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Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 890

(Chair, Judicial Proceedings Committee)(By Request -
Office of the Attorney General)

Judicial Proceedings

Judiciary

Compensation for Individuals Erroneously Convicted - Alterations

This bill (1) alters the circumstances under which an individual who was erroneously convicted, sentenced, and confined may receive compensation; (2) alters the benefits available to these individuals; (3) requires the State to notify the individual in writing and provide specified information when it intends to introduce evidence to reduce or prevent an award of compensation to an individual who served a concurrent sentence for a lawful conviction and confinement; and (4) repeals obsolete provisions. The bill also extends eligibility for compensation to individuals who have been erroneously convicted of a conspiracy to commit a felony and meet specified existing statutory requirements; individuals in this category who were ineligible for compensation before July 1, 2024, may petition for an order of eligibility no later than July 1, 2026. **The bill may not be applied or interpreted to require dismissal of a petition for compensation for erroneous conviction filed before the bill's July 1, 2024 effective date.**

Fiscal Summary

State Effect: General fund expenditures may increase due to the bill's extension of eligibility for compensation to individuals erroneously convicted of a conspiracy to commit a felony. Otherwise, the bill is not expected to materially affect State finances or operations.

Local Effect: The bill is not expected to materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary/Current Law:

Petitions for Eligibility Determinations

Under current law, an administrative law judge (ALJ) must issue an order that an individual is eligible for compensation and benefits from the State/Board of Public Works (BPW) for being erroneously convicted, sentenced, and confined (as described below) if:

- the individual has received a full pardon from the Governor stating that the individual's conviction has been shown conclusively to be in error; or
- the ALJ finds by clear and convincing evidence that (1) the individual was convicted, sentenced, and subsequently confined for a felony; (2) the individual's conviction for the felony was reversed or vacated *and either the charges were dismissed or the individual was found not guilty on retrial*; (3) the individual did not commit the felony for which they were convicted, sentenced, and subsequently confined and was not an accessory or accomplice to the felony; and (4) the individual did not commit or suborn perjury, fabricate evidence, or by the individual's own conduct cause or bring about the conviction, which specifically does not include making a false confession or false admission or entering a guilty plea.

The bill alters these requirements to (1) reflect expanded eligibility for individuals convicted of a conspiracy to commit a felony and (2) allow an ALJ to issue an order for compensation and benefits from the State if it is found by clear and convincing evidence that the individual's conviction for a felony was reversed or vacated *and the order reversing or vacating the judgment of conviction did not allow for retrial*.

Under current law, in determining the weight and admissibility of evidence presented by the parties, an ALJ may, in the interest of justice, give due consideration to the passage of time, death or unavailability of witnesses, the destruction of evidence, or any other factor.

Currently, an individual may petition/file a request with the Office of Administrative Hearings (OAH) for an ALJ to issue an order of eligibility within two years after the date on which the Governor issued a pardon, the criminal charges against the individual were dismissed, or the individual was found not guilty on retrial. If the individual is deceased, the individual's personal representative or the executor of the individual's estate may request an order of eligibility. The bill authorizes an individual to file a petition within two years after the date on which an order reversing or vacating the judgment of conviction and not allowing for retrial was issued.

Under current law, an individual convicted, confined, and released from confinement before July 1, 2021, who has not previously received compensation from BPW, may petition for an order of eligibility no later than June 30, 2023. An individual who was awarded compensation from BPW on or before July 1, 2005, may request an order for supplemental compensation in the amount authorized under the bill on or before July 12, 2023. The bill repeals these provisions.

Under current law, a petition for an order of eligibility must be served on the State's Attorney in the county in which the conviction occurred and the Attorney General, or their designees. The State (represented by the Attorney General or designee), the State's Attorney of the county where the crime was committed, or their designees must be parties to a proceeding before the ALJ.

Under current law, an individual may not receive compensation for any period of confinement during which the individual was concurrently serving a sentence for a conviction for which the individual was lawfully convicted and confined. The bill requires the State to notify the individual in writing at least 15 days before a hearing on a petition of (1) the State's intention to introduce evidence to reduce or prevent an award of compensation because of a concurrent sentence and (2) the number of days that the State claims the individual was incarcerated but not concurrently serving a sentence for a conviction of another offense for which the individual was lawfully convicted and confined.

