

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

House Bill 705
Judiciary

(Delegate Waldstreicher, *et al.*)

Judicial Proceedings

**Victims of Crime - Legal Representatives of Minors and Disabled and Elderly
Persons**

This bill authorizes a legal representative to request criminal injuries compensation, restitution, or any other financial property interest on behalf of a decedent or a beneficiary who is or was a victim of a crime. In addition, the bill authorizes a court to order a legal representative to serve as a victim's representative to assert the victim's interests under specified circumstances.

The bill requires the Social Services Administration (SSA) of the Department of Human Resources (DHR) to adopt regulations that authorize SSA to notify the appropriate criminal or juvenile delinquency court under specified circumstances. The bill further requires the Adult Protective Services Program in DHR to include as part of its program a notification of the appropriate criminal or juvenile delinquency court under specified circumstances.

Fiscal Summary

State Effect: Minimal increase in special fund expenditures for the Department of Public Safety and Correctional Services (DPSCS) to the extent the bill increases the total amount of grants awarded from the Criminal Injuries Compensation Fund (CICF).

Local Effect: The bill is not expected to materially affect local expenditures.

Small Business Effect: None.

Analysis

Bill Summary: The bill authorizes a personal representative to request criminal injuries compensation, restitution, or any other financial property interest for a decedent who was a victim of a crime. A guardian and a fiduciary are also authorized to request criminal injuries compensation, restitution, or any other financial property interest for a beneficiary (a minor or a person with a disability) who is a victim of a crime.

A court may order a guardian to serve as a victim's representative to assert the interest of a minor or a person with a disability (in addition to the other rights, duties, and powers that a court may order) if (1) there is no victim's representative who can adequately assert the minor or person's rights as a victim of a crime or a delinquent act and (2) no other court has appointed a guardian *ad litem* to protect the minor or person's interest.

SSA must adopt regulations authorizing it to notify the appropriate criminal or juvenile delinquency court if there is information indicating that a child's interest as a victim is not adequately protected in a case before a court. The Adult Protective Services Program in DHR must also include, as a part of its program, a notification of the appropriate criminal or juvenile delinquency court if the program has information indicating that the interests of the person with a disability as a victim are not adequately protected in a case before the court.

Current Law:

Criminal Injury Compensation Board

The Criminal Injury Compensation Board (CICB) awards grants to innocent victims of crime who incur financial hardship as a result of crime. Awards may be made for lost wages, medical expenses, counseling, crime scene cleanup, and funeral expenses for homicide victims. Grants may not exceed \$45,000, including any subsequent and supplemental awards, with the exception of victims suffering permanent total disability. After a disability-related claim of \$25,000 has been awarded to the victim, if the injury to the victim resulted in permanent total disability, the victim may request an additional award of up to \$25,000. Funding for these grants is provided by CICF from fees assessed by circuit and District courts. CICF is also supplemented by federal funds.

Personal Representative

In the performance of a personal representative's duties, a personal representative may exercise all of the power or authority conferred upon the personal representative by statute or in the decedent's will. In addition, a personal representative may prosecute, defend, or submit to arbitration actions, claims or proceedings in any appropriate

jurisdiction for the protection or benefit of the estate, including the commencement of a personal action which the decedent might have commenced or prosecuted, except that:

- A personal representative may not institute an action against a defendant for slander against the decedent during the lifetime of the decedent.
- In an action by the personal representative against a tort-feasor for a wrong which resulted in the death of the decedent, the personal representative may recover the funeral expenses of the decedent up to a specified amount in addition to other damages that may be recovered.

Guardian of the Person

A guardian of the person of an unmarried minor may be appointed by a court, after notice and hearing, if any person interested in the welfare of the minor petitions the court and neither parent is serving as guardian of the person and no testamentary appointment has been made. Unless a person is not qualified or the appointment is not in the best interests of the minor, the court shall appoint a person designated by the minor.

On petition and after a notice and a hearing, a guardian of the person of a disabled person may be appointed by a court if the court determines from clear and convincing evidence that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his or her person, including provisions for health care, food, clothing, or shelter, or because of any mental disability, disease, habitual drunkenness, or drug addiction, and that no less restrictive form of intervention is available which is consistent with the person's welfare.

A court may grant to a guardian of a person only those powers necessary to provide for the demonstrated need of the disabled person. Further, a court may appoint a guardian of the person of a disabled person for the limited purpose of making one or more decisions related to the health care of that person.

The powers of a fiduciary and the manner of exercise of those powers are applicable to a guardian.

Fiduciary

A fiduciary is a trustee acting under a deed, will, and declaration of trust or other instrument in the nature of a trust or appointed by a court, a committee, or guardian of the property of a minor or a disabled person. A fiduciary is not a receiver, trustee of a trust for the benefit of creditors, executor, administrator, or personal representative.

A fiduciary has a number of powers relating to investment and use of assets, among other things, which may be extended or limited by a court. In addition, a fiduciary may prosecute, defend, or submit to arbitration any actions, claims, or proceedings in any jurisdiction for the protection of the fiduciary estate.

A beneficiary includes a minor or disabled person.

Department of Human Resources

SSA must provide child welfare services to a child and the child's parent or guardian (1) to assist in preventing the necessity of placing the child outside of the child's home; (2) to reunite the child with the child's parent or guardian after the child has been placed in foster care; or (3) if the child has been placed in foster care and cannot return to the child's parent or guardian, to develop and implement an alternative permanent plan for the child.

SSA must adopt rules and regulations that authorize it to (1) conduct a background check of child support arrearages on an applicant for foster home approval who is also a biological or adoptive parent and (2) consider any child support arrearage in determining whether to approve or disapprove the application.

The Adult Protective Services Program is offered to disabled persons age 18 and older. According to DHR, the services are "to prevent or remedy the abuse, neglect, self neglect, or exploitation of adults who are unable protect their own interests and are at risk of immediate harm to their own person or to others."

Funding for grant awards made from CICF to crime victims totals \$4.0 million in the Governor's proposed fiscal 2015 budget. Eligible claims received by CICB declined for the fourth consecutive year, falling most recently by 6% to 1,420 claims received in fiscal 2013. This reflects a 17.5% reduction from the most recent peak of over 1,700 claims received in fiscal 2009. Nearly 90% of the claims received in fiscal 2013 were deemed eligible. CICB does not currently have a backlog in claims eligible for award. The agency had a \$2.6 million federal fund balance at the end of fiscal 2013.

State Expenditures: DPSCS advises that, in fiscal 2013, the average award paid by CICB out of CICF to a claimant was \$3,169. DPSCS further advises that, over the past three years, CICB has received only five claims filed by a personal representative on behalf of a deceased crime victim. Thus, any increase in special fund expenditures resulting from the bill is not anticipated to be significant.

Additional Information

Prior Introductions: None.

Cross File: SB 940 (Senator Stone) – Judicial Proceedings.

Information Source(s): Department of Human Resources, Department of Disabilities, Judiciary (Administrative Office of the Courts), Maryland Department of Aging, Department of Public Safety and Correctional Services, Register of Wills, Department of Legislative Services

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