



Task Force to Study Erroneous Conviction and Imprisonment



Meeting Minutes

October 24, 2017

Members in Attendance: Delegate Brett Wilson, Chair; Senator Delores Kelley; Senator William Smith; Elihai Braun; Michele Nethercott; Scott Shellenberger; Donald Hogan; Walter Lomax; Renée Hutchins; Tiffany Maclin, Staff

Members not present: Delegate Kathleen Dumais - Julie Scheide attending on her behalf

Other Guests in Attendance: Lauren Dedon; Lauren Lipscomb; Lisa Smith; Sarah Yoo; Suzanne Pelz; Russell Butler; Jen McLaughlin; Cara Sullivan; Camille Fesche

I. Welcome

Delegate Wilson called the meeting to order at 10:41 AM as he welcomed everyone to the initial meeting of the task force. Delegate Wilson announced his recent judgeship appointment, indicating this would be his first and last meeting as a member and Chair of the task force. He told the members that a new Delegate appointment and Chair designation was forthcoming.

II. Introduction of Members

Delegate Wilson allowed the members of the Task Force to introduce themselves. Guests attending the meeting were also given the opportunity to introduce themselves.

III. Overview of Senate Bill 348 / Role of Task Force

Tiffany Maclin of the Governor's Office of Crime Control and Prevention read from the bill the statutory charge for the task force. The bill states that the task force must study the State's current process for establishing whether a conviction was made in error and for determining the innocence of a person erroneously convicted; study the processes and standards in other states for designating an erroneous conviction, determining a person's innocence, and compensating a person for imprisonment based on an erroneous conviction; and make recommendations on whether the State should create and implement a new process to designate an erroneous conviction and determine the innocence of a person erroneously convicted, including whether a specific agency should certify that a person is innocent. By December 15, 2017, the task force must report its findings and recommendations to the Governor and the General Assembly.

IV. Presentation from the National Governors Association

Lauren Dedon, Policy Analyst for the Homeland Security & Public Safety Division of the National Governors Association presented on other state's erroneous conviction standards for eligibility, compensation, and commissions that have assembled. Lauren began her presentation with an overview of the National Governors Association (NGA). The NGA is the nation's oldest organization serving the needs of governors



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and their staff. A request from the Governor's Office of Crime Control & Prevention prompted the NGA's involvement in researching other state statutes for erroneous conviction procedures and compensation.

Link to presentation:

<https://goccp.maryland.gov/wp-content/uploads/erroneous-conviction-imprisonment-20171024-NGA-presentation.pdf>

V. Questions, Discussion and Next Steps

At the conclusion of the presentation, some questions and comments overlapped for Ms. Dedon and the members of the task force. Scott Shellenberger inquired about the limitations on the types of crimes for other states for exonerations. He also inquired about how the varying pleas affected the exoneration process, such as Alford pleas and guilty pleas. Ms. Dedon responded that she would need to do more research to provide an accurate answer.

Senator Delores Kelley spoke about the problems with eligibility and the standards for compensation. Senator Kelley indicated that Maryland does not establish in a statute how the damages are calculated. She also spoke about the new certification process that will eliminate the redundancy of requiring a writ of actual innocence and a gubernatorial pardon to receive payment from the Board of Public Works.

Delegate Wilson stated he was interested in more information on states with no statute for compensation and whether they recognize other causes of wrongful convictions, such as misconduct of state actors or an error by the trier of fact.

Donald Hogan, referencing back to the NGA presentation, asked if the North Carolina Innocence Inquiry Commission was staffed full-time and what costs were associated with a full-time commission solely dedicated to wrongful convictions. Lauren Dedon did not have costs for the commission but did indicate that the commission is staffed with 8 or 9 full-time employees, not including the members. Since 2007, the commission has reviewed over 2000 applications, with 10 hearings and 10 exonerations resulting. As the discussion was focused on groups working to assist the wrongfully convicted, Senator Kelley mentioned the University of Baltimore School of Law Innocence Project. Senator Kelley suggested the possibility of state funding to assist the Innocence Project to continue their work rather than creating an overlap by giving any consideration to a statutory commission or board.

Senator Smith inquired whether the other 32 states with compensation statutes offered tax relief to the exonerees. Ms. Dedon indicated that none of the resources she researched listed information on tax relief for compensation packages but she would follow-up and provide an answer to the members. Delegate Wilson and Senator Kelley mentioned that they were uncertain about Maryland tax relief but both indicated that the compensation should be tax exempt.

While referencing the Board of Public Works 2017 claims chart, Delegate Wilson asked Mr. Lomax about his compensation status and other topics he would be interested in addressing with the task force. From the standpoint of an exoneree who served almost 40 years wrongfully imprisoned, Mr. Lomax offered his ideas. Mr. Lomax commented that compensation will never be enough and that the type of damage that has been done cannot be fairly assessed by a board. He stated that comparing the awarded compensation of lawsuits for sexual harassment vs. compensation packages for the erroneously convicted, shows an



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inaccurate assessment for actual damages. Not minimizing the former, he indicated that the damage is similarly detrimental. Moving into compensation discussion, Mr. Lomax mentioned the payout options, lump sum payments and installments, should be further studied. He stated that factors such as age, race, and family impact should all be considered. Mr. Lomax indicated that he has not received compensation from the state.

Delegate Wilson suggested allowing the October 1 law to take effect allowing compensation to be the primary focus and direction of the task force. Ms. Nethercott stated that the new law does not solve the whole process. She expressed concerns with the role of the State's Attorneys under the new law allowing them to certify the error, as they are also the individuals prosecuting. Ms. Nethercott also mentioned the need for reintegration services for exonerees, noting that conditions of parole and probation provide for services, assistance, and transition while it is extremely difficult for an exoneree upon release requiring those same services. Exonerees are often released with little to no warning, no transition or re-entry services, no money, and with an immediate need for healthcare, housing, and assistance. She would like the task force to consider provisions for job training, education, housing and other reintegration services for exonerees. Delegate Wilson mentioned working with the Department of Public Safety and Correctional Services for feasibility of reintegration services for exonerees.

Renée Hutchins asked why does the State's Attorney still need to certify the error if the defense won the petition for writ of actual innocence. Senator Kelley mentioned another state official to certify rather than the State's Attorney may be an option. Mr. Hogan then inquired about the number of writs filed and granted in Maryland. Mr. Braun referenced the fiscal and policy note for Senate Bill 348 for data on writs filed by county from 2014-2016. Ms. Nethercott added the caveat that the only way to prevail in writ petitions is to produce newly discovered evidence (Criminal Procedure Article, §8-301).

Delegate Wilson suggested the group begin focusing on the best practices for determining compensation. The members are tasked with deciding before the next meeting, but preferably in the next 2 weeks, how Maryland law should compensate; i.e. dollar amount per day method, setting minimum/maximum annual totals, or other calculations. Ms. Hutchins asked that members be mindful of variables such as social, racial, or economic factors that may have an impact on determining compensation packages. Delegate Wilson then moved to set a date for the next meeting. The members decided that November 29 at 10:30 AM would be best.

VI. Conclusion

Delegate Wilson adjourned the meeting at 12:19 PM.