
By: Chairman, Judiciary Committee (Departmental - Public Safety and Correctional Services)

Introduced and read first time: January 31, 1996

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Injuries Compensation Board**

3 FOR the purpose of repealing certain procedures used by the Criminal Injuries
4 Compensation Board to review and evaluate claims; authorizing the Board to
5 include procedures for reviewing and evaluating claims in their rules and
6 regulations; altering the maximum amount the Board may award for a claim;
7 authorizing the Board to negotiate settlements with health care providers under
8 certain conditions; repealing the termination of a provision that requires a certain
9 cost be imposed in certain types of cases; and generally relating to the Criminal
10 Injuries Compensation Board.

11 BY repealing and reenacting, with amendments,
12 Article 26A - Criminal Injuries Compensation Act
13 Section 4(b), 6, 8, 11, and 12
14 Annotated Code of Maryland
15 (1994 Replacement Volume and 1995 Supplement)

16 BY repealing and reenacting, without amendments,
17 Article 26A - Criminal Injuries Compensation Act
18 Section 17 and 17A
19 Annotated Code of Maryland
20 (1994 Replacement Volume and 1995 Supplement)

21 BY repealing and reenacting, with amendments,
22 Chapter 396 of the Acts of the General Assembly of 1995
23 Section 3

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
25 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article 26A - Criminal Injuries Compensation Act**

2 4.

3 The Board, subject to the authority of the Secretary of Public Safety and
4 Correctional Services as set forth in Article 41 of the Code, shall have the following
5 powers and duties:

6 (b) To adopt, promulgate, amend and rescind suitable rules and regulations to
7 carry out the provisions and purposes of this article, including PROCEDURES FOR THE
8 REVIEW AND EVALUATION OF CLAIMS, AND rules for the approval of attorneys' fees
9 for representation before the Board or before the court upon judicial review as
10 hereinafter provided.

11 6.

12 (a) A claim may be filed by a person eligible to receive an award, as provided in
13 § 5 of this article, or if such person is under eighteen years of age, by his parent or
14 guardian. In any case in which the person entitled to make a claim is mentally
15 incompetent, the claim may be filed on his behalf by his guardian or such other individual
16 authorized to administer his estate.

17 (b) (1) A claim must be filed by the claimant not later than:

18 (i) 180 days after the occurrence of the crime upon which the claim is
19 based; or

20 (ii) 180 days after the death of the victim.

21 (2) The Board may extend the time for filing up to 2 years after each
22 occurrence for good cause.

23 (3) In cases of child abuse, a claim may be filed up to 2 years after the
24 occurrence was known or should have been known by the claimant.

25 (c) Claims shall be filed in the office of the [secretary of the] Board in person or
26 by mail. The [secretary] BOARD shall accept for filing all claims [submitted by persons
27 eligible under subsection (a) of this section and alleging the jurisdictional requirements
28 set forth in this article and meeting the requirements as to form in the rules and
29 regulations of the Board] THAT MEET THE REQUIREMENTS OF THIS ARTICLE AND
30 THE RULES AND REGULATIONS OF THE BOARD.

31 [(d) Upon filing of a claim pursuant to this article, the Board shall promptly notify
32 the State's Attorney of the county, or Baltimore City, as the case may be, wherein the
33 crime is alleged to have occurred. If, within ten days after such notification, the State's
34 Attorney so notified advises the Board that a criminal prosecution is pending upon the
35 same alleged crime, the Board shall defer all proceedings under this article until such
36 time as such criminal prosecution has been concluded and shall so notify such State's
37 Attorney and the claimant. When such criminal prosecution has been concluded, the
38 State's Attorney shall promptly so notify the Board. Nothing in this section shall limit the
39 authority of the Board to grant emergency awards as hereinafter provided.]

3

1 8.

2 [(a) A claim, when accepted for filing, shall be assigned by the chairman to 3
3 members of the Board. All claims arising from the death of an individual as a direct result
4 of a crime shall be considered together by 3 Board members. The chairman may reassign
5 cases as necessary.

6 (b) The Board members to whom the claim is assigned shall examine the papers
7 filed in support of the claim and shall thereupon cause an investigation to be conducted
8 into the validity of the claim. The investigation shall include, but not be limited to, an
9 examination of police, court and official records and reports concerning the crime and an
10 examination of medical and hospital reports relating to the injury upon which the claim is
11 based.

