AMENDED IN ASSEMBLY MARCH 22, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

# ASSEMBLY BILL No. 886

**Introduced by Assembly Member Bonta**

February 17, 2021

An act to amend ~~Section 13103 of the Penal Code,~~ *Sections 13954 and 13956 of the Government Code, to add Title 12.1 (commencing with Section 14220) to Part 4 of the Penal Code, and to add Part 7 (commencing with Section 5955) to Division 5 of the Welfare and Institutions Code,* relating to ~~public records.~~ *victims of crimes, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 886, as amended, Bonta. ~~Public records.~~ *Victims of crimes.*

*(1) Existing law authorizes victims of crime to be awarded compensation by the California Victim Compensation Board for the pecuniary losses they suffer as a direct result of criminal acts. The awarding of compensation is subject to application procedures, eligibility requirements, and specified limits on the amount of compensation.*

*Existing law establishes the Restitution Fund and continuously appropriates moneys in the fund to the board for the purposes of indemnification of victims of crime.*

*Existing law allows the board to deny an application for compensation if the victim fails to reasonably cooperate with law enforcement officials, as specified, except as exempted.*

*This bill would eliminate the requirement that a victim cooperate with law enforcement to be eligible for compensation.*

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

*(2) Existing law defines a "hate crime" as a criminal act committed, in whole or in part, because of actual or perceived characteristics of the victim, including, among other things, race, religion, disability, and sexual orientation.*

*Existing law creates various preconviction diversion programs for persons charged with crimes. Existing law states that restorative justice is a principal policy goal of the state in sentencing for hate crimes.*

*This bill would, subject to an appropriation of funds by the Legislature, create a grant program within the Department of Justice to provide grants to community-based organizations, as defined, for the implementation and operation of restorative justice programs, as defined, that are focused on hate crime offenses.*

*This bill would also, subject to an appropriation of funds by the Legislature, create a grant program within the California Health and Human Services Agency to provide grants to community-based organizations, as defined, for the implementation of mental health services, as described, focused on the victims of, and other persons affected by, hate crimes and related hostilities.*

~~Existing law provides specified requirements to ensure uniform recording, reporting, storage, analysis, and dissemination of criminal offender record information by criminal justice agencies in the state. Existing law authorizes a criminal justice agency to destroy the original records maintained pursuant to those provisions if the records have been reproduced onto another storage medium, as specified. Existing law requires that if a record has been reproduced onto optical disk, that the original record be retained for at least one year, as specified, before destruction.~~

~~This bill would instead require that if a record has been reproduced onto optical disk, that the original record be retained for at least 16 months, as specified, before destruction.~~

Vote: ~~majority~~ *2/3*. Appropriation: ~~no~~ *yes*. Fiscal committee: yes. State-mandated local program: no.

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

*SECTION 1. Section 13954 of the Government Code is amended to read:*

13954. (a) The board shall verify with hospitals, physicians, law enforcement officials, or other interested parties involved, the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and any other pertinent information deemed necessary by the board. Verification information shall be returned to the board within 10 business days after a request for verification has been made by the board. Verification information shall be provided at no cost to the applicant, the board, or victim centers. When requesting verification information, the board shall certify that a signed authorization by the applicant is retained in the applicant's file and that this certification constitutes actual authorization for the release of information, notwithstanding any other provision of law. If requested by a physician or mental health provider, the board shall provide a copy of the signed authorization for the release of information.

(b) (1) The applicant shall cooperate with the staff of the board or the victim center in the verification of the information contained in the application. Failure to cooperate shall be reported to the board, which, in its discretion, may reject the application solely on this ground.

(2) An applicant may be found to have failed to cooperate with the board if any of the following occur:

(A) The applicant has information, or there is information that ~~he or she~~ *the applicant* may reasonably obtain, that is needed to process the application or supplemental claim, and the applicant failed to provide the information after being requested to do so by the board. The board shall take the applicant's economic, psychosocial, and postcrime traumatic circumstances into consideration, and shall not unreasonably reject an application solely for failure to provide information.

(B) The applicant provided, or caused another to provide, false information regarding the application or supplemental claim.

(C) The applicant refused to apply for other benefits potentially available ~~to him or her~~ from other sources besides the board including, but not limited to, worker's compensation, state disability insurance, social security benefits, and unemployment insurance.

(D) The applicant threatened violence or bodily harm to a member of the board or staff.

(c) The board may contract with victim centers to provide verification of applications processed by the centers pursuant to conditions stated in subdivision (a). The board and its staff shall cooperate with the Office of Criminal Justice Planning and victim centers in conducting training sessions for center personnel and shall cooperate in the development of standardized verification procedures to be used by the victim centers in the state. The board and its staff shall cooperate with victim centers in disseminating standardized board policies and findings as they relate to the centers.

