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# 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 that were 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.

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 such service, the  
20 attorney general shall file with the court an answer that shall



1 either admit that the petitioner is entitled to compensation or  
2 deny 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.

20 (b) The following shall be affirmative defenses, on which  
21 the State shall have the burden of proof by a preponderance of



1 the evidence. If the State proves one or more affirmative  
2 defenses, the petitioner shall receive no compensation except as  
3 provided in paragraph (1):

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 (c) If the court finds that the petitioner has proven a  
16 claim for wrongful conviction and imprisonment, the court shall  
17 award the petitioner \$50,000 for each year of actual  
18 confinement, including time spent awaiting trial, served by the  
19 petitioner for the crime or crimes for which the petitioner was  
20 actually innocent; provided:



- 1           (1) That the petitioner shall not be compensated for the  
2           time imprisoned if the petitioner was concurrently  
3           imprisoned for a different conviction, even if the  
4           other conviction was related to the conviction that  
5           was vacated or reversed or for which the petitioner  
6           was pardoned because of actual innocence;
- 7           (2) The award shall be pro-rated for partial years of  
8           imprisonment; and
- 9           (3) That if the court finds, by a preponderance of the  
10          evidence, extraordinary circumstances pertain to a  
11          conviction that is set aside or a pardon that is  
12          granted because of actual innocence, the court may  
13          award the petitioner a maximum of \$100,000 in  
14          additional compensation.
- 15          (d) The court shall award reasonable attorneys' fees not  
16          to exceed \$10,000 for fees incurred in preparing and prosecuting  
17          the claim for the prevailing petitioner. The attorney for the  
18          petitioner shall not charge, demand, receive, or collect fees  
19          for services rendered in excess of twenty-five per cent of any  
20          amount awarded by the circuit court.





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

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

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

13 **§ -4 Time limitations.** Every claim arising under this  
14 chapter shall forever be barred unless the action is commenced  
15 by filing a petition with the circuit court within two years  
16 after the conviction that is the subject of the petition is  
17 either reversed or vacated, or the petitioner is pardoned for  
18 that conviction; provided that:

19 (1) If the claim is based on a conviction reversed or  
20 vacated or a pardon granted prior to the effective  
21 date of this chapter, the claim shall be commenced by



1 filing a petition with the circuit court no later than  
2 July 1, 2018, or be forever barred; and

3 (2) Notwithstanding any other law to the contrary, this  
4 limitation of actions shall not be tolled for any  
5 reason.

6 § -5 **Right of appeal.** Review of any final judgment of  
7 the circuit court shall be governed by chapter 602.

8 § -6 **Waiver of sovereign immunity.** This chapter shall  
9 constitute a waiver of sovereign immunity by the State only for  
10 the claims brought pursuant to this chapter. The State makes no  
11 other waiver of sovereign immunity, and fully retains its  
12 sovereign immunity as to all other claims, however denominated,  
13 that seek compensation of any kind or nature that are a result  
14 of, related to, or arise from a conviction and imprisonment for  
15 crimes for which the claimant alleges actual innocence. This  
16 section shall be broadly construed in favor of the State and  
17 against any waiver of sovereign immunity.

18 § -7 **Exclusive remedy.** (a) Any other law, including  
19 the common law, to the contrary notwithstanding, this chapter  
20 sets forth the exclusive remedy for any person seeking  
21 compensation of any kind or nature whatsoever, as a result of,



1 related to, or arising from a conviction and imprisonment for  
2 crimes for which the person was actually innocent. This section  
3 shall be strictly construed in favor of any person against whom  
4 a claim is asserted, and against the person asserting the claim.

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

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, or  
13 charged with but not convicted of a crime, or found eligible for  
14 redress 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~~] the 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 expungement of conviction to persons who can demonstrate they were wrongfully convicted and imprisoned when actually innocent. (HB1046 HD1 PROPOSED)

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