

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Enrolled

Senate Bill 348

(Senator Kelley, *et al.*)

Judicial Proceedings

Judiciary

**State Compensation for Erroneous Conviction and Imprisonment - Certification
of Error**

This bill authorizes a State's Attorney, upon request of a petitioner for a writ of actual innocence, to certify that a conviction was in error if (1) the court grants the petitioner's petition for relief; (2) the court sets aside the verdict or grants a new trial when ruling on the petitioner's petition for writ of actual innocence; and (3) the State's Attorney declines to prosecute the petitioner because the State's Attorney determines that the petitioner is innocent. An individual is eligible for specified payments by the Board of Public Works (BPW) if the State's Attorney certifies that the individual's conviction was in error. The bill also establishes the Task Force to Study Erroneous Conviction and Imprisonment, to be staffed by the Governor's Office of Crime Control and Prevention (GOCCP).

The bill's provisions pertaining to the task force terminate September 30, 2018.

Fiscal Summary

State Effect: Potential significant increase in cumulative general fund expenditures for BPW if the bill significantly increases payments by BPW, as discussed below. Any expense reimbursements for task force members and staffing costs for GOCCP are assumed to be minimal and absorbable within existing budgeted resources. State revenues are not affected.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: The task force must:

- study the State's current process for establishing whether a conviction was made in error and for determining the innocence of a person erroneously convicted;
- study the processes and standards in other states for designating an erroneous conviction, determining a person's innocence, and compensating a person for imprisonment based on an erroneous conviction; and
- make recommendations on whether the State should create and implement a new process to designate an erroneous conviction and determine the innocence of a person erroneously convicted, including whether a specific agency should certify that a person is innocent.

The Governor must designate the chair of the task force. Task force members may not receive compensation, but are entitled to reimbursement for expenses under the standard State travel regulations. By December 15, 2017, the task force must report its findings and recommendations to the Governor and the General Assembly.

Current Law: A person charged by indictment or criminal information with a crime triable in circuit court and convicted of that crime may, at any time, file a petition for writ of actual innocence in the circuit court for the county in which the conviction was imposed if the person claims that there is newly discovered evidence that (1) creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined and (2) could not have been discovered in time to move for a new trial under Maryland Rule 4-331.

In ruling on a petition, the court may set aside the verdict, resentence, grant a new trial, or correct the sentence, as the court considers appropriate. The court must state the reasons for its ruling on the record. A petitioner in a writ of actual innocence proceeding has the burden of proof.

BPW may grant payments to an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit. BPW is authorized to grant an amount commensurate with the actual damages sustained by the individual, but is also authorized to grant a reasonable amount for any financial or other appropriate counseling for the individual due to the confinement. An individual is eligible for these payments *only if* the individual has received from the Governor a full pardon stating that the individual's conviction has been shown conclusively to be in error.

BPW must make payments from money in the General Emergency Fund or money that the Governor provides in the annual budget. BPW may only make payments to the pardoned individual, and the payments can be made in a lump sum or installments.

An individual is prohibited from paying any part of a received payment to another person for services rendered in connection with the collection of the payment. An obligation incurred in violation of this prohibition is void and a payment made in violation of this prohibition must be forfeited to the State. However, an individual may contract for services to determine the individual's innocence, obtain a pardon, or obtain the individual's release from confinement.

State Expenditures: General fund expenditures increase, perhaps significantly, if the bill significantly increases payments by BPW. The extent to which this occurs cannot be reliably determined at this time. While the population of individuals affected by the bill is likely small, the magnitude of the bill's fiscal impact depends on (1) the extent to which the bill expands the pool of individuals eligible for BPW payments (which depends on the number of individuals for whom a State's Attorney certifies that the individual's conviction was in error) and (2) whether payments are awarded by BPW and the amounts of any payments to eligible individuals under the bill's provisions.

Exhibit 1 contains information on the number of petitions for writs of actual innocence filed in the State's circuit courts from fiscal 2014 through 2016. The Judiciary advises that none of the State's jurisdictions maintains data on the number of petitions for writs of actual innocence granted or denied. Therefore, data is not readily available on the number of petitions for writs of actual innocence for which a court granted relief, let alone the number of individuals whose verdicts were set aside or who were granted a new trial in response to a petition for a writ of actual innocence and who were not prosecuted again (for whatever reason).

Pardons are granted at the discretion of the Governor. Being erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit is not a prerequisite for a gubernatorial pardon. Data is not immediately available on the number of individuals erroneously convicted, sentenced, and confined under State law for crimes they did not commit.

The National Registry of Exonerations is a project of the University of California Irvine Newkirk Center for Science and Society, the University of Michigan Law School, and the Michigan State University College of Law. The registry, which is based on publicly available information, collects, analyzes, and compiles information about known exonerations of innocent criminal defendants since 1989. The registry lists information for 24 exonerations in Maryland.

Exhibit 1
Petitions for Writs of Actual Innocence Filed in the Circuit Courts
Fiscal 2014-2016

<u>County</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Allegany	0	0	0
Anne Arundel	7	1	1
Baltimore City	42	38	43
Baltimore	10	4	6
Calvert	0	0	2
Caroline	1	0	2
Carroll	2	3	0
Cecil	0	0	0
Charles	0	0	0
Dorchester	0	0	0
Frederick	0	2	1
Garrett	0	0	0
Harford	0	1	1
Howard	2	0	0
Kent	0	0	0
Montgomery	2	2	1
Prince George's	1	2	4
Queen Anne's	1	0	0
St. Mary's	1	0	0
Somerset	0	0	0
Talbot	0	0	1
Washington	0	0	0
Wicomico	4	3	1
Worcester	2	0	0
TOTAL	75	56	63

Source: Maryland Judiciary

BPW advises that the most recent payment made under the statutory provisions affected by the bill was \$1.4 million in 2004. According to BPW, individuals who have been pardoned and are receiving compensation receive BPW payments over a 10-year period.

Based on the language of the bill, it appears that BPW still retains discretion to authorize payments for individuals erroneously convicted, sentenced, and confined under State law.

BPW advises that it does not currently have any criteria for evaluating these claims for payment and refers interested individuals to the Governor's Office since they have to obtain a gubernatorial pardon in order to qualify for payments. BPW can develop such criteria with existing budgeted resources.

Additional Information

Prior Introductions: None.

Cross File: HB 593 (Delegate Dumais) - Judiciary.

Information Source(s): Governor's Office; Judiciary (Administrative Office of the Courts); Board of Public Works; Governor's Office of Crime Control and Prevention; National Registry of Exonerations; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2017
md/kdm Revised - Correction - February 7, 2017
Third Reader - March 27, 2017
Revised - Amendment(s) - March 27, 2017
Enrolled - May 9, 2017

Analysis by: Amy A. Devadas

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