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## A BILL FOR AN ACT

RELATING TO INNOCENCE REDRESS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that innocent persons who  
2 have been wrongly convicted of crimes and subsequently  
3 imprisoned have been uniquely victimized, have distinct problems  
4 re-entering society, have difficulty achieving legal redress due  
5 to a variety of substantive and technical obstacles in the law,  
6 and should have an avenue of redress over and above the existing  
7 tort remedies to seek compensation for damages. In light of the  
8 injustice of being imprisoned for a crime one did not commit,  
9 twenty-seven states, the District of Columbia, and the federal  
10 government have adopted compensation statutes for wrongly  
11 imprisoned individuals.

12           The purpose of this Act, which is based largely on the  
13 Innocence Project's 2011 Model State Compensation Statute, is to  
14 ensure that those persons who can demonstrate that they were  
15 wrongfully convicted can, under appropriate circumstances,  
16 receive compensation and immediate services upon release.





- 1                   (i) The accusatory instrument was dismissed; or
- 2                   (ii) If a new trial was held, the claimant was
- 3                   found not guilty; and

4           (3) The claim is not time-barred by section -5.

5           (b) The claim shall be verified by the claimant.

6           (c) If the court finds after reading the claim that the  
7 claimant has not alleged sufficient facts to succeed at trial,  
8 it shall dismiss the claim, either on its own motion or on the  
9 State's motion.

10           § -2 Presentation of claim. All claims of wrongful  
11 conviction and imprisonment shall be presented to and heard by  
12 the circuit courts of the State.

13           § -3 Judgment and award. (a) In order to obtain a  
14 judgment in the claimant's favor, the claimant shall prove by a  
15 preponderance of the evidence that:

16           (1) The claimant was convicted of one or more crimes and  
17 subsequently sentenced to a term of imprisonment, and  
18 has served all or any part of the sentence, and that:

19           (A) The claimant has been pardoned for the crime or  
20 crimes for which the claimant was sentenced and  
21 that are the grounds for the claim; or

1 (B) The claimant's judgment of conviction was  
2 reversed or vacated, and:  
3 (i) The accusatory instrument was dismissed; or  
4 (ii) If a new trial was ordered, either the  
5 claimant was found not guilty at the new  
6 trial or the claimant was not retried and  
7 the accusatory instrument was dismissed;  
8 provided that the judgment of conviction was  
9 reversed or vacated, or the accusatory  
10 instrument was dismissed, on grounds not  
11 inconsistent with innocence; or the statute,  
12 or application thereof, on which the  
13 accusatory instrument was based violated the  
14 United States constitution or the Hawaii  
15 constitution; and

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

20 (3) The claimant did not commit or suborn perjury, or  
21 fabricate evidence to cause or bring about the  
22 claimant's conviction; provided that neither a

1 confession or admission later found to be false, nor a  
2 guilty plea to a crime the claimant did not commit,  
3 shall constitute bringing about the claimant's own  
4 conviction under this chapter.

5 (b) If the court pursuant to subsection (a) finds that the  
6 claimant was wrongfully convicted and incarcerated, the court  
7 shall award:

8 (1) Damages for the physical injury of wrongful conviction  
9 and incarceration that shall be:

10 (A) Not less than \$50,000 for each year of  
11 incarceration. This amount shall reflect:

12 (i) Inflation from the date of enactment of this  
13 chapter as adjusted by the state auditor,  
14 and partial years the claimant served; and

15 (ii) Consideration of economic damages including  
16 but not limited to lost wages, costs  
17 associated with the claimant's criminal  
18 defense and efforts to prove innocence, and  
19 medical and dental expenses incurred or  
20 expected to be incurred after release; and  
21 consideration of non-economic damages for  
22 personal physical injuries or physical



1                   sickness and for any non-physical injuries  
2                   or sickness arising out of same, incurred  
3                   during or as a result of incarceration; and  
4           (B)   Not less than \$25,000 for each year served either  
5                   on parole, probation, or as a registered sex  
6                   offender, to be pro-rated for partial years  
7                   served;  
8           (2)   Physical and mental health care for the life of the  
9                   claimant through the Hawaii employer-union health  
10                  benefits trust fund under chapter 87A, to be offset by  
11                  any amount provided through the claimant's employers  
12                  during that time period;  
13           (3)   Reimbursement for any tuition and fees paid for the  
14                  education of the claimant and any biological children  
15                  of the claimant that were conceived prior to the  
16                  claimant's incarceration for the wrongful conviction  
17                  at any community college or other unit of the  
18                  University of Hawaii under chapter 304A, including any  
19                  necessary assistance to meet the criteria required  
20                  therefor, or a mutually agreed upon vocational  
21                  program; and employment skills development training;



