

SENATE BILL 797

P1, E2

0lr2119
CF HB 985

By: **Senators Kelley, Ferguson, Hayes, Lee, Patterson, Rosapepe, Smith, Sydnor, Waldstreicher, Washington, and West**

Introduced and read first time: February 3, 2020

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Compensation to Individual Erroneously Convicted, Sentenced, and Confined**
3 **or Whose Conviction or Adjudication Is Reversed**

4 FOR the purpose of altering a provision of law to require, rather than authorize, the Board
5 of Public Works to pay certain compensation to a certain individual who has been
6 erroneously convicted, sentenced, and confined on a finding of eligibility by an
7 administrative law judge within a certain period of time after receiving the order;
8 authorizing an administrative law judge to issue a certain order of eligibility under
9 certain circumstances; requiring certain compensation made by the Board to be
10 equal to a certain amount; authorizing the administrative law judge issuing a certain
11 order to direct certain State agencies and service providers to provide certain
12 benefits free of charge; requiring certain compensation to be reduced by certain
13 amounts under certain circumstances; prohibiting an individual from receiving
14 certain compensation for certain periods of confinement; requiring an individual to
15 request a certain order of eligibility within a certain period of time after certain
16 events; authorizing a certain person to request an order of eligibility on behalf of a
17 certain deceased individual; requiring a certain request to be served on a certain
18 State's Attorney; authorizing a certain decision to be appealed by certain parties;
19 requiring a certain order to contain certain information; requiring a copy of a certain
20 order to be delivered to the Board and certain State agencies or service providers;
21 repealing a provision of law limiting eligibility for certain compensation to certain
22 situations in which a State's Attorney has certified that a conviction was in error
23 under a certain provision of law; repealing certain provisions of law prohibiting the
24 payment of certain money to certain individuals; providing that certain provisions
25 do not prohibit an individual from contracting for services to obtain certain
26 compensation; establishing certain reporting requirements; requiring the Office of
27 Administrative Hearings to adopt certain regulations; requiring the Board to pay
28 certain compensation to an individual if a court reverses finally the conviction or
29 adjudication of the individual within a certain period of time; requiring the Chief
30 Administrative Law Judge to assign administrative law judges to conduct hearings

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 on certain cases; authorizing the Chief Administrative Law Judge to serve as an
2 administrative law judge in a certain case; making conforming changes; providing
3 for the application of this Act; and generally relating to compensation to individuals
4 erroneously convicted, sentenced, and confined and individuals whose convictions or
5 adjudications are reversed by a court.

6 BY repealing and reenacting, with amendments,
7 Article – State Finance and Procurement
8 Section 10–501
9 Annotated Code of Maryland
10 (2015 Replacement Volume and 2019 Supplement)

11 BY adding to
12 Article – State Finance and Procurement
13 Section 10–502 and 10–503
14 Annotated Code of Maryland
15 (2015 Replacement Volume and 2019 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – State Government
18 Section 9–1604(a)(4) and (b)(1)(i)
19 Annotated Code of Maryland
20 (2014 Replacement Volume and 2019 Supplement)

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

23 **Article – State Finance and Procurement**

24 10–501.

25 (a) (1) **[Subject to] ON A FINDING OF ELIGIBILITY BY AN ADMINISTRATIVE**
26 **LAW JUDGE UNDER** subsection (b) of this section, the Board of Public Works **[may grant**
27 **to] SHALL COMPENSATE** an individual erroneously convicted, sentenced, and confined
28 under State law for a crime the individual did not commit **IN** an amount **[commensurate**
29 **with the actual damages sustained by the individual, and may grant a reasonable amount**
30 **for any financial or other appropriate counseling for the individual, due to the confinement]**
31 **EQUAL TO, FOR EACH YEAR THAT THE INDIVIDUAL WAS WRONGFULLY CONFINED,**
32 **THE AVERAGE OF THE STATE’S MEDIAN HOUSEHOLD INCOME AS PUBLISHED BY THE**
33 **U.S. CENSUS BUREAU FOR THE 5 YEARS IMMEDIATELY PRECEDING THE FINDING**
34 **OF ELIGIBILITY.**

