidence. Once the victim makes a prima facie showing of economic losses, the burden shifts to the defendant to disprove the amount of the claimed losses.⁵ In most cases, the victim's statements in the probation report about the value of his or her loss should be accepted as prima facie evidence of value for purposes of restitution.⁶ Furthermore, the defendant has no right to confront and cross-examine witnesses, including the victim or the probation officer who prepared the probation report.⁷ A restitution hearing does not require the formalities of a trial.⁸

While the probation officer is required to provide the victim with timely written information concerning restitution and the victim's right to a restitution order, many misdemeanor offenders are often sentenced without referring the matter to the probation department. Consequently, the required notice is sometimes not sent. A victim seeking restitution should proactively contact the district attorney and provide restitution information.

Often, the amount of restitution cannot be fixed at the time of sentencing because necessary information is lacking, or a subsequent hearing is needed to resolve a dispute about the amount. In these situations, the court may order that it will determine the amount later.⁹ The court retains jurisdiction over the defendant for purposes of imposing or modifying restitution until the losses are determined.¹⁰ There is no limitation on when the court must set the restitution hearing.¹¹

A sentence without victim restitution is invalid.¹² However, it is not uncommon for the court, probation department, and even the prosecutor, to fail to establish restitution. Therefore, it is incumbent upon the victim to remain in contact with the probation officer and the district attorney to make certain a written restitution order is obtained.

Restitution and the Defendant's Insurance Coverage

A civil settlement does not necessarily establish the amount of restitution payable in a criminal case, and it is not uncommon that the defendant's insurance will cover only a portion of the victim's losses. Unfortunately, even an insurance carrier's willingness to pay policy limits may not make the victim whole again. However, a victim should never be placed in the untenable position of rejecting a civil settlement in order to preserve the uncertain possibility that the full amount of his or her loss may be recovered from the defendant in the criminal proceeding.¹³ Payments made to the victim by the defendant's insurance carrier must offset the defendant's restitution obligation to the extent that those payments are for items of loss included in the restitution order.¹⁴

The Restitution Order

At the conclusion of the restitution hearing, and pursuant to Penal Code section 1202.4(f)(3), the court should prepare a restitution order identifying "each victim and each loss to which it pertains." Although the sentencing court is required to prepare the restitution order, this does not occur in many cases.¹⁵ A written order is required for any of the enforcement methods used to collect restitution. A restitution order, unlike a civil judgment, does not require renewal or expire in 10 years.¹⁶

Changing or Modifying the Restitution Order—Notice

Pursuant to Penal Code section 1202.4(f)(1):

The court may modify [a restitution order], on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of the motion at least 10 days prior to the proceeding to decide the motion.^[17]

Both the prosecutor and the victim have a right to notice and a hearing before a restitution order may be modified.¹⁸

Enforcing Restitution

The responsibility for collecting restitution will vary from county to county. The California Department of Corrections and Rehabilitation (CDCR) will collect victim restitution from the defendant's prison wages for those defendants sentenced to state prison. The responsible county department for collecting restitution from defendants serving their sentence in the county jail or placed on probation is less certain. Sometimes the county collections department or the probation department will assume the responsibility for collecting restitution; other counties have not designated any local agency or department to collect restitution and require the victim to collect it for themselves.

Regardless of the effectiveness of a state or local department to collect restitution, some victims may find greater success collecting restitution themselves. Per Penal Code section 1214(b): A restitution order is "enforceable by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment." The victim may elect to retain a collection attorney to pursue restitution, and pursuant to section 1202.4(f)(3)(H), the "actual and reasonable attorney's fees" may also be recovered from the defendant. The restitution order also accumulates interest "at the rate of 10 percent per annum ... as of the date of sentencing or loss, as determined by the court."¹⁹

The Legislature has provided the victim with some additional tools to identify the defendant's assets to aid in the collection of restitution. In every case in which a restitution order may be entered, the defendant is required to complete and file a disclosure statement identifying all assets, income, and liabilities in which he or she holds or controls an interest.²⁰ If the defendant fails to complete a disclosure statement, the district attorney may request an order of examination to determine the defendant's financial assets for purposes of collecting restitution.²¹ The defendant must also complete a second disclosure statement 120 days prior to his or her scheduled release from probation.²²

