

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 249 (Delegate Moon, *et al.*)
 Judiciary

Attorney General - Wrongful Convictions - Investigations

This bill requires the Office of the Attorney General (OAG) to conduct an investigation, as specified, when OAG receives notice that (1) a court granted a petition for a writ of actual innocence or (2) the Board of Public Works (BPW) received an order from an administrative law judge (ALJ) that an individual is eligible for compensation and benefits from the State/BPW for being erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit. After its investigation, OAG must send recommendations to the relevant disciplinary entity if it determines that specified individuals committed misconduct and disciplinary action is appropriate.

Fiscal Summary

State Effect: General fund expenditures increase by \$198,100 in FY 2023. Future years reflect annualization and ongoing costs. Revenues are not affected.

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	198,100	239,500	246,200	252,600	259,200
Net Effect	(\$198,100)	(\$239,500)	(\$246,200)	(\$252,600)	(\$259,200)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Potential increase in local expenditures to address disciplinary actions, as discussed below. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: A court must provide OAG with a copy of its order granting a petition for writ of actual innocence. BPW must send to OAG a copy of an order from an ALJ that an individual is eligible for compensation and benefits from the State/BPW for being erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit.

Upon receipt of such a notice, OAG must initiate an investigation into the circumstances leading to the issuance of the order. In its investigation, OAG must examine the conduct of (1) any law enforcement officer involved in the investigation that resulted in the conviction(s) covered by the order; (2) any State's Attorney, deputy State's Attorney, or assistant State's Attorney involved in the prosecution covered by the order; (3) any attorney who represented the defendant in the criminal proceeding that resulted in the conviction(s) covered by the order; and (4) any judge who presided over the criminal proceeding that resulted in the conviction(s) covered by the order.

If, after this investigation, OAG determines that any law enforcement officer committed misconduct and that discipline would be appropriate, OAG must send a recommendation to the entity with the authority to initiate disciplinary proceedings against the officer in accordance with Title 3, Subtitle 1 of the Public Safety Article.

If, after its investigation, OAG determines that any State's Attorney, deputy State's Attorney, assistant State's Attorney, attorney, or judge committed misconduct and that discipline would be appropriate, OAG must send a recommendation to the Court of Appeals.

Current Law:

Writ of Actual Innocence

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 could not have been discovered in time to move for a new trial under Maryland Rule 4-331 and that:

- if the conviction resulted from a trial, creates a substantial or significant possibility that the result may have been different, as that standard has been judicially determined; or

- if the conviction resulted from a guilty plea, an Alford plea, or a plea of *nolo contendere*, establishes by clear and convincing evidence the petitioner's actual innocence of the offense or offenses that are the subject of the petitioner's motion.

If the conviction resulted from a trial, in ruling on a petition for writ of actual innocence, the court may set aside the verdict, resentence, grant a new trial, or correct the sentence, as the court considers appropriate.

If the conviction resulted from a guilty plea, an Alford plea, or a plea of *nolo contendere*, when assessing the impact of the newly discovered evidence on the strength of the State's case against the petitioner at the time of the plea, the court may consider admissible evidence submitted by either party in addition to the evidence presented as part of the factual support of the plea that was contained in law enforcement files in existence at the time the plea was entered. If the court determines that, upon consideration of other evidence, as specified, the newly discovered evidence establishes by clear and convincing evidence the petitioner's actual innocence of the offense or offenses that are the subject of the petitioner's motion, the court may:

- allow the petitioner to withdraw the guilty plea, Alford plea, or plea of *nolo contendere*; and
- set aside the conviction, resentence, schedule the matter for trial, or correct the sentence, as the court considers appropriate.

When determining the appropriate remedy, the court may allow both parties to present any admissible evidence that came into existence after the plea was entered and is relevant to the petitioner's claim of actual innocence. In any event, the court must state the reasons for its ruling on the record.

If the petitioner was convicted as a result of a guilty plea, an Alford plea, or a plea of *nolo contendere*, an appeal may be taken either by the State or the petitioner from an order entered by the court.

