
HOUSE BILL 1435

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By Representatives Orwall, Appleton, Roberts, Goodman, Upthegrove, Carlyle, Hunt, Hudgins, Rolfes, Kagi, and Sells

Read first time 01/21/11. Referred to Committee on Judiciary.

1 AN ACT Relating to providing compensation for persons who have been
2 wrongly convicted and imprisoned; adding a new section to chapter
3 28B.15 RCW; adding a new section to chapter 41.05 RCW; adding a new
4 section to chapter 72.09 RCW; adding a new chapter to Title 4 RCW; and
5 providing an effective date.

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

7 NEW SECTION. **Sec. 1.** (1) Any person convicted in a court in this
8 state and subsequently imprisoned for one or more felonies of which he
9 or she is actually innocent may file a claim for compensation and
10 damages against the state.

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

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

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

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

6 (b) If the person entitled to file a claim under subsection (1) of
7 this section is deceased, the claim may be filed on behalf of his or
8 her estate by the person's surviving spouse or domestic partner,
9 attorney, or agent acting as the person's personal representative.

10 NEW SECTION. **Sec. 2.** (1) All claims of wrongful conviction and
11 imprisonment shall be filed in superior court. The venue for such
12 actions shall be governed by RCW 4.92.010.

13 (2) Service of the summons and complaint shall be governed by RCW
14 4.92.020.

15 NEW SECTION. **Sec. 3.** (1) In order to file an actionable claim for
16 wrongful conviction and imprisonment, the claimant must establish by
17 documentary evidence that:

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

21 (b)(i) The claimant is not currently incarcerated for any offense;
22 and

23 (ii) During the period of confinement for which the claimant is
24 seeking compensation, the claimant was not serving a term of
25 imprisonment or a concurrent sentence for any crime other than the
26 felony or felonies for which the claimant was sentenced and which are
27 grounds for the compensation claim;

28 (c)(i) The claimant's judgment of conviction was reversed or
29 vacated and the accusatory instrument dismissed on the basis of
30 significant new information or, if a new trial was ordered following
31 the presentation of significant new information, either the claimant
32 was found not guilty at the new trial or the claimant was not retried
33 and the accusatory instrument dismissed; or

34 (ii) The statute on which the accusatory instrument was based or
35 the application of the statute violated the Constitution of the United
36 States or the state Constitution; and

1 (d) The claim is not time-barred by section 8 of this act.

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

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

8 (b) The claimant did not commit or suborn perjury, or fabricate
9 evidence to cause or bring about the conviction. A guilty plea to a
10 crime the claimant did not commit, or a confession that is proven to be
11 false, does not constitute perjury or fabricated evidence under this
12 subsection.

13 (3) The claimant shall verify the claim unless he or she is
14 incapacitated or deceased, in which case the person filing on behalf of
15 the claimant shall verify the claim.

16 (4) The office of the county prosecuting attorney responsible for
17 charging and prosecuting the felony or felonies for which the claimant
18 was sentenced and which are grounds for the complaint is not a party to
19 the action, but may submit briefs to the court related to a claim for
20 compensation under this section.

21 (5)(a) If the court finds after reading the claim that the claimant
22 does not meet the filing criteria set forth in section 3 of this act,
23 it shall dismiss the claim, either on its own motion or on the motion
24 of the state.

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

28 NEW SECTION. **Sec. 4.** Any party is entitled to the rights of
29 appeal afforded parties in a civil action following a decision on such
30 motions. In the case of dismissal of a claim, review of the superior
31 court action shall be de novo.