Collecting Criminal Restitution

Victims need to contact and follow up with the appropriate agency to ensure all of their contact information is up to date. A victim advocate can help with determine who the victim should contact:

- **County System:** Contact your local county agency, e.g., probation department, collections department, or the courts depending on the type of case and how your county operates.
- **State Prison:** Register with CDCR's Office of Victim and Survivor Rights and Services.²³

Restitution Not Discharged or Stayed by Bankruptcy

A restitution obligation may not be discharged in bankruptcy.²⁴ Furthermore, a defendant's bankruptcy does not block the collection of restitution even if the defendant's obligations were discharged by bankruptcy before criminal charges were filed.²⁵ In addition, the automatic stay provisions of the bankruptcy code do not enjoin state criminal proceedings against a defendant.²⁶

Freezing and Seizing Assets

In criminal cases of theft, embezzlement, forgery, fraud, and identity theft charged under Penal Code section 368(d) or (e) or Welfare and Institutions Code section 15656, and where more than \$100,000 was taken from an elder victim, the prosecuting attorney may, in certain cases, allege a special allegation pursuant to Penal Code section 186.12 and file a petition to obtain a court order preserving the defendant's assets for the purpose of making restitution to the victim. Section 186.12 applies to real property as well as bank accounts, stocks, bonds and other things of value possessed by the defendant or transferred by the defendant to a third party. The frozen assets need not be traceable directly to the criminal conduct. Section 186.12 is technical and extremely limited in its application. It also gives the court great discretion in determining whether to issue a preservation order and what assets, if any, the court will release to the defendant to retain an attorney or pay living expenses.

Penal Code Section 186.12(a)(1)-(2)

A felony for purposes of this section means a felony violation of subdivision (d) or (e) of Section 368, or a felony violation of subdivision (c) of Section 15656 of the Welfare and Institutions Code, that involves the taking or loss of more than one hundred thousand dollars (\$100,000). If a person is charged with a felony as described in paragraph (1) and an allegation as to the existence of those facts has been made, any property that is in the control of that person, and any property that has been transferred by that person to a third party, subsequent to the commission of any criminal act alleged pursuant to this subdivision, other than in a bona fide purchase, whether found within or outside the state, may be preserved by the superior court in order to pay restitution imposed pursuant to this section. Upon conviction of the felony, this property may be levied upon by the superior court to pay restitution imposed pursuant to this section.

CRIMINAL VIOLATIONS—ELDER ABUSE

PHYSICAL ELDER ABUSE

Pen. Code § 368(b)(1); Welf. & Inst. Code § 15656(a)

- Any person who knows or reasonably should know that a person is an elder;
- under circumstances or conditions likely to produce great bodily harm or death;
 - willfully causes or permits any elder to suffer, or
 - inflicts unjustifiable physical pain or mental suffering;

or

- having the care or custody of any elder;
 - willfully causes or permits the person or health of the elder to be injured, or;
 - willfully causes or permits the elder to be placed in a situation in which his or her person or health is endangered;
- **is guilty of a felony.**

FINANCIAL ELDER ABUSE (NON-CARETAKER)

Pen. Code § 368(d)(1)

- Any *non-caretaker* of an elder who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder, and;
- who knows or reasonably should know that the victim is an elder;
- **is guilty of a felony**, when the
- moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).

FINANCIAL ELDER ABUSE (CARETAKER)

Pen. Code § 368(e)(1); Welf. & Inst. Code § 15656(c)

- Any *caretaker* of an elder who violates any provision of law proscribing theft, embezzlement, forgery, or fraud, or who violates Section 530.5 proscribing identity theft, with respect to the property or personal identifying information of that elder
- **is guilty of a felony**, when the
- moneys, labor, goods, services, or real or personal property taken or obtained is of a value exceeding nine hundred fifty dollars (\$950).

