New Rules

A few states – California, Connecticut, and New Mexico being prime examples – have changed their compensation statutes to authorize eligibility for victims to qualify for compensation, without filing a police report or cooperating in the investigation and prosecution of the crime. California and Connecticut limit this statutory exception to various sexual assault crimes, and domestic violence; New Mexico’s provision extends generally to all victims. Some states, like Iowa, have accomplished this objective by changing their rules to allow eligibility under their general statutory “good cause” exception to reporting and cooperation.

New Mexico’s compensation law, which took effect July 1, 2019, deems victims eligible if the crime was “reported to the police in a reasonable time” or if the “*crime****has been reported to a licensed medical provider, licensed mental health or counseling provider, or tribal health provider”.***

California’s statute says this:

*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 [sexual assault and human trafficking are treated similarly in (3) and (4)] 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.

And Connecticut’s law reads as follows, applying to various crimes involving sexual assault and abuse, and domestic violence:

 (1) the personal injury has been disclosed to: (A) A physician or surgeon licensed under chapter 370; (B) a resident physician or intern in any hospital in this state, whether or not licensed; (C) a physician assistant licensed under chapter 370; (D) an advanced practice registered nurse, registered nurse or practical nurse licensed under chapter 378; (E) a psychologist licensed under chapter 383; (F) a police officer; (G) a mental health professional; (H) an emergency medical services provider licensed or certified under chapter 368d; (I) an alcohol and drug counselor licensed or certified under chapter 376b; (J) a marital and family therapist licensed under chapter 383a; (K) a domestic violence counselor or a sexual assault counselor, as defined in section 52-146k; (L) a professional counselor licensed under chapter 383c; (M) a clinical social worker licensed under chapter 383b; (N) an employee of the Department of Children and Families; or (O) a school principal, a school teacher, a school guidance counselor or a school counselor, and (2) the office or commissioner, as the case may be, reasonably concludes that a violation of any of said sections has occurred.

(e) In instances where a violation of section 53-21, 53a-70, 53a-70a, 53a-70b, 53a-70c, 53a-71, 53a-72a, 53a-72b, 53a-73a, 53a-82, 53a-192a or family violence, as defined in section 46b-38a, has been alleged, the Office of Victim Services or, on review, a victim compensation commissioner, may also order the payment of compensation under sections 54-201 to 54-218, inclusive, for personal injury suffered by a victim (1) as reported in an application for a restraining order under section 46b-15 or an application for a civil protection order under section 46b-16a, an affidavit supporting an application under section 46b-15 or section 46b-16a, or on the record to the court, provided such restraining order or civil protection order was granted in the Superior Court following a hearing; or (2) as disclosed to a domestic violence counselor or a sexual assault counselor, as such terms are defined in section 52-146k.

Connecticut’s law goes on to address the filing period:

No order for the payment of compensation shall be made under section 54-210 unless (A) the application has been made within two years after the date of the personal injury or death, (B) the personal injury or death was the result of an incident or offense listed in section 54-209, and (C) such incident or offense has been reported to the police within five days of its occurrence or, if the incident or offense could not reasonably have been reported within such period, within five days of the time when a report could reasonably have been made, except that a victim of a sexual assault shall not be ineligible for the payment of compensation by reason of failing to make a report pursuant to this subparagraph if such victim presented himself or herself to a health care facility within one hundred twenty hours of such sexual assault for examination and collection of evidence of such sexual assault in accordance with the provisions of section 19a-112a, or if such victim complied with subsection (d) of section 54-209.

Beyond these few statutorily explicit statements, nearly every other compensation program has the statutory authority to waive eligibility rules relating to police reporting and cooperation, as well as filing deadlines. We have found in informal surveying that many states DO waive these police cooperation requirements for sexual assault victims; some require a forensic exam to be performed, at a minimum.

Iowa’s rule would encompass a victim of any crime that qualifies within the following good cause exception definition.

9.29(4) Good cause. In determining whether there is good cause for waiving the requirement to report a crime to law enforcement within 72 hours of the occurrence of the crime, the victim’s age, physical condition, psychological state, cultural or linguistic barriers, and any compelling health or safety reasons that would jeopardize the well–being of the victim may be considered. In the event good cause is found, the crime must be substantiated through disclosure to another provider including, but not limited to, a licensed medical provider, a licensed mental health professional, or a designated victim service provider.

State Statutory References:

<https://law.justia.com/codes/new-mexico/2019/chapter-31/article-22/section-31-22-7/>

<https://www.cga.ct.gov/current/pub/chap_968.htm#sec_54-209>

<http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV&sectionNum=13956>