

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 723

(Senator Lee)

Judicial Proceedings

Board of Public Works - Erroneously Convicted Individual - Restitution

This bill establishes that if the Board of Public Works (BPW) makes a grant to an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit, the grant must include the amounts of any previously paid fines, fees, costs, and restitution determined by a court to be owed to the individual in connection with the conviction. The bill also requires that if a court reverses a person's conviction or adjudication and orders the refund of fines, fees, costs, or restitution paid by the individual in connection with the conviction, BPW must pay the amount associated with the court-ordered refund from money in the General Emergency Fund or money provided in the annual budget, unless the person has received the type of BPW grant mentioned above.

Fiscal Summary

State Effect: Minimal increase in general fund expenditures for court-ordered refunds. Revenues are not affected.

Local Effect: Minimal decrease in local expenditures if the State assumes payment of refunds currently paid by local jurisdictions. Revenues are not affected.

Small Business Effect: None.

Analysis

Current Law: A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that (1) creates a substantial or

significant possibility that the result may have been different, as that standard has been judicially determined and (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.

In ruling on a petition, the court may set aside the verdict, resentence, grant a new trial, or correct the sentence, as the court considers appropriate. The court must state the reasons for its ruling on the record. A petitioner in a writ of actual innocence proceeding has the burden of proof.

Section 8-301 of the Criminal Procedure Article authorizes a State's Attorney, upon request of a petitioner for a writ of actual innocence, to certify that a conviction was in error if (1) the court grants the petitioner's petition for relief; (2) the court sets aside the verdict or grants a new trial when ruling on the petitioner's petition for writ of actual innocence; and (3) the State's Attorney declines to prosecute the petitioner because the State's Attorney determines that the petitioner is innocent.

BPW may grant payments to an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit. BPW is authorized to grant an amount commensurate with the actual damages sustained by the individual but is also authorized to grant a reasonable amount for any financial or other appropriate counseling for the individual due to the confinement. An individual is eligible for these payments if (1) the individual has received from the Governor a full pardon stating that the individual's conviction has been shown conclusively to be in error or (2) the State's Attorney certifies that the individual's conviction was in error under § 8-301 of the Criminal Procedure Article.

BPW must make payments from money in the General Emergency Fund or money that the Governor provides in the annual budget. BPW may only make payments to the erroneously convicted individual, and the payments can be made in a lump sum or installments.

An individual is prohibited from paying any part of a received payment to another person for services rendered in connection with the collection of the payment. An obligation incurred in violation of this prohibition is void, and a payment made in violation of this prohibition must be forfeited to the State. However, an individual may contract for services to determine the individual's innocence, obtain a pardon, or obtain the individual's release from confinement.

Background: According to the Judiciary, there were 194 petitions for writs of actual innocence filed in the State's circuit courts between fiscal 2014 and 2016. There were 64 petitions filed in the State's circuit courts (excluding Montgomery County) during fiscal 2017. None of the State's jurisdictions maintains data on the number of petitions for writs of actual innocence granted or denied.

The Maryland State’s Attorneys’ Association advises that it does not have information on any State’s Attorney certifying that a conviction was made in error since the effective date of legislation establishing that authority (October 1, 2017). However, BPW advises that it has received one grant application for \$1.2 million from an applicant who has a certificate of a conviction made in error from a State’s Attorney.

BPW Payments

Exhibit 1 contains information on BPW payments from 1984 through 2004 (the year of the most recent payment).

Exhibit 1
BPW Payment Amounts

<u>Year</u>	<u>Incarceration Period</u>	<u>Actual Amount of BPW Award</u>
2004	26 years, 10 months	\$1.4 million
2003	19 years, 8 months	\$900,000
1994	9 years	\$300,000
1987	11 years	\$250,000
1984	11 months	\$16,500

BPW: Board of Public Works

Source: Department of Legislative Services

BPW advises that payments are made in lump sum payments or installments. Initial payments are made from BPW’s contingency fund (also known as the General Emergency Fund), which is usually budgeted at \$500,000 annually and from which payment in full or an initial installment payment may be made. Future installments are made from BPW’s Settlement and Judgments Fund. The fund is usually not funded unless a specific amount has been authorized. The last time that fund received an appropriation was fiscal 2015.

Pardons and Exonerations

Pardons are granted at the discretion of the Governor. Being erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit is not a prerequisite for a gubernatorial pardon. Data is not immediately available on the number of individuals erroneously convicted, sentenced, and confined under State law for crimes they did not commit.

The National Registry of Exonerations is a project of the University of California Irvine Newkirk Center for Science and Society, the University of Michigan Law School, and the Michigan State University College of Law. The registry, which is based on publicly available information, collects, analyzes, and compiles information about known exonerations of innocent criminal defendants since 1989. The registry lists information for 25 exonerations in Maryland.

Task Force to Study Erroneous Convictions and Imprisonment

Chapter 800 of 2017 established the Task Force to Study Erroneous Conviction and Imprisonment, which is staffed by the Governor's Office of Crime Control and Prevention. The task force must (1) study the process for establishing an erroneous conviction; (2) study the processes and standards for designating an erroneous conviction in other states; and (3) make recommendations on whether the State should create and implement a new process to designate an erroneous conviction and determine innocence. The task force was required to report its findings and recommendations to the Governor and General Assembly by December 15, 2017; however, the final report has not yet been issued. The task force terminates September 30, 2018.

