

SENATE BILL 22

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7lr0096

(PRE-FILED)

By: **Chair, Judicial Proceedings Committee (By Request – Departmental – Public Safety and Correctional Services)**

Requested: September 28, 2016

Introduced and read first time: January 11, 2017

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Criminal Injuries Compensation Board – Claimant Award**
3 **Basis**

4 FOR the purpose of altering the minimum eligibility threshold for a certain award of lost
5 earnings or support; establishing eligibility for a certain award of lost wages for
6 certain individuals related to a victim who died as a direct result of a crime or
7 delinquent act; prohibiting compensation for certain lost average weekly wage claims
8 from exceeding a certain amount; and generally relating to the Criminal Injuries
9 Compensation Board.

10 BY repealing and reenacting, with amendments,
11 Article – Criminal Procedure
12 Section 11–810 and 11–811
13 Annotated Code of Maryland
14 (2008 Replacement Volume and 2016 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
16 That the Laws of Maryland read as follows:

17 **Article – Criminal Procedure**

18 11–810.

19 (a) (1) The Board may make an award only if the Board finds that:

20 (i) a crime or delinquent act was committed;

21 (ii) the crime or delinquent act directly resulted in:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1. physical injury to or death of the victim; or

2. psychological injury to the victim that necessitated mental health counseling;

(iii) 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

(iv) the victim has cooperated fully with all law enforcement units.

(2) For good cause, the Board may waive the requirements of paragraph (1)(iii) and (iv) of this subsection.

(b) Unless total dependency is established, family members are considered to be partly dependent on a parent with whom they reside without regard to actual earnings.

(c) 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:

(i) medical care;

(ii) expenses for eyeglasses and other corrective lenses;

(iii) mental health counseling;

(iv) funeral expenses;

(v) repairing, replacing, or cleaning property;

(vi) disability or dependent claim; or

(vii) other necessary services; or

(2) lost at least [2 continuous weeks'] **\$100 IN** earnings or support.

(d) (1) (i) Except as provided under subparagraph (ii) of this paragraph, in considering a claim and in determining the amount of an award, the Board shall determine 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.

(ii) The Board may disregard the responsibility of the victim for the victim's own injury if that responsibility is attributable to efforts by the victim:

1 1. to prevent a crime or delinquent act or an attempted crime
2 or delinquent act from occurring in the victim's presence; or

3 2. to apprehend an offender who had committed a crime or
4 delinquent act in the victim's presence or had committed a felony or delinquent act that
5 would be a felony if committed by an adult.

6 (2) A claimant filing for injuries incurred as the occupant of a motor vehicle
7 or a dependent of an occupant of a motor vehicle operated in violation of § 21-902 of the
8 Transportation Article may not receive an award unless the claimant proves that the
9 occupant did not know or could not have known of the condition of the operator of the
10 vehicle.

11 (3) A claimant may not receive an award if:

12 (i) the victim initiated, consented to, provoked, or unreasonably
13 failed to avoid a physical confrontation with the offender; or

14 (ii) the victim was participating in a crime or delinquent act when
15 the injury was inflicted.

16 (e) (1) A victim or dependent may not be denied compensation solely because
17 the victim:

18 (i) is a relative of the offender; or

19 (ii) was living with the offender as a family member or household
20 member at the time of the injury or death.

21 (2) If the Board can reasonably determine that the offender will not receive
22 any economic benefit or undue enrichment from the compensation, the Board may award
23 compensation to a victim or dependent who is a relative, family member, or household
24 member of the offender.

25 11-811.

26 (a) (1) (i) Except as otherwise provided in this subsection, an award under
27 this subtitle shall be made in accordance with the schedule of benefits, as it existed on
28 January 1, 2001, and degree of disability as specified in Title 9, Subtitle 6 of the Labor and
29 Employment Article and any other applicable provisions of the Labor and Employment
30 Article, except for Title 9, Subtitle 8 of the Labor and Employment Article.

31 (ii) For determining the amount of an award under this subtitle, the
32 term "average weekly wages" does not include tips, gratuities, and wages that are
33 undeclared on the claimant's State or federal income tax returns for the applicable years.

(iii) If a claimant does not have “average weekly wages” to qualify under the formula in Title 9, Subtitle 6 of the Labor and Employment Article, the award shall be in an amount equal to the average of the maximum and minimum awards listed in the applicable portion of that subtitle.

(2) An award for loss of earnings or support made under this subtitle may be up to two-thirds of the victim’s gross average wage, but may not be less than the amount provided in paragraph (1) of this subsection.

(3) The parent or guardian of a victim who is a child and who resides with the victim may be eligible for an award of up to 30 days of lost earnings as a result of caring for the victim.

(4) An award for funeral expenses may not exceed \$5,000.

(5) Subject to the limitation under subsection (b)(3) of this section and § 11-812 of this subtitle, a person who is eligible for an award as the result of the death of a victim or psychological injury may be eligible, under the regulations that the Board adopts, to receive psychiatric, psychological, or mental health counseling.

(6) Subject to the limitation under subsection (b)(6) of this section and § 11-812 of this subtitle, a parent, child, or spouse of a victim who resides with the victim and who is eligible for an award as the result of the injury of a victim is eligible to receive psychiatric, psychological, or mental health counseling.

(7) SUBJECT TO THE LIMITATION UNDER SUBSECTION (B)(7) OF THIS SECTION AND § 11-812 OF THIS SUBTITLE, A PARENT, CHILD, OR SPOUSE OF A VICTIM WHO DIED AS A DIRECT RESULT OF A CRIME OR DELINQUENT ACT IS ELIGIBLE FOR AN AWARD OF UP TO 2 WEEKS OF LOST AVERAGE WEEKLY WAGES.

(b) Compensation awarded under this subtitle may not exceed:

(1) for a disability-related or dependency-related claim:

(i) except as provided in item (ii) of this paragraph, \$25,000; or

(ii) if the injury to the victim results in permanent total disability, up to an additional \$25,000 after a disability-related claim has been awarded to the victim;

(2) \$45,000 for a medical claim;

(3) \$5,000 for each claimant for psychiatric, psychological, or mental health counseling under subsection (a)(4) of this section;

(4) except as provided in item (1)(ii) of this subsection, a total of \$45,000, including any subsequent and supplemental awards;

(5) \$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]

(6) for an award for psychiatric, psychological, or mental health counseling made under subsection (a)(6) of this section:

(i) \$1,000 for each claimant; and

(ii) \$5,000 for each incident; **OR**

(7) \$2,000 FOR LOST AVERAGE WEEKLY WAGE CLAIMS MADE UNDER SUBSECTION (A)(7) OF THIS SECTION.

(c) An award made under this subtitle shall 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 as provided in item (3) of this subsection, 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 under § 11–813 of this subtitle.

(d) If there are two or more persons entitled to an award as a result of the death of a victim, the award shall be apportioned among the claimants.

(e) The Board may negotiate a settlement with a health care provider for the medical and medically related expenses.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2017.