

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 985
 Judiciary

(Delegate Dumais, *et al.*)

Judicial Proceedings

Compensation to Individual Erroneously Convicted, Sentenced, and Confined or
 Whose Conviction or Adjudication Is Reversed (The Walter Lomax Act)

This bill makes several changes to existing provisions pertaining to payments by the Board of Public Works (BPW) to an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit. Among other things, the bill modifies the procedures and criteria for eligibility, including requiring an Administrative Law Judge (ALJ) in the Office of Administrative Hearings (OAH) to make specified findings related to eligibility and compensation. The bill applies retroactively to any application for compensation or benefits pending on or after the bill’s effective date and must be construed to allow a person to apply for modification of any compensation awarded by BPW between January 1, 1984, and June 30, 2019, inclusive. **The bill takes effect July 1, 2020.**

Fiscal Summary

State Effect: General fund expenditures increase by at least \$2.7 million in FY 2021; future years cannot be estimated. Reimbursable fund expenditures increase by approximately \$200,000 annually beginning in FY 2021. Reimbursable fund revenues increase beginning in FY 2023.

(\$ in millions)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
ReimB. Rev.	\$0	\$0	-	-	-
GF Expenditure	\$2.7	-	-	-	-
ReimB. Exp.	\$0.2	\$0.2	\$0.2	\$0.2	\$0.2
Net Effect	(\$3.0)	(\$0.2)	(\$0.2)	(\$0.2)	(\$0.2)

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

Local Effect: Minimal decrease in local expenditures. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Requests for Eligibility Determinations

An ALJ must issue an order that an individual is eligible for compensation and benefits from BPW for being erroneously convicted, sentenced, and confined (as described below) if:

- the individual has received a full pardon from the Governor stating that the individual's conviction has been shown conclusively to be in error; the State's Attorney certifies that the individual's conviction was in error under § 8-201 (postconviction review of DNA evidence) or § 8-301 (petition for writ of actual innocence) of the Criminal Procedure Article; or
- the ALJ certifies that the individual was convicted, sentenced, and confined for a crime the individual did not commit based on the following factors, proven by a preponderance of the evidence: (1) the individual's conviction was reversed or vacated *and* either the charges were dismissed or the individual was acquitted on retrial; (2) the verdict or conviction was set aside or vacated; (3) the State's Attorney declined to prosecute the petitioner, or the person was retried and found not guilty; (3) the petitioner requested in writing that the State's Attorney certify that the individual's conviction was in error; (4) the State's Attorney failed to act on or declined a request to certify that the individual's conviction was in error within 45 days of a request; (5) the individual did not commit the crime(s) for which the individual was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction that resulted in the reversal or the judgment being vacated, dismissal of the charges, or an acquittal on retrial; and (6) the individual did not commit or suborn perjury, fabricate evidence, or by the individual's own conduct cause or bring about the conviction, which specifically does not include making a false confession or entering a guilty plea, an Alford plea, or a not guilty plea pursuant to an agreed statement of facts.

An individual may request an ALJ to issue an order of eligibility within two years after the date on which the Governor issued a pardon, the State's Attorney made the appropriate certification, or the criminal charges against the individual were dismissed or the individual was found not guilty on retrial. If the individual is deceased, the individual's personal representative or the executor of the individual's estate may request an order of eligibility. An individual convicted, confined, and released from confinement before July 1, 2020, may request an order of eligibility on or before June 30, 2022.

A request for an order of eligibility must be served on the State's Attorney in the county in which the conviction occurred. The State and the State's Attorney of the county where the crime was committed must be parties to a proceeding before the ALJ. The decision to grant or deny an order of eligibility may be appealed by either party.

If an ALJ issues an order of eligibility, the order must include the monetary award owed the individual, reasonable attorney's fees and expenses associated with the eligibility determination action, and benefits to be awarded to the individual, as described below. A copy of the order must be delivered to BPW and any State agency or service provider ordered to provide benefits.

Calculation of Compensation and Benefits – Base Payment

BPW must compensate an individual found to be eligible in an amount equal to the total number of days of wrongful confinement multiplied by a daily rate based on the State's most recent median household income preceding the finding of eligibility, as published in the American Community Survey of the U.S. Census Bureau. However, the individual may not receive compensation for any period of confinement during which the individual was serving a concurrent sentence for another conviction for which the individual was lawfully convicted and confined.

