
A BILL FOR AN ACT

RELATING TO WRONGFUL IMPRISONMENT.

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

1 SECTION 1. The legislature finds that wrongful convictions
2 may be the result of many causes, including eyewitness
3 misidentification, false confessions, improper forensic science,
4 and government misconduct. A convicted person is considered
5 exonerated when the person is later officially declared innocent
6 of the crime. Nationally, there are more than 1,532 persons
7 listed on the National Registry of Exonerations, including three
8 persons convicted in Hawaii.

9 The legislature also finds that innocent persons who have
10 been wrongly convicted of crimes and subsequently imprisoned
11 have been uniquely victimized, have distinct challenges re-
12 entering society, and have difficulty achieving legal redress
13 due to a variety of substantive and technical obstacles in the
14 law. These individuals deserve an avenue of redress over and
15 above the existing tort remedies to seek compensation for
16 damages from the jurisdiction that convicted and imprisoned
17 them. In light of the injustice of being imprisoned for a crime
18 one did not commit, thirty states, the District of Columbia, and



1 the federal government have adopted compensation statutes for
2 wrongly imprisoned individuals. These statutes, along with
3 recommendations from the advocacy organization, the Innocence
4 Project, were considered by the legislature as the State takes
5 steps to meaningfully address the effects of wrongful conviction
6 and imprisonment.

7 The purpose of this Act is to ensure that those persons who
8 were wrongfully convicted and imprisoned by the State receive
9 immediate services upon release and, when able to demonstrate
10 damages under appropriate circumstances, compensation.

11 SECTION 2. The Hawaii Revised Statutes is amended by
12 adding a new chapter to be appropriately designated and to read
13 as follows:

14 "CHAPTER

15 REDRESS FOR WRONGFUL CONVICTION AND IMPRISONMENT

16 § -1 Statement of claim for compensation. (a) Any
17 person convicted and subsequently imprisoned for one or more
18 crimes that the person did not commit or for actions that did
19 not constitute a crime, may petition for a claim for damages
20 against the State if the requirements of subsection (b) are met.



1 (b) To present an actionable claim against the State for
2 wrongful conviction and imprisonment, the claimant shall allege:

3 (1) That the claimant has been convicted of one or more
4 crimes, was subsequently sentenced to a term of
5 imprisonment, and has served all or any part of the
6 sentence, under the laws of this State;

7 (2) On grounds consistent with innocence and supported by
8 findings that clearly state the consistency, for the
9 crime or crimes for which the claimant was sentenced:

10 (A) That the claimant was pardoned for the crime or
11 crimes; provided that the pardon is on grounds
12 consistent with innocence;

13 (B) That the judgment of conviction was reversed or
14 vacated and:

15 (i) The accusatory instrument was dismissed; or

16 (ii) If a new trial was ordered, either the
17 claimant was found not guilty at the new
18 trial or the claimant was not retried and
19 the accusatory instrument was dismissed; or

20 (C) The statute, or application thereof, on which the
21 accusatory instrument was based, violated the



1 Constitution of the United States or the Hawaii
2 State Constitution;

3 (3) That the claimant did not commit any of the crimes
4 charged in the accusatory instrument, or the acts or
5 omissions charged in the accusatory instrument did not
6 constitute a crime;

7 (4) That the claimant did not commit or suborn perjury or
8 fabricate evidence to cause or bring about the
9 claimant's conviction; provided that neither a
10 confession or admission later found to be false, nor a
11 guilty plea to a crime the claimant did not commit,
12 shall constitute perjury or fabrication under this
13 paragraph; and

14 (5) That the claim is not time-barred by section -5.

15 (c) The claim shall be verified by the claimant and shall
16 include, in summary form, the facts supporting each of the
17 grounds specified.

18 (d) If a person entitled to file a claim under this
19 chapter is incapacitated and incapable of filing the claim, the
20 claim may be filed on behalf of the claimant by an authorized
21 person.



1 § -2 **Presentation of claim.** A petition for relief filed
2 pursuant to this chapter shall be filed in the circuit court of
3 the circuit in which the claimant lives. If a claimant alleges
4 facts that if proven would entitle the claimant to relief for
5 wrongful conviction and imprisonment, the circuit court shall
6 grant a hearing; provided that the court may deny a hearing if
7 the claimant's claim is patently frivolous and is without trace
8 of support either in the record or from other evidence submitted
9 by the claimant.

10 § -3 **Judgment and award.** (a) To obtain a judgment in
11 the claimant's favor, the claimant shall prove the statement of
12 claim for compensation by a preponderance of the evidence.

