
HOUSE BILL 2122

State of Washington 60th Legislature 2007 Regular Session

By Representatives McDermott, Flannigan, Appleton, Santos and Ormsby

Read first time 02/09/2007. Referred to Committee on Judiciary.

1 AN ACT Relating to providing compensation for persons who have been
2 wrongfully convicted and imprisoned; adding a new section to chapter
3 41.05 RCW; adding a new section to chapter 72.09 RCW; and adding a new
4 chapter to Title 4 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** INTENT. (1) The legislature finds that
7 persons who have been wrongfully convicted and imprisoned for crimes
8 they did not commit have been uniquely victimized and have suffered
9 substantial injustice. The legislature also finds that those persons
10 do not have adequate legal redress to recover damages and restore their
11 lives. Thus, the legislature intends to create a civil cause of action
12 that is above and beyond any existing tort remedy and that is
13 specifically created to address the unique situation faced by those who
14 have been wrongfully convicted and imprisoned.

15 (2) The legislature also recognizes that persons who have been
16 wrongfully convicted and imprisoned may need more than monetary damages
17 to assist them in restoring their lives. The legislature finds that
18 programs such as Washington's corrections clearinghouse and reentry
19 services established by the department of corrections offer valuable

1 workforce training, educational services, and other resources that can
2 help offenders reintegrate back into society. The legislature
3 encourages the courts to assist persons who have been wrongfully
4 convicted and imprisoned in accessing these resources. In addition,
5 because of the wrongfully convicted person's substantial burden of
6 proof required under this legislation before the person can recover
7 damages, the legislature encourages the court, in exercising its
8 discretion regarding the weight and admissibility of evidence, to give
9 due consideration to difficulties of proof caused by the passage of
10 time, the death or unavailability of witnesses, the destruction of
11 evidence, or other factors not caused by the wrongfully convicted
12 person or those acting on his or her behalf.

13 NEW SECTION. **Sec. 2.** STATEMENT OF CLAIM. (1) Any person
14 convicted in a court in this state and subsequently imprisoned for one
15 or more felonies which he or she was wrongfully convicted may file a
16 claim for damages against the state.

17 (2) If the person is incapacitated and incapable of filing the
18 claim, or if he or she is a minor, or is a nonresident of the state,
19 the claim may be filed on behalf of that person by any relative,
20 attorney, or agent acting as the person's representative. However, if
21 the person entitled to file a claim under subsection (1) of this
22 section is deceased, no claim may be brought on his or her behalf.

23 NEW SECTION. **Sec. 3.** VENUE AND SERVICE OF PROCESS. (1) All
24 claims of wrongful conviction and imprisonment shall be filed in
25 superior court. The venue for such actions shall be governed by RCW
26 4.92.010.

27 (2) Service of the summons and complaint shall be governed by RCW
28 4.92.020.

29 NEW SECTION. **Sec. 4.** PRESENTATION OF CLAIM. (1) In order to file
30 an actionable claim for wrongful conviction and imprisonment, the
31 claimant must establish by documentary evidence that:

32 (a) The claimant has been convicted of one or more felonies in
33 state court and subsequently sentenced to a term of imprisonment, and
34 has served all or part of the sentence;

35 (b) The claimant is not currently incarcerated for any offense;

1 (c)(i) The claimant has been pardoned on grounds consistent with
2 innocence for the felony or felonies for which the claimant was
3 sentenced and which are grounds for the complaint; or

4 (ii) The claimant's judgment of conviction was reversed or vacated
5 and the accusatory instrument dismissed or, if a new trial was ordered,
6 either the claimant was found not guilty at the new trial or the
7 claimant was not retried and the accusatory instrument dismissed;
8 provided that the judgment of conviction was reversed or vacated, or
9 the accusatory instrument was dismissed, on grounds consistent with
10 innocence or because the statute on which the accusatory instrument was
11 based or the application of the statute violated the Constitution of
12 the United States or the state Constitution; and

13 (d) The claim is not time-barred by the provisions of section 9 of
14 this act.

15 (2) In addition to the requirements in subsection (1) of this
16 section, the claim shall state facts in sufficient detail to permit the
17 court to determine whether the claimant is likely to succeed at trial
18 in proving that:

19 (a) The claimant did not commit any of the acts charged in the
20 accusatory instrument or the claimant's acts or omissions charged in
21 the accusatory instrument did not constitute a crime; and

22 (b) The claimant did not commit or suborn perjury, or fabricate
23 evidence to cause or bring about the conviction. A guilty plea to a
24 crime the claimant did not commit, or a confession that is later proven
25 to be false, does not constitute perjury or fabricated evidence under
26 this subsection.

