

Department of Legislative Services
 Maryland General Assembly
 2013 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 258

(Senator Shank)

Judicial Proceedings

Judiciary

Correctional Services - Inmate Earnings - Compensation for Victims of Crime

This bill requires the Department of Public Safety and Correctional Services (DPSCS) to make a certain withholding from the earnings of an inmate in the Private Sector/Prison Industry Enhancement (PIE) Certification Program for compensation for victims of crime.

Fiscal Summary

State Effect: Overall special fund revenues increase by an estimated \$4,600 annually beginning in FY 2014 due to an increase in the withholding of the earnings of an inmate in the PIE program. Special fund revenues for the Criminal Injuries Compensation Fund (CICF) within the Department of Public Safety and Correctional Services (DPSCS) increase by up to that amount, but the bill may redirect the increase in special fund revenues to the State Victims of Crime Fund (MVOC) in the Governor’s Office of Crime Control and Prevention (GOCCP). Special fund expenditures increase correspondingly. The bill’s administrative requirements, including reporting requirements, can be handled with the existing budgeted resources of DPSCS and GOCCP.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
SF Revenue	\$4,600	\$4,600	\$4,600	\$4,600	\$4,600
SF Expenditure	\$4,600	\$4,600	\$4,600	\$4,600	\$4,600
Net Effect	\$0	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The bill specifies that, of the earnings of an inmate in the Private Sector/Prison Industry Enhancement Certification Program of the U.S. Department of Justice, Bureau of Justice Assistance, DPSCS must withhold 20% for compensation for victims of crime, in accordance with the requirements of the program.

If a court in a criminal or juvenile delinquency proceeding has ordered the inmate to pay restitution, DPSCS must forward the withheld 20% to CICF. The Criminal Injuries Compensation Board (CICB) must distribute from that fund any amount received under the bill to the person or governmental unit specified in the judgment of restitution to pay the restitution as required by law.

If the inmate is not subject to a judgment of restitution or the judgment of restitution is satisfied, of the money withheld, DPSCS must pay:

- 50% into CICF; and
- 50% into MVOC.

DPSCS is required to report to the Senate Judicial Proceedings Committee and House Judiciary Committee by December 1, 2013, on the payment of restitution by inmates under its jurisdiction, addressing how DPSCS could increase the collection of restitution, including by having additional inmates pay toward restitution obligations through an annual transfer or other periodic transfer of earnings.

Current Law: CICB, an agency in DPSCS, provides financial assistance for innocent victims of crime through CICF, a State special fund. The board may compensate victims who suffer physical or psychological injury for their medical expenses and loss of earnings, but only if the injury is a direct result of a criminal or delinquent offense. 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 CICF 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.

CICB 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.

CICB 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 CICF 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 CICB.

Chapters 69 and 70 of 2010 (SB 442/HB138) subject a claim filed with 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.

MVOC is used to pay for carrying out (1) Article 47 of the Maryland Declaration of Rights; (2) the guidelines for the treatment and assistance for victims and witnesses of crimes and delinquent acts; and (3) any laws enacted to benefit victims and witnesses of crimes and delinquent acts. This special fund is administered by the State Board of Victim Services in GOCCP and may pay for its own administrative costs.

Article 47 of the Declaration of Rights provides that (1) a victim of crime must be treated by agents of the State with dignity, respect, and sensitivity during all phases of the criminal justice process; (2) in a case originating by indictment or information filed in a circuit court, a victim of crime has the right to be informed of the rights established in this Article and, upon request and if practicable, to be notified of, to attend, and to be heard at a criminal justice proceeding, as these rights are implemented and the terms “crime,” “criminal justice proceeding,” and “victim” are specified by law; and (3) nothing in this Article permits any civil cause of action for monetary damages for violation of any of its provisions or authorizes a victim of crime to take any action to stay a criminal justice proceeding.

Background: Under the Prison Industry Enhancement Certification Program (PIECP), the Bureau of Justice Assistance certifies that local or state prison industry programs meet all the necessary requirements to be exempt from federal restrictions on prisoner-made goods in interstate commerce. The program places inmates in realistic work environments, pays them prevailing wages, and gives them a chance to develop marketable skills that will increase their potential for rehabilitation and meaningful employment on release.

The technical assistance provider under PIECP, the National Correctional Industries Association, works with the public and private sectors to provide the latest information and strategies on prison industries and to enhance certificate holders’ prison industry programs.

According to the most recent published data by the Bureau of Justice Statistics, currently, 37 state and four county-based certified correctional industry programs operate in the United States, and these programs manage at least 175 business partnerships with private industry. Nationwide, as of September 30, 2005, PIECP generated more than \$33 million for victims’ programs, \$21 million for inmate family support, \$97.5 million for correctional institution room and board costs, and \$46.6 million in state and federal taxes.

State Fiscal Effect: Inmates in Maryland’s PIE program must be paid the prevailing wage and no less than the Federal Minimum Wage. Deductions are allowed from the inmates’ wages for taxes, room and board, contributions to a victims’ compensation program, and family support.

In Maryland, a total of 2,065 inmates were employed in fiscal 2012. A total of 2,250 are expected to be employed at the close of fiscal 2013. Inmates currently employed through Maryland's PIE program are paid the prevailing wage and are already subject to a 10% deduction of wages for victim compensation. Disbursements are made to CICF. PIE withholdings and victim disbursements to CICF vary annually. In fiscal 2012, inmate income in the PIE program totaled \$46,240, and victim compensation disbursements from the program to CICF totaled \$4,624. It is not known how many inmates participating in the PIE program owe restitution to victims.

Under the bill, the annual withholding from inmate PIE earnings doubles from \$4,624 to \$9,248 annually and is either distributed to CICF or is shared between CICF and MVOC, depending on restitution requirements applicable to inmates in the program. *For purposes of illustration only*, an equal division of the annual withholding would result in \$4,624 being directed to CICF (the same amount that fund now receives at a withholding rate of 10%) and \$4,624 being directed to MVOC (an amount not now received).

Additional Information: Funding for awards made by CICB to victims of crime is reduced in the Governor's proposed fiscal 2014 budget by \$1.4 million compared to fiscal 2013, as the agency has exhausted the fund balance accrued in prior years and must now spend within the actual amount of revenue generated annually via court fees. Legislation was introduced in both the 2011 and 2012 sessions to increase court fees in order to build up CICF, but the bills did not pass.

The Governor's proposed fiscal 2014 budget contains about \$1.3 million in special fund revenue for MVOC.

Additional Information

Prior Introductions: Similar bills were introduced in the 2009 session. SB 655 of 2009 received a hearing by the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 938, passed the House and was referred to the Judicial Proceedings Committee, but no further action was taken.

Cross File: HB 921 (Delegate Valentino-Smith, *et al.*) - Judiciary.

Information Source(s): Governor's Office, Judiciary (Administrative Office of the Courts), Department of Public Safety and Correctional Services, Bureau of Justice Assistance, Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2013
mc/lgc Revised - Senate Third Reader - March 22, 2013

Analysis by: Guy G. Cherry

Direct Inquiries to:
(410) 946-5510
(301) 970-5510