
SUBSTITUTE HOUSE BILL 2221

State of Washington 62nd Legislature 2012 Regular Session

By House Judiciary (originally sponsored by Representatives Orwall, Appleton, Jinkins, Pollet, Upthegrove, Roberts, and Kagi)

READ FIRST TIME 01/26/12.

1 AN ACT Relating to creating a claim for wrongful conviction and
2 imprisonment; adding a new section to chapter 28B.15 RCW; adding a new
3 section to chapter 41.05 RCW; adding a new section to chapter 72.09
4 RCW; and adding a new chapter to Title 4 RCW.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that persons convicted
7 and imprisoned for crimes they did not commit have been uniquely
8 victimized. They have suffered tremendous injustice by being stripped
9 of their lives and liberty, forced to endure prison for a crime they
10 did not commit. A majority of those wrongly convicted do not have
11 legal redress to recover damages in order to restore their lives. The
12 legislature intends to provide redress for those who have been wrongly
13 convicted in Washington state, in recognition of the lost years of
14 their lives and the unique challenges they face after exoneration. The
15 legislature further intends that claims be paid by the county in which
16 the wrongful conviction occurred, and that no person found wrongly
17 convicted in this state be deprived of his or her award once a judgment
18 has been successfully secured.

1 NEW SECTION. **Sec. 2.** (1) Any person convicted in superior court
2 and subsequently imprisoned for one or more felonies of which he or she
3 is actually innocent may file a claim for compensation and monetary
4 damages against the county in which he or she was convicted.

5 (2) For purposes of this chapter, a person is:

6 (a) "Actually innocent" of a felony if he or she did not engage in
7 any illegal conduct alleged in the charging documents; and

8 (b) "Wrongly convicted" if he or she was charged, convicted, and
9 imprisoned for one or more felonies of which he or she is actually
10 innocent.

11 (3)(a) If the person entitled to file a claim under subsection (1)
12 of this section is incapacitated and incapable of filing the claim, or
13 if he or she is a minor, or is a nonresident of the state, the claim
14 may be filed on behalf of the claimant by an authorized agent.

15 (b) A claim filed under this chapter survives to the personal
16 representative of the claimant as provided in RCW 4.20.046.

17 NEW SECTION. **Sec. 3.** (1) All claims under this chapter shall be
18 filed in superior court. The venue for such actions shall be governed
19 by RCW 4.12.020.

20 (2) Service of the summons and complaint shall be governed by RCW
21 4.28.080.

22 (3) The attorney general shall represent any county named as the
23 adverse party in a claim under this chapter.

24 NEW SECTION. **Sec. 4.** (1) In order to file an actionable claim for
25 wrongful conviction and imprisonment, the claimant must establish by
26 documentary evidence that:

27 (a) The claimant has been convicted of one or more felonies in
28 superior court and subsequently sentenced to a term of imprisonment,
29 and has served all or part of the sentence;

30 (b)(i) The claimant is not currently incarcerated for any offense;
31 and

32 (ii) During the period of confinement for which the claimant is
33 seeking compensation, the claimant was not serving a term of
34 imprisonment or a concurrent sentence for any crime other than the
35 felony or felonies that are the basis for the claim;

1 (c)(i) The claimant has been pardoned on grounds consistent with
2 innocence for the felony or felonies that are the basis for the claim;
3 or

4 (ii) The claimant's judgment of conviction was reversed or vacated
5 and the accusatory instrument dismissed on the basis of significant new
6 exculpatory information or, if a new trial was ordered following the
7 presentation of significant new exculpatory information, either the
8 claimant was found not guilty at the new trial or the claimant was not
9 retried and the accusatory instrument dismissed; and

10 (d) The claim is not time barred by section 9 of this act.

11 (2) In addition to the requirements in subsection (1) of this
12 section, the claim shall state facts in sufficient detail for the
13 finder of fact to determine that:

14 (a) The claimant did not engage in any illegal conduct alleged in
15 the charging documents; and

16 (b) The claimant did not commit or suborn perjury, or fabricate
17 evidence to cause or bring about the conviction. A guilty plea to a
18 crime the claimant did not commit, or a confession that is later proven
19 to be false, does not constitute perjury or fabricated evidence under
20 this subsection.

