

SHB 1341 - H AMD 141

By Representative Orwall

ADOPTED 03/08/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** The legislature recognizes that persons
4 convicted and imprisoned for crimes they did not commit have been
5 uniquely victimized. Having suffered tremendous injustice by being
6 stripped of their lives and liberty, they are forced to endure
7 imprisonment and are later stigmatized as felons. A majority of those
8 wrongly convicted in Washington state have no remedy available under
9 the law for the destruction of their personal lives resulting from
10 errors in our criminal justice system. The legislature intends to
11 provide an avenue for those who have been wrongly convicted in
12 Washington state to redress the lost years of their lives, and help to
13 address the unique challenges faced by the wrongly convicted after
14 exoneration.

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

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

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

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

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

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

3 NEW SECTION. **Sec. 3.** (1) All claims under this chapter must be
4 filed in superior court. The venue for such actions is governed by RCW
5 4.12.020.

6 (2) Service of the summons and complaint is governed by RCW
7 4.28.080.

8 NEW SECTION. **Sec. 4.** (1) In order to file an actionable claim for
9 compensation under this act, the claimant must establish by documentary
10 evidence that:

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

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

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

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

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

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

30 (2) In addition to the requirements in subsection (1) of this
31 section, the claimant shall state facts in sufficient detail for the
32 finder of fact to determine that:

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

35 (b) The claimant did not commit or suborn perjury, or fabricate
36 evidence to cause or bring about the conviction. A guilty plea to a

1 crime the claimant did not commit, or a confession that is later
2 determined by a court to be false, does not automatically constitute
3 perjury or fabricated evidence under this subsection.

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

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

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

15 (6)(a) If the attorney general does not concede that the claimant
16 was wrongly convicted and the court finds after reading the claim that
17 the claimant does not meet the filing criteria set forth in this
18 section, it may dismiss the claim, either on its own motion or on the
19 motion of the attorney general.

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

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

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

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

33 (b)(i) The claimant is not currently incarcerated for any offense;
34 and

35 (ii) During the period of confinement for which the claimant is

1 seeking compensation, the claimant was not serving a term of
2 imprisonment or a concurrent sentence for any conviction other than
3 those that are the basis for the claim;

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

7 (ii) The claimant's judgment of conviction was reversed or vacated
8 and the charging document dismissed on the basis of significant new
9 exculpatory information or, if a new trial was ordered pursuant to the
10 presentation of significant new exculpatory information, either the
11 claimant was found not guilty at the new trial or the claimant was not
12 retried and the charging document dismissed;

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

15 (e) The claimant did not commit or suborn perjury, or fabricate
16 evidence to cause or bring about his or her conviction. A guilty plea
17 to a crime the claimant did not commit, or a confession that is later
18 determined by a court to be false, does not automatically constitute
19 perjury or fabricated evidence under this subsection.

20 (2) Any pardon or proclamation issued to the claimant must be
21 certified by the officer having lawful custody of the pardon or
22 proclamation, and be affixed with the seal of the office of the
23 governor, or with the official certificate of such officer before it
24 may be offered as evidence.

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

31 (4) The claimant may not be compensated for any period of time in
32 which he or she was serving a term of imprisonment or a concurrent
33 sentence for any conviction other than the felony or felonies that are
34 the basis for the claim.

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 order the state to pay

1 the actually innocent claimant the following compensation award, as
2 adjusted for partial years served and to account for inflation from the
3 effective date of this section:

4 (a) Fifty thousand dollars for each year of actual confinement
5 including time spent awaiting trial and an additional fifty thousand
6 dollars for each year served under a sentence of death pursuant to
7 chapter 10.95 RCW;

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

11 (c) Compensation for child support payments owed by the claimant
12 that became due and interest on child support arrearages that accrued
13 while the claimant was in custody on the felony or felonies that are
14 grounds for the compensation claim. The funds must be paid on the
15 claimant's behalf in a lump sum payment to the department of social and
16 health services for disbursement under Title 26 RCW;

17 (d) Reimbursement for all restitution, assessments, fees, court
18 costs, and all other sums paid by the claimant as required by pretrial
19 orders and the judgment and sentence; and

20 (e) Attorneys' fees for successfully bringing the wrongful
21 conviction claim calculated at ten percent of the monetary damages
22 awarded under subsection (5)(a) and (b) of this section, plus expenses.
23 However, attorneys' fees and expenses may not exceed seventy-five
24 thousand dollars. These fees may not be deducted from the compensation
25 award due to the claimant and counsel is not entitled to receive
26 additional fees from the client related to the claim. The court may
27 not award any attorneys' fees to the claimant if the claimant fails to
28 prove he or she was wrongly convicted.

29 (6) The compensation award may not include any punitive damages.

30 (7) The court may not offset the compensation award by any expenses
31 incurred by the state, the county, or any political subdivision of the
32 state including, but not limited to, expenses incurred to secure the
33 claimant's custody, or to feed, clothe, or provide medical services for
34 the claimant. The court may not offset against the compensation award
35 the value of any services or reduction in fees for services to be
36 provided to the claimant as part of the award under this section.

37 (8) The compensation award is not income for tax purposes, except
38 attorneys' fees awarded under subsection (5)(e) of this section.

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

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

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

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

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

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

30 NEW SECTION. **Sec. 8.** (1) Nothing in this chapter precludes any
31 existing remedy available to the claimant related to his or her
32 wrongful conviction and imprisonment.

33 (2) If a claimant is awarded compensation under this act and
34 receives a tort award related to his or her wrongful conviction and
35 incarceration, the claimant shall reimburse the state for the lesser
36 of:

1 (a) The amount of the compensation award, excluding the portion
2 awarded pursuant to section 6(5) (c) through (e) of this act; or

3 (b) The amount received by the claimant under the tort award.

4 (3) A release dismissal agreement, plea agreement, or any similar
5 agreement whereby a prosecutor's office or an agent acting on its
6 behalf agrees to take or refrain from certain action if the accused
7 individual agrees to forgo legal action against the county, the state
8 of Washington, or any political subdivision, is admissible and should
9 be evaluated in light of all the evidence. However, any such agreement
10 is not dispositive of the question of whether the claimant was wrongly
11 convicted or entitled to compensation under this act.

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

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

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

30 (a) A wrongly convicted person; and

31 (b) Any child or stepchild of a wrongly convicted person who was
32 born or became the stepchild of, or was adopted by, the wrongly
33 convicted person before compensation is awarded under section 6 of this
34 act.

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

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

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

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

8 (d) Tuition waivers for graduate students are not required for
9 those who qualify under subsection (1) of this section but are
10 encouraged.

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

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

18 (4) For the purposes of this section:

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

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

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

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

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

36 When a court refers a person to the department under section 6 of
37 this act as part of the person's award in a wrongful conviction claim,

1 the department shall provide reasonable access to existing reentry
2 programs and services. Nothing in this section requires the department
3 to establish new reentry programs or services.

4 NEW SECTION. **Sec. 12.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 13.** Sections 1 through 9 of this act constitute
9 a new chapter in Title 4 RCW."

10 Correct the title.

EFFECT: Makes nonsubstantive wording changes for clarity and
consistency.

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