

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

House Bill 1329

(Delegate Valderrama, *et al.*)

Judiciary

Judicial Proceedings

**Criminal Procedure - Criminal Injuries Compensation Board - Delegation of
Contested Claims to Office of Administrative Hearings**

This bill transfers hearing authority for criminal injuries compensation claims from the Criminal Injuries Compensation Board to the Office of Administrative Hearings (OAH).

Fiscal Summary

State Effect: Minimal. The bill's provisions could be generally accommodated with the existing budgeted resources of OAH and the board. However, if all or most contested claims result in OAH hearings, the bill may impose some operational difficulties for the board. Criminal Injuries Compensation Fund per diem payments to board members could increase by as much as \$29,700 per year.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill repeals the authority of the Criminal Injuries Compensation Board to hold hearings relating to a criminal injuries compensation claim. The board is authorized to make tentative decisions on claims and all contested decisions of the board must be delegated, as specified, to OAH for final findings of fact, final conclusions of law, and the final administrative decision of the board. At the request of a claimant, OAH must hold hearings on contested tentative decisions of the board in the county where the crime or delinquent act occurred, the claimant resides, or the claimant is regularly employed.

The board must adopt specified regulations relating to OAH, including regulations for the approval of attorneys' fees. Any money saved by eliminating hearings that would have been conducted by the board prior to the enactment of these provisions may be transferred and appropriated in the annual budget bill or by budget amendment to OAH for the purpose of conducting hearings required under these provisions. The bill's provisions apply to all claims not final after September 30, 2008.

Current Law and Background: 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 or psychological 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.

Although judicial power is vested only in the courts, quasi-judicial hearings are conducted by a multitude of Executive Branch commissions, departments, and agencies. Some departments and individual agencies conduct their own hearings, but many delegate their authority to OAH, an independent unit of the Executive Branch. The office has 57 administrative law judges – headed by the Chief Administrative Law Judge.

OAH is reimbursed by other State agencies that refer cases to it. The Department of Budget and Management allocates funds to these agencies to cover anticipated costs associated with such hearings by utilizing a caseload formula. Agencies' annual assessments are determined based on their prior year's caseload and the length of time it takes to hear cases. The cost per case varies because the length of time required to hear a particular type of case varies considerably according to the complexity of the case.

Over 50% of the OAH total annual case-hour allocation is to the Maryland Department of Transportation and the Department of Human Resources. Of the various types of hearings held, personnel grievances, with an average case time of approximately seven hours, are the most common type of cases heard by the office. OAH anticipates hearing about 30,000 cases per year for a total of over 44,000 case hours.

Although the form of the hearings varies, a common characteristic is that, after a determination at the administrative level, a party may file an appeal for the purpose of judicial review by a circuit court.

COMAR provisions allow \$50 per day for attorney fees for office time, \$60 per day for hearings, and an overall fee cap of 10% of the amount eventually awarded to a claimant for personal use (not including medical allowances).

State Fiscal Effect: The board advises that about 10 to 15 claims decisions of the board are contested per month. On average, all but about four of these cases are resolved without a hearing. Under this bill, it is unclear whether the board would still have the authority (or an available timeframe in which) to continue to resolve contested issues without a hearing. Board members are paid a *per diem* for meetings and hearings of \$186 per day, plus standard State travel expenses. A typical hearing would involve total costs to the fund of about \$225 per day.

In any event, OAH advises that an increase in caseload from this bill could be handled with existing budgeted resources. If updated regulations governing these provisions allow for continued attempts by the board to resolve contested issues prior to a hearing, this bill should not impose a burden on either OAH or the board. However, if board members must attend an additional 6-11 hearings per month, at various locations in the State, this bill may impose an operational encumbrance on existing resources. This would include increased *per diem* and expense payments to board members for hearings which paid from the special fund. This could increase special fund expenditures by \$16,200 to \$29,700 annually. Such additional special fund payments would not be expected to significantly affect the solvency of the fund.

Whether additional hearings by OAH for contested claims under the bill could or would result in additional awards (including the award of additional attorneys' fees) cannot be reliably predicted.

Additional Information

Prior Introductions: None.

Cross File: SB 524 (Senator Stone, *et al.*) – Judicial Proceedings.

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

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mll/jr

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