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

1 **(2) IN ADDITION TO THE COMPENSATION AWARDED UNDER**
2 **PARAGRAPH (1) OF THIS SUBSECTION, THE ADMINISTRATIVE LAW JUDGE ISSUING**
3 **AN ORDER OF ELIGIBILITY UNDER SUBSECTION (B) OF THIS SECTION MAY DIRECT**
4 **THE APPROPRIATE STATE AGENCY OR SERVICE PROVIDER TO PROVIDE TO THE**
5 **INDIVIDUAL FREE OF CHARGE ANY OF THE FOLLOWING BENEFITS:**

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

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

12 **(III) EDUCATION AND TRAINING RELEVANT TO LIFE SKILLS AND**
13 **JOB AND VOCATIONAL TRAINING FOR A PERIOD OF TIME UNTIL THE INDIVIDUAL**
14 **ELECTS NO LONGER TO RECEIVE THE EDUCATION AND TRAINING;**

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

17 **(V) ACCESS TO ENROLLMENT AT AND PAYMENT OF TUITION AND**
18 **FEES FOR ATTENDING A PUBLIC SENIOR HIGHER EDUCATION INSTITUTION, A**
19 **REGIONAL HIGHER EDUCATION CENTER, OR THE BALTIMORE CITY COMMUNITY**
20 **COLLEGE FOR A PERIOD OF ENROLLMENT NOT EXCEEDING 5 YEARS; AND**

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

24 **(3) (I) IF AN INDIVIDUAL PREVIOUSLY RECEIVED A MONETARY**
25 **AWARD FROM A CIVIL SUIT OR ENTERED INTO A SETTLEMENT AGREEMENT WITH THE**
26 **STATE OR A POLITICAL SUBDIVISION OF THE STATE FOR AN ERRONEOUS**
27 **CONVICTION, SENTENCE, OR CONFINEMENT, THE AMOUNT OWED TO THE**
28 **INDIVIDUAL UNDER THIS SUBSECTION SHALL BE REDUCED BY THE AMOUNT OF THE**
29 **MONETARY AWARD OR SETTLEMENT THAT WAS PAID TO THE INDIVIDUAL LESS ANY**
30 **AMOUNT PAID FOR ATTORNEY'S FEES AND COSTS FOR LITIGATING THE AWARD OR**
31 **SETTLEMENT.**

32 **(II) 1. IF, AFTER RECEIVING COMPENSATION UNDER THIS**
33 **SUBSECTION, AN INDIVIDUAL RECEIVES A MONETARY AWARD FROM A CIVIL SUIT OR**
34 **ENTERS INTO A SETTLEMENT AGREEMENT WITH THE STATE OR A POLITICAL**
35 **SUBDIVISION OF THE STATE FOR AN ERRONEOUS CONVICTION, SENTENCE, OR**
36 **CONFINEMENT, THE INDIVIDUAL SHALL REIMBURSE THE STATE THE AMOUNT OF**

1 MONEY PAID UNDER THIS SECTION LESS ANY AMOUNT PAID FOR ATTORNEY'S FEES
2 AND COSTS FOR LITIGATING THE AWARD OR SETTLEMENT.

3 **2. REIMBURSEMENT REQUIRED UNDER**
4 **SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH MAY NOT EXCEED THE AMOUNT OF**
5 **THE MONETARY AWARD THE INDIVIDUAL RECEIVED FOR DAMAGES IN THE CIVIL**
6 **SUIT OR SETTLEMENT AGREEMENT.**

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

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

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

17 **[(1) (I) the individual has received from the Governor a full pardon**
18 **[stating that the individual's conviction has been shown conclusively to be in error] BASED**
19 **ON THE CONCLUSION THAT THE INDIVIDUAL WAS CONVICTED, SENTENCED, AND**
20 **CONFINED FOR A CRIME THAT THE INDIVIDUAL DID NOT COMMIT; [or]**

