
SUBSTITUTE HOUSE BILL 1341

State of Washington

63rd Legislature

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

READ FIRST TIME 02/14/13.

1 AN ACT Relating to creating a claim for compensation for wrongful
2 conviction and imprisonment; adding a new section to chapter 28B.15
3 RCW; adding a new section to chapter 72.09 RCW; and adding a new
4 chapter to Title 4 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

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

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

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

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

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

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

17 NEW SECTION. **Sec. 3.** (1) All claims under this chapter shall be
18 filed in superior court. The venue for such actions shall be governed
19 by RCW 4.12.020.

20 (2) Service of the summons and complaint shall be governed by RCW
21 4.28.080.

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

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

28 (b)(i) The claimant is not currently incarcerated for any offense;
29 and

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

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

1 (ii) The claimant's judgment of conviction was reversed or vacated
2 and the accusatory instrument dismissed on the basis of significant new
3 exculpatory information or, if a new trial was ordered pursuant to the
4 presentation of significant new exculpatory information, either the
5 claimant was found not guilty at the new trial or the claimant was not
6 retried and the accusatory instrument dismissed; and

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

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 5.** Any party is entitled to the rights of
2 appeal afforded parties in a civil action following a decision on such
3 motions. In the case of dismissal of a claim, review of the superior
4 court action shall be de novo.

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

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

11 (b)(i) The claimant is not currently incarcerated for any offense;
12 and

13 (ii) During the period of confinement for which the claimant is
14 seeking compensation, the claimant was not serving a term of
15 imprisonment or a concurrent sentence for any conviction other than
16 those that are the basis for the claim;

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

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

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

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

33 (2) Any pardon or proclamation issued to the claimant must be
34 certified by the officer having lawful custody of the pardon or
35 proclamation, and be affixed with the seal of the office of the
36 governor, or with the official certificate of such officer before it
37 may be offered as evidence.

1 (3) In exercising its discretion regarding the weight and
2 admissibility of evidence, the court shall give due consideration to
3 difficulties of proof caused by the passage of time or by release of
4 evidence pursuant to a plea, the death or unavailability of witnesses,
5 the destruction of evidence, or other factors not caused by the
6 parties.

7 (4) The claimant shall not be compensated for any period of time in
8 which he or she was serving a term of imprisonment or a concurrent
9 sentence for any conviction other than the felony or felonies that are
10 the basis for the claim.

11 (5) If the jury or, in the case where the right to a jury is
12 waived, the court finds by clear and convincing evidence that the
13 claimant was wrongly convicted, the court shall order the state to pay
14 the actually innocent claimant the following compensation award, as
15 adjusted for partial years served and to account for inflation from the
16 effective date of this section:

17 (a) Fifty thousand dollars for each year of actual confinement
18 including time spent awaiting trial and an additional fifty thousand
19 dollars for each year served on death row;

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

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

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

32 (e) Attorneys' fees for successfully bringing the wrongful
33 conviction claim calculated at ten percent of the monetary damages
34 awarded under subsection (5)(a) and (b) of this section, plus expenses.
35 However, attorneys' fees and expenses shall not exceed seventy-five
36 thousand dollars. These fees shall not be deducted from the
37 compensation award due to the claimant and counsel shall not be

1 entitled to receive additional fees from the client related to the
2 claim. The court may not award any attorneys' fees to the claimant if
3 the claimant fails to prove he or she was wrongly convicted.

4 (6) The compensation award shall not include any punitive damages.

5 (7) The compensation award shall not be offset by any expenses
6 incurred by the state, the county, or any political subdivision of the
7 state including, but not limited to, expenses incurred to secure the
8 claimant's custody, or to feed, clothe, or provide medical services for
9 the claimant. The court shall not offset against the compensation
10 award the value of any services or reduction in fees for services to be
11 provided to the claimant as part of the award under this section.

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

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

16 (b) Upon request of the claimant, the court may order the
17 claimant's record of conviction vacated if the record has not already
18 been vacated, expunged, or destroyed under court rules. The
19 requirements for vacating records under RCW 9.94A.640 shall not apply.

20 (10) Upon request of the claimant, the court shall refer the
21 claimant to the department of corrections or the department of social
22 and health services for access to reentry services, if available,
23 including but not limited to the community-based transition programs
24 and long-term support programs for education, mentoring, life skills
25 training, assessment, job skills development, mental health and
26 substance abuse treatment.

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

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

1 (3) If an individual entitled to receive the information required
2 under this section shows that he or she was not provided with the
3 information, he or she shall have an additional twelve months, beyond
4 the statute of limitations under section 9 of this act, to bring a
5 claim under this chapter.

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

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

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

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

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

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

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

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

8 (a) A wrongly convicted person; and

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

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

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

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

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

22 (d) Tuition waivers for graduate students are not required for
23 those who qualify under subsection (1) of this section but are
24 encouraged.

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

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

32 (4) For the purposes of this section:

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

37 (b) "Fees" includes all assessments for costs incurred as a

1 condition to a student's full participation in coursework and related
2 activities at an institution of higher education.

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

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

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

13 When a court refers a person to the department under section 6 of
14 this act as part of the person's award in a wrongful conviction claim,
15 the department shall provide reasonable access to existing reentry
16 programs and services. Nothing in this section requires the department
17 to establish new reentry programs or services.

18 NEW SECTION. **Sec. 12.** If any provision of this act or its
19 application to any person or circumstance is held invalid, the
20 remainder of the act or the application of the provision to other
21 persons or circumstances is not affected.

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

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