

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
 First Reader

Senate Bill 788 (Senator Hettleman)
 Judicial Proceedings

Criminal Procedure - Victim Compensation - Alterations

This bill (1) alters the membership and composition of the Criminal Injuries Compensation Board (CICB); (2) alters the duties, powers, and procedures for CICB to make awards to victims of crime; (3) alters the statement of legislative policy regarding CICB; (4) alters the amount and types of awards CICB is authorized to make to specified victims of crime; (5) authorizes reconsideration and judicial review of CICB decisions; (6) requires the Governor, for fiscal 2025 and each year thereafter, to include in the annual budget bill an appropriation of \$7.0 million to the Criminal Injuries Compensation Fund (CICF); and (7) effective July 1, 2024, repeals language establishing that CICF consists of money distributed from additional court costs collected from defendants in criminal cases.

Fiscal Summary

State Effect: General fund expenditures increase by an indeterminate amount in FY 2024 to reflect the expanded duties of CICB and eligibility for grant awards; special fund revenues and expenditures are assumed to correspond. *Under one set of assumptions*, beginning in FY 2025, general fund expenditures increase by \$3.7 million annually to reflect the mandated appropriation amount. Special fund revenues correspondingly increase; special fund expenditures are assumed to increase correspondingly. **This bill establishes a mandated appropriation beginning in FY 2025.**

(\$ in millions)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	-	\$3.7	\$3.7	\$3.7	\$3.7
GF Expenditure	-	\$3.7	\$3.7	\$3.7	\$3.7
SF Expenditure	-	\$3.7	\$3.7	\$3.7	\$3.7
Net Effect	(-)	(\$3.7)	(\$3.7)	(\$3.7)	(\$3.7)

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

Local Effect: The bill is not anticipated to materially affect local government finances.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Criminal Injuries Compensation Board

Membership: The membership of CICB must reflect the racial, ethnic, geographic, and gender diversity of the State and is expanded to include nine instead of five members who represent specified types of organizations. A member may not serve more than two consecutive terms.

Powers and Duties: The bill specifically alters the powers and duties for CICB by:

- repealing the authority for CICB to request from the State's Attorney, the Department of State Police, or county or municipal police departments any investigation and information that will help the board to determine whether and to what extent the victim or claimant was responsible for the victim's or claimant's own injury;
- authorizing CICB to hear appeals by applicants; and
- specifying information that must be included in the annual report regarding the activities of the board that is submitted to the Governor, the Executive Director of the Governor's Office of Crime Prevention, Youth, and Victim Services (GOCPYVS), and the General Assembly.

Eligibility for an Award: Persons eligible for awards is expanded to include (1) the domestic partner or dependent minor of a victim who resides with the victim and (2) the domestic partner or dependent minor of an individual who is incarcerated for abuse, as defined in § 4-501 of the Family Law Article, and who, prior to incarceration provided financial support to the domestic partner or dependent minor.

Filing of Claim: The timeframe for filing a claim is increased from three years to five years after the later of:

- the discovery of the occurrence of the crime or delinquent act or the death of the victim; or
- the earlier of (1) the date the claimant discovered an attempt to obtain a reversal of a conviction, a sentence, or an adjudication for the crime or delinquent act or (2) the date the claimant, exercising ordinary diligence, should have discovered an attempt to obtain a reversal of a conviction, a sentence, or an adjudication for the crime or delinquent act.

In addition, the bill expands the authorization for a claimant to file a claim at any time if the board determines that there was a good cause for failure to file a claim within the time limits provided in statute.

Conditions for Awards on Claims: The bill repeals the requirement, in order to make an award, for the board to find that 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 that the victim has cooperated fully with all law enforcement units.

The bill specifies information that CICB must accept as evidence, including any evidence that the board considers probative. Unless total dependency is established, under the bill, household members and minors living with a legal guardian are considered to be partly dependent on a parent or a legal guardian with whom they reside without regard to actual earnings.