27 (3) The claimant shall verify the claim unless he or she is
28 incapacitated, in which case the person filing on behalf of the
29 claimant shall verify the claim.

30 (4)(a) If the court finds after reading the claim that the claimant
31 is not likely to succeed at trial, it shall dismiss the claim, either
32 on its own motion or on the motion of the state.

33 (b) If the court dismisses the claim, the court shall set forth the
34 reasons for its decision in written findings of fact and conclusions of
35 law.

36 NEW SECTION. **Sec. 5.** RIGHT OF APPEAL. Any party is entitled to

1 the rights of appeal afforded parties in a civil action following a
2 decision on such motions. In the case of dismissal of a claim, review
3 of the superior court action shall be de novo.

4 NEW SECTION. **Sec. 6.** JUDGMENT AND AWARD. (1) In order to obtain
5 a judgment in his or her favor, the claimant must show by clear and
6 convincing evidence that:

7 (a) The claimant was convicted of one or more felonies in state
8 court and subsequently sentenced to a term of imprisonment, and has
9 served all or any part of the sentence;

10 (b) The claimant is not currently incarcerated for any offense;

11 (c)(i) The claimant has been pardoned on grounds consistent with
12 innocence for the felony or felonies for which the claimant was
13 sentenced and which are the grounds for the complaint; or

14 (ii) The claimant's judgment of conviction was reversed or vacated
15 and the accusatory instrument dismissed or, if a new trial was ordered,
16 either the claimant was found not guilty at the new trial or the
17 claimant was not retried and the accusatory instrument dismissed;
18 provided that the judgment of conviction was reversed or vacated, or
19 the accusatory instrument was dismissed, on grounds consistent with
20 innocence or because the statute on which the accusatory instrument was
21 based or the application of the statute violated the Constitution of
22 the United States or the state Constitution;

23 (d) The claimant did not commit any of the acts charged in the
24 accusatory instrument, or the claimant's acts or omissions charged in
25 the accusatory instrument did not constitute a crime; and

26 (e) The claimant did not commit or suborn perjury, or fabricate
27 evidence to cause or bring about his or her conviction. A guilty plea
28 to a crime the claimant did not commit, or a confession that is later
29 proven to be false, does not constitute perjury or fabricated evidence
30 under this subsection.

31 (2) Any pardon or proclamation issued to the claimant by the
32 governor shall be admissible as evidence when it is certified by the
33 officer having lawful custody of the pardon or proclamation, with the
34 seal of the office affixed, or with the official certificate of such
35 officer.

36 (3) If the jury or, in the case where the right to a jury is

1 waived, the court finds by clear and convincing evidence that the
2 claimant was wrongfully convicted and imprisoned, the court shall award
3 the following damages to the claimant:

4 (a) Not less than fifty thousand dollars for each year of actual
5 confinement including time spent awaiting trial, with an additional
6 fifty thousand dollars for each year served on death row, as adjusted
7 for partial years served and to account for inflation from the
8 effective date of this section;

9 (b) Economic damages including but not limited to loss of earnings,
10 costs associated with the claimant's criminal defense at trial and on
11 appeal, restitution paid by the claimant that was a requirement of the
12 judgment and sentence, and medical expenses for mental and physical
13 health costs incurred after the claimant's release that are reasonably
14 related to the claimant's imprisonment;

15 (c) Compensation for any reasonable reintegrative services, such as
16 job training, that are paid for by the claimant;

17 (d) Up to ten years of eligibility to participate in the health
18 insurance plans and contracts offered by the public employees' benefits
19 board. The court shall issue an order directing the health care
20 authority to enroll the claimant as provided for in section 10 of this
21 act. The court order must specify the amount of time for which the
22 claimant is eligible to receive benefits and that the claimant shall
23 not be responsible for any costs associated with participation. The
24 claimant's eligibility under this subsection shall not extend to the
25 claimant's spouse or dependents; and

26 (e) Reasonable attorneys' fees for successfully bringing the
27 wrongful conviction claim. The attorneys' fees shall be calculated at
28 ten percent of the damage award plus expenses. However, attorneys'
29 fees, exclusive of expenses, shall not exceed seventy-five thousand
30 dollars. These fees shall not be deducted from the compensation due to
31 the claimant and counsel shall not be entitled to receive additional
32 fees from the client. The court may not award any attorneys' fees to
33 the claimant if the claimant fails to prove he or she was wrongfully
34 convicted and imprisoned.

35 (4) The damage award shall not include any punitive or noneconomic
36 damages.

