

ASSEMBLY BILL

No. 2545

Introduced by Assembly Member Lowenthal

February 21, 2014

An act to amend Section 13956 of the Government Code, relating to crime victims, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 2545, as introduced, Lowenthal. Victims of crime: restitution: military sexual assault.

Existing law authorizes the compensation of victims and derivative victims of specified types of crimes by the California Victim Compensation and Government Claims Board from the Restitution Fund, a continuously appropriated fund, for specified losses suffered as a result of those crimes. Existing law sets forth eligibility requirements and specified limits on the amount of compensation the board may award. Existing law requires the board to deny an application if the board finds that the victim or derivative victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime. However, existing law specifies that an application for compensation cannot be denied pursuant to that provision solely on the basis of specified behavior by the victim, such as failure to make a police report.

This bill would prohibit denial of an application for compensation under the above circumstances with respect to a claim based on sexual assault, as defined, committed by military personnel against military personnel, solely because the sexual assault was not reported to a superior officer or law enforcement at the time of the crime. The bill would set forth types of evidence of sexual assault the board would be

required to consider in these cases, for purposes of determining if a claim qualifies for compensation. The bill would require both the perpetrator, as defined, and the victim to be active duty military personnel at the time the sexual assault occurred for these provisions to apply.

By expanding the authorization for the use of moneys in the continuously appropriated Restitution Fund, this bill would make an appropriation.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13956 of the Government Code is
 2 amended to read:
 3 13956. Notwithstanding Section 13955, a person shall not be
 4 eligible for compensation under the following conditions:
 5 (a) An application shall be denied if the board finds that the
 6 victim or, ~~where~~ *if* compensation is sought by or on behalf of a
 7 derivative victim, either the victim or derivative victim, knowingly
 8 and willingly participated in the commission of the crime that
 9 resulted in the pecuniary loss for which compensation is being
 10 sought pursuant to this chapter. However, this subdivision shall
 11 not apply if the injury or death occurred as a direct result of a crime
 12 committed in violation of Section 261, 262, or 273.5 of, or a crime
 13 of unlawful sexual intercourse with a minor committed in violation
 14 of subdivision (d) of Section 261.5 of, the Penal Code.
 15 (b) (1) An application shall be denied if the board finds that
 16 the victim or, ~~where~~ *if* compensation is sought by, or on behalf of,
 17 a derivative victim, either the victim or derivative victim failed to
 18 cooperate reasonably with a law enforcement agency in the
 19 apprehension and conviction of a criminal committing the crime.
 20 However, in determining whether cooperation has been reasonable,
 21 the board shall consider the victim’s or derivative victim’s age,
 22 physical condition, and psychological state, cultural or linguistic
 23 barriers, any compelling health and safety concerns, including, but
 24 not limited to, a reasonable fear of retaliation or harm that would
 25 jeopardize the well-being of the victim or the victim’s family or
 26 the derivative victim or the derivative victim’s family, and giving
 27 due consideration to the degree of cooperation of which the victim

1 or derivative victim is capable in light of the presence of any of
2 these factors.

3 (2) An application for a claim based on domestic violence ~~may~~
4 *shall* not be denied solely because no police report was made by
5 the victim. The board shall adopt guidelines that allow the board
6 to consider and approve applications for assistance based on
7 domestic violence relying upon evidence other than a police report
8 to establish that a domestic violence crime has occurred. Factors
9 evidencing that a domestic violence crime has occurred may
10 include, but are not limited to, medical records documenting
11 injuries consistent with allegations of domestic violence, mental
12 health records, or the fact that the victim has obtained a temporary
13 or permanent restraining order, or all of these.

14 (3) An application for a claim based on human trafficking as
15 defined in Section 236.1 of the Penal Code ~~may~~ *shall* not be denied
16 solely because no police report was made by the victim. The board
17 shall adopt guidelines that allow the board to consider and approve
18 applications for assistance based on human trafficking relying
19 upon evidence other than a police report to establish that a human
20 trafficking crime as defined in Section 236.1 *of the Penal Code*
21 has occurred. That evidence may include any reliable corroborating
22 information approved by the board, including, but not limited to,
23 the following:

24 (A) A Law Enforcement Agency Endorsement issued pursuant
25 to Section 236.2 of the Penal Code.

