

HOUSE BILL 487

D3

8lr0920

By: **Delegates Ali, Gibson, Hayes, and Moon**

Introduced and read first time: January 25, 2018

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Law Enforcement Misconduct – Erroneous Conviction Compensation and**
3 **Expungement**

4 FOR the purpose of providing that an individual is eligible for a certain grant from the
5 Board of Public Works if the individual was erroneously convicted due to misconduct
6 by law enforcement under certain circumstances; establishing the process to
7 determine eligibility for grant compensation to an erroneously convicted individual
8 by the Board; providing certain factors for the Board to consider in making its
9 determination for grant compensation; providing that an individual is not prohibited
10 from pursuing a separate lawsuit against a certain law enforcement officer; requiring
11 expungement of records for an individual who receives a grant from the Board due
12 to an erroneous conviction; providing that an individual entitled to expungement due
13 to an erroneous conviction may not be required to pay certain costs for the
14 expungement; and generally relating to compensation for erroneously convicted
15 individuals due to misconduct by law enforcement.

16 BY repealing and reenacting, with amendments,
17 Article – State Finance and Procurement
18 Section 10–501
19 Annotated Code of Maryland
20 (2015 Replacement Volume and 2017 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 subsection [(b)](B)(1) of this section, **WHEN MISCONDUCT**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **BY LAW ENFORCEMENT IS NOT INVOLVED**, the Board of Public Works may grant to an
2 individual erroneously convicted, sentenced, and confined under State law for a crime the
3 individual did not commit an amount commensurate with the actual damages sustained by
4 the individual, and may grant a reasonable amount for any financial or other appropriate
5 counseling for the individual, due to the confinement.

6 (2) **SUBJECT TO SUBSECTION (B)(2) OF THIS SECTION, WHEN**
7 **MISCONDUCT BY LAW ENFORCEMENT IS INVOLVED, THE BOARD OF PUBLIC WORKS**
8 **MAY GRANT TO AN INDIVIDUAL ERRONEOUSLY CONVICTED, SENTENCED, AND**
9 **CONFINED UNDER STATE LAW FOR A CRIME THE INDIVIDUAL DID NOT COMMIT AN**
10 **AMOUNT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION.**

11 (3) In making a grant under [paragraph] **PARAGRAPHS (1) AND (2)** of this
12 subsection, the Board of Public Works shall use money in the General Emergency Fund or
13 money that the Governor provides in the annual budget.

14 (b) (1) An individual is eligible for a grant under subsection [(a)](A)(1) of this
15 section if:

16 [(1)] (I) the individual has received from the Governor a full pardon
17 stating that the individual's conviction has been shown conclusively to be in error; or

18 [(2)] (II) the State's Attorney certifies that the individual's conviction was
19 in error under § 8-301 of the Criminal Procedure Article.

20 (2) **AN INDIVIDUAL IS ELIGIBLE FOR A GRANT UNDER SUBSECTION**
21 **(A)(2) OF THIS SECTION IF:**

22 (I) **A LAW ENFORCEMENT OFFICER INVOLVED IN THE**
23 **INDIVIDUAL'S ARREST OR CONVICTION IS SUBSEQUENTLY CONVICTED OF A CRIME**
24 **RELATED TO CONDUCT DURING THE INDIVIDUAL'S CRIMINAL CASE; AND**

25 (II) 1. **THE INDIVIDUAL HAS RECEIVED FROM THE**
26 **GOVERNOR A FULL PARDON STATING THAT THE INDIVIDUAL'S CONVICTION HAS**
27 **BEEN SHOWN CONCLUSIVELY TO BE IN ERROR; OR**

28 2. **THE STATE'S ATTORNEY CERTIFIES THAT THE**
29 **INDIVIDUAL'S CONVICTION WAS IN ERROR UNDER § 8-301 OF THE CRIMINAL**
30 **PROCEDURE ARTICLE.**

31 (c) (1) **WHEN AN INDIVIDUAL IS ELIGIBLE FOR A GRANT UNDER**
32 **SUBSECTION (B)(2) OF THIS SECTION, THE BOARD OF PUBLIC WORKS SHALL**
33 **CONDUCT A HEARING TO DETERMINE THE AMOUNT OF THE GRANT.**

34 (2) **AT THE HEARING, THE BOARD OF PUBLIC WORKS MAY CONSIDER:**

1 **(I) WHETHER THE LAW ENFORCEMENT OFFICER'S CRIMINAL**
2 **ACT WAS CAUSALLY RELATED TO THE INDIVIDUAL'S ERRONEOUS CONVICTION;**

