

**armbrust\_fav\_sb797**

Uploaded by: Armbrust, Shawn

Position: FAV

**Senate Bill 797 FAVORABLE**  
**Shawn Armbrust, Mid-Atlantic Innocence Project**  
**February 26, 2020**

The Mid-Atlantic Innocence Project (MAIP) is dedicated to exonerating innocent people who have been wrongfully convicted in Maryland, Virginia, and Washington, D.C., and promoting policies to prevent and address wrongful convictions. MAIP supports Senate Bill 797 because it will fix the current exoneree compensation law, which is flawed and does not ensure that exonerees receive prompt, fair compensation.

Hubert James Williams is a Vietnam veteran who spent nearly 12 years in prison for a Baltimore County attempted murder that he didn't commit. When he won a writ of actual innocence in 2009 and was released, Mr. Williams had nothing. A courthouse employee loaned him bus fare so he could get to his mother's house. His post-exoneration life has been miserable. Because of his wrongful conviction, he lost his job, his family, and his will to live. Mr. Williams struggles with substance abuse but couldn't afford proper treatment, has profound physical and mental health problems, and has attempted suicide several times. He alternated between unsafe VA-supported house and homelessness; in either setting, he was frequently robbed and beaten.

In January 2017, lawyers for Mr. Williams filed a compensation petition on his behalf with the Board of Public Works (BPW). That petition was accompanied by a certification from the Baltimore County State's Attorney that he was innocent and a request by the lawyers to expedite his petition because Mr. Williams' situation was so dire. Although the BPW staff promptly reviewed the petition, the BPW did not act on that claim for 21 months, until October 2019.

Mr. Williams was not alone. Between 2004 and October 2019, not a single exoneree in Maryland received compensation from the state, even though Maryland has long been one of the 35 states with a law that theoretically provided for such compensation – and even though there were four DNA exonerations and five other Writs of Actual Innocence granted during that time. The compensation law initially allowed only those with a gubernatorial pardon to receive compensation. Given the difficulty of securing pardons, even in cases where a prosecutor agreed that someone was innocent, this body changed the law in 2016 to allow compensation in cases where prosecutors certified innocence.

Unfortunately, that was not enough. Between January 2017 and June 2019, five men with such certifications, including Mr. Williams, sought compensation from the BPW. The BPW did not act on those claims, suggesting that it was not equipped to determine how much each exoneree should receive. Finally, under significant pressure from legislators and the media, it agreed in October 2019 to compensate the five men.

Senate Bill 797 would address these problems by: (1) providing a set amount of compensation rather than asking the BPW to individually assess claims; (2) setting that amount at \$78,916 per year of wrongful incarceration, the formula used to compensate the five men in October 2019; and (3) streamlining the process by assigning Administrative Law Judges (ALJs) to assess eligibility and requiring the BPW to compensate those who are deemed eligible. In addition, it would provide much-needed services to exonerees upon their release — critically important measures that will have a sustainable impact on their transition back to society.

This body has long believed that the state has a responsibility to compensate those who have spent time in prison for crimes they didn't commit. As the past 15 years have demonstrated, that goal cannot effectively be achieved without fixing the current law. Senate Bill 797 does just that, and MAIP therefore urges this committee to issue a favorable report.

**arrington\_fav\_sb797**

Uploaded by: Arrington, Jermaine

Position: FAV

**Senate Bill 797 Favorable**  
**Fixing Maryland's Exoneree Compensation Law**  
**Jermaine Arrington, *Montgomery County Exoneree***  
Senate Judicial Proceedings Committee  
February 26, 2020

My name is Jermaine Arrington and I spent 15 years in prison for a murder in Montgomery County that I didn't commit. Despite DNA proving my innocence, I am still not eligible for state compensation.

When I went to prison I was 19 years old and I wouldn't be free again until I was 34 years old. There are some things I'll never get back. I missed out on so much time with my family. I never got to say goodbye to loved ones who passed away while I was incarcerated. My dreams of joining the military were gone. I missed out on a critical time in life when most people are learning to become adults.

Even after a decade of freedom, I'm still struggling from the effects of my wrongful conviction. My wife helped me get back on my feet when I first got out, but it is still hard for my family to make ends meet. I've tried to make the best out of my circumstances. I became a certified youth practitioner. For the past three years I've been the manager of a program in Montgomery County that helps at-risk youth get diplomas and job skills.

If I hadn't been wrongfully incarcerated I would have been further along in my career. I've taken college courses but I don't have the money to finish my bachelor's degree. With a college diploma I would be able to do what I love on a bigger scale and help more young people. My wife and children would be more financially stable.

This legislation would give me a chance to be compensated for the years that were taken away from me. It would give me a shot at finally getting justice. I hope you will vote to improve Maryland's compensation law.