13 (b) If the court finds that the claimant was wrongfully
14 convicted and imprisoned, the court shall award:

15 (1) Damages for the physical injury of wrongful conviction
16 and imprisonment that shall be:

17 (A) Not less than \$50,000 for each year of
18 imprisonment, to be pro-rated for partial years
19 served. This amount shall reflect:



1 (i) Inflation from the date of enactment of this
2 chapter as adjusted by the director of
3 finance; and
4 (ii) Consideration of economic damages, including
5 but not limited to lost wages, costs
6 associated with the claimant's criminal
7 defense and efforts to prove innocence,
8 medical and dental expenses incurred or
9 expected to be incurred after release, and
10 consideration of non-economic damages for
11 personal physical injuries or physical
12 sickness and for any non-physical injuries
13 or sickness arising out of same, incurred
14 during or as a result of imprisonment; and
15 (B) Not less than \$25,000 for each year served either
16 on parole, probation, or as a registered sex
17 offender, to be pro-rated for partial years
18 served. The minimum dollar amount for damages
19 set by this subparagraph shall be adjusted by the
20 director of finance to account for inflation from
21 the date of enactment of this chapter;



- 1 (2) Physical, dental, and mental health care, including
2 all premiums, co-pays, deductibles, and related costs,
3 for the life of the claimant, to be offset by any
4 amount provided through the claimant's employers
5 during that time period; provided that the claimant
6 enrolls in the Hawaii health insurance exchange, and
7 provided further the department of health assists with
8 the claimant's enrollment;
- 9 (3) Waiver of or reimbursement for any tuition and fees,
10 including any necessary assistance to meet required
11 admission criteria, paid for the education of the
12 claimant and any biological children of the claimant
13 that were conceived prior to the claimant's
14 imprisonment for the wrongful conviction at any
15 community college or other unit of the University of
16 Hawaii under chapter 304A, or a mutually agreed upon
17 vocational program and employment skills development
18 training;
- 19 (4) Compensation for any child support payments owed by
20 the claimant that became due and any interest on child
21 support arrearages that accrued during the claimant's



1 time served in prison, to be paid to the obligee of
2 the child support order;

3 (5) Compensation for any reasonable costs for immediate
4 services secured upon exoneration and release,
5 including housing, transportation, subsistence, re-
6 integrative services, and mental and physical health
7 care costs, incurred by the claimant for the time
8 period between the claimant's release from wrongful
9 imprisonment and the date of the claimant's award;
10 provided that any compensation awarded under this
11 paragraph shall not duplicate any services received by
12 the claimant and paid for by the State pursuant to
13 section -7; and

14 (6) Reasonable attorneys' fees for bringing a claim under
15 this chapter calculated at ten per cent of the damage
16 award plus expenses, provided that:

17 (A) The fees, exclusive of expenses, shall not exceed
18 \$75,000, as adjusted by the director of finance
19 to account for inflation from the date of
20 enactment of this chapter; and



- 1 (B) The fees shall not be deducted from the
2 compensation due to the claimant, nor shall
3 counsel be entitled to receive additional fees
4 from or on behalf of the claimant.
- 5 (c) The damage award shall not be subject to:
- 6 (1) Any cap applicable to private parties in civil
7 lawsuits;
- 8 (2) Any taxes, except for the portions of the judgment
9 awarded as attorneys' fees for bringing a claim under
10 this chapter; or
- 11 (3) Treatment as gross income to a claimant under chapter
12 235.
- 13 (d) The acceptance by a claimant of any award, compromise,
14 or settlement under this section shall:
- 15 (1) Be reduced to writing; and
- 16 (2) Except when procured by fraud, be final and conclusive
17 on the claimant.
- 18 (e) Any future damages awarded to the claimant resulting
19 from an action by the claimant against any unit of government
20 within this State by reason of the same subject shall be offset
21 by the damage award received under this chapter.



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

4 (1) Expenses incurred to:

5 (A) Secure the claimant's custody; or

6 (B) Feed, clothe, or provide medical services for the
7 claimant; or

8 (2) The value of any services or reduction in fees for
9 service, or the value thereof to be provided to the
10 claimant that may be awarded to the claimant pursuant
11 to this chapter.

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

17 (h) If the court finds that the claimant was wrongfully
18 convicted and imprisoned, the court shall issue a court order to
19 expunge the record of conviction and notify the attorney
20 general, or the attorney general's duly authorized
21 representative within the department of the attorney general, of



1 the finding for expungement purposes pursuant to section 831-
2 3.2.

3 § -4 Notice. (a) A court granting judicial relief
4 consistent with the criteria set forth in section -1(b) on or
5 after the effective date of this chapter shall provide to the
6 person granted relief information orally about this chapter, a
7 printed copy of this chapter, guidance on how to obtain
8 compensation under this chapter, and contact information for
9 nonprofit advocacy groups that assist wrongfully imprisoned
10 persons in filing claims for compensation to the individual
11 granted relief at the time the criteria of section -1(b)(2)
12 are found to be satisfied. The person shall be required to
13 acknowledge receipt of the written materials in writing on a
14 form established by the chief justice. The court shall enter
15 the acknowledgement on the docket and the acknowledgement shall
16 be admissible in any proceeding filed by a claimant under this
17 chapter.