Additional Benefits

The ALJ may also direct the appropriate State agency or service provider to provide the following to the individual, free of charge:

- a State identification card and any other document necessary for the individual's health or welfare on the individual's release from confinement;
- housing accommodations available on the individual's release from confinement for up to five years;
- education and training relevant to life skills, job/vocational training, or financial literacy until the recipient elects to no longer receive the education and training;
- health care and dental care for at least five years after the individual's release from confinement;
- 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 of up to five years; and
- reimbursement for court fines, fees, and restitution paid by the individual for the relevant crime.

Adjustments for Other Funds Received

If an eligible 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 the erroneous conviction, sentence, or confinement, the amount owed to the individual must be reduced by the amount of the monetary award or settlement, less any amount paid for attorney's fees and costs for litigating the award or settlement. The individual must reimburse the State for an equivalent amount if the individual receives such a monetary award from a civil suit or enters into such a settlement agreement after receiving compensation under the bill. However, the amount of the reimbursement required may not exceed the amount of the monetary award received for damages in the civil suit or settlement agreement.

BPW Payments of Compensation

After receiving an order of eligibility order issued by an ALJ, BPW must pay the compensation in a lump sum or installments, with an initial payment of \$50,000 to be paid within 90 days after receiving the ALJ's order. The bill repeals provisions prohibiting BPW from paying any part of a grant to an erroneously convicted individual to any person other than the individual and prohibiting any recipient of a grant from using any part of the grant funds to pay another person for services rendered in connection with collecting the grant. The bill specifies that (1) an individual is not prohibited from contracting for services to obtain BPW compensation and (2) a person who provides these services may not charge, demand, receive, or collect payment other than reasonable attorney's fees and expenses associated with the action for compensation; otherwise, the incurred obligation is void. The bill establishes that if the eligible individual is deceased, the individual's estate has standing to be compensated and also authorizes an individual to contract for services to obtain compensation under the bill.

Regulations and Reporting Requirements

By December 31, 2020, and annually thereafter, BPW must report to the General Assembly on any compensation and services awarded to erroneously convicted individuals. OAH, in consultation with BPW, must adopt regulations to govern the procedures and practices in cases brought under the bill.

BPW Compensation – Court-ordered Refunds

The bill requires BPW to award compensation for fines, fees, costs, and restitution previously paid by an individual whose conviction or juvenile adjudication was finally reversed and for whom the court has ordered a refund of said expenses. BPW must pay the amount set by the court within 90 days after receiving the order from the court. This

requirement does not apply to an individual who receives compensation for an erroneous conviction, sentence, or confinement, as described above.

Certification of a Conviction in Error – Postconviction Review of DNA Evidence

The bill amends § 8-201 (postconviction review of DNA) of the Criminal Procedure Article to authorize a State's Attorney, on written request of a petitioner, to certify that a conviction was in error if (1) the court grants a petition for relief under § 8-201; (2) in ruling on a petition under § 8-201, the court sets aside the verdict or conviction or schedules the matter for trial or grants a new trial; and (3) the State's Attorney declines to prosecute the petitioner because the State's Attorney determines that the petitioner is innocent.

Current Law:

BPW Payments

BPW may grant payments to an individual erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit. BPW is authorized to grant an amount commensurate with the actual damages sustained by the individual but is also authorized to grant a reasonable amount for any financial or other appropriate counseling for the individual due to the confinement. An individual is eligible for these payments if (1) 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.

BPW must make payments from money in the General Emergency Fund or money that the Governor provides in the annual budget. BPW may only make payments to the erroneously convicted individual, and the payments can be made in a lump sum or installments.

An individual is prohibited from paying any part of a received payment to another person for services rendered in connection with the collection of the payment. An obligation incurred in violation of this prohibition is void, and a payment made in violation of this prohibition must be forfeited to the State. However, an individual may contract for services to determine the individual's innocence, obtain a pardon, or obtain the individual's release from confinement.

Certification of Conviction in Error

On written request by the petitioner, the State's Attorney may certify that a conviction was in error if (1) the court grants a petition for writ of actual innocence; (2) in ruling on a petition for writ of actual innocence, the court sets aside the verdict or conviction or

schedules the matter for trial or grants a new trial; and (3) the State's Attorney declines to prosecute the petitioner because the State's Attorney determines that the petitioner is innocent.

