

AMENDED IN SENATE JUNE 5, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2545**

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**Introduced by Assembly Member Lowenthal**  
*(Coauthors: Assembly Members Maienschein, Mullin, Skinner, Ting, Wieckowski, and Williams)*  
*(Coauthor: Senator DeSaulnier)*

February 21, 2014

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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 amended, 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: 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, if compensation is sought by or on behalf of a derivative  
7 victim, either the victim or derivative victim, knowingly and  
8 willingly participated in the commission of the crime that resulted  
9 in the pecuniary loss for which compensation is being sought  
10 pursuant to this chapter. However, this subdivision shall not apply  
11 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, if compensation is sought by, or on behalf of, a  
17 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

1 not limited to, a reasonable fear of retaliation or harm that would  
2 jeopardize the well-being of the victim or the victim's family or  
3 the derivative victim or the derivative victim's family, and giving  
4 due consideration to the degree of cooperation of which the victim  
5 or derivative victim is capable in light of the presence of any of  
6 these factors.

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

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

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

30 (B) A human trafficking caseworker as identified in Section  
31 1038.2 of the Evidence Code, has attested by affidavit that the  
32 individual was a victim of human trafficking.

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

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

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

1 the board shall consider the minor's age, physical condition, and  
2 psychological state, as well as any compelling health and safety  
3 concerns, in determining whether the minor's application should  
4 be denied pursuant to this section. The application of a derivative  
5 victim of domestic violence under the age of 18 years of age or a  
6 derivative victim of trafficking under 18 years of age may not be  
7 denied on the basis of the denial of the victim's application under  
8 this subdivision.

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

16 (2) A person who has been convicted of a felony may apply for  
17 compensation pursuant to this chapter at any time, but the award  
18 of that compensation may not be considered until the applicant  
19 meets the requirements for compensation set forth in paragraph  
20 (1).

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