(d) (1) Notwithstanding Section 827 of the Welfare and Institutions Code or any other provision of law, every law enforcement and social service agency in the state shall provide to the board or to victim centers that have contracts with the board pursuant to subdivision (c), upon request, a complete copy of the law enforcement report and any supplemental reports involving the crime or incident giving rise to a claim, a copy of a petition filed in a juvenile court proceeding, reports of the probation officer, and any other document made available to the probation officer or to the judge, referee, or other hearing officer, for the specific purpose of determining the eligibility of a claim filed pursuant to this chapter.

(2) The board and victim centers receiving records pursuant to this subdivision may not disclose a document that personally identifies a minor to anyone other than the minor who is so identified, ~~his or her~~ *the minor's* custodial parent or guardian, the attorneys for those parties, and any other persons that may be designated by court order. Any information received pursuant to this section shall be received in confidence for the limited purpose for which it was provided and may not be further disseminated. A violation of this subdivision is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) The law enforcement agency supplying information pursuant to this section may withhold the names of witnesses or informants from the board, if the release of those names would be detrimental to the parties or to an investigation in progress.

(e) Notwithstanding any other provision of law, every state agency, upon receipt of a copy of a release signed in accordance with the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division

3 of the Civil Code) by the applicant or other authorized representative, shall provide to the board or victim center the information necessary to complete the verification of an application filed pursuant to this chapter.

(f) The Department of Justice shall furnish, upon application of the board, all information necessary to verify the eligibility of any applicant for benefits pursuant to subdivision ~~(c)~~ *(b)* of Section 13956, to recover any restitution fine or order obligations that are owed to the Restitution Fund or to any victim of crime, or to evaluate the status of any criminal disposition.

(g) A privilege is not waived under Section 912 of the Evidence Code by an applicant consenting to disclosure of an otherwise privileged communication if that disclosure is deemed necessary by the board for verification of the application.

(h) Any verification conducted pursuant to this section shall be subject to the time limits specified in Section 13958.

(i) Any county social worker acting as the applicant for a child victim or elder abuse victim shall not be required to provide personal identification, including, but not limited to, the applicant's date of birth or social security number. County social workers acting in this capacity shall not be required to sign a promise of repayment to the board.

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

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

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

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

(A) The victim or derivative victim initiated the qualifying crime, or provoked or aggravated the suspect into initiating the qualifying crime.

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

(C) The victim or derivative victim was committing a crime that could be charged as a felony and reasonably lead to ~~him or her~~ *their* being victimized. However, committing a crime shall not be considered involvement if the victim's injury or death occurred as a direct result of a crime committed in violation of Section 261, 262, or 273.5 of, or for a crime of unlawful sexual intercourse with a minor in violation of subdivision (d) of Section 261.5 of, the Penal Code.

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

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

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

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

~~(b) (1) An application shall be denied if the board finds that the victim or, if compensation is sought by, or on behalf of, a derivative victim, either 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. In determining whether cooperation has been reasonable, the board shall consider the victim's or derivative victim's age, physical condition, and psychological state, cultural or linguistic barriers, any compelling health and safety concerns, including, but not limited to, a reasonable fear of retaliation or harm that would jeopardize the well-being of the victim or the victim's family or the derivative victim or the derivative victim's family, and giving due consideration to the degree of cooperation of which the victim or derivative victim is capable in light of the presence of any of these factors. A victim of domestic violence shall not be determined~~

~~to have failed to cooperate based on his or her conduct with law enforcement at the scene of the crime. Lack of cooperation shall also not be found solely because a victim of sexual assault, domestic violence, or human trafficking delayed reporting the qualifying crime.~~

~~(2) An application for a claim based on domestic violence shall not be denied solely because a police report was not made by the victim. The board shall adopt guidelines that allow the board to consider and approve applications for assistance based on domestic violence relying upon evidence other than a police report to establish that a domestic violence crime has occurred. Factors evidencing that a domestic violence crime has occurred may include, but are not limited to, medical records documenting injuries consistent with allegations of domestic violence, mental health records, or that the victim has obtained a permanent restraining order.~~

~~(3) An application for a claim based on a sexual assault shall not be denied solely because a police report was not made by the victim. The board shall adopt guidelines that allow it to consider and approve applications for assistance based on a sexual assault relying upon evidence other than a police report to establish that a sexual assault crime has occurred. Factors evidencing that a sexual assault crime has occurred may include, but are not limited to, medical records documenting injuries consistent with allegations of sexual assault, mental health records, or that the victim received a sexual assault examination.~~

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

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

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

~~(5) (A) An application for a claim by a military personnel victim based on a sexual assault by another military personnel shall not be denied solely because it was not reported to a superior officer or law enforcement at the time of the crime.~~

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

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

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

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

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

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

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

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

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

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

~~(E) For purposes of this subdivision, a "perpetrator" means an individual who is any of the following at the time of the sexual assault:~~

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

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

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

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

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

~~(c)~~

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

(2) A person who has been convicted of a violent felony listed in subdivision (c) of Section 667.5 of the Penal Code 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).