**chestnut\_fav\_sb797**

Uploaded by: Chestnut, Alfred

Position: FAV

**Senate Bill 797 Favorable**  
**Fixing Maryland's Exoneree Compensation Law**  
**Alfred Chestnut, *Baltimore Exoneree***  
Senate Judicial Proceedings Committee  
February 26, 2020

My name is Alfred Chestnut. At the age of 16 my friends Ransom Watkins, Andrew Stewart and I were wrongfully convicted of shooting another teenager. After spending 36 years in prison, we were finally exonerated on November 29, 2019 by the Baltimore City State's Attorney Marilyn Mosby.

Ransom, Andrew and I were sent to adult prison when we were just kids. Being behind bars when you are innocent is hard enough. Being the youngest inmates was hell. Think about everything that happened in your teens, 20's, 30's and 40's. That was all taken away from us. We were forced to grow up in prison.

For decades I focused on proving my innocence and going home. I didn't know how difficult it would be once I was exonerated. Most people my age have built careers, bought houses, and saved for retirement. I am just beginning my adult life with almost no financial resources. I thought that I would get compensated right after I got out of prison. I was surprised to learn that other exonerees had waited for over a year.

If I didn't have my fiancé to support me, I don't know what I would do. I don't want to be a burden on my family. My dream is to start my own business in the food industry. I love to cook and want to open a restaurant, but that takes money. I applied for state compensation but haven't gotten a dime yet, and I don't know what to expect.

The state failed exonerees, not the other way around. The state should take responsibility by compensating innocent people quickly and fairly. There is no way to give me back the time that I lost, but there is a way to improve the law so that exonerees can have a better future.

**feldman\_fav\_sb797**

Uploaded by: Feldman, Michelle

Position: FAV

Contact: Michelle Feldman, State Campaigns Director, (516) 557-6650 mfeldman@innocenceproject.org

**Senate Bill 797 Favorable**  
**Fixing Maryland's Exoneree Compensation Law**  
**Michelle Feldman, Innocence Project**  
**Senate Judicial Proceedings Committee**  
February 26, 2020

When the state takes an innocent person's liberty, the state has a responsibility to help repair the damage. Wrongfully convicted people lose their freedom and time with family and friends, while suffering the agony of prison life. There is also economic suffering. Exonerees missed critical opportunities to build careers, increase earnings, establish savings and pay into Social Security. After proving innocence and securing their freedom, the wrongfully convicted often have to restart their lives without any resources.

Nationally 35 states, the federal government and Washington D.C. have exoneree compensation laws that are supposed to provide a straightforward path for wrongfully convicted people to receive financial justice. However, Maryland's law is not working efficiently and is out of step with the rest of the nation. Problems in the statute were underscored when five exonerees filed compensation claims with the Board of Public Works (BPW), and some waited for over a year before payments were granted in October 2019.

Fixing Maryland's exoneree compensation law is in the interest of exonerees and taxpayers. Because the law hasn't worked properly, the only avenue to economic justice for many exonerees is filing **federal civil rights lawsuits, which have cost Maryland taxpayers over \$24 million.**<sup>1</sup> These cases often take years to resolve, and taxpayers must cover litigation costs. If the exoneree prevails there is no limit on the amount that may be awarded.

**Senate Bill 797**, sponsored by Senator Delores Kelley and **House Bill 985**, sponsored by Delegate Kathleen Dumais would fix Maryland's compensation law so that it works effectively for the wrongfully convicted and taxpayers. The following information explains how the legislation addresses problems in the current law, and compares provisions of the legislation to exoneree compensation laws nationally.

	<b>Current Law</b>	<b>Problem in Current Law</b>	<b>SB 797/HB985</b>
<b>1. Amount</b>	No set amount. Board of Public Works (BPW) is supposed to determine "an amount commensurate with the actual damages sustained by the individual."	<ul style="list-style-type: none"><li>No guidance on how BPW shall determine "actual damages."</li><li>A majority of states provide a set amount of compensation per year of wrongful incarceration.</li></ul>	<b>\$78, 916 per year of wrongful incarceration</b> (5-year average of state's median household income). This formula was used by BPW to compensate the five exonerees in October 2019.

<sup>1</sup> Civil payments were compiled by Jeffrey S. Gutman, a Professor of Clinical Law at the George Washington University Law School who tracks state compensation and civil litigation awards/settlements for every U.S. exoneration since 1989. His data is based on records from the National Registry of Exonerations, PACER and state public records.



