

AMENDED IN SENATE AUGUST 3, 2020

AMENDED IN SENATE JULY 14, 2020

AMENDED IN SENATE JUNE 29, 2020

AMENDED IN SENATE JUNE 6, 2019

AMENDED IN ASSEMBLY MAY 16, 2019

AMENDED IN ASSEMBLY APRIL 30, 2019

AMENDED IN ASSEMBLY APRIL 9, 2019

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 767

**Introduced by Assembly Members Grayson, Kamlager, Chiu,
Cristina Garcia, Weber, and Wicks
(Coauthor: Assembly Member Bonta)
(Coauthor: Senator Wiener)**

February 19, 2019

An act to amend Sections 13951 and 13956 of the Government Code, relating to victim compensation, ~~and making an appropriation therefor.~~ *making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 767, as amended, Grayson. ~~Victim compensation. compensation:~~ *use of excessive force by a peace officer.*

Existing law provides for the compensation of victims and derivative victims of specified types of crimes by the California Victim Compensation Board from the Restitution Fund, a continuously

appropriated fund, for specified losses suffered as a result of those crimes. Existing law defines various terms for purposes of these provisions, including “crime,” which includes any public offense wherever it may take place that would constitute a misdemeanor or felony.

This bill would revise the definition of “crime” to include any public offense described above regardless of whether any suspect is arrested for or charged with the commission of the crime. The bill would also include in the definition of “crime” the use of force by a peace officer that is beyond what is reasonable under the totality of the circumstances, and that causes the victim injury or death, regardless of whether the peace officer is arrested for or charged with the commission of a crime or a public offense. By expanding the types of crime for which compensation can be paid from a continuously appropriated fund, the bill would make an appropriation.

Existing law specifies that a person is not eligible for compensation under specified conditions, including, among other things, if the board determines that denial of the claim for compensation is appropriate because of the nature of the victim’s involvement in the events leading to the crime, or the involvement of the person whose injury or death gives rise to the application. If the victim is determined to have been involved in the events leading to the qualifying crime, existing law specifies the factors that the board may consider to mitigate that involvement including, among other things, that the victim’s injuries were significantly more serious than reasonably could have been expected based on the victim’s level of involvement, or that a third party interfered in a manner that was not reasonably foreseeable by the victim.

This bill would recast the factors that may be considered in determining whether the victim was involved in the events leading to the qualifying crime. The bill would, notwithstanding those provisions, prohibit the board from denying an application based upon the victim’s involvement in the crime if the claim is for injury or death that happened as a result of the use of excessive force by a peace officer.

Existing law requires the board to deny an application if it finds that the victim failed to cooperate reasonably with a law enforcement agency in the apprehension and conviction of a criminal committing the crime.

This bill would prohibit the board from determining that a victim failed to cooperate with law enforcement based upon their conduct with law enforcement at the scene of the crime or on a hospital following the crime, and specify that lack of cooperation shall not be found solely

because a victim delayed in reporting the qualifying crime. The bill would, notwithstanding those provisions, prohibit the board from denying an application based solely upon the victim's failure to cooperate if the claim is for injury or death that happened as a result of the use of excessive force by a peace officer. The bill would prohibit the board from denying an application for a claim based on injuries or death as a result of the use of excessive force by a peace officer based solely on a police report, or the lack thereof, or based upon whether the peace officer was arrested or charged with a crime. The bill would, absent a police report, authorize these claims to be supported by other evidence. The bill would also prohibit the board from denying an application, in whole or in part, based solely upon the contents of a police report, or because a police report was not made by the victim, or based upon whether any suspect was arrested or charged with the qualifying crime. The bill would require the board to consider other evidence to establish that a qualifying crime occurred.

This bill would declare that it is to take effect immediately as an urgency statute.

