
SENATE BILL 5460

State of Washington

62nd Legislature

2011 Regular Session

By Senators Kline, Kohl-Welles, Keiser, White, and Chase

Read first time 01/26/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to establishing a claims process for persons
2 convicted and imprisoned for crimes they did not commit; adding a new
3 section to chapter 41.05 RCW; adding a new section to chapter 43.20A
4 RCW; adding a new section to chapter 72.09 RCW; adding a new section to
5 chapter 50.08 RCW; adding a new chapter to Title 4 RCW; and providing
6 an expiration date.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that persons who
9 have been wrongly convicted and imprisoned for crimes they did not
10 commit have been uniquely victimized and have suffered tremendous
11 injustice by being stripped of their lives and liberty and forced to
12 endure the horror of prison. The legislature also finds that a
13 majority of those wrongly convicted do not have legal redress to
14 recover damages in order to restore their lives. Thus, the legislature
15 intends to provide compassionate assistance to those who have been
16 convicted and imprisoned for crimes they did not commit in
17 acknowledgment of the unique circumstances they face.

18 (2) The legislature also recognizes that resources in addition to

1 monetary compensation, including access to physical and mental health
2 care and job training, are critically important tools for those wrongly
3 convicted to begin restoring their lives.

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

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

9 (a) "Actually innocent" of a felony if he or she did not commit any
10 of the acts charged in the accusatory instrument, or the person's acts
11 or omissions charged in the accusatory instrument did not constitute a
12 crime;

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

16 (3) If the person entitled to file a claim under subsection (1) of
17 this section is incapacitated and incapable of filing the claim, or if
18 he or she is a minor, or is a nonresident of the state, the claim may
19 be filed on behalf of that person by any relative, attorney, or agent
20 acting as the person's representative.

21 NEW SECTION. **Sec. 3.** (1) All claims of wrongful conviction and
22 imprisonment shall be filed with the risk management division.

23 (2) All claims of wrongful conviction and imprisonment shall be
24 reviewed by the risk management division to determine an initial
25 valuation, and to delegate to the appropriate officer to investigate,
26 negotiate, compromise, and settle the claim.

27 (3) All claims of wrongful conviction and imprisonment that result
28 in a lawsuit shall be forwarded to the attorney general's office.
29 Thereafter the attorney general and the risk management division shall
30 collaborate in the investigation, denial, or settlement of the claim.

31 (4) The valuation of a specific claim of wrongful conviction and
32 imprisonment against the state shall be privileged and confidential.

33 (5) "Risk management division" means the division of the office of
34 financial management that carries out the powers and duties under this
35 chapter relating to claim filing, claims administration, and claims
36 payment.

1 NEW SECTION. **Sec. 4.** (1) In order to file a claim for wrongful
2 conviction and imprisonment, the claimant must establish by documentary
3 evidence that:

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

7 (b)(i) The claimant is not currently incarcerated for any offense;
8 and

9 (ii) During the period of confinement for which the claimant is
10 seeking compensation, the claimant was not serving a term of
11 imprisonment or a concurrent sentence for any crime other than the
12 felony or felonies for which the claimant was sentenced and which are
13 grounds for the compensation claim;

14 (c)(i) The claimant's judgment of conviction was reversed or
15 vacated and the accusatory instrument dismissed on the basis of
16 significant new information dispositive in extent or exculpatory in
17 nature or, if a new trial was ordered following the presentation of
18 significant new information, either the claimant was found not guilty
19 at the new trial or the claimant was not retried and the accusatory
20 instrument dismissed; or

21 (ii) The statute on which the accusatory instrument was based or
22 the application of the statute violated the Constitution of the United
23 States or the state Constitution; and

24 (d) The claim is not time-barred by the provisions of section 10 of
25 this act.

26 (2) In addition to the requirements in subsection (1) of this
27 section, the claim shall state facts in sufficient detail for the
28 division of risk management to determine that:

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

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

37 (3) The claimant shall verify the claim unless he or she is

1 incapacitated, in which case the person filing on behalf of the
2 claimant shall verify the claim.

3 (4) The office of the county prosecuting attorney responsible for
4 charging and prosecuting the felony or felonies for which the claimant
5 was sentenced and which are grounds for the complaint is not a party to
6 the action, but may submit information to the division of risk
7 management related to a claim for compensation under this section.

