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Senate Bill 797 Favorable
Fixing Maryland's Exoneree Compensation Law
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When the state takes an innocent person's liberty, the state has a responsibility to help repair the damage. Wrongfully convicted people lose their freedom and time with family and friends, while suffering the agony of prison life. There is also economic suffering. Exonerees missed critical opportunities to build careers, increase earnings, establish savings and pay into Social Security. After proving innocence and securing their freedom, the wrongfully convicted often have to restart their lives without any resources.

Nationally 35 states, the federal government and Washington D.C. have exoneree compensation laws that are supposed to provide a straightforward path for wrongfully convicted people to receive financial justice. However, Maryland's law is not working efficiently and is out of step with the rest of the nation. Problems in the statute were underscored when five exonerees filed compensation claims with the Board of Public Works (BPW), and some waited for over a year before payments were granted in October 2019.

Fixing Maryland's exoneree compensation law is in the interest of exonerees and taxpayers. Because the law hasn't worked properly, the only avenue to economic justice for many exonerees is filing **federal civil rights lawsuits, which have cost Maryland taxpayers over \$24 million.**¹ These cases often take years to resolve, and taxpayers must cover litigation costs. If the exoneree prevails there is no limit on the amount that may be awarded.

Senate Bill 797, sponsored by Senator Delores Kelley and **House Bill 985**, sponsored by Delegate Kathleen Dumais would fix Maryland's compensation law so that it works effectively for the wrongfully convicted and taxpayers. The following information explains how the legislation addresses problems in the current law, and compares provisions of the legislation to exoneree compensation laws nationally.

	Current Law	Problem in Current Law	SB 797/HB985
1. Amount	No set amount. Board of Public Works (BPW) is supposed to determine "an amount commensurate with the actual damages sustained by the individual."	- No guidance on how BPW shall determine "actual damages." - A majority of states provide a set amount of compensation per year of wrongful incarceration.	\$78, 916 per year of wrongful incarceration (5-year average of state's median household income). This formula was used by BPW to compensate the five exonerees in October 2019.

¹ Civil payments were compiled by Jeffrey S. Gutman, a Professor of Clinical Law at the George Washington University Law School who tracks state compensation and civil litigation awards/settlements for every U.S. exoneration since 1989. His data is based on records from the National Registry of Exonerations, PACER and state public records.

2. Non-monetary Benefits	BPW "may grant a reasonable amount for any financial or other appropriate counseling."	Provides limited and vague non-monetary benefits.	Administrative Law Judge (ALJ) may direct appropriate state agencies to provide the following: 1) state identification, 2) education/training, 3) health and dental care, 4) public college/university tuition, & 5) reimbursement for court fines, fees, and restitution paid for the wrongful conviction.
3. Who Authorizes Compensation?	Board of Public Works (BPW)	BPW's primary role is to oversee capital project spending. A majority of states have judges determine eligibility for compensation because they understand how to assess evidence and claims.	ALJs would determine who meets the eligibility requirements. ALJs already adjudicate claims against the state, conduct hearings, and assess witnesses and evidence. There are set rules of procedure and most claims are resolved within 90 days.
4. Eligibility Requirements	1) Governor pardon based on conviction being "in error." 2) State's Attorney certifies individual's conviction was "in error" under "writ of actual innocence" law (§ 8-301).	• No definition of "conviction in error." • Does not require affirmative proof of innocence. • Excludes people exonerated with DNA or other types of evidence that do not meet legal definition of "newly discovered" (e.g. evidence withheld by the state at the time of trial in violation of <i>Brady v. Maryland</i>). • Excludes people who are granted writ of actual innocence under § 8-301 by a judge, but the State's Attorney did not agree to it.	1) Governor pardon based on conclusion that person did not commit the crime. 2) State's Attorney certifies person was convicted of a crime the person did not commit under "writ of actual innocence" law (§ 8-301). 3) ALJ determines that the person has proved by a preponderance of evidence: a. Person did not commit the crime or act as an accessory or accomplice. b. Conviction was reversed or vacated, and charges were either dismissed, or person was retried and acquitted. c. Person did not commit perjury, fabricate evidence, or bring about the conviction by his own conduct.
5. Process	BPW "may grant"... "an amount commensurate with the actual damages."	No deadlines or rules for BPW to issue compensation.	1) Person must file for "order of eligibility" within 2 years of the date of the pardon, date of State's Attorney certification, or date when conviction was overturned and either charges were dismissed or person was retried and acquitted. 2) ALJ automatically grants order of eligibility if person was pardoned or state certified under writ of actual innocence. 3) If person files under #3, ALJ serves notice to State's Attorney. If State's Attorney contests the claim,