~~Existing law provides for the compensation of victims and derivative victims of specified types of crimes by the California Victim Compensation Board from the Restitution Fund, a continuously appropriated fund, for specified losses suffered as a result of those crimes. Existing law defines various terms for purposes of these provisions, including "crime", which includes any public offense wherever it may take place that would constitute a misdemeanor or felony.~~

~~This bill would revise the definition of "crime" to include crimes and public offenses regardless of whether a person is arrested for, charged with, or convicted of committing the crime. The bill would also add to the definition of "crime" an incident in which an individual sustains injury or death as a result of an encounter with a peace officer, regardless of whether the peace officer is arrested for, charged with, or convicted of committing a crime. By expanding the crimes for which compensation may be paid from a continuously appropriated fund, the bill would make an appropriation.~~

~~Existing law makes a person ineligible for compensation under specified conditions, including, among others, whether the board determines that denial of the claim for compensation is appropriate because of the nature of the victim's involvement in the events leading to the crime, or the involvement of the person whose injury or death~~

gives rise to the application, and specifies the factors that the board may consider to mitigate that involvement.

~~This bill would recast those provisions to, instead, authorize the board to deny an application if it finds that the victim or derivative victim was knowingly and willingly in the process of committing a crime that constitutes a felony that directly caused the qualifying crime which inflicted or posed a substantial and imminent threat of causing great bodily injury to, or the death of, another person, or that directly provoked or aggravated the suspect into committing the qualifying crime at the time that the qualifying injury or death occurred, except as specified. The bill would also prohibit the board from denying an application, in whole or in part, based upon a deceased victim's involvement in the events leading to the qualifying crime if the victim's death occurred as a result of the crime.~~

~~Existing law requires the board to deny an application if it 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.~~

~~This bill, instead, would authorize the board to deny an application, in whole or in part, under these circumstances. The bill would specify that if the victim or derivative victim obtained a temporary restraining order, emergency order, emergency protective order, or protective order, presented themselves to a licensed medical or mental health care provider for treatment for injuries resulting from the crime, reported the crime to law enforcement, or sought services from a victim services provider, as defined, that conduct shall be deemed to satisfy the reasonable cooperation requirement and would prevent denial of the application pursuant to those provisions. The bill would prohibit the board from denying a claim, in whole or in part, because of the lack of cooperation by the victim or derivative victim if the victim's injury or death resulted from an encounter with a peace officer, as specified.~~

~~This bill would prohibit a claim from being denied, in whole or in part, solely because the crime or qualifying circumstances are not verified by law enforcement or documented in a police report, or because the victim or derivative victim has not reported the qualifying crime to law enforcement, and would require the board to adopt guidelines for consideration and approval of applications for assistance relying upon available evidence to reasonably establish that a qualifying crime has occurred. The bill would require the board to adopt regulations relating to its consideration of applications for assistance based on sexual assault~~

and human trafficking relying upon evidence other than a police report to establish the crime.

~~Existing law prohibits a person who has been convicted of specified violent felonies from being granted compensation until they have been discharged from probation or have been released from a correctional institution and discharged from parole, postrelease community supervision, or other mandatory supervision.~~

~~This bill would delete those provisions.~~

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 13951 of the Government Code is
2 amended to read:

3 13951. As used in this chapter, the following definitions shall
4 apply:

5 (a) “Board” means the California Victim Compensation Board.

6 (b) (1) “Crime” means a crime or public offense, wherever it
7 may take place, that would constitute a misdemeanor or a felony
8 if the crime had been committed in California by a competent
9 adult. ~~adult regardless of whether any suspect is arrested for or~~
10 charged with the commission of the crime.

11 (2) “Crime” includes an act of terrorism, as defined in Section
12 2331 of Title 18 of the United States Code, committed against a
13 resident of the state, whether or not the act occurs within the state.

14 (3) “Crime” includes the use of force by a peace officer, as
15 defined in Section 830 of the Penal Code, that is beyond what is
16 reasonable under the totality of the circumstances, and that causes
17 the victim injury or death, regardless of whether the peace officer
18 is arrested for or charged with the commission of a crime or a
19 public offense, as described in paragraph (1).

