



POSITION ON PROPOSED LEGISLATION

BILL: HB 0742
Compensation to Individual Erroneously Convicted, Sentenced, and Confined
(The Walter Lomax Act)

POSITION: Favorable

DATE: February 8, 2021

The Maryland Office of the Public Defender writes to support HB 0742, Compensation to Individual Erroneously Convicted, Sentenced, and Confined.

Primarily, it is important to think of what this bill does not, and cannot, do. It cannot recover an innocent person's lost years. It cannot take back the trauma that incarceration causes. It cannot rewind the clock and allow a wrongfully convicted person to recover precious moments. The loss caused by incarceration rips through a person in a way most of us cannot imagine. And this bill, while an important resource to aid in the transition back to rightful freedom, cannot undo these losses.

The loss caused by time in prison is pervasive and intangible. My office, the Post Conviction Defenders Division, represented a middle-aged client who treasured the program from his mother's funeral. He brought it to an attorney-client meeting. He mourned her. He regrets missing her funeral. He wonders whether she might still be alive if he had been out and could have helped her manage her diabetes. He will never know. The worry will always nag at the corners of his mind. With slightly less misery, he displayed his niece's high school graduation photo. He and his niece write letters around birthdays and holidays, but she lives in a different state and they had not seen each other in years. He is motivated by a fear of forgetting and of being forgotten.

On top of the fear and loss he battles with every day, he faces great uncertainty. He does not know where he would stay if he is released. He had hoped that his mother's rowhouse, which he had maintained for years, would stay in the family. That opportunity has been foreclosed by his years in prison. Now he does not know what would come next. The dream of freedom is clouded with the insecurity that accompanies release. He had hoped to retire with Social Security, if not a 401K. But he now he works in prison sanitation, making under a dollar per hour. While other people spent their twenties and thirties developing a career, he has been confined – literally, and figuratively – to whatever jobs he can get behind bars. He does not know how he would find a well-paying job, because who will hire him with a paucity of work experience? The time he has spent in prison cannot change. The birthdays missed, the family members lost, the experiences gone.

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But, he can be provided a sliver of hope. The grant of financial compensation without civil suits and burdens of proof offers a small source of stability and certainty. Housing resources, education and training, and assistance with obtaining necessary documentation further offers a small bridge to help a person transition from a life behind bars to a life of freedom. This bill could provide that.

Thus, while acknowledging that there is nothing that can ever restore the lost years and time a person suffers from a wrongful conviction, we must consider what the years in prison do to a person. There is absolutely no doubt that: Prison destabilizes a person's life. The forced removal from the job market and ability to financially support their families or save for retirement is an additional punishment, that is exponentially worse the longer someone serves. They miss out on those prime working years—the lose training and promotion opportunities, and earned work credits. If someone is retirement age when they are released, but do not have enough work credits to qualify for retirement, they will have no form of income when they are released, and will have to continue to rely on family members, if they are able. If an exonerated person is able to work, they start at the very bottom of the career ladder and may have limited opportunities to raise their earning potential before they need to retire or exit the workforce. An exonerated person may be alleviated of a conviction, have the black mark expunged from their record. But, the skills eroded by time while incarcerated, the opportunities lost, and the relationships deteriorated cannot be expunged. Nor can the trauma that incarceration causes. And, while compensation cannot ameliorate that damage completely, it can aid in a path forward. There is ample evidence to suggest that compensation above \$500,000 can reduce recidivism for people who were never guilty to begin with. See Evan J. Mandery et al., Compensation Statutes and Post-Exoneration Offending, 103 J. CRIM. L. & CRIMINOLOGY 553, 556, 583 (2013).

Mandatory compensation not only provides exonerees with a nest egg from which they can build their new life. It tells them that they are worthy, they are valuable. It tells them that we want them home, safe, and productive. The phrase: put your money where your mouth is exists for a reason. We cannot offer apologetic platitudes without substantiated reparation.

We must consider our responsibility to wrongfully convicted individuals. It is not enough to permit them to pursue financial compensation. The onus cannot remain on these people who have had their lives taken from them. It is our duty to provide them with resources, **and hope**. It is necessary to aid them, show them that they will be able to readjust after being wrongfully forced to live in a controlled institution life. Thus, the financial, educational, occupational and housing support offered in this bill is critical.

Truly, there is nothing we can do to sufficiently restore persons who have lost years to wrongful convictions. But, HB 0742 does take necessary steps to ease the transition back into freedom for these wrongfully convicted, and unjustly treated, persons. In short, while we cannot become a perfect government that never convicts the wrong person, it is our duty to aid those who suffer our imperfections in their transition back into their rightful freedom.

For these reasons, the Maryland Office of the Public Defender supports HB 0742.