

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 908
Judiciary

(Delegate C. Davis)

**Criminal Procedure - Erroneous Conviction, Sentence, and Confinement -
Expungement, Damages, and Restitution Relief**

This bill provides for the discharging of judgments of restitution against a person released from confinement based on a determination by a court that the person was erroneously convicted, sentenced, and confined for a crime the person did not commit. The bill authorizes a person to file a petition for expungement of police or court records if the person filing the petition is released from confinement based on such a determination by a court. The bill also authorizes the Board of Public Works (BPW) to make a grant award for actual damages, without the need of a pardon from the Governor, to such a person if he or she has been released under a court order making such a determination, in circumstances where he or she had been convicted of only one criminal act that is not a crime of violence.

Fiscal Summary

State Effect: The bill's potential impact on actual restitution payments made cannot be readily quantified. Any additional expungement orders could be handled with the existing budgeted resources of the Criminal Justice Information System (CJIS) Central Repository. Increasing eligibility for payments of actual damages could result in increased payments from the Contingent Fund.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: An individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit is eligible for a grant for “actual damages” only if the individual has received a full pardon from the Governor stating that the conviction has been shown conclusively to be in error. However, not every person whose conviction has been reversed is eligible. Procedural mistakes that lead to a reversal are not sufficient to make a person eligible, and the determination of whether the eligibility standard has been met by the person requesting the pardon is wholly within the discretion of the Governor.

In any case, such grant payments are discretionary for BPW, but if paid, are required to be made from the “General Emergency Fund” (now named the Contingent Fund) or money provided in the budget by the Governor.

“Judgment of restitution” means a direct order for payment of restitution or an order for payment of restitution that is a condition of probation in an order of probation.

A court may enter a judgment of restitution that orders a defendant or child respondent (including a liable parent) to make restitution in addition to any other penalty for the commission of a crime or delinquent act, if:

- as a direct result of the crime or delinquent act, property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;
- as a direct result of the crime or delinquent act, the victim suffered actual medical, dental, hospital, counseling, funeral, or burial expenses; any other direct out-of-pocket loss; or loss of earnings;
- the victim incurred medical expenses that were paid by the Department of Health and Mental Hygiene or any other governmental unit;
- a governmental unit incurred expenses in removing, towing, transporting, preserving, storing, selling, or destroying an abandoned vehicle;
- the Criminal Injuries Compensation Board paid benefits to a victim; or
- the Department of Health and Mental Hygiene or other governmental unit paid certain other expenses.

A victim is presumed to have a right to such restitution if the victim or the State requests restitution, and the court is presented with competent evidence of any item for which restitution is requested. A judgment of restitution does not preclude the property owner or the victim who suffered personal physical or mental injury, out-of-pocket loss of

earnings, or support from bringing a civil action to recover damages from the restitution obligor. A civil verdict is required to be reduced by the amount paid under the criminal judgment of restitution.

A circuit court or the District Court may:

- impose a sentence for a specified time and provide that a lesser time be served in confinement;
- suspend the remainder of the sentence; and
- order probation for a time longer than the sentence but not longer than five years if the probation is ordered by a circuit court or three years if the probation is ordered by the District Court.

The law lists numerous crimes found throughout the Code that may serve as the basis for a restitution order. In *Coles v. State*, 290 Md. 296 (1981), the Court of Appeals held that uniformity to enforce restitution orders would not exist unless all covered offenses were listed in the restitution statute (Title 11, subchapter 6 of the Maryland Code).

In *In re John M.*, 129 Md.App. 165 (1999), the Court of Special Appeals held that restitution could not be ordered to cover anticipated future costs.

A written statement or bill for medical, counseling, or funeral expenses subject to restitution is legally sufficient evidence of the amount, fairness, and reasonableness of the charge and the necessity of the service.

Maryland law provides for the recording and indexing of restitution judgments, and for the termination of such judgments.

A victim or other person or governmental unit may not execute on a recorded and indexed judgment if the restitution obligor: (1) files a motion under the Maryland Rules to stay execution of sentence or the judgment of restitution that has not been determined by the court; and (2) challenges the conviction, sentence, or judgment of restitution by making certain applications or filings.

If a restitution obligor makes such an application or filing, a person or governmental unit may not execute on a recorded and indexed judgment until a court issues a final judgment that upholds the conviction, sentence, or judgment of restitution. A person or governmental unit may not execute on a recorded and indexed judgment until the time has expired in which a restitution obligor may apply for or file any of such actions. The judgment of restitution may be enforced in the same way that a monetary judgment is enforced.

A person who has been charged with the commission of a crime may file a petition listing relevant facts for expungement of a police record, court record, or other record maintained by the State or a political subdivision of the State, under various circumstances listed in the statute. These grounds include acquittal, dismissal of charges, entry of probation before judgment, entry of *nolle prosequi*, stet of charge, and gubernatorial pardon. Expungement allows such persons to escape the collateral consequences or civil disabilities of such convictions.

Expungement of a court record means removal from public inspection:

- by obliteration;
- by removal to a separate secure area to which persons who do not have a legitimate reason for access are denied access; or
- if access to a court record or police record can be obtained only by reference to another such record, by the expungement of that record, or the part of it that provides access.

Background: In the last decade, there have been only three awards for economic damages paid by BPW. One was to Leslie Vass for \$250,000. Another was made to Kirk Bloodworth for \$300,000. The most recent payment was approved by the board on January 8, 2003 for Bernard Webster in the amount of \$900,000, or \$45,000 per year for each of the 20 years he was wrongfully imprisoned. In actuality, Mr. Webster will receive two \$45,000 payments per year for the next ten years. All of these individuals had been released from incarceration and received a full pardon by the Governor stating that the conviction was conclusively shown to be in error.

HB 665 of 2001 was introduced to provide \$7.5 million in the budget of the Department of Public Safety and Correctional Services in order to compensate Anthony Gray, Jr. for his wrongful murder conviction and imprisonment. Mr. Gray was arrested and convicted in the 1991 murder of a Chesapeake Beach woman. Without a pardon, Mr. Gray is barred from seeking a grant from BPW. The Circuit Court of St. Mary's County had released Mr. Gray in 1999 after the Calvert County State's Attorney reopened the case and determined there to be no evidence linking him to the crime. HB 665 received an unfavorable report from the House Appropriations Committee.

In 2001 the *Baltimore Sun* chronicled the case of Michael Austin, who had been incarcerated for 26 years for the murder of a security guard shot during an April 1974 robbery of a Crown Food Market in East Baltimore. Various persons, including the former State's Attorney who prosecuted Austin, have said that his conviction was based on false testimony and flawed evidence. Austin's guilty verdict was reversed in

Baltimore City Circuit Court in December 2001. Neither Mr. Gray nor Mr. Austin has formally sought a pardon from the Governor, to date.

The Governor's fiscal 2004 budget includes an allocation of \$750,000 for the Contingent Fund.

Criminal record expungement functions are handled by the Criminal Justice Information System (CJIS) Central Repository. CJIS is the database containing the criminal history record information reflecting the official fingerprint-supported criminal record of each offender charged and adjudicated in Maryland. The CJIS Central Repository is administratively managed by the Department of Public Safety and Correctional Services and is designated by the FBI as Maryland's State identification bureau for the exchange of criminal history records.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Board of Public Works, Department of Public Safety and Correctional Services (Information Technology and Communications Division), Department of Legislative Services

Fiscal Note History: First Reader - March 5, 2003
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