



T. C. A. § 9-8-108

West's Tennessee Code Annotated [Currentness](#)

Title 9. Public Finances

 [Chapter 8.](#) Board of Claims

 [Part 1.](#) Establishment and Operation of Board

 **§ 9-8-108. Powers of board**

(a) The board of claims:

(1) Has the authority, but is not required, to investigate and hear claims and make awards when appropriate in cases based on acts or omissions of state officers or employees where a claim does not fall within the jurisdiction of the claims commission under [§ 9-8-307\(a\)](#). The board of claims shall not have jurisdiction over any claim arising under [§ 9-8-307\(a\)](#), even though the claimant requests punitive damages and/or damages in excess of those set forth in [§ 9-8-307\(e\)](#). No award shall be made unless the board determines that the facts would entitle the claimant to a judgment in action at law. Where the board determines to hear a claim, it may refer the claim to a designee for a hearing and written recommendation to the board on whether or not to make an award. If the recommendation by the designee is against an award or less than the amount requested by the claimant, the claimant shall have the right to an appeal to the board. The board may, in its discretion, hold a hearing or decide the claim on the record. All decisions of the board shall be final;

(2) Is authorized to pay final judgments in civil lawsuits against state employees as provided in [§ 9-8-112](#);

(3) Shall review and make recommendations to the commissioner of finance and administration and the general assembly regarding the following:

(A) The required funding of the risk management fund;

(B) The required funding of the claims commission administrative costs; and

(C) Appropriate levels of self-insurance, purchased insurance or any combination thereof for the protection of the state and/or its employees and the required funding for such insurance policies. The recommendation made by the board of claims to the general assembly for excess coverage for the ensuing calendar year pursuant to [§ 9-8-307\(e\)](#) may include self-insurance, purchased insurance or any combination of the two (2);

(4) Shall review and approve insurance policies designed to pay claims against the state or its employees arising from contract or tort. This responsibility includes the authority to coordinate the purchase of insurance between the various departments, agencies, and institutions, and all other entities created by the state other than counties and municipal corporations in order that adequate protection be given at the least possible cost;

(5) Has jurisdiction to hear disputes between the various departments and agencies of the state involving the assignment of losses to individual departments, as well as general responsibility to establish policies governing the administration of the state's contract and tort insurance program;

(6) Shall retain consultants as necessary to fully discharge the duties assigned to the

board;

(7) Shall hear claims for compensation by persons wrongfully imprisoned and granted exoneration pursuant to [§ 40-27-109](#). Any award made by the board pursuant to this subdivision (a)(7) shall be subject to the following conditions:

(A) Compensation payable to such persons shall be determined by the board considering all factors the board considers relevant including, but not limited to, the person's physical and mental suffering and loss of earnings; provided, however, that the maximum aggregate total of such compensation shall not exceed one million dollars (\$1,000,000);

(B) Any amount awarded shall be payable in equal monthly installments until paid in full, unless the person dies prior to receipt of the full amount. The amount of the monthly installments payable under this subdivision (a)(7) shall be calculated by dividing the non-commuted amount, determined pursuant to subdivision (a)(7)(D), by the estimated number of months the claimant will live based upon the claimant's life expectancy at the time of the award as determined from the mortality tables last adopted by the board of trustees of the Tennessee consolidated retirement system pursuant to [§ 8-34-503](#);

(C) If the person dies without leaving a surviving spouse or surviving minor children, the payments shall cease. Upon the death of the claimant, any monthly installments left remaining shall be paid to the claimant's surviving spouse and surviving minor children in equal portions. The amount payable to the surviving spouse, if any, shall be paid until the surviving spouse's death or remarriage. If the surviving spouse dies or remarries, then the amount that was payable to the surviving spouse shall be divided equally among the claimant's surviving minor children. Each child shall receive such child's share until reaching majority status or death, whichever occurs first, at which time the amount shall be redistributed equally among the remaining minor children. For purposes of this subdivision (a)(7)(C), "minor" means any person who has not attained eighteen (18) years of age;

(D) Upon motion of the claimant or in the discretion of the board, all or a portion of the compensation payable monthly under this subdivision (a)(7) may be commuted to a lump sum payment. In determining whether to commute the compensation, the board shall consider whether there exist special needs warranting such commutation, whether the commutation will be in the best interest of the person and whether that person has the ability to wisely manage and control the commuted award irrespective of whether there exist special needs. The claimant has the burden of proving that a lump sum payment is warranted;

(E)(i) In the event compensation is awarded to a claimant pursuant to this subdivision (a)(7), the board, at the request of the claimant, may fund on behalf of such claimant an annuity contract to be secured by the claimant; provided, however, that:

(a) Such contract shall only be secured from an insurance company licensed under the laws of the state of Tennessee whose claims paying ability is rated as superior or excellent by at least two (2) nationally recognized rating services;

(b) The contract, by its terms, cannot be sold, transferred, assigned, discounted or used as security for a loan; and

(c) The contract provides for survivor benefits;

(ii) The cost of any such annuity contract shall be paid from the compensation awarded to the claimant under this subdivision (a)(7);

(F) Any claim for compensation under this subdivision (a)(7) must be filed with the board no later than one (1) year from the date that the claimant is granted exoneration pursuant to [§ 40-27-109](#); and

(G) The state of Tennessee shall have a right of subrogation as provided by law for any amount awarded pursuant to this subdivision (a)(7) against any person who willfully and intentionally committed an act or engaged in conduct that directly resulted in or contributed to the wrongful conviction and imprisonment of the claimant;

(8) Shall certify the per occurrence limit to the claims commission;