12 (c) Claims shall be investigated and determined, regardless of whether the alleged
13 criminal has been apprehended or prosecuted for or convicted of any crime based upon
14 the same incident, or has been acquitted, or found not guilty of the crime in question
15 owing to criminal responsibility or other legal exemption.

16 (d) The Board members to whom a claim is assigned may recommend a tentative
17 decision and advise the claimant of that recommendation. The claimant may request a
18 hearing before the Board members for the purpose of presenting additional information.
19 If the Board members are unable to decide the claim upon the basis of the said papers
20 and report, they shall order a hearing. At the hearing any relevant evidence, not legally
21 privileged, shall be admissible.

22 (e) After examining the papers filed in support of the claim and thereport of
23 investigation, and after a hearing, if any, the Board members to whom the claim was
24 assigned shall make a decision either granting an award pursuant to § 12 of this article or
25 deny the claim.

26 (f) The] UPON COMPLETING THE REVIEW AND EVALUATION PROCESS ON
27 EACH CLAIM, THE Board [members making a decision] shall file with the Secretary a
28 written report setting forth the decision and the reasons therefor. After reviewing the
29 records, the Secretary shall modify, affirm, or reverse the decision of the Board
30 [members]. The action of the Secretary in affirming, modifying, or reversing the decision
31 of the Board [members] shall be final. The claimant shall be furnished with a copy of the
32 final report upon request.

33 11.

34 Notwithstanding the provisions of §§ 6 and 8 of this article, if it appears to the
35 Board [members to whom a claim is assigned], prior to taking action upon the claim, that
36 (a) the claim is one with respect to which an award probably will be made, and (b) undue
37 hardship will result to the claimant if immediate payment is not made, the Board
38 [members] may make an emergency award to the claimant pending a final decision in
39 the case. However, (1) the amount of the emergency award shall not exceed \$1,000, (2)
40 the amount of the emergency award shall be deducted from any final award made to the
41 claimant, and (3) the excess of the amount of the emergency award over the final award,
42 or the full amount of the emergency award if no final award is made, shall be repaid by
43 the claimant to the Board.

4

1 12.

2 (a) (1) An award may not be made unless the Board members find that (i) a
 3 crime was committed, (ii) such crime directly resulted in [personal] physical injury to, or
 4 death of the victim, OR IN THE CASE OF SEXUAL ASSAULT OR CHILD ABUSE,
 5 PSYCHOLOGICAL OR EMOTIONAL INJURY and (iii) police, OTHER LAW
 6 ENFORCEMENT, OR JUDICIAL records show that such crime OR THE DISCOVERY OF
 7 CHILD ABUSE was [promptly] reported to the proper authorities[; and in no case may
 8 an award be made where the police records show that such report was made more than]
 9 WITHIN [forty-eight] 48 hours after the occurrence of such crime, AND (IV) THE VICTIM
 10 HAS FULLY COOPERATED WITH ALL LAW ENFORCEMENT AGENCIES. [unless the]
 11 THE Board[, for good cause shown,] MAY WAIVE THE 48-HOUR REPORTING
 12 REQUIREMENT IF IT finds the delay to have been justified. [The Board, upon finding
 13 that any claimant or award recipient has not fully cooperated with all law enforcement
 14 agencies, may deny or withdraw any award, as the case may be.]

15 (2) An award may not be made unless funds are appropriated and available
 16 for the full amount of the award. If a multiyear award is made, the total amount of the
 17 award shall be obligated and held for such period of time as is necessary to complete
 18 payment in accordance with the provisions of the award. If payment of the award is
 19 terminated for any reason subsequent to June 30 of the fiscal year in which the award was
 20 made, the remainder of the award shall revert to the Criminal Injuries Compensation
 21 Fund established under § 17A of this article. Any compensation awarded under the
 22 provisions of this Act shall not exceed [\$25,000] \$10,000 for any disability-related OR
 23 DEPENDENCY-RELATED claim, and [\$45,000 for any medical claim. The] THE
 24 maximum amount awarded under all of the provisions of this Act shall not exceed
 25 [\$45,000] \$25,000, including any subsequent and supplemental awards.