26 (B) A human trafficking caseworker as identified in Section
27 1038.2 of the Evidence Code, has attested by affidavit that the
28 individual was a victim of human trafficking.

29 (4) (A) *An application for a claim by military personnel victim*
30 *based on a sexual assault by another military personnel shall not*
31 *be denied solely because it was not reported to a superior officer*
32 *or law enforcement at the time of the crime.*

33 (B) *Factors that the board shall consider for purposes of*
34 *determining if a claim qualifies for compensation include, but are*
35 *not limited to, the evidence of the following:*

36 (i) *Restricted or unrestricted reports to a military victim*
37 *advocate, sexual assault response coordinator, chaplain, attorney,*
38 *or other military personnel.*

39 (ii) *Medical or physical evidence consistent with sexual assault.*

- 1 (iii) A written or oral report from military law enforcement or
2 a civilian law enforcement agency concluding that a sexual assault
3 crime was committed against the victim.
- 4 (iv) A notarized report from a sexual assault counselor, as
5 defined in Section 1035.2 of the Evidence Code, licensed therapist,
6 or mental health counselor, stating that the victim is seeking
7 services related to the allegation of sexual assault.
- 8 (v) A credible witness to whom the victim disclosed the details
9 that a sexual assault crime occurred.
- 10 (vi) A restraining order from a military or civilian court against
11 the perpetrator of the sexual assault.
- 12 (vii) Other behavior by the victim consistent with sexual assault.
- 13 (C) For purposes of this subdivision, the sexual assault at issue
14 shall have occurred during military service, including deployment.
- 15 (D) For purposes of this subdivision, the sexual assault may
16 have been committed offbase.
- 17 (E) For purposes of this subdivision, a “perpetrator” means
18 an individual who is any of the following at the time of the sexual
19 assault:
- 20 (i) An active duty military personnel from the United States
21 Army, Navy, Marine Corps, Air Force, or Coast Guard.
- 22 (ii) A civilian employee of any military branch specified in
23 clause (i), military base, or military deployment.
- 24 (iii) A contractor or agent of a private military or private
25 security company.
- 26 (iv) A member of the California National Guard.
- 27 (F) For purposes of this subdivision, “sexual assault” means
28 an offense included in Section 261, 262, 264.1, 286, 288a, or 289
29 of the Penal Code, as of the date the act that added this paragraph
30 was enacted.
- 31 (c) An application for compensation may be denied, in whole
32 or in part, if the board finds that denial is appropriate because of
33 the nature of the victim’s or other applicant’s involvement in the
34 events leading to the crime or the involvement of the persons whose
35 injury or death gives rise to the application. In the case of a minor,
36 the board shall consider the minor’s age, physical condition, and
37 psychological state, as well as any compelling health and safety
38 concerns, in determining whether the minor’s application should
39 be denied pursuant to this section. The application of a derivative
40 victim of domestic violence under the age of 18 years of age or a

1 derivative victim of trafficking under 18 years of age may not be
2 denied on the basis of the denial of the victim's application under
3 this subdivision.

4 (d) (1) Notwithstanding Section 13955, no person who is
5 convicted of a felony may be granted compensation until that
6 person has been discharged from probation or has been released
7 from a correctional institution and has been discharged from parole,
8 if any. In no case shall compensation be granted to an applicant
9 pursuant to this chapter during any period of time the applicant is
10 held in a correctional institution.

11 (2) A person who has been convicted of a felony may apply for
12 compensation pursuant to this chapter at any time, but the award
13 of that compensation may not be considered until the applicant
14 meets the requirements for compensation set forth in paragraph
15 (1).

16 (3) Applications of victims who are not felons shall receive
17 priority in the award of compensation over an application submitted
18 by a felon who has met the requirements for compensation set
19 forth in paragraph (1).