
MOCK SECOND SUBSTITUTE HOUSE BILL 1341

State of Washington 67th Legislature 2019 Regular Session

By Representative Jones.

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

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

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7 NEW SECTION. **Sec. 1.** The legislature recognizes that persons
8 convicted and imprisoned for crimes they did not commit have been
9 uniquely victimized. Having suffered tremendous injustice by being
10 stripped of their lives and liberty, they are forced to endure
11 imprisonment and are later stigmatized as felons. A majority of those
12 wrongly convicted in Washington state have no remedy available under
13 the law for the destruction of their personal lives resulting from
14 errors in our criminal justice system. The legislature intends to
15 provide an avenue for those who have been wrongly convicted in Washington
16 state to redress the lost years of their lives, and help to address the
17 unique challenges faced by the wrongly convicted after 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
12 NEW SECTION. **Sec. 3.** (1) To file an actionable claim for
13 compensation under this act, the claimant must establish by documentary
14 evidence that:

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

18 (b)(i) The claimant is not currently incarcerated for any offense;
19 and

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

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

27 (ii) The claimant's judgment of conviction was reversed or vacated
28 and the accusatory instrument dismissed on the basis of significant new
29 exculpatory information or, if a new trial was ordered following the
30 presentation of significant new exculpatory information, either the
31 claimant was found not guilty at the new trial or the claimant was not
32 retried and the accusatory instrument dismissed.

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

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

6 (b) The claimant did not commit or suborn perjury, or fabricate
7 evidence to cause or bring about the conviction. A guilty plea to a
8 crime the claimant did not commit, or a confession that is later
9 determined by a court to be false, does not constitute perjury or
10 fabricated evidence under this subsection.

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

14 (5) If the attorney general concedes that the claimant was wrongly
15 convicted, the court shall award compensation as provided in section 5
16 of this act.

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

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

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

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

1 that the requirements of section 2 (1) and (2) of this chapter have
2 been met.

3 (2) Any pardon or proclamation issued to the claimant by the
4 governor shall be admissible as evidence when it is certified by the
5 officer having lawful custody of the pardon or proclamation, with the
6 seal of the office of the governor affixed, or with the official
7 certificate of such officer.

8 (3) In exercising its discretion regarding the weight and
9 admissibility of evidence, the court shall give due consideration to
10 difficulties of proof caused by the passage of time, the death or
11 unavailability of witnesses, the destruction of evidence, or other
12 factors not caused by the parties.

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

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

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

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

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

1 (e) Attorneys' fees for successfully bringing the wrongful
2 conviction claim calculated at ten percent of the monetary damages
3 awarded under subsection (5)(a) and (b) of this section, plus expenses.
4 However, attorneys' fees and expenses shall not exceed seventy-five
5 thousand dollars. Counsel shall not be entitled to receive additional
6 fees from the client related to the claim.

7 (5)(a) Upon finding that the claimant was wrongly convicted, the
8 court shall seal the claimant's record of conviction.

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

13 (6) Upon request of the claimant, the court shall refer the claimant
14 to the department of corrections or the department of social and health
15 services for access to reentry services, if available, including but
16 not limited to the community-based transition programs and long-term
17 support programs for education, mentoring, life skills training,
18 assessment, job skills development, mental health and substance abuse
19 treatment.

20 (7) The claimant or the attorney general may initiate and agree to
21 a claim with a structured settlement for the compensation awarded under
22 subsection (4) of this section. Any structured settlement agreement
23 binds the parties with regard to all compensation awarded. A structured
24 settlement agreement entered into under this section must be in writing
25 and signed by the parties or their representatives. The court may approve
26 the agreement only if the judge finds that the claimant has an adequate
27 understanding of the agreement, and that the agreement is in the best
28 interest of the claimant and actuarially equivalent to the lump sum
29 compensation award under subsection (4) of this section before taxation.

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31 NEW SECTION. **Sec. 6.** (1) On or after the effective date of this
32 section, when a court grants judicial relief, such as reversal and

1 vacation of a person's conviction, consistent with the criteria
2 established in section 4 of this act, the court shall provide to the
3 claimant a copy of sections 2 through 11 of this act at the time the
4 relief is granted.

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 8.** Except as provided in section 7 of this act,
2 an action for compensation under this chapter must be commenced within
3 three years after the grant of a pardon, the grant of judicial relief
4 and satisfaction of other conditions described in section 2 of this act,
5 or release from custody, whichever is later; provided, however, that
6 any action by the state challenging or appealing the grant of judicial
7 relief or release from custody shall toll the three-year period. Any
8 persons meeting the criteria set forth in section 2 of this act who was
9 wrongly convicted before the effective date of this section may commence
10 an action under this chapter within three years after the effective date
11 of this section.

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13 NEW SECTION. **Sec. 9.** A new section is added to chapter 72.09 RCW
14 to read as follows:

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

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21 NEW SECTION. **Sec. 10.** Sections 1 through 9 of this act constitute
22 a new chapter in Title 4 RCW.

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