21 **[(2) (II) the State's Attorney certifies that the [individual's conviction**
22 **was in error under § 8-301 of the Criminal Procedure Article] INDIVIDUAL WAS**
23 **CONVICTED, SENTENCED, AND CONFINED FOR A CRIME THE INDIVIDUAL DID NOT**
24 **COMMIT; OR**

25 **(III) THE ADMINISTRATIVE LAW JUDGE CERTIFIES THAT THE**
26 **INDIVIDUAL WAS CONVICTED, SENTENCED, AND CONFINED FOR A CRIME THAT THE**
27 **INDIVIDUAL DID NOT COMMIT BASED ON THE FOLLOWING, PROVED BY A**
28 **PREPONDERANCE OF THE EVIDENCE:**

29 **1. THE JUDGMENT OF CONVICTION WAS REVERSED OR**
30 **VACATED AND EITHER THE CHARGES WERE DISMISSED OR, ON RETRIAL, THE**
31 **INDIVIDUAL WAS ACQUITTED;**

32 **2. THE INDIVIDUAL DID NOT COMMIT THE CRIME OR**
33 **CRIMES FOR WHICH THE INDIVIDUAL WAS CONVICTED AND WAS NOT AN ACCESSORY**
34 **OR ACCOMPLICE TO THE ACTS THAT WERE THE BASIS OF THE CONVICTION THAT**
35 **RESULTED IN THE REVERSAL OR THE JUDGMENT BEING VACATED, DISMISSAL OF**

1 THE CHARGES, OR AN ACQUITTAL ON RETRIAL; AND

2 3. THE INDIVIDUAL DID NOT COMMIT OR SUBORN
3 PERJURY, FABRICATE EVIDENCE, OR BY THE INDIVIDUAL'S OWN CONDUCT CAUSE
4 OR BRING ABOUT THE CONVICTION.

5 (2) FOR THE PURPOSES OF PARAGRAPH (1)(III)3 OF THIS
6 SUBSECTION, "COMMITTING OR SUBORNING PERJURY, FABRICATING EVIDENCE, OR
7 CAUSING OR BRINGING ABOUT A CONVICTION" DOES NOT INCLUDE MAKING A FALSE
8 CONFESSION OR ENTERING A GUILTY PLEA.

9 (C) (1) EXCEPT AS PROVIDED UNDER PARAGRAPH (2) OF THIS
10 SUBSECTION, AN INDIVIDUAL MAY REQUEST AN ORDER OF ELIGIBILITY UNDER
11 SUBSECTION (B) OF THIS SECTION WITHIN 2 YEARS AFTER THE DATE ON WHICH:

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

14 (II) THE STATE'S ATTORNEY MAKES A CERTIFICATION
15 DESCRIBED UNDER SUBSECTION (B)(1)(II) OF THIS SECTION; OR

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

19 (2) AN INDIVIDUAL CONVICTED, CONFINED, AND RELEASED FROM
20 CONFINEMENT BEFORE JULY 1, 2020, MAY REQUEST AN ORDER OF ELIGIBILITY
21 UNDER SUBSECTION (B) OF THIS SECTION ON OR BEFORE JUNE 30, 2022.

22 (3) IF AN INDIVIDUAL DESCRIBED UNDER SUBSECTION (B)(1) OF THIS
23 SECTION IS DECEASED, A PERSONAL REPRESENTATIVE OR AN EXECUTOR OF THE
24 INDIVIDUAL'S ESTATE MAY REQUEST AN ORDER OF ELIGIBILITY FOR
25 COMPENSATION ON THE INDIVIDUAL'S BEHALF.

26 (4) A REQUEST FOR ELIGIBILITY FILED UNDER THIS SECTION SHALL
27 BE SERVED ON THE STATE'S ATTORNEY IN THE COUNTY IN WHICH THE CONVICTION
28 OCCURRED.

29 (5) THE DECISION TO GRANT OR DENY AN ORDER OF ELIGIBILITY
30 UNDER SUBSECTION (B) OF THIS SECTION MAY BE APPEALED BY EITHER PARTY.

