

SENATE BILL REPORT

SB 5139

As of February 28, 2011

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

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

Sponsors: Senators Hargrove and Shin.

Brief History:

Committee Activity: Human Services & Corrections: 2/01/11, 2/17/11 [DPS, w/oRec].
Ways & Means: 2/25/11.

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: That Substitute Senate Bill No. 5139 be substituted therefor, and the substitute bill do pass.

Signed by Senators Hargrove, Chair; Regala, Vice Chair; Stevens, Ranking Minority Member; Harper and McAuliffe.

Minority Report: That it be referred without recommendation.

Signed by Senators Baxter and Carrell.

Staff: Jennifer Strus (786-7316)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Steve Jones (786-7440)

Background: In 1938, the federal government enacted a statute to compensate the wrongly convicted. The original statute allocated \$5,000 to the exoneree regardless of time served. In 2004 as part of the Innocence Project Act, Congress increased this amount up to \$50,000 per year of wrongful imprisonment and up to \$100,000 per year of wrongful imprisonment on death row.

Currently 27 states offer compensation for persons who have been wrongly convicted. Washington does not have a compensation statute for the wrongly convicted.

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 (Recommended Substitute): 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 or damages against the state. A person is actually innocent of a felony if the person did not commit any of the acts in the charging document. A person is considered wrongly convicted if that person was charged, convicted, and imprisoned for one or more felonies of which the person is actually innocent.

To file an actionable claim for wrongful conviction and imprisonment, the claimant must establish by clear and convincing evidence the following:

- that the person has been convicted of one or more felonies in state court and sentenced to a prison term for those convictions and has served all or a part of his or her sentence;
- that the person is not currently incarcerated for any offense; and that during the period of imprisonment for which the claimant is seeking compensation, he or she was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies for which the claimant is seeking compensation;
- the claimant has been pardoned on grounds consistent with innocence for the felony or felonies for which the claimant was sentenced and for which the claimant is seeking compensation or the claimant's judgment of conviction was reversed or vacated and the charges dismissed on the basis of significant new information, or if a new trial was ordered either the claimant was found not guilty at the new trial or the claimant was not retried and the charges dismissed; and
- the statute of limitations has not run out.

The claim must state facts in sufficient detail for the trier of fact to determine that the claimant did not commit any of the acts in the charging document and, in light of all the evidence whether or not the evidence was admissible at trial, the claimant did not commit or suborn perjury or fabricate evidence to cause the conviction.

The claimant must verify the claim.

If the court finds that the claimant does not meet the filing criteria, it must dismiss the claim. The court must set forth the reasons for its decisions in written findings of fact and conclusions of law.

If the jury or the court finds by clear and convincing evidence that the claimant was wrongly convicted, the court must award compensation, adjusted for partial years served and accounting for inflation from the effective date of the act in an amount up to \$20,000 for each year of actual confinement, including time spent awaiting trial and on death row. The court may order that a portion of child support arrearages and interest that accrued while the claimant was in prison be paid from the compensation. The court may also direct that a portion of the compensation be for lost wages.

The court may award reasonable attorneys' fees for successfully bringing the wrongful conviction claim. The attorneys' fees are to be calculated at 10 percent of the damage award plus expenses. However, the fees cannot exceed \$75,000. Attorneys fees are not to be deducted from the compensation award and the attorney cannot obtain additional fees from the claimant.

The compensation amount cannot be offset by expenses incurred by the state or local government in incarcerating the claimant.

The court must seal the claimant's conviction record if it finds that the claimant was wrongfully convicted. If the claimant requests, the court must vacate the claimant's conviction record.

At the claimant's request, the court must refer the claimant to the Department of Corrections, the Department of Social and Health Services, or the Employment Security Department for reentry services.

A claim for wrongful conviction must be brought within three years after the claimant is pardoned or granted judicial relief. If the state appeals the grant of judicial relief, the statute of limitations is tolled during the appeal period. Any person wrongfully convicted before the effective date of the act has three years after the effective date of the act within which to file a claim.

If a person's conviction is reversed or vacated or a person is granted a pardon, the person must be provided with a copy of the act. If a person entitled to receive this information did not receive it, he or she has an additional 12 months beyond the statute of limitations within which to bring a wrongful conviction claim.

