

Senate Bill 14: Fixing Maryland's Exoneree Compensation Law

Problems w/Current Law

Maryland is one of 35 states with an exoneree compensation. However, the law is not working effectively. Problems include:

1. Unfair eligibility criteria exclude some exonerees.

- Eligibility limited to exonerees who receive 1) governor's pardon or 2) prosecutor-approved writ of actual innocence (WOIA). However, WOIA is just one of several laws that can exonerate an innocent person in Maryland.
- Exonerees are ineligible for compensation if their convictions were overturned based on: DNA testing, constitutional violations (e.g. defense failed to present evidence), WOIA opposed by prosecutor.

2. No set amount, process or timelines for payment.

- BPW is not required to pay compensation at all, it is discretionary.
- BPW decides how much & when to pay.
- BPW's primary role of funding capital projects; exoneree compensation is not its area of expertise.

3. Allows civil & compensation awards. Exonerees can receive state compensation and large civil awards and settlements.

Senate Bill 14

1. Eligibility based on proof of innocence.

- Based on proof of innocence, rather than law used for overturning conviction.
- Must prove to Administrative Law Judge (ALJ), by clear and convincing evidence, that the person did not commit the crime for which he or she was incarcerated.

2. Consistent process. ALJ determines if applicant is eligible and orders BPW to make payments and agencies to provide social services.

National Picture: 22 states have courts determine eligibility for exoneree compensation.

3. Sets amount and timeline for payment.

- Amount= (State's Median Household Income) X (Years of Wrongful Incarceration)
- BPW makes initial payment equal to State Median Household Income within 60 days; remainder paid in installments over 6 years.
- Supplemental compensation for wrongfully convicted who were exonerated before 2005.

National Picture: National average amount of compensation is \$69,000 per year of wrongful incarceration.¹

4. Civil lawsuits. Offset provision requires exonerees who were compensated and then win civil award to reimburse the state for the difference, and vice-versa.

National Picture: 5 states have civil offset provisions.

¹ Jeffrey S. Gutman, An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted, 82 Mo. L. Rev. (2017)

Costs

Retroactive Costs: \$16.8 million

- **15 exonerees** excluded under current law= **\$14.1 million**.²
- **5 exonerees** pre-2005 supplemental compensation= **\$2.7 million**.

Future Costs: With 15 eligible exonerees over a 30-year period (1989-2019) fewer than 1 exoneration per year should be expected. However, with Maryland's adoption of wrongful conviction prevention measures and DNA testing being more frequently used before conviction, the wrongful convictions is expected to decrease in the future.

* *State's Median Household Income 2018= \$83,242*

* *According to the National Registry of Exonerations there have been 38 exonerations in Maryland since 1989. However 18 of those listed would be ineligible because 1) they were already compensated since October 2019, 2) the civil offset provision would make them ineligible for state compensation, 3) they are deceased without apparent heirs, or 4) the case were overturned on technicalities without evidence of innocence.*

Who is Excluded Under Current Law?

- **Kirk Bloodsworth-** Sentenced to death and spent 9 years in prison for Baltimore murder until DNA evidence proved his innocence and he was exonerated in 1993. At the time, he was compensated \$300,000. Under the bill he would have been eligible to receive supplemental compensation under the new rate (approximately \$80,000 per year of wrongful incarceration).
- **Malcolm Bryant** spent 17 years in prison for a Baltimore murder he did not commit until he was exonerated by Baltimore City State's Attorney's Conviction Review Unit in 2016. He died in 2017. The bill would have allowed his sons--who were forced to grow up without him-- to apply for compensation on his behalf. Under the current law, families of exonerees do not have standing to apply for compensation.
- **Demetrius Smith** was wrongfully convicted of the 2008 Baltimore murder of Robert Long based on testimony of a jailhouse witness and another paid witness. During his appeal the Drug Enforcement Agency discovered evidence that a man named Juan Morales actually committed the crime. Smith was released and Morales was convicted of the murder. Despite the fact that the real perpetrator has been convicted, Smith is ineligible for state compensation because he was exonerated under motion for new trial law and could not obtain state's attorney certification under writ of innocence.
- **John Mooney**, was wrongfully convicted of his friend's murder in Baltimore in 2007. Years later a man named Kyle Stevens was recorded on a prison phone call admitting to the murder. Stevens then confessed to a federal judge and pleaded guilty. A judge granted John Mooney's writ of actual innocence in 2014, but the state's attorney refused to certify it. Because the current law requires a state's attorneys to certify a writ of actual innocence, Mooney is ineligible for compensation. The legislation would have allowed him to apply.
- **Jermaine Arrington**, spent 15 years in prison for Montgomery County murder he didn't commit until DNA proved his innocence and he was exonerated in 2010. He is ineligible under the current law because he was exonerated with DNA, not through the writ of innocence.

² National Registry of Exonerations.