

HOUSE BILL REPORT

ESHB 1341

As Amended by the Senate

Title: An act relating to creating a claim for compensation for wrongful conviction and imprisonment.

Brief Description: Creating a claim for compensation for wrongful conviction and imprisonment.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Orwall, Goodman, Pollet, Jenkins, Carlyle, Roberts, Appleton, Hunt, Upthegrove, Green, Kagi, Seaquist, Moeller, Kirby, Santos, Ryu, Pedersen and Moscoso).

Brief History:

Committee Activity:

Judiciary: 2/7/13, 2/12/13 [DPS];
Appropriations: 2/26/13, 3/1/13 [DPS(JUDI)].

Floor Activity:

Passed House: 3/8/13, 95-2.
Senate Amended.
Passed Senate: 4/15/13, 48-0.

Brief Summary of Engrossed Substitute Bill

- Creates a civil cause of action allowing persons wrongly convicted of one or more felonies and incarcerated as a result to bring a civil suit against the state for compensation.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; O'Ban, Assistant Ranking Minority Member; Goodman, Hope, Jenkins, Kirby, Orwall, Roberts and Shea.

Minority Report: Do not pass. Signed by 2 members: Representatives Klippert and Nealey.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Staff: Omeara Harrington (786-7136).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Judiciary be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Alexander, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Dahlquist, Dunshee, Fagan, Green, Haigh, Haler, Harris, Hudgins, Hunt, Jinkins, Kagi, Maxwell, Morrell, Parker, Pedersen, Pettigrew, Pike, Ross, Seaquist, Springer and Sullivan.

Minority Report: Do not pass. Signed by 2 members: Representatives Schmick and Taylor.

Staff: Kristen Fraser (786-7148).

Background:

Persons unjustly convicted of federal crimes and subsequently imprisoned are authorized by federal statute to bring an action for damages in the United States Court of Federal Claims. In 2004 Congress increased the damage award limit for persons who successfully bring a claim based on unjust conviction of a federal crime. Successful claimants are eligible for up to \$100,000 per year served on death row and \$50,000 per year of incarceration not on death row.

Along with the federal government, the District of Columbia and 27 states have statutes offering some form of compensation to the wrongly convicted. Washington law does not provide for a civil cause of action specific to compensation for persons wrongly convicted and incarcerated.

Summary of Engrossed Substitute Bill:

Persons wrongly convicted of a felony in superior court and imprisoned as a result may bring a civil suit against the state for money damages and other compensation.

Who May Bring a Claim.

A person who has been convicted in Washington and imprisoned for one or more felonies of which that person is actually innocent may file a claim. A person is actually innocent of a felony if the person did not engage in any of the illegal activity alleged in the charging documents. A person is wrongly convicted if that person was charged with, convicted of, and imprisoned for one or more felonies of which the person is actually innocent. If the claimant is deceased, the claim survives to the personal representative of the deceased claimant.

Presenting a Claim.

In order to file an actionable claim, a claimant must establish by documentary evidence that:

- the claimant has been convicted of one or more felonies in superior court and has served all or part of a corresponding sentence of imprisonment;
- the claimant is not currently incarcerated for any offense;

- the claimant is not seeking compensation for any period of imprisonment during which they were simultaneously imprisoned on a concurrent sentence for a crime other than the felony or felonies that form the basis of the claim;
- the claimant has been pardoned on grounds consistent with innocence for the felony or felonies upon which the claim is based; or, as a result of significant new exculpatory information, the judgment of conviction was reversed or vacated and the charging document dismissed, or the wrongly convicted person was found not guilty at a new trial or was not retried and the charging document was dismissed; and
- the statute of limitations has not run.

The claim must also set out the following factual assertions in sufficient detail:

- that the claimant did not engage in any illegal conduct alleged in the charging documents; and
- that the claimant did not commit perjury or fabricate evidence to bring about the conviction.

Unless the Attorney General concedes that the claimant was wrongly convicted, any claim not meeting the filing criteria may be dismissed by the court. The court is required to set forth its reasons for dismissal in written findings of fact and conclusions of law.

In order to obtain a judgment, the claimant must show clear and convincing evidence of all of the documentary evidence and factual assertions required at filing.

The Compensation Award.

The award for bringing a successful claim is the following:

- \$50,000 for each year of actual incarceration (including pre-trial incarceration);
- \$50,000 (additional) for each year served under a sentence of death;
- \$25,000 for each year on parole, community custody, or as a registered sex offender;
- compensation for child support that became due and interest on arrearages that accrued while incarcerated;
- reimbursement for restitution, assessments, fees, and court costs associated with the underlying wrongful conviction;
- attorneys' fees for bringing the wrongful conviction claim, not to exceed \$75,000;
- higher education tuition waivers for Washington's state universities and colleges for the claimant and the claimant's children and step-children if they are domiciled in Washington; and
- access to reentry services, upon the claimant's request.