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			ALJ may hold hearings for sides to call witnesses, etc. 4) Orders granting or denying compensation are appealable. 5) ALJ delivers order of eligibility to BPW and relevant state agencies with amount of compensation and services granted. BPW shall pay within 60 days.
6. Civil Lawsuits	Not addressed.	Not addressed.	Civil Offset Provision. Exonerees who receive state compensation and later obtain civil awards/settlements must reimburse the state for the difference. Conversely, exonerees who first obtain civil awards/settlements and then file for state compensation would only be entitled to an amount of state compensation that subtracts the amount of the civil award/settlement.

National Perspective: SB 797/HB985 Compared to Other Exoneree Compensation Laws

1. Amount

SB 797/HB 985: \$78, 916 per year of wrongful incarceration (5-year average of state's median household income). This formula was used to compensate the five exonerees in October 2019.

National Picture: The majority of states provide a set amount of compensation at a rate of at least \$50,000 per year of wrongful incarceration. The national average for state compensation payments is \$68,000 per year of wrongful incarceration.²

- Greater than \$50k= D.C., NV, TX, CO, KS, OH, CA, CT, VT.
- \$50k= AL, FL, HI, IN, MI, MN, MS, NJ, NC, WA
- Washington, DC- \$200,000
- NV- 1-10 years= \$50,000 per year of wrongful incarceration; 10-20 years= \$75,000 per year of wrongful incarceration; 20 or more years = \$100,000 per year of wrongful conviction
- TX- \$80,000
- CO- \$70,000
- KS-\$65,000

² Jeffrey Gutman. *An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted*, 82 Mo. L. Rev. 369 (2017).

2. Non-Monetary Benefits

SB 797/HB 985: Administrative Law Judge (ALJ) may direct appropriate state agencies to provide the following: 1) state identification, 2) education/training, 3) health and dental care, 4) public college/university tuition, & 5) reimbursement for court fines, fees, and restitution paid for the wrongful conviction.

National Picture:

- **Tuition assistance:** 14 states (CO, CT, FL, KS, LA, MA, MN, MT, NC, NJ, NV, TX, VA, VT)
- **Medical expenses:** 9 states (CA, IL, KS, LA, MN, NJ, NV, TX, VT)
- **Job search assistance:** 7 states (CA, CT, LA, IL, NC, NJ, TX)
- **Housing assistance:** 3 states (CA, KS, NJ)
- **Counseling services:** 12 states: (CA, CT, IN, KS, LA, MA, NJ, NV, TX, VA, VT, WA)
- **Re-entry services:** 6 states: (CA, CT, IL, IN, NV, TX)
- **Immediate assistance upon exoneration:** 1 state (CA)

3. Who determines eligibility?

SB 797/HB 985: Administrative Law Judges (ALJ) would determine who meets the eligibility requirements. ALJs already adjudicate claims against the state, conduct hearings, and assess witnesses and evidence. There are set rules of procedure and most claims are resolved within 90 days.

National Picture: The federal law and 21 of 35 states compensation laws task a judge with determining eligibility for compensation.

- **Circuit Court:** 2 states (HI, MS)
- **Superior Court or County Supreme Court:** 5 states (MA, ME, NJ, VT, WA)
- **Court of Claims:** 5 states (IL, MI, NY, WV, OH)
- **District Court:** 5 states (CO, KS, NV, UT, IA)
- **Sentencing court:** 1 state (MO)
- **State civil court:** 1 state (OK)
- **Trial court:** 2 states (FL, LA)
- **U.S. Court of Federal Claims:** Federal

4. Eligibility Requirements/Process

SB 797/HB 985:

1. ALJ issues an order of eligibility & the compensation owed.

- ALJ automatically grants orders if the person was pardoned or the state's attorney certified that the person did not commit the crime for which he was convicted.
- Adds third way for person to qualify with ALJ determination that person proved by a preponderance of evidence:
 - a. Person did not commit the crime or act as an accessory or accomplice.
 - b. Conviction was reversed or vacated, and charges were either dismissed, or person was retried and acquitted.
 - c. Person did not commit perjury, fabricate evidence, or bring about the conviction by his own conduct.