Compensation for Erroneous Convictions

Pursuant to Chapters 76 and 77 of 2021, an individual may petition/file a request with the Office of Administrative Hearings (OAH) for an ALJ to issue an order of eligibility for compensation/benefits from the State/BPW 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. An ALJ must issue an order that an individual is eligible for compensation and benefits from the State/BPW for being erroneously

convicted, sentenced, and confined if the ALJ makes specified findings after following specified procedural requirements. OAG represents the State at these ALJ proceedings.

If an ALJ issues an order of eligibility, the order must be delivered to BPW and any State agency or service provider ordered to provide benefits.

Commission on Judicial Disabilities, Attorney Grievance Commission, and Bar Counsel

As authorized under §§ 4A and 4B of Article IV of the Maryland Constitution, the Commission on Judicial Disabilities investigates complaints against judges in the State's courts and recommends disciplinary action to the Court of Appeals, as appropriate.

Section 18 of Article IV of the Maryland Constitution authorizes the Court of Appeals power to “adopt rules and regulations concerning the practice and procedure in and the administration of the appellate courts and in the other courts of this State” In response, the Court of Appeals created the Attorney Grievance Commission, established the position of Bar Counsel, and granted these entities the power and duty to investigate attorney misconduct.

Discipline of Police Officers

Effective July 1, 2022, Chapter 59 of 2021 repeals the Law Enforcement Officers' Bill of Rights and establishes provisions relating to a statewide accountability and discipline process for police officers.

State Expenditures: General fund expenditures for OAG increase by a minimum of \$198,066 in fiscal 2023, which accounts for the bill's October 1, 2022 effective date, as discussed below.

The Department of Legislative Services (DLS) notes that caseloads under the bill are unpredictable and may vary significantly each year. In fiscal 2020, 18 petitions for a writ of actual innocence were *filed*. In fiscal 2021, 25 such petitions were *filed*. Information is not available on the number of *granted* petitions. BPW advises that it has received four orders from OAH granting relief under Chapters 76 and 77 of 2021 (effective July 1, 2021). OAG advises that, at a minimum, it needs two Assistant Attorneys General and one management associate to implement the bill, at a cost of approximately \$322,000 in fiscal 2023, increasing to \$423,000 by fiscal 2027. However, OAG did not respond to a request for information on how it developed this estimate and determined the need for personnel.

Regardless, given the breadth of individuals involved in each case that OAG must investigate and the amount of time that may have transpired since the original law

enforcement investigation and trial, investigations may require an extensive amount of time and resources. For purposes of this estimate, it is assumed that at least one Assistant Attorney General and one management associate are needed to perform investigations and make disciplinary recommendations in accordance with the bill, with associated expenditures for fiscal 2023, which accounts for the bill’s October 1, 2022 effective date, as shown below. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$183,380
Operating Expenses	<u>14,686</u>
Minimum FY 2023 State Expenditures	\$198,066

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

The estimate above reflects minimal expenditures associated with providing staff exclusive to the new investigatory process established under the bill. However, DLS notes that *if* existing units within OAG can assist with the requirements of the bill, there may be no *additional* impact beyond the minimum assumed in the estimate. For example, Chapter 132 of 2021 created an Independent Investigative Unit (IIU) within OAG that is required to investigate all alleged or potential police-involved deaths of a civilian and may investigate any other crimes related to police misconduct that are discovered during an investigation. The Governor is required to include funding in the State budget sufficient to provide for the full and proper operation of IIU. IIU currently consists of nine employees (attorneys and investigators). However, given the statutory provisions pertaining to IIU (which the bill does not alter), it is unclear if IIU could assist with investigations under the bill, even if its caseload volume may otherwise permit it to do so in some years.

Local Expenditures: Expenditures may increase for local jurisdictions to respond to any disciplinary recommendations and actions resulting from OAG investigations. The extent of any such increase in expenditures cannot be reliably estimated in advance.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Baltimore, Carroll, Cecil, and Harford counties; towns of Bel Air and Leonardtown; Office of the Attorney General; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of Budget and Management; Board of Public Works; Department of State Police; Department of Legislative Services

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