

SENATE BILL 118

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1999 Regular Session
9r1072
CF 9r0845

By: **Senator Stone (Task Force to Examine Maryland's Crime Victims' Rights Laws)**

Introduced and read first time: January 22, 1999

Assigned to: Judicial Proceedings

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;

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

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

1 (iv) The victim has fully cooperated with all law enforcement
2 agencies.

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

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

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

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

14 (iv) Any compensation awarded under the provisions of this Act
15 shall not exceed \$25,000 for any disability-related or dependency-related claim and
16 \$45,000 for any medical claim. The maximum amount awarded under all of the
17 provisions of this Act shall not exceed \$45,000, including any subsequent and
18 supplemental awards.

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

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

24 (b) (1) Except as provided in paragraph (2) of this subsection, any award
25 made under this subheading shall be made in accordance with the schedule of
26 benefits, as it existed on January 1, 1989, and degree of disability, as specified in Title
27 9, Subtitle 6 of the Labor and Employment Article and any other applicable provisions
28 of the Labor and Employment Article, except for Title 9, Subtitle 8 of the Labor and
29 Employment Article. However, the term "average weekly wages", as applied to
30 determine the award in accordance with Title 9, Subtitle 6 of the Labor and
31 Employment Article, does not include tips, gratuities and wages that are undeclared
32 on the claimant's State or federal income tax returns in the applicable years. If a
33 claimant does not have "average weekly wages" so as to qualify under the formula in
34 Title 9, Subtitle 6 of the Labor and Employment Article, the award shall be in an
35 amount equal to the arithmetic average between the maximum and minimum awards
36 listed in the applicable portion of that subtitle.

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

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

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

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

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

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

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

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

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

25 (2) Claimants filing for injuries incurred as the occupants of a motor
26 vehicle or dependents of an occupant of a motor vehicle operated by a person in
27 violation of the provisions of § 21-902 of the Transportation Article may not recover
28 unless the claimant can prove that the occupant did not or could not have known of
29 the 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
32 confrontation with the offender, or the victim was participating in a criminal offense
33 at the time the injury was inflicted.

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

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

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

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

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

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

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

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

19 (3) Recommend a model to replace the current serious financial hardship
20 standard.

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