31 (D) (1) IF AN ADMINISTRATIVE LAW JUDGE ORDERS THAT AN INDIVIDUAL
32 IS ELIGIBLE FOR COMPENSATION AND BENEFITS UNDER SUBSECTION (B) OF THIS

1 SECTION, THE ORDER SHALL INCLUDE:

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

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

6 (III) BENEFITS TO BE AWARDED UNDER SUBSECTION (A) OF THIS
7 SECTION.

8 (2) A COPY OF THE ORDER ISSUED UNDER SUBSECTION (B) OF THIS
9 SECTION SHALL BE DELIVERED TO:

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

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

14 [(c)] (E) The Board of Public Works [may] SHALL pay the [grant]
15 COMPENSATION determined under subsection [(a)] (D) of this section WITHIN 60 DAYS
16 AFTER RECEIVING AN ORDER ISSUED UNDER SUBSECTION (B) OF THIS SECTION in a
17 lump sum or in installments.

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

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

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

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

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

28 (1) determine the individual's innocence;

29 (2) obtain a pardon; [or]

30 (3) obtain the individual's release from confinement; OR

1 (4) OBTAIN COMPENSATION UNDER THIS SECTION.

2 (G) ON OR BEFORE DECEMBER 31, 2020, AND ANNUALLY THEREAFTER, THE
3 BOARD OF PUBLIC WORKS SHALL REPORT TO THE GENERAL ASSEMBLY, IN
4 ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, ON ANY
5 COMPENSATION AND SERVICES AWARDED UNDER THIS SECTION.

6 (H) THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL ADOPT
7 REGULATIONS TO GOVERN THE PROCEDURES AND PRACTICES IN ALL CASES
8 REQUESTING COMPENSATION AND BENEFITS UNDER THIS SUBTITLE.

9 10-502.

10 (A) THIS SECTION DOES NOT APPLY TO AN INDIVIDUAL WHO RECEIVES
11 COMPENSATION UNDER § 10-501 OF THIS SUBTITLE.

12 (B) IF A COURT REVERSES FINALLY THE CONVICTION OR ADJUDICATION OF
13 AN INDIVIDUAL AND ORDERS THAT FINES, GOVERNMENTAL FEES, COSTS, OR
14 RESTITUTION THAT WERE PAID BY THE INDIVIDUAL IN CONNECTION WITH THE
15 CONVICTION OR ADJUDICATION BE REFUNDED, THE BOARD OF PUBLIC WORKS
16 SHALL COMPENSATE THE INDIVIDUAL FOR THE AMOUNT DETERMINED BY THE
17 COURT TO BE OWED TO THE INDIVIDUAL FOR FINES, FEES, COSTS, AND RESTITUTION
18 PREVIOUSLY PAID BY THE INDIVIDUAL.

19 (C) THE BOARD OF PUBLIC WORKS SHALL PAY TO THE INDIVIDUAL THE
20 AMOUNT SET BY THE COURT UNDER SUBSECTION (B) OF THIS SECTION WITHIN 60
21 DAYS AFTER RECEIVING THE ORDER FROM THE INDIVIDUAL.

22 10-503.

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

26 Article – State Government

27 9-1604.

28 (a) The Chief Administrative Law Judge shall:

29 (4) assign administrative law judges to conduct hearings in contested cases
30 OR CASES TO DETERMINE ELIGIBILITY FOR COMPENSATION AND BENEFITS UNDER
31 § 10-501 OF THE STATE FINANCE AND PROCUREMENT ARTICLE;

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

2 (i) serve as an administrative law judge in a contested case **OR A**
3 **CASE TO DETERMINE ELIGIBILITY FOR COMPENSATION AND BENEFITS UNDER §**
4 **10-501 OF THE STATE FINANCE AND PROCUREMENT ARTICLE;**

5 SECTION 2. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be
6 construed to apply retroactively to any application for compensation or benefits pending on
7 or after the effective date of this Act.

8 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall be
9 construed to apply retroactively to allow a person to apply for modification of any
10 compensation awarded by the Board of Public Works between January 1, 1987, and June
11 30, 2020, inclusive.

12 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect July
13 1, 2020.