- 1           (4) Compensation for child support payments owed by the  
2           claimant that became due, and interest on child  
3           support arrearages that accrued during the claimant's  
4           time served in prison but were not paid;
- 5           (5) Compensation for any reasonable costs incurred by the  
6           claimant for immediate services secured upon  
7           exoneration and release, including housing,  
8           transportation and subsistence, re-integrative  
9           services, and mental and physical health care costs  
10          incurred by the claimant for the time period between  
11          the claimant's release from wrongful incarceration and  
12          the date of the claimant's award; and
- 13          (6) Reasonable attorneys' fees for bringing a claim under  
14          this chapter calculated at ten per cent of the damage  
15          award plus expenses, provided that:
  - 16                (A) The fees, exclusive of expenses, shall not exceed  
17                \$75,000, as adjusted by the state auditor to  
18                account for inflation from the date of enactment  
19                of this chapter; and
  - 20                (B) The fees shall not be deducted from the  
21                compensation due to the claimant; nor shall



1                   counsel be entitled to receive additional fees  
2                   from the client.

3           (c) The damage award shall not be subject to:

4           (1) Any cap applicable to private parties in civil  
5           lawsuits;

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

9           (3) Treatment as gross income to a claimant under chapter  
10          235.

11          (d) The acceptance by a claimant of any award, compromise,  
12 or settlement under this section shall:

13          (1) Be reduced to writing; and

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

16          (e) Any future damages awarded to the claimant resulting  
17 from an action by the claimant against any unit of government  
18 within this State by reason of the same subject shall be offset  
19 by the damage award received under this chapter.

20          (f) The damage award shall not be offset by any expenses  
21 incurred by the State or any political subdivision of the State,  
22 including, but not limited to:





- 1           (1) Expenses incurred:
  - 2               (A) To secure the claimant's custody; or
  - 3               (B) To feed, clothe, or provide medical services for
  - 4                   the claimant; or
- 5           (2) The value of any services or reduction in fees for
- 6               service, or the value thereof to be provided to the
- 7               claimant that may be awarded to the claimant pursuant
- 8               to this chapter.

9           (g) If the court finds that the claimant was subjected to  
10 a lien pursuant to defense services rendered by the State to  
11 defend the claimant in connection with the criminal case that  
12 resulted in claimant's wrongful conviction, the court shall  
13 extinguish the lien.

14           § -4 Notice. (a) A court granting judicial relief  
15 consistent with the criteria set forth in section -1(a)(2)(A)  
16 on or after the effective date of this chapter shall provide a  
17 copy of this chapter to the individual granted such relief at  
18 the time the criteria of section -1(a)(2)(A) are satisfied.

19           (b) The individual shall be required to acknowledge the  
20 individual's receipt of a copy of this chapter in writing on a  
21 form established by the chief justice.



1           (c) The court shall enter the acknowledgement under  
2 subsection (b) on the docket and the acknowledgement shall be  
3 admissible in any proceeding filed by a claimant under this  
4 chapter.

5           (d) The paroling authority, upon the issuance of a full  
6 pardon on or after the effective date of this chapter, shall  
7 provide a copy of this chapter at the time the pardon is issued  
8 to the individual pardoned. The individual shall be required to  
9 acknowledge the individual's receipt of a copy of this chapter  
10 in writing on a form established by the paroling authority,  
11 which shall be retained on file by the paroling authority as  
12 part of its official records and shall be admissible in any  
13 proceeding filed by a claimant under this chapter.

14           (e) In the event a claimant granted judicial relief or a  
15 full pardon on or after the effective date of this chapter shows  
16 the claimant did not properly receive a copy of the information  
17 required by this section, the claimant shall receive a one-year  
18 extension on the three-year time limit provided in section

19           -5.

20           (f) The chief justice shall make reasonable attempts to  
21 notify all persons pardoned or granted judicial relief  
22 consistent with the criteria set forth in section       -1(a)



1 before enactment of this chapter of their rights under this  
2 chapter.