8 (5)(a) If the division of risk management finds after reading the
9 claim that the claimant does not meet the filing criteria set forth in
10 both this section and section 2 of this act, it shall reject the claim.

11 (b) If the division of risk management rejects the claim, the
12 division shall set forth the reasons for its decision in writing.

13 NEW SECTION. **Sec. 5.** (1) If the division of risk management finds
14 that the claimant meets all the requirements set out in sections 2 and
15 4 of this act then the claimant must be awarded:

16 (a) Compensation, as adjusted for partial years served and to
17 account for inflation from the effective date of this section, of:

18 (i) Fifty thousand dollars for each year of actual confinement
19 including time spent awaiting trial; and

20 (ii) Twenty-five thousand dollars for each year served on death
21 row; and

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

25 (b) Compensation for child support payments owed by the claimant
26 that became due and interest on child support arrearages that accrued
27 while the claimant was in custody on the felony or felonies which are
28 grounds for the compensation claim. Such funds shall be paid on the
29 person's behalf in a lump-sum payment to the department of social and
30 health services for distribution to the obligee under the child support
31 order;

32 (c) Costs associated with the claimant's criminal defense at trial
33 and on appeal;

34 (d) Reimbursement for all restitution, assessments, fees, and any
35 other sums paid by the claimant as required by the judgment and
36 sentence;

1 (e) Reimbursement for any reasonable reintegrative services and
2 mental, physical health, and dental care costs incurred by the claimant
3 in the time period between his or her release from custody and the date
4 of the award; and

5 (f) Reasonable attorneys' fees for successfully bringing the
6 wrongful conviction claim. The attorneys' fees shall be calculated at
7 ten percent of the damage award, as calculated under (a) through (e) of
8 this subsection, plus expenses. However, attorneys' fees, exclusive of
9 expenses, shall not exceed seventy-five thousand dollars. These fees
10 shall not be deducted from the compensation due to the claimant and
11 counsel shall not be entitled to receive additional fees from the
12 client. The risk management division may not award any attorneys' fees
13 to the claimant if the claimant fails to prove he or she was wrongly
14 convicted.

15 (2) The compensation and damage award shall not include any
16 punitive damages.

17 (3) The compensation and damage award shall not be offset by any
18 expenses incurred by the state or any political subdivision of the
19 state including, but not limited to, expenses incurred to secure the
20 claimant's custody, or to feed, clothe, or provide medical services for
21 the claimant. The risk management division shall not offset against
22 the award the value of any services or reduction in fees for services
23 to be provided to the claimant as part of the damages awarded to the
24 claimant pursuant to this section.

25 (4)(a) A person awarded compensation under this section is entitled
26 to an annuity payment, based on a preset value sum equal to the total
27 amount to which the person is awarded under this section.

28 (b) The annuity payments under this section are payable in equal
29 monthly installments for the life of the clamant and must be based on
30 a five percent per annum interest rate and other actuarial factors
31 within the discretion of the risk management division.

32 (c) The annuity payments may not be accelerated, deferred,
33 increased, or decreased. The claimant may not sell, mortgage or
34 otherwise encumber, or anticipate the payments, wholly or partly, by
35 assignment or otherwise.

36 (5) Upon a finding that the claimant has met the requirements set
37 out in sections 2 and 4 of this act, the risk management division must
38 award up to ten years of eligibility to participate in the health and

1 dental insurance plans and contracts offered by the public employees'
2 benefits board. The risk management division shall direct the health
3 care authority to enroll the claimant and his or her dependent children
4 and spouse or domestic partner as provided for in section 10 of this
5 act. The risk management division shall specify the amount of time for
6 which the claimant and his or her dependent children and spouse or
7 domestic partner are eligible to receive benefits, and that the
8 claimant and his or her dependent children and spouse or domestic
9 partner shall not be responsible for any costs associated with
10 participation.

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

19 NEW SECTION. **Sec. 6.** (1) The risk management division shall not
20 make any payment of claims for monetary compensation under section 5
21 subsections (1) through (4) until July 1, 2015.

22 (2) This section expires July 1, 2015.

23 NEW SECTION. **Sec. 7.** Claims approved by the risk management
24 division shall be submitted to the legislature for appropriation in the
25 same manner as judgments against the state under RCW 4.92.040(4)
26 through (6).

