

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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 16, 1999

CHAPTER _____

1 AN ACT concerning

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

3 FOR the purpose of providing that a resident of this State who is the victim of a crime
4 in another state is eligible for an award if the other state operates a criminal
5 injuries compensation program for which funds have not been appropriated or
6 made available; establishing certain time limitations for notifying a claimant,
7 reviewing and evaluating certain claims and decisions, and reporting certain
8 recommendations concerning criminal injuries compensation; establishing and
9 increasing the maximum amount of compensation for certain claims; prohibiting
10 the Criminal Injuries Compensation Board from finding that a claimant fails to
11 suffer serious financial hardship under certain circumstances; requiring the
12 Department of Public Safety and Correctional Services to report to the General
13 Assembly on or before a certain date; making stylistic changes; and generally
14 relating to compensation awards by the Criminal Injuries Compensation Board.

15 BY repealing and reenacting, with amendments,
16 Article 27 - Crimes and Punishments
17 Section 819(c), 822, and 825
18 Annotated Code of Maryland
19 (1996 Replacement Volume and 1998 Supplement)

20 BY adding to
21 Article 27 - Crimes and Punishments
22 Section 820(d)
23 Annotated Code of Maryland
24 (1996 Replacement Volume and 1998 Supplement)

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

3 **Article 27 - Crimes and Punishments**

4 819.

5 (c) Any resident of the State is eligible for an award if the resident:

6 (1) Meets the requirements of this subheading; or

7 (2) Becomes a victim of a crime in a state other than Maryland that:

8 (i) Does not operate a criminal injuries compensation program;

9 [or]

10 (ii) Operates a criminal injuries compensation program for which
11 the victim is ineligible; OR

12 (III) OPERATES A CRIMINAL INJURIES COMPENSATION PROGRAM
13 FOR WHICH FUNDS HAVE NOT BEEN APPROPRIATED OR MADE AVAILABLE.

14 820.

15 (D) THE BOARD SHALL NOTIFY THE CLAIMANT WITHIN 10 DAYS AFTER
16 RECEIPT OF THE CLAIM.

17 822.

18 (A) WITHIN 30 DAYS AFTER THE RECEIPT OF A CLAIM, THE BOARD SHALL
19 NOTIFY THE CLAIMANT IF ADDITIONAL MATERIAL IS REQUIRED.

20 (B) (1) [Upon completing] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
21 SUBSECTION, WITHIN 90 DAYS AFTER THE RECEIPT OF A CLAIM AND ALL NECESSARY
22 SUPPORTING MATERIAL, THE BOARD SHALL:

23 (I) COMPLETE the review and evaluation process on each claim[,
24 the Board shall file]; AND

25 (II) FILE with the Secretary a written report setting forth the
26 decision and the reasons in support of the decision.

27 (2) FOR GOOD CAUSE SHOWN, FOR A PERIOD NOT TO EXCEED 1 YEAR
28 THE BOARD MAY EXTEND THE TIME TO FILE ITS REPORT WITH THE SECRETARY
29 AFTER RECEIPT OF THE CLAIM AND ALL NECESSARY SUPPORTING MATERIAL UNTIL
30 THE FIRST TO OCCUR OF THE FOLLOWING EVENTS:

31 (I) THE CLAIMANT NO LONGER HAS EXPENSES RELATED TO THE
32 CRIME; OR

1 (II) THE CLAIMANT HAS BEEN AWARDED THE MAXIMUM AMOUNT
2 AUTHORIZED UNDER § 825 OF THIS SUBHEADING.

3 (C) [After reviewing the records,] WITHIN 30 DAYS AFTER THE RECEIPT OF A
4 WRITTEN REPORT FROM THE BOARD, the Secretary shall modify, affirm, or reverse
5 the decision of the Board. The action of the Secretary in affirming, modifying, or
6 reversing the decision of the Board shall be final. The claimant shall be furnished
7 with a copy of the final report upon request.

8 825.

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

10 (i) A crime was committed;

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

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

17 (iv) The victim has fully cooperated with all law enforcement
18 agencies.

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

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

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

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

30 (iv) Any compensation awarded under the provisions of this Act
31 shall not exceed \$25,000 for any disability-related or dependency-related claim and
32 \$45,000 for any medical claim. The maximum amount awarded under all of the
33 provisions of this Act shall not exceed \$45,000, including any subsequent and
34 supplemental awards.

35 (4) Any compensation awarded under the provisions of this subheading
36 for the purposes of psychiatric, psychological, or mental health counseling may not
37 exceed ~~\$2,000~~ \$5,000 for each claimant.

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

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

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

19 (II) AN AWARD FOR FUNERAL EXPENSES MAY BE IN AN AMOUNT
20 NOT TO EXCEED \$5,000.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (2) Determine whether other reasonable expenses incurred by victims
37 and their families should be compensated, including mental health counseling for
38 family and household members;

1 (2) (3) Project the effect of the models and any other changes on the
2 long-term stability and strength of the Criminal Injuries Compensation Fund; and

3 (3) (4) Recommend a model to replace the current serious financial
4 hardship standard.

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