
HOUSE BILL 3254

State of Washington 59th Legislature 2006 Regular Session

By Representatives McDermott, Appleton and Hasegawa

Read first time 01/30/2006. Referred to Committee on Judiciary.

1 AN ACT Relating to civil causes of action against the state of
2 Washington for persons wrongfully convicted and imprisoned; adding a
3 new section to chapter 41.05 RCW; and adding a new chapter to Title 4
4 RCW.

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

6 NEW SECTION. **Sec. 1.** INTENT. (1) It is the intent of the
7 legislature that persons who can demonstrate that they were wrongfully
8 convicted be able to recover damages. The legislature finds that
9 persons who have been wrongfully convicted of crimes and subsequently
10 imprisoned have been uniquely victimized, and have difficulty achieving
11 legal redress due to a variety of substantive and technical obstacles
12 in the law, and that in light of the particular and substantial horror
13 of being wrongfully convicted, such persons should have an available
14 avenue of redress over and above the existing tort remedies to seek
15 compensation for damages.

16 (2) In light of the substantial burden of proof that must be
17 carried by such persons, it is the intent of the legislature that the
18 court, in exercising its discretion as permitted by law regarding the
19 weight and admissibility of evidence submitted under this act, may, in

1 the interest of justice, give due consideration to difficulties of
2 proof caused by the passage of time, the death or unavailability of
3 witnesses, the destruction of evidence, or other factors not caused by
4 such persons or those acting on their behalf.

5 NEW SECTION. **Sec. 2.** STATEMENT OF CLAIM. (1) Any person
6 convicted in state court and subsequently imprisoned for one or more
7 felonies which he or she was wrongfully convicted may, under the
8 conditions provided in this section, present a claim for damages
9 against the state.

10 (2) If the person described in subsection (1) of this section is
11 incapacitated and incapable of verifying, presenting, and filing the
12 claim, or if he or she is a minor, or is a nonresident of the state,
13 the claim may be verified, presented, and filed on behalf of that
14 person by any relative, attorney, or agent acting as the person's
15 representative.

16 (3) If the person described in subsection (1) of this section is
17 deceased, no claim may be brought on their behalf.

18 NEW SECTION. **Sec. 3.** VENUE. All claims of wrongful conviction
19 and imprisonment shall be presented to and heard by the superior court.
20 The venue for such actions shall be as provided for in RCW 4.92.010, as
21 existing on the effective date of this section.

22 NEW SECTION. **Sec. 4.** NOTICE. (1) A court granting judicial
23 relief consistent with the criteria established in section 5 of this
24 act on or after the effective date of this act shall provide a copy of
25 sections 2 through 10 of this act to the individual seeking such relief
26 at the time the court grants relief.

27 (2) The clemency and pardons board or the indeterminate sentence
28 review board, whichever is applicable, upon issuance of a pardon by the
29 governor on grounds not inconsistent with innocence on or after the
30 effective date of this act, shall provide a copy of sections 2 through
31 10 of this act to the individual pardoned.

32 (3) If an individual entitled to receive the information required
33 under this section shows that such information was not provided as
34 required, he or she shall have an additional year, beyond the statute

1 of limitations under section 9 of this act, to bring a claim under this
2 chapter.

3 NEW SECTION. **Sec. 5.** PRESENTATION OF CLAIM. (1) In order to
4 present an actionable claim for wrongful conviction and imprisonment,
5 the claimant must establish by documentary evidence that:

6 (a) The claimant has been convicted of one or more felonies in
7 state court and subsequently sentenced to a term of imprisonment, and
8 has served all or part of the sentence;

9 (b) The claimant's wrongful conviction has been established by:

10 (i) Being pardoned on grounds not inconsistent with innocence for
11 the felony or felonies for which the claimant was sentenced and which
12 are grounds for the complaint; or

13 (ii) The claimant's judgment of conviction was reversed or vacated
14 and the accusatory instrument dismissed or, if a new trial was ordered,
15 either the claimant was found not guilty at the new trial or the
16 claimant was not retried and the accusatory instrument dismissed;
17 provided that the judgment of conviction was reversed or vacated, or
18 the accusatory instrument was dismissed, on grounds not inconsistent
19 with innocence or because the statute, or application thereof, on which
20 the accusatory instrument was based violated the Constitution of the
21 United States or the state Constitution; and

22 (c) The claim is not time-barred by the provisions of section 9 of
23 this act.

