
Judiciary Committee

HB 3254

Title: An act relating to civil causes of action against the state of Washington for persons wrongfully convicted and imprisoned.

Brief Description: Providing remedies for persons wrongfully convicted and imprisoned.

Sponsors: Representatives McDermott, Appleton and Hasegawa.

Brief Summary of Bill
<ul style="list-style-type: none">Provides for a civil cause of action against the state by which persons wrongfully convicted of felonies may be awarded damages related to their wrongful conviction and incarceration.

Hearing Date: 2/9/06

Staff: Elisabeth Frost (786-5793).

Background:

For various reasons, a person who has been convicted of a crime may have their criminal conviction overturned. The Innocence Project, a non-profit legal clinic that offers legal assistance to people wrongfully convicted, reports that as of 2002 approximately 170 people in the United States have been exonerated as a result of post-conviction DNA testing results. The Innocence Project developed model legislation that would allow a person wrongfully convicted to receive compensation.

As of 2005, 22 states have compensation statutes that allow the wrongfully convicted to seek damage awards either through an administrative process or the court system.

Persons wrongfully convicted of federal crimes are authorized by federal statute to bring an action for damages in the United States Court of Federal Claims. Congress recently increased the damage award limit for persons who successfully bring a claim for wrongful conviction of a federal crime to up to \$100,000 for death row exonerees, and \$50,000 a year for non-death row exonerees.

If a person is wrongfully convicted of a state crime in a state that does not have specific statutes providing for wrongful conviction compensation, in order to seek compensation that person would likely bring an action under §1983 of the Civil Rights Act or under a common law tort cause of action.

Washington law does not currently provide for a civil cause of action specific to compensation for persons wrongfully convicted and incarcerated.

Summary of Bill:

A civil cause of action is established by which persons wrongfully convicted of felonies in state court may bring suit against the state and be awarded damages for their wrongful conviction and incarceration.

Who may bring the claim:

A person who was wrongfully convicted and incarcerated of a felony in a state court may bring the claim. If the wrongfully convicted person is incapacitated and incapable of bringing the claim, or is a minor or nonresident of the state, the claim may be brought on their behalf by a relative, attorney, or person acting as their representative. If the wrongfully convicted is deceased, no claim may be brought on their behalf.

Statute of limitations:

The claim must be commenced within three years after the wrongfully convicted person has been pardoned or granted judicial relief not inconsistent with innocence. Any action by the state challenging or appealing such a grant of relief tolls the three year period. Persons convicted, incarcerated and released from custody prior to the effective date of this act are granted an extension on the statute of limitations and may commence an action within five years of the act's effective date.

Establishment of claim:

The claim is to be brought in superior court. In order to be eligible to seek damages, a claimant must first establish by documentary evidence that:

- the wrongfully convicted person was convicted of a felony or felonies in state court and subsequently served all or part of a sentence for that conviction;
- the wrongfulness of the conviction has been established by pardon, reversal or vacation of the conviction, a "not guilty" verdict on retrial, or dismissal of the accusatory instrument, provided that such action was taken "on grounds not inconsistent with innocence"; and
- the claimant is likely to succeed at trial in proving that the person did not commit the acts charged or those acts did not constitute a crime, and that perjury or fabricated evidence attributable to the claimant did not cause or bring about the conviction.

Neither a guilty plea to a crime that the person did not commit nor a confession later proved to be false, constitute perjury or fabricated evidence for the purposes of bringing or proving a claim under this act.

The state is forbidden from asserting as a defense to a claim brought under this act, any agreement entered into between the prosecutor's office and the wrongfully convicted person in which the person agreed to forego legal action against the government if the prosecution took or refrained from certain action.

Award of damages:

If the above is found by clear and convincing evidence, the wrongfully convicted person shall be awarded monetary damages and equitable relief that includes the following:

- not less than \$50,000 per year of actual confinement, with an additional \$50,000 for each year served on death row;
- economic damages including but not limited to lost wages, costs associated with the person's efforts to prove their innocence, restitution paid by the claimant, and medical costs incurred after release that are related to the circumstances of imprisonment;
- compensation for reintegrative services and mental and physical health costs incurred after release but before the award of damages;
- up to ten years of eligibility to participate in the health insurance plans offered by the public employees' benefits board;
- reasonable attorney's fees for bringing the wrongful conviction claim, limited to \$75,000; and
- at the request of the claimant, an order vacating the person's record of conviction, provided that the record has not already been vacated, sealed, expunged or destroyed.

The damage award may not be offset by any expenses incurred by the state or its political subdivisions related to the wrongfully convicted person's prosecution or incarceration.

The damage award shall not be subject to any cap applicable to private parties in civil lawsuits.

No punitive damages may be awarded.

Right of appeal:

In the event that the superior court dismisses the claim, the court shall set forth the reasons for its decision in written findings of facts and conclusions of law. Review of the superior court action shall be "de novo," a legal term for a standard of review where the appellate court reviews the documentary evidence anew, instead of deferring to the lower court's decision.

Notice:

When the wrongfulness of a person's conviction has been established by pardon, reversal or vacation of the conviction, a "not guilty" verdict on retrial, or dismissal of the accusatory instrument, they shall be provided with a copy of this act notifying them of this cause of action.

Appropriation: None.

Fiscal Note: Requested on February 8, 2006.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.