*SEC. 3. Title 12.1 (commencing with Section 14220) is added to Part 4 of the Penal Code, to read:*

*TITLE 12.1. COMMUNITY-BASED RESTORATIVE JUSTICE GRANT PROGRAM*

*14220. A program to provide grant assistance to community-based organizations to create or maintain restorative justice programs in collaboration with the prosecutor in their local jurisdiction is hereby created, to be administered by the Department of Justice.*

*14220.1. As used in this title, terms are defined as follows:*

*(a) "Community-based organization" means a nonprofit nongovernmental organization with a physical presence in the jurisdiction in which it is applying for a grant under this title.*

*(b) "Department" means the Department of Justice.*

*(c) "Hate crime" has the same meaning as in Section 422.55.*

*(d) "Prosecutor" means the district attorney, city attorney, or other entity responsible for the prosecution of criminal offenses on behalf of a local jurisdiction.*

*(e) "Restorative justice" means a preconviction alternative to criminal prosecution, entered into with the voluntary consent of the victim, the offender, and the prosecutor, in which a community-based organization facilitates mediation between the parties that aims to compensate the victim for the harm suffered, rehabilitate the offender through understanding the impacts of their offense, break down barriers of fear and mistrust that exist between communities because of cultural differences and language barriers, and build bridges based on common interests and goals.*

*14220.2. Grants made pursuant to this title shall be made to community-based organizations and used to fund the implementation and operation of restorative justice programs that focus on offenders who have committed hate crime offenses and their victims.*

*14220.3. An applicant for a grant shall submit a proposal, in a form prescribed by the department.*

*14220.4. Grants shall be made on a competitive basis to those applicants who, as determined by the department, based upon application materials, have demonstrated a need for restorative justice programs in the communities they serve, have the knowledge and ability to effectively implement and operate a restorative justice program as described in Section 14220.2, and have secured a commitment from the local district attorney or prosecutor to work with the applicant if they are selected for a grant.*

*14220.5. Each grantee shall report to the department, in a form and at intervals prescribed by the department, a summary of activities supported by the grant and related data.*

*14220.6. The implementation of this title is contingent upon an appropriation by the Legislature in the annual Budget Act or another statute for purposes of this title.*

*SEC. 4. Part 7 (commencing with Section 5955) is added to Division 5 of the Welfare and Institutions Code, to read:*

*PART 7. COMMUNITY-BASED MENTAL HEALTH SERVICES FOR VICTIMS OF HATE CRIMES GRANT PROGRAM*

*5955. A program to provide grant assistance to community-based organizations to provide mental health services for victims of hate crimes is hereby created to be administered by the California Health and Human Services Agency.*

*5956. As used in this title, terms are defined as follows:*

*(a) "Agency" means the California Health and Human Services Agency.*

*(b) "Community-based organization" means a nonprofit nongovernmental organization with a physical presence in the jurisdiction in which it is applying for a grant under this title.*

*(c) "Hate crime" has the same meaning as in Section 422.55.*

*(d) "Mental health services" means counseling and treatment for trauma, post-traumatic stress, and other related services for victims of, or other persons affected by, hate crimes and related hostilities.*

*5957. Grants made pursuant to this title shall be made to community-based organizations and used to fund the implementation and operation of programs providing mental health services geared towards and located within underserved communities.*

*5958. An applicant for a grant shall submit a proposal, in a form prescribed by the agency.*

*5959. Grants shall be made on a competitive basis to those applicants who, as determined by the agency, based upon application materials, have demonstrated a need for mental health service for victims of hate crimes and others affected by hate crimes in the communities they serve, have the knowledge and ability to effectively provide those services, including relevant language skills and cultural competencies, and are appropriately licensed.*

*5960. Each grantee shall report to the agency, in a form and at intervals prescribed by the agency, a summary of activities supported by the grant and related data.*

*5961. The implementation of this part is contingent upon an appropriation by the Legislature in the annual Budget Act or another statute for purposes of this part.*

~~SECTION 1. Section 13103 of the Penal Code is amended to read:~~

~~13103. Notwithstanding any other provisions of law relating to retention of public records, any criminal justice agency may cause the original records filed pursuant to this chapter to be destroyed if all of the following requirements are met:~~

~~(a) The records have been reproduced onto microfilm or optical disk, or by any other techniques which do not permit additions, deletions, or changes to the original document.~~

~~(b) If the records have been reproduced onto optical disk, at least 16 months have elapsed since the date of registration of the records.~~

~~(c) The nonerasable storage medium used meets the minimum standards recommended by the National Institute of Standards and Technology for permanent record purposes.~~

~~(d) Adequate provisions are made to ensure that the nonerasable storage medium reflects additions or corrections to the records.~~

~~(e) A copy of the nonerasable storage medium is maintained in a manner which permits it to be used for all purposes served by the original record.~~

~~(f) A copy of the nonerasable storage medium has been stored at a separate physical location in a place and manner which will reasonably assure its preservation indefinitely against loss or destruction.~~

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