3 **(II) THE SEVERITY OF THE MISCONDUCT BY LAW**
4 **ENFORCEMENT;**

5 **(III) THE EXTENT OF THE HARM CAUSED TO THE ERRONEOUSLY**
6 **CONVICTED INDIVIDUAL; AND**

7 **(IV) ANY OTHER RELEVANT FACTORS.**

8 **(3) ON A FINDING THAT AN INDIVIDUAL IS ENTITLED TO A GRANT**
9 **UNDER THIS SECTION FOR AN ERRONEOUS CONVICTION INVOLVING MISCONDUCT**
10 **BY LAW ENFORCEMENT, THE BOARD OF PUBLIC WORKS SHALL GRANT TO THE**
11 **INDIVIDUAL A MINIMUM OF \$50,000 FOR EACH YEAR OF ERRONEOUS CONFINEMENT**
12 **UP TO A MAXIMUM OF \$5,000,000 TOTAL COMPENSATION.**

13 **(D)** The Board of Public Works may pay the grant determined under subsection
14 (a) of this section in a lump sum or in installments.

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

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

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

21 (iii) A payment made in violation of this paragraph shall be forfeited
22 to the State.

23 **[(e)] (F)** This section does not prohibit an individual from contracting for
24 services to:

25 (1) determine the individual's innocence;

26 (2) obtain a pardon; or

27 (3) obtain the individual's release from confinement.

28 **(G) THIS SECTION DOES NOT PROHIBIT AN INDIVIDUAL FROM PURSUING A**
29 **SEPARATE LEGAL ACTION AGAINST THE LAW ENFORCEMENT OFFICER INVOLVED IN**
30 **THE ERRONEOUS CONVICTION.**

1 **(H) (1) AN INDIVIDUAL WHO RECEIVES A GRANT UNDER THIS SECTION IS**
2 **ENTITLED TO EXPUNGEMENT OF ALL COURT AND POLICE RECORDS RELATING TO**
3 **THE ARREST AND CONVICTION.**

4 **(2) WITHIN 30 DAYS AFTER A GRANT UNDER SUBSECTION (C) OF THIS**
5 **SECTION, THE COURT SHALL ORDER EXPUNGEMENT OF EACH COURT RECORD,**
6 **POLICE RECORD, OR OTHER RECORD THAT THE STATE OR A POLITICAL SUBDIVISION**
7 **OF THE STATE KEEPS RELATED TO THE CONVICTION.**

8 **(3) WITHIN 30 DAYS AFTER A GRANT UNDER SUBSECTION (C) OF THIS**
9 **SECTION, THE LOCAL LAW ENFORCEMENT UNIT SHALL:**

10 **(I) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE**
11 **RECORD ABOUT THE ARREST AND CONFINEMENT OF THE INDIVIDUAL; AND**

12 **(II) SEND A NOTICE OF EXPUNGEMENT CONTAINING ALL**
13 **RELEVANT FACTS ABOUT THE EXPUNGEMENT AND UNDERLYING ARREST AND**
14 **CONFINEMENT TO:**

15 **1. THE CENTRAL REPOSITORY;**

16 **2. EACH BOOKING FACILITY OR LAW ENFORCEMENT**
17 **UNIT THAT THE LOCAL LAW ENFORCEMENT UNIT BELIEVES MAY HAVE A POLICE**
18 **RECORD ABOUT THE ARREST OR CONFINEMENT; AND**

19 **3. THE INDIVIDUAL ENTITLED TO EXPUNGEMENT.**

20 **(4) WITHIN 30 DAYS AFTER RECEIPT OF THE NOTICE UNDER**
21 **PARAGRAPH (3) OF THIS SUBSECTION, THE CENTRAL REPOSITORY, EACH BOOKING**
22 **FACILITY, AND EACH LAW ENFORCEMENT UNIT SHALL:**

23 **(I) SEARCH DILIGENTLY FOR AND EXPUNGE EACH POLICE**
24 **RECORD ABOUT THE ARREST OR CONFINEMENT OF THE INDIVIDUAL; AND**

25 **(II) ADVISE IN WRITING THE INDIVIDUAL ENTITLED TO**
26 **EXPUNGEMENT OF COMPLIANCE WITH THE ORDER.**

27 **(5) IF A LAW ENFORCEMENT UNIT, A BOOKING FACILITY, OR THE**
28 **CENTRAL REPOSITORY FAILS TO EXPUNGE A POLICE RECORD AS REQUIRED UNDER**
29 **PARAGRAPH (3) OR (4) OF THIS SUBSECTION, THE INDIVIDUAL ENTITLED TO**
30 **EXPUNGEMENT MAY:**

1 **(I) SEEK REDRESS BY MEANS OF ANY APPROPRIATE LEGAL**
2 **REMEDY; AND**

3 **(II) RECOVER COURT COSTS.**

4 **(6) AN INDIVIDUAL WHO IS ENTITLED TO EXPUNGEMENT UNDER THIS**
5 **SECTION MAY NOT BE REQUIRED TO PAY ANY FEE OR COSTS IN CONNECTION WITH**
6 **THE EXPUNGEMENT.**

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2018.