24 (2) The claim shall state facts in sufficient detail to permit the
25 court to find that the claimant is likely to succeed in trial in
26 proving that:

27 (a) The claimant did not commit any of the acts charged in the
28 accusatory instrument or the claimant's acts or omissions charged in
29 the accusatory instrument did not constitute a crime; and

30 (b) The claimant did not commit or suborn perjury, or fabricate
31 evidence to cause or bring about the conviction. A guilty plea to a
32 crime the claimant did not commit, or a confession that is later proven
33 to be false, does not constitute perjury or fabricated evidence under
34 this subsection.

35 (3) The claim shall be verified by the claimant.

36 (4)(a) If the court finds after reading the claim that the claimant

1 is not likely to succeed at trial, it shall dismiss the claim, either
2 on its own motion or on the motion of the state.

3 (b) If the court dismisses the claim, the court shall set forth the
4 reasons for its decision in written findings of facts and conclusions
5 of law.

6 NEW SECTION. **Sec. 6.** RIGHT OF APPEAL. Any party is entitled to
7 the rights of appeal afforded parties in a civil action following a
8 decision on such motions. In the case of dismissal of a claim, such
9 review of the superior court action shall be de novo.

10 NEW SECTION. **Sec. 7.** JUDGMENT AND AWARD. (1) In order to obtain
11 a judgment in his or her favor, the claimant must provide clear and
12 convincing evidence to prove that:

13 (a) The claimant was convicted of one or more felonies in state
14 court and subsequently sentenced to a term of imprisonment, and has
15 served all or any part of the sentence; and

16 (b)(i) The claimant has been pardoned on grounds which are not
17 inconsistent with innocence for the felony or felonies for which the
18 claimant was sentenced and which are the grounds for the complaint; or

19 (ii) The claimant's judgment of conviction was reversed or vacated
20 and the accusatory instrument dismissed or, if a new trial was ordered,
21 either the claimant was found not guilty at the new trial or the
22 claimant was not retried and the accusatory instrument dismissed;
23 provided that the judgment of conviction was reversed or vacated, or
24 the accusatory instrument was dismissed, on grounds not inconsistent
25 with innocence or because the statute, or application thereof, on which
26 the accusatory instrument was based violated the Constitution of the
27 United States or the state Constitution; and

28 (c) The claimant did not commit any of the acts charged in the
29 accusatory instrument, or the claimant's acts or omissions charged in
30 the accusatory instrument did not constitute a crime; and

31 (d) The claimant did not commit or suborn perjury, or fabricate
32 evidence to cause or bring about his or her conviction. A guilty plea
33 to a crime the claimant did not commit, or a confession that is later
34 proven to be false, does not constitute perjury or fabricated evidence
35 under this subsection.

1 (2) Any pardon or proclamation issued to the claimant by the
2 governor, shall be admissible as evidence in the proceedings when duly
3 certified by the officer having the lawful custody thereof, with the
4 seal of the office annexed, or with the official certificate of such
5 officer.

6 (3)(a) If the jury, or in the case the right to a jury is waived,
7 the court, finds by clear and convincing evidence that the claimant was
8 wrongfully convicted and imprisoned, the claimant shall be awarded the
9 following damages:

10 (i) Not less than fifty thousand dollars for each year of actual
11 confinement, including time spent awaiting trial, with an additional
12 fifty thousand dollars for each year served on death row, as adjusted
13 for partial years served and to account for inflation from the
14 effective date of this act;

15 (ii) Economic damages including but not limited to lost wages,
16 costs associated with the claimant's criminal defense and efforts to
17 prove the claimant's innocence, restitution paid by the claimant as a
18 requirement of the sentence which is the grounds for the complaint, and
19 medical expenses for mental and physical health costs incurred after
20 release that are reasonably related to the circumstances of the
21 claimant's imprisonment;