The award cannot be offset by costs the state or any political subdivision of the state incurred in prosecuting and incarcerating the wrongly convicted person. The award cannot include punitive damages and will not be considered income for tax purposes.

A court must seal the person's record of conviction upon a finding of wrongful conviction. Upon the claimant's request, the court may order the conviction record vacated.

The claimant is entitled to pursue any existing remedy related to the wrongful conviction; however, if another award is granted based on the wrongful conviction, the claimant must reimburse the state to the extent of the other award or the amount received by the claimant

under the immediate cause of action, whichever is less. The claimant does not have to reimburse the state for compensation associated with child support, costs related to defending the underlying conviction, or attorneys' fees.

Notice.

When a person's conviction has been reversed or vacated or other similar judicial relief has been granted on grounds consistent with innocence, the court must provide the person with a copy of this act.

Statute of Limitations.

The claim must be brought within three years from pardon, grant of judicial relief, release from custody, or this act's effective date, whichever is latest. If the wrongly convicted person is not given proper notice of this act, they have an additional 12 months to file.

Right of Appeal.

Wrongful conviction claimants will have the right to appeal. Review of a superior court dismissal is de novo.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment makes the following changes:

- The claimant and the Attorney General may agree to a structured settlement of the compensation claim. The structured settlement agreement is subject to court approval. The court must ensure that the claimant understands the agreement and may only approve the agreement if it is found to be in the claimant's best interest and actuarially equivalent to the lump sum compensation award before taxation.
- The claimant must waive all other claims against the state and any political subdivision of the state to receive a compensation award, and must execute a release prior to payment of any compensation. If the release is held invalid for any reason and the claimant receives a tort award and a compensation award, the claimant must reimburse the state for the amount of the lesser award.
- Compensation awards are paid from the state self-insurance liability account and are factored into the measurement of risk exposure for purposes of the account's cost allocation system. Payment of a compensation award does not constitute a finding that the wrongful conviction resulted from tortious conduct by the state or its political subdivisions.
- Minor wording changes are made for consistency and clarity.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Judiciary):

(In support) This issue has been worked on for three years. Washington is one of a minority of states that does not offer a compensation package. People convicted and released receive a lot of services; people who are exonerated get nothing. This conversation has been going on across the nation because of DNA exonerations. There are three in Washington, and two or three dozen other cases being worked on in some manner. These individuals are victims of a system that did not work for them, and the horrific circumstance does not end when they are released. Some lost up to 17 years while incarcerated, and lost their businesses and the opportunity to earn money for retirement. They have had trouble securing housing and work. They need financial help and medical care. They cannot be given the years back or have the chance to watch their children grow up, but they can be given a package to rebuild their lives. Washington is a national leader in equality and justice, and it is time for bipartisan recognition of these men.

Alternative funding mechanisms are being investigated, but this is a no-fault claim and the state should pay. It is a state criminal justice system, and these cases are rare, but represent some of the worst mistakes a government could make. The state should apologize, and the compensation award is structured and equitable. Nobody would trade a year in prison for \$50,000. The attorneys' fees are low enough that lawyers are not going to jump into this to make money. Right now wrongly convicted people have no other option but to sue, and there are several lawsuits pending now. The compensation package would probably be less than one payoff lawsuit. The question of whether or not wrongly convicted people should have to waive the option to sue in tort in order to obtain a compensation award is under consideration.

The language in the bill is narrow and has been amended to address prosecutor concerns. For instance language was added to account for the fact that evidence is not preserved when a plea is entered. There will not be a flood of litigation from this, and it has not happened in the other states that have enacted these laws.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) Washington is one of a minority of states that do not have a compensation program for exonerees. When government makes a mistake, it apologizes and should pay compensation. This bill has the strictest criteria in the country. This bill has very narrow qualification requirements; significant new exculpatory evidence is required. I spent 17 years wrongfully incarcerated. The hardest part was not being able to watch my kids grow up. I am still a stranger to them and trying to get to know them again. Before I was wrongfully convicted, I had a business that was starting to take off. Now I have no access to credit due to child support obligations I incurred while incarcerated, which means I cannot get things like dental care. Getting by has been rough and I have no pension or retirement savings. Please pass this bill for those like me who are hoping for a miracle. Only about five individuals will qualify under this bill; the estimate of 15 in the fiscal note is excessive. Funding payments to exonerees will have little effect on the budget. The bill protects against double recoveries. Exonerees have been asking for help for three years in a row; help and support are overdue.

(Opposed) None.

Persons Testifying (Judiciary): Representative Orwall, prime sponsor; Lara Zarowsky, Courtney Skiles, and Caroline Bercier, Innocence Project Northwest; Larry Davis; Alan Northrop; James Anderson; Dan Satterberg, King County Prosecutors Office; and Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Testifying (Appropriations): Representative Orwall, prime sponsor; and Lara Zarowsky, Alan Northrop, and Thomas Hudson, Innocence Project Northwest.

Persons Signed In To Testify But Not Testifying (Judiciary): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.