

2019 -- H 5329

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO CRIMINAL PROCEDURE

Introduced By: Representatives Serpa, Amore, Ackerman, McKiernan, and Caldwell

Date Introduced: February 07, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 33

4 CLAIMS FOR WRONGFUL CONVICTION AND IMPRISONMENT

5 **12-33-1. Legislative intent.**

6 (a) The general assembly finds that innocent persons who have been wrongfully
7 convicted of crimes through no fault of their own have been uniquely victimized, and are
8 deserving of consideration and remuneration for this miscarriage of justice.

9 (b) For the purposes of this chapter, a "wrongful conviction" is a finding of guilt by a jury
10 or judge, later proven incorrect, which results in incarceration for more than one year.

11 **12-33-2. Statement of claim for compensation.**

12 (a) In order to present an actionable claim pursuant to this chapter, the claimant must
13 establish by documentary evidence that:

14 (1) Claimant has been convicted of one or more crimes and, as a result of the conviction,
15 was sentenced to a term of imprisonment and has served all or part of said sentence; and

16 (2) On grounds not inconsistent with innocence:

17 (i) Claimant was pardoned of the crime or crimes upon which claimant was sentenced
18 and which are the grounds for the complaint; or

19 (ii) The judgment of conviction was vacated; or

- 1 (iii) The judgment of conviction was reversed; and
2 (iv) The accusatory instrument was dismissed; and
3 (3) The claim is not time-barred by the provisions of this chapter.
4 (b) The claims shall be verified by the claimant; and
5 (c) If the court determines after an examination of the claim that the claimant has not
6 alleged sufficient facts to succeed at trial it shall dismiss the claim, either on its own motion or on
7 the state's motion.

8 **12-33-3. Presentation of claim.**

9 All claims of wrongful conviction and imprisonment under this chapter shall be presented
10 to and heard by the presiding justice of the superior court.

11 **12-33-4. Judgment and award.**

12 (a) In order to obtain a judgment in their favor, the claimant must prove by a
13 preponderance of the evidence that:

14 (1) Claimant was convicted of one or more crimes, and subsequently sentenced to a term
15 of imprisonment for more than one year, and has served all or any part of the sentence; and

16 (i) Claimant has been pardoned for the crime or crimes upon which claimant was
17 sentenced, and which are the grounds for the complaint; or

18 (ii) Claimant's judgment of conviction was reversed or vacated and the accusatory
19 instrument was dismissed, and

20 (2) Claimant did not commit any of the crimes charged in the accusatory instrument; and

21 (3) Claimant did not commit or suborn perjury, or fabricate evidence to cause or bring
22 about their own conviction.

23 (4) Neither a confession nor an admission later found to be false or a guilty plea shall
24 constitute committing or suborning perjury, fabricating evidence or causing or bringing about the
25 conviction under this subsection; and

26 (b) If the court finds that the claimant was wrongfully convicted and incarcerated
27 pursuant to this section the court shall grant:

28 (1) An award for wrongful conviction and incarceration calculated at fifty thousand
29 dollars (\$50,000) at the time of release and paid for each year and portion of year served in a
30 correctional facility. The award may be expanded to include, at the discretion of the court, in the
31 interest of justice:

32 (i) Release from any child support payments owed to the state by the claimant that
33 became due, and interest on child support arrearages that accrued, during the time served in
34 prison but were not paid as well as reasonable attorneys' fees where legal proceedings are

1 required to remedy outstanding obligations resulting from an order to pay child support:

2 (ii) Compensation for any reasonable costs, not exceeding the pro rata award, incurred by
3 the claimant for immediate services secured upon exoneration and release, including housing,
4 transportation, subsistence, re-integrative services, and mental and physical health care costs
5 incurred by the claimant for the time period between the claimant's release from wrongful
6 incarceration and the date of claimant's award; and

7 (iii) Reasonable attorneys' fees for bringing a claim under this chapter calculated at a rate
8 of fifteen percent (15%) of the total amount awarded. Any such fees granted shall not be
9 deducted from the compensation due to the claimant, nor is counsel entitled to receive additional
10 fees from the client.

11 (c) No damages or amounts awarded pursuant to this chapter shall be subject to:

12 (1) Any cap or limit that may be applicable to private parties in civil lawsuits;

13 (2) Any taxes, except for those portions of the judgment awarded as attorneys' fees for
14 bringing a claim under this chapter; or

15 (3) Treatment as gross income to a claimant under the provisions of title 44; or

16 (4) The claimant shall not receive compensation for any period of incarceration during
17 which the claimant was concurrently serving a sentence for a conviction of another crime for
18 which such claimant was lawfully incarcerated.

19 (d) The acceptance by a claimant of any such award, compromise, or settlement shall:

20 (1) Be memorialized in writing;

21 (2) Except when procured by fraud, be final and conclusive on the claimant.

22 (e) The court shall, upon determining that the claimant is entitled to compensation under
23 this chapter, forward to the general treasurer an inventory and description of the award, including
24 any attorneys' fees awarded, for disbursement.

25 (f)(1) If at the time of the judgment entry referred to in subsection (b) of this section, the
26 claimant has won a monetary award as the result of a federal civil rights lawsuit under federal
27 statute 42 U.S.C. § 1983, the amount of the award in the action or the amount received in the
28 settlement agreement, less any sums paid to attorneys or for costs litigating the other civil action
29 or obtaining the settlement agreement, shall be deducted from the sum of money to which the
30 claimant is entitled under this section.

31 (2) If subsection (f)(1) does not apply and if, after the time of the judgment entry referred
32 to in subsection (b) of this section, the claimant wins a monetary award as the result of a federal
33 civil rights lawsuit under federal statute 42 U.S.C. § 1983, the claimant shall reimburse the state
34 for the sum of money paid under the judgment entry referred to in subsection (b) of this section,

1 less any sums paid to attorneys or for costs in litigation the other civil action or obtaining the
2 settlement agreement. A reimbursement required under this subsection shall not exceed the
3 amount of the monetary award the claimant wins for damages in the other civil action or the
4 amount received in the settlement agreement.

5 **12-33-5. Funding.**

6 Any awards, amounts, or fees awarded pursuant to the provisions of this chapter shall, at
7 the direction of the court be provided by the general treasurer from the general fund.

8 **12-33-6. Non-exclusivity.**

9 The provisions of this chapter shall not be construed to prohibit a person who has been
10 wrongfully convicted and incarcerated as a result of the misfeasance or malfeasance on the part of
11 the state or any of its political subdivisions from seeking compensation or relief pursuant to any
12 other action or suit authorized by law.

13 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE

1 This act would create an action at law authorizing any person who has been sentenced to
2 a term of imprisonment greater than one year subsequent to being wrongfully convicted of a
3 criminal offense to petition the presiding justice of the superior court for an award of
4 compensation and damages, including attorney's fees.

5 This act would take effect upon passage.

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