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

22 (d) “Law enforcement” means every district attorney, municipal
23 police department, sheriff’s department, district attorney’s office,
24 county probation department, and social services agency, the
25 Department of Justice, the Department of Corrections, the
26 Department of the Youth Authority, the Department of the
27 California Highway Patrol, the police department of any campus

1 of the University of California, California State University, or
2 community college, and every agency of the State of California
3 expressly authorized by statute to investigate or prosecute law
4 violators.

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

8 (f) “Peer counseling” means counseling offered by a provider
9 of mental health counseling services who has completed a
10 specialized course in rape crisis counseling skills development,
11 participates in continuing education in rape crisis counseling skills
12 development, and provides rape crisis counseling within the State
13 of California.

14 (g) “Victim” means an individual who sustains injury or death
15 as a direct result of a crime as specified in subdivision (e) of
16 Section 13955.

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

19 (i) “Victim services provider” means an individual, whether
20 paid or serving as a volunteer, who provides services to victims
21 under the auspices or supervision of either an agency or an
22 organization that has a documented record of providing services
23 to victims, or a law enforcement or prosecution agency.

24 SEC. 2. Section 13956 of the Government Code is amended to
25 read:

26 13956. Notwithstanding Section 13955, a person shall not be
27 eligible for compensation under the ~~following conditions:~~
28 *conditions described in subdivisions (a) and (b).*

29 (a) An application may be denied, in whole or in part, if the
30 board finds that denial is appropriate because of the nature of the
31 victim’s or other applicant’s involvement in the events leading to
32 the crime, or the involvement of the person whose injury or death
33 gives rise to the application.

34 (1) Factors that may be considered in determining whether the
35 victim or derivative victim was involved in the events leading to
36 the qualifying crime include, but are not limited to:

37 (A) The victim or derivative victim initiated the qualifying
38 crime, or *directly* provoked or aggravated the suspect into ~~initiating~~
39 *committing* the qualifying crime.

1 (B) The qualifying crime was a reasonably foreseeable
2 consequence of the conduct of the victim or derivative victim.

3 (C) The victim or derivative victim was *knowingly and willingly*
4 committing a crime that could be charged as a ~~felony~~ *felony, absent*
5 *consideration of any enhancement or prior conviction*, and
6 reasonably lead to ~~him or her~~ *them* being victimized. However,
7 committing a crime shall not be considered involvement if the
8 victim's injury or death occurred as a direct result of a crime
9 committed *against the victim* in violation of Section 261, 262, or
10 273.5 of, or for a crime of unlawful sexual intercourse with a minor
11 in violation of subdivision (d) of Section 261.5 of, the Penal Code.

12 (2) If the victim is determined to have been involved in the
13 events leading to the qualifying crime, factors that may be
14 considered to mitigate or overcome involvement include, but are
15 not limited to:

16 (A) The victim's injuries were significantly more serious than
17 reasonably could have been expected based on the victim's level
18 of involvement.

19 (B) A third party interfered in a manner not reasonably
20 foreseeable by the victim or derivative victim.

21 (C) The board shall consider the victim's age, physical
22 condition, and psychological state, as well as any compelling health
23 and safety concerns, in determining whether the application should
24 be denied pursuant to this section. The application of a derivative
25 victim of domestic violence under 18 years of age or derivative
26 victim of trafficking under 18 years of age shall not be denied on
27 the basis of the denial of the victim's application under this
28 subdivision.

29 (3) *Notwithstanding paragraphs (1) and (2), if an application*
30 *is for a claim based on injury or death that happened as a result*
31 *of a crime, as defined in paragraph (3) of subdivision (b) of Section*
32 *13951, the board shall not deny the application based upon the*
33 *victim's involvement in the crime.*

34 (b) (1) An application shall be denied if the board finds that
35 the victim or, if compensation is sought by, or on behalf of, a
36 derivative victim, either the victim or derivative victim failed to
37 cooperate reasonably with a law enforcement agency in the
38 apprehension and conviction of a criminal committing the crime.
39 In determining whether cooperation has been reasonable, the board
40 shall consider the victim's or derivative victim's age, physical