FALSELY IMPRISONING AN ELDER

Pen. Code § 368(f)

- Any person who commits the false imprisonment of an elder by the use of violence, menace, fraud, or deceit
- **is guilty of a felony.**

Overview

Merely referring an elder abuse matter to the police or district attorney for criminal investigation and possible prosecution is no guarantee that the victim will ultimately recover any financial losses or receive compensation. In some instances, the evidence may not be sufficient to prove that the abuser is guilty of a crime beyond a reasonable doubt. Absent a conviction, criminal restitution cannot be ordered. In addition, police and prosecutors are rarely able to engage in effective pre-conviction asset investigation, location, or seizure. Generally, criminal restitution must wait for a conviction and a subsequent sentencing hearing before losses can be determined and restitution ordered. In many cases, the criminal defendant will have spent or sold the proceeds derived from his or her unlawful conduct, or otherwise lack the means to pay criminal restitution to the victim for any losses at the time of sentencing.

Therefore, an elder abuse victim should consider retaining a private attorney to determine if a civil action is appropriate. A private attorney can evaluate the abuser's assets, and when appropriate, bring a civil lawsuit to seize assets and obtain a judgment awarding damages, which may include recovering money, property, or other losses incurred in connection with the abuse. In some cases, an attorney can also request appropriate equitable relief, including the rescission of sales, punitive damage awards, and reasonable attorney's fees and costs. In elder financial abuse cases, a civil attorney can also seek a pre-judgment attachment securing the abuser's assets and preventing the abuser from selling, distributing, or hiding assets until the civil matter is resolved. A private attorney may also engage other professionals to trace assets and determine the likelihood of obtaining any recovery.

The Elder Abuse and Dependent Adult Civil Protection Act— Welfare and Institutions Code Section 15657 et seq.

In recognizing the unique vulnerability of seniors when their physical and mental abilities decline, the Legislature has enacted special provisions intended to provide seniors additional protections from abuse; additional means of re-dress for those suffering elder abuse; and additional means to punish and deter would be abusers.

Protective Orders—Stopping the Abuse Welfare and Institutions Code Section 15657.03

First and foremost, the elder must be protected from further abuse. An elder who has suffered abuse should seek a protective order to ensure the abusive conduct stops. The distinction between physical and financial abuse often overlaps as financial abusers may resort to physical abuse and other techniques to obtain possession and control of the elder's assets. Upon a showing of good cause, a court may issue a protective order to remove the abuser from the residence or require the abuser to stay a specified distance away from the elder. Pursuant to section 15657.03(b)(4)(A), the

order may also enjoin an abuser “from abusing, intimidating, molesting, attacking, striking, stalking, threatening, sexually assaulting, battering, harassing, telephoning, ... destroying personal property, contacting, ... or disturbing the peace of, [the elder].” The court may also make any order necessary to prevent the recurrence of the abuse.

Recovering Damages

Welfare and Institutions Code Sections 15657, 15657.5, and 15657.6

A civil lawsuit may be brought by, or on behalf of, an elder for physical abuse or against a person or entity that “takes, secretes, appropriates, obtains, retains, or assists in taking, secreting, appropriating, obtaining, or retaining the real or personal property of an elder.”²⁷ The civil action may be brought when the elder’s losses are the result of theft or in those instances when the elder lacks capacity due to an unsound mind.²⁸ Upon a finding of abuse, the court may order the return of property wrongly obtained, and if not returned, money damages sufficient to compensate the victim for his or her losses.²⁹

Costs, Attorney’s Fees, and Exemplary Damages

Welfare and Institutions Code Sections 15657 and 15657.5

Physical Elder Abuse (§ 15657)

Where it is proven by **clear and convincing evidence** that a defendant is liable for physical abuse or neglect, and that defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of the elder abduction, elder physical abuse, or neglect, the court **shall** award attorney’s fees and costs, including the reasonable cost of a conservator.

Financial Elder Abuse (§ 15675.5)

Where it is proven by **a preponderance of the evidence** that a defendant is liable for financial elder abuse, the court **shall** award reasonable attorney’s fees and costs including the reasonable cost of a conservator.

Where it is proven by **clear and convincing evidence** that a defendant has committed either form of elder abuse with recklessness, oppression, fraud, or malice in the commission of the abuse, the elder may recover punitive damages. In the event of the elder’s death, exemplary damages may also be recovered by the decedent’s estate and are not limited to damages incurred before death.

