

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1341

Chapter 175, Laws of 2013

(partial veto)

63rd Legislature
2013 Regular Session

WRONGFUL CONVICTION AND IMPRISONMENT--COMPENSATION

EFFECTIVE DATE: 07/28/13

Passed by the House April 22, 2013
Yeas 95 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 15, 2013
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved May 8, 2013, 2:25 p.m., with
the exception of Sections 10 and 13
which are vetoed.

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of
the House of Representatives of
the State of Washington, do hereby
certify that the attached is
**ENGROSSED SUBSTITUTE HOUSE BILL
1341** as passed by the House of
Representatives and the Senate on
the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 8, 2013

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1341

AS AMENDED BY THE SENATE

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By House Judiciary (originally sponsored by Representatives Orwall, Goodman, Pollet, Jenkins, Carlyle, Roberts, Appleton, Hunt, Upthegrove, Green, Kagi, Seaquist, Moeller, Kirby, Santos, Ryu, Pedersen, and Moscoso)

READ FIRST TIME 02/14/13.

1 AN ACT Relating to creating a claim for compensation for wrongful
2 conviction and imprisonment; amending RCW 4.92.130; adding a new
3 section to chapter 28B.15 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 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 must be
18 filed in superior court. The venue for such actions is governed by RCW
19 4.12.020.

20 (2) Service of the summons and complaint is 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 chapter, the claimant must establish by
24 documentary 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 charging document dismissed on the basis of significant new
3 exculpatory information or, if a new trial was ordered pursuant to 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 charging document 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 must 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 automatically constitute
17 perjury or 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 must 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 must verify the claim.

26 (5) If the attorney general concedes that the claimant was wrongly
27 convicted, the court must 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 must 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 is 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 charging document dismissed on the basis of significant new
22 exculpatory information or, if a new trial was ordered pursuant to 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 charging document 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 automatically constitute
32 perjury or fabricated evidence under this subsection.

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

1 (3) In exercising its discretion regarding the weight and
2 admissibility of evidence, the court must give due consideration to
3 difficulties of proof caused by the passage of time or by release of
4 evidence pursuant to a plea, the death or unavailability of witnesses,
5 the destruction of evidence, or other factors not caused by the
6 parties.

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

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

17 (a) Fifty thousand dollars for each year of actual confinement
18 including time spent awaiting trial and an additional fifty thousand
19 dollars for each year served under a sentence of death pursuant to
20 chapter 10.95 RCW;

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 must 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

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

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

4 (6) The compensation award may not include any punitive damages.

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

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

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

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

20 (10) Upon request of the claimant, the court must refer the
21 claimant to the department of corrections or the department of social
22 and health services for access to reentry services, if available,
23 including but not limited to counseling on the ability to enter into a
24 structured settlement agreement and where to obtain free or low-cost
25 legal and financial advice if the claimant is not already represented,
26 the community-based transition programs and long-term support programs
27 for education, mentoring, life skills training, assessment, job skills
28 development, mental health and substance abuse treatment.

29 (11) The claimant or the attorney general may initiate and agree to
30 a claim with a structured settlement for the compensation awarded under
31 subsection (5) of this section. During negotiation of the structured
32 settlement agreement, the claimant must be given adequate time to
33 consult with the legal and financial advisor of his or her choice. Any
34 structured settlement agreement binds the parties with regard to all
35 compensation awarded. A structured settlement agreement entered into
36 under this section must be in writing and signed by the parties or
37 their representatives and must clearly state that the parties
38 understand and agree to the terms of the agreement.

1 (12) Before approving any structured settlement agreement, the
2 court must ensure that the claimant has an adequate understanding of
3 the agreement. The court may approve the agreement only if the judge
4 finds that the agreement is in the best interest of the claimant and
5 actuarially equivalent to the lump sum compensation award under
6 subsection (5) of this section before taxation. When determining
7 whether the agreement is in the best interest of the claimant, the
8 court must consider the following factors:

9 (a) The age and life expectancy of the claimant;

10 (b) The marital or domestic partnership status of the claimant; and

11 (c) The number and age of the claimant's dependants.