Under current law, if an ALJ issues an order of eligibility, the order must include the monetary award owed the individual; reasonable attorney's fees and expenses associated with the eligibility determination action; benefits to be awarded to the individual, as described below; and, if the ALJ determines that it is in the interests of the individual, a recommendation for an expedited payment schedule. A copy of the order must be delivered to BPW and any State agency or service provider ordered to provide benefits. The decision to grant or deny an order of eligibility may be appealed by either party.

Calculation of Compensation and Benefits – Base Payment

Under current law, BPW must compensate an individual found to be eligible in an amount equal to the total number of days of wrongful confinement after the erroneous conviction multiplied by a daily rate based on the State's most recent median household income in the year the order of eligibility is issued, as published in the American Community Survey of the U.S. Census Bureau, as specified. However, as noted above, the individual may not receive compensation for any period of confinement during which the individual was serving a concurrent sentence for another conviction for which the individual was lawfully convicted and confined.

Additional Benefits

Under current law, the ALJ may also direct the appropriate State agency or service provider to provide the following to the individual, free of charge:

- a State identification card and any other document necessary for the individual's health or welfare on the individual's release from confinement;
- housing accommodations *available on the individual's release from confinement* for up to five years;
- education and training relevant to life skills, job/vocational training, or financial literacy until the recipient elects to no longer receive the education and training;
- health care and dental care for at least five years *after the individual's release from confinement*;
- access to enrollment at and payment of tuition and fees for attending a public senior higher education institution, a regional higher education center, or the Baltimore City Community College (BCCC) for a period of enrollment of *up to five years*; and
- reimbursement for court fines, fees, and restitution paid by the individual for the relevant crime.

The bill alters the housing accommodations and health care and dental care benefits to run for a maximum of five years *after the date the ALJ issued the order of eligibility*. The bill also increases the duration of the higher education/community college benefit from five years to eight years.

Adjustments for Other Funds Received

If an eligible 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 the erroneous conviction, sentence, or confinement, the amount owed to the individual must be reduced by the amount of the monetary award or settlement, less any amount paid for attorney's fees and costs for litigating the award or settlement. The individual must reimburse the State for an equivalent amount if the individual receives such a monetary award from a civil suit or enters into such a settlement agreement after receiving compensation under the bill. However, the amount of the reimbursement required may not exceed the amount of the monetary award received for damages in the civil suit or settlement agreement. The State may obtain a lien against the monetary award from a civil suit or settlement agreement to satisfy this obligation.

BPW Payments of Compensation

After receiving an order of eligibility issued by an ALJ, BPW must pay the compensation, with an initial payment equal to the annual amount of the State's most recent median household income to be paid within 60 days after receiving the ALJ's order. Following this initial payment, BPW must pay the remainder of the compensation in installments paid over no more than six fiscal years or in accordance with an expedited payment schedule recommended by the ALJ.

State Expenditures: General fund expenditures increase for compensation awarded to individuals convicted of a conspiracy to commit a felony. The magnitude of potential compensation for individuals eligible for compensation as a result of the bill cannot be reliably quantified at this time. According to the Office of the Attorney General (OAG), there are currently two individuals erroneously convicted of a conspiracy to commit a felony who would retroactively qualify for compensation under the bill. ***OAG did not respond to a request for additional information regarding the fiscal impact of awarding compensation to these individuals.***

Regarding the other provisions of the bill, based on information provided by BPW, the bill appears to alter eligibility criteria and procedures in response to particular situations that have arisen. In both situations, the individuals eventually received compensation. Given the number of individuals affected by the bill, the bill's changes to benefits are not expected to materially affect State finances or operations. BCCC, Morgan State University, and the University System of Maryland do not anticipate a fiscal impact from the bill.

OAH advises that it can train administrative law judges on the bill's provisions and handle additional cases generated by the bill with existing budgeted resources.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 1086 (Chair, Judiciary Committee)(By Request - Office of the Attorney General) - Judiciary.

Information Source(s): Office of the Attorney General; Judiciary (Administrative Office of the Courts); Maryland Higher Education Commission; Baltimore City Community College; University System of Maryland; Morgan State University; Board of Public Works; Office of Administrative Hearings; Department of Legislative Services

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Analysis by: Amy A. Devadas

Direct Inquiries to:
(410) 946-5510
(301) 970-5510