In an action on behalf of an elder decedent, the cause of action may include damages that the decedent incurred before death, including any penalties or punitive damages that the decedent would have been entitled to recover had he or she lived; damages of pain, suffering, or disfigurement may also apply. *Note:* The limitations of Code of Civil Procedure section 377.34 do not apply.³⁰

CIVIL FINANCIAL ELDER ABUSE

Civil financial elder abuse occurs when:

- A person or entity
 - takes, secretes, appropriates, obtains, or retains real or personal property of an elder for a wrongful use or with intent to defraud, or both;
 - assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder for a wrongful use or with intent to defraud or both; or
 - takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder by undue influence.
- **Elder** means a person 65 years of age or older at the time of the conduct.
- **Wrongful use** means the person knew or should have known the conduct was likely to be harmful to the elder.
- **Real or personal property** means any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly by the elder or by a representative of an elder.
- **Representative** includes a conservator, trustee, attorney-in-fact, or person who acts within the authority of the power of attorney.

Prohibited Settlement Conditions

Welfare and Institutions Code Section 15657.8

Pursuant to section 15657.8(a)(1)-(2), any provision in a settlement agreement or stipulated judgment that prohibits a party from filing a complaint with, contacting, reporting, or cooperating

with the county adult protective services agency, local law enforcement agency, the long-term care ombudsman, the California Department of Aging, the Department of Justice, the Licensing and Certification Division of the State Department of Public Health, the State Department of State Hospitals, a licensing or regulatory agency that has jurisdiction over the license [of the person or facility], any other governmental entity, a protection and advocacy agency, the defendant's current employer if the defendant's job responsibilities include contact with elders, ... or children

is prohibited and void against public policy. Section 15657.8(a)(3) prohibits any provision that requires any person to withdraw a complaint or a violation reported to any of the above departments or agencies.

Pre-Judgment Attachment Welfare and Institutions Code Section 15657.01

“Pre-judgment attachment” is a tool used for freezing and seizing the abuser’s assets at the beginning or early stage in a civil financial elder abuse lawsuit before the abuser can squander his or her assets. A private attorney may seek to freeze the defendant’s assets to prevent the defendant from spending, hiding, or otherwise wasting possible assets by applying for a pre-judgment attachment. The burden of proof for a pre-judgment attachment is Probable Validity and at the hearing, the court will order the attachment if it finds the following:

- (1) The claim upon which the attachment is based is one upon which an attachment may be issued.
- (2) The plaintiff has established the probable validity of the claim upon which the attachment is based.
- (3) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.
- (4) The amount to be secured by the attachment is greater than zero.

Other Helpful Authorities

Rescission: a remedy based on the lack of consent necessary to form a contract.

➤ **Civil Code Section 1567**

Consent is deemed not to be given freely if it is obtained through fraud, duress, menace, mistake, or undue influence.

➤ **Civil Code Section 1688**

A contract is extinguished by its rescission.

A court may consider the following factors when determining whether a senior’s consent was the result of undue influence or duress:

- whether the senior acted with a free mind;
- whether there was an arm’s length negotiation;
- whether the parties were in a confidential relationship; and
- the adequacy of the consideration.

Actual fraud: a misrepresentation with an intent to deceive.

Constructive fraud: misleading conduct; a presumption of constructive fraud may exist if the consideration was inadequate.

Reformation

➤ **Civil Code Section 3399**

An equitable remedy to change a trust or written instrument to express the parties' true intent if the agreement was the result of fraud or in some instances, a unilateral mistake.

Undoing Donative Transfers

➤ **Probate Code Section 21380**

A presumption of fraud or undue influence in donative transfer instruments for:

- (1) the person who drafted the instrument;
- (2) fiduciary relation;
- (3) care custodian; or
- (4) related to the care custodian or the person drafting the instrument

Pursuant to section 21380(b): "The presumption may be rebutted by proving, by clear and convincing evidence, that the donative transfer was not the product of fraud or undue influence."