<p><b>2. Non-monetary Benefits</b></p>	<p>BPW “may grant a reasonable amount for any financial or other appropriate counseling.”</p>	<p>Provides limited and vague non-monetary benefits.</p>	<p><b>Administrative Law Judge (ALJ) may direct appropriate state agencies</b> to provide the following: 1) state identification, 2) education/training, 3) health and dental care, 4) public college/university tuition, &amp; 5) reimbursement for court fines, fees, and restitution paid for the wrongful conviction.</p>
<p><b>3. Who Authorizes Compensation?</b></p>	<p><b>Board of Public Works (BPW)</b></p>	<p>BPW’s primary role is to oversee capital project spending. A majority of states have judges determine eligibility for compensation because they understand how to assess evidence and claims.</p>	<p>ALJs would determine who meets the eligibility requirements. ALJs already adjudicate claims against the state, conduct hearings, and assess witnesses and evidence. There are set rules of procedure and most claims are resolved within 90 days.</p>
<p><b>4. Eligibility Requirements</b></p>	<p>1) Governor pardon based on conviction being “in error.” 2) State’s Attorney certifies individual’s conviction was “in error” under “writ of actual innocence” law (§ 8-301).</p>	<ul style="list-style-type: none"> <li>• No definition of “conviction in error.”</li> <li>• Does not require affirmative proof of innocence.</li> <li>• Excludes people exonerated with DNA or other types of evidence that do not meet legal definition of “newly discovered” (e.g. evidence withheld by the state at the time of trial in violation of <i>Brady v. Maryland</i>).</li> <li>• Excludes people who are granted writ of actual innocence under § 8-301 by a judge, but the State’s Attorney did not agree to it.</li> </ul>	<p>1) Governor pardon based on conclusion that person did not commit the crime. 2) State’s Attorney certifies person was convicted of a crime the person did not commit under “writ of actual innocence” law (§ 8-301). 3) ALJ determines that the person has proved by a preponderance of evidence:</p> <ol style="list-style-type: none"> <li>a. Person did not commit the crime or act as an accessory or accomplice.</li> <li>b. Conviction was reversed or vacated, and charges were either dismissed, or person was retried and acquitted.</li> <li>c. Person did not commit perjury, fabricate evidence, or bring about the conviction by his own conduct.</li> </ol>
<p><b>5. Process</b></p>	<p>BPW “may grant”... “an amount commensurate with the actual damages.”</p>	<p>No deadlines or rules for BPW to issue compensation.</p>	<p>1) Person must file for “order of eligibility” within 2 years of the date of the pardon, date of State’s Attorney certification, or date when conviction was overturned and either charges were dismissed or person was retried and acquitted. 2) ALJ automatically grants order of eligibility if person was pardoned or state certified under writ of actual innocence. 3) If person files under #3, ALJ serves notice to State’s Attorney. If State’s Attorney contests the claim,</p>

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			ALJ may hold hearings for sides to call witnesses, etc. 4) Orders granting or denying compensation are appealable. 5) ALJ delivers order of eligibility to BPW and relevant state agencies with amount of compensation and services granted. BPW shall pay within 60 days.
<b>6. Civil Lawsuits</b>	Not addressed.	Not addressed.	<b>Civil Offset Provision.</b> Exonerees who receive state compensation and later obtain civil awards/settlements must reimburse the state for the difference. Conversely, exonerees who first obtain civil awards/settlements and then file for state compensation would only be entitled to an amount of state compensation that subtracts the amount of the civil award/settlement.

**National Perspective: SB 797/HB985 Compared to Other Exoneree Compensation Laws**

**1. Amount**

**SB 797/HB 985: \$78, 916 per year of wrongful incarceration** (5-year average of state’s median household income). This formula was used to compensate the five exonerees in October 2019.

**National Picture:** The majority of states provide a set amount of compensation at a rate of at least \$50,000 per year of wrongful incarceration. The national average for state compensation payments is \$68,000 per year of wrongful incarceration.<sup>2</sup>

- Greater than \$50k= D.C., NV, TX, CO, KS, OH, CA, CT, VT.
- \$50k= AL, FL, HI, IN, MI, MN, MS, NJ, NC, WA
- Washington, DC- \$200,000
- NV- 1-10 years= \$50,000 per year of wrongful incarceration; 10-20 years= \$75,000 per year of wrongful incarceration; 20 or more years = \$100,000 per year of wrongful conviction
- TX- \$80,000
- CO- \$70,000
- KS-\$65,000

<sup>2</sup> Jeffrey Gutman. *An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted*, 82 Mo. L. Rev. 369 (2017).

## 2. Non-Monetary Benefits

**SB 797/HB 985:** Administrative Law Judge (ALJ) may direct appropriate state agencies to provide the following: 1) state identification, 2) education/training, 3) health and dental care, 4) public college/university tuition, & 5) reimbursement for court fines, fees, and restitution paid for the wrongful conviction.

### National Picture:

- **Tuition assistance:** 14 states (CO, CT, FL, KS, LA, MA, MN, MT, NC, NJ, NV, TX, VA, VT)
- **Medical expenses:** 9 states (CA, IL, KS, LA, MN, NJ, NV, TX, VT)
- **Job search assistance:** 7 states (CA, CT, LA, IL, NC, NJ, TX)
- **Housing assistance:** 3 states (CA, KS, NJ)
- **Counseling services:** 12 states: (CA, CT, IN, KS, LA, MA, NJ, NV, TX, VA, VT, WA)
- **Re-entry services:** 6 states: (CA, CT, IL, IN, NV, TX)
- **Immediate assistance upon exoneration:** 1 state (CA)

## 3. Who determines eligibility?

**SB 797/HB 985:** Administrative Law Judges (ALJ) would determine who meets the eligibility requirements. ALJs already adjudicate claims against the state, conduct hearings, and assess witnesses and evidence. There are set rules of procedure and most claims are resolved within 90 days.