3       § -5 Time limitations. (a) An action for compensation  
4 brought by a wrongfully convicted person under this chapter  
5 shall be commenced within three years after either the grant of  
6 a pardon or the grant of judicial relief and satisfaction of  
7 other conditions described in section -1(a); provided that  
8 any action by the State challenging or appealing the grant of  
9 that judicial relief shall toll the three-year period. Persons  
10 convicted, incarcerated, and released from custody prior to the  
11 effective date of this chapter shall commence an action under  
12 this chapter within three years of the effective date.

13       (b) Notwithstanding any other provision of law, failure to  
14 file any applicable notice of claim shall not bar filing of a  
15 claim under this chapter.

16       § -6 Right of appeal. Any party is entitled to the  
17 rights of appeal afforded parties in a civil action as set forth  
18 in chapter 641.

19       § -7 Eligibility for immediate services. (a) Any  
20 person convicted and subsequently imprisoned for one or more  
21 crimes for which either the person is pardoned on grounds not  
22 inconsistent with innocence, or the conviction was reversed or



1 vacated on the basis of newly discovered evidence, and either  
2 the charges are dismissed or the individual is subsequently re-  
3 tried and acquitted, shall receive up to three years of  
4 immediate services needed upon release and for successful return  
5 to society, including but not limited to:

- 6 (1) Housing, which may include authorizing the  
7 prioritization of the wrongfully convicted as a  
8 category in Hawaii's section 8 housing voucher  
9 program;
- 10 (2) Secondary or higher education;
- 11 (3) Vocational training;
- 12 (4) Transportation;
- 13 (5) Subsistence monetary assistance;
- 14 (6) Re-integrative services; and
- 15 (7) Mental, physical, and dental health care.

16 The need for these services shall be determined through a review  
17 by the department of human services, and provided by the  
18 appropriate state entities, or contractors thereof.

19 (b) Where a conviction is vacated on legal grounds, a  
20 judge may order that services similar to those in subsection (a)  
21 be provided."



1 SECTION 3. Section 831-3.2, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) The attorney general, or the attorney general's duly  
4 authorized representative within the department of the attorney  
5 general, upon written application from a person arrested for, or  
6 charged with but not convicted of a crime, or found eligible for  
7 redress under chapter \_\_\_\_\_ shall issue an expungement order  
8 annulling, canceling, and rescinding the record of arrest;  
9 provided that an expungement order shall not be issued:

10 (1) In the case of an arrest for a felony or misdemeanor  
11 where conviction has not been obtained because of bail  
12 forfeiture;

13 (2) For a period of five years after arrest or citation in  
14 the case of a petty misdemeanor or violation where  
15 conviction has not been obtained because of a bail  
16 forfeiture;

17 (3) In the case of an arrest of any person for any offense  
18 where conviction has not been obtained because the  
19 person has rendered prosecution impossible by  
20 absenting oneself from the jurisdiction;

21 (4) In the case of a person acquitted by reason of a  
22 mental or physical defect under chapter 704; and



1 (5) For a period of one year upon discharge of the  
2 defendant and dismissal of the charge against the  
3 defendant in the case of a deferred acceptance of  
4 guilty plea or nolo contendere plea, in accordance  
5 with chapter 853.

6 Any person entitled to an expungement order hereunder may  
7 by written application also request return of all fingerprints  
8 or photographs taken in connection with the person's arrest.  
9 The attorney general or the attorney general's duly authorized  
10 representative within the department of the attorney general,  
11 within 120 days after receipt of the written application, shall,  
12 when so requested, deliver, or cause to be delivered, all  
13 fingerprints or photographs of the person, unless the person has  
14 a record of conviction or is a fugitive from justice, in which  
15 case the photographs or fingerprints may be retained by the  
16 agencies holding such records."

17 SECTION 4. New statutory material is underscored.

18 SECTION 5. This Act shall take effect upon its approval.

19

INTRODUCED BY:

  
BY REQUEST

JAN 17 2012



# H.B. NO. 1985

**Report Title:**

Crime; Wrongful Conviction and Imprisonment; Innocence Redress;  
Office of Hawaiian Affairs Package

**Description:**

Provides compensation and services to persons who can demonstrate they were wrongfully convicted of a crime and imprisoned.

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