The bill expands the circumstances under which CICB may make an award to a claimant as a result of the injury on which the claim is based, including if costs have been incurred, as specified, for certain relocation, child care, and transportation expenses. In addition, the bill repeals (1) the requirement for CICB to make a determination regarding whether the victim's conduct contributed to the infliction of the victim's injury, and, if so, reduce the amount of the award or reject the claim; (2) authorization for CICB to disregard the responsibility of the victim for the victim's own injury if that responsibility is attributable to specified efforts by the victim; and (3) the prohibition on a claimant receiving an award if the victim initiated, consented to, provoked, or unreasonably failed to avoid a physical confrontation with the offender, or the victim was participating in a crime or delinquent act when the injury was inflicted.

A victim or dependent may not be denied compensation because (instead of *solely* because) the victim is a relative of the offender or was living with the offender as a family member or household member at the time of the injury or death.

Amount of Award: Subject to specified limitations, the eligibility for awards from CICF is expanded to include a domestic partner or dependent of a victim under specified circumstances. In addition, the maximum limits on awards are increased:

- for funeral expenses, from \$7,500 to \$10,000;
- for psychiatric, psychological, or mental health counseling, under specified circumstances, from \$10,000 to \$45,000; and

- for repair, replacement, or cleaning of property damaged, soiled, or littered as a result of a crime or law enforcement investigation of a crime, as specified, from \$250 to \$2,000.

Emergency Awards: The maximum amount of an emergency award under CICF is increased from \$5,000 to \$10,000. In addition, the bill:

- repeals (1) the requirement for a claimant to repay CICB the excess of the amount of the emergency award over any final award or if a final award is not made, all of the emergency award and (2) authorization for the board, on written request by a claimant, for a compelling reason, to waive the requirement that a claimant repay an emergency award;
- requires CICB to make emergency awards for specified expenses, unless it finds by clear and convincing evidence that the application is without merit; and
- requires CICB to make a form for victims to apply for emergency awards available publicly on its website.

Board Decisions on Claims: Within 30 days after the receipt of a claim, the board must (1) notify the claimant *by email or phone* if additional material is required and (2) document the date and time that the notice is issued. Within 30 days (instead of 90 days) after the receipt of a claim and all necessary supporting material, the board or its staff must complete the review and evaluation of each claim and file with the Executive Director a written report setting forth the decision and the reasons in support of the decision.

Within 30 days after the receipt of a written report, the claimant may petition the board for reconsideration. Within 30 days after the receipt of a petition for reconsideration, the board must issue a decision and file with the Executive Director a written report setting forth the decision and the reasons in support of the decision.

A claimant may appeal the decision of the board on a petition for reconsideration by filing a petition for judicial review in accordance with Title 7 of the Maryland Rules. The claimant must be given a copy of any report (not only the final report by request) by certified mail.

The bill repeals (1) the requirement for the Executive Director to modify, affirm, or reverse the decision of the board and (2) the decision of the Executive Director to affirm, modify, or reverse the decision of the board as being final.

False Claims: The penalty for a person who is found guilty of asserting a false claim, under CICB provisions, is altered to only include a maximum fine of \$500 and not imprisonment up to one year.

Definitions: The bill alters several terms to expand applicability of CICB and CICF. Specifically:

- “crime” is expanded to include any act involving the operation of a vessel or motor vehicle instead of only an act that is a violation of § 20-102, § 20-104, § 21-902, or § 21-904 of the Transportation Article, a violation of § 8-738 of the Natural Resources Article, a violation of the Criminal Law Article, operating a motor vehicle or vessel that results in an intentional injury, or a violation of federal law or the law of another state that is substantially equivalent to one of these violations, as specified;
- “dependent” is expanded to include a domestic partner; and
- “victim” is expanded to include a person who suffers psychological injury as a direct result of any crime or delinquent act (instead of only a person who suffers such an injury as a direct result of the specific crimes of (1) a fourth-degree sexual offense or a delinquent act that would be a fourth-degree sexual offense if committed by an adult; (2) a felony or a delinquent act that would be a felony if committed by an adult; or (3) physical injury or death directly resulting from a crime or delinquent act).

