

SENATE BILL REPORT

ESHB 1341

As of April 8, 2013

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: Passed House: 3/08/13, 95-2.

Committee Activity: Law & Justice: 3/27/13, 4/01/13 [DPA-WM].
Ways & Means:

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Padden, Chair; Kline, Ranking Member; Darneille, Kohl-Welles, Pearson and Roach.

Staff: Aldo Melchiori (786-7439)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Steve Jones (786-7440)

Background: Persons that are 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

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provide for a civil cause of action specific to compensation for persons wrongly convicted and incarcerated.

Summary of Bill (Recommended Amendments): 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. A person convicted in Washington and imprisoned for one or more felonies of which that person is actually innocent may file a claim. 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.

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.

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

- the claimant was convicted of one or more felonies in superior court and 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 was 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.

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. 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 must set forth its reasons for dismissal in written findings of fact and conclusions of law.

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. 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 need to reimburse the state for compensation associated with child support, costs related to defending the underlying conviction, or attorneys' fees.

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

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

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Amendments): Allows the structured settlement of wrongful conviction awards. As part of the claimant's reentry counseling, the Department of Corrections or the Department of Social and Health Services provides counseling on the ability of the claimant to enter into a structured settlement agreement.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Engrossed Substitute House Bill (Law & Justice): PRO: Washington is the minority of states that do not compensate wrongfully convicted persons. Currently, no services are provided to these people. Three people were found to be wrongfully convicted in Washington. When government makes a mistake, it says it is sorry by providing compensation. The bill provides strict and narrow criteria for obtaining compensation. No human endeavor is infallible and the justice system is not

immune. We have a responsibility to make things right. These people are victims of the system which was supposed to protect them. They are truly innocent individuals, not just people who get off on technicalities. This matches the amount provided to wrongfully convicted people in the federal system. It has a minimal effect of the budget and a potential major effect on people's lives. Wrongful convictions deprive people of their lives, families, reputations, and dignity.

Persons Testifying (Law & Justice): PRO: Representative Orwall, prime sponsor; Hunter Elenbaas, Thomas Hudson, Lara Zarowsky, Innocence Project NW; Alan Northrop, exonerated citizen; Tom McBride, WA Assn. of Prosecuting Attorneys.