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SENATE BILL 5139

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Hargrove and Shin

Read first time 01/17/11. Referred to Committee on Human Services & Corrections.

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

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

5 NEW SECTION. **Sec. 1.** INTENT. The legislature finds that persons  
6 who have been convicted and imprisoned for crimes they did not commit  
7 have been uniquely victimized and have suffered tremendous injustice by  
8 being stripped of their lives and liberty and forced to endure the  
9 horror of prison. A majority of those wrongly convicted do not have  
10 legal redress to recover damages in order to restore their lives. The  
11 legislature, therefore, intends to provide redress for those who have  
12 been wrongly convicted in recognition of the lost years of their lives,  
13 and the unique circumstances they face after exoneration.

14 NEW SECTION. **Sec. 2.** STATEMENT OF CLAIM. (1) Any person  
15 convicted in a court in this state and subsequently imprisoned for one  
16 or more felonies of which he or she is actually innocent may file a  
17 claim for compensation and damages against the state.

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

1 (a) "Actually innocent" of a felony if he or she did not commit any  
2 of the acts charged in the accusatory instrument, or the person's acts  
3 or omissions charged in the accusatory instrument did not constitute a  
4 crime;

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

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

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

17 NEW SECTION. **Sec. 3.** VENUE AND SERVICE OF PROCESS. (1) All  
18 claims of wrongful conviction and imprisonment shall be filed in  
19 superior court. The venue for such actions shall be governed by RCW  
20 4.92.010.

21 (2) Service of the summons and complaint shall be governed by RCW  
22 4.92.020.

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

26 (a) The claimant has been convicted of one or more felonies in  
27 state court and subsequently sentenced to a term of imprisonment for  
28 the conviction or convictions, and has served all or part of the  
29 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 for which the claimant was sentenced and which are  
36 grounds for the compensation claim;

1 (c)(i) The claimant has been pardoned on grounds consistent with  
2 innocence for the felony or felonies for which the claimant was  
3 sentenced and which are grounds for the 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 the provisions of section 9 of  
11 this act.

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

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

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

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

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

31 (5)(a) If the court finds after reading the claim that the claimant  
32 does not meet the filing criteria set forth in section 2 of this act,  
33 it shall dismiss the claim, either on its own motion or on the motion  
34 of the state.

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

1        NEW SECTION.    **Sec. 5.**    RIGHT OF APPEAL.    Any party is entitled to  
2 the rights of appeal afforded parties in a civil action following a  
3 decision on such motions.    In the case of dismissal of a claim, review  
4 of the superior court action shall be de novo.

5        NEW SECTION.    **Sec. 6.**    JUDGMENT AND AWARD.    (1) In order to obtain  
6 a judgment in his or her favor, the claimant must show by a  
7 preponderance of the evidence 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) The claimant is not currently incarcerated for any offense;

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

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

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

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

29           (2) Any pardon or proclamation issued to the claimant by the  
30 governor shall be admissible as evidence when it is certified by the  
31 officer having lawful custody of the pardon or proclamation, with the  
32 seal of the office affixed, or with the official certificate of such  
33 officer.

34           (3) In exercising its discretion regarding the weight and  
35 admissibility of evidence, the court shall give due consideration to  
36 difficulties of proof caused by the passage of time, the death or

1 unavailability of witnesses, the destruction of evidence, or other  
2 factors not caused by the wrongly convicted person or those acting on  
3 his or her behalf.

4 (4) If the state concedes that the claimant was wrongly convicted,  
5 the court shall award compensation as provided in subsection (5)(a)  
6 through (d) of this section.

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

11 (a) Compensation, as adjusted for partial years served and to  
12 account for inflation from the effective date of this section, in an  
13 amount up to twenty thousand dollars for each year of actual  
14 confinement including time spent awaiting trial and time spent on death  
15 row.

16 (b) The court may direct that a portion of the amount awarded in  
17 (a) of this subsection be for child support payments owed by the  
18 claimant that became due, and interest on child support arrearages that  
19 accrued while the claimant was in custody on the felony or felonies  
20 which are grounds for the compensation claim. Such funds shall be paid  
21 on the person's behalf in a lump sum payment to the department of  
22 social and health services for disbursement under the child support  
23 order;

24 (c) The court may direct that a portion of the amount awarded in  
25 (a) of this subsection be for economic damages for lost wages.

26 (d) The court may award reasonable attorneys' fees for successfully  
27 bringing the wrongful conviction claim. The attorneys' fees shall be  
28 calculated at ten percent of the damage award plus expenses. However,  
29 attorneys' fees, exclusive of expenses, shall not exceed seventy-five  
30 thousand dollars. These fees shall not be deducted from the  
31 compensation due to the claimant and counsel shall not be entitled to  
32 receive additional fees from the client. The court may not award any  
33 attorneys' fees to the claimant if the claimant fails to prove he or  
34 she was wrongly convicted.

35 (6) The amount awarded in subsection (5)(a) of this section shall  
36 not include any punitive damages.

37 (7) The award shall not be offset by any expenses incurred by the  
38 state or any political subdivision of the state including, but not

1 limited to, expenses incurred to secure the claimant's custody, or to  
2 feed, clothe, or provide medical services for the claimant. The court  
3 shall not offset against the award the value of any services or  
4 reduction in fees for services to be provided to the claimant as part  
5 of the damages awarded to the claimant pursuant to this section.

6 (8) Except attorneys' fees under subsection (5)(d) of this section,  
7 compensation awarded under this section shall not be considered  
8 "income" for tax purposes.

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

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

15 (10) Upon request of the claimant, the court shall refer the  
16 claimant to the department of corrections, the department of social and  
17 health services, or the employment security department, whichever is  
18 appropriate, for access to reentry services, if available, including  
19 but not limited to the community-based transition programs and long-  
20 term support programs for education, mentoring, life skills training,  
21 assessment, job skills development, and mental health and substance  
22 abuse treatment.

23 NEW SECTION. **Sec. 7.** NOTICE. (1) On or after the effective date  
24 of this section, when a court grants judicial relief, such as reversal  
25 and vacation of a person's conviction, consistent with the criteria  
26 established in section 4(1)(c)(ii) of this act, the court shall provide  
27 to the person at the time the relief is granted a copy of this chapter.

28 (2) The clemency and pardons board or the indeterminate sentence  
29 review board, whichever is applicable, upon issuance of a pardon by the  
30 governor on grounds consistent with innocence on or after the effective  
31 date of this section, shall provide a copy of this chapter to the  
32 individual pardoned.

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

1        NEW SECTION.    **Sec. 8.**    LEGAL REMEDIES NOT BARRED.    (1) The  
2 provisions of this chapter shall not preclude any other legal remedy  
3 available to the claimant to seek redress for the wrongful conviction  
4 and imprisonment.

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

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

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

26        NEW SECTION.    **Sec. 10.**    A new section is added to chapter 72.09 RCW  
27 to read as follows:

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

33        NEW SECTION.    **Sec. 11.**    SEVERABILITY CLAUSE.    If any provision of  
34 this act or its application to any person or circumstance is held

1 invalid, the remainder of the act or the application of the provision  
2 to other persons or circumstances is not affected.

3 NEW SECTION. **Sec. 12.** CODIFICATION DIRECTION. Sections 1 through  
4 9 of this act constitute a new chapter in Title 4 RCW.

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