Will Revocation

➤ **Probate Code Section 6122**

Dissolution of a marriage revokes all of the following:

- (1) Any disposition or appointment of property made to the former spouse.
- (2) Any provision of the will conferring powers of appointment.
- (3) Nominations for executor, trustee, conservator, or guardian.

Abusers Deemed to Have Pre-Deceased an Elder Victim

➤ **Probate Code Section 259**

Deemed to have predecease: Any person shall be deemed to have predeceased a decedent where it has been proven, by clear and convincing evidence, that the person was liable for financial abuse of the elder decedent; acted in bad faith; and was reckless, oppressive, fraudulent, or malicious in the commission of the act; and at the time the acts occurred, the decedent was substantially unable to manage his or her financial resources.

Liable for Twice the Value of the Property

➤ **Probate Code Section 859**

If a court finds that a person has in bad faith wrongfully taken, concealed, or disposed of property belonging to, ... an elder, ... or the estate of a decedent, or has taken, concealed, or disposed of the property by the use of undue influence in bad faith or through the commission of elder adult financial abuse, ... the person shall be liable for twice the value of the property recovered by an action under this part. In addition, the person may, in the court's discretion, be liable for reasonable attorney's fees and costs.

Small Claims Court

If the victim's primary interest is to recover damages of \$10,000 or less, he or she may consider filing a small claims court action. "Self-help" information for this process can be found online at <http://www.courts.ca.gov/selfhelp-smallclaims.htm>. The victim can also consult with the clerk of the small claims court for information and assistance. Cases are generally decided within three months, and if won, the court can order the losing side to pay the court fees and costs.

Internal Revenue Service's Whistleblower Informant Award

The IRS Whistleblower Office pays money to individuals who blow the whistle on persons who fail to pay the tax that they owe. Victims of criminal or civil financial abuse may consider contacting the IRS if they suspect that the perpetrator committed tax fraud by not reporting the money they acquired on their tax return. If the IRS uses information provided by the whistleblower, it can award the whistleblower up to 30 percent of the additional tax penalty and other amounts it collects.³¹

USEFUL STATUTES

Abuse of an Elder – Welf. & Inst. Code § 15610.07(a)

- (1) Physical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering.
- (2) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.

Elder – Welf. & Inst. Code § 15610.27

Any person residing in this state, 65 years of age or older.

Financial Abuse – Welf. & Inst. Code § 15610.30(a)

- (1) [A person who] takes, secretes, appropriates, obtains, or retains real or personal property of an elder for a wrongful use or with intent to defraud, or both.
- (2) [A person who] assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder for a wrongful use or with intent to defraud, or both.

Undue Influence – Welf. & Inst. Code § 15610.70(a)

Excessive persuasion that causes another person to act or refrain from acting by overcoming that person's free will and results in inequity.

Return of Property to Elder Lacking Capacity – Welf. & Inst. Code § 15657.6

The representative of the elder may demand the return of an elder's property.

Statute of Limitations for Elder Financial Abuse – Welf. & Inst. Code § 15657.7

... within four years after the plaintiff discovers or, through the exercise of reasonable diligence, should have discovered, the facts constituting the financial abuse.

Prohibition Against Settlements that Require Non-Cooperation with Authorities – Welf. & Inst. Code § 15657.8

Provisions cannot prohibit a party from contacting law enforcement, licensing or regulatory agencies, adult protective services, or the defendant's current employer if the defendant's job responsibilities include contact with elders.

Senior Consumer Protection Statutes and Negligence Per Se

Business and Professions Code

- § 6126 Illegal practice of law
- § 6152 Running and capping
- § 6450 Illegal paralegals
- § 17200 Unfair Competition Law
- § 17203 Restitution and injunctive relief
- § 17500.3 Unlawful senior home solicitations

Civil Code (CLRA)

- § 1750-1784 Consumers Legal Remedies Act
- § 1780 Actual or punitive damages, injunctive relief, restitution
- § 1780(b)(1) Additional award if the victim was a senior
- § 1780(e) Attorney's fees and costs
- § 1782(a) Violator must be given a 30-day notice and opportunity to cure
- § 1783 Three-year statute of limitations
- § 3294(a) Punitive damages against a defendant where there was oppression, fraud, or malice
- § 3294(b) Punitive damages against an employer
- § 3345 Triple damages for unfair or deceptive against elders