National Picture:

- The additional criteria reflect eligibility requirements in other jurisdictions including **Kansas, Nevada, New Jersey** and the **federal government**.
- **These laws have a judge determine eligibility through a civil claims process.** The judge rules that a person is eligible if:
 - 1) He or she can affirmatively prove he or she did not commit the crime for which he or she was convicted or act as an accessory or accomplice;
 - 2) Conviction was reversed or vacated, and charges were either dismissed, or person was retried and acquitted.
 - 3) Person did not bring about his or her conviction by his or her own conduct.
- **“Preponderance of evidence”** is the standard used to prevail on federal civil rights claims stemming from wrongful convictions.

Kansas K.S.A. 60-5004

- (c)(1) The claimant shall establish the following by a preponderance of evidence:
- (A) The claimant was convicted of a felony crime and subsequently imprisoned;
- (B) the claimant's judgment of conviction was reversed or vacated and either the charges were dismissed or on retrial the claimant was found to be not guilty;
- (C) the claimant did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial; and
- (D) the claimant did not commit or suborn perjury, fabricate evidence, or by the claimant's own conduct cause or bring about the conviction. Neither a confession nor admission later found to be false or a guilty plea shall constitute committing or suborning perjury, fabricating evidence or causing or bringing about the conviction under this subsection.

Nevada Nev. Rev. Stat. Ann. § 41.900

- The court shall award damages for wrongful conviction in accordance with section 7 of this act if the person proves by a preponderance of the evidence that:
- (a) He or she was convicted of a felony in this State and was subsequently imprisoned for the conviction;
- (b) He or she did not commit the felony for which he or she was convicted and the person:
- (1) Was not an accessory or accomplice to the acts that were the basis of the conviction;
 - (2) Did not commit the acts that were the basis of the conviction; and
 - (3) Did not aid, abet or act as an accomplice or accessory to a person who committed the acts that were the basis of the conviction;
- (c) He or she was not convicted of an offense necessarily included in the offense charged;
- (d) Any of the following occurred:
- (1) The judgment of conviction was reversed or vacated and the charging document was dismissed;
 - (2) The basis for reversing or vacating the judgment of conviction was not legal error that was unrelated to his or her innocence, and if a court ordered a new trial, the person was found not guilty at the new trial or the person was not retried and the charging document was dismissed; or
 - (3) The person was pardoned by the State Board of Pardons Commissioners on the grounds that he or she was innocent; and
- (e) The person did not commit perjury or fabricate evidence at the criminal proceeding that brought about his or her felony conviction and the person did not by his or her own conduct cause or bring about his or her felony conviction.

Federal 28 U.S.C.A. § 2513

(a) Any person suing under section 1495 of this title must allege and prove that:

(1) His conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing he was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction and

(2) He did not commit any of the acts charged or his acts, deeds, or omissions in connection with such charge constituted no offense against the United States, or any State, Territory or the District of Columbia, and he did not by misconduct or neglect cause or bring about his own prosecution.

(b) Proof of the requisite facts shall be by a certificate of the court or pardon wherein such facts are alleged to appear, and other evidence thereof shall not be received.

New Jersey NJ Stat Ann §§ 52:4C-1 to 4C-7

52:4C-3. Burden and standard of proof

The person (hereinafter titled, “the claimant”) shall establish the following by clear and convincing evidence:

a. That he was convicted of a crime and subsequently sentenced to a term of imprisonment, served all or any part of his sentence; and

b. He did not commit the crime for which he was convicted;

c. He did not commit or suborn perjury, fabricate evidence, or by his own conduct cause or bring about his conviction. Neither a confession or admission later found to be false shall constitute committing or suborning perjury, fabricating evidence, or causing or bringing about his conviction under this subsection; and

d. He did not plead guilty to the crime for which he was convicted.

5. Civil Offset Provision

SB 797/HB 985: Exonerees who receive state compensation and later obtain civil awards/settlements must reimburse the state for the difference. Conversely, exonerees who first obtain civil awards/settlements and then file for state compensation would only be entitled to an amount of state compensation that subtracts the amount of the civil award/settlement.

National Picture: Five state compensation laws—CO, KS, NJ, NV, OH—have civil offset provisions that offset state compensation with the amount of civil awards/settlements obtained from the wrongful conviction