
HOUSE BILL 2221

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By Representatives Orwall, Appleton, Jinkins, Pollet, Upthegrove, Roberts, and Kagi

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1 AN ACT Relating to creating a claim for wrongful conviction and
2 imprisonment; adding a new section to chapter 28B.15 RCW; adding a new
3 section to chapter 41.05 RCW; adding a new section to chapter 72.09
4 RCW; and adding a new chapter to Title 4 RCW.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that persons convicted
7 and imprisoned for crimes they did not commit have been uniquely
8 victimized. They have suffered tremendous injustice by being stripped
9 of their lives and liberty, forced to endure prison for a crime they
10 did not commit. A majority of those wrongly convicted do not have
11 legal redress to recover damages in order to restore their lives. The
12 legislature intends to provide redress for those who have been wrongly
13 convicted in Washington state, in recognition of the lost years of
14 their lives and the unique challenges they face after exoneration. The
15 legislature further intends that compensation be paid by the county in
16 which the wrongful conviction occurred, and under no circumstances will
17 a person found wrongly convicted in this state be deprived of his or
18 her award once a judgment for compensation has been successfully
19 secured.

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

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 accusatory instrument; 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 of wrongful conviction and
18 imprisonment shall be filed in superior court. The venue for such
19 actions shall be governed by RCW 4.12.020.

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

22 (3) The attorney general shall represent any county named as the
23 adverse party in a claim for compensation under this chapter.

24 NEW SECTION. **Sec. 4.** (1) In order to file an actionable claim for
25 wrongful conviction and imprisonment, the claimant must establish by
26 documentary evidence that:

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

30 (b)(i) The claimant is not currently incarcerated for any offense;
31 and

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

1 (c)(i) The claimant has been pardoned on grounds consistent with
2 innocence for the felony or felonies that are the basis for the
3 compensation claim; or

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

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

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

14 (a) The claimant did not engage in any illegal conduct alleged in
15 the accusatory instrument; and

16 (b) The claimant did not commit or suborn perjury, or fabricate
17 evidence to cause or bring about the conviction. A guilty plea to a
18 crime the claimant did not commit, or a confession that is later proven
19 to be false, does not constitute perjury or fabricated evidence under
20 this subsection.

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

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

29 (5)(a) If the court finds after reading the claim that the claimant
30 does not meet the filing criteria set forth in this section, it shall
31 dismiss the claim, either on its own motion or on the motion of the
32 attorney general.

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

36 (6) If the attorney general concedes that the claimant was wrongly
37 convicted, the court shall award compensation as provided in section 6
38 of this act.

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 a preponderance of the evidence
7 that:

8 (a) The claimant was convicted of one or more felonies in state
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 crime other than those
16 that are the basis for the compensation 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
19 compensation claim; 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 information or, if a new trial was ordered following the presentation
23 of significant new information, either the claimant was found not
24 guilty at the new trial or the claimant was not retried and the
25 accusatory instrument dismissed;

26 (d) The claimant did not engage in any illegal conduct alleged in
27 the accusatory instrument; 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 proven to be false, does not constitute perjury or fabricated evidence
32 under this subsection. Evidence of a guilty plea or confession later
33 proven to be false may be considered by the trier of fact in
34 determining a claim for compensation under this chapter.

35 (2) Any pardon or proclamation issued to the claimant by the
36 governor shall be admissible as evidence when it is certified by the

1 officer having lawful custody of the pardon or proclamation, with the
2 seal of the office of the governor affixed, or with the official
3 certificate of such officer.

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

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

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

19 (a) Monetary damages in an amount not less than:

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

22 (ii) Fifty thousand dollars for each year served on death row; and

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

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

33 (c) Reimbursement for all restitution, assessments, fees, court
34 costs, and all other sums paid by the claimant as required by pretrial
35 orders and the judgment and sentence;

36 (d) Higher education tuition waivers for the claimant and all
37 qualifying children as provided in section 10 of this act;

1 (e) Up to ten years of eligibility to participate in the health and
2 dental insurance plans and contracts offered by the public employees'
3 benefits board. The court shall issue an order directing the health
4 care authority to enroll the claimant and his or her dependent children
5 and spouse or domestic partner under an appropriate existing
6 eligibility type, as provided for in section 11 of this act. The court
7 order must specify the amount of time for which the claimant and his or
8 her dependent children and spouse or domestic partner are eligible to
9 receive benefits, and that the claimant and his or her dependents shall
10 not be responsible for any costs associated with participation; and

11 (f) Reasonable attorneys' fees for successfully bringing the
12 wrongful conviction claim. The attorneys' fees shall be calculated at
13 ten percent of the monetary damage awarded under subsection (5)(a) of
14 this section, plus expenses. However, attorneys' fees, exclusive of
15 expenses, shall not exceed seventy-five thousand dollars. These fees
16 shall not be deducted from the compensation due to the claimant and
17 counsel shall not be entitled to receive additional fees from the
18 client. The court may not award any attorneys' fees to the claimant if
19 the claimant fails to prove he or she was wrongly convicted.

