
Judiciary Committee

HB 2221

Title: An act relating to creating a claim for wrongful conviction and imprisonment.

Brief Description: Creating a claim for wrongful conviction and imprisonment.

Sponsors: Representatives Orwall, Appleton, Jenkins, Pollet, Upthegrove, Roberts and Kagi.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Creates a civil cause of action whereby persons wrongly convicted of one or more felonies and incarcerated as a result may bring suit against the county where their prosecution occurred and be awarded compensation.
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Hearing Date: 1/12/12

Staff: Omeara Harrington (786-7136).

Background:

For various reasons, a person who has been convicted of a crime may have his or her criminal conviction overturned. The Innocence Project, a non-profit legal clinic that offers legal assistance to people wrongly convicted, reports that there have been 280 post-conviction DNA exonerations in United States history.

Persons wrongly convicted of federal crimes are authorized by federal statute to bring an action for damages in the United States Court of Federal Claims. In 2004 Congress increased the damage award limit for persons who successfully bring a claim for wrongful conviction of a federal crime to up to \$100,000 for death row exonerees and \$50,000 a year for non-death row exonerees.

Along with the federal government, the District of Columbia and 27 states have compensation statutes of some form. Washington law does not provide for a civil cause of action specific to compensation for persons wrongly convicted and incarcerated.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill:

A civil cause of action is established by which persons wrongly convicted of felonies in state court may bring suit against the county in which their prosecution occurred and be awarded compensation for their wrongful conviction and incarceration.

Who may bring a claim.

A person who has been convicted in Washington and imprisoned for one or more felonies of which that person is actually innocent may file a claim for compensation. A person is actually innocent of a felony if the person did not engage in any of the illegal activity alleged in the accusatory instrument. A person is wrongly convicted if that person was charged, convicted, and imprisoned for one or more felonies of which the person is actually innocent. If the claimant is incapacitated, a minor, or a nonresident, an agent may file the claim on behalf of the claimant. If the claimant is deceased, the claim survives to the personal representative of the deceased claimant.

Establishment of claim.

The claim must be brought in superior court and named counties are to be represented by the Attorney General. In order to file an actionable claim, a claimant must establish by documentary evidence that:

- the claimant has been convicted of one or more felonies in state court and served all or part of a corresponding sentence of imprisonment;
- the claimant is not currently incarcerated for any offense;
- the claimant is not seeking compensation for any period of imprisonment during which they were simultaneously imprisoned on a concurrent sentence for a crime other than the felony or felonies that form the basis of the claim;
- the claimant has been pardoned on grounds consistent with innocence for the felony or felonies upon which the claim is based; or, as a result of significant new information, the judgment of conviction was reversed or vacated and the accusatory instrument dismissed, the wrongly convicted person was found not guilty at a new trial, or the wrongly convicted person was not retried and the accusatory instrument was dismissed; and
- the statute of limitations has not run.

The claim must also set out the following factual assertions in sufficient detail:

- the claimant did not engage in any illegal conduct alleged in the accusatory instrument; and
- the claimant did not commit perjury or fabricate evidence to bring about the conviction; however, a guilty plea to a crime the claimant did not commit or a false confession will not constitute perjury.

Convictions vacated, overturned, or subject to re-sentencing pursuant to *In re: Personal Detention of Andress* do not qualify as the basis of a compensation claim unless all other qualifying criteria are met.

The claimant must verify the claim.

Unless the Attorney General concedes, any claim not meeting the filing criteria set out above will be dismissed by the court. The court must set forth its reasons for dismissal in findings of fact and conclusions of law.

The standard of proof is a proof by a preponderance of the evidence.

A person accepting compensation under this act forfeits any other state claim related to the underlying wrongful conviction. The claimant is not precluded from bringing a federal claim; however, if a federal award is granted based on the wrongful conviction, any entity providing compensation under this act will be reimbursed to the full extent of the federal award or the full amount received by the claimant under this act, whichever is less.

Compensation.

Counties are responsible for compensation under this act. If the county fails to satisfy the compensation award within 180 days, the state will satisfy the award and seek reimbursement from the county. The compensation award includes the following:

- monetary damages in an amount not less than:
 - \$50,000 for each year in actual incarceration (including pre-trial incarceration);
 - \$50,000 for each year spent on death row;
 - \$25,000 for each year on parole, community custody, or as a registered sex offender; and
- other compensation includes:
 - compensation for child support that accrued while incarcerated;
 - reimbursement for restitution, assessments, fees, and court costs associated with the underlying wrongful conviction;
 - higher education tuition waivers for Washington's state universities and colleges for the claimant and the claimant's children and step-children if they are domiciled in Washington state;
 - up to ten years of eligibility under an existing eligibility type for the claimant, their spouse or domestic partner, and dependent children to participate, cost free, in Public Employees' Benefits Board health and dental insurance programs;
 - attorneys' fees for bringing the wrongful conviction claim, not to exceed \$75,000; and
 - access to reentry services (upon the claimant's request).

The award cannot be offset by costs the state (or any political subdivision of the state) incurred in prosecuting and incarcerating the wrongly convicted person. The award cannot include punitive damages and will not be considered income for tax purposes.

A court must seal the wrongly convicted person's record of conviction upon a finding of wrongful conviction. Upon the claimant's request, the court may order the conviction record vacated.

Notice.

When a person's conviction has been reversed or vacated or other similar judicial relief has been granted on grounds consistent with innocence, the court must provide the person with a copy of this act.

Statute of Limitations.

The claim must be brought within three years from pardon, grant of judicial relief, release from custody, or effective date of this act, whichever is latest. If the wrongly convicted person is not given proper notice of the act they have an additional twelve months to file.

Right of Appeal.

Wrongful conviction claimants will have the right to appeal. Review of a superior court dismissal is *de novo*.

Appropriation: None.

Fiscal Note: Requested on January 3, 2012.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.