Current Law: CICB in the Victim Services Unit of GOCPYVS administers a compensation program for victims of crime, persons who have made efforts to prevent crime, and their dependent survivors. After review and evaluation of claims filed, the board awards compensation from CICF for medical expenses, funeral or death-related expenses, property damage, disability or dependency claims, other necessary services, and lost wages under certain circumstances. In general, a claim must be filed with CICB within three years after the occurrence of the crime or delinquent act or the death of the victim. However, in the case of child abuse, a claim may be filed until the date the child who was the subject of abuse reaches the age of 25 or, if the board determines that there was good cause for failure to file a claim by that date, at any time. Also, in a case of sexual assault, a claimant is authorized to file a claim at any time if the board determines that there was good cause for failure to file a claim within the otherwise required time limits.

CICB is also responsible for the reimbursement of a physician, qualified health care provider, or hospital that is entitled to payment for expenses incurred providing a victim of an alleged rape or sexual offense or a victim of alleged child sexual abuse with (1) a physical and sexual assault forensic examination to gather information and evidence; (2) emergency hospital care for up to 90 days after the initial physical examination; and (3) up to five hours of professional time to gather information and evidence at no cost to the victim.

CICF is a special, nonlapsing fund that receives funding from several sources, including investment earnings and federal matching funds received by the State for criminal injuries

compensation. A small portion of the funding is from restitution paid by a defendant to the fund for reimbursement of money already paid by the fund to a victim. However, CICF's principal source of money has traditionally been from costs imposed in criminal cases.

Compensation awarded from CICF may not exceed:

- \$25,000 for a disability-related or dependency-related claim; however, if the injury to the victim results in permanent total disability, an additional \$25,000 may be awarded after a disability-related claim has been awarded to the victim;
- \$45,000 for a medical claim;
- \$10,000 for each claimant for psychiatric, psychological, or mental health counseling, as specified;
- except for a specified disability-related or dependency-related claim, 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;
- for an award for psychiatric, psychological, or mental health counseling: (1) \$10,000 for each claimant and (2) \$20,000 for each incident; or
- \$2,000 for lost average weekly wage claims, as specified.

An award made by CICB must be reduced by the amount of any payments received or to be received as a result of the injury: (1) from or on behalf of the offender; (2) except from any proceeds of life insurance, as specified, from any other public or private source, including an award of the State Workers' Compensation Commission under the Maryland Workers' Compensation Act; (3) from any proceeds of life insurance in excess of \$25,000; or (4) as an emergency award, as specified.

Court costs are imposed on a defendant convicted of a crime in the amount of \$45 for the circuit court and \$35 for the District Court. In addition, court costs, in the amount of \$3, are imposed on a defendant convicted of certain motor vehicle offenses in the District Court. The Comptroller deposits \$22.50 from each fee collected in circuit court and \$12.50 from each fee collected in District Court (excluding fees from motor vehicle cases that are not punishable by imprisonment) into the State Victims of Crime Fund (SVCF), a special fund used for carrying out statutory guidelines for treatment and assistance to victims of crime and delinquent acts.

The Comptroller deposits \$2.50 from each fee collected in circuit courts and the District Court (excluding fees from motor vehicle cases that are not punishable by imprisonment) to the Victim and Witness Protection and Relocation Fund (VWPRF). This is a special fund used to carry out the Victim and Witness Protection and Relocation Program which is administered by the States' Attorneys' coordinator.

All other monies from these fees are deposited into CICF.

CICF and SVCF share the first \$500,000 attained from the \$3 assessed in the District Court for motor vehicle cases that are not punishable by imprisonment. After the \$500,000 threshold is reached and each fund has acquired \$250,000, CICF receives the remainder of funding from these fees.