21 (3) Convictions vacated, overturned, or subject to resentencing
22 pursuant to *In re: Personal Detention of Andress*, 147 Wn.2d 602 (2002)
23 may not serve as the basis for a claim under this chapter unless the
24 claimant otherwise satisfies the qualifying criteria set forth in
25 section 2 of this act and this section.

26 (4) The claimant shall verify the claim unless he or she is
27 incapacitated, in which case the personal representative or agent
28 filing on behalf of the claimant shall verify the claim.

29 (5) If the attorney general concedes that the claimant was wrongly
30 convicted, the court shall award compensation as provided in section 6
31 of this act.

32 (6)(a) If the attorney general does not concede that the claimant
33 was wrongly convicted and the court finds after reading the claim that
34 the claimant does not meet the filing criteria set forth in this
35 section, it shall dismiss the claim, either on its own motion or on the
36 motion of the attorney general.

37 (b) If the court dismisses the claim, the court shall set forth the

1 reasons for its decision in written findings of fact and conclusions of
2 law.

3 NEW SECTION. **Sec. 5.** Any party is entitled to the rights of
4 appeal afforded parties in a civil action following a decision on such
5 motions. In the case of dismissal of a claim, review of the superior
6 court action shall be de novo.

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

10 (a) The claimant was convicted of one or more felonies in superior
11 court and subsequently sentenced to a term of imprisonment, and has
12 served all or any part of the sentence;

13 (b)(i) The claimant is not currently incarcerated for any offense;
14 and

15 (ii) During the period of confinement for which the claimant is
16 seeking compensation, the claimant was not serving a term of
17 imprisonment or a concurrent sentence for any conviction other than
18 those that are the basis for the claim;

19 (c)(i) The claimant has been pardoned on grounds consistent with
20 innocence for the felony or felonies that are the basis for the claim;
21 or

22 (ii) The claimant's judgment of conviction was reversed or vacated
23 and the accusatory instrument dismissed on the basis of significant new
24 exculpatory information or, if a new trial was ordered following the
25 presentation of significant new exculpatory information, either the
26 claimant was found not guilty at the new trial or the claimant was not
27 retried and the accusatory instrument dismissed;

28 (d) The claimant did not engage in any illegal conduct alleged in
29 the charging documents; and

30 (e) The claimant did not commit or suborn perjury, or fabricate
31 evidence to cause or bring about his or her conviction. A guilty plea
32 to a crime the claimant did not commit, or a confession that is later
33 proven to be false, does not constitute perjury or fabricated evidence
34 under this subsection. Evidence of a guilty plea or confession later
35 proven to be false may be considered by the trier of fact in
36 determining a claim for compensation under this chapter.

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

6 (3) In exercising its discretion regarding the weight and
7 admissibility of evidence, the court shall give due consideration to
8 difficulties of proof caused by the passage of time, the death or
9 unavailability of witnesses, the destruction of evidence, or other
10 factors not caused by the parties.

11 (4) The claimant shall not be compensated for any period of time in
12 which he or she was serving a term of imprisonment or a concurrent
13 sentence for any conviction other than the felony or felonies that are
14 the basis for the claim.

15 (5) If the jury or, in the case where the right to a jury is
16 waived, the court finds by clear and convincing evidence that the
17 claimant was wrongly convicted, the court shall order the county to pay
18 the claimant the following monetary damages, as adjusted for partial
19 years served and to account for inflation from the effective date of
20 this section:

21 (a) Fifty thousand dollars for each year of actual confinement
22 including time spent awaiting trial and an additional fifty thousand
23 dollars for each year served on death row;

24 (b) Twenty-five thousand dollars for each year served on parole,
25 community custody, or as a registered sex offender pursuant only to the
26 felony or felonies which are grounds for the claim;

27 (c) Reimbursement for all restitution, assessments, fees, court
28 costs, and all other sums paid by the claimant as required by pretrial
29 orders and the judgment and sentence; and

30 (d) Attorneys' fees for successfully bringing the wrongful
31 conviction claim calculated at ten percent of the monetary damages
32 awarded under subsection (5)(a) and (b) of this section. However,
33 attorneys' fees shall not exceed seventy-five thousand dollars. These
34 fees shall not be deducted from the compensation due to the claimant
35 and counsel shall not be entitled to receive additional fees from the
36 client related to the claim. The court may not award any attorneys'
37 fees to the claimant if the claimant fails to prove he or she was
38 wrongly convicted.

