

Chapter 77

(House Bill 742)

AN ACT concerning

**Compensation to Individual Erroneously Convicted, Sentenced, and Confined
(The Walter Lomax Act)**

FOR the purpose of altering a provision of law to require, rather than authorize, the Board of Public Works to pay certain compensation in a certain manner to a certain individual who has been erroneously convicted, sentenced, and subsequently confined for a felony on receipt of a certain order; authorizing an administrative law judge to issue a certain order of eligibility under certain circumstances; requiring certain compensation made by the Board to be equal to a certain amount; authorizing the administrative law judge issuing a certain order to direct certain State agencies and service providers to provide certain benefits free of charge; requiring certain compensation to be reduced by certain amounts under certain circumstances; authorizing the State to obtain a certain lien under certain circumstances; prohibiting an individual from receiving certain compensation for certain periods of confinement; requiring an individual to file a petition for a certain order within a certain period of time after certain events; authorizing a certain individual who has previously received compensation to request an order for supplemental compensation in certain circumstances; authorizing a certain person to request an order of eligibility on behalf of a certain deceased individual; requiring a certain petition to be served on a certain State's Attorney, or the State's Attorney's designee, and the Attorney General, or the Attorney General's designee; authorizing a certain decision to be appealed by certain parties; requiring a certain order to contain certain information; requiring a copy of a certain order to be delivered to the Board and certain State agencies or service providers; repealing a provision of law providing for eligibility for a certain grant in situations in which a State's Attorney has certified that a conviction was in error under a certain provision of law; repealing certain provisions of law prohibiting the payment of certain money to certain individuals; providing that certain provisions do not prohibit an individual from contracting for services to obtain certain compensation; establishing certain reporting requirements; requiring the Office of Administrative Hearings, in consultation with the Board, to adopt certain regulations; prohibiting a person who provides certain services to obtain certain compensation from charging, demanding, receiving, or collecting payment except under certain circumstances; providing that a certain obligation incurred is void under certain circumstances; requiring the Chief Administrative Law Judge to assign administrative law judges to conduct hearings on certain cases; authorizing the Chief Administrative Law Judge to serve as an administrative law judge in a certain case; making conforming changes; providing for the application of this Act; and generally relating to compensation to individuals erroneously convicted, sentenced, and confined.

BY repealing and reenacting, with amendments,

Article – State Finance and Procurement
 Section 10–501
 Annotated Code of Maryland
 (2015 Replacement Volume and 2020 Supplement)

BY adding to

Article – State Finance and Procurement
 Section 10–502
 Annotated Code of Maryland
 (2015 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,

Article – State Government
 Section 9–1604(a)(4) and (b)(1)(i)
 Annotated Code of Maryland
 (2014 Replacement Volume and 2020 Supplement)

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

Article – State Finance and Procurement

10–501.

(a) (1) [Subject to] **ON RECEIPT OF AN ORDER BY AN ADMINISTRATIVE LAW JUDGE GRANTING A PETITION UNDER** subsection (b) of this section, the Board of Public Works [may grant to] **SHALL COMPENSATE** an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit **IN** an amount [commensurate with the actual damages sustained by the individual, and may grant a reasonable amount for any financial or other appropriate counseling for the individual, due to the confinement] **EQUAL TO THE PRODUCT OF THE TOTAL NUMBER OF DAYS THAT THE INDIVIDUAL WAS WRONGFULLY CONFINED AFTER THE ERRONEOUS CONVICTION MULTIPLIED BY A DAILY RATE OF THE STATE’S MOST RECENT ANNUAL MEDIAN HOUSEHOLD INCOME AS PUBLISHED IN THE AMERICAN COMMUNITY SURVEY OF THE U.S. CENSUS BUREAU IN THE YEAR THE ORDER OF ELIGIBILITY IS ISSUED UNDER SUBSECTION (B) OF THIS SECTION AND DIVIDED BY 365 DAYS TO THE NEAREST WHOLE CENT.**

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

(2) IN ADDITION TO THE COMPENSATION AWARDED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE ADMINISTRATIVE LAW JUDGE ISSUING AN ORDER UNDER SUBSECTION (B) OF THIS SECTION MAY DIRECT THE

APPROPRIATE STATE AGENCY OR SERVICE PROVIDER TO PROVIDE TO THE INDIVIDUAL FREE OF CHARGE ANY OF THE FOLLOWING BENEFITS:

(I) A STATE IDENTIFICATION CARD AND ANY OTHER DOCUMENT NECESSARY FOR THE INDIVIDUAL'S HEALTH OR WELFARE ON THE INDIVIDUAL'S RELEASE FROM CONFINEMENT;