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:

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

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, that 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.

Postconviction Review of DNA Evidence

A person who is convicted of a crime of violence may file a petition requesting that the court (1) order DNA testing of scientific identification evidence that the State possesses that is related to the conviction or (2) order a law enforcement agency to search a law enforcement database to identify the source of the physical evidence used for DNA testing. A petitioner also may move for a new trial on the grounds that the conviction was based on unreliable scientific identification evidence and a substantial possibility exists that the petitioner would not have been convicted without the evidence.

If the petitioner was convicted as the result of a trial, the court is required to either open or reopen a proceeding under the Uniform Postconviction Procedure Act or order a new trial if the court finds that a substantial possibility exists that the petitioner would not have been convicted if the DNA testing results had been known or introduced at trial. Alternatively, if the court finds that the test results produce relevant exculpatory or mitigating evidence but that a substantial possibility does not exist that the petitioner would not have been convicted or sentenced if the test results had been known, the court may still order a new trial, if the court finds that a new trial is in the interest of justice.

If the petitioner was convicted as the result of a guilty plea, an Alford plea, or a plea of *nolo contendere* and the court determines that the DNA test results establish by clear and convincing evidence the petitioner's actual innocence, the court may open or reopen a proceeding under the Uniform Postconviction Procedure Act or set aside the conviction and schedule the matter for trial. When assessing the impact of the DNA test results on the strength of the State's case against the petitioner at the time the plea was entered, the court may consider, in addition to evidence that was presented as part of the factual support of the plea, admissible evidence submitted by either party that was contained in law enforcement files in existence at the time of the plea. When determining an appropriate remedy, the court may consider any additional admissible evidence submitted by either party that came into existence after the plea was entered and is relevant to the petitioner's claim of actual innocence.

Background: On March 4, 2020, BPW awarded approximately \$8.8 million to three exonerated men who spent more than 100 combined years in prison. On October 30, 2019, BPW approved a plan to pay approximately \$9.3 million to compensate five Maryland men who were exonerated for crimes they did not commit. In September 2019, the Governor expressed interest in using administrative judges to make these award decisions.

Pardons are granted at the discretion of the Governor. Being erroneously convicted, sentenced, and confined under State law for a crime the individual did not commit is not a prerequisite for a gubernatorial pardon. Data is not immediately available on the number of individuals erroneously convicted, sentenced, and confined under State law for crimes they did not commit.

The National Registry of Exonerations is a project of the University of California Irvine Newkirk Center for Science and Society, the University of Michigan Law School, and the Michigan State University College of Law. The registry, which is based on publicly available information, collects, analyzes, and compiles information about known exonerations of innocent criminal defendants since 1989. The registry lists information for 45 exonerations in Maryland (37 since 1989 and 8 prior to 1989).

In May 2018, Baltimore City agreed to pay one of the exonerees \$9 million to resolve a lawsuit that had lasted seven years; he was convicted in 1988 and released from prison in 2008. In November 2017, a federal jury awarded another one of the exonerees \$15 million for his wrongful conviction for the murder of his girlfriend.

Baltimore City Gun Trace Task Force

The Gun Trace Task Force (GTTF) was created in 2007 as an elite unit within the Baltimore City Police Department intended to pursue violent criminals and persons illegally possessing and using guns. In 2017, eight of the nine members of the task force were charged with crimes including racketeering, robbery, extortion, overtime pay fraud, and filing false paperwork. The officers allegedly pocketed hundreds of thousands of dollars discovered while searching the homes and cars of criminals and some innocent civilians. All eight members who were indicted either pled guilty or were convicted of several federal charges.

In September 2019, the State's Attorney for Baltimore City asked courts to vacate convictions in approximately 800 compromised cases tied to the task force under motions filed pursuant to Chapter 702 of 2019. Chapter 702 authorizes a court with jurisdiction over the case, *on motion of the State*, to vacate a probation before judgment or conviction when (1) there is newly discovered evidence that could not have been discovered by due diligence in time for a new trial and creates a substantial or significant probability that the

result would have been different or (2) the State received new information after the entry of probation before judgment or conviction that calls into question the integrity of the probation before judgment or conviction. The interest of justice and fairness must also justify vacating the probation before judgment or conviction.