1 (6) In addition to monetary damages and attorneys' fees awarded
2 under subsection (5) of this section:

3 (a) The state shall waive any interest on child support arrearages
4 that accrued while the claimant was in custody on the felony or
5 felonies which are grounds for the claim.

6 (b) The claimant and his or her dependent children and spouse or
7 registered domestic partner are eligible to participate in the health
8 and dental insurance plans and contracts offered by the public
9 employees' benefits board for a period of up to ten years following the
10 date of judgment. Upon request of the claimant the court shall issue
11 an order directing the health care authority to enroll the claimant and
12 his or her dependent children and spouse or registered domestic partner
13 under an appropriate existing nonemployee eligibility type, as provided
14 for in section 11 of this act. The court order must specify the amount
15 of time for which the claimant and his or her dependent children and
16 spouse or registered domestic partner are eligible to receive benefits,
17 and that the claimant and his or her dependent children and spouse or
18 registered domestic partner shall not be responsible for any premiums
19 associated with participation.

20 (7) The compensation and monetary damages award shall not include
21 any punitive damages.

22 (8) The compensation and monetary damages award shall not be offset
23 by any expenses incurred by the state, the county, or any political
24 subdivision of the state including, but not limited to, expenses
25 incurred to secure the claimant's custody, or to feed, clothe, or
26 provide medical services for the claimant. The court shall not offset
27 against the monetary damages award the value of any services or
28 reduction in fees for services to be provided to the claimant as part
29 of the award under this section.

30 (9) Compensation awarded under this act is not income for tax
31 purposes.

32 (10)(a) Upon finding that the claimant was wrongly convicted, the
33 court shall seal the claimant's record of conviction.

34 (b) Upon request of the claimant, the court may order the
35 claimant's record of conviction vacated if the record has not already
36 been vacated, expunged, or destroyed under court rules. The
37 requirements for vacating records under RCW 9.94A.640 shall not apply.

1 (11) Upon request of the claimant, the court shall refer the
2 claimant to the department of corrections or the department of social
3 and health services for access to reentry services, if available,
4 including but not limited to the community-based transition programs
5 and long-term support programs for education, mentoring, life skills
6 training, assessment, job skills development, mental health and
7 substance abuse treatment.

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

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

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

24 NEW SECTION. **Sec. 8.** (1) As a condition of accepting compensation
25 under this chapter, the claimant forfeits all other claims related to
26 the underlying wrongful conviction cognizable under state tort law.
27 However, nothing in this chapter precludes any federal remedy available
28 to the claimant related to his or her wrongful conviction and
29 imprisonment.

30 (2) In the event that the claimant receives a federal tort award
31 related to his or her wrongful conviction and incarceration, the
32 claimant shall reimburse the entity that provided compensation under
33 this act for the amount of compensation received or the amount received
34 by the claimant under the tort award, whichever is less.

35 (3) A release dismissal agreement, plea agreement, or any similar
36 agreement whereby the prosecutor's office or an agent acting on its

1 behalf agrees to take or refrain from certain action if the accused
2 individual agrees to forgo legal action against the county, the state
3 of Washington, or any political subdivision, is admissible and should
4 be evaluated in light of all the evidence. However, any such agreement
5 is not dispositive of the question of whether the claimant was wrongly
6 convicted or entitled to compensation under this act.

7 (4) The county is responsible for monetary damages awarded under
8 this chapter. Nothing in this chapter shall preclude the county from
9 satisfying its obligation through risk pool or insurance coverage.

10 (5) If the county does not pay the claim within one hundred eighty
11 days of the court order, the court shall order the state to satisfy the
12 judgment. Upon payment by the state, the state is entitled to
13 reimbursement, from the county named as the adverse party in the claim,
14 in an amount equal to the value of the claim paid and any reasonable
15 fees and interest imposed by the court.