**National Picture:** The federal law and 21 of 35 states compensation laws task a judge with determining eligibility for compensation.

- **Circuit Court:** 2 states (HI, MS)
- **Superior Court or County Supreme Court:** 5 states (MA, ME, NJ, VT, WA)
- **Court of Claims:** 5 states (IL, MI, NY, WV, OH)
- **District Court:** 5 states (CO, KS, NV, UT, IA)
- **Sentencing court:** 1 state (MO)
- **State civil court:** 1 state (OK)
- **Trial court:** 2 states (FL, LA)
- **U.S. Court of Federal Claims:** Federal

## 4. Eligibility Requirements/Process

### **SB 797/HB 985:**

#### 1. ALJ issues an order of eligibility & the compensation owed.

- ALJ automatically grants orders if the person was pardoned or the state's attorney certified that the person did not commit the crime for which he was convicted.
- Adds third way for person to qualify with ALJ determination that person proved by a preponderance of evidence:
  - a. Person did not commit the crime or act as an accessory or accomplice.
  - b. Conviction was reversed or vacated, and charges were either dismissed, or person was retried and acquitted.
  - c. Person did not commit perjury, fabricate evidence, or bring about the conviction by his own conduct.

**National Picture:**

- The additional criteria reflect eligibility requirements in other jurisdictions including **Kansas, Nevada, New Jersey** and the **federal government**.
- **These laws have a judge determine eligibility through a civil claims process.** The judge rules that a person is eligible if:
  - 1) He or she can affirmatively prove he or she did not commit the crime for which he or she was convicted or act as an accessory or accomplice;
  - 2) Conviction was reversed or vacated, and charges were either dismissed, or person was retried and acquitted.
  - 3) Person did not bring about his or her conviction by his or her own conduct.
- **“Preponderance of evidence”** is the standard used to prevail on federal civil rights claims stemming from wrongful convictions.

**Kansas K.S.A. 60-5004**

- (c)(1) The claimant shall establish the following by a preponderance of evidence:
- (A) The claimant was convicted of a felony crime and subsequently imprisoned;
  - (B) the claimant's judgment of conviction was reversed or vacated and either the charges were dismissed or on retrial the claimant was found to be not guilty;
  - (C) the claimant did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial; and
  - (D) the claimant did not commit or suborn perjury, fabricate evidence, or by the claimant's own conduct cause or bring about the conviction. Neither a confession nor admission later found to be false or a guilty plea shall constitute committing or suborning perjury, fabricating evidence or causing or bringing about the conviction under this subsection.

**Nevada Nev. Rev. Stat. Ann. § 41.900**

The court shall award damages for wrongful conviction in accordance with section 7 of this act if the person proves by a preponderance of the evidence that:

- (a) He or she was convicted of a felony in this State and was subsequently imprisoned for the conviction;
- (b) He or she did not commit the felony for which he or she was convicted and the person:
  - (1) Was not an accessory or accomplice to the acts that were the basis of the conviction;
  - (2) Did not commit the acts that were the basis of the conviction; and
  - (3) Did not aid, abet or act as an accomplice or accessory to a person who committed the acts that were the basis of the conviction;
- (c) He or she was not convicted of an offense necessarily included in the offense charged;
- (d) Any of the following occurred:
  - (1) The judgment of conviction was reversed or vacated and the charging document was dismissed;
  - (2) The basis for reversing or vacating the judgment of conviction was not legal error that was unrelated to his or her innocence, and if a court ordered a new trial, the person was found not guilty at the new trial or the person was not retried and the charging document was dismissed; or
  - (3) The person was pardoned by the State Board of Pardons Commissioners on the grounds that he or she was innocent; and
- (e) The person did not commit perjury or fabricate evidence at the criminal proceeding that brought about his or her felony conviction and the person did not by his or her own conduct cause or bring about his or her felony conviction.

**Federal 28 U.S.C.A. § 2513**

(a) Any person suing under section 1495 of this title must allege and prove that:

(1) His conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing he was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction and

(2) He did not commit any of the acts charged or his acts, deeds, or omissions in connection with such charge constituted no offense against the United States, or any State, Territory or the District of Columbia, and he did not by misconduct or neglect cause or bring about his own prosecution.

(b) Proof of the requisite facts shall be by a certificate of the court or pardon wherein such facts are alleged to appear, and other evidence thereof shall not be received.

**New Jersey NJ Stat Ann §§ 52:4C-1 to 4C-7**

**52:4C-3. Burden and standard of proof**

The person (hereinafter titled, "the claimant") shall establish the following by clear and convincing evidence:

a. That he was convicted of a crime and subsequently sentenced to a term of imprisonment, served all or any part of his sentence; and

b. He did not commit the crime for which he was convicted;

c. He did not commit or suborn perjury, fabricate evidence, or by his own conduct cause or bring about his conviction. Neither a confession or admission later found to be false shall constitute committing or suborning perjury, fabricating evidence, or causing or bringing about his conviction under this subsection; and

d. He did not plead guilty to the crime for which he was convicted.

