

AMENDED IN SENATE MARCH 18, 2013

SENATE BILL

No. 60

Introduced by Senator Wright

(Coauthors: Senators Cannella, Wolk, and Wyland)

(Coauthors: Assembly Members Ammiano, Bloom, Garcia, and Yamada)

January 7, 2013

An act to amend ~~Section 13951~~ *Sections 13955 and 13957* of the Government Code, relating to ~~the Victims of Crime Act~~ *crime victims*, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 60, as amended, Wright. ~~Victims of Crime Act: elderly adults.~~
Crime victims: human trafficking: elder and dependent adult abuse.

Existing law provides for 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.

This bill would include ~~financial abuse of an elderly~~ *victims of human trafficking and victims of specified forms of elder or dependent adult abuse* within the definition of crimes that are eligible for compensation under these provisions, *as specified*, and provide *reimbursement for financial counseling, as specified, for victims of elder or dependent adult abuse. The bill would delete inoperative provisions that authorized reimbursement of child care expenses from the Restitution Fund until January 1, 2010. The bill would also provide* legislative findings and

declarations regarding financial crimes against elderly or dependent adults.

By expanding the application of provisions authorizing certain uses of *authorization for the use of moneys in the Restitution Fund*, a continuously appropriated ~~funds 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. The Legislature finds and declares:
 2 (a) California has the highest number of older adults compared
 3 to any other state in the nation, with 4.2 million individuals over
 4 65 years of age counted in the 2010 census.
 5 (b) Elderly and dependent adults are seen as easy targets by
 6 financial predators who take advantage of their victims' loneliness,
 7 isolation, and vulnerability. This population often falls victim to
 8 scams such as foreign lotteries, the sale of costly and ineffective
 9 annuities, identity theft, reverse mortgage scams, and fraudulent
 10 home repairs.
 11 (c) A 1998 study reported in the Journal of The American
 12 Medical Association (Lachs et al, 1998) found that an elder
 13 victimized by financial abuse has a decreased projected lifespan
 14 when compared to elders who have not suffered that exploitation.
 15 (d) State Department of Social Services reports that as many as
 16 1,600 reports of elder and dependent adult financial abuse are
 17 under investigation in a given month by the Adult Protective
 18 Services Division statewide.
 19 (e) The California Victims of Crime Program does not serve
 20 this population even though federal law allows Victims of Crime
 21 Act funds to be used to assist victims of financial crimes. Federal
 22 guidelines identify elders and dependent adults as being
 23 underserved in this area.
 24 (f) Many states already provide assistance to victims of financial
 25 crimes, including Colorado, Florida, Idaho, New Jersey, New
 26 York, Oklahoma, Vermont, Pennsylvania, and Wyoming.
 27 ~~SEC. 2. Section 13951 of the Government Code is amended~~
 28 ~~to read:~~

1 13951. As used in this chapter, the following definitions shall
2 apply:

3 (a) ~~“Board” means the California Victim Compensation and
4 Government Claims Board.~~

5 (b) (1) ~~“Crime” means a crime or public offense, including
6 financial abuse of an elderly or dependent adult, wherever it may
7 take place, that would constitute a misdemeanor or a felony if the
8 crime had been committed in California by a competent adult.~~

9 (2) ~~“Crime” includes an act of terrorism, as defined in Section
10 2331 of Title 18 of the United States Code, committed against a
11 resident of the state, whether or not the act occurs within the state.~~

12 (c) ~~“Derivative victim” means an individual who sustains
13 pecuniary loss as a result of injury or death to a victim.~~

14 (d) ~~“Law enforcement” means every district attorney, municipal
15 police department, sheriff’s department, district attorney’s office,
16 county probation department, and social services agency, the
17 Department of Justice, the Department of Corrections and
18 Rehabilitation, the Division of Juvenile Facilities, Department of
19 Corrections and Rehabilitation, the Department of the California
20 Highway Patrol, the police department of any campus of the
21 University of California, California State University, or community
22 college, and every agency of the State of California expressly
23 authorized by statute to investigate or prosecute law violators.~~