37 (5) The damage award shall not be offset by any expenses incurred
38 by the state or any political subdivision of the state including, but

1 not limited to, expenses incurred to secure the claimant's custody, or
2 to feed, clothe, or provide medical services for the claimant, nor
3 shall the court offset against the award the value of any services or
4 reduction in fees for services to be provided to the claimant as part
5 of the damages awarded to the claimant pursuant to this section.

6 (6) The court may order the claimant's record of conviction vacated
7 if the record has not already been vacated, sealed, expunged, or
8 destroyed under court rules. The requirements for vacating records
9 under RCW 9.94A.640 shall not apply.

10 (7) Upon request of the claimant, the court shall refer the
11 claimant to the department of corrections for access to the
12 department's reentry services, if available, including but not limited
13 to the department's community-based transition programs and long-term
14 support programs for education, monitoring, mentoring, life skills
15 training, assessment, job skills development, mental health and
16 substance abuse treatment.

17 NEW SECTION. **Sec. 7.** NOTICE. (1) On or after the effective date
18 of this section, when a court grants judicial relief, such as reversal
19 and vacation of a person's conviction, consistent with the criteria
20 established in section 4(1)(c)(ii) of this act, the court shall provide
21 to the person at the time the relief is granted a copy of sections 2
22 through 11 of this act.

23 (2) The clemency and pardons board or the indeterminate sentence
24 review board, whichever is applicable, upon issuance of a pardon by the
25 governor on grounds consistent with innocence on or after the effective
26 date of this section, shall provide a copy of sections 2 through 11 of
27 this act to the individual pardoned.

28 (3) If an individual entitled to receive the information required
29 under this section shows that he or she was not provided with the
30 information, he or she shall have an additional twelve months, beyond
31 the statute of limitations under section 9 of this act, to bring a
32 claim under this chapter.

33 NEW SECTION. **Sec. 8.** LEGAL REMEDIES NOT BARRED. (1) The
34 provisions of this chapter shall not preclude any other legal remedy
35 available to the claimant to seek redress for the wrongful conviction
36 and imprisonment.

1 (2) The state may not assert as a defense to a claim under this
2 chapter a release dismissal agreement, plea agreement, or any similar
3 agreement whereby the prosecutor's office or an agent acting on its
4 behalf agrees to take or refrain from certain action if the accused
5 individual agrees to forgo legal action against the government.

6 NEW SECTION. **Sec. 9.** STATUTE OF LIMITATIONS. Except as provided
7 in section 7(3) of this act, an action for compensation under this
8 chapter shall be commenced within three years after either the grant of
9 a pardon or the grant of judicial relief and satisfaction of other
10 conditions described in section 5 of this act; provided, however, that
11 any action by the state challenging or appealing the grant of judicial
12 relief shall toll the three-year period. Persons who have been
13 wrongfully convicted, imprisoned, and released from custody before the
14 effective date of this section may commence an action under this
15 chapter within five years of the effective date of this section.

16 NEW SECTION. **Sec. 10.** A new section is added to chapter 41.05 RCW
17 to read as follows:

18 (1) An individual who was awarded damages under section 6 of this
19 act is eligible to participate in the health insurance plans and
20 contracts offered by the public employees' benefits board as prescribed
21 by court order, and the individual is not responsible for any costs
22 associated with that participation.

23 (2) The health care authority, upon receipt of the court order,
24 must enroll the individual in a health insurance plan in compliance
25 with the terms and conditions of the court order.

26 (3) The director shall adopt rules under RCW 41.50.050 as the
27 director may find necessary to implement this section and to avoid
28 conflicts with any applicable federal or state laws.

29 NEW SECTION. **Sec. 11.** A new section is added to chapter 72.09 RCW
30 to read as follows:

31 When a court refers a person to the department under section 6 of
32 this act as part of the person's judgment in a wrongful conviction
33 claim, the department shall provide reasonable reentry services to the
34 person. Nothing in this section requires the department to establish
35 new reentry programs or services.

1 NEW SECTION. **Sec. 12.** SEVERABILITY CLAUSE. If any provision of
2 this act or its application to any person or circumstance is held
3 invalid, the remainder of the act or the application of the provision
4 to other persons or circumstances is not affected.

5 NEW SECTION. **Sec. 13.** CAPTIONS NOT LAW. Captions used in this
6 chapter are not any part of the law.

7 NEW SECTION. **Sec. 14.** CODIFICATION DIRECTION. Sections 1 through
8 9, 12, and 13 of this act constitute a new chapter in Title 4 RCW.

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