22 (iii) Compensation for any reasonable reintegrative services and
23 mental and physical health costs incurred by the claimant for the time
24 period between the claimant's release from imprisonment and the date of
25 the award;

26 (iv) Up to ten years of eligibility to participate in the health
27 insurance plans and contracts offered by the public employees' benefits
28 board. The court shall issue an order directing the health care
29 authority to enroll the claimant as provided for in section 10 of this
30 act. The court order must specify the amount of time for which the
31 claimant is eligible to receive benefits, and that the claimant shall
32 not be responsible for any costs associated with participation. The
33 claimant's eligibility under this subsection shall not extend to the
34 claimant's spouse or dependents; and

35 (v) Reasonable attorneys' fees calculated at ten percent of the
36 damage award plus expenses. These fees, exclusive of expenses, shall
37 not exceed seventy-five thousand dollars. These fees shall not be

1 deducted from the compensation due to the claimant; nor is counsel
2 entitled to receive additional fees from the client.

3 (b) The damage award shall not include any punitive damages.

4 (c) The damage award shall not be subject to any cap applicable to
5 private parties in civil lawsuits.

6 (d) The damage award shall not be offset by any expenses incurred
7 by the state or any political subdivision of the state, including, but
8 not limited to, expenses incurred to secure the claimant's custody, or
9 to feed, clothe, or provide medical services for the claimant, nor
10 shall the court offset against the award the value of any services or
11 reduction in fees for services or the value thereof to be provided to
12 the claimant that may be awarded to the claimant pursuant to this
13 section.

14 (e) In addition to the damage award, the court may, at the request
15 of the claimant, order the claimant's record of conviction vacated if
16 the record has not already been vacated, sealed, expunged, or destroyed
17 under court rules. The requirements for vacating records under RCW
18 9.94A.640 shall not apply.

19 NEW SECTION. **Sec. 8.** LEGAL REMEDIES NOT BARRED. (1) The
20 provisions of this chapter shall not preclude any other legal remedy
21 available to the claimant to seek redress for the wrongful conviction
22 and imprisonment.

23 (2) The state may not assert as a defense to a claim under this
24 chapter a release dismissal agreement, or any similar agreement whereby
25 the prosecutor's office or an agent acting on its behalf agrees to take
26 or refrain from certain action if the accused individual agrees to
27 forgo legal action against the government.

28 NEW SECTION. **Sec. 9.** STATUTE OF LIMITATIONS. An action for
29 compensation brought by a wrongfully convicted person under the
30 provisions of this chapter shall be commenced within three years after
31 either the grant of a pardon or the grant of judicial relief and
32 satisfaction of other conditions described in section 5 of this act;
33 provided, however, that any action by the state challenging or
34 appealing the grant of judicial relief shall toll the three-year
35 period. Persons convicted, incarcerated, and released from custody

1 before the effective date of this act may commence an action under this
2 chapter within five years of the effective date of this act.

3 NEW SECTION. **Sec. 10.** A new section is added to chapter 41.05 RCW
4 to read as follows:

5 (1) An individual who was awarded damages under section 7 of this
6 act is eligible to participate in the health insurance plans and
7 contracts offered by the public employees' benefits board as prescribed
8 by court order, and the individual is not responsible for any costs
9 associated with that participation.

10 (2) The health care authority, upon receipt of the court order,
11 must enroll the individual in a health insurance plan in compliance
12 with the terms and conditions of the court order.

13 (3) The director shall adopt rules under RCW 41.50.050 as the
14 director may find necessary to implement this section and to avoid
15 conflicts with any applicable federal or state laws.

16 NEW SECTION. **Sec. 11.** SEVERABILITY CLAUSE. If any provision of
17 this act or its application to any person or circumstance is held
18 invalid, the remainder of the act or the application of the provision
19 to other persons or circumstances is not affected.

20 NEW SECTION. **Sec. 12.** CAPTIONS NOT LAW. Captions used in this
21 chapter are not any part of the law.

22 NEW SECTION. **Sec. 13.** CODIFICATION DIRECTIONS. Sections 1
23 through 9, 11, and 12 of this act constitute a new chapter in Title 4
24 RCW.

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