

HOUSE BILL 305

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1999 Regular Session
9lr0845
CF 9lr1072

By: **Delegate Vallario (Task Force to Examine Maryland's Crime Victims' Rights Laws) and Delegates Amedori, Barkley, Bartlett, Boschert, Boutin, Bronrott, Burns, Cadden, Clagett, Conway, Cryor, D. Davis, DeCarlo, Dembrow, Dewberry, Doory, Dypski, Edwards, Frush, Fulton, Giannetti, Glassman, Healey, Heller, Hixson, Howard, Hubbard, Hubers, Hurson, Kach, Klima, Kopp, Love, McClenahan, McHale, McKee, Menes, Moe, Mohorovic, Montague, Morhaim, O'Donnell, Owings, Palumbo, Parrott, Patterson, Petzold, Pitkin, Proctor, Rawlings, Redmer, Riley, Rosso, Rudolph, Rzepkowski, Slade, Sophocleus, Swain, Turner, Valderrama, and Zirkin**

Introduced and read first time: February 4, 1999
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Victims' Rights - Criminal Injuries Compensation Board - Claims**

3 FOR the purpose of prohibiting the Criminal Injuries Compensation Board from
4 finding that a claimant fails to suffer serious financial hardship under certain
5 circumstances; requiring the Department of Public Safety and Correctional
6 Services to report to the General Assembly on or before a certain date; making
7 stylistic changes; and generally relating to compensation awards by the
8 Criminal Injuries Compensation Board.

9 BY repealing and reenacting, with amendments,
10 Article 27 - Crimes and Punishments
11 Section 825
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 1998 Supplement)

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

16 **Article 27 - Crimes and Punishments**

17 825.

18 (a) (1) An award may not be made unless the Board members find that:

19 (i) A crime was committed;

1 (ii) The crime directly resulted in physical injury to, or death of the
2 victim, or in the case of sexual assault or child abuse, psychological or emotional
3 injury;

4 (iii) Police, other law enforcement, or judicial records show that the
5 crime or the discovery of child abuse was reported to the proper authorities within 48
6 hours after the occurrence of the crime; and

7 (iv) The victim has fully cooperated with all law enforcement
8 agencies.

9 (2) The Board may waive the requirements of paragraph (1)(iii) and (iv)
10 of this subsection for good cause shown.

11 (3) (i) An award may not be made unless funds are appropriated and
12 available for the full amount of the award.

13 (ii) If a multiyear award is made, the total amount of the award
14 shall be obligated and held for any period of time as is necessary to complete payment
15 in accordance with the provisions of the award.

16 (iii) If payment of the award is terminated for any reason
17 subsequent to June 30 of the fiscal year in which the award was made, the remainder
18 of the award shall revert to the Criminal Injuries Compensation Fund established
19 under § 831 of this subheading.

20 (iv) Any compensation awarded under the provisions of this Act
21 shall not exceed \$25,000 for any disability-related or dependency-related claim and
22 \$45,000 for any medical claim. The maximum amount awarded under all of the
23 provisions of this Act shall not exceed \$45,000, including any subsequent and
24 supplemental awards.

25 (4) Any compensation awarded under the provisions of this subheading
26 for the purposes of psychiatric, psychological, or mental health counseling may not
27 exceed \$2,000 for each claimant.

28 (5) The Board may negotiate a settlement with a health care provider for
29 the medical and medically related expenses of a claimant.

30 (b) (1) Except as provided in paragraph (2) of this subsection, any award
31 made under this subheading shall be made in accordance with the schedule of
32 benefits, as it existed on January 1, 1989, and degree of disability, as specified in Title
33 9, Subtitle 6 of the Labor and Employment Article and any other applicable provisions
34 of the Labor and Employment Article, except for Title 9, Subtitle 8 of the Labor and
35 Employment Article. However, the term "average weekly wages", as applied to
36 determine the award in accordance with Title 9, Subtitle 6 of the Labor and
37 Employment Article, does not include tips, gratuities and wages that are undeclared
38 on the claimant's State or federal income tax returns in the applicable years. If a
39 claimant does not have "average weekly wages" so as to qualify under the formula in
40 Title 9, Subtitle 6 of the Labor and Employment Article, the award shall be in an

1 amount equal to the arithmetic average between the maximum and minimum awards
2 listed in the applicable portion of that subtitle.

3 (2) Awards for disability or dependency made pursuant to this article
4 may be up to two-thirds of the victim's gross average wage, but may not be less than
5 the amount provided in paragraph (1) of this subsection.

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

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

13 (d) Any award made under this subheading shall be reduced by the amount of
14 any payments received or to be received as a result of the injury:

15 (1) From or on behalf of the person who committed the crime;

16 (2) From any other public or private source, including an award of the
17 State Workers' Compensation Commission under the Maryland Workers'
18 Compensation Act; or

19 (3) As an emergency award under § 824 of this subheading.

20 (e) (1) (i) Except as provided under subparagraph (ii) of this paragraph,
21 in determining the amount of an award, the Board members shall determine whether,
22 because of the victim's conduct, the victim of the crime contributed to the infliction of
23 the victim's injury, and the Board members shall reduce the amount of the award or
24 reject the claim altogether, in accordance with this determination.

25 (ii) The Board members may disregard for this purpose the
26 responsibility of the victim for the victim's own injury where the record shows that
27 this responsibility was attributable to efforts by the victim to prevent a crime or an
28 attempted crime from occurring in the victim's presence or to apprehend a person who
29 had committed a crime in the victim's presence or had, in fact, committed a felony.

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

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

1 (f) (1) (I) If the Board finds that the claimant will not suffer serious
2 financial hardship, as a result of the loss of earnings or support and the out-of-pocket
3 expenses incurred as a result of the injury, if not granted financial assistance
4 pursuant to this article to meet the loss of earnings, support, or out-of-pocket
5 expenses, the Board shall deny an award.

6 (II) In determining the serious financial hardship, the Board shall
7 consider all of the financial resources of the claimant.

8 (III) Unless total dependency is established, a family is considered to
9 be partially dependent on a parent with whom they reside without regard to actual
10 earnings.

11 (2) The conditions of paragraph (1) of this subsection do not apply in
12 determining an award under § 819(a)(4), (5), and (6) of this subheading.

13 (3) THE BOARD MAY NOT FIND THAT A CLAIMANT FAILS TO SUFFER
14 SERIOUS FINANCIAL HARDSHIP BECAUSE A CLAIMANT IS INDIGENT OR JUDGMENT
15 PROOF.

16 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of Public
17 Safety and Correctional Services shall report to the General Assembly on or before
18 November 1, 1999, in accordance with § 2-1246 of the State Government Article, on
19 the results of a study to:

20 (1) Identify and examine alternate models for determining the financial
21 eligibility of criminal injuries compensation claimants;

22 (2) Project the effect of the models on the long-term stability and
23 strength of the Criminal Injuries Compensation Fund; and

24 (3) Recommend a model to replace the current serious financial hardship
25 standard.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 October 1, 1999.