24 (e) ~~“Pecuniary loss” means an economic loss or expense
25 resulting from an injury or death to a victim of crime that has not
26 been and will not be reimbursed from any other source.~~

27 (f) ~~“Peer counseling” means counseling offered by a provider
28 of mental health counseling services who has completed a
29 specialized course in rape crisis counseling skills development,
30 participates in continuing education in rape crisis counseling skills
31 development, and provides rape crisis counseling within the State
32 of California.~~

33 (g) ~~“Victim” means an individual who sustains injury or death
34 as a direct result of a crime as specified in subdivision (c) of
35 Section 13955.~~

36 (h) ~~“Victim center” means a victim and witness assistance center
37 that receives funds pursuant to Section 13835.2 of the Penal Code.~~

38 *SEC. 2. Section 13955 of the Government Code is amended to*
39 *read:*

1 13955. Except as provided in Section 13956, a person shall be
2 eligible for compensation when all of the following requirements
3 are met:

4 (a) The person for whom compensation is being sought is any
5 of the following:

6 (1) A victim.

7 (2) A derivative victim.

8 (3) (A) A person who is entitled to reimbursement for funeral,
9 burial, or crime scene cleanup expenses pursuant to paragraph (9)
10 of subdivision (a) of Section 13957.

11 (B) This paragraph applies without respect to any felon status
12 of the victim.

13 (b) Either of the following conditions is met:

14 (1) The crime occurred within this state, whether or not the
15 victim is a resident of the state. This paragraph shall apply only
16 during those time periods during which the board determines that
17 federal funds are available to the state for the compensation of
18 victims of crime.

19 (2) Whether or not the crime occurred within the State of
20 California, the victim was any of the following:

21 (A) A resident of the state.

22 (B) A member of the military stationed in California.

23 (C) A family member living with a member of the military
24 stationed in this state.

25 (c) If compensation is being sought for a derivative victim, the
26 derivative victim is a resident of this state, or resident of another
27 state, who is any of the following:

28 (1) At the time of the crime was the parent, grandparent, sibling,
29 spouse, child, or grandchild of the victim.

30 (2) At the time of the crime was living in the household of the
31 victim.

32 (3) At the time of the crime was a person who had previously
33 lived in the household of the victim for a period of not less than
34 two years in a relationship substantially similar to a relationship
35 listed in paragraph (1).

36 (4) Is another family member of the victim, including, but not
37 limited to, the victim's fiancé or fiancée, and who witnessed the
38 crime.

39 (5) Is the primary caretaker of a minor victim, but was not the
40 primary caretaker at the time of the crime.

- 1 (d) The application is timely pursuant to Section 13953.
- 2 (e) (1) Except as provided in paragraph (2), the injury or death
3 was a direct result of a crime.
- 4 (2) Notwithstanding paragraph (1), no act involving the
5 operation of a motor vehicle, aircraft, or water vehicle that results
6 in injury or death constitutes a crime for the purposes of this
7 chapter, except when the injury or death from such an act was any
8 of the following:
- 9 (A) Intentionally inflicted through the use of a motor vehicle,
10 aircraft, or water vehicle.
- 11 (B) Caused by a driver who fails to stop at the scene of an
12 accident in violation of Section 20001 of the Vehicle Code.
- 13 (C) Caused by a person who is under the influence of any
14 alcoholic beverage or drug.
- 15 (D) Caused by a driver of a motor vehicle in the immediate act
16 of fleeing the scene of a crime in which he or she knowingly and
17 willingly participated.
- 18 (E) Caused by a person who commits vehicular manslaughter
19 in violation of subdivision (b) of Section 191.5, subdivision (c) of
20 Section 192, or Section 192.5 of the Penal Code.
- 21 (F) Caused by any party where a peace officer is operating a
22 motor vehicle in an effort to apprehend a suspect, and the suspect
23 is evading, fleeing, or otherwise attempting to elude the peace
24 officer.
- 25 (f) As a direct result of the crime, the victim or derivative victim
26 sustained one or more of the following:
- 27 (1) Physical injury. The board may presume a child who has
28 been the witness of a crime of domestic violence has sustained
29 physical injury. A child who resides in a home where a crime or
30 crimes of domestic violence have occurred may be presumed by
31 the board to have sustained physical injury, regardless of whether
32 the child has witnessed the crime.
- 33 (2) Emotional injury and a threat of physical injury.
- 34 (3) Emotional injury, where the crime was a violation of any of
35 the following provisions:
- 36 (A) Section 236.1, 261, 262, 271, 273a, 273d, 285, 286, 288,
37 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of
38 the Penal Code.