16 NEW SECTION. **Sec. 9.** Except as provided in section 7(3) of this
17 act, an action for compensation under this chapter must be commenced
18 within three years after the grant of a pardon, the grant of judicial
19 relief and satisfaction of other conditions described in section 4 of
20 this act, or release from custody, whichever is later; provided,
21 however, that any action by the state challenging or appealing the
22 grant of judicial relief or release from custody shall toll the three-
23 year period. Any persons meeting the criteria set forth in section 2
24 of this act who was wrongly convicted before the effective date of this
25 section may commence an action under this chapter within three years
26 after the effective date of this section.

27 NEW SECTION. **Sec. 10.** A new section is added to chapter 28B.15
28 RCW to read as follows:

29 (1) Subject to the conditions in subsection (2) of this section and
30 the limitations in RCW 28B.15.910, the governing boards of the state
31 universities, the regional universities, The Evergreen State College,
32 and the community colleges, shall waive all tuition and fees for the
33 following persons:

34 (a) A wrongly convicted person; and

35 (b) Any child or stepchild of a wrongly convicted person who was

1 born or became the stepchild of, or was adopted by, the wrongly
2 convicted person before compensation is awarded under section 6 of this
3 act.

4 (2) The following conditions apply to waivers under subsection (1)
5 of this section:

6 (a) A wrongly convicted person must be a Washington domiciliary to
7 be eligible for the tuition waiver.

8 (b) A child must be a Washington domiciliary ages seventeen through
9 twenty-six years to be eligible for the tuition waiver. A child's
10 marital status does not affect eligibility.

11 (c) Each recipient's continued participation is subject to the
12 school's satisfactory progress policy.

13 (d) Tuition waivers for graduate students are not required for
14 those who qualify under subsection (1) of this section but are
15 encouraged.

16 (e) Recipients who receive a waiver under subsection (1) of this
17 section may attend full time or part time. Total credits earned using
18 the waiver may not exceed two hundred quarter credits, or the
19 equivalent of semester credits.

20 (3) Private vocational schools and private higher education
21 institutions are encouraged to provide waivers consistent with the
22 terms of this section.

23 (4) For the purposes of this section:

24 (a) "Child" means a biological child, stepchild, or adopted child
25 who was born of, became the stepchild of, or was adopted by a wrongly
26 convicted person before compensation is awarded under section 6 of this
27 act.

28 (b) "Fees" includes all assessments for costs incurred as a
29 condition to a student's full participation in coursework and related
30 activities at an institution of higher education.

31 (c) "Washington domiciliary" means a person whose true, fixed, and
32 permanent house and place of habitation is the state of Washington. In
33 ascertaining whether a wrongly convicted person or child is domiciled
34 in the state of Washington, public institutions of higher education
35 shall, to the fullest extent possible, rely upon the standards provided
36 in RCW 28B.15.013.

37 (d) "Wrongly convicted person" means a Washington domiciliary who
38 was awarded damages under section 6 of this act.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 41.05 RCW
2 to read as follows:

3 (1) An individual who was awarded a judgment in his or her favor
4 under section 6 of this act and his or her dependent children and
5 spouse or registered domestic partner are eligible to participate in
6 the health insurance plans and contracts offered by the public
7 employees' benefits board as prescribed by court order, and none of
8 those persons eligible under this section are responsible for any
9 premiums associated with that participation.

10 (2) The health care authority, upon receipt of the court order,
11 shall enroll the individual and his or her dependent children and
12 spouse or registered domestic partner in a health insurance plan under
13 an appropriate existing nonemployee eligibility type in compliance with
14 the terms and conditions of the court order.

15 (3) The director shall adopt rules under RCW 41.05.050 as the
16 director may find necessary to implement this section and to avoid
17 conflicts with any applicable federal or state laws. However, nothing
18 in this section requires the director or the health care authority to
19 develop a new eligibility type.

20 NEW SECTION. **Sec. 12.** A new section is added to chapter 72.09 RCW
21 to read as follows:

22 When a court refers a person to the department under section 6 of
23 this act as part of the person's award in a wrongful conviction claim,
24 the department shall provide reasonable access to existing reentry
25 programs and services. Nothing in this section requires the department
26 to establish new reentry programs or services.

27 NEW SECTION. **Sec. 13.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 14.** Sections 1 through 9 of this act constitute
32 a new chapter in Title 4 RCW.

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