
SUBSTITUTE SENATE BILL 5139

State of Washington

62nd Legislature

2011 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Hargrove and Shin)

READ FIRST TIME 02/21/11.

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

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

5 NEW SECTION. **Sec. 1.** INTENT. The legislature finds that persons
6 who have been convicted and imprisoned for crimes they did not commit
7 have been uniquely victimized and have suffered tremendous injustice by
8 being stripped of their lives and liberty. A majority of those wrongly
9 convicted do not have legal redress to recover damages in order to
10 restore their lives. The legislature, therefore, intends to provide
11 redress for those who have been wrongly convicted in recognition of the
12 lost years of their lives, and the unique circumstances they face after
13 exoneration.

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

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

1 (a) "Actually innocent" of a felony if he or she did not commit any
2 of the acts in the charging documents;

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

6 (3)(a) If the person entitled to file a claim under subsection (1)
7 of this section is incapacitated and incapable of filing the claim, or
8 if he or she is a minor, or is a nonresident of the state, the claim
9 may be filed on behalf of that person by any relative, attorney, or
10 agent acting as the person's representative.

11 (b) If the person entitled to file a claim under subsection (1) of
12 this section is deceased, the claim may be filed on behalf of his or
13 her estate by the person's surviving spouse or domestic partner,
14 attorney, or agent acting as the person's personal representative.

15 NEW SECTION. **Sec. 3.** VENUE AND SERVICE OF PROCESS. (1) All
16 claims of wrongful conviction and imprisonment shall be filed in
17 superior court. The venue for such actions shall be governed by RCW
18 4.92.010.

19 (2) Service of the summons and complaint shall be governed by RCW
20 4.92.020.

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

24 (a) The claimant has been convicted of one or more felonies in
25 state court and subsequently sentenced to a term of imprisonment for
26 the conviction or convictions, and has served all or part of the
27 sentence;

28 (b)(i) The claimant is not currently incarcerated for any offense;
29 and

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

35 (c)(i) The claimant has been pardoned on grounds consistent with

1 innocence for the felony or felonies for which the claimant was
2 sentenced and which are grounds for the compensation claim; or

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

9 (d) The claim is not time-barred by the provisions of section 9 of
10 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 commit any of the acts in the charging
15 documents; and

16 (b) In light of all the evidence whether or not admissible at
17 trial, the claimant did not commit or suborn perjury, or fabricate
18 evidence to cause or bring about the conviction.

19 (3) The claimant shall verify the claim unless he or she is
20 incapacitated or deceased, in which case the person filing on behalf of
21 the claimant shall verify the claim.

22 (4) The office of the county prosecuting attorney responsible for
23 charging and prosecuting the felony or felonies for which the claimant
24 was sentenced and which are grounds for the complaint is not a party to
25 the action, but may submit briefs to the court related to a claim for
26 compensation under this section.

27 (5)(a) If the court finds after reading the claim that the claimant
28 does not meet the filing criteria set forth in section 2 of this act,
29 it shall dismiss the claim, either on its own motion or on the motion
30 of the state.

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

34 NEW SECTION. **Sec. 5.** RIGHT OF APPEAL. Any party is entitled to
35 the rights of appeal afforded parties in a civil action following a
36 decision on such motions. In the case of dismissal of a claim, review
37 of the superior court action shall be de novo.

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

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

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

8 (c)(i) The claimant has been pardoned on grounds consistent with
9 innocence for the felony or felonies for which the claimant was
10 sentenced and which are the grounds for the compensation claim; or

11 (ii) The claimant's judgment of conviction was reversed or vacated
12 and the accusatory instrument dismissed on the basis of significant new
13 information or, if a new trial was ordered following the presentation
14 of significant new information, either the claimant was found not
15 guilty at the new trial or the claimant was not retried and the
16 accusatory instrument dismissed;

17 (d) The claimant did not commit any of the acts in the charging
18 documents; and

19 (e) In light of all the evidence whether or not admissible at
20 trial, the claimant did not commit or suborn perjury, or fabricate
21 evidence to cause or bring about his or her conviction.

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

27 (3) In exercising its discretion regarding the weight and
28 admissibility of evidence, the court shall give due consideration to
29 difficulties of proof caused by the passage of time, the death or
30 unavailability of witnesses, the destruction of evidence, or other
31 factors not caused by the parties.

32 (4) If the state concedes that the claimant was wrongly convicted,
33 the court shall award compensation as provided in subsection (5)(a)
34 through (d) of this section.