26 (3) Any compensation awarded under the provisions of this article for the
 27 purposes of psychiatric, psychological, or mental health counseling shall not exceed
 28 \$2,000 for each claimant.

29 (4) THE BOARD MAY NEGOTIATE A SETTLEMENT WITH A HEALTH CARE
 30 PROVIDER FOR THE MEDICAL AND MEDICALLY RELATED EXPENSES OF A
 31 CLAIMANT. AS A CONDITION OF THE SETTLEMENT, THE HEALTH CARE PROVIDER
 32 SHALL INDICATE IN WRITING THAT SUCH PAYMENT FULLY SATISFIES THE DEBT
 33 RELATED TO THE VICTIM'S CRIMINAL INJURIES.

34 (b) (1) [Any award made pursuant to this article shall be made in accordance
 35 with the schedule of benefits, as it existed on January 1, 1989, and degree of disability, as
 36 specified in Title 9, Subtitle 6 of the Labor and Employment Article and any other
 37 applicable provisions of the Labor and Employment Article, except for Title 9, Subtitle 8
 38 of the Labor and Employment Article. However, the term "average weekly wages", as
 39 applied to determine the award in accordance with Title 9, Subtitle 6 of the Labor and
 40 Employment Article, does not include tips, gratuities and wages that are undeclared on
 41 the claimant's State or federal income tax returns in the applicable years. If a claimant
 42 does not have "average weekly wages" so as to qualify under the formulain Title 9,
 43 Subtitle 6 of the Labor and Employment Article, the award shall be in an amount equal
 44 to the arithmetic average between the maximum and minimum awards listedin the
 45 applicable portion of that subtitle.] AWARDS FOR DISABILITY OR DEPENDENCY MADE

5
1 PURSUANT TO THIS ARTICLE MAY BE UP TO TWO-THIRDS OF THE VICTIM'S GROSS
2 AVERAGE WAGE.

3 (2) Any person who is entitled to an award due to the death of a victim as
4 the direct result of a crime or who has psychological injury may be eligible, under the
5 rules established by the Board, to receive psychiatric, psychological, or mental health
6 counseling, within the specific limitations of subsection (a)(3) of this section.

7 (c) If there are two or more persons entitled to an award as a result of the death
8 of a person which is the direct result of a crime, the award shall be apportioned among
9 the claimants.

10 (d) Any award made pursuant to this article shall be reduced by the amount of
11 any payments received or to be received as a result of the injury (1) from or on behalf of
12 the person who committed the crime, (2) from any other public or private source,
13 including an award of the State Workers' Compensation Commission under the Maryland
14 Workers' Compensation Act, or (3) as an emergency award pursuant to § 11 of this
15 article.

16 (e) (1) In determining the amount of an award, the Board members shall
17 determine whether, because of his conduct, the victim of such crime contributed to the
18 infliction of his injury, and the Board members shall reduce the amount of the award or
19 reject the claim altogether, in accordance with such determination; provided, however,
20 that the Board members may disregard for this purpose the responsibility of the victim for
21 his own injury where the record shows that such responsibility was attributable to efforts
22 by the victim to prevent a crime or an attempted crime from occurring in his presence or
23 to apprehend a person who had committed a crime in his presence or had, in fact,
24 committed a felony.

25 (2) Claimants filing for injuries incurred as the occupants of a motor vehicle
26 or dependents of an occupant of a motor vehicle operated by a person in violation of the
27 provisions of § 21-902(a), (b), (c), or (d) of the Transportation Article may not recover
28 unless the claimant can prove that the occupant did not or could not have known of the
29 condition of the operator of the vehicle.

30 (3) A person is not eligible for all or a portion of an award if the person
31 initiated, consented to, provoked, or unreasonably failed to avoid a physical confrontation
32 with the offender, or the victim was participating in a criminal offense at the time the
33 injury was inflicted.

34 (f) (1) If the Board [members find] FINDS that the claimant will not suffer
35 serious financial hardship, as a result of the loss of earnings or support and the
36 out-of-pocket expenses incurred as a result of the injury, if not granted financial
37 assistance pursuant to this article to meet the loss of earnings, support, or out-of-pocket
38 expenses, the Board [members] shall deny an award. In determining the serious financial
39 hardship, the Board [members] shall consider all of the financial resources of the
40 claimant. Unless total dependency is established, a family is considered to be partially
41 dependent on a mother with whom they reside without regard to actual earnings.