The provisions of the act do not prevent the claimant from pursuing any other legal remedy available to him or her to seek redress for the wrongful conviction. If the claimant files a separate claim for tortious conduct for the wrongful conviction, the related arrest, or the subsequent imprisonment, the statute of limitations for pursuing a claim under the act is tolled. The tort award, if any, offsets any compensation awarded under the act.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Substitute): Raises the burden of proof to pursue a claim from preponderance of the evidence to clear and convincing evidence. Provides that the court, in determining whether the claimant committed or suborned perjury, must review all the evidence, even evidence that was not admitted in trial. Removed language that would not allow the state to assert as a defense a release dismissal agreement, a plea agreement, or any similar agreement.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill (Human Services & Corrections):

PRO: A person was wrongfully convicted in 1996 and spent ten years in prison for a crime he did not commit. He did his entire sentence and was not exonerated until a retrial at which he

was acquitted. Another person was wrongly convicted in 1993 and spent 17 years in prison. His children were very small when he first went to prison. It was very painful to know that he could not watch them grow up. He fought hard and was finally exonerated in April of 2010. The crime he was wrongly convicted for committing is a crime that is not well taken in the prison community so he had a real hard time in the system. This bill would help to give exonerees a step up in society. Even though he has a job, he can barely make ends meet. In addition, he was hit with a \$111,000 child support bill from the state when he was released from prison on which he pays \$50 a pay period. Another was wrongly convicted in 1993 and did his entire sentence of 18 years. Even though he could not help himself he tried to help other inmates. Since his release he has had a harder time outside of prison than he did inside prison. He has no medical care, and can't get a job; anything would help. A man who was wrongly convicted and was finally exonerated during his second trial has lost his job, car, house everything and is currently forced to live with his parents. His parents have refinanced their house three times to pay for their son's attorneys' fees. Their son cannot hold a job because of his past, even though he was eventually acquitted. We hope this bill is a starting point and that at some point the state will move to the federal level of compensation. Exonerees have no access to the re-entry services that those who have committed crimes are eligible for. We should help the exonerees rebuild their lives.

CON: We're not opposed to the concept of compensating the wrongly convicted. The problem is with the specifics of the bill. The bill goes too far in defining actually innocent. There are three things that must be in the bill: (1) must be able to confidently say that the person is actually innocent; (2) the person charged cannot be responsible or partially responsible for the conviction - the language in the bill that says even though a claimant may have lied to the police, he or she could still recover under this bill is a real problem. Often this is the best evidence that prosecutors have at the time and this kind of evidence is used all the time in prosecutions; and (3) the burden of proof needs to be clearly defined and should be clear and convincing evidence rather than preponderance of the evidence. Also there needs to be a definition of what that body of evidence will be – proposal is that it should be all the evidence, even evidence that was suppressed. The process should begin by having to file a claim through the tort claim process.

OTHER: Prosecuting attorneys support an actually innocent wrongfully convicted person being compensated. They do have concerns that with some of the language in the bill, the *Andress* case could be implicated. We agree with the Attorney General's Office (AGO) that the burden of proof should be clear and convincing.

Persons Testifying (Human Services & Corrections): PRO: Lara Zarowsky, Innocence Project Northwest at UW Law School; Alan Northrop, Larry Davis, Ted Bradford, Exonerees; Tom Brandt, James Degroff, Joanne Degroff, citizens; Elizabeth Mustin, Elizabeth Sher, Jane Boman, Innocence Project NW.

CON: Lana Weinmann, John Samson, AGO.

OTHER: Tom McBride, WA Assoc. of Prosecuting Attorneys.

Staff Summary of Public Testimony on Recommended Substitute (Ways & Means):

PRO: The bill will have limited fiscal impact because it applies to a very narrow range of

cases. To be eligible, the claimant must show that he or she did not commit the acts alleged in the charging documents. This provision will prevent any claims from the *in re Andress* case, where the state Supreme Court modified the application of the state's felony-murder doctrine.

Persons Testifying (Ways & Means): PRO: Lara Zarowsky, Innocence Project Northwest Clinic, University of Washington School of Law.