(II) HOUSING ACCOMMODATIONS AVAILABLE ON THE INDIVIDUAL'S RELEASE FROM CONFINEMENT FOR A PERIOD NOT EXCEEDING 5 YEARS;

(III) EDUCATION AND TRAINING RELEVANT TO LIFE SKILLS, JOB AND VOCATIONAL TRAINING, OR FINANCIAL LITERACY FOR A PERIOD OF TIME UNTIL THE INDIVIDUAL ELECTS TO NO LONGER RECEIVE THE EDUCATION AND TRAINING;

(IV) HEALTH CARE AND DENTAL CARE FOR AT LEAST 5 YEARS AFTER THE INDIVIDUAL'S RELEASE FROM CONFINEMENT;

(V) 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 FOR A PERIOD OF ENROLLMENT NOT EXCEEDING 5 YEARS; AND

(VI) REIMBURSEMENT FOR COURT FINES, FEES, AND RESTITUTION PAID BY THE INDIVIDUAL FOR THE CRIME FOR WHICH THE INDIVIDUAL WAS ERRONEOUSLY CONVICTED, SENTENCED, AND CONFINED.

(3) (I) IF AN 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 AN ERRONEOUS CONVICTION, SENTENCE, OR CONFINEMENT, THE AMOUNT OWED TO THE INDIVIDUAL UNDER THIS SUBSECTION SHALL BE REDUCED BY THE AMOUNT OF THE MONETARY AWARD OR SETTLEMENT THAT WAS PAID TO THE INDIVIDUAL LESS ANY AMOUNT PAID FOR ATTORNEY'S FEES AND COSTS FOR LITIGATING THE AWARD OR SETTLEMENT.

(II) 1. IF, AFTER RECEIVING COMPENSATION UNDER THIS SUBSECTION, AN INDIVIDUAL RECEIVES A MONETARY AWARD FROM A CIVIL SUIT OR ENTERS INTO A SETTLEMENT AGREEMENT WITH THE STATE OR A POLITICAL SUBDIVISION OF THE STATE FOR AN ERRONEOUS CONVICTION, SENTENCE, OR CONFINEMENT, THE INDIVIDUAL SHALL REIMBURSE THE STATE THE AMOUNT OF MONEY PAID UNDER THIS SECTION LESS ANY AMOUNT PAID FOR ATTORNEY'S FEES AND COSTS FOR LITIGATING THE AWARD OR SETTLEMENT.

2. REIMBURSEMENT REQUIRED UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY NOT EXCEED THE AMOUNT OF THE MONETARY AWARD THE INDIVIDUAL RECEIVED IN THE CIVIL SUIT OR SETTLEMENT AGREEMENT.

3. THE STATE MAY OBTAIN A LIEN AGAINST THE MONETARY AWARD FROM A CIVIL SUIT OR SETTLEMENT AGREEMENT TO SATISFY AN OBLIGATION UNDER SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH.

(4) AN INDIVIDUAL MAY NOT RECEIVE COMPENSATION UNDER THIS SUBSECTION FOR ANY PERIOD OF CONFINEMENT DURING WHICH THE INDIVIDUAL WAS CONCURRENTLY SERVING A SENTENCE FOR A CONVICTION OF ANOTHER OFFENSE FOR WHICH THE INDIVIDUAL WAS LAWFULLY CONVICTED AND CONFINED.

(5) IF AN INDIVIDUAL ELIGIBLE FOR COMPENSATION AND BENEFITS UNDER THIS SUBSECTION IS DECEASED, THE INDIVIDUAL'S ESTATE HAS STANDING TO BE COMPENSATED UNDER THIS SUBSECTION.

(b) (1) An ADMINISTRATIVE LAW JUDGE SHALL ISSUE AN ORDER THAT AN individual is eligible for [a grant] COMPENSATION AND BENEFITS FROM THE STATE under subsection (a) of this section if:

[(1) (I) the individual has received from the Governor a full pardon stating that the individual's conviction has been shown conclusively to be in error; or

[(2) the State's Attorney certifies that the individual's conviction was in error under § 8-301 of the Criminal Procedure Article]

(II) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, 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;

2. THE JUDGMENT OF CONVICTION FOR THE FELONY WAS REVERSED OR VACATED AND:

A. THE CHARGES AGAINST THE INDIVIDUAL WERE DISMISSED; OR

B. ON RETRIAL, THE INDIVIDUAL WAS FOUND NOT GUILTY;

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. SUBJECT TO PARAGRAPH (2)(II) OF THIS SUBSECTION, THE INDIVIDUAL DID NOT COMMIT OR SUBORN PERJURY, FABRICATE EVIDENCE, OR BY THE INDIVIDUAL'S OWN CONDUCT CAUSE OR BRING ABOUT THE CONVICTION.

