

ESHB 1341 - S COMM AMD

By Committee on Ways & Means

ADOPTED AND ENGROSSED 4/15/13

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 chapter, the claimant must establish by
10 documentary 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 must 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 must 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 must verify the claim.

12 (5) If the attorney general concedes that the claimant was wrongly
13 convicted, the court must 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 must 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 must 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 must 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 must 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 must 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 counseling on the ability to enter into a
11 structured settlement agreement and where to obtain free or low-cost
12 legal and financial advice if the claimant is not already represented,
13 the community-based transition programs and long-term support programs
14 for education, mentoring, life skills training, assessment, job skills
15 development, mental health and substance abuse treatment.

16 (11) The claimant or the attorney general may initiate and agree to
17 a claim with a structured settlement for the compensation awarded under
18 subsection (5) of this section. During negotiation of the structured
19 settlement agreement, the claimant must be given adequate time to
20 consult with the legal and financial advisor of his or her choice. Any
21 structured settlement agreement binds the parties with regard to all
22 compensation awarded. A structured settlement agreement entered into
23 under this section must be in writing and signed by the parties or
24 their representatives and must clearly state that the parties
25 understand and agree to the terms of the agreement.

26 (12) Before approving any structured settlement agreement, the
27 court must ensure that the claimant has an adequate understanding of
28 the agreement. The court may approve the agreement only if the judge
29 finds that the agreement is in the best interest of the claimant and
30 actuarially equivalent to the lump sum compensation award under
31 subsection (5) of this section before taxation. When determining
32 whether the agreement is in the best interest of the claimant, the
33 court must consider the following factors:

34 (a) The age and life expectancy of the claimant;

35 (b) The marital or domestic partnership status of the claimant; and

36 (c) The number and age of the claimant's dependants.

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

7 (2) The clemency and pardons board or the indeterminate sentence
8 review board, whichever is applicable, upon issuance of a pardon by the
9 governor on grounds consistent with innocence on or after the effective
10 date of this section, must provide a copy of sections 2 through 12 of
11 this act to the individual pardoned.

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

17 NEW SECTION. **Sec. 8.** (1) It is the intent of the legislature that
18 the remedies and compensation provided under this chapter shall be
19 exclusive to all other remedies at law and in equity against the state
20 or any political subdivision of the state. As a requirement to making
21 a request for relief under this chapter, the claimant waives any and
22 all other remedies, causes of action, and other forms of relief or
23 compensation against the state, any political subdivision of the state,
24 and their officers, employees, agents, and volunteers related to the
25 claimant's wrongful conviction and imprisonment. This waiver shall
26 also include all state, common law, and federal claims for relief,
27 including claims pursuant to 42 U.S.C. Sec. 1983. A wrongfully
28 convicted person who elects not to pursue a claim for compensation
29 pursuant to this chapter shall not be precluded from seeking relief
30 through any other existing remedy. The claimant must execute a legal
31 release prior to the payment of any compensation under this chapter.
32 If the release is held invalid for any reason and the claimant is
33 awarded compensation under this chapter and receives a tort award
34 related to his or her wrongful conviction and incarceration, the
35 claimant must reimburse the state for the lesser of:

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

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

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

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

21 NEW SECTION. **Sec. 10.** All payments by the state under this
22 chapter shall be paid from the liability account established under RCW
23 4.92.130.

24 NEW SECTION. **Sec. 11.** A new section is added to chapter 28B.15
25 RCW to read as follows:

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

31 (a) A wrongly convicted person; and

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

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

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

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

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

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

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

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

20 (4) For the purposes of this section:

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

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

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

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

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

1 When a court refers a person to the department under section 6 of
2 this act as part of the person's award in a wrongful conviction claim,
3 the department must provide reasonable access to existing reentry
4 programs and services. Nothing in this section requires the department
5 to establish new reentry programs or services.

6 **Sec. 13.** RCW 4.92.130 and 2011 1st sp.s. c 43 s 513 are each
7 amended to read as follows:

8 A liability account in the custody of the treasurer is hereby
9 created as a nonappropriated account to be used solely and exclusively
10 for the payment of liability settlements and judgments against the
11 state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of
12 its officers, employees, and volunteers and all related legal defense
13 costs.

14 (1) The purpose of the liability account is to: (a) Expeditiously
15 pay legal liabilities and defense costs of the state resulting from
16 tortious conduct; (b) promote risk control through a cost allocation
17 system which recognizes agency loss experience, levels of self-
18 retention, and levels of risk exposure, including the payment of
19 compensation awarded by a court under section 6 of this act; and (c)
20 establish an actuarially sound system to pay incurred losses, within
21 defined limits.

22 (2) The liability account shall be used to pay claims for injury
23 and property damages and legal defense costs exclusive of agency-
24 retained expenses otherwise budgeted.

25 (3) No money shall be paid from the liability account, except for
26 defense costs, unless all proceeds available to the claimant from any
27 valid and collectible liability insurance shall have been exhausted and
28 unless:

29 (a) The claim shall have been reduced to final judgment in a court
30 of competent jurisdiction; or

31 (b) The claim has been approved for payment.

32 (4) The liability account shall be financed through annual premiums
33 assessed to state agencies, based on sound actuarial principles, and
34 shall be for liability coverage in excess of agency-budgeted self-
35 retention levels.

36 (5) Annual premium levels shall be determined by the risk manager.

1 An actuarial study shall be conducted to assist in determining the
2 appropriate level of funding.

3 (6) Disbursements for claims from the liability account shall be
4 made to the claimant, or to the clerk of the court for judgments, upon
5 written request to the state treasurer from the risk manager.

6 (7) The director may direct agencies to transfer moneys from other
7 funds and accounts to the liability account if premiums are delinquent.

8 (8) The liability account shall not exceed fifty percent of the
9 actuarial value of the outstanding liability as determined annually by
10 the office of risk management. If the account exceeds the maximum
11 amount specified in this section, premiums may be adjusted by the
12 office of risk management in order to maintain the account balance at
13 the maximum limits. If, after adjustment of premiums, the account
14 balance remains above the limits specified, the excess amount shall be
15 prorated back to the appropriate funds.

16 (9) The payment of compensation for wrongful conviction awarded by
17 a court under section 6 of this act does not constitute a finding that
18 the wrongful conviction resulted from tortious conduct by the officers
19 or employees of the state or the political subdivisions, municipal
20 corporations, and quasi-municipal corporations of the state.

21 NEW SECTION. **Sec. 14.** If any provision of this act or its
22 application to any person or circumstance is held invalid, the
23 remainder of the act or the application of the provision to other
24 persons or circumstances is not affected.

25 NEW SECTION. **Sec. 15.** Sections 1 through 10 of this act
26 constitute a new chapter in Title 4 RCW."

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27 On page 1, line 2 of the title, after "imprisonment;" strike the
28 remainder of the title and insert "amending RCW 4.92.130; adding a new

1 section to chapter 28B.15 RCW; adding a new section to chapter 72.09
2 RCW; and adding a new chapter to Title 4 RCW."

--- END ---