1 (B) Section 270 of the Penal Code, where the emotional injury
2 was a result of conduct other than a failure to pay child support,
3 and criminal charges were filed.

4 (C) Section 261.5 of the Penal Code, and criminal charges were
5 filed.

6 (D) Section 278 or 278.5 of the Penal Code, where the
7 deprivation of custody as described in those sections has endured
8 for 30 calendar days or more. For purposes of this paragraph, the
9 child, and not the nonoffending parent or other caretaker, shall be
10 deemed the victim.

11 (E) *Subdivisions (d) and (e) of Section 368 of the Penal Code.*

12 (g) The injury or death has resulted or may result in pecuniary
13 loss within the scope of compensation pursuant to Sections 13957
14 to 13957.7, inclusive.

15 *SEC. 3. Section 13957 of the Government Code is amended to*
16 *read:*

17 13957. (a) The board may grant for pecuniary loss, when the
18 board determines it will best aid the person seeking compensation,
19 as follows:

20 (1) Subject to the limitations set forth in Section 13957.2,
21 reimburse the amount of medical or medical-related expenses
22 incurred by the victim, including, but not limited to, eyeglasses,
23 hearing aids, dentures, or any prosthetic device taken, lost, or
24 destroyed during the commission of the crime, or the use of which
25 became necessary as a direct result of the crime.

26 (2) Subject to the limitations set forth in Section 13957.2,
27 reimburse the amount of outpatient psychiatric, psychological, or
28 other mental health counseling-related expenses incurred by the
29 victim or derivative victim, including peer counseling services
30 provided by a rape crisis center as defined by Section 13837 of
31 the Penal Code, and including family psychiatric, psychological,
32 or mental health counseling for the successful treatment of the
33 victim provided to family members of the victim in the presence
34 of the victim, whether or not the family member relationship
35 existed at the time of the crime, that became necessary as a direct
36 result of the crime, subject to the following conditions:

37 (A) The following persons may be reimbursed for the expense
38 of their outpatient mental health counseling in an amount not to
39 exceed ten thousand dollars (\$10,000):

40 (i) A victim.

1 (ii) A derivative victim who is the surviving parent, sibling,
2 child, spouse, fiancé, or fiancée of a victim of a crime that directly
3 resulted in the death of the victim.

4 (iii) A derivative victim, as described in paragraphs (1) to (4),
5 inclusive, of subdivision (c) of Section 13955, who is the primary
6 caretaker of a minor victim whose claim is not denied or reduced
7 pursuant to Section 13956 in a total amount not to exceed ten
8 thousand dollars (\$10,000) for not more than two derivative
9 victims.

10 (B) The following persons may be reimbursed for the expense
11 of their outpatient mental health counseling in an amount not to
12 exceed five thousand dollars (\$5,000):

13 (i) A derivative victim not eligible for reimbursement pursuant
14 to subparagraph (A), provided that mental health counseling of a
15 derivative victim described in paragraph (5) of subdivision (c) of
16 Section 13955, shall be reimbursed only if that counseling is
17 necessary for the treatment of the victim.

18 (ii) A victim of a crime of unlawful sexual intercourse with a
19 minor committed in violation of subdivision (d) of Section 261.5
20 of the Penal Code. A derivative victim of a crime committed in
21 violation of subdivision (d) of Section 261.5 of the Penal Code
22 shall not be eligible for reimbursement of mental health counseling
23 expenses.

24 (iii) A minor who suffers emotional injury as a direct result of
25 witnessing a violent crime and who is not eligible for
26 reimbursement of the costs of outpatient mental health counseling
27 under any other provision of this chapter. To be eligible for
28 reimbursement under this clause, the minor must have been in
29 close proximity to the victim when he or she witnessed the crime.