1 condition, and psychological state, cultural or linguistic barriers,
2 any compelling health and safety concerns, including, but not
3 limited to, a reasonable fear of retaliation or harm that would
4 jeopardize the well-being of the victim or the victim's family or
5 the derivative victim or the derivative victim's family, and giving
6 due consideration to the degree of cooperation of which the victim
7 or derivative victim is capable in light of the presence of any of
8 these factors. A victim of domestic violence shall not be determined
9 to have failed to cooperate based on ~~his or her~~ *their* conduct with
10 law enforcement at the scene of the ~~crime~~ *crime or in a hospital*
11 *following the crime*. Lack of cooperation shall also not be found
12 solely because a victim of ~~sexual assault, domestic violence, or~~
13 ~~human trafficking~~ delayed reporting the qualifying crime.

14 (2) *Notwithstanding paragraph (1), if an application is for a*
15 *claim based on injury or death that happened as a result of a crime,*
16 *as defined in paragraph (3) of subdivision (b) of Section 13951,*
17 *the board shall not deny the application based upon the victim's*
18 *failure to cooperate.*

19 (2)

20 (3) An application for a claim based on domestic violence shall
21 not be denied solely because a police report was not made by the
22 victim. The board shall adopt guidelines that allow the board to
23 consider and approve applications for assistance based on domestic
24 violence relying upon evidence other than a police report to
25 establish that a domestic violence crime has occurred. Factors
26 evidencing that a domestic violence crime has occurred may
27 include, but are not limited to, medical records documenting
28 injuries consistent with allegations of domestic violence, mental
29 health records, or that the victim has obtained a permanent
30 restraining order.

31 (3)

32 (4) An application for a claim based on a sexual assault shall
33 not be denied solely because a police report was not made by the
34 victim. The board shall adopt guidelines that allow it to consider
35 and approve applications for assistance based on a sexual assault
36 relying upon evidence other than a police report to establish that
37 a sexual assault crime has occurred. Factors evidencing that a
38 sexual assault crime has occurred may include, but are not limited
39 to, medical records documenting injuries consistent with allegations

1 of sexual assault, mental health records, or that the victim received
2 a sexual assault examination.

3 ~~(4)~~

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

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

16 (B) A human trafficking caseworker, as identified in Section
17 1038.2 of the Evidence Code, has attested by affidavit that the
18 individual was a victim of human trafficking.

19 ~~(5)~~

20 (6) (A) An application for a claim by a military personnel victim
21 based on a sexual assault by another military personnel shall not
22 be denied solely because it was not reported to a superior officer
23 or law enforcement at the time of the crime.

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

27 (i) Restricted or unrestricted reports to a military victim
28 advocate, sexual assault response coordinator, chaplain, attorney,
29 or other military personnel.

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

31 (iii) A written or oral report from military law enforcement or
32 a civilian law enforcement agency concluding that a sexual assault
33 crime was committed against the victim.

34 (iv) A letter or other written statement from a sexual assault
35 counselor, as defined in Section 1035.2 of the Evidence Code,
36 licensed therapist, or mental health counselor, stating that the
37 victim is seeking services related to the allegation of sexual assault.

38 (v) A credible witness to whom the victim disclosed the details
39 that a sexual assault crime occurred.

1 (vi) A restraining order from a military or civilian court against
2 the perpetrator of the sexual assault.

3 (vii) Other behavior by the victim consistent with sexual assault.

4 (C) For purposes of this subdivision, the sexual assault at issue
5 shall have occurred during military service, including deployment.

6 (D) For purposes of this subdivision, the sexual assault may
7 have been committed off base.

8 (E) For purposes of this subdivision, a “perpetrator” means an
9 individual who is any of the following at the time of the sexual
10 assault:

11 (i) An active duty military personnel from the United States
12 Army, Navy, Marine Corps, Air Force, or Coast Guard.

13 (ii) A civilian employee of any military branch specified in
14 clause (i), military base, or military deployment.