(2) (I) IN DETERMINING THE WEIGHT AND ADMISSIBILITY OF EVIDENCE PRESENTED BY THE PARTIES, THE ADMINISTRATIVE LAW JUDGE 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.

(II) FOR THE PURPOSES OF PARAGRAPH (1)(II)4 OF THIS SUBSECTION, SUBORNING PERJURY, FABRICATING EVIDENCE, OR CAUSING OR BRINGING ABOUT A CONVICTION DOES NOT INCLUDE:

1. A CONFESSION OR ADMISSION LATER DETERMINED TO BE FALSE; OR

2. A GUILTY PLEA.

(3) A REQUEST FOR AN ORDER OF ELIGIBILITY UNDER THIS SECTION SHALL BE:

(I) FILED WITH THE OFFICE OF ADMINISTRATIVE HEARINGS;
AND

(II) CAPTIONED "IN THE MATTER OF THE WRONGFUL CONVICTION OF (CLAIMANT)" OR "(CLAIMANT) V. BOARD OF PUBLIC WORKS".

~~(3)~~ (4) THE FOLLOWING SHALL BE PARTIES TO A PROCEEDING UNDER THIS SUBSECTION:

(I) THE STATE'S ATTORNEY OF THE COUNTY WHERE THE CRIME WAS COMMITTED, OR THE STATE'S ATTORNEY'S DESIGNEE; AND

(II) THE STATE, REPRESENTED BY THE ATTORNEY GENERAL, OR THE ATTORNEY GENERAL'S DESIGNEE.

(c) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN INDIVIDUAL MAY FILE A PETITION FOR AN ORDER UNDER SUBSECTION (B) OF THIS SECTION NOT LATER THAN 2 YEARS AFTER THE DATE ON WHICH:

(i) THE GOVERNOR ISSUED A PARDON DESCRIBED UNDER SUBSECTION (B)(1)(I) OF THIS SECTION; OR

(ii) THE CRIMINAL CHARGES AGAINST THE INDIVIDUAL WERE DISMISSED OR THE INDIVIDUAL WAS FOUND NOT GUILTY ON RETRIAL AS DESCRIBED UNDER SUBSECTION (B)(1)(II) OF THIS SECTION.

(2) AN INDIVIDUAL CONVICTED, CONFINED, AND RELEASED FROM CONFINEMENT BEFORE JULY 1, 2021, WHO HAS NOT PREVIOUSLY RECEIVED COMPENSATION UNDER THIS SECTION, MAY PETITION FOR AN ORDER UNDER SUBSECTION (B) OF THIS SECTION NOT LATER THAN JUNE 30, 2023.

(3) AN INDIVIDUAL WHO WAS AWARDED COMPENSATION UNDER THIS SECTION ON OR BEFORE JULY 1, 2005, MAY REQUEST AN ORDER FOR SUPPLEMENTAL COMPENSATION IN THE AMOUNT AUTHORIZED BY THIS SECTION ON OR BEFORE JULY 12, 2023.

~~(3)~~ (4) IF AN INDIVIDUAL OTHERWISE ELIGIBLE FOR RELIEF UNDER THIS SECTION IS DECEASED, A PERSONAL REPRESENTATIVE OR AN EXECUTOR OF THE INDIVIDUAL'S ESTATE MAY FILE A PETITION FOR AN ORDER UNDER SUBSECTION (B) OF THIS SECTION ON THE INDIVIDUAL'S BEHALF.

~~(4)~~ (5) A PETITION FILED UNDER THIS SECTION SHALL BE SERVED ON:

(i) THE STATE'S ATTORNEY IN THE COUNTY IN WHICH THE CONVICTION OCCURRED, OR THE STATE'S ATTORNEY'S DESIGNEE; AND

(ii) THE ATTORNEY GENERAL, OR THE ATTORNEY GENERAL'S DESIGNEE.

~~(5)~~ (6) THE DECISION TO GRANT OR DENY A PETITION UNDER THIS SECTION MAY BE APPEALED BY ANY PARTY TO THE PROCEEDING.