In addition, the Comptroller is required to annually transfer \$500,000 to CICF and \$125,000 to VWPRF, which must be in addition to the transfers cited above and which is also drawn from court costs in criminal and traffic cases in the District Court.

The fiscal 2024 budget as introduced includes \$3.3 million in special funds for *CICF*. Of these funds, grants totaling \$1.9 million are estimated to be awarded by CICB. The fiscal 2024 budget also includes \$3.3 million in federal funds for CICB grants.

State Expenditures: General fund expenditures increase in fiscal 2024 by an indeterminate amount to support the expanded operations of CICB/CICF under the bill and by \$3.7 million annually beginning in fiscal 2025 to reflect the mandated appropriation, under the assumptions discussed below. Special fund revenues and expenditures increase accordingly.

Although the bill repeals language that specifically states that CICF consists of money distributed to the fund from the additional courts costs collected from defendants under § 7-409 of the Courts and Judicial Proceedings Article (effective July 1, 2024), *the bill does not repeal (1) requirements under the Courts and Judicial Proceedings Article for these costs to be imposed on defendants or (2) the requirement for the Comptroller to deposit the money collected from the additional court costs to the fund.* Therefore, this analysis assumes that the money imposed on defendants continues to be available to CICF. GOCPYVS advises that in addition to making grant awards from CICB, it also uses those funds to cover administrative costs.

Under the bill, beginning in fiscal 2025, the Governor must include in the annual budget bill an appropriation of \$7.0 million to *CICF*. *For purposes of this analysis*, it is assumed that the special fund revenues from court costs (1) continue to be imposed on defendants and deposited to CICF; (2) remain available for expenditures associated with CICF/CICB operations; and (3) remain constant with that assumed in the fiscal 2024 allowance and the fiscal 2023 appropriation (approximately \$3.3 million). This analysis therefore accounts for general fund expenditures increasing by \$3.7 million beginning in fiscal 2025 to reflect the difference between the mandated appropriation amount and current *State* funding levels. Special fund revenues increase correspondingly; for purposes of this analysis, it is assumed that special fund expenditures also increase correspondingly, even though the total amount of awards made from the fund in any given year is unknown.

It is also assumed that the mandated appropriation is intended to provide additional *State-funded* support to an increased number of crime victims and other eligible individuals (and for related administrative costs). Because the bill *significantly* expands the scope of CICB/CICF as currently operated, this fiscal and policy note does not rely on the use of federal funds to meet any portion of the mandated appropriation amount.

GOCPYVS also advises that due to the expanded scope of CICB/CICF, it needs additional staff and resources. Specifically, GOCPYVS advises that 37 additional staff (4 administrative aides, 26 administrative specialists, 3 fiscal services technical staff, 1 fiscal accounts supervisor, 2 procurement officers, and 1 procurement manager) are needed to assist and serve the increased number of victims eligible for awards, to manage and oversee the additional types of services covered, to conduct procurements and services for the expanded services, and to manage the finances of the expanded program. Estimated expenditures associated with the new staff are approximately \$3.0 million in fiscal 2024, which accounts for the bill's October 1, 2023 effective date and increasing to over \$4.0 million by 2028.

The Department of Legislative Services (DLS) acknowledges that the bill significantly expands the work of CICB/CICF and agrees that additional staffing resources are required. However, although DLS is unable to reliably predict the additional staffing resources likely to be needed without experience under the bill, DLS generally disagrees that the *magnitude* of additional staffing resources estimated by GOCPYVS is solely required by the bill. DLS generally advises that a portion of the indeterminate general fund increase anticipated in fiscal 2024 as well as an indeterminate portion of the \$3.7 million annual increase beginning in fiscal 2025 is likely used to increase staffing resources at GOCPYVS (in addition to awarding grants).

Judiciary

The Judiciary can handle any judicial review necessary as a result of the bill with existing resources.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 861 (Delegate Smith) - Judiciary.

Information Source(s): Governor's Office of Crime Prevention, Youth, and Victim Services; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of Legislative Services

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