**5. Civil Offset Provision**

**SB 797/HB 985**: Exonerees who receive state compensation and later obtain civil awards/settlements must reimburse the state for the difference. Conversely, exonerees who first obtain civil awards/settlements and then file for state compensation would only be entitled to an amount of state compensation that subtracts the amount of the civil award/settlement.

**National Picture**: Five state compensation laws—*CO, KS, NJ, NV, OH*—have civil offset provisions that offset state compensation with the amount of civil awards/settlements obtained from the wrongful conviction

# **Kukucka\_FAV\_SB797**

Uploaded by: Kukucka, Jeff

Position: FAV



## Testimony Concerning SB 797

### “Compensation to Individual Erroneously Convicted, Sentenced, and Confined or Whose Conviction or Adjudication Is Reversed”

Submitted to the Senate Judicial Proceedings Committee

February 26, 2020

Jeff Kukucka, Ph.D.

Assistant Professor  
Dept. of Psychology

8000 York Road  
Towson, MD 21252

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#### Position: SUPPORT

Dear Senators Smith and Waldstreicher,

I, Dr. Jeff Kukucka, Assistant Professor of Psychology at Towson University, strongly support SB 797. My research examines the causes and consequences of wrongful convictions in the criminal justice system. In my career, I have published 18 peer-reviewed papers on this topic and presented my work at professional conferences over 50 times. This testimony represents my own views based on the extant scientific literature and does not necessarily represent the views of Towson University.

Since 1989, over 2,500 wrongful convictions have been discovered in the United States. On average, these individuals spent nine years incarcerated for crimes that they did not commit. As attention to this problem has grown, wrongful convictions are being discovered at an accelerating rate—including nearly 1,000 exonerations since 2014 alone.

Research on post-exoneration adjustment has established that wrongly convicted individuals face myriad challenges after their release—including but not limited to poverty, unemployment, homelessness, and mental and physical illness. In one study, for example, exonerees showed rates of clinical depression (44%) and post-traumatic stress disorder (27%) well above those in the general population (7% and 4%, respectively).<sup>1</sup>

My own research has shown that wrongly convicted individuals also face stigma, hiring discrimination, and housing discrimination at a level comparable to ex-offenders. Ironically, however, they are typically

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<sup>1</sup> Jennifer Wildeman et al., *Experiencing Wrongful and Unlawful Conviction*, 50 JOURNAL OF OFFENDER REHABILITATION 411 (2011).

ineligible for the re-entry assistance offered to parolees—such as access to halfway housing or free vocational training—precisely because they did not commit the crime for which they were incarcerated.

SB 797 will provide exonerees with financial restitution commensurate with the length of their incarceration, as well as improved access to housing, job and vocational training, health care, and education. The benefits of these services—both to the individual and to society—are undeniable. For example, studies have found that exonerees who received larger amounts of financial restitution were less likely to commit future criminal offenses, and that exonerees who were actively employed were less likely to suffer from mental illness than those who were not.

In sum, the scientific evidence indicates that wrongful convictions are being discovered at an accelerating rate, that wrongly convicted individuals face significant reentry challenges, and that they—and indeed we all—stand to benefit from the services prescribed in SB 797. For this reason, I urge your favorable consideration of this bill.

Sincerely,



Jeff Kukucka, Ph.D.  
Assistant Professor of Psychology  
Towson University





**lomax\_fav\_sb797**

Uploaded by: Lomax, Walter

Position: FAV

**Maryland Restorative Justice Initiative**  
**1111 Park Ave., Suite 151**  
**Baltimore, Maryland 21201**

**Executive Director,**

Walter Mandela Lomax

**Secretary**

Laurie Bezold

**Executive Director,**

Walter Mandela Lomax

**Secretary**

Laurie Bezold,  
Fusion Partnership Inc.

**Technical Advisor**

Retired Delegate  
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**Supporters:**

ACLU Maryland

Community Conferencing

Correctional Round-Table

Grassroots Criminal Justice  
Advocates Network

MSBA Correctional Reform  
Section

The Justice Policy Institute

The Sentencing Project

**Senate Bill 797**

**Favorable**

**Compensation to Individual Erroneously Convicted, Sentenced, and Confined, or Whose Conviction or Adjudication Is Reversed**

Chairman Smith and Members of the Senate Judicial Proceedings Committee

The Maryland Restorative Justice Initiative supports Senate Bill 797. As the director of MRJI, and a member of the Task Force that studied this issue the need to pass this legislation is still urgent. The Task Force did an excellent evaluation of the compensation procedure, and provided excellent guidance to compensate Erroneously Convicted individuals, but the legislation did not pass.

The Board of Public Works did develop a method to compensate five individuals last year I was one of those individuals. However, I was released in 2006, completely exonerated in 2014, yet only began being compensated in 2019. It should not have taken that long to correct a miscarriage of justice, this is why passage of SB-797 is so important.

Each individual experience trauma differently, so it is difficult to fathom what they are dealing with, that is unless you have had a similar experience. You will never be able to make them whole again, because they will never be the same, the best you can hope is that they learn to live with what has happened to them.