18 (b) The paroling authority, upon the issuance of a pardon
19 on grounds consistent with innocence on or after the effective
20 date of this chapter, shall provide information orally about
21 this chapter, a printed copy of this chapter, guidance on how to



1 obtain compensation under this chapter, and contact information
2 for nonprofit advocacy groups that assist wrongfully imprisoned
3 persons in filing claims for compensation at the time the pardon
4 is issued to the individual pardoned. The individual shall be
5 required to acknowledge receipt of the written materials in
6 writing on a form established by the paroling authority, which
7 shall be retained on file by the paroling authority as part of
8 its official records and shall be admissible in any proceeding
9 filed by a claimant under this chapter.

10 (c) In the event a claimant who is granted judicial relief
11 or a pardon on grounds consistent with innocence on or after the
12 effective date of this chapter shows the claimant did not
13 properly receive a copy of the written materials required by
14 this section, the claimant shall receive a one-year extension on
15 the three-year time limit provided in section -5.

16 (d) The chief justice, or the chief justice's designee,
17 shall make reasonable attempts to provide notice of the rights
18 under this chapter to all persons granted, prior to the
19 effective date of this chapter, judicial relief consistent with
20 the criteria set forth in section -1(b).



1 (e) The governor, or the governor's designee, shall make
2 reasonable attempts to provide notice of the rights under this
3 chapter to all persons who, prior to the effective date of this
4 chapter, were pardoned consistent with the criteria set forth in
5 section -1(b).

6 § -5 Time limitations. (a) An action for compensation
7 brought by a claimant under this chapter shall be commenced
8 within three years after either the grant of a pardon on grounds
9 consistent with innocence or the grant of judicial relief and
10 satisfaction of other conditions described in section -1(b);
11 provided that any action by the State challenging or appealing
12 the grant of that judicial relief shall toll the three-year
13 period. Claimants who were convicted, imprisoned, and released
14 from custody prior to the effective date of this chapter shall
15 commence an action under this chapter within three years of its
16 effective date.

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



1 § -6 **Right of appeal.** Any party is entitled to the
2 rights of appeal afforded parties in a civil action as set forth
3 in chapter 641.

4 § -7 **Eligibility for immediate services.** (a) Any
5 person convicted and subsequently imprisoned for one or more
6 crimes for which either the person is pardoned on grounds
7 consistent with innocence, or the conviction was reversed or
8 vacated on the basis of newly discovered evidence, and either
9 the charges are dismissed or the individual is subsequently re-
10 tried and acquitted, shall receive, at the State's expense, up
11 to three years of immediate services needed upon release and for
12 successful return to society, including but not limited to:

- 13 (1) Housing, which may include authorizing the
14 prioritization of wrongfully convicted and imprisoned
15 persons as a category in Hawaii's section 8 housing
16 voucher program;
- 17 (2) Secondary or higher education;
- 18 (3) Vocational training;
- 19 (4) Transportation;
- 20 (5) Subsistence monetary assistance;
- 21 (6) Re-integrative services; and



1 (7) Physical, dental, and mental health care.
 2 The need for these services shall be determined through a review
 3 by the department of human services and provided by the
 4 appropriate state entities, or contractors thereof.

5 (b) Where a conviction is vacated on purely legal grounds,
 6 without regard to factual basis, a judge may order that services
 7 similar to those in subsection (a) be provided."

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

10 "(a) The attorney general, or the attorney general's duly
 11 authorized representative within the department of the attorney
 12 general, upon written application from a person arrested for[7]
 13 or charged with but not convicted of a crime[7] or upon the
 14 court's finding that the person was wrongfully convicted and
 15 imprisoned under chapter _____, shall issue an expungement order
 16 annulling, canceling, and rescinding the record of arrest;
 17 provided that an expungement order shall not be issued:

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

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

5 (3) In the case of an arrest of any person for any offense
6 where conviction has not been obtained because the
7 person has rendered prosecution impossible by
8 absenting oneself from the jurisdiction;

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

11 (5) For a period of one year upon discharge of the
12 defendant and dismissal of the charge against the
13 defendant in the case of a deferred acceptance of
14 guilty plea or nolo contendere plea, in accordance
15 with chapter 853.

16 Any person entitled to an expungement order hereunder may
17 by written application also request return of all fingerprints
18 or photographs taken in connection with the person's arrest.
19 The attorney general or the attorney general's duly authorized
20 representative within the department of the attorney general,
21 within 120 days after receipt of the written application, shall,



1 when so requested, deliver, or cause to be delivered, all
2 fingerprints or photographs of the person, unless the person has
3 a record of conviction or is a fugitive from justice, in which
4 case the photographs or fingerprints may be retained by the
5 agencies holding such records."

6 SECTION 4. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 5. This Act shall take effect on January 1, 2016.



Report Title:

Crime; Wrongful Conviction and Imprisonment; Innocence Redress

Description:

Provides compensation and services to persons who can demonstrate they were wrongfully convicted of a crime and imprisoned. Effective 01/01/2016. (SD1)

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