Code of Civil Procedure

- § 1029.8 Victimized by an unlicensed person

Insurance Code

- § 780 Misrepresenting benefits of a policy
- § 785.1 Prohibited annuity sales involving reverse mortgages
- § 785.4 Illegal delivery of legal documents by an insurance agent
- § 785.5 Illegal sales of annuities to qualify a senior for veterans benefits
- § 791.03 Pretext interviews
- § 1724 Illegal fee splitting between an insurance agent and an attorney
- § 10509.910 Unsuitable annuities

Negligence Per Se

In civil financial elder abuse cases where, in addition to the elder abuse, the perpetrator violated another statute, the litigator should look to the doctrine of Negligence Per Se. BAJI No. 418 instructs that Negligence Per Se is found when a defendant violated a specific statute and harm resulted from that violation. Likewise, in civil financial elder abuse cases [under Welf. & Inst. Code § 15610.30(b)], elder abuse is found where it is shown that the defendant knew or should have known that his or her conduct would be harmful to the elder. Therefore, the Negligence Per Se finding that the defendant knew or should have known that the conduct would be harmful helps to prove up the Welf. & Inst. Code § 15610.30(b) requirement as well.

Making Complaints to the Proper Licensing Authority

If the elder was a victim of a licensed professional, the government entity that controls the license needs to be contacted to investigate the complaint. Professionals do not want to lose their licenses. If an investigation finds them at fault, they also may be forced to make restitution. Complaints are also important because they can protect others from future harm by dishonest “business people.” Below is contact information for licensing bureaus in California.

Financial Services

- Accountants – Board of Accountancy (916) 263-3680
- Banks (National) – Office of the Comptroller of the Currency (800) 613-6743
- Banks (State); Credit Unions (State); Investment/Financial Advisor; Mortgage Servicers (Non-Bank); Payday Lenders; Property/Bill Payers; Stock/Securities Investment – Department of Business Oversight (866) 275-2677
- Credit Union (National) – National Credit Union Administration (800) 755-1030
- Federal Savings (National) – Office of the Comptroller of the Currency (800) 613-6743
- Precious Metal Investment – U.S. Commodity Futures Trading Commission (866) 366-2382
- Unclaimed Property – California State Controller (800) 992-4647

Real Estate

- Land Sell; Timeshares – Bureau of Real Estate (877) 373-4542
- Mobile Home Park/Sales – Department of Housing and Community Development (800) 952-5275
- Motor Home/RV Dealers – Motor Vehicle Board (916) 445-1888
- Prepaid Rental Listing Services – Department of Consumer Affairs (800) 952-5210
- Real Estate Appraiser – Bureau of Real Estate Appraisers (916) 552-9000
- Real Estate Broker/Corporation – Bureau of Real Estate (877) 373-4542
- Registered Appraisal Management Companies – Department of Consumer Affairs (800) 952-5210
- Title Company – California State Controller (800) 992-4647

Legal Assistance

- Attorneys – California State Bar (800) 843-9053
- Notary Public – Secretary of State, Notary Public Section (916) 653-3595
- Professional Fiduciaries – Department of Consumer Affairs (800) 952-5210

Services and Products

- Auto Dealers – Department of Motor Vehicles (916) 574-7220
- Automotive Repair and Smog Check Bureau of Automotive Repair (800) 952-5210
- Contractors – Contractors State License Board (800) 321-2752
- Funeral/Cemetery Services – Cemetery and Funeral Board (916) 574-7870
- Hearing Aid Dispensers; Thermal Insulation – Department of Consumer Affairs (800) 952-5210
- Insurance Company/Agent Broker – Department of Insurance (800) 927-4357

California Victim Compensation Board (CalVCB)

Overview

The California Victim Compensation Board (CalVCB) helps pay bills and expenses for victims of violent crimes. Financial assistance alone does not eliminate the trauma or emotional suffering of victimization, but in certain cases it can relieve some of the added pressures that arise as a result of the crime.

CalVCB is the “payer of last resort,” meaning they will step in and pay for certain items or expenses that cannot be covered by other sources, such as health insurance or workers’ compensation.