42 (2) The conditions of paragraph (1) of this subsection shall not apply in
43 determining an award under § 5(a)(4), (5), and (6) of this article.

6

1 17.

2 (a) (1) In this section the following words have the meanings indicated.

3 (2) "Crime" means an act committed by a person in the State that is:

4 (i) A crime under Article 27 of the Code;

5 (ii) A violation of the Transportation Article which is punishable by
6 imprisonment; or

7 (iii) A crime at common law.

8 (3) "Offense" means an act committed by a person in the State that is a
9 violation of the Transportation Article and is not punishable by imprisonment.

10 (b) In addition to any other costs required by law, a circuit court shall impose on
11 a defendant convicted of a crime an additional cost of \$40 in the case.

12 (c) In addition to any other costs required by law, the District Court shall impose
13 on a defendant convicted of a crime an additional cost of \$30 in the case.

14 (d) In addition to any other costs required by law, a court shall impose on a
15 defendant convicted of an offense an additional cost of \$3 in the case, including cases in
16 which the defendant elects to waive the right to trial and pay the fine or penalty deposit
17 established by the Chief Judge of the District Court by administrative regulation.

18 (e) (1) All money collected under this section shall be paid to the Comptroller
19 of the State.

20 (2) The Comptroller shall deposit \$20 from each fee collected under
21 subsection (b) of this section from a circuit court and \$10 from each fee collected under
22 subsection (c) of this section from the District Court into the Maryland Victims of Crime
23 Fund established under Article 27, § 764(j) of the Code.

24 (3) The Comptroller shall deposit all other moneys collected under
25 subsections (b) and (c) of this section into the Criminal Injuries Compensation Fund
26 established under § 17A of this article.

27 (4) The Comptroller shall pay out moneys from the Maryland Victims of
28 Crime Fund as approved by the Board of Victim Services under §§ 9-1701 through 9-1708
29 of the State Government Article.

30 (f) (1) From the first \$500,000 in fees collected under subsection (d) of this
31 section, the Comptroller shall deposit one-half of each fee into the Maryland Victims of
32 Crime Fund and one-half of each fee into the Criminal Injuries Compensation Fund.

33 (2) For fees collected under subsection (d) of this section in excess of
34 \$500,000, the Comptroller shall deposit the entire fee into the Criminal Injuries
35 Compensation Fund.

36 (g) A political subdivision may not be held liable under any condition for the
37 payment of sums under this section.

7

1 17A.

2 (a) (1) There is established a Criminal Injuries Compensation Fund.

3 (2) The Fund is a special continuing, nonlapsing fund that is not subject to
4 § 7-302 of the State Finance and Procurement Article.

5 (3) The Treasurer shall separately hold, and the Comptroller shall account
6 for, the Fund.

7 (4) The Fund shall be invested and reinvested in the same manner as other
8 State funds.

9 (5) Any investment earnings or federal matching funds received by the State
10 for criminal injuries compensation shall be retained to the credit of the Fund.

11 (6) The Fund shall be subject to an audit by the Office of Legislative Audits
12 as provided for in § 2-1215 of the State Government Article.

13 (7) This section may not be construed to prohibit the Fund from receiving
14 funds from any other source.

15 (b) (1) The Criminal Injuries Compensation Fund shall be used to fund the
16 Criminal Injuries Compensation Act as provided in this article.

17 (2) The Criminal Injuries Compensation Fund may be used for:

18 (i) Any award given under the Criminal Injuries Compensation Act;
19 and

20 (ii) The actual costs of administering the Criminal Injuries
21 Compensation Act.

22 **Chapter 396 of the Acts of 1995**

23 SECTION 3. AND BE IT FURTHER ENACTED, That the changes made to
24 Article 26A, § 17 of the Code by Section 1 of this Act shall take effect October 1, 1995
25 [and shall remain effective for a period of one year and, at the end of September 30,
26 1996, with no further action required by the General Assembly, shall be abrogated and of
27 no further force and effect].

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 1996.