Task Force to Study Erroneous Convictions and Imprisonment

Chapter 800 of 2017 established the Task Force to Study Erroneous Conviction and Imprisonment, which is staffed by the Governor's Office of Crime Control and Prevention. The task force was required to (1) study the process for establishing an erroneous conviction; (2) study the processes and standards for designating an erroneous conviction in other states; and (3) make recommendations on whether the State should create and implement a new process to designate an erroneous conviction and determine innocence. The task force issued its final report on December 1, 2018. The recommendations of the task force are reflected in this bill.

State Expenditures: General fund expenditures increase, perhaps significantly, for BPW to provide compensation in accordance with the bill's requirements, including \$2.7 million in fiscal 2021 for modifications to previous grants. General fund expenditures increase minimally due to BPW payments for court-ordered refunds of conviction-related fines, fees, costs, and restitution paid by an individual whose conviction has been reversed. General fund expenditures decrease minimally for the Judiciary to the extent that BPW assumes payments of refunds currently paid by the Judiciary in applicable cases. Reimbursable fund expenditures for OAH increase by as much as \$213,461 in fiscal 2021 for personnel to conduct hearings and implement the bill; future years reflect ongoing expenditures.

Modifications of Prior BPW Awards

General fund expenditures for BPW increase by approximately \$2.7 million in fiscal 2021 for modifications to BPW awards made between January 1, 1984, and June 30, 2019 (see **Exhibit 1**). Prior to the October 2019 payments, the most recent BPW payment was made in 2004.

This estimate (1) assumes the bill does not alter the amount of time for which a previous grant recipient is eligible for compensation; (2) is based on the most recent figure on the State's median household income in 2018 inflation-adjusted dollars from the U.S. Census Bureau (\$83,242 per year); and (3) does not account for the value of the U.S. dollar at the time of the original award.

Exhibit 1
BPW Actual Payment Amounts/Actual Damages and
Retroactive Base Payment Amounts Under the Bill

<u>Year</u>	<u>Incarceration/ Confinement Period</u>	<u>Actual Amount of BPW Award/ Actual Damages</u>	<u>Retroactive Base Amount Under Bill*</u>	<u>Difference Between Actual Amount and Retroactive Amount</u>
2004	26 years, 10 months (9,794 days)	\$1,405,000	\$2,233,032	\$828,032
2003	19 years, 8 months (7,178 days)	900,000	1,636,584	736,584
1994	9 years (3,285 days)	300,000	748,980	448,980
1987	11 years (4,015 days)	250,000	915,420	665,420
1984	11 months (335 days)	16,500	76,380	59,880
		\$2,871,500	\$5,610,396	\$2,738,896

BPW: Board of Public Works

*Calculated using most recently available figure for Maryland median household income from the U.S. Census Bureau (\$83,242 per year in 2018 inflation-adjusted dollars). Does not account for the value of the U.S. dollar at the time of the original award.

Source: Department of Legislative Services

The bill authorizes retroactive modification of previous BPW awards using the methodology/formula in the bill. It is unclear what is meant by “preceding *the finding of eligibility*” with respect to adjusted awards. This estimate assumes it refers to the most recent U.S. Census Bureau median household income statistic; however, it could also refer to the median household income based on the date of the original BPW award or the date the individual was originally eligible to receive funds from BPW (*i.e.*, the date of the pardon or the § 8-301 certification).

Payments of Future Erroneous Conviction Awards Under the Bill

The bill (1) removes BPW discretion to deny or alter awards; (2) creates an alternative opportunity for a direct path to eligibility through an independent ALJ determination; and (3) extends eligibility to certifications by State’s Attorneys involving postconviction review of DNA evidence. Accordingly, general fund expenditures for BPW increase, perhaps significantly, in future years if the bill results in expanded eligibility for awards. Expenditures may be mitigated to the extent that recipients receive monetary awards through related litigation and are required to reimburse the State, as specified in the bill.

BPW advises that the median amount of applicable time of confinement for the 13 petitions it has received is 10,701 days (29.3 years). It is unclear at this time if individuals who are determined to be eligible as a result of the bill (and would not be eligible absent the bill) present claims of this magnitude. However, *for illustrative purposes only*, if even one individual with this type of claim is determined eligible as a result of the bill’s provisions, applying a median household income of \$83,242 per year to this time of confinement results in increased expenditures of \$2.4 million.