35 (5) If the jury or, in the case where the right to a jury is
36 waived, the court finds by clear and convincing evidence that the
37 claimant was wrongly convicted, the court shall award the following
38 compensation and damages to the claimant:

1 (a) Compensation, as adjusted for partial years served and to
2 account for inflation from the effective date of this section, in an
3 amount up to twenty thousand dollars for each year of actual
4 confinement including time spent awaiting trial and time spent on death
5 row.

6 (b) The court may direct that a portion of the amount awarded in
7 (a) of this subsection be for child support payments owed by the
8 claimant that became due, and interest on child support arrearages that
9 accrued while the claimant was in custody on the felony or felonies
10 which are grounds for the compensation claim. Such funds shall be paid
11 on the person's behalf in a lump sum payment to the department of
12 social and health services for disbursement under the child support
13 order;

14 (c) The court may direct that a portion of the amount awarded in
15 (a) of this subsection be for economic damages for lost wages.

16 (d) The court may award reasonable attorneys' fees for successfully
17 bringing the wrongful conviction claim. The attorneys' fees shall be
18 calculated at ten percent of the damage award plus expenses. However,
19 attorneys' fees shall not exceed seventy-five thousand dollars. These
20 fees shall not be deducted from the compensation due to the claimant
21 and counsel shall not be entitled to receive additional fees from the
22 client. The court may not award any attorneys' fees to the claimant if
23 the claimant fails to prove he or she was wrongly convicted.

24 (6) The amount awarded in subsection (5)(a) of this section shall
25 not include any punitive damages.

26 (7) The award shall not be offset by any expenses incurred by the
27 state or any political subdivision of the state including, but not
28 limited to, expenses incurred to secure the claimant's custody, or to
29 feed, clothe, or provide medical services for the claimant. The court
30 shall not offset against the award the value of any services or
31 reduction in fees for services to be provided to the claimant as part
32 of the damages awarded to the claimant pursuant to this section.

33 (8) Except attorneys' fees under subsection (5)(d) of this section,
34 compensation awarded under this section shall not be considered
35 "income" for tax purposes.

36 (9)(a) Upon finding that the claimant was wrongly convicted, the
37 court shall seal the claimant's record of conviction.

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

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

13 NEW SECTION. **Sec. 7.** NOTICE. (1) On or after the effective date
14 of this section, when a court grants judicial relief, such as reversal
15 and vacation of a person's conviction, consistent with the criteria
16 established in section 4(1)(c)(ii) of this act, the court shall provide
17 to the person at the time the relief is granted a copy of this chapter.

18 (2) The clemency and pardons board or the indeterminate sentence
19 review board, whichever is applicable, upon issuance of a pardon by the
20 governor on grounds consistent with innocence on or after the effective
21 date of this section, shall provide a copy of this chapter to the
22 individual pardoned.

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

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

32 (2) If the claimant pursues a separate claim for tortious conduct
33 pursuant to the wrongful conviction, the related arrest, or subsequent
34 incarceration, the statute of limitations under this chapter is tolled
35 pending resolution of that claim, and the tort award shall offset any
36 compensation awarded under this chapter.

1 NEW SECTION. **Sec. 9.** STATUTE OF LIMITATIONS. Except as provided
2 in section 7(3) of this act, an action for compensation under this
3 chapter must be commenced within three years after either the grant of
4 a pardon or the grant of judicial relief and satisfaction of other
5 conditions described in section 5 of this act; provided, however, that
6 any action by the state challenging or appealing the grant of judicial
7 relief shall toll the three-year period. Any persons meeting the
8 criteria set forth in section 2 of this act who was wrongly convicted
9 before the effective date of this section may commence an action under
10 this chapter within three years after the effective date of this
11 section.

12 NEW SECTION. **Sec. 10.** A new section is added to chapter 72.09 RCW
13 to read as follows:

14 When a court refers a person to the department under section 6 of
15 this act as part of the person's award in a wrongful conviction claim,
16 the department shall provide reasonable access to existing reentry
17 programs and services. Nothing in this section requires the department
18 to establish new reentry programs or services.

19 NEW SECTION. **Sec. 11.** SEVERABILITY CLAUSE. If any provision of
20 this act or its application to any person or circumstance is held
21 invalid, the remainder of the act or the application of the provision
22 to other persons or circumstances is not affected.

23 NEW SECTION. **Sec. 12.** CODIFICATION DIRECTION. Sections 1 through
24 9 of this act constitute a new chapter in Title 4 RCW.

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