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

18 (2) The clemency and pardons board or the indeterminate sentence
19 review board, whichever is applicable, upon issuance of a pardon by the
20 governor on grounds consistent with innocence on or after the effective
21 date of this section, must provide a copy of sections 2 through 12 of
22 this act to the individual pardoned.

23 (3) If an individual entitled to receive the information required
24 under this section shows that he or she was not provided with the
25 information, he or she has an additional twelve months, beyond the
26 statute of limitations under section 9 of this act, to bring a claim
27 under this chapter.

28 NEW SECTION. **Sec. 8.** (1) It is the intent of the legislature that
29 the remedies and compensation provided under this chapter shall be
30 exclusive to all other remedies at law and in equity against the state
31 or any political subdivision of the state. As a requirement to making
32 a request for relief under this chapter, the claimant waives any and
33 all other remedies, causes of action, and other forms of relief or
34 compensation against the state, any political subdivision of the state,
35 and their officers, employees, agents, and volunteers related to the
36 claimant's wrongful conviction and imprisonment. This waiver shall

1 also include all state, common law, and federal claims for relief,
2 including claims pursuant to 42 U.S.C. Sec. 1983. A wrongfully
3 convicted person who elects not to pursue a claim for compensation
4 pursuant to this chapter shall not be precluded from seeking relief
5 through any other existing remedy. The claimant must execute a legal
6 release prior to the payment of any compensation under this chapter.
7 If the release is held invalid for any reason and the claimant is
8 awarded compensation under this chapter and receives a tort award
9 related to his or her wrongful conviction and incarceration, the
10 claimant must reimburse the state for the lesser of:

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

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

14 (2) A release dismissal agreement, plea agreement, or any similar
15 agreement whereby a prosecutor's office or an agent acting on its
16 behalf agrees to take or refrain from certain action if the accused
17 individual agrees to forgo legal action against the county, the state
18 of Washington, or any political subdivision, is admissible and should
19 be evaluated in light of all the evidence. However, any such agreement
20 is not dispositive of the question of whether the claimant was wrongly
21 convicted or entitled to compensation under this chapter.

22 NEW SECTION. **Sec. 9.** Except as provided in section 7 of this act,
23 an action for compensation under this chapter must be commenced within
24 three years after the grant of a pardon, the grant of judicial relief
25 and satisfaction of other conditions described in section 2 of this
26 act, or release from custody, whichever is later. However, any action
27 by the state challenging or appealing the grant of judicial relief or
28 release from custody tolls the three-year period. Any persons meeting
29 the criteria set forth in section 2 of this act who was wrongly
30 convicted before the effective date of this section may commence an
31 action under this chapter within three years after the effective date
32 of this section.

33 *NEW SECTION. **Sec. 10.** *All payments by the state under this*
34 *chapter shall be paid from the liability account established under RCW*
35 **4.92.130.**

**Sec. 10 was vetoed. See message at end of chapter.*

1 NEW SECTION. **Sec. 11.** 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, must 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 must, 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. 12.** 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 must 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 **Sec. 13. RCW 4.92.130 and 2011 1st sp.s. c 43 s 513 are each*
19 *amended to read as follows:*

20 *A liability account in the custody of the treasurer is hereby*
21 *created as a nonappropriated account to be used solely and exclusively*
22 *for the payment of liability settlements and judgments against the*
23 *state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of*
24 *its officers, employees, and volunteers and all related legal defense*
25 *costs.*

26 *(1) The purpose of the liability account is to: (a) Expeditiously*
27 *pay legal liabilities and defense costs of the state resulting from*
28 *tortious conduct; (b) promote risk control through a cost allocation*
29 *system which recognizes agency loss experience, levels of self-*
30 *retention, and levels of risk exposure, including the payment of*
31 *compensation awarded by a court under section 6 of this act; and (c)*
32 *establish an actuarially sound system to pay incurred losses, within*
33 *defined limits.*

34 *(2) The liability account shall be used to pay claims for injury*
35 *and property damages and legal defense costs exclusive of agency-*
36 *retained expenses otherwise budgeted.*

1 (3) No money shall be paid from the liability account, except for
2 defense costs, unless all proceeds available to the claimant from any
3 valid and collectible liability insurance shall have been exhausted and
4 unless:

5 (a) The claim shall have been reduced to final judgment in a court
6 of competent jurisdiction; or

7 (b) The claim has been approved for payment.