The calculation of the base award under the bill appears to be generally consistent with the approach used by BPW in 2019. However, the bill (1) allows for payments of attorney’s fees and expenses and (2) allows eligible individuals to receive additional benefits, many of which are tailored to newly released individuals and are of limited duration beginning with an individual’s release from confinement.

With respect to additional benefits, while the bill requires OAH to direct an appropriate State agency or service provider to provide these benefits free of charge, it is unclear if BPW is to reimburse these agencies and providers for services rendered, if the appropriate agency is to absorb the cost, or if another agency related to the service is to reimburse private service providers for services rendered. Listed below are some examples of additional benefits available under the bill:

- health care costs (required for at least five years after release from confinement): at least \$15,000 per year based on the purchase price of a plan that includes medical and dental care on the State’s health exchange for a 40-year-old man, including the

cost of the deductible and out-of-pocket maximum. Costs are assumed to increase by at least 5% per year;

- community college tuition and fees for one year, based on 30 credits per year for an in county resident: \$5,000;
- participation in vocational training: at least \$5,000 (based on EARN Maryland); and
- five years of housing costs (based on median gross monthly rent in Maryland from 2014 to 2018, according to U.S. Census Bureau data): \$81,420.

This fiscal and policy note does not address any conflict between eligibility requirements for programs (including compliance requirements for federal funding received by programs administered by the Maryland Department of Labor) and the bill's requirement that compensation recipients receive specified services.

BPW Fund Balances

This estimate does not address the potential effect of the bill on BPW fund balances. Currently, BPW pays grants from erroneous convictions in installments, with the initial payment coming from BPW's contingency fund (also known as the General Emergency Fund), which is usually budgeted at \$500,000 annually; future installments are made from BPW's Settlement and Judgments Fund. The fund is usually not funded unless a specific amount has been authorized.

The bill requires BPW to pay compensation "in a lump sum or installments with an initial payment of \$50,000 within 90 days after receiving an order [from OAH]." BPW advises that if the board has to make 10 initial payments from the fund in a given year, then the entirety of the fund will have been absorbed by the initial payments, leaving no additional funding for either reimbursements for court-ordered refunds or any other use that the contingent fund may otherwise have been put to. However, the extent to which this may occur cannot be reliably determined at this time and can only be determined with actual experience under the bill.

Determinations of Eligibility

Data is not readily available on the number of requests for eligibility determinations that may be initiated under the bill. Information on caseloads and payments (other than adjustments to previously BPW payments) can only be determined with actual experience under the bill and will depend on the unique circumstances of each case. However, the Conviction Integrity Unit of the Office of the State's Attorney for Baltimore City received approximately 170 applications last year and, as previously noted, convictions were vacated in approximately 800 cases involving GTTF. Based on anecdotal evidence, State's Attorneys issue few certifications for convictions made in error and the Judiciary has

historically advised that it does not maintain data on the number of petitions for writs of actual innocence granted. Caseloads may be higher during the two-year window of eligibility for older cases established and may stabilize over time.

OAH

Reimbursable fund expenditures for OAH increase by as much as \$213,461 in fiscal 2021, which accounts for the bill’s July 1, 2020 effective date. This estimate reflects the cost of hiring one ALJ and one docket clerk to assist with cases presented to OAH under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. OAH advises that the agency requires additional personnel should it experience an increase in the number of hearings of more than 140 cases per year. Given the potential number of statewide *applicants* (regardless of the merit of claims), this estimate assumes that OAH meets this threshold and needs additional personnel.

Positions	2
Salaries and Fringe Benefits	\$202,411
Operating Expenses	<u>11,050</u>
Total FY 2021 OAH Expenditures	\$213,461

Future year expenditures reflect salaries with annual increases and employee turnover and ongoing operating expenses.

To the extent that actual caseloads are below the 140-case threshold, then the addition of OAH personnel may allow for the development of more specialization and expertise in erroneous conviction cases.