Victims can receive financial assistance from CalVCB before the perpetrator has been sentenced by the court systems. However, CalVCB can only pay for expenses related to the crime; they cannot pay for items such as property loss/damage or damages for pain and suffering. They are also limited to certain amounts that can be paid for each loss.

Benefits for Victims of Violent Crimes

Medical Health Treatment

AVAILABLE BENEFIT	REQUIREMENTS	WHO MAY RECEIVE THE BENEFIT	BENEFIT LIMITS	LEGAL AUTHORITY
Medical/Medically Related includes, but is not limited to, doctor services, hospital, surgery, prescriptions, eyeglasses, hearing aids, dentures, prosthetic devices, ambulance, dental, and chiropractic	Verification from the crime report or medical records that medical services were required and/or medical/medically related devices were taken, lost, damaged, or destroyed during the commission of a crime, or the use of which became necessary as a direct result of the crime.	Direct victim(s) or anyone who pays or assumes legal liability for a deceased victim’s expenses.	Application maximum	Gov. Code § 13957(a)(1); 13957(a)(8)(a)
Home Modification	Verification from a physician that the modification expense is medically necessary	Partially or totally permanently disabled victims	Application maximum	Gov. Code § 13957(a)(6)
Home Security	Verification from the crime report or other supporting documentation that the victim’s home safety is at risk, the offender is aware of where the victim resides, or due to the crime, there is a need for increased security. Verification from a mental health provider that security is necessary for the victim’s emotional well-being.	Direct victim(s)	\$1,000	Gov. Code § 13957(a)(5) Cal. Code Regs., tit. 2, § 649.19

Mental Health Treatment

INITIAL SESSION LIMIT	WHO MAY RECEIVE THE BENEFIT	BENEFIT LIMITS	LEGAL AUTHORITY
40 session hours	Direct victim or a surviving parent, grandparent, grandchild, sibling, child, spouse, registered domestic partner or fiancé/ fiancée of a victim who becomes deceased due to the crime.	\$10,000	Gov. Code § 13957(a)(2)
30 session hours	Derivative victims, minor witness to a violent crime, or a Good Samaritan as defined in Gov. Code § 13970.	\$5,000	

For more information and to access billing forms and required documents, contact CalVCB at 800-777-9229 or visit <http://victims.ca.gov>.

Locating a Victim Witness Assistance Center

The California Victim Witness Assistance Centers can connect you to a victim advocate. There is a Victim Witness Assistance Center located in each county, plus an additional center in the City of Los Angeles, that work directly with CalVCB. The victim advocates can help you apply for compensation; get you emergency food, clothing, and shelter; help you file a temporary restraining order; attend court hearings with you to offer support and information; and refer you to other resources. Depending on where the perpetrator is sentenced—county jail or state prison—the Victim Witness Assistance Centers can help direct you to the appropriate agency in order to collect restitution. All services provided by victim advocates are free of charge.

Contact information for each California Victim Witness Assistance Center is listed on the following page.

Alameda County (510) 272-6180	Kings County (559) 582-3211, x 2640	Orange County (949) 975-0244	Santa Cruz County (831) 454-2010
Alpine County (530) 694-2971	Lake County (707) 262-4282	Placer County (530) 889-7021	Shasta County (530) 225-5220
Amador County (209) 223-6474	Lassen County (530) 251-8281	Plumas County (530) 283-6285	Sierra County (530) 993-4617
Butte County (530) 538-7512	Los Angeles County (213) 974-7499	Riverside County (951) 955-5450	Siskiyou County (530) 842-8228
Calaveras County (209) 754-6565	Los Angeles City (213) 485-6976	Sacramento County (916) 874-5701	Solano County (707) 784-6800
Colusa County (530) 458-0449	Madera County (559) 661-1000	San Benito County (831) 634-1397	Sonoma County (707) 565-8252
Contra Costa County (925) 646-2474	Marin County (415) 499-6450	San Bernardino County VW Center (909) 387-6540	Stanislaus County (209) 525-5541
Del Norte County (707) 464-7273	Mariposa County (209) 742-7441	San Diego County (619) 531-4041	Sutter County (530) 822-7345
El Dorado County (530) 573-3337	Mendocino County (707) 463-4521	San Francisco County and City (415) 553-9044	Tehama County (530) 527-4296
Fresno County (559) 488-3425	Merced County (209) 725-3515	San Joaquin County (209) 468-2500	Trinity County (530) 623-8316
Glenn County (800) 287-8711	Modoc County (530) 233-6214	San Luis Obispo County (866) 781-5821	Tulare County (559) 733-6754
Humboldt County (707) 445-7417	Mono County (760) 924-1710	San Mateo County (650) 599-7479	Tuolumne County (209) 588-5440
Imperial County (760) 336-3930	Monterey County (831) 755-5470	Santa Barbara County (805) 568-2408	Ventura County (805) 654-3919
Inyo County (760) 873-6669	Napa County (707) 252-6222	Santa Clara County (408) 295-2656	Yolo County (530) 666-8187
Kern County (661) 868-4507	Nevada County (530) 265-1246		Yuba County (530) 741-6275

