



GOV. MSG. NO. 1258

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 29, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the
House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on June 29, 2016, the following bill was signed into law:

HB1046 HD2 SD2 CD1

**RELATING TO WRONGFUL IMPRISONMENT
ACT 156 (16)**

Sincerely,

A handwritten signature in black ink that reads "David Y. Ige".

DAVID Y. IGE
Governor, State of Hawai'i

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 one thousand
7 seven hundred persons listed on the National Registry of
8 Exonerations, including three persons that were convicted in
9 Hawaii.

10 The legislature also finds that innocent persons who have
11 been wrongly convicted of crimes and subsequently imprisoned
12 have been uniquely victimized, have distinct challenges
13 re-entering society, and have difficulty achieving legal redress
14 due to a variety of substantive and technical obstacles in the
15 law. These individuals deserve an avenue of redress over and
16 above the existing tort remedies to seek compensation for
17 damages from the jurisdiction that convicted and imprisoned
18 them. In light of the injustice of being imprisoned for a crime



1 one did not commit, thirty states, the District of Columbia, and
2 the federal government have adopted compensation statutes for
3 wrongly imprisoned individuals.

4 The purpose of this Act is to ensure that those persons who
5 were wrongfully convicted and imprisoned by the State receive,
6 under appropriate circumstances, compensation.

7 SECTION 2. The Hawaii Revised Statutes is amended by
8 adding a new chapter to be appropriately designated and to read
9 as follows:

10 "CHAPTER

11 REDRESS FOR WRONGFUL CONVICTION AND IMPRISONMENT

12 § -1 Statement of claim for compensation. (a) Any
13 person convicted in a court of the State and imprisoned for one
14 or more crimes of which the person was actually innocent may
15 file a petition for relief pursuant to this chapter for an award
16 of damages against the State; provided that the requirements of
17 subsection (b) are met.

18 (b) To present an actionable claim against the State for
19 wrongful conviction and imprisonment, the petitioner shall
20 allege that the petitioner was convicted of one or more crimes
21 under the laws of the State, was subsequently sentenced to a



1 term of imprisonment, and has served all or any part of the
2 sentence and either that:

3 (1) The judgment of conviction was reversed or vacated
4 because the petitioner was actually innocent of the
5 crimes for which the petitioner was convicted, and the
6 court decision so states; or

7 (2) The petitioner was pardoned because the petitioner was
8 actually innocent of the crimes for which the
9 petitioner was convicted and the pardon so states.

10 § -2 Presentation of claim. (a) A petition for relief
11 filed pursuant to this chapter shall be filed in the circuit
12 court of the circuit in which the petitioner lives, or if the
13 petitioner lives outside the State, in the circuit court of the
14 first circuit. The petitioner shall serve the petition upon the
15 attorney general, and if the prosecuting authority was other
16 than the attorney general, upon the prosecuting authority. The
17 petition shall set forth the facts and authority that support
18 the petitioner's claim.

19 (b) No later than sixty days after service, the attorney
20 general shall file with the court an answer that shall either



1 admit that the petitioner is entitled to compensation or deny
2 the petitioner's claim.

3 If the attorney general admits that the petitioner is
4 entitled to compensation, the court shall conduct a trial to
5 determine the amount of compensation; provided that if the
6 attorney general and the petitioner agree on the amount of the
7 compensation, the court may issue a final judgment awarding the
8 petitioner the amount agreed upon or, in its discretion, conduct
9 a trial to determine the amount to award the petitioner.

10 If the attorney general denies that the petitioner is
11 entitled to compensation, then the court shall conduct a trial
12 to determine if the petitioner is entitled to compensation and
13 the amount, if any.

14 (c) Notwithstanding any other provision of law to the
15 contrary, no person shall be allowed to intervene in the
16 proceeding; provided that if the attorney general did not obtain
17 the conviction of the petitioner, then the prevailing
18 prosecuting authority may state its position on the petitioner's
19 claim in a statement to the court. If the attorney general did
20 not obtain the conviction of the petitioner, then the prevailing
21 prosecuting authority shall provide the attorney general with



1 any information or assistance that the attorney general may
2 request.

