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

Introduced and read first time: January 31, 1996

Assigned to: Judiciary

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 1996

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CHAPTER \_\_\_\_\_

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~~ 12, and 17  
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

2

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

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

4 4.

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

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

13 6.

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

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

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

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

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

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

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

33 [(d) Upon filing of a claim pursuant to this article, the Board shall promptly notify  
34 the State's Attorney of the county, or Baltimore City, as the case may be, wherein the  
35 crime is alleged to have occurred. If, within ten days after such notification, the State's  
36 Attorney so notified advises the Board that a criminal prosecution is pending upon the  
37 same alleged crime, the Board shall defer all proceedings under this article until such  
38 time as such criminal prosecution has been concluded and shall so notify such State's  
39 Attorney and the claimant. When such criminal prosecution has been concluded, the

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1 State's Attorney shall promptly so notify the Board. Nothing in this section shall limit the  
2 authority of the Board to grant emergency awards as hereinafter provided.]

3 8.

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

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

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

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

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

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

35 11.

36 Notwithstanding the provisions of §§ 6 and 8 of this article, if it appears to the  
37 Board [members to whom a claim is assigned], prior to taking action upon the claim, that  
38 (a) the claim is one with respect to which an award probably will be made, and (b) undue  
39 hardship will result to the claimant if immediate payment is not made, the Board  
40 [members] may make an emergency award to the claimant pending a final decision in  
41 the case. However, (1) the amount of the emergency award shall not exceed \$1,000, (2)  
42 the amount of the emergency award shall be deducted from any final award made to the  
43 claimant, and (3) the excess of the amount of the emergency award over the final award,

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1 or the full amount of the emergency award if no final award is made, shall be repaid by  
2 the claimant to the Board.

3 12.

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

18 (2) An award may not be made unless funds are appropriated and available  
19 for the full amount of the award. If a multiyear award is made, the total amount of the  
20 award shall be obligated and held for such period of time as is necessary to complete  
21 payment in accordance with the provisions of the award. If payment of the award is  
22 terminated for any reason subsequent to June 30 of the fiscal year in which the award was  
23 made, the remainder of the award shall revert to the Criminal Injuries Compensation  
24 Fund established under § 17A of this article. Any compensation awarded under the  
25 provisions of this Act shall not exceed ~~[\$25,000] \$10,000~~ for any disability-related OR  
26 ~~DEPENDENCY-RELATED~~ claim, and ~~[\$45,000]~~ for any medical claim. ~~The] THE~~  
27 maximum amount awarded under all of the provisions of this Act shall not exceed  
28 ~~[\$45,000] \$25,000~~, including any subsequent and supplemental awards.

29 (3) Any compensation awarded under the provisions of this article for the  
30 purposes of psychiatric, psychological, or mental health counseling shall not exceed  
31 \$2,000 for each claimant.

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

37 (b) (1) ~~Any~~ EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS  
38 SUBSECTION, ANY award made pursuant to this article shall be made in accordance with  
39 the schedule of benefits, as it existed on January 1, 1989, and degree of disability, as  
40 specified in Title 9, Subtitle 6 of the Labor and Employment Article and any other  
41 applicable provisions of the Labor and Employment Article, except for Title 9, Subtitle 8  
42 of the Labor and Employment Article. However, the term "average weekly wages", as  
43 applied to determine the award in accordance with Title 9, Subtitle 6 of the Labor and  
44 Employment Article, does not include tips, gratuities and wages that are undeclared on  
45 the claimant's State or federal income tax returns in the applicable years. If a claimant

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1 does not have "average weekly wages" so as to qualify under the formulain Title 9,  
2 Subtitle 6 of the Labor and Employment Article, the award shall be in an amount equal  
3 to the arithmetic average between the maximum and minimum awards listedin the  
4 applicable portion of that subtitle.}

5                   (2) AWARDS FOR DISABILITY OR DEPENDENCY MADE PURSUANT TO  
6 THIS ARTICLE MAY BE UP TO TWO-THIRDS OF THE VICTIM'S GROSS AVERAGE  
7 WAGE, BUT MAY NOT BE LESS THAN THE AMOUNT PROVIDED IN PARAGRAPH (1) OF  
8 THIS SUBSECTION.

9                   ~~(2)~~ (3) Any person who is entitled to an award due to the deathof a victim  
10 as the direct result of a crime or who has psychological injury may be eligible, under the  
11 rules established by the Board, to receive psychiatric, psychological, or mental health  
12 counseling, within the specific limitations of subsection (a)(3) of this section.

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

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

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

31                   (2) Claimants filing for injuries incurred as the occupants of a motor vehicle  
32 or dependents of an occupant of a motor vehicle operated by a person inviolation of the  
33 provisions of § 21-902(a), (b), (c), or (d) of the Transportation Article may not recover  
34 unless the claimant can prove that the occupant did not or could not have known of the  
35 condition of the operator of the vehicle.

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

40                   (f) (1) If the Board [members find] FINDS that the claimant will notsuffer  
41 serious financial hardship, as a result of the loss of earnings or support and the  
42 out-of-pocket expenses incurred as a result of the injury, if not granted financial  
43 assistance pursuant to this article to meet the loss of earnings, support, or out-of-pocket

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1 expenses, the Board [members] shall deny an award. In determining the serious financial  
2 hardship, the Board [members] shall consider all of the financial resources of the  
3 claimant. Unless total dependency is established, a family is considered to be partially  
4 dependent on a ~~mother~~ PARENT with whom they reside without regard to actual  
5 earnings.

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

8 17.

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

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

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

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

14 (iii) A crime at common law.

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

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

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

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

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

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

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

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

37 (f) (1) From the first \$500,000 in fees collected under subsection (d) of this  
38 section IN EACH FISCAL YEAR, the Comptroller shall deposit one-half of each fee into

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1 the Maryland Victims of Crime Fund and one-half of each fee into the Criminal Injuries  
2 Compensation Fund.

3 (2) For fees collected under subsection (d) of this section in excess of  
4 \$500,000 IN EACH FISCAL YEAR, the Comptroller shall deposit the entire fee into the  
5 Criminal Injuries Compensation Fund.

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

8 17A.

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

10 (2) The Fund is a special continuing, nonlapsing fund that is not subject to  
11 § 7-302 of the State Finance and Procurement Article.

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

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

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

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

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

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

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

25 (i) Any award given under the Criminal Injuries Compensation Act;  
26 and

27 (ii) The actual costs of administering the Criminal Injuries  
28 Compensation Act.

29 **Chapter 396 of the Acts of 1995**

30 SECTION 3. AND BE IT FURTHER ENACTED, That the changes made to  
31 Article 26A, § 17 of the Code by Section 1 of this Act shall take effect October 1, 1995  
32 [and shall remain effective for a period of one year and, at the end of September 30,  
33 1996, with no further action required by the General Assembly, shall be abrogated and of  
34 no further force and effect].

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

