

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1278

(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 (CICB) to the Office of Administrative Hearings (OAH).

Fiscal Summary

State Effect: Minimal. The bill's provisions can 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 special fund reimbursements to OAH are estimated at \$29,700 per year for the additional hearings.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill repeals the authority of CICB 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.

A member of the board is not entitled to compensation or reimbursement to attend a contested hearing before OAH.

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, 2009.

Current Law and Background: The State's CICB 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 it 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: (1) incurred at least \$100 in unreimbursed and unreimbursable expenses or indebtedness reasonably incurred or claimed for specified necessary services; or (2) 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 approximately 60 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. In any case, the bill will generate an additional 6 to 11 administrative hearings per month for OAH, at various locations in the State.

CICB estimates that the cost for OAH to conduct these hearings total about \$225 per case, resulting in an annual expenditure increase of \$16,200 to \$29,700. Because the reimbursement from CICB special fund expenditures to OAH will be made the following fiscal year, based on actual hearings from the prior year, these reimbursements will begin to occur in fiscal 2011. Any potential expense reimbursements for CICB investigators to attend OAH hearings are assumed to be minimal and absorbable within existing budgeted resources.

OAH advises that an increase in caseload from this bill can be handled with existing budgeted resources. Although this bill may impose some additional fiscal and operational difficulties on the existing special fund resources of CICB, 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 that could not be handled with existing budgeted resources. 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: HB 1329 of 2008 passed the House, was referred to the Senate Judicial Proceedings Committee, and had no further action taken on it. Its cross file, SB 524, received an unfavorable report from the Senate Judicial Proceedings Committee.

Cross File: SB 619 (Senators Stone and Miller) - Judicial Proceedings.

Information Source(s): Department of Legislative Services

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