3 (d) Any action against the State under this chapter shall
4 be tried by the court without a jury; provided that the court,
5 with the consent of all the parties, may order a trial with a
6 jury whose verdict shall have the same effect as if trial by
7 jury had been a matter of right.

8 § -3 Judgment and award. (a) The petitioner shall have
9 the burden to prove by a preponderance of the evidence:

10 (1) That the petitioner is eligible to seek compensation
11 in accordance with the requirements set forth in
12 section -1;

13 (2) That the petitioner was convicted in a court of the
14 State and subsequently imprisoned for one or more
15 crimes, but the petitioner was actually innocent of
16 the crimes at issue; and

17 (3) That the petitioner served time in prison for the
18 crime or crimes, including time served prior to
19 conviction, if any.



1 (b) The following shall be affirmative defenses, on which
2 the State shall have the burden of proof by a preponderance of
3 the evidence:

4 (1) The petitioner was serving a term of imprisonment for
5 another crime, including crimes under the laws of the
6 United States, concurrently with imprisonment for the
7 crime or crimes for which petitioner was actually
8 innocent; provided that if the petitioner served
9 additional time in prison due to the conviction that
10 is the basis of the petition, then the petitioner
11 shall receive compensation for that portion of the
12 time served in prison during which the petitioner was
13 serving no other sentence;

14 (2) The petitioner committed perjury or fabricated
15 evidence or induced another person to commit perjury
16 or fabricate evidence to cause or bring about the
17 conviction at issue;

18 (3) The petitioner fabricated evidence or committed or
19 suborned perjury during any proceeding related to the
20 crime for which the petitioner was convicted;



1 (4) The petitioner solicited the commission of the crime
2 at issue or any crime factually related to the crime
3 at issue;

4 (5) The petitioner conspired to commit the crime at issue
5 or any crime factually related to the crime at issue;

6 (6) The petitioner attempted to commit the crime at issue
7 or any crime factually related to the crime at issue;

8 (7) The petitioner assisted in the commission of the crime
9 at issue or any crime factually related to the crime
10 at issue; or

11 (8) The petitioner assisted any person to avoid
12 apprehension, arrest, or conviction for the crime at
13 issue or any crime factually related to the crime at
14 issue.

15 If the State proves one or more of the affirmative defenses
16 enumerated in this subsection, the petitioner shall receive no
17 compensation except as provided in paragraph (1).

18 (c) If the court finds that the petitioner has proven a
19 claim for wrongful conviction and imprisonment, the court shall
20 award the petitioner \$50,000 for each year of actual
21 confinement, including time spent awaiting trial, served by the

1 petitioner for the crime or crimes for which the petitioner was
2 actually innocent; provided that:

3 (1) The petitioner shall not be compensated for the time
4 imprisoned if the petitioner was concurrently
5 imprisoned for a different conviction, even if the
6 other conviction was related to the conviction that
7 was vacated or reversed or for which the petitioner
8 was pardoned because of actual innocence;

9 (2) The award shall be pro-rated for partial years of
10 imprisonment; and

11 (3) If the court finds, by a preponderance of the
12 evidence, extraordinary circumstances pertain to a
13 conviction that is set aside or a pardon that is
14 granted because of actual innocence, the court may
15 award the petitioner a maximum of \$100,000 in
16 additional compensation.

17 (d) The court shall award reasonable attorneys' fees not
18 to exceed \$10,000 for fees incurred in preparing and prosecuting
19 the claim for the prevailing petitioner. The attorney for the
20 petitioner shall not charge, demand, receive, or collect fees



1 for services rendered in excess of twenty-five per cent of any
2 amount awarded by the circuit court.

3 (e) In an action under this chapter, court costs and fees
4 as established by law may be allowed to the prevailing party.

5 (f) On all moneys awarded to the petitioner for claims
6 instituted under this chapter, interest shall be computed at the
7 rate of four per cent a year from the date of judgment up to,
8 but not exceeding, thirty days after the date of approval of any
9 appropriation act providing for payment of the judgment.

10 (g) Any moneys awarded to the petitioner for claims
11 instituted under this chapter, other than for attorneys' fees,
12 shall not be subject to any tax by the State or any county,
13 including any income or general excise tax, any law to the
14 contrary notwithstanding.

