

Introduced by Senator Block

January 9, 2014

An act to amend Sections 13955, 13956, and 13957 of the Government Code, relating to crime victims, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 847, as introduced, Block. Crime victim compensation: financial elder or 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 victims of financial 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 those victims. The bill would make a derivative victim ineligible for compensation if the only crime the victim suffered was financial elder or dependent adult abuse. The bill would also provide related legislative findings and declarations.

By expanding the authorization for the use of moneys in the Restitution Fund, a continuously appropriated 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 all of the
2 following:

3 (a) California has the highest number of older adults compared
4 to any other state in the nation, with 4.2 million individuals over
5 65 years of age counted in the 2010 census.

6 (b) Elderly and dependent adults are seen as easy targets by
7 financial predators who take advantage of their victims' loneliness,
8 isolation, and vulnerability. This population often falls victim to
9 scams such as foreign lotteries, the sale of costly and ineffective
10 annuities, identity theft, reverse mortgage scams, and fraudulent
11 home repairs.

12 (c) A 1998 study reported in the Journal of the American
13 Medical Association found that an elder victimized by financial
14 abuse has a decreased projected lifespan when compared to elders
15 who have not suffered that exploitation.

16 (d) The State Department of Social Services reports that as many
17 as 1,600 reports of elder and dependent adult financial abuse are
18 under investigation per month by Adult Protective Services offices
19 statewide.

20 (e) The California Victims of Crime Program does not serve
21 this population even though federal law allows Victims of Crime
22 Act funds to be used to assist victims of financial crimes. Federal
23 guidelines identify elders and dependent adults as being
24 underserved in this area.

25 (f) Many states already provide assistance to victims of financial
26 crimes, including Colorado, Florida, Idaho, New Jersey, New
27 York, Oklahoma, Pennsylvania, Vermont, and Wyoming.

28 SEC. 2. Section 13955 of the Government Code is amended
29 to read:

30 13955. Except as provided in Section 13956, a person shall be
31 eligible for compensation when all of the following requirements
32 are met:

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

35 (1) A victim.

36 (2) A derivative victim.

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

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

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

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

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

14 (A) A resident of the state.

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

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

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

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

23 (2) At the time of the crime was living in the household of the
24 victim.

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

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

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

34 (d) The application is timely pursuant to Section 13953.

35 (e) (1) Except as provided in paragraph (2), the injury or death
36 was a direct result of a crime.

37 (2) Notwithstanding paragraph (1), no act involving the
38 operation of a motor vehicle, aircraft, or water vehicle that results
39 in injury or death constitutes a crime for the purposes of this

chapter, except when the injury or death from such an act was any of the following:

(A) Intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(B) Caused by a driver who fails to stop at the scene of an accident in violation of Section 20001 of the Vehicle Code.

(C) Caused by a person who is under the influence of any alcoholic beverage or drug.

(D) Caused by a driver of a motor vehicle in the immediate act of fleeing the scene of a crime in which he or she knowingly and willingly participated.

(E) Caused by a person who commits vehicular manslaughter in violation of subdivision (b) of Section 191.5, subdivision (c) of Section 192, or Section 192.5 of the Penal Code.

(F) Caused by any party where a peace officer is operating a motor vehicle in an effort to apprehend a suspect, and the suspect is evading, fleeing, or otherwise attempting to elude the peace officer.

(f) As a direct result of the crime, the victim or derivative victim sustained one or more of the following:

(1) Physical injury. The board may presume a child who has been the witness of a crime of domestic violence has sustained physical injury. A child who resides in a home where a crime or crimes of domestic violence have occurred may be presumed by the board to have sustained physical injury, regardless of whether the child has witnessed the crime.

(2) Emotional injury and a threat of physical injury.

(3) Emotional injury, where the crime was a violation of any of the following provisions:

(A) Section 236.1, 261, 262, 271, 273a, 273d, 285, 286, 288, 288a, 288.5, or 289, or subdivision (b) or (c) of Section 311.4, of the Penal Code.

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

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

(D) Section 278 or 278.5 of the Penal Code, where the deprivation of custody as described in those sections has endured for 30 calendar days or more. For purposes of this paragraph, the

1 child, and not the nonoffending parent or other caretaker, shall be
2 deemed the victim.

