

---

HOUSE BILL 1341

---

State of Washington

63rd Legislature

2013 Regular Session

By Representatives Orwall, Goodman, Pollet, Jenkins, Carlyle, Roberts, Appleton, Hunt, Upthegrove, Green, Kagi, Seaquist, Moeller, Kirby, Santos, Ryu, Pedersen, and Moscoso

Read first time 01/23/13. Referred to Committee on Judiciary.

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 following 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 constitute perjury or  
17 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 following 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 constitute perjury or  
32 fabricated evidence under this subsection.

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

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, the death or  
4 unavailability of witnesses, the destruction of evidence, or other  
5 factors not caused by the parties.

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

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

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

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

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

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

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

1 claim. The court may not award any attorneys' fees to the claimant if  
2 the claimant fails to prove he or she was wrongly convicted.

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

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

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

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

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

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

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

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

--- END ---