

# SENATE BILL 348

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CF HB 593

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By: **Senators Kelley, Brochin, Conway, Currie, DeGrange, Ferguson, Lee, Madaleno, McFadden, Muse, Nathan-Pulliam, Ramirez, Robinson, Rosapepe, and Smith**

Introduced and read first time: January 25, 2017

Assigned to: Judicial Proceedings

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Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 13, 2017

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **State Compensation for Erroneous Conviction and Imprisonment –**  
3 ~~**Gubernatorial Pardon Requirement – Repeal**~~ **Certification of Error**

4 FOR the purpose of ~~repealing a requirement that an erroneously convicted individual must~~  
5 ~~receive a gubernatorial pardon to be eligible for certain payments by the Board of~~  
6 ~~Public Works;~~ authorizing a certain individual to request that a State's Attorney  
7 certify that a conviction was made in error under certain circumstances; providing  
8 that an individual is eligible for a certain grant from the Board of Public Works if a  
9 State's Attorney has certified that the individual's conviction was made in error;  
10 establishing the Task Force to Study Erroneous Conviction and Imprisonment;  
11 providing for the composition, chair, and staffing of the Task Force; prohibiting a  
12 member of the Task Force from receiving certain compensation, but authorizing the  
13 reimbursement of certain expenses; requiring the Task Force to study and make  
14 recommendations on certain issues related to erroneous convictions and establishing  
15 innocence; requiring the Task Force to report its findings and recommendations to  
16 the Governor and the General Assembly on or before a certain date; providing for the  
17 termination of certain provisions of this Act; making conforming changes; and  
18 generally relating to State compensation for erroneously convicted and imprisoned  
19 individuals.

20 BY repealing and reenacting, without amendments,

21 Article – Criminal Procedure

22 Section 8-301(a), (f), and (g)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Annotated Code of Maryland  
 2 (2008 Replacement Volume and 2016 Supplement)

3 BY adding to  
 4 Article – Criminal Procedure  
 5 Section 8–301(h)  
 6 Annotated Code of Maryland  
 7 (2008 Replacement Volume and 2016 Supplement)

8 BY repealing and reenacting, with amendments,  
 9 Article – State Finance and Procurement  
 10 Section 10–501  
 11 Annotated Code of Maryland  
 12 (2015 Replacement Volume and 2016 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,  
 14 That the Laws of Maryland read as follows:

15 **Article – Criminal Procedure**

16 8–301.

17 (a) A person charged by indictment or criminal information with a crime triable  
 18 in circuit court and convicted of that crime may, at any time, file a petition for writ of actual  
 19 innocence in the circuit court for the county in which the conviction was imposed if the  
 20 person claims that there is newly discovered evidence that:

21 (1) creates a substantial or significant possibility that the result may have  
 22 been different, as that standard has been judicially determined; and

23 (2) could not have been discovered in time to move for a new trial under  
 24 Maryland Rule 4–331.

25 (f) (1) In ruling on a petition filed under this section, the court may set aside  
 26 the verdict, resentence, grant a new trial, or correct the sentence, as the court considers  
 27 appropriate.

28 (2) The court shall state the reasons for its ruling on the record.

29 (g) A petitioner in a proceeding under this section has the burden of proof.

30 **(H) ON WRITTEN REQUEST BY THE PETITIONER, THE STATE’S ATTORNEY**  
 31 **MAY CERTIFY THAT A CONVICTION WAS IN ERROR, IF:**

32 **(1) THE COURT GRANTS A PETITION FOR RELIEF UNDER THIS**  
 33 **SECTION;**

1           **(2) IN RULING ON A PETITION UNDER THIS SECTION, THE COURT SETS**  
 2 **ASIDE THE VERDICT OR GRANTS A NEW TRIAL; AND**

3           **(3) THE STATE'S ATTORNEY DECLINES TO PROSECUTE THE**  
 4 **PETITIONER BECAUSE THE STATE'S ATTORNEY DETERMINES THAT THE**  
 5 **PETITIONER IS INNOCENT.**

6                                   **Article – State Finance and Procurement**

7 10–501.