What this body can do is pass this legislation so that those individuals who has been **erroneously Convicted, can be compensated in a timely manner.**

**I therefore encourage you to vote Favorable for Senate Bill 797**

*Sincerely,*

*Walter Lomax*, Executive Director  
Maryland Restorative Justice Initiative  
Waltermandalalomax@hotmail.com

## **Nethercott\_fav\_sb797**

Uploaded by: Nethercott, Michele

Position: FAV



**Senate Bill 797 Favorable**  
**Fixing Maryland's Exoneree Compensation Law**  
**Michele Nethercott, University of Baltimore Innocence Project Clinic**  
Senate Judicial Proceedings Committee  
February 26, 2020

I write today to urge a favorable recommendation from this Committee on Senate Bill 797. I have represented a number of Maryland exonerees who were released from prison frequently with little advance notice that they were about to be released and typically without even the minimal pre-release assistance that is provided to guilty prisoners who have completed their sentence. I have personally observed the struggle of so many of these men to obtain identification, health care and a means of sustaining themselves while adjusting to a world many of them left decades ago when they were imprisoned for crimes they did not commit. For exonerees without family members to provide shelter and assistance to them upon release, the post-release phase has been dire and traumatic. Those individuals who have endured the horror of being convicted and incarcerated for crimes they did not commit deserve better treatment from the State of Maryland.

Over the years I have worked on the issue of amending Maryland's compensation law to ensure that it compensates only those who were factually innocent of the crimes they were convicted of and does so in a fair manner that is fiscally responsible. I have served on the legislative Task Force to Study Erroneous Conviction and Imprisonment in 2017 and had the opportunity to consider input from various stakeholders regarding the need for a predictable and affordable compensation scheme. Over the last several years I believe that a consensus has emerged among those who have studied this issue that Maryland's compensation scheme needs to: 1) mandate rather than permit compensation for those who meets its requirements, 2) provide a formula for compensation that takes into

account the length of incarceration; 3) provides health care and educational assistance; 4) provide a mechanism for either a prosecutorial or administrative determination of eligibility for compensation and 5) require a reduction of any award under this statute for any other compensation received by an exoneree in a civil action related to the wrongful conviction. Senate Bill 797 accomplishes all these objectives and I am happy to join with State's Attorney Scott Schellenberger, who served as Chairman of the Task Force on Erroneous Conviction and Imprisonment, in urging this committee to give a favorable recommendation to this legislation.

# **SenKelley\_FAV\_SB797**

Uploaded by: Senator Kelley, Senator Kelley

Position: FAV

**TESTIMONY OF SENATOR DELORES G. KELLEY**

**REGARDING SENATE BILL 797– COMPENSATION TO INDIVIDUAL  
ERRONEOUSLY CONVICTED, SENTENCED, AND CONFINED OR  
WHOSE CONVICTION OR ADJUDICATION IS REVERSED**

**BEFORE THE SENATE JUDICIAL PROCEEDINGS COMMITTEE  
ON  
FEBRUARY 26, 2020**

**Mr. Chairman and Members:**

**Senate Bill 797 is here as follow up on issues remaining after this committee's strong support in 2017 of Senate Bill 348, which was enacted into law as Chapter 799, and which eliminated the unfair and debilitating requirement in the State Finance Article that an individual wrongfully convicted, sentenced, confined, and subsequently exonerated was then mandated to obtain a pardon from the Governor before the exoneree would be eligible to apply to the Board of Public Works for compensation for his/her damages.**

Current Maryland law does not require a Governor to pardon an already exonerated person, and current law includes no specific compensation requirements, nor standards for the same. Current law prohibits an exonerated person from contracting with legal counsel for help in getting compensation, and prohibits anyone from inheriting any part of any state compensation which the Board of Public Works might grant to an exonerated person. Senate Bill 797 is here to remedy these problems.

Senate Bill 797 requires compensation of \$78,916 per year for each year of wrongful incarceration (the same formula which the Governor used in October 2019), when he compensated 5 exonerees, while leaving 30 others waiting and hoping. Since there are many health, education, and social service needs of persons who were wrongly convicted and confined for years or decades, Maryland is morally obligated to address the needs of our exonerees for education, job training, health care, reimbursement for court fines and fees. Current Maryland law lacks specific provisions in this regard, a problem addressed by SB 797.



Whereas current law addresses accommodations that the Board of Public Works may grant, Senate Bill 797 directs that an Administrative Law Judge shall order that the following be provided:

- 1) state identification
- 2) education and job training
- 3) health and dental care
- 4) public college/university tuition
- 5) reimbursement of court fines, fees and restitution for the wrongful conviction.

This Bill designates Administrative Law Judges as the agents to determine who meets the eligibility criteria for compensation as an exonerated person; including:

- 1) certain persons pardoned by the Governor;
- 2) a persons who is certified by a States Attorney as having been convicted of a crime the person did not commit under “writ of actual innocence,” ;
- 3) a person who the Administrative Law Judge determines by a preponderance of evidence did not commit the crime or act as an accessory or accomplice’
- 4) a person whose conviction was reversed or vacated, with the charges dismissed; or
- 5) a person who was retried and acquitted.