15 § -4 Time limitations. Every claim arising under this
16 chapter shall forever be barred unless the action is commenced
17 by filing a petition with the circuit court within two years
18 after the conviction that is the subject of the petition is
19 either reversed or vacated, or the petitioner is pardoned for
20 that conviction; provided that:



1 (1) If the claim is based on a conviction reversed or
2 vacated or a pardon granted prior to the effective
3 date of this chapter, the claim shall be commenced by
4 filing a petition with the circuit court no later than
5 July 1, 2018, or be forever barred; and

6 (2) Notwithstanding any other law to the contrary, this
7 limitation of actions shall not be tolled for any
8 reason.

9 § -5 Right of appeal. Review of any final judgment of
10 the circuit court shall be governed by chapter 602.

11 § -6 Waiver of sovereign immunity. This chapter shall
12 constitute a waiver of sovereign immunity by the State only for
13 the claims brought pursuant to this chapter. The State makes no
14 other waiver of sovereign immunity, and fully retains its
15 sovereign immunity as to all other claims, however denominated,
16 that seek compensation of any kind or nature that are a result
17 of, related to, or arise from a conviction and imprisonment for
18 crimes for which the claimant alleges actual innocence. This
19 section shall be broadly construed in favor of the State and
20 against any waiver of sovereign immunity.



1 § -7 Exclusive remedy. (a) Notwithstanding any other
2 law, including the common law, to the contrary, this chapter
3 sets forth the exclusive remedy for any person seeking
4 compensation of any kind or nature whatsoever, as a result of,
5 related to, or arising from a conviction and imprisonment for
6 crimes for which the person was actually innocent. This section
7 shall be strictly construed in favor of any person against whom
8 a claim is asserted, and against the person asserting the claim.

9 (b) Notwithstanding any law to the contrary, should the
10 petitioner die before a final judgment in the circuit court is
11 entered, the petitioner's claim shall abate in its entirety."

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

14 "(a) The attorney general, or the attorney general's duly
15 authorized representative within the department of the attorney
16 general, upon written application from a person arrested for, or
17 charged with but not convicted of a crime, or found eligible for
18 redress under chapter , shall issue an expungement order
19 annulling, canceling, and rescinding the record of arrest;
20 provided that an expungement order shall not be issued:



- 1 (1) In the case of an arrest for a felony or misdemeanor
2 where conviction has not been obtained because of bail
3 forfeiture;
- 4 (2) For a period of five years after arrest or citation in
5 the case of a petty misdemeanor or violation where
6 conviction has not been obtained because of a bail
7 forfeiture;
- 8 (3) In the case of an arrest of any person for any offense
9 where conviction has not been obtained because the
10 person has rendered prosecution impossible by
11 absenting oneself from the jurisdiction;
- 12 (4) In the case of a person acquitted by reason of a
13 mental or physical defect under chapter 704; and
- 14 (5) For a period of one year upon discharge of the
15 defendant and dismissal of the charge against the
16 defendant in the case of a deferred acceptance of
17 guilty plea or nolo contendere plea, in accordance
18 with chapter 853.

19 Any person entitled to an expungement order [~~hereunder~~]
20 under this section may by written application also request
21 return of all fingerprints or photographs taken in connection

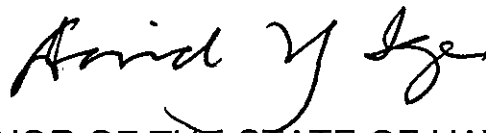


1 with the person's arrest. The attorney general or the attorney
2 general's duly authorized representative within the department
3 of the attorney general, within [~~120~~] one hundred twenty days
4 after receipt of the written application, shall, when [~~se~~]
5 requested, deliver, or cause to be delivered, all fingerprints
6 or photographs of the person, unless the person has a record of
7 conviction or is a fugitive from justice, in which case the
8 photographs or fingerprints may be retained by the agencies
9 holding [~~such~~] the records."

10 SECTION 4. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

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

APPROVED this 29 day of JUN, 2016



GOVERNOR OF THE STATE OF HAWAII

