

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 138

(Delegate Waldstreicher, *et al.*)

Judiciary

Judicial Proceedings

Criminal Injuries Compensation Board - Right to Hearing

This bill subjects a claim filed with the Criminal Injuries Compensation Board (CICB) to review under applicable provisions of the Administrative Procedure Act. If a claimant requests a hearing after the board has issued proposed findings of fact, conclusions of law, or orders, the board must hold a hearing in accordance with the Administrative Procedure Act before issuing final findings of fact, conclusions of law, or orders.

Fiscal Summary

State Effect: While this bill requires some operational changes, including hearings not now held, it is not expected to result in any additional awards from the Criminal Injuries Compensation Fund.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: CICB in the Department of Public Safety and Correctional Services (DPSCS) 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.

By statute and COMAR, the board has the discretion to decide a claim with or without a hearing. 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: \$1,000 for each claimant; and \$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: (1) from or on behalf of the offender; (2) from any other public or

private source, including an award under the Maryland Workers' Compensation Act; (3) from any proceeds of life insurance in excess of \$25,000; or (4) as an emergency award from the board.

The Administrative Procedure Act is Title 10 of the State Government Article. Regulations adopted under the Act may include procedures and criteria for requesting and conducting expedited hearings. The Act specifies a variety of procedures for contested cases which include requirements relating to notice of hearings, dispositions, hearings conducted by electronic means, open hearings, interpreters, evidence, proceeding transcripts, ex parte communications, proposed decisions and orders, and final decisions and orders. All final decisions under the Act are subject to judicial review by a circuit court.

Background: Generally, the board will not grant a hearing under the following circumstances:

- when the claimant is seeking compensation that the board is prevented from providing by statute. [*e.g.*, a claim is sought by a victim who admits to having been engaged in illegal conduct when injured, such as the use, possession of drugs, or attempted purchase of drugs]; or
- because the statute requires the claimant to prove his or her claim, when the claimant fails to provide any new or sufficient information or documentation to justify the claim.

The Criminal Injuries Compensation Fund (CICF) paid out approximately \$6.5 million in fiscal 2009 for 823 claims filed. Assuming 800 claims are filed in fiscal 2010, awards for the current fiscal year will total about \$6.5 million. The proposed fiscal 2011 State budget includes \$6.5 million for awards.

CICF revenues average approximately \$3.6 million annually and are used to support crime victim compensation as well as CICB operating expenses. A fund balance in excess of \$2.5 million existed in the account since fiscal 2002. As a result of a number of operational improvements between fiscal 2002 and 2004, such as a new automated tracking system, increased staffing, and a more aggressive outreach effort, CICB increased the number of awards made to victims of crime and the amount of State funding used to support this purpose. CICB used the available fund balance to help support this growth. As a result, the special fund appropriation for CICB has exceeded annual revenues since fiscal 2005. As of fiscal 2009, the CICF fund balance has been exhausted. CICB estimates that by fiscal 2013 and each subsequent year, total funding for crime victim compensation will be reduced to \$4.4 million, as opposed to the more than \$6.0 million provided annually for the past two years.

Additional Comments: The board has expressed a concern that additional hearings and operational inefficiencies resulting from the bill could lead to delays in making awards to successful claimants.

Additional Information

Prior Introductions: None.

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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