Recent Supreme Court Activity

In *Nelson v. Colorado*, 581 U.S. ___ (2017), the U.S. Supreme Court held that Colorado's Compensation for Certain Exonerated Persons Act (Exoneration Act) violates the right to due process under the Fourteenth Amendment. The petitioners in the case both had their convictions reversed and/or vacated through postconviction review. One of the petitioners was acquitted of all charges on retrial, and the state elected not to appeal or retry the other petitioner's case. Following invalidation of their convictions, both petitioners made motions in the applicable trial courts for refunds of the costs, fees, and restitution they had paid. One petitioner had her motion denied in the trial court while the other petitioner was granted a refund of costs and fees but not restitution.

The Colorado Court of Appeals determined that both petitioners were entitled to pursue refunds of their costs, fees, and restitution. However, the Colorado Supreme Court reversed that decision and held that Colorado's Exoneration Act was the sole authority for these refunds and because the petitioners had not filed claims under that statute, the court could not order refunds for them. The court also determined that the statute did not present a due process issue, even though it authorizes the state to keep conviction-related assessments paid by a prevailing defendant, unless the defendant pursues an independent civil proceeding in which the defendant must prove his/her innocence by clear and convincing evidence. The U.S. Supreme Court conducted its own due process analysis and subsequently reversed the Colorado Supreme Court's decision. According to the court, even though the petitioners made their various payments when their convictions were in

place, they were presumed innocent once their convictions were erased. Thus, Colorado cannot deem them presumed innocent under one scenario but guilty for the purposes of monies paid in connection with those convictions. The concurring opinion agreed with the decision but disagreed with the methodology used and the lack of distinction in the majority opinion between restitution and the other types of payments made.

The court released its opinion on April 19, 2017. However, on March 23, 2017, Colorado's governor signed into law legislation granting defendants whose convictions are overturned under specified circumstances the right to a refund of monetary payments made relative solely to the conviction, subject to specified procedures. Colorado's law took effect September 1, 2017.

State Expenditures: General fund expenditures increase minimally from BPW payments for court-ordered refunds of conviction-related fines, fees, costs, and restitution paid by an individual whose conviction has been reversed. General fund expenditures decrease minimally for the Judiciary to the extent that BPW assumes payments of refunds currently paid by the Judiciary in applicable cases. BPW can develop procedures to implement the bill's provisions using existing resources.

The bill's specification that a BPW grant to an erroneously convicted individual must include the amounts of any previously paid fines, fees, costs, and restitution determined by a court to be owed to the individual in connection with the conviction does not materially affect BPW expenditures. According to BPW, those costs are considered actual damages and are typically included in grants awarded.

This estimate assumes that:

- relatively few convictions are reversed each fiscal year;
- the amounts associated with court-ordered refunds of fines, fees, costs, and restitution *actually paid* by individuals whose convictions are reversed does not rise to a significant level; and
- the bill does not increase the frequency with which courts order refunds.

Assuming that the District Court currently pays for court-ordered refunds of costs, fines, and fees imposed in convictions rendered in that court, then BPW assumes payment of funds currently paid by the State (via the District Court) and possibly payments of refunds by local jurisdictions in circuit court cases, as discussed below. It is unclear if a victim who has received restitution must refund those funds if a court orders a refund of restitution upon reversal of the applicable conviction. If that is the case, then BPW assumes payment of refunds of restitution in District Court and circuit court cases. If the State (via the District Court) currently pays refunds of restitution in District Court cases, then the bill shifts responsibility for these payments between State-funded entities.

The Judiciary advises that, barring a case-by-case analysis, information is not readily available on the number of convictions reversed. However, the Colorado experience may provide some context. According to the fiscal analysis for the recent Colorado legislation, Colorado's Judiciary Department advised that the Colorado Court of Appeals overturned 45 criminal cases on direct appeal. The analysis also noted that, according to a legal opinion in *People v. Nelson* (one of the lower court cases leading to the U.S. Supreme Court case), the department estimated that, as far back as 2005, the number of overturned cases in Colorado has not exceeded 67 per year. However, the Colorado analysis noted that information was not available on how many of the overturned cases involved dismissals of charges or acquittals upon retrials (two criteria included in the Colorado statute) or the number of restitution orders. The estimate was also unable to estimate the cost of future refunds.

Local Expenditures: Local expenditures decrease minimally to the extent that the bill results in BPW assuming payments for refunds currently paid by local jurisdictions in circuit court cases. The Judiciary was unable to provide information on the source of payments for court-ordered refunds of costs, fines, fees, and restitution in time for inclusion in this fiscal and policy note. However, assuming that local jurisdictions pay the refunds in those cases, then the bill shifts responsibility for these payments from local jurisdictions to BPW.

Additional Information

Prior Introductions: None.

Cross File: HB 1583 (Delegate Vallario, *et al.*) - Judiciary.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland State's Attorneys' Association; Department of Budget and Management; Department of Public Safety and Correctional Services; Board of Public Works; U.S. Supreme Court; SCOTUSblog; *Denver Post*; Colorado Legislative Council Staff; Department of Legislative Services

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