

1 assistance of counsel; or

2 (iii) The judgment of conviction was reversed for reasons other than the ineffective
3 assistance of counsel; and

4 (iv) The accusatory instrument was dismissed; and

5 (3) The claim is not time-barred by the provisions of this chapter.

6 (b)The claims shall be verified by the claimant; and

7 (c) If the court determines after an examination of the claim that the claimant has not
8 alleged sufficient facts to succeed at trial it shall dismiss the claim, either on its own motion or on
9 the state's motion.

10 **12-33-3. Presentation of claim.**

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

13 **12-33-4. Judgment and award.**

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

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

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

20 (ii) Claimant's judgment of conviction was reversed or vacated for reasons other than the
21 ineffective assistance of counsel and the accusatory instrument was dismissed; and

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

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

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

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

30 (1) An award for wrongful conviction and incarceration calculated at fifty thousand dollars
31 (\$50,000) at the time of release and paid for each year served in a correctional facility. For
32 incarceration of less than a year, this amount shall be prorated to one three hundred sixty fifth's
33 (1/365) of fifty thousand dollars (\$50,000) for every day served. The award may be expanded to
34 include, at the discretion of the court, in the interest of justice:

1 (i) Release from any child support payments owed the state by the claimant that became
2 due, and interest on child support arrearages that accrued, during the time served in prison but were
3 not paid as well as reasonable attorneys' fees where legal proceedings are required to remedy
4 outstanding obligations resulting from an order to pay child support;

5 (ii) Access to and eligibility for any services provided by the state for offenders who have
6 been adjudicated by the courts and are residing in the community. Coordination of said services
7 shall be through the department of probation and parole;

8 (iii) Reasonable attorneys' fees for bringing a claim under this chapter, not to exceed fifteen
9 thousand dollars (\$15,000). Any such fees granted shall not be deducted from the compensation
10 due to the claimant, nor is counsel entitled to receive additional 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.

16 (d) 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 which
18 such claimant was lawfully incarcerated.

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

20 (1) Be memorialized in writing, which shall include a provision, signed by the claimant,
21 voluntarily relinquishing any and all rights to pursue any other action or remedy at law or in equity
22 that such person may have arising out of such wrongful conviction and incarceration;

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

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

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

33 (2) If subsection (g)(1) of this section does not apply and if, after the time of the judgment
34 entry referred to in subsection (b) of this section, the claimant wins a monetary award as the result

1 of a federal civil rights lawsuit under federal statute 42 U.S.C. § 1983, the claimant shall reimburse
2 the state for the sum of money paid under the judgment entry referred to in subsection (b) of this
3 section, less any sums paid to attorneys or for costs in litigation of the other civil action or obtaining
4 the settlement agreement. A reimbursement required under this subsection shall not exceed the
5 amount of the monetary award the claimant wins for damages in the other civil action or the amount
6 received in the settlement agreement.

7 **12-33-5. Funding.**

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

10 **12-33-6. Non-exclusivity.**

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

15 **12-33-7. Limitations.**

16 Any person claiming compensation under this section based on a pardon that was granted
17 or the vacated or reversed judgment of conviction that occurred before June 30, 2021, shall file
18 such claim not later than three (3) years after June 30, 2021. Any person claiming compensation
19 under this section based on a pardon that was granted or the vacated or reversed judgment of
20 conviction on or after June 30, 2021, shall file such claim not later than three (3) years after the
21 date of such pardon or the vacated or reversed judgment of conviction.

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

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LC001471/SUB B
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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 a
2 term of imprisonment greater than one year subsequent to being wrongfully convicted of a criminal
3 offense to petition the presiding justice of the superior court for an award of compensation and
4 damages, including attorney's fees. Wrongful conviction would exclude reversals or pardons based
5 on ineffectiveness of counsel. Any claimant whose conviction was reversed prior to June 30, 2021
6 would have three (3) years from that date to file a claim and all subsequent claimants would be
7 limited to filing within three (3) years from the date of the reversal or pardon.

8 This act would take effect upon passage.

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LC001471/SUB B
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