BPW and Other Agencies – Participation in OAH Proceedings

General fund expenditures increase, beginning in fiscal 2023, for BPW to make payments to OAH for hearings, as described above. The bill requires “the State” to be a party to OAH proceedings and allows for appeals from OAH decisions *by either party*. It is unclear what State entity is the intended party and what role, if any, BPW will have in determination hearings. BPW’s role in the process is to calculate payments based on a prescribed formula and administer payments. To the extent that the bill establishes an adversarial process with expected participation by BPW, the board advises that it requires at least one attorney position, as the statutorily prescribed responsibilities for its general counsel do not permit the handling of criminal case and compensation review proceedings at OAH and appellate forums. *For illustrative purposes only*, if BPW does have to participate in OAH proceedings, general fund expenditures increase by at least \$100,000 annually.

Similarly, the bill may have an operational effect on other affected State agencies (*e.g.*, the Office of the Attorney General or agencies required to provide additional services under the bill) that may be parties to OAH proceedings.

Refunds of Costs, Fees, and Restitution

General fund expenditures increase minimally for BPW to pay for refunds, as specified in the bill. Assuming that the District Court currently pays for court-ordered refunds of costs, fines, and fees imposed in convictions rendered in that court, then BPW assumes payment of funds currently paid by the State (via the District Court) and possibly payments by local jurisdictions in circuit court cases, as discussed below. It is also assumed that BPW assumes any payment of refunds of restitution in District Court and circuit court cases.

This estimate assumes that:

- relatively few convictions and juvenile adjudications are reversed each fiscal year;
- the amounts associated with court-ordered refunds of fines, fees, costs, and restitution *actually paid* by individuals whose convictions are reversed does not rise to a significant level; and
- the bill does not increase the frequency with which courts order refunds.

The Judiciary has historically advised that, barring a case-by-case analysis, information is not readily available on the number of convictions reversed. According to the Judiciary's *Maryland Judiciary Statistical Abstract 2018*, during fiscal 2018, the Court of Appeals reversed or vacated and remanded 10 criminal appeals and the Court of Special Appeals reversed or vacated and remanded (in whole or in part) 14 juvenile matters and 106 criminal matters, for a total of 130 cases. *For illustrative purposes only*, assuming that each of these cases involves a \$500 refund, general fund expenditures for BPW increase by \$65,000 annually.

State Revenues: OAH reimbursable fund revenues increase, beginning in fiscal 2023 (based on OAH billing practices), from payments from BPW for cases conducted by OAH. While the bill specifies that “the State” is a party to an OAH proceeding, this estimate assumes that BPW is the designated State agency for OAH billing purposes.

OAH advises that it determines the billing rate for an agency after conducting an extensive study of the complexity of and time required to handle an agency's cases, at which point the agency's cases are incorporated onto OAH's funding matrix. OAH further advises that because the cases presented under the bill are unique for the agency, OAH cannot predict the amount of time required to handle an erroneous conviction case. However, for context, cases from agencies that sporadically send cases to OAH are not incorporated into the matrix and are instead handled through contractual agreements at a rate of \$200 per hour.

Local Expenditures: Local expenditures decrease minimally to the extent that the bill results in BPW assuming payments for refunds currently paid by local jurisdictions in circuit court cases. This estimate assumes that the bill does not alter the inclination of individuals eligible for BPW payments to sue local jurisdictions for erroneous convictions, sentences, or confinement. The bill is not expected to materially affect State's Attorney caseloads.

Small Business Effect: The bill may have a meaningful impact on attorneys and other small businesses that are able to receive compensation from BPW as a result of the bill.

Additional Information

Prior Introductions: Similar bills have been introduced during prior legislative sessions. SB 191 of 2019 received a hearing in the Senate Judicial Proceedings Committee, but no further action was taken. Its cross file, HB 1184, received a hearing in the House Judiciary Committee, but no further action was taken. HB 1225 of 2018 passed the House with amendments and was referred to the Senate Judicial Proceedings and Budget and Taxation committees. No further action was taken. Its cross file, SB 987, received a hearing in the Senate Judicial Proceedings Committee. No further action was taken.

Designated Cross File: SB 797 (Senator Kelley, *et al.*) - Judicial Proceedings.

Information Source(s): Governor's Office; Maryland State Commission on Criminal Sentencing Policy; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Register of Wills; University System of Maryland; Morgan State University; Maryland Department of Health; Department of Housing and Community Development; Maryland Department of Labor; Department of Public Safety and Correctional Services; Board of Public Works; Maryland Department of Transportation; Office of Administrative Hearings; *Baltimore Sun*; National Registry of Exonerations; Department of Legislative Services

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