

To: Members of the Judiciary Committee
From: Andrew D. Freeman
Re: HB 742 (testimony supporting, with amendments)
Date: Hearing on February 10, 2021

As a partner at the Baltimore law firm of Brown, Goldstein & Levy, I have had the privilege of being part of the teams representing several men who have been exonerated after serving lengthy prison sentences for crimes they did not commit – including James Owens, Jerome Johnson, and the “Harlem Park Three” (Alvin Chestnut, Andrew Stewart, and Ransom Watkins). I have represented these gentlemen both in obtaining compensation from the Board of Public Works and in lawsuits against the Baltimore Police Department for violations of constitutional rights that led to wrongful convictions.

I commend the many people who have worked over the past few years to strengthen Maryland’s law for the compensation of people who were wrongfully convicted in the name of the State. After the State of Maryland has imprisoned an innocent person, sometimes for decades, the least we can do is to provide prompt compensation to partially make amends for that wrongful incarceration. Until recently, that compensation has been anything but prompt, and this bill will address that.

While I strongly support the bill, I encourage the committee to make two amendments, one to avoid the possibility that an exoneree will end up owing the state more than he receives from a lawsuit, and the other to allow exonerees who have already obtained a Writ of Actual Innocence from a Circuit Court to rely on that writ as part of his proof before an Administrative Law Judge.

1. On page 4, line 11, it appears that the phrase “less any amount paid for attorney’s fees and costs for litigating the award or settlement,” which is appropriately included at the end of the previous two subsections (i.e. on page 4 lines 6 and 7) was inadvertently omitted. This leaves open the possibility that a person compensated could, if he wins less at trial than he received in compensation under this statute, owe the state more than he has received at trial, after deducting attorneys’ fees. For example, if an exoneree receives \$1 million under this statute, but a jury awards only \$500,000 at trial, out of which he owes his attorney 40% (\$200,000) plus \$25,000 expenses, he would receive only \$275,000 but owe the state \$500,000. This would be solved by adding the language in red, below.

(3) (I) IF AN INDIVIDUAL PREVIOUSLY RECEIVED A MONETARY AWARD FROM A CIVIL SUIT OR ENTERED INTO A SETTLEMENT AGREEMENT WITH THE STATE OR A POLITICAL SUBDIVISION OF THE STATE FOR AN ERRONEOUS CONVICTION, SENTENCE, OR CONFINEMENT, THE AMOUNT OWED TO THE INDIVIDUAL UNDER THIS SUBSECTION SHALL BE REDUCED BY THE AMOUNT OF THE MONETARY AWARD OR SETTLEMENT THAT WAS PAID TO THE INDIVIDUAL LESS ANY AMOUNT PAID FOR ATTORNEY’S FEES AND COSTS FOR LITIGATING THE AWARD OR SETTLEMENT.

(II) 1. IF, AFTER RECEIVING COMPENSATION UNDER THIS SUBSECTION, AN INDIVIDUAL RECEIVES A MONETARY AWARD FROM A CIVIL SUIT OR ENTERS INTO A SETTLEMENT AGREEMENT WITH THE STATE OR A POLITICAL SUBDIVISION OF THE STATE FOR AN ERRONEOUS CONVICTION,

SENTENCE, OR CONFINEMENT, THE INDIVIDUAL SHALL REIMBURSE THE STATE THE AMOUNT OF MONEY PAID UNDER THIS SECTION LESS ANY AMOUNT PAID FOR ATTORNEY'S FEES AND COSTS FOR LITIGATING THE AWARD OR SETTLEMENT.

2. REIMBURSEMENT REQUIRED UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY NOT EXCEED THE AMOUNT OF THE MONETARY AWARD THE INDIVIDUAL RECEIVED IN THE CIVIL SUIT OR SETTLEMENT AGREEMENT **LESS ANY AMOUNT PAID FOR ATTORNEY'S FEES AND COSTS FOR LITIGATING THE AWARD OR SETTLEMENT.**

3. THE STATE MAY OBTAIN A LIEN AGAINST THE MONETARY AWARD FROM A CIVIL SUIT OR SETTLEMENT AGREEMENT TO SATISFY AN OBLIGATION UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH.

2. Currently, an individual is entitled to compensation if (a) the Governor pardons him and certifies his innocence, or (b) a State's Attorney certifies his innocence. Under HB 742, the Governor's pardon and certification would suffice, but a State's Attorney's certification would not. In practice, this will mean that individuals who have already obtained a Writ of Actual Innocence will be required to again prove their innocence by clear and convincing evidence to receive compensation. A State's Attorney's certification could be replaced by a court's grant of a Writ of Actual Innocence (there have been instances when courts have rejected State's Attorneys' certifications). Alternatively, on page 5, following line 17 (regarding things the ALJ can consider), a subsection could be added providing that, in determining whether an individual is eligible for compensation and benefits under this section, there shall be a rebuttable presumption that an individual who has received a Writ of Actual Innocence did not commit the felony for which he was charged.