When an Administrative Law Judge makes a finding of a person’s eligibility for compensation, the Board of Public Works is so notified, and must issue payments within 60 days. Payments can be made as either a lump sum or by installments.

If an exonoree who receives State compensation should later receive a civil award or settlement, the exonoree must reimburse the State for any excess compensation and therefore the exonoree would not be able to “double dip.”

With the passage of SB 797 into law, Maryland can join 38 other states that have definite standards and predictability regarding compensation for exonorees, who have already suffered great harm by the State, even if not intended.

I therefore urge your favorable report of Senate Bill 797

**simmons\_fav\_sb797**

Uploaded by: Simmons, Eric

Position: FAV

**Senate Bill 797 Favorable**  
**Fixing Maryland's Exoneree Compensation Law**  
**Eric Simmons, *Baltimore Exoneree***  
Senate Judicial Proceedings Committee  
February 26, 2020

My name is Eric Simmons and my brother JR McPherson and I spent almost 25 years in prison for a murder we didn't commit. Thanks to the Baltimore City State's Attorney we were exonerated on May 3, 2019.

I went to prison when I was 24 years old and now I'm 48. Time is something you can never get back. Since I was a little kid I've loved building things and hoped to become a carpenter. The chance to develop a career was taken from me. In prison I always wanted to take college courses, but with a life sentence I was always last on the list.

My wrongful conviction had a ripple effect on my family. My brother and I both had sons who we were forced to raise while we were behind bars. Now my son is in the system, and I feel like if I had been there things would have been different. My wife was forced to take care of our family without me. My mother passed away and I never got to say goodbye.

Money cannot make exonerees whole again, but it can help with the struggle of surviving in the real world. My plan when I got out was to become a personal trainer. Then I found out I had slipped disks in my back from the prison bunks and exercise equipment, so I had to give up that dream. My wife has been the breadwinner and I want to contribute to my family.

If this bill had passed a long time ago I could have already been compensated. I could have already started pursuing the things that I've had to put off for so long. Passing this legislation is the right thing to do, and I hope you will vote for it.

**smith\_fav\_sb797**

Uploaded by: Smith, Demetrius

Position: FAV

**Senate Bill 797 Favorable**  
**Fixing Maryland's Exoneree Compensation Law**  
**Demetrius Smith, *Baltimore Exoneree***  
Senate Judicial Proceedings Committee  
February 26, 2020

My name is Demetrius Smith. When I was 24 years old I was wrongfully convicted of murdering a man named Robert Long in Baltimore. I was convicted because a jailhouse witness testified that he saw me commit the crime. He lied to avoid prison time in his own case.

The truth finally came out during a federal investigation of a man named Juan Morales. The investigation showed that Morales ordered a hitman to kill Robert Long because Long was going to testify against him. While I was sitting in prison, Morales committed more crimes. Eventually Morales and the hitman were convicted of killing Long and I was free.

Even though the real perpetrators have been convicted, I'm still not eligible for compensation. I wasn't exonerated through the writ of actual innocence so I'm out of luck. There are different ways that people can overturn their wrongful convictions. The men that actually killed Robert Long have been convicted—what stronger proof of my innocence could there be?

The worst part was that my daughter grew up without me. When I left she was a baby, when I came back she was grown. I had to get to know my child and rebuild our relationship.

It's been hard to restart my life without compensation. I started a landscaping business and I want to grow it. This bill would give me a fair shot at getting the compensation I deserve and I hope you will support it.

**CarolStern\_Jews United for Justice\_FAV\_SB 797**

Uploaded by: stern, carol

Position: FAV

February 26, 2020

Carol Stern

4550 North Park Avenue, Apt T106, Chevy Chase, MD 20815  
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**JEW'S UNITED  
FOR JUSTICE**

THINK JEWISHLY. ACT LOCALLY.

**TESTIMONY IN SUPPORT OF SB797**  
**Compensation to Individual Erroneously Convicted, Sentenced, and Confined or  
Whose Conviction or Adjudication Is Reversed**

**TO:** Chair Smith, Vice Chair Waldstreicher, and members of the Judicial Proceedings Committee

**FROM:** Carol Stern on behalf of Jews United for Justice

I provide this testimony in favor of SB797 as co-chair of the Equal Justice under the Law team of Jews United for Justice (JUFJ). JUFJ organizes 5,000 Jewish Marylanders and allies in support of local campaigns for social, racial, and economic justice.

As Jews, we are tasked with carrying out the directive issued in Deuteronomy 16:20, “*Tzedek, tzedek tirdof* - Justice, justice shall you pursue.” The Jewish sages explain that the word *tzedek* is repeated not only for emphasis but to teach us that in our pursuit of justice, our means must be as just as our ends. This helps to shape my religious and moral conviction that Maryland’s laws should automatically give fair compensation to anyone wrongfully convicted and imprisoned. The Union for Reform Judaism Resolution on Criminal Justice Reform stated that **“Preventing and punishing criminal conduct are among the primary obligations of government at all levels. But it is also the obligation of the government to ensure that no one is unjustly accused, convicted, or punished.”** When we are working to reform our criminal justice system, we must demand that it operates in accordance with these deeply held beliefs.