30 (C) The board may reimburse a victim or derivative victim for
31 outpatient mental health counseling in excess of that authorized
32 by subparagraph (A) or (B) or for inpatient psychiatric,
33 psychological, or other mental health counseling if the claim is
34 based on dire or exceptional circumstances that require more
35 extensive treatment, as approved by the board.

36 (D) Expenses for psychiatric, psychological, or other mental
37 health counseling-related services may be reimbursed only if the
38 services were provided by either of the following individuals:

1 (i) A person who would have been authorized to provide those
2 services pursuant to former Article 1 (commencing with Section
3 13959) as it read on January 1, 2002.

4 (ii) A person who is licensed by the state to provide those
5 services, or who is properly supervised by a person who is so
6 licensed, subject to the board's approval and subject to the
7 limitations and restrictions the board may impose.

8 (3) Reimburse the expenses of nonmedical remedial care and
9 treatment rendered in accordance with a religious method of healing
10 recognized by state law.

11 (4) Subject to the limitations set forth in Section 13957.5,
12 authorize compensation equal to the loss of income or loss of
13 support, or both, that a victim or derivative victim incurs as a direct
14 result of the victim's or derivative victim's injury or the victim's
15 death. If the victim or derivative victim requests that the board
16 give priority to reimbursement of loss of income or support, the
17 board may not pay medical expenses, or mental health counseling
18 expenses, except upon the request of the victim or derivative victim
19 or after determining that payment of these expenses will not
20 decrease the funds available for payment of loss of income or
21 support.

22 (5) Authorize a cash payment to or on behalf of the victim for
23 job retraining or similar employment-oriented services.

24 (6) Reimburse the claimant for the expense of installing or
25 increasing residential security, not to exceed one thousand dollars
26 (\$1,000). Reimbursement shall be made either upon verification
27 by law enforcement that the security measures are necessary for
28 the personal safety of the claimant or verification by a mental
29 health treatment provider that the security measures are necessary
30 for the emotional well-being of the claimant. For purposes of this
31 paragraph, a claimant is the crime victim, or, if the victim is
32 deceased, a person who resided with the deceased at the time of
33 the crime. Installing or increasing residential security may include,
34 but need not be limited to, both of the following:

35 (A) Home security device or system.

36 (B) Replacing or increasing the number of locks.

37 (7) Reimburse the expense of renovating or retrofitting a
38 victim's residence or a vehicle, or both, to make the residence, the
39 vehicle, or both, accessible or the vehicle operational by a victim
40 upon verification that the expense is medically necessary for a

1 victim who is permanently disabled as a direct result of the crime,
2 whether the disability is partial or total.

3 (8) (A) Authorize a cash payment or reimbursement not to
4 exceed two thousand dollars (\$2,000) to a victim for expenses
5 incurred in relocating, if the expenses are determined by law
6 enforcement to be necessary for the personal safety of the victim
7 or by a mental health treatment provider to be necessary for the
8 emotional well-being of the victim.

9 (B) The cash payment or reimbursement made under this
10 paragraph shall only be awarded to one claimant per crime giving
11 rise to the relocation. The board may authorize more than one
12 relocation per crime if necessary for the personal safety or
13 emotional well-being of the claimant. However, the total cash
14 payment or reimbursement for all relocations due to the same crime
15 shall not exceed two thousand dollars (\$2,000). For purposes of
16 this paragraph a claimant is the crime victim, or, if the victim is
17 deceased, a person who resided with the deceased at the time of
18 the crime.

19 (C) The board may, under compelling circumstances, award a
20 second cash payment or reimbursement to a victim for another
21 crime if both of the following conditions are met:

22 (i) The crime occurs more than three years from the date of the
23 crime giving rise to the initial relocation cash payment or
24 reimbursement.

25 (ii) The crime does not involve the same offender.

26 (D) When a relocation payment or reimbursement is provided
27 to a victim of sexual assault or domestic violence and the identity
28 of the offender is known to the victim, the victim shall agree not
29 to inform the offender of the location of the victim's new residence
30 and not to allow the offender on the premises at any time, or shall
31 agree to seek a restraining order against the offender.