8 (4) The liability account shall be financed through annual premiums
9 assessed to state agencies, based on sound actuarial principles, and
10 shall be for liability coverage in excess of agency-budgeted self-
11 retention levels.

12 (5) Annual premium levels shall be determined by the risk manager.
13 An actuarial study shall be conducted to assist in determining the
14 appropriate level of funding.

15 (6) Disbursements for claims from the liability account shall be
16 made to the claimant, or to the clerk of the court for judgments, upon
17 written request to the state treasurer from the risk manager.

18 (7) The director may direct agencies to transfer moneys from other
19 funds and accounts to the liability account if premiums are delinquent.

20 (8) The liability account shall not exceed fifty percent of the
21 actuarial value of the outstanding liability as determined annually by
22 the office of risk management. If the account exceeds the maximum
23 amount specified in this section, premiums may be adjusted by the
24 office of risk management in order to maintain the account balance at
25 the maximum limits. If, after adjustment of premiums, the account
26 balance remains above the limits specified, the excess amount shall be
27 prorated back to the appropriate funds.

28 (9) The payment of compensation for wrongful conviction awarded by
29 a court under section 6 of this act does not constitute a finding that
30 the wrongful conviction resulted from tortious conduct by the officers
31 or employees of the state or the political subdivisions, municipal
32 corporations, and quasi-municipal corporations of the state.

*Sec. 13 was vetoed. See message at end of chapter.

33 NEW SECTION. Sec. 14. If any provision of this act or its
34 application to any person or circumstance is held invalid, the
35 remainder of the act or the application of the provision to other
36 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 15.** Sections 1 through 10 of this act
2 constitute a new chapter in Title 4 RCW.

Passed by the House April 22, 2013.

Passed by the Senate April 15, 2013.

Approved by the Governor May 8, 2013, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 8, 2013.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to Sections 10 and 13, Engrossed Substitute House Bill 1341 entitled:

"AN ACT Relating to creating a claim for compensation for wrongful conviction and imprisonment."

I am pleased to join 27 states and the District of Columbia to provide compensation to individuals who have been wrongly convicted in Washington state of a felony offense and imprisoned as a result. While the impact on the person and his or her family cannot be quantified, some measure of compensation will help those wrongly convicted get back on their feet.

Under this bill, persons who clearly demonstrate that they have been wrongly convicted of a felony offense in superior court and subsequently imprisoned may bring a claim for compensation. Those individuals will receive monetary compensation based on the amount of time spent in prison and be eligible for other assistance programs to help them reintegrate in the community.

Sections 10 and 13 of the bill require payment of any wrongful conviction and imprisonment claims to be made from the state's liability account. This account is a self-insurance pool used to pay state tort claims, judgments, and settlements. State agencies pay premiums to the account based on an analysis for the claim loss history of the state agency. This methodology has passed state and federal audit scrutiny because it is based on the sound actuarial principle of examining actual claims experience. However, payments of wrongful conviction and imprisonment claims from this fund could draw a challenge from state and federal auditors because there is no state agency engaged in the conduct for which compensation is awarded under the bill. To avoid this risk, I am vetoing Sections 10 and 13 of this bill. Payments of such claims will be paid out of the General Fund and handled in accordance with RCW 4.92.040.

For these reasons, I have vetoed Sections 10 and 13 of Engrossed Substitute House Bill 1341.

With the exception of Sections 10 and 13, Engrossed Substitute House Bill 1341 is approved."