It is hard to imagine that the State of Maryland does not have compensation standards for the Board of Public Works so it can swiftly act on exonerees’ requests. The status quo consists of years worth of unanswered petitions before the state Board of Public Works. It is not surprising that in recent years exonerees just stopped requesting compensation.

Maryland should not allow this unjust situation to continue. This bill adds much needed reforms to expedite compensation for wrongfully convicted Marylanders. This bill will also greatly enhance the justice system so that exonerees can be given the chance to resume a normal life.

**On behalf of JUFJ, I respectfully urge a favorable report on SB797.**



# **Board of Public Works-INFO-SB 797**

Uploaded by: Gontrum, John

Position: INFO

**John Gontrum, Esq.**  
*Executive Secretary*

**Gabriel Gnall, Esq., CPPO**  
*Procurement Advisor*

**David Bohannon, Esq.**  
*General Counsel*

**William Morgante, PWS**  
*Wetlands Administrator*

Letter of Information  
For Presentation to the Judicial Proceedings Committee  
February 26, 2020

**Senate Bill 797: Compensation to Individual Erroneously Convicted, Sentenced, and Confined or Whose Conviction or Adjudication Is Reversed**

The Board of Public Works staff has reviewed the legislation and appreciates the opportunity to provide information on three areas of the legislation, as introduced:

- **60 Day Payment Requirement**

The legislation includes the following language at p. 6, lines 14-17 of Senate Bill 797

*The Board of Public Works shall pay the compensation determined under subsection (d) of this section within 60 days after receiving an order issued under subsection (b) of this section in a lump sum or installments.*

The plain reading of this language indicates that the legislative intent is for full payment of an OAH ordered amount within 60 days of the Board receiving an OAH payment order. The language further indicates the Board may make as many separate payments as determined appropriate by the Board over the course of the 60 day payment period. There are two points of information that may be helpful in the Committee's review of this language. Firstly, the Board's budget would require a standing fund balance sufficient to make any such payments ordered within 60 days. For reference, in 2019, the Board approved grant allocations under SFP § 10-501 to five individuals totaling \$9,308,896 to be paid over the course of a mix of five fiscal years (two individuals) and seven fiscal years (three individuals). Currently, the FY 2021 budget contains a total of \$500,000 the Board may use for SFP §10-501 grant payments. Secondly, in altering the current discretionary authority exercised by the Board under SFP §10-501 to a mandatory requirement for payment approval, the legislation creates a requirement unique in Maryland law where the Governor, Treasurer and Comptroller are required to cast an affirmative vote on a matter before the Board.

## Page 2- Board of Public Works letter of information on Senate Bill 797

- **Retroactive Modifications**

The legislation includes the following language in Section 3 at p. 8, lines 8-11 of Senate Bill 797

*And be it further enacted, that Section 1 of this Act shall be construed to apply retroactively to allow a person to apply for modification of any compensation awarded by the Board of Public Works between January 1, 1987 and June 30, 2020, inclusive.*

As the five individuals granted funds in 2019 by the Board under SFP § 10-501 received funding in-line with the Maryland median household income-based formula included in the legislation, this language likely applies only to the four individuals who received grant awards between 1987 and 2004. The question left open by the legislation is how to apply the Maryland-median household income-based formula in these four cases. Specifically, should the Maryland median household income immediately preceding the original grant award be used to calculate a modification amount, or should the income figure immediately preceding the modification be used. If all four eligible individuals apply for modifications, the resolution of this ambiguity alters the dollar amounts of the modifications by millions of dollars.

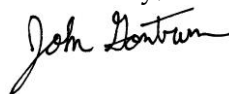
- **Matters Covered under newly created § 10-502**

The legislation includes the following language at p. 7, lines 12-21 of Senate Bill 797

*(b) If a court reverses finally the conviction or adjudication of an individual and orders that fines, governmental fees, costs, or restitution that were paid by the individual in connection with the conviction or adjudication be refunded, the Board of Public Works shall compensate the individual for the amount determined by the court to be owed to the individual for fines, fees, costs, and restitution previously paid by the individual. (c) The Board of Public Works shall pay to the individual the amount set by the court under subsection (b) of this section within 60 days after receiving the order from the individual.*

There are two points of information that may be helpful in the Committee's review of this language. Firstly, the term 'adjudication' is not defined in the legislation and is used in the Courts & Judicial Proceedings Article to apply to a broad range of proceedings, including civil cases. Secondly, this language carries the attendant issues previously identified with necessitating a fund balance in the Board's budget sufficient to pay any amount ordered within 60 days and removing the traditional discretion exercised by the Governor, Treasurer and Comptroller in reviewing matters before the Board.

I hope you find this information helpful as you consider these policy changes. As always, the Board will administer the laws as the legislature intends and will be a resource for your Committee, as needed.

Sincerely,  


John Gontrum