

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 487
Judiciary

(Delegate Ali, *et al.*)

Law Enforcement Misconduct - Erroneous Conviction Compensation and
Expungement

This bill alters existing provisions pertaining to payments by the Board of Public Works (BPW) to individuals erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit by establishing alternative award amounts and procedures for BPW grants to these individuals when misconduct by law enforcement is involved.

Fiscal Summary

State Effect: Potential significant increase in general fund expenditures if the bill increases the amount of BPW awards. Revenues are not materially affected.

Local Effect: The bill's requirements can be handled with existing budgeted local resources. Revenues are not materially affected.

Small Business Effect: None.

Analysis

Bill Summary: The bill contains provisions regarding eligibility standards for grants, grant determinations, grant award amounts, and expungements of records for relevant convictions.

Eligibility for Grants

An individual is eligible for a grant if (1) a law enforcement officer involved in the individual's arrest or conviction is subsequently convicted of a crime related to conduct during the individual's criminal case and (2) the individual has received a gubernatorial pardon stating that the individual's conviction has been shown conclusively to be in error or a State's Attorney has certified that the individual's conviction was in error under § 8-301 of the Criminal Procedure Article.

Grant Determinations

When an individual is eligible for a grant and officer misconduct is involved, BPW must conduct a hearing to determine the amount of the grant. At the hearing, BPW may consider (1) whether the law enforcement officer's criminal act was causally related to the individual's erroneous conviction; (2) the severity of the misconduct by law enforcement; (3) the extent of the harm caused to the erroneously convicted individual; and (4) any other relevant factors.

Grant Award Amounts

If BPW finds that the erroneously convicted individual is entitled to a grant under the bill, BPW must grant the individual at least \$50,000 for each year of erroneous confinement, subject to a maximum award amount of \$5,000,000.

Separate Legal Action

An individual is not prohibited from pursuing separate legal action against the law enforcement officer involved in the erroneous conviction.

Expungement

An erroneously convicted individual who receives a grant from BPW is entitled to expungement, free of charge, of all court records and police records relating to the arrest and conviction. The bill establishes procedures for these expungements, and it authorizes a person to seek legal redress and recover court costs if a law enforcement unit, a booking facility, or the Central Repository fails to expunge a police record as required under the bill.

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.

Under § 10-105 of the Criminal Procedure Article, a person is eligible for expungement if convicted of only one criminal act (that is not a crime of violence) and is granted a full and unconditional pardon by the Governor. Other requirements also apply. However, a petition for expungement based on a pardon must be filed no later than 10 years after the pardon was signed by the Governor.

Background: The bill does not expand eligibility for BPW awards; rather, it establishes an alternate award calculation and evaluation process when “law enforcement misconduct” is involved.

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 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).

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.

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 on September 30, 2018.

State Expenditures: General fund expenditures increase, perhaps significantly, to the extent the bill increases the payment amounts issued by BPW, which cannot be reliably determined at this time. The bill affects a small population of individuals who appear to already be eligible for BPW awards. While the bill establishes a minimum amount for an

award, it also contains a \$5,000,000 maximum. The decision to award an amount above the minimum amount is within BPW’s discretion.

Exhibit 1 contains information on BPW payments from 1984 through 2004 (the year of the most recent payment). While BPW did not specify whether any of these cases meets the bill’s definition of “law enforcement misconduct,” based on the information provided, it does not appear that they do. However, *for illustrative purposes only*, Exhibit 1 shows the minimum and maximum amounts that BPW would award under the bill *if law enforcement misconduct was involved*.

Exhibit 1
Board of Public Works Actual Payment Amounts and
Payment Amounts Under the Bill If Law Enforcement Misconduct Was Involved

<u>Year</u>	<u>Incarceration Period</u>	<u>Actual Amount of BPW Award</u>	<u>Minimum Amount Proposed*</u>	<u>Maximum Amount Proposed*</u>
2004	26 years, 10 months	\$1.4 million	\$1.34 million	\$5,000,000
2003	19 years, 8 months	\$900,000	\$983,333	\$5,000,000
1994	9 years	\$300,000	\$450,000	\$5,000,000
1987	11 years	\$250,000	\$550,000	\$5,000,000
1984	11 months	\$16,500	\$45,833	\$5,000,000

BPW: Board of Public Works

*Reflects amount if law enforcement misconduct is determined to have been involved. The maximum amount is within the discretion of BPW.

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, which is usually budgeted at \$500,000 per year 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 left empty unless a specific amount has been authorized. The last time that fund received an appropriation was fiscal 2015.

BPW advises that it can implement the bill’s procedural requirements with existing budgeted resources.

The Judiciary advises that, because the bill's process and timeline for expungements differs from the current process, the Judiciary needs to conduct 9.6 hours of computer reprogramming, at a cost of \$860 in fiscal 2019. Accordingly, the Department of Legislative Services advises this reprogramming should be able to be undertaken with existing budgeted resources.

Given the small number of individuals to whom the bill's expungement provisions apply, the Department of Public Safety and Correctional Services can implement the bill's expungement provisions with existing budgeted resources.

Local Expenditures: Several local jurisdictions advise that the bill has no or minimal fiscal impact on their jurisdictions.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, and Frederick counties; cities of Frederick and Havre de Grace; Governor's Office; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Maryland State's Attorneys' Association; Department of Public Safety and Correctional Services; Board of Public Works; Department of State Police; National Registry of Exonerations; Department of Legislative Services

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