(9) Has the authority to hear claims and make awards for property damage caused by an escapee from a state correctional facility; provided, that:

(A) The claimant has the burden of proving that the escapee caused the damage, that the proximate cause of the escape was the negligence of a state employee, that the incident giving rise to the loss occurred in the county in which the escape occurred or in a county contiguous to the county in which the escape occurred, that the damage occurred within seventy-two (72) hours of the escape and that the amount requested is not reimbursable from any other source;

(B) No award shall be paid if the state correctional facility from which the individual causing such damage escaped is classified as a community service center, a work release center or a non-secured juvenile facility;

(C) No award shall be paid to any individual who aided in the escape of the inmate causing such damage;  
(D) For purposes of this subdivision (a)(9), negligence shall exist when an employee of the department of correction is disciplined as a result of acts or omissions related to the occurrence of escape;  
(E) Claim awards are limited to five thousand dollars (\$5,000) per claimant; and  
(F) No award shall be made for damages occurring prior to February 4, 1987; provided, that claims made pursuant to this subdivision (a)(9) for damages that occurred between January 1, 1987 and February 29, 1988 must be filed with the board of claims within sixty (60) days of February 29, 1988; and

(10) Is authorized to adopt and publish rules and regulations necessary for the proper performance of its duties.

(b) The board of claims may not consider a claim filed more than one (1) year after the occurrence of the incident giving rise to the claim.

1984 Pub.Acts, c. 972, § 16; 1986 Pub.Acts, c. 626, § 6; 1986 Pub.Acts, c. 911, § 5; 1988 Pub.Acts, c. 467, § 1; 1988 Pub.Acts, c. 701, § 1. Amended by [2003 Pub.Acts, c. 212, § 4, eff. July 1, 2003](#); [2004 Pub.Acts, c. 880, § 1, eff. June 7, 2004](#).

#### HISTORICAL AND STATUTORY NOTES

The preamble of 2004 Pub.Acts, c. 880, provides:

"WHEREAS, in May 1980, Clark McMillan ("McMillan") was convicted in the Shelby County Court of a rape and robbery of a sixteen-year-old girl that occurred on October 26, 1979 in Overton Park; and

"WHEREAS, McMillan was sentenced to 119 years in prison; and

"WHEREAS, the prosecution presented no physical evidence of McMillan's guilt at his trial; and

"WHEREAS, the most significant evidence of McMillan's guilt was problematic identifications by the victim and her boyfriend as the perpetrator; and

"WHEREAS, during the investigation of this crime, semen was recovered in the victim's rape kit and on her clothing; and

"WHEREAS, forensic DNA testing did not exist at the time of the prosecution and conviction of McMillan; and

"WHEREAS, at the time of his conviction, McMillan was twenty-two years old and physically disabled as the result of a spinal injury; and

"WHEREAS, in August 2001, the State of Tennessee enacted a law allowing certain inmates access to postconviction DNA testing to support claims of factual innocence; and

"WHEREAS, on April 18, 2002, the Tennessee Bureau of Investigation Memphis Crime Laboratory completed the relevant DNA testing, testing that irrefutably excluded McMillan as the source of the semen recovered from the victim; and

"WHEREAS, on May 14, 2002, the prosecutor conceded McMillan's actual innocence and joined in his application to vacate the conviction and dismiss the indictment against him; and

"WHEREAS, subsequent to McMillan's exoneration, the DNA profile of the semen recovered from the victim was matched to David Louis Boyd, a serial rapist who had been a suspect in other attacks in Overton Park and who is now serving a life prison sentence in Texas for a subsequent aggravated rape that occurred in 1983; and

"WHEREAS, the Speaker of the Senate of the 102nd General Assembly of the State of Tennessee, in conjunction with Senator Roscoe Dixon, issued a proclamation recognizing Mr. McMillan for his determination, strength, and optimism; and

"WHEREAS, McMillan's sister, father, and grandmother died while he was in prison, and his mother suffered several strokes and lost her home; and

"WHEREAS, while incarcerated, McMillan received negligible medical treatment for the preexisting spinal injury and served his time in prison under extreme physical pain and discomfort as his condition deteriorated; and

"WHEREAS, as a result of his wrongful conviction, McMillan sustained the following injuries: pain and suffering; severe mental anguish; emotional distress; loss of income; infliction of physical illness; inadequate medical care; humiliation, indignities, and embarrassment; degradation; injury to reputation; permanent loss of natural psychological development; and McMillan also endured restrictions on his liberty and all forms of personal freedom, such as diet, sleep, personal contact, educational opportunity, vocational opportunity, athletic opportunity, personal fulfillment, sexual activity, family relations, reading, television, movies, travel, enjoyment, and expression; and

"WHEREAS, McMillan now resides in Memphis, Tennessee with his wife, Betty, who he met through prison ministries, and he plans to serve in a youth ministry, guiding and encouraging young people to make choices which will lead them to live productive lives; and

"WHEREAS, McMillan's exoneration was the first under Tennessee's then-new postconviction DNA testing law; and

"WHEREAS, McMillan served twenty-two and a half years for this crime that he did not commit, the second longest prison time served by any of the 140 postconviction DNA exonerations to date nationwide; and

"WHEREAS, New York's compensation statute, NY Court of Claims Act § 8-D, has no award cap; and

"WHEREAS, Alabama's compensation statute, Al. § 29-2-150-165, provides for compensation in the amount of a minimum of \$50,000 per year of wrongful imprisonment; and

"WHEREAS, California's compensation statute, [Cal. Penal Code § 4900-4906](#), provides for compensation in the amount of \$100 per day or \$36,500 per year of wrongful imprisonment; now, therefore,"

