

---

---

# 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



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. These statutes, along with  
4 recommendations from the advocacy organization, the Innocence  
5 Project, were considered by the legislature as the State takes  
6 steps to meaningfully address the effects of wrongful conviction  
7 and imprisonment.

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

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

15 **"CHAPTER**

16 **REDRESS FOR WRONGFUL CONVICTION AND IMPRISONMENT**

17 **§ -1 Statement of claim for compensation.** (a) Any  
18 person convicted and subsequently imprisoned for one or more  
19 crimes, which the person did not commit or for actions that did  
20 not constitute a crime, may petition for a claim for damages  
21 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 such consistency, for the  
9 crime or crimes which the claimant was sentenced:

10 (A) That the claimant was pardoned for the crime or  
11 crimes;

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

14 (i) The accusatory instrument was dismissed; or

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

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



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

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 conviction took place. If a claimant  
4 alleges facts that if proven would entitle the claimant to  
5 relief for wrongful conviction and imprisonment, the circuit  
6 court shall grant a hearing. However, the court may deny a  
7 hearing if the claimant's claim is patently frivolous and is  
8 without trace of support either in the record or from other  
9 evidence submitted 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 the claimant enrolls  
6           in the Hawaii health insurance exchange, and provided  
7           further the department of health assists with the  
8           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:

5 (A) To secure the claimant's custody; or

6 (B) To feed, clothe, or provide medical services for  
7 the 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  
6 information orally about this chapter, a printed copy of this  
7 chapter, guidance on how to obtain compensation under this  
8 chapter, and contact information for nonprofit advocacy groups  
9 that assist wrongfully imprisoned persons in filing claims for  
10 compensation to the individual granted such relief at the time  
11 the criteria of section -1(b)(2) are found to be satisfied.  
12 The individual shall be required to acknowledge receipt of the  
13 written materials in writing on a form established by the chief  
14 justice. The court shall enter the acknowledgement on the  
15 docket and the acknowledgement shall be admissible in any  
16 proceeding filed by a claimant under this chapter.

17       (b) The paroling authority, upon the issuance of a full  
18 pardon on or after the effective date of this chapter, shall  
19 provide information orally about this chapter, a printed copy of  
20 this chapter, guidance on how to obtain compensation under this  
21 chapter, and contact information for nonprofit advocacy groups



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

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

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



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 or the  
9 grant of judicial relief and satisfaction of other conditions  
10 described in section -1(b); provided that any action by the  
11 State challenging or appealing the grant of that judicial relief  
12 shall toll the three-year period. Claimants who were convicted,  
13 imprisoned, and released from custody prior to the effective  
14 date of this chapter shall commence an action under this chapter  
15 within three years of its effective date.

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

19 **§ -6 Right of appeal.** Any party is entitled to the  
20 rights of appeal afforded parties in a civil action as set forth  
21 in chapter 641.



1           **§ -7 Eligibility for immediate services.** (a) Any  
2 person convicted and subsequently imprisoned for one or more  
3 crimes for which either the person is pardoned on grounds of  
4 innocence, or the conviction was reversed or vacated on the  
5 basis of newly discovered evidence, and either the charges are  
6 dismissed or the individual is subsequently re-tried and  
7 acquitted, shall receive, at the State's expense, up to three  
8 years of immediate services needed upon release and for  
9 successful return to society, including but not limited to:

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



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

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

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

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

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

20 (2) For a period of five years after arrest or citation in  
21 the case of a petty misdemeanor or violation where



1 conviction has not been obtained because of a bail  
2 forfeiture;

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

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

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

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





1 a record of conviction or is a fugitive from justice, in which  
2 case the photographs or fingerprints may be retained by the  
3 agencies holding such records."

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

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



**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. (HB148 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