27 NEW SECTION. **Sec. 8.** (1) A person who files a claim under this
28 chapter may appeal the decision of the risk management division if the
29 claim:

- 30 (a) Is denied; or
- 31 (b) Is disputed by the person filing the claim and the person
32 disagrees with the amount of compensation determined by the risk
33 management division.

34 (2) In the case of denial of a claim, review of the risk management
35 division decision shall be de novo.

1 (3) The venue for such action shall be governed by RCW 4.92.010.

2 NEW SECTION. **Sec. 9.** On or after the effective date of this
3 section, when a court grants judicial relief, such as reversal and
4 vacation of a person's conviction, consistent with the criteria
5 established in section 4 of this act, the court shall:

6 (1) Provide to the person at the time the relief is granted a copy
7 of chapter 4.--- RCW (the new chapter created in section 17 of this
8 act). If an individual entitled to receive the information required
9 under this subsection shows that he or she was not provided with the
10 information, he or she shall have an additional twelve months, beyond
11 the statute of limitations under section 11 of this act, to bring a
12 claim under this chapter.

13 (2) Upon request by the person wrongly convicted, seal the
14 claimant's record of conviction and issue the claimant a written court
15 order certifying that the claimant has been exonerated.

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

20 NEW SECTION. **Sec. 10.** (1) The provisions of this chapter shall
21 not preclude any other legal remedy available to the claimant to seek
22 redress for the wrongful conviction and imprisonment.

23 (2) If the claimant pursues a separate claim for tortious conduct
24 pursuant to the wrongful conviction, the related arrest, or subsequent
25 incarceration, the statute of limitations under this chapter is tolled
26 pending resolution of that claim, and the tort award shall offset any
27 compensation awarded under this chapter.

28 (3) The division of risk management may not deny a claim submitted
29 under this chapter based upon a release dismissal agreement, plea
30 agreement, or any similar agreement whereby the prosecutor's office or
31 an agent acting on its behalf agrees to take or refrain from certain
32 action if the accused individual agrees to forgo legal action against
33 the state.

34 NEW SECTION. **Sec. 11.** Except as provided in section 8(1)(b) of
35 this act, a claim for compensation under this chapter shall be

1 commenced within three years after the grant of judicial relief and
2 satisfaction of other conditions described in section 5 of this act;
3 provided, however, that any action by the state challenging or
4 appealing the grant of judicial relief shall toll the three-year
5 period. Any person meeting the criteria set forth in section 2 of this
6 act who was wrongly convicted before the effective date of this section
7 may file a claim for compensation under this chapter within three years
8 after the effective date of this section.

9 NEW SECTION. **Sec. 12.** A new section is added to chapter 41.05 RCW
10 to read as follows:

11 (1) An individual who was awarded compensation under section 5 of
12 this act and his or her dependent children and spouse or domestic
13 partner are eligible to participate in the health and dental insurance
14 plans and contracts offered by the public employees' benefits board as
15 prescribed by direction from the risk management division, and no
16 person eligible under this section is responsible for any costs
17 associated with that participation.

18 (2) The health care authority, upon receipt of the direction from
19 the risk management division, must enroll the individual and his or her
20 dependent children and spouse or domestic partner in a health and
21 dental insurance plan in compliance with the terms and conditions of
22 the direction from the division of risk management.

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

26 NEW SECTION. **Sec. 13.** A new section is added to chapter 43.20A
27 RCW to read as follows:

28 When the division of risk management refers a person to the
29 department under section 5 of this act as part of the person's award in
30 a wrongful conviction claim, the department shall provide reasonable
31 reentry services to the person. Nothing in this section requires the
32 department to establish new reentry programs or services.

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

35 When the risk management division refers a person to the department

1 under section 5 of this act as part of the person's award in a wrongful
2 conviction claim, the department shall provide reasonable reentry
3 services to the person. Nothing in this section requires the
4 department to establish new reentry programs or services.

5 NEW SECTION. **Sec. 15.** A new section is added to chapter 50.08 RCW
6 to read as follows:

7 When the risk management division refers a person to the department
8 under section 5 of this act as part of the person's award in a wrongful
9 conviction claim, the department shall provide reasonable reentry
10 services to the person. Nothing in this section requires the
11 department to establish new reentry programs or services.

12 NEW SECTION. **Sec. 16.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 17.** Sections 1 through 11 of this act
17 constitute a new chapter in Title 4 RCW.

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