32 NEW SECTION. **Sec. 5.** (1) In order to obtain a judgment in his or
33 her favor, the claimant must show by a preponderance of the evidence
34 that:

35 (a) The claimant was convicted of one or more felonies in state

1 court and subsequently sentenced to a term of imprisonment, and has
2 served all or any part of the sentence;

3 (b) The claimant is not currently incarcerated for any offense;

4 (c)(i) The claimant has been pardoned on grounds consistent with
5 innocence for the felony or felonies for which the claimant was
6 sentenced and which are the grounds for the compensation claim;

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

13 (iii) The statute on which the accusatory instrument was based or
14 the application of the statute violated the Constitution of the United
15 States or the state Constitution;

16 (d) The claimant did not commit any of the acts charged in the
17 accusatory instrument, or the claimant's acts or omissions charged in
18 the accusatory instrument did not constitute a crime; and

19 (e) The claimant did not commit or suborn perjury, or fabricate
20 evidence to cause or bring about his or her conviction. A guilty plea
21 to a crime the claimant did not commit, or a confession that is proven
22 to be false, does not constitute perjury or fabricated evidence under
23 this subsection.

24 (2) Any pardon or proclamation issued to the claimant by the
25 governor shall be admissible as evidence when it is certified by the
26 officer having lawful custody of the pardon or proclamation, with the
27 seal of the office affixed, or with the official certificate of such
28 officer.

29 (3) In exercising its discretion regarding the weight and
30 admissibility of evidence, the court shall give due consideration to
31 difficulties of proof caused by the passage of time, the death or
32 unavailability of witnesses, the destruction of evidence, or other
33 factors not caused by the wrongly convicted person or those acting on
34 his or her behalf.

35 (4) If the state concedes that the claimant was wrongly convicted,
36 the court shall award compensation as provided in subsection (5) of
37 this section.

1 (5) If the jury or, in the case where the right to a jury is
2 waived, the court finds by a preponderance of the evidence that the
3 claimant was wrongly convicted, the court shall award the following
4 compensation and damages to the claimant:

5 (a) Compensation, as adjusted for partial years served and to
6 account for inflation from the effective date of this section, in an
7 amount not less than:

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

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

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

14 (b) Compensation for child support payments owed by the claimant
15 that became due and interest on child support arrearages that accrued
16 while the claimant was in custody on the felony or felonies which are
17 grounds for the compensation claim. Such funds shall be paid on the
18 person's behalf in a lump-sum payment to the department of social and
19 health services for disbursement under Title 26 RCW;

20 (c) Economic damages for lost wages including but not limited to
21 the greater amount equal to:

22 (i) Loss of earnings calculated by the claimant's gross income the
23 year before the wrongful conviction, multiplied by each year of
24 incarceration for the felony or felonies which are grounds for the
25 compensation claim; or

26 (ii) Gross wages earned by the claimant while incarcerated for the
27 felony or felonies which are grounds for the complaint, adjusted to the
28 minimum hourly wage in effect in the state the year the claimant was
29 released from custody and offset by any portion already received by the
30 claimant;

31 (d) Reimbursement for all restitution, assessments, fees, and any
32 other sums paid by the claimant as required by the judgment and
33 sentence;

34 (e) Higher education tuition waivers for the claimant and all
35 qualifying children as provided in section 9 of this act;

36 (f) Up to ten years of eligibility to participate in the health and
37 dental insurance plans and contracts offered by the public employees'
38 benefits board. The court shall issue an order directing the health

1 care authority to enroll the claimant and his or her dependent children
2 and spouse or domestic partner as provided for in section 10 of this
3 act. The court order must specify the amount of time for which the
4 claimant and his or her dependent children and spouse or domestic
5 partner are eligible to receive benefits, and that the claimant and his
6 or her dependent children and spouse or domestic partner shall not be
7 responsible for any costs associated with participation; and

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

17 (6) The compensation and damage award shall not include any
18 punitive damages.

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

27 (8) Except attorneys' fees under subsection (5)(g) of this section,
28 compensation and damages awarded under this act shall not be considered
29 income for tax purposes.