3 *(E) Subdivision (d) or (e) of Section 368 of the Penal Code.*

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

7 SEC. 3. Section 13956 of the Government Code is amended
8 to read:

9 13956. Notwithstanding Section 13955, a person shall not be
10 eligible for compensation under the following conditions:

11 (a) An application shall be denied if the board finds that the
12 victim or, where compensation is sought by or on behalf of a
13 derivative victim, either the victim or derivative victim, knowingly
14 and willingly participated in the commission of the crime that
15 resulted in the pecuniary loss for which compensation is being
16 sought pursuant to this chapter. However, this subdivision shall
17 not apply if the injury or death occurred as a direct result of a crime
18 committed in violation of Section 261, 262, or 273.5 of, or a crime
19 of unlawful sexual intercourse with a minor committed in violation
20 of subdivision (d) of Section 261.5 of, the Penal Code.

21 (b) (1) An application shall be denied if the board finds that
22 the victim or, where compensation is sought by, or on behalf of,
23 a derivative victim, either the victim or derivative victim failed to
24 cooperate reasonably with a law enforcement agency in the
25 apprehension and conviction of a criminal committing the crime.
26 However, in determining whether cooperation has been reasonable,
27 the board shall consider the victim's or derivative victim's age,
28 physical condition, and psychological state, cultural or linguistic
29 barriers, any compelling health and safety concerns, including, but
30 not limited to, a reasonable fear of retaliation or harm that would
31 jeopardize the well-being of the victim or the victim's family or
32 the derivative victim or the derivative victim's family, and giving
33 due consideration to the degree of cooperation of which the victim
34 or derivative victim is capable in light of the presence of any of
35 these factors.

36 (2) An application for a claim based on domestic violence may
37 not be denied solely because no police report was made by the
38 victim. The board shall adopt guidelines that allow the board to
39 consider and approve applications for assistance based on domestic
40 violence relying upon evidence other than a police report to

1 establish that a domestic violence crime has occurred. Factors
2 evidencing that a domestic violence crime has occurred may
3 include, but are not limited to, medical records documenting
4 injuries consistent with allegations of domestic violence, mental
5 health records, or the fact that the victim has obtained a temporary
6 or permanent restraining order, or all of these.

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

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

18 (B) A human trafficking caseworker as identified in Section
19 1038.2 of the Evidence Code, has attested by affidavit that the
20 individual was a victim of human trafficking.

21 (c) An application for compensation may be denied, in whole
22 or in part, if the board finds that denial is appropriate because of
23 the nature of the victim's or other applicant's involvement in the
24 events leading to the crime or the involvement of the persons whose
25 injury or death gives rise to the application. In the case of a minor,
26 the board shall consider the minor's age, physical condition, and
27 psychological state, as well as any compelling health and safety
28 concerns, in determining whether the minor's application should
29 be denied pursuant to this section. The application of a derivative
30 victim of domestic violence under the age of 18 years of age or a
31 derivative victim of trafficking under 18 years of age may not be
32 denied on the basis of the denial of the victim's application under
33 this subdivision.

34 (d) (1) Notwithstanding Section 13955, no person who is
35 convicted of a felony may be granted compensation until that
36 person has been discharged from probation or has been released
37 from a correctional institution and has been discharged from parole,
38 if any. In no case shall compensation be granted to an applicant
39 pursuant to this chapter during any period of time the applicant is
40 held in a correctional institution.

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

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

(e) A derivative victim shall not be eligible for compensation if the only crime the victim suffered is elder or dependent adult abuse described in subdivision (d) or (e) of Section 368 of the Penal Code.

SEC. 4. Section 13957 of the Government Code is amended to read:

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

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

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

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

(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 expense of financial counseling for a victim*
18 *of a crime described in subdivision (d) or (e) of Section 368 of the*
19 *Penal Code as follows:*

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

22 (B) *A victim who receives both mental health counseling and*
23 *financial counseling under this section may be reimbursed in an*
24 *amount not to exceed a combined total of ten thousand dollars*
25 *(\$10,000) with a maximum of two thousand dollars (\$2,000)*
26 *apportioned for financial counseling.*

27 (C) *Reimbursable financial counseling expenses shall be*
28 *provided by a certified financial counselor or adviser providing*
29 *services that may include analysis of a victim's financial situation,*
30 *including income-producing capacity and crime-related financial*
31 *obligations, assistance with restructuring budget and debt,*
32 *assistance in accessing insurance, public assistance, and other*
33 *benefits, and assistance in completing the financial aspects of*
34 *victim impact statements.*

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

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