

Suter, Erica J. Testimony SB890.pdf

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TO: Members of the Senate Judicial Proceedings Committee

FROM: Erica J. Suter, Assistant Public Defender and Director of the UB Innocence Project Clinic

RE: SB890: Compensation for Individuals Erroneously Convicted - Alterations

DATE: February 27, 2024

I am an assistant public defender, faculty member of the University of Baltimore School of Law and Director of the UB Innocence Project Clinic, and Immediate Past President of the Maryland Criminal Defense Attorney's Association. I write in support of SB890.

According to the Innocence Project's latest numbers, Innocence Project Clients across the nation have spent a collective 3,874 years wrongfully incarcerated.¹ On average, Innocence Project Clients were 27 years old when convicted and 44 when exonerated.² There have been 51 exonerations in Maryland since 1989 when the National Registry of Exonerations began tracking exonerations.³ Exonerees on average serve approximately 16 years of wrongful incarceration.⁴ Maryland made great strides when it passed the Walter Lomax act and significantly improved the compensation process for exonerees. SB890 corrects the Lomax act in important ways. For example, SB890 revises the window in which an exoneree may apply for compensation to change the beginning of the window from the time of release to the time of exoneration. This is a critical fix.

Developing the evidence to exonerate a convicted person is a time and labor-intensive process that typically takes several years. Prison is a notoriously dangerous and unpredictable environment. I have had clients who have been attacked and killed in prison and clients who have died of disease and illness while incarcerated. Clients often experience the death of parents, siblings, and other loved ones while incarcerated. If a client has the opportunity to pursue release through parole, a sentence modification, or some other means, they should be able to avail themselves of that opportunity without sacrificing their ability to receive compensation if and when

¹ Explore the Numbers: Innocence Project's Impact. Last visited February 19, 2024, <https://innocenceproject.org/exonerations-data/>

² *Id.*

³ National Registry of Exonerations. Last visited February 19, 2024, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=ST&FilterValue1=MD>

⁴ Explore the Numbers: Innocence Project's Impact. Last visited February 19, 2024, <https://innocenceproject.org/exonerations-data/>

⁴ *Id.*

they are exonerated. Wrongful convictions steal decades from the wrongfully convicted, their families, and our community. Exonerees are often released with the years in which they would have started a family and established themselves professionally, behind them. It is a moral imperative that we take steps toward undoing some of the devastating harms caused by wrongful convictions. It is sensible, in keeping with the intent of the Lomax Act, and fair that these revisions be made.

For these reasons, I urge a favorable report.

SB890 - BGL - FAV w AM.pdf

Uploaded by: Michael Abrams

Position: FWA

POSITION ON PROPOSED LEGISLATION

BILL: SB 890—Compensation for Individuals Erroneously Convicted - Alterations

FROM: Neel K. Lalchandani, Michael R. Abrams, Michele D. Hall, Lauren J. Kelleher¹

POSITION: Favorable with Amendments

DATE: February 21, 2024

We respectfully request that the Committee issue a favorable with amendments report on Senate Bill 890, which makes critical alterations to Maryland Code, State Finance and Procurement, § 10–501, also known as the Walter Lomax Act (WLA). We support these proposed amendments and commend the Office of the Attorney General for offering them—they are much needed to ensure the remedial purpose of the WLA is not undermined by semantic loopholes.

When the WLA was enacted with bipartisan support in 2021, its remedial purpose was clear: to provide a statewide standard for fairly compensating individuals who lost their freedom for crimes they did not commit. Despite this clear goal of compensating exonerees for time served for wrongful convictions, the WLA in its first three years of implementation has in numerous instances been interpreted contrary to its purpose. The result has been multiple exonerees whose convictions were set aside still being denied compensation for the decades of their lives lost to wrongful incarceration—until the Office of the Attorney General or Governor intervened.²

¹ The authors of this testimony are civil rights attorneys based in Baltimore with Brown, Goldstein & Levy LLP. This testimony reflects their personal opinions based on their collective professional experiences, not the opinion of Brown, Goldstein & Levy LLP.

² “Moore apologizes to wrongfully convicted Baltimore man,” MARYLAND MATTERS, Sept. 20, 2023, *available at* <https://www.marylandmatters.org/2023/09/20/moore-apologizes-to-wrongfully-convicted-baltimore-man>.

SB 890 provides three amendments to the WLA that strengthen the law and directly respond to instances where the WLA has been unfairly interpreted contrary to its purpose. First, SB 890 maximizes benefits for exonerees by increasing the amount of time individuals can receive health care and housing benefits, while extending education benefits from 5 to 8 years. Second, SB 890 preserves important due process rights by requiring that the State notify petitioners of its intent to reduce or prevent an award of compensation due to concurrent confinement on another legal conviction. Third, SB 890 clarifies that individuals are eligible for compensation if the order which reversed or vacated their conviction did not allow for a retrial. These three amendments are critical to the courts' ability to interpret the WLA with fidelity.

Based upon our experiences as practitioners in this area, we propose the following, narrow amendments which are similarly necessary to fully effectuate the WLA's purpose of fairly compensating individuals for their wrongful conviction and incarceration.

The wrongfully convicted should not be precluded from receiving compensation based on a semantic loophole. Unlike most other states, Maryland maintains the common law categorization of felonies and misdemeanors. Except for when a statute expressly provides otherwise, crimes that were felonies or misdemeanors under common law remain so today. Crucially, under common law, inchoate crimes—attempt, solicitation, and conspiracy—were misdemeanors. In Maryland today, many attempt, solicitation, and conspiracy crimes remain “misdemeanors,” even though they can carry the same sentence as the “object crime” underlying the attempt, solicitation, or conspiracy. Thus, an individual can be incarcerated for *life* on misdemeanor charges, if convicted of a conspiracy to commit a life eligible offense, such as murder. As currently written, the Act only applies to *felony* convictions and thus excludes wrongly convicted individuals sentenced to lengthy periods of incarceration, including life, for such crimes technically classified as misdemeanors under Maryland law. The Act must be amended as follows

to include those individuals:

§ 10-501(b)(1): An administrative law judge shall issue an order that an individual is eligible for compensation and benefits from the State under subsection (a) of this section if . . . (ii) . . . the administrative law judge finds that the individual has proven by clear and convincing evidence that:

1. the individual was convicted, sentenced, and subsequently confined for a [felony] **CRIME PUNISHABLE BY IMPRISONMENT**;
2. the judgment of conviction [for the felony] was reversed or vacated . . . ;
3. the individual did not commit the [felony] **CRIME** for which they were convicted, sentenced, and subsequently confined and was not an accessory or accomplice to the [felony] **CRIME**.

The enacting statutory language should continue to explicitly include a provision regarding retroactivity. As drafted, the uncodified enacting language only includes two of the three sections from the current statute: the effective date and the proclamation that the Act may not be interpreted to require dismissal of a petition filed prior to the effective date. The bill should re-incorporate the enacting language currently in the Act which explicitly applies changes to the Act to pending applications for compensation and benefits, to ensure that no individuals are erroneously precluded from rightly receiving compensation:

SECTION 2. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be construed to apply retroactively to any application for compensation or benefits pending on or after the effective date of this Act.

These proposed amendments in combination with those proposed in the bill will ensure that the wrongfully convicted are not arbitrarily precluded from receiving the minimum they are entitled to receive from the State: compensation for their stolen life. **For these reasons, we urge this Committee to issue a favorable with amendments report on SB 890.**

Submitted: Michael R. Abrams

Authored: Neel K. Lalchandani, Michael R. Abrams, Michele D. Hall, Lauren J. Kelleher