32 (E) Notwithstanding subparagraphs (A) and (B), the board may
33 increase the cash payment or reimbursement for expenses incurred
34 in relocating to an amount greater than two thousand dollars
35 (\$2,000), if the board finds this amount is appropriate due to the
36 unusual, dire, or exceptional circumstances of a particular claim.

37 (9) When a victim dies as a result of a crime, the board may
38 reimburse any individual who voluntarily, and without anticipation
39 of personal gain, pays or assumes the obligation to pay any of the
40 following expenses:

1 (A) The medical expenses incurred as a direct result of the crime
2 in an amount not to exceed the rates or limitations established by
3 the board.

4 (B) The funeral and burial expenses incurred as a direct result
5 of the crime, not to exceed seven thousand five hundred dollars
6 (\$7,500).

7 (10) When the crime occurs in a residence, the board may
8 reimburse any individual who voluntarily, and without anticipation
9 of personal gain, pays or assumes the obligation to pay the
10 reasonable costs to clean the scene of the crime in an amount not
11 to exceed one thousand dollars (\$1,000). Services reimbursed
12 pursuant to this subdivision shall be performed by persons
13 registered with the State Department of Public Health as trauma
14 scene waste practitioners in accordance with Chapter 9.5
15 (commencing with Section 118321) of Part 14 of Division 104 of
16 the Health and Safety Code.

17 ~~(11) Reimburse the licensed child care expenses necessarily~~
18 ~~incurred by a victim or derivative victim as a direct result of a~~
19 ~~crime that resulted in physical injury or death, if the following~~
20 ~~conditions are met:~~

21 ~~(A) The injured or deceased victim was a primary caregiver for~~
22 ~~the victim's dependent children.~~

23 ~~(B) The total reimbursement for all child care expenses does~~
24 ~~not exceed five thousand dollars (\$5,000). The board shall have~~
25 ~~the ability to set a lower reimbursement amount if necessary to~~
26 ~~protect the solvency of the Restitution Fund.~~

27 ~~(C) The periods of time for which child care expenses may be~~
28 ~~reimbursed do not exceed a total of 180 days. The time periods~~
29 ~~need not be continuous.~~

30 ~~(D) The child care expenses are consistent with the usual and~~
31 ~~customary rates charged by the child care provider for other~~
32 ~~children in the provider's care. If the provider only cares for the~~
33 ~~victim's children, the reimbursement rate shall not exceed two~~
34 ~~hundred dollars (\$200) per week for one child or four hundred~~
35 ~~dollars (\$400) per week for two or more children subject to the~~
36 ~~limit in subparagraph (E).~~

37 ~~(E) No victim or derivative victim may receive reimbursement~~
38 ~~for child care expenses in addition to reimbursement subject to~~
39 ~~paragraph (4).~~

1 ~~(F) This paragraph is a pilot program and shall be operative~~
2 ~~only until January 1, 2010.~~

3 *(11) The board may reimburse the cost of financial counseling*
4 *for a victim of a violation of subdivision (d) or (e) of Section 368*
5 *of the Penal Code as follows:*

6 *(A) The cost of financial counseling in an amount not to exceed*
7 *two thousand dollars (\$2,000).*

8 *(B) A victim who receives both mental health counseling and*
9 *financial counseling under this section may be reimbursed in an*
10 *amount not to exceed a combined total of ten thousand dollars*
11 *(\$10,000) with a maximum of two thousand dollars (\$2,000)*
12 *apportioned for financial counseling.*

13 *(C) Reimbursable financial counseling expenses shall be*
14 *provided by a certified financial counselor or adviser providing*
15 *services that may include, but are not limited to, analysis of a*
16 *victim's financial situation, including income-producing capacity*
17 *and crime-related financial obligations, assistance with*
18 *restructuring budget and debt, assistance in accessing insurance,*
19 *public assistance, and other benefits, and assistance in completing*
20 *the financial aspects of victim impact statements.*

21 *(b) The total award to or on behalf of each victim or derivative*
22 *victim may not exceed thirty-five thousand dollars (\$35,000),*
23 *except that this amount may be increased to seventy thousand*
24 *dollars (\$70,000) if federal funds for that increase are available.*