15 (iii) A contractor or agent of a private military or private security
16 company.

17 (iv) A member of the California National Guard.

18 (F) For purposes of this subdivision, “sexual assault” means an
19 offense included in Section 261, 262, 264.1, 286, 287, formerly
20 288a, or Section 289 of the Penal Code, as of the date the act that
21 added this paragraph was enacted.

22 *(c) Notwithstanding any provision of this section, the board*
23 *shall not deny an application, in whole or in part, based solely*
24 *upon the contents of a police report, or because a police report*
25 *was not made by the victim, or based upon whether any suspect*
26 *was arrested or charged with the qualifying crime. The board shall*
27 *consider other evidence to establish that a qualifying crime*
28 *occurred. The additional factors evidencing that a qualifying crime*
29 *has occurred may include, but are not limited to, the following:*

30 *(1) A written statement provided by a victim services provider*
31 *who has provided services to the victim or derivative victim in*
32 *response to the impact of the qualifying crime.*

33 *(2) A statement provided by a credible witness to the qualifying*
34 *crime.*

35 *(3) A permanent restraining order or protective order issued*
36 *by a court to protect or separate the victim or derivative victim*
37 *from the person who is responsible for the qualifying crime.*

38 *(4) A statement from a licensed medical provider, physician’s*
39 *assistant, nurse practitioner, or other person licensed to provide*
40 *medical or mental health care documenting that the victim*

1 *experienced physical, mental, or emotional injury as a result of*
2 *the qualifying crime.*

3 *(5) Video, audio, or photographic recording of the commission*
4 *of the qualifying crime.*

5 *(6) Any other reliable corroborating evidence that the board*
6 *finds sufficient to reasonably establish that a qualifying crime*
7 *occurred.*

8 *(e)*

9 *(d) (1) Notwithstanding Section 13955, no person who is*
10 *convicted of a violent felony listed in subdivision (c) of Section*
11 *667.5 of the Penal Code may be granted compensation until that*
12 *person has been discharged from probation or has been released*
13 *from a correctional institution and has been discharged from parole,*
14 *or has been discharged from postrelease community supervision*
15 *or mandatory supervision, if any, for that violent crime. In no case*
16 *shall compensation be granted to an applicant pursuant to this*
17 *chapter during any period of time the applicant is held in a*
18 *correctional institution, or while an applicant is required to register*
19 *as a sex offender pursuant to Section 290 of the Penal Code.*

20 *(2) A person who has been convicted of a violent felony listed*
21 *in subdivision (c) of Section 667.5 of the Penal Code may apply*
22 *for compensation pursuant to this chapter at any time, but the award*
23 *of that compensation may not be considered until the applicant*
24 *meets the requirements for compensation set forth in paragraph*
25 *(1).*

26 *(e) Notwithstanding any provision of this section, if an*
27 *application is for a claim based on injury or death that happened*
28 *as a result of a crime, as defined in paragraph (3) of subdivision*
29 *(b) of Section 13951, the board shall not deny the application*
30 *based solely on a police report, or the lack thereof, or based upon*
31 *whether the peace officer was arrested or charged with a crime.*
32 *If there is no police report, the application may be supported by*
33 *other evidence to establish that a crime occurred.*

34 *SEC. 3. This act is an urgency statute necessary for the*
35 *immediate preservation of the public peace, health, or safety within*
36 *the meaning of Article IV of the California Constitution and shall*
37 *go into immediate effect. The facts constituting the necessity are:*

38 *Presently, many Californians are engaging in civil*
39 *demonstrations against violence committed by peace officers. In*
40 *order to ensure that victims, and the families of victims, who suffer*

1 *injuries or death as a result of the use of excessive force by peace*
2 *officers have access to compensation for medical and mental health*
3 *expenses and, in the worst case, funeral services, it is necessary*
4 *that this act take effect immediately.”*

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**All matter omitted in this version of the bill
appears in the bill as amended in the
Senate, July 14, 2020. (JR11)**