Endnotes

1. Visit CalVCB's website at <https://victims.ca.gov/victims/> (accessed Apr. 27, 2018).
2. Pen. Code § 1202.4(f); (f)(3); see, also, Cal. Const., art. I, § 28(b)(13)(A).
3. Pen. Code § 1203(b)(2)(D)(i)–(ii).
4. *People v. Cain* (2000) 82 Cal.App.4th 81, 86–88; Pen. Code §§ 1203(b)(2)(D)(ii); 1203.1(k).
5. *People v. Gemelli* (2008) 161 Cal.App.4th 1539, 1542–1543.
6. *People v. Foster* (1993) 14 Cal.App.4th 939, 946.
7. *Cain, supra*, at 86–88.
8. *People v. Hartley* (1984) 163 Cal.App.3d 126, 130.
9. Pen. Code §§ 1202.4(f); 1202.46.
10. Pen. Code § 1202.46.
11. *People v. Bufford* (2007) 146 Cal.App.4th 966, 969–972.
12. *People v. Rowland* (1997) 51 Cal.App.4th 1745, 1750–1752 [cert. for part. pub.]; *People v. Brown* (2007) 147 Cal.App.4th 1213, 1225–1226.
13. *People v. Bernal* (2002) 101 Cal.App.4th 155, 160–161; *People v. Clifton* (1985) 172 Cal.App.3d 1165, 1167.
14. *People v. Short* (2008) 160 Cal.App.4th 899, 905; *Bernal, supra*, at 168.
15. The Judicial Council has created a standard victim restitution form [CR-110] that can be downloaded at <http://www.courts.ca.gov/documents/cr110.pdf> (accessed May 1, 2018).
16. Pen. Code § 1214(d).
17. See Pen. Code § 1202.46.
18. Pen. Code §§ 679.02(a)(3); 1191.1; 1202.4(f)(1); 1203.3(b)(1); *Melissa J. v. Superior Court of Alameda County* (1987) 190 Cal.App.3d 476.
19. Pen. Code § 1202.4(f)(3)(G).
20. Pen. Code § 1202.4(f)(5).
21. Pen. Code § 1202.4(f)(10)(A); 1202.4(h).
22. Pen. Code § 1202.4(f)(11).
23. https://www.cdcr.ca.gov/victim_services/ (accessed May 4, 2018).
24. *People v. Washburn* (1979) 97 Cal.App.3d 621.
25. *People v. Moser* (1996) 50 Cal.App.4th 130, 136.
26. 11 U.S.C. § 362(b)(1).
27. Welf. & Inst. Code § 15657.6.
28. Welf. & Inst. Code §§ 15657; 15657.6.
29. Welf. & Inst. Code §§ 15657.5; 15657.6.
30. Welf. & Inst. Code § 15657.5(b).
31. Visit <https://www.irs.gov/individuals/how-do-you-report-suspected-tax-fraud-activity> to access Form 3949-A: How to Report Suspected Tax Fraud Activity and <https://www.irs.gov/pub/irs-pdf/f211.pdf> for Form 211: Application for Award for Original Information (accessed May 3, 2018).