20 (6) The compensation and damage award shall not include any
21 punitive damages.

22 (7) The compensation and damage award shall not be offset by any
23 expenses incurred by the state, the county, or any political
24 subdivision of the state including, but not limited to, expenses
25 incurred to secure the claimant's custody, or to feed, clothe, or
26 provide medical services for the claimant. The court shall not offset
27 against the award the value of any services or reduction in fees for
28 services to be provided to the claimant as part of the damages awarded
29 to the claimant pursuant to this section.

30 (8) Compensation awarded under this act shall not be considered
31 income for tax purposes.

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

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

1 (10) Upon request of the claimant, the court shall refer the
2 claimant to the department of corrections or the department of social
3 and health services for access to reentry services, if available,
4 including but not limited to the community-based transition programs
5 and long-term support programs for education, mentoring, life skills
6 training, assessment, job skills development, mental health and
7 substance abuse treatment.

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

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

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

24 NEW SECTION. **Sec. 8.** (1) As a condition of accepting compensation
25 under this chapter, the claimant forfeits all other claims related to
26 the underlying wrongful conviction cognizable under state tort law.
27 However, nothing in this chapter precludes any federal remedy available
28 to the claimant related to his or her wrongful conviction and
29 imprisonment.

30 (2) In the event that the claimant receives a federal tort award
31 related to his or her wrongful conviction and incarceration, the
32 claimant shall reimburse the entity that provided compensation under
33 this act for the amount of compensation received or the amount received
34 by the claimant under the tort award, whichever is less.

35 (3) The county may not assert as a defense to a claim under this
36 chapter a release dismissal agreement, plea agreement, or any similar

1 agreement whereby the prosecutor's office or an agent acting on its
2 behalf agrees to take or refrain from certain action if the accused
3 individual agrees to forgo legal action against the county, the state
4 of Washington, or any political subdivision.

5 (4) If the county does not pay the claim within one hundred eighty
6 days of the court order, the court shall order the state to satisfy the
7 judgment. Upon payment by the state, the state is entitled to
8 reimbursement, from the county named as the adverse party in the
9 compensation claim, in an amount equal to the value of the claim paid
10 and any reasonable fees and interest imposed by the court.

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

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

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

- 29 (a) A wrongly convicted person; and
- 30 (b) Any child or stepchild of a wrongly convicted person who was
31 born or became the stepchild of, or was adopted by, the wrongly
32 convicted person before compensation is awarded under section 6 of this
33 act.

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

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

3 (b) A child must be a Washington domiciliary between the age of
4 seventeen and twenty-six to be eligible for the tuition waiver. A
5 child's marital status does not affect eligibility.

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

8 (d) Tuition waivers for graduate students are not required for
9 those who qualify under subsection (1) of this section but are
10 encouraged.

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

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

18 (4) For the purposes of this section:

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

23 (b) "Fees" includes all assessments for costs incurred as a
24 condition to a student's full participation in coursework and related
25 activities at an institution of higher education.

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

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

34 NEW SECTION. **Sec. 11.** A new section is added to chapter 41.05 RCW
35 to read as follows:

36 (1) An individual who was awarded damages under section 6 of this
37 act and his or her dependent children and spouse or domestic partner

1 are eligible to participate in the health insurance plans and contracts
2 offered by the public employees' benefits board as prescribed by court
3 order, and none of those persons eligible under this section are
4 responsible for any costs associated with that participation.

5 (2) The health care authority, upon receipt of the court order,
6 shall enroll the individual and his or her dependent children and
7 spouse or domestic partner in a health insurance plan under an
8 appropriate existing eligibility type in compliance with the terms and
9 conditions of the court order.

10 (3) The director shall adopt rules under RCW 41.50.050 as the
11 director may find necessary to implement this section and to avoid
12 conflicts with any applicable federal or state laws. However, nothing
13 in this section requires the director or the health care authority to
14 develop a new eligibility type.

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

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

22 NEW SECTION. **Sec. 13.** If any provision of this act or its
23 application to any person or circumstance is held invalid, the
24 remainder of the act or the application of the provision to other
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 14.** Sections 1 through 9 and 13 of this act
27 constitute a new chapter in Title 4 RCW.

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