

Contact: Michelle Feldman, State Campaigns Director, (516) 557-6650 mfeldman@innocenceproject.org
 Nathaniel Erb, State Policy Advocate, (301) 788-7338 nerb@innocenceproject.org

Support House Bill 742 -Fixing Maryland’s Exoneree Compensation Law

Innocence Project, Mid-Atlantic Innocence Project & University of Baltimore Innocence Clinic

House Judiciary Committee

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The Mid-Atlantic Innocence Project, University of Baltimore Innocence Clinic, and national Innocence Project urge the House Judiciary Committee to vote in support of **House Bill 742, which would fix Maryland’s exoneree compensation law.**

Nationally, 35 states and the federal government have laws to compensate the wrongfully convicted. Maryland’s law is out of step with the rest of the nation. While the Board of Public Works (BPW) has compensated 10 exonerees since 2019 there are still major flaws that make the process unfair and inefficient. As a result, the only avenue to economic justice for many exonerees is filing **federal civil rights lawsuits, which have cost Maryland taxpayers over \$24 million.**¹

House Bill 742 establishes a fair, straightforward process for the state to compensate the innocent, while protecting taxpayers. This draft was a product of collaboration between Senator Delores Kelley, Delegate Kathleen Dumais, the Mid-Atlantic Innocence Project and Baltimore County State’s Attorney Scott Shellenberger. It addresses concerns that were raised regarding last year’s proposal in Senate Judicial Proceedings.

Problems with the Current Law:

1. **The Board of Public Works (BPW), rather than the court system, handles the process.** The BPW’s primary role is funding capital projects, not awarding damages for suffering. Compensation claims in most other states are handled through the court system.
2. **No set amount of compensation or deadlines for payment.** Under the current law, the BPW has complete discretion over the amount and schedule of payments, and can simply decide not to pay at all.
3. **Eligibility is automatic and limited** to those exonerated through a prosecutor-approved writ of actual innocence (WOAI). WOIA is just one of several laws that can be used to overturn a wrongful conviction in Maryland. The current law excludes exonerees who have airtight evidence of their innocence but obtained relief through other avenues. For example:
 - Demetrius Smith was wrongfully convicted of a 2008 murder, and a federal investigation uncovered the actual perpetrators, who have since been convicted. However, Smith is ineligible for state compensation because he was exonerated under the motion for new trial law.
 - John Mooney was wrongfully convicted of his friend’s murder in Baltimore in 2007. Years later, a man named Kyle Stevens confessed and pled guilty to the crime. A judge granted John Mooney’s WOIA in 2014, but the state’s attorney refused to certify it, making Mooney ineligible for compensation.

¹ Jeffrey S. Gutman, An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted, 82 Mo. L. Rev. (2017)

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4. Taxpayers cover both civil lawsuits and compensation payments stemming from wrongful convictions.

House Bill 742 fixes the law by:

1. **Assigning Administrative Law Judges (ALJs) to oversee the process.** Under HB742, ALJs determine if claimants meet eligibility requirements and order payments and benefits. ALJs are well positioned to handle compensation claims because their role includes weighing evidence, rendering legal and factual findings and ruling on monetary damages.

National Picture: 21 states have courts determine eligibility for exoneree compensation—*CO, FL, HI, IA, IL, LA, KS, MA, ME, MI, MO, MS, NJ, NV, NY, OH, OK, UT, VT, WA, WV,*

2. **Setting an amount and timeline for compensation payments.** Modeled on recent BPW exoneree compensation awards, HB 742 establishes the following:
 - Amount= (State’s Median Household Income) X (Years of Wrongful Incarceration)
 - BPW makes initial payment equal to State Median Household Income within 60 days; remainder paid in installments over 6 years.
 - Supplemental compensation for wrongfully convicted who were exonerated before 2005.

National Picture: The national average amount of compensation is \$69,000 per year of wrongful incarceration.²

3. **Making eligibility based on proof of innocence.** Eliminates automatic eligibility. All applicants must prove to an Administrative Law Judge (ALJ) by clear and convincing evidence that four criteria are met:
 - i. The person was convicted & subsequently imprisoned for a felony.
 - ii. The person did not commit the felony, or act as an accessory or accomplice.
 - iii. The conviction was vacated/overturned, and the charges were either dismissed, or the person was acquitted on retrial.
 - iv. The person’s own conduct did not cause the conviction.

National Picture: 12 states use these eligibility requirements--*AL, CO, CT, FL, KS, MA, MN, MS, NV, NJ, OH, OK.*

4. **Offsetting civil payments with state compensation awards.** Exonerees who first receive state compensation and then obtain civil lawsuit payments would be required to reimburse the state for the difference. Conversely, if the exoneree first obtains a civil settlement/award, that amount would be subtracted from the amount of state compensation the exoneree is entitled to.

National Picture: 5 states have civil offset provisions—*CO, KS, NJ, NV, OH.*

² Id.