(d) (1) IF AN ADMINISTRATIVE LAW JUDGE ORDERS THAT AN INDIVIDUAL IS ELIGIBLE FOR COMPENSATION AND BENEFITS UNDER THIS SECTION, THE ORDER SHALL INCLUDE:

(I) THE MONETARY AWARD OWED TO THE INDIVIDUAL UNDER SUBSECTION (A)(1) OF THIS SECTION;

(II) REASONABLE ATTORNEY'S FEES AND EXPENSES ASSOCIATED WITH THE ACTION BROUGHT UNDER THIS SECTION; ~~AND~~

(III) BENEFITS TO BE AWARDED UNDER SUBSECTION (A)(2) OF THIS SECTION; AND

(IV) IF THE ADMINISTRATIVE LAW JUDGE DETERMINES THAT IT IS IN THE INTERESTS OF THE INDIVIDUAL, A RECOMMENDATION FOR AN EXPEDITED PAYMENT SCHEDULE.

(2) A COPY OF THE ORDER SHALL BE DELIVERED TO:

(I) THE BOARD OF PUBLIC WORKS TO MAKE THE PAYMENTS ORDERED UNDER PARAGRAPH (1)(I) AND (II) OF THIS SUBSECTION; AND

(II) ANY STATE AGENCY OR SERVICE PROVIDER ORDERED TO PROVIDE BENEFITS UNDER PARAGRAPH (1)(III) OF THIS SUBSECTION.

[(c)] (E) The Board of Public Works [may] SHALL pay the [grant determined] COMPENSATION ORDERED under subsection [(a)] (D) of this section [in a lump sum or in installments] IN:

(1) ONE 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 ORDER; AND

(2) (I) AFTER THE INITIAL PAYMENT UNDER ITEM (1) OF THIS SUBSECTION, INSTALLMENTS PAID OVER A PERIOD NOT TO EXCEED 6 FISCAL YEARS; OR

(II) IN ACCORDANCE WITH AN EXPEDITED PAYMENT SCHEDULE RECOMMENDED UNDER SUBSECTION (D)(1)(IV) OF THIS SECTION.

[(d)] (1) The Board of Public Works may not pay any part of a grant made under this section to any individual other than the erroneously convicted individual.

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

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

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

[(e)] **(F) (1)** This section does not prohibit an individual from contracting for services to:

[(1)] (I) determine the individual's innocence;

[(2)] (II) obtain a pardon; [or]

[(3)] (III) obtain the individual's release from confinement; **OR**

(IV) OBTAIN COMPENSATION UNDER THIS SECTION.

(2) (I) A PERSON PROVIDING SERVICES UNDER PARAGRAPH (1)(IV) OF THIS SUBSECTION MAY NOT CHARGE, DEMAND, RECEIVE, OR COLLECT PAYMENT OTHER THAN THAT ALLOWED UNDER SUBSECTION (D)(1)(II) OF THIS SECTION.

(II) AN OBLIGATION INCURRED IN VIOLATION OF THIS PARAGRAPH IS VOID.

(G) ON OR BEFORE DECEMBER 31, 2022, AND ANNUALLY THEREAFTER, THE BOARD OF PUBLIC WORKS SHALL REPORT TO THE GENERAL ASSEMBLY, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, ON ANY COMPENSATION AND SERVICES AWARDED UNDER THIS SECTION.

(H) THE OFFICE OF ADMINISTRATIVE HEARINGS, IN CONSULTATION WITH THE BOARD OF PUBLIC WORKS, SHALL ADOPT REGULATIONS TO GOVERN THE PROCEDURES AND PRACTICES IN ALL CASES REQUESTING COMPENSATION AND BENEFITS UNDER THIS SUBTITLE.

10-502.

IN AWARDING COMPENSATION UNDER THIS SUBTITLE, THE BOARD OF PUBLIC WORKS SHALL USE MONEY IN THE GENERAL EMERGENCY FUND OR MONEY THAT THE GOVERNOR PROVIDES IN THE ANNUAL BUDGET FOR THAT PURPOSE.

Article – State Government

9-1604.

(a) The Chief Administrative Law Judge shall:

(4) assign administrative law judges to conduct hearings in contested cases **OR CASES TO DETERMINE ELIGIBILITY FOR COMPENSATION AND BENEFITS UNDER § 10-501 OF THE STATE FINANCE AND PROCUREMENT ARTICLE;**

(b) (1) The Chief Administrative Law Judge may:

(i) serve as an administrative law judge in a contested case **OR A CASE TO DETERMINE ELIGIBILITY FOR COMPENSATION AND BENEFITS UNDER § 10-501 OF THE STATE FINANCE AND PROCUREMENT ARTICLE;**

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.

SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be construed to apply retroactively, notwithstanding any prior compensation awarded, to allow a person to apply for modification of any compensation awarded by the Board of Public Works between January 1, 1984, and ~~June 30, 2021~~, July 1, 2005, inclusive.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2021.

Approved by the Governor, April 13, 2021.