

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 140

(Chair, Judicial Proceedings Committee)(By Request –
Departmental – Public Safety and Correctional Services)

Judicial Proceedings

Judiciary

**Criminal Procedure - Criminal Injuries Compensation Board - Claims by
Victims**

This departmental bill requires the Criminal Injuries Compensation Board to reduce the amount of an award or deny a claim if the board finds that the victim contributed to the victim's own injury under specified circumstances.

Fiscal Summary

State Effect: No net impact on the Criminal Injuries Compensation Fund is expected as a result of this bill. While some payments on claims from the fund would increase, others would decrease.

Local Effect: None.

Small Business Effect: The Department of Public Safety and Correctional Services has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: The bill specifically authorizes partial awards, rather than full claim denial, when:

- the victim initiated, consented to, provoked, or unreasonably failed to avoid a physical confrontation with the offender; or

- when the injury was inflicted, the victim was participating in a crime or delinquent act other than the crime or delinquent act that is the basis of the claim.

The board would continue to have discretion on partial payments of awards involving circumstances where the victim was an occupant of a motor vehicle being operated by an alcohol or drug impaired person. The bill eliminates current provisions whereby the board may disregard the responsibility of the victim under specified circumstances.

In addition, the bill requires that awards be made in accordance with the schedule of benefits existing on the date of the occurrence of the crime or delinquent act on which the claim is made, rather than the schedule of benefits as it existed on January 1, 2001.

Current Law: The State's Criminal Injuries Compensation Board in the Department of Public Safety and Correctional Services provides financial assistance for innocent victims of crime. The board may compensate victims who suffer physical injury for their medical expenses and loss of earnings. In cases of homicide, the board may assist with funeral expenses and loss of support on the part of the victim's dependents. A claimant seeking compensation from the Criminal Injuries Compensation Fund must file a claim no later than three years after the occurrence of the crime or delinquent act or the death of the victim. In a case of child abuse, a claimant may file a claim up to three years after the claimant knew or should have known of the abuse. A person who commits the crime or delinquent act that is the basis of a claim, or an accomplice of the person, is not eligible to receive an award.

The board may make an award only if the board finds that • a crime or delinquent act was committed; • the crime or delinquent act directly resulted in physical injury to or death of the victim or psychological injury to the victim that necessitated mental health counseling; • police, other law enforcement, or judicial records show that the crime or delinquent act or the discovery of child abuse was reported to the proper authorities within 48 hours after the occurrence of the crime or delinquent act or the discovery of the child abuse; and • the victim has cooperated fully with all law enforcement units.

The board may make an award only if the claimant, as a result of the injury on which the claim is based, has • incurred at least \$100 in unreimbursed and unreimbursable expenses or indebtedness reasonably incurred or claimed for specified necessary services; or • lost at least two continuous weeks' earnings or support. A claim awarded for lost wages may not exceed two-thirds of gross weekly salary or \$668 per week, whichever is greater.

Compensation from the fund may not exceed:

- \$25,000 for a disability-related or dependency-related claim;
- \$45,000 for a medical claim;
- \$5,000 for each claimant for psychiatric, psychological, or mental health counseling;
- a total of \$45,000, including any subsequent and supplemental awards;
- \$250 for each claimant for repair, replacement, or cleaning of property damaged, soiled, or littered as a result of a crime or law enforcement investigation of a crime; or
- for an award for psychiatric, psychological, or mental health counseling resulting from the death of a victim: (1) \$1,000 for each claimant; and (2) \$5,000 for each incident.

An award must be reduced by the amount of any payment received or to be received as a result of the injury • from or on behalf of the offender; • from any other public or private source, including an award under the Maryland Workers' Compensation Act; • from any proceeds of life insurance in excess of \$25,000; or • as an emergency award from the board.

State Fiscal Effect: The Criminal Injuries Compensation Fund had special fund award expenditures of approximately \$5.2 million in fiscal 2007 for 739 claims filed. Based on an assumption of 800 claims filed for all of fiscal 2008, awards for the current fiscal year are estimated to be about \$5.4 million. The budget allowance for claims and awards for fiscal 2009 is the same as for fiscal 2008. Although the fund balance has continued to decline in recent years (mainly due to the fund becoming more widely known, more victim advocates referring victims to the board, and expanding the types of allowable claims), it remains solvent. At the close of fiscal 2007, the fund balance for awards was about \$2.7 million.

The U.S. Department of Justice, through the Victims of Crime Act (VOCA), reimburses each state 60% of money expended on claims. VOCA does not allow reimbursement for property damage claims. Assuming a minimal increase in claims as a result of this bill, federal VOCA reimbursements would increase minimally.

This bill is not expected to meaningfully affect the fund's balance. Currently, the board pays or denies claims in their entirety. The discretionary authority provided under this bill will, in only a few circumstances, reduce the full award or partially pay an otherwise denied claim. No overall net impact is expected.

Additional Information

Prior Introductions: Some elements of this bill were included under SB 200 of 2007, which had a hearing before the Senate Judicial Proceedings Committee and had no further action taken. Its cross file, HB 1003, passed the House, was referred to Judicial Proceedings, and had no further action taken.

Cross File: None.

Information Source(s): Department of Public Safety and Correctional Services (Criminal Injuries Compensation Board), Department of Legislative Services

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mll/jr

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