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

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

36 (10) Upon request of the claimant, the court shall refer the
37 claimant to the department of corrections or the department of social
38 and health services for access to reentry services, if available,

1 including but not limited to the community-based transition programs
2 and long-term support programs for education, mentoring, life skills
3 training, assessment, job skills development, and mental health and
4 substance abuse treatment.

5 NEW SECTION. **Sec. 6.** (1) On or after the effective date of this
6 section, when a court grants judicial relief, such as reversal and
7 vacation of a person's conviction, consistent with the criteria
8 established in section 3(1)(c)(i) of this act, the court shall provide
9 to the person at the time the relief is granted a copy of chapter 4.---
10 RCW (the new chapter created in section 13 of this act).

11 (2) The clemency and pardons board or the indeterminate sentence
12 review board, whichever is applicable, upon issuance of a pardon by the
13 governor on grounds consistent with innocence on or after the effective
14 date of this section, shall provide a copy of sections 1 through 10 of
15 this act to the individual pardoned.

16 (3) If an individual entitled to receive the information required
17 under this section shows that he or she was not provided with the
18 information, he or she shall have an additional twelve months, beyond
19 the statute of limitations under section 8 of this act, to bring a
20 claim under this chapter.

21 NEW SECTION. **Sec. 7.** (1) The provisions of this chapter shall not
22 preclude any other legal remedy available to the claimant to seek
23 redress for the wrongful conviction and imprisonment.

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

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

34 NEW SECTION. **Sec. 8.** Except as provided in section 6(3) of this
35 act, an action for compensation under this chapter must be commenced

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

9 NEW SECTION. **Sec. 9.** A new section is added to chapter 28B.15 RCW
10 to read as follows:

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

16 (a) A wrongly convicted person; and

17 (b) Any child or stepchild of a wrongly convicted person who was
18 born or became the stepchild of, or was adopted by, the wrongly
19 convicted person before compensation is awarded under section 5 of this
20 act.

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

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

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

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

30 (d) Tuition waivers for graduate students are not required for
31 those who qualify under subsection (1) of this section but are
32 encouraged.

33 (e) Recipients who receive a waiver under subsection (1) of this
34 section may attend full-time or part-time. Total credits earned using
35 the waiver may not exceed two hundred quarter credits, or the
36 equivalent of semester credits.

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

4 (4) The definitions in this subsection apply throughout this
5 section.

6 (a) "Child" means a biological child, stepchild, or adopted child
7 who was born of, became the stepchild of, or was adopted by a wrongly
8 convicted person before compensation is awarded under section 5 of this
9 act.

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

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

19 (d) "Wrongly convicted person" means a Washington domiciliary who
20 was awarded damages under section 5 of this act.

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

23 (1) An individual who was awarded damages under section 5 of this
24 act and his or her dependent children and spouse or domestic partner
25 are eligible to participate in the health and dental insurance plans
26 and contracts offered by the board as prescribed by court order, and no
27 person eligible under this section is responsible for any costs
28 associated with that participation.

29 (2) The authority, upon receipt of the court order, must enroll the
30 individual and his or her dependent children and spouse or domestic
31 partner in a health and dental insurance plan in compliance with the
32 terms and conditions of the court order.

33 (3) The administrator shall adopt rules under RCW 41.50.050 as the
34 administrator may find necessary to implement this section and to avoid
35 conflicts with any applicable federal or state laws.

1 NEW SECTION. **Sec. 11.** A new section is added to chapter 72.09 RCW
2 to read as follows:

3 When a court refers a person to the department under section 5 of
4 this act as part of the person's award in a wrongful conviction claim,
5 the department shall provide reasonable access to existing reentry
6 programs and services. Nothing in this section requires the department
7 to establish new reentry programs or services.

8 NEW SECTION. **Sec. 12.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

12 NEW SECTION. **Sec. 13.** Sections 1 through 8 of this act constitute
13 a new chapter in Title 4 RCW.

14 NEW SECTION. **Sec. 14.** This act takes effect July 1, 2014.

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