8           (a) (1) ~~¶~~Subject to subsection (b) of this section, ~~the~~ ~~THE~~ Board of Public  
 9 Works may grant to an individual erroneously convicted, sentenced, and confined under  
 10 State law for a crime the individual did not commit an amount commensurate with the  
 11 actual damages sustained by the individual, and may grant a reasonable amount for any  
 12 financial or other appropriate counseling for the individual, due to the confinement.

13           (2) In making a grant under paragraph (1) of this subsection, the Board of  
 14 Public Works shall use money in the General Emergency Fund or money that the Governor  
 15 provides in the annual budget.

16           (b) ~~¶~~An individual is eligible for a grant under subsection (a) of this section ~~only~~  
 17 if:

18           **(1)** the individual has received from the Governor a full pardon stating that  
 19 the individual's conviction has been shown conclusively to be in error; **OR**

20           **(2) THE STATE'S ATTORNEY CERTIFIES THAT THE INDIVIDUAL'S**  
 21 **CONVICTION WAS IN ERROR UNDER § 8–301 OF THE CRIMINAL PROCEDURE**  
 22 **ARTICLE.**

23           (c) ~~¶~~ The Board of Public Works may pay the grant determined under subsection  
 24 (a) of this section in a lump sum or in installments.

25           ~~¶(d)(e)~~ (1) The Board of Public Works may not pay any part of a grant made  
 26 under this section to any individual other than the [pardoned] **ERRONEOUSLY**  
 27 **CONVICTED** individual.

28           (2) (i) An individual may not pay any part of a grant received under  
 29 this section to another person for services rendered in connection with the collection of the  
 30 grant.

31                                   (ii) An obligation incurred in violation of this paragraph is void.

32                                   (iii) A payment made in violation of this paragraph shall be forfeited  
 33 to the State.

1        ~~{(e)}{(D)}~~        This section does not prohibit an individual from contracting for  
2 services to:

- 3            (1)        determine the individual's innocence;
- 4            (2)        obtain a pardon; or
- 5            (3)        obtain the individual's release from confinement.

6        SECTION 2. AND BE IT FURTHER ENACTED, That:

7        (a)        There is a Task Force to Study Erroneous Conviction and Imprisonment.

8        (b)        The Task Force consists of the following members:

9            (1)        two members of the Senate of Maryland, appointed by the President of  
10 the Senate;

11            (2)        two members of the House of Delegates, appointed by the Speaker of  
12 the House;

13            (3)        the Public Defender of Maryland, or the Public Defender's designee;

14            (4)        the President of the Maryland State's Attorney's Association, or the  
15 President's designee;

16            (5)        the Executive Director of the Governor's Office of Crime Control and  
17 Prevention, or the Executive Director's designee;

18            (6)        a representative with expertise in criminal postconviction procedures  
19 from the University of Maryland School of Law, appointed by the Dean of the school; and

20            (7)        a representative of the Innocence Project Clinic from the University of  
21 Baltimore School of Law, appointed by the Dean of the school.

22        (c)        The Governor shall designate the chair of the Task Force.

23        (d)        The Governor's Office of Crime Control and Prevention shall provide staff for  
24 the Task Force.

25        (e)        A member of the Task Force:

26            (1)        may not receive compensation as a member of the Task Force; but

27            (2)        is entitled to reimbursement for expenses under the Standard State  
28 Travel Regulations, as provided in the State budget.

1           (f)     The Task Force shall:

2                   (1)     study the State's current process for establishing whether a conviction  
3 was made in error and for determining the innocence of a person erroneously convicted;

4                   (2)     study the processes and standards in other states for designating an  
5 erroneous conviction, determining a person's innocence, and compensating a person for  
6 imprisonment based on an erroneous conviction; and

7                   (3)     make recommendations on whether the State should create and  
8 implement a new process to designate an erroneous conviction and determine the innocence  
9 of a person erroneously convicted, including whether a specific agency should certify that a  
10 person is innocent.

11           (g)     On or before December 15, 2017, the Task Force shall report its findings and  
12 recommendations to the Governor and, in accordance with § 2-1246 of the State  
13 Government Article, the General Assembly.

14           SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 October 1, 2017. Section 2 of this Act shall remain effective for a period of 1 year and, at  
16 the end of September 30, 2018, with no further action required by the General Assembly,  
17 Section 2 of this Act shall be abrogated and of no further force and effect.

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.