

ESHB 1341 - S COMM AMD  
By Committee on Law & Justice

OUT OF ORDER 04/15/2013

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 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, the community-based transition  
12 programs and long-term support programs for education, mentoring, life  
13 skills training, assessment, job skills development, mental health and  
14 substance abuse treatment.

15 (11) The claimant or the attorney general may initiate and agree to  
16 a claim with a structured settlement for the compensation awarded under  
17 subsection (5) of this section. Any structured settlement agreement  
18 binds the parties with regard to all compensation awarded. A  
19 structured settlement agreement entered into under this section must be  
20 in writing and signed by the parties or their representatives and must  
21 clearly state that the parties understand and agree to the terms of the  
22 agreement.

23 NEW SECTION. **Sec. 7.** (1) On or after the effective date of this  
24 section, when a court grants judicial relief, such as reversal and  
25 vacation of a person's conviction, consistent with the criteria  
26 established in section 4 of this act, the court must provide to the  
27 claimant a copy of sections 2 through 11 of this act at the time the  
28 relief is granted.

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

34 (3) If an individual entitled to receive the information required  
35 under this section shows that he or she was not provided with the  
36 information, he or she has an additional twelve months, beyond the

1 statute of limitations under section 9 of this act, to bring a claim  
2 under this chapter.

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

6 (2) If a claimant is awarded compensation under this act and  
7 receives a tort award related to his or her wrongful conviction and  
8 incarceration, the claimant must reimburse the state for the lesser of:

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

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

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

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

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

33 (1) Subject to the conditions in subsection (2) of this section and  
34 the limitations in RCW 28B.15.910, the governing boards of the state

1 universities, the regional universities, The Evergreen State College,  
2 and the community colleges, must waive all tuition and fees for the  
3 following persons:

4 (a) A wrongly convicted person; and

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

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

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

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

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

18 (d) Tuition waivers for graduate students are not required for  
19 those who qualify under subsection (1) of this section but are  
20 encouraged.

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

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

28 (4) For the purposes of this section:

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

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

36 (c) "Washington domiciliary" means a person whose true, fixed, and  
37 permanent house and place of habitation is the state of Washington. In  
38 ascertaining whether a wrongly convicted person or child is domiciled



1 in the state of Washington, public institutions of higher education  
2 must, to the fullest extent possible, rely upon the standards provided  
3 in RCW 28B.15.013.

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

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

8 When a court refers a person to the department under section 6 of  
9 this act as part of the person's award in a wrongful conviction claim,  
10 the department must provide reasonable access to existing reentry  
11 programs and services. Nothing in this section requires the department  
12 to establish new reentry programs or services.

13 NEW SECTION. **Sec. 12.** If any provision of this act or its  
14 application to any person or circumstance is held invalid, the  
15 remainder of the act or the application of the provision to other  
16 persons or circumstances is not affected.

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

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By Committee on Law & Justice

**OUT OF ORDER 04/15/2013**

19 On page 1, line 2 of the title, after "imprisonment;" strike the  
20 remainder of the title and insert "adding a new section to chapter  
21 28B.15 RCW; adding a new section to chapter 72.09 RCW; and adding a new  
22 chapter to Title 4 RCW."

EFFECT: Allows structured settlement of the wrongful conviction

claim.

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