

**RECEIVED
SUPREME COURT
STATE OF WASHINGTON
CLERK'S OFFICE**

Sep 21, 2016, 11:29 am

RECEIVED ELECTRONICALLY

NO. 93421-5

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ROBERT E. LARSON, TYLER W. GASSMAN,
and PAUL E. STATLER,

Respondents,

v.

STATE OF WASHINGTON,

Petitioner.

WASHINGTON ASSOCIATION OF PROSECUTING ATTORNEYS'
AMICUS CURIAE MEMORANDUM

PAMELA B. LOGINSKY
WSBA No. 18096
Staff Attorney
Washington Association of Prosecuting Attorneys
206 10th Ave. S.E.
Olympia, WA 98501
(360) 753-2175

E-mail: pamloginsky@waprosecutors.org



ORIGINAL

TABLE OF CONTENTS

I. INTEREST OF AMICUS CURIAE 1

II. ISSUES PRESENTED 1

III. STATEMENT OF THE CASE 2

IV. ARGUMENT 2

 A. Chapter 4.100 RCW Created a New Cause of Action 2

 B. A Statute that Creates a New Cause of Action is Substantive,
 Not Remedial. 5

 C. Liberal Construction of a Remedial Statute Does Not Allow
 a Court to Expand a Term to Include Items Not Contemplated
 by the Legislature 7

Wrongful Conviction Compensation Bills Appendix A

TABLE OF AUTHORITIES

TABLE OF CASES

Bayless v. Community College Dist. No. XIX, 84 Wn. App. 309,
927 P.2d 254 (1996) 6

Haddenham v. State, 87 Wn.2d 145, 550 P.2d 9 (1976) 6

In re Pers. Restraint of Brown, 143 Wn.2d 431, 21 P.3d 687 (2001) ... 10

In re Personal Restraint of Faircloth, 177 Wn. App. 161,
311 P.3d 47 (2013) 10

Jametsky v. Olsen, 179 Wn.2d 756, 317 P.3d 1003 (2014) 7

Johnston v. Benefit Management Corp., 85 Wn.2d 637,
538 P.2d 510 (1975) 5, 6

Larson v. State, 194 Wn. App. 722, 375 P.3d 1096 (2016) 5, 7, 9, 10

Perez-Farias v. Global Horizons, Inc., 175 Wn.2d 518,
286 P.3d 46 (2012) 7

Seattle v. Fontanilla, 128 Wn.2d 492, 909 P.2d 1294 (1996) 8

State v. Jones, 92 Wn. App. 555, 964 P.2d 398 (1998) 8

State v. Joswick, 71 Wn. App. 311, 858 P.2d 280 (1993) 9

State v. Villanueva, 177 Wn. App. 251, 311 P.3d 79 (2013) 7, 8

Teamsters, Local 117 v. NW Beverages, 95 Wn. App. 767,
976 P.2d 1262 (1999) 7

CONSTITUTIONS

Washington Constitution article II, section 26 1, 3, 4

STATUTES

42 U.S.C. § 1983	2, 3
Chapter 4.100 RCW	1-3, 5-7, 10
Laws of 2013, ch. 175	3, 5
RCW 10.73.100(1)	10
RCW 4.100.010	1, 3, 4, 6
RCW 4.100.020(1)	4
RCW 4.100.040(1)(c)	4
RCW 4.100.040(1)(c)(ii)	4, 9
RCW 4.100.040(2)(a)	4
RCW 4.100.060(1)(c)(ii)	4, 9
RCW 4.100.080	6
RCW 9A.16.110	8
RCW 9A.16.110(2)	8

RULES AND REGULATIONS

RAP 13.4(b)(1)	2, 7
RAP 13.4(b)(2)	2
RAP 13.4(b)(3)	1, 5
RAP 13.4(b)(4)	1, 5

OTHER AUTHORITIES

David S. Kahn, *Presumed Guilty Until Proven Innocent: The Burden of Proof in Wrongful Conviction Claims Under State Compensation Statutes*, 44 U. Mich. J.L. Reform 123 (2010) 3

Meghan J. Ryan, *Remedying Wrongful Execution*, 45 U. Mich. J.L. Reform 261 (2012) 2

I. INTEREST OF AMICUS CURIAE

The Washington Association of Prosecuting Attorneys (“WAPA”) represents the elected prosecuting attorneys of Washington State who are responsible by law for the prosecution of all felonies, gross misdemeanors and misdemeanors charged under state statutes. WAPA is interested in ensuring that statutes are applied as written.

II. ISSUES PRESENTED

1. Washington Constitution article II, section 26 provides that “[t]he legislature shall direct by law, in what manner, and in what courts, suits may be brought against the state.” In Chapter 4.100 RCW, the legislature created a new cause of action against the State. The legislature placed specific limitations upon compensation awards under the law. The Court of Appeals’ decision departs significantly from the plain language of the law. Does the judicial expansion of Chapter 4.100 RCW present a significant question of law under the Washington Constitution and does the associated cost raise an issue of substantial public interest that should be resolved by this Court? *See* RAP 13.4(b)(3) and (4).

2. A “remedial statute” is one that relates to practice or procedure or that increases the remedies already authorized by law for a cause of action. Chapter 4.100 RCW creates a new remedy under the law for wrongly convicted persons. *See* RCW 4.100.010. Did the Court of Appeals’

mislabeled of Chapter 4.100 RCW as “remedial” and its expansive construction of Chapter 4.100 RCW conflict with this Court’s precedent and other cases issued by the Court of Appeals? *See generally* RAP 13.4(b)(1) and (2).

III. STATEMENT OF THE CASE

WAPA adopts the statements provided by the State in its brief of respondent and in its petition for review.

IV. ARGUMENT

A. Chapter 4.100 RCW Created a New Cause of Action.

A person, who is innocent of any criminal conduct, tried in accordance with the orderly processes of criminal proceedings suffers grievously from the loss of liberty, separation from his or her family, and being deprived of the opportunity to earn a living. Once exonerated, such a person might seek compensation through common law tort and federal civil rights claims. Common law tort claims rarely result in payment due to the difficulty in identifying an individual or entity whose conduct was the proximate cause for the wrongful conviction, the absence of bad faith, and immunities. *See, e.g.,* Meghan J. Ryan, *Remedying Wrongful Execution*, 45 U. Mich. J.L. Reform 261, 279- 287 (2012) (describing possible tort theories and explaining why these actions have proven unsuccessful). Civil right actions filed pursuant to 42 U.S.C. § 1983 frequently fail because the

convicted individual was not deprived of a right covered by § 1983 and/or the government did not engage in culpable conduct. *See, e.g.,* David S. Kahn, *Presumed Guilty Until Proven Innocent: The Burden of Proof in Wrongful Conviction Claims Under State Compensation Statutes*, 44 U. Mich. J.L. Reform 123, 131-34 (2010) (explaining why § 1983 actions rarely provide compensation to a wrongfully convicted individual).

The Washington Legislature is the only branch of government that can authorize suits against the State. *See* Wash. Const. art. II, § 26. The legislature recognized that “[a] majority of those wrongly convicted in Washington state have no remedy available under the law for the destruction of their personal lives resulting from errors in our criminal justice system.” RCW 4.100.010. Over the course of six years, the legislature considered a number of issues: (1) who is a wrongly convicted person; (2) under what circumstances should a wrongly convicted person receive compensation; (3) what is the burden of proof; (4) may a wrongly convicted person pursue other legal claims; (5) how much compensation will be paid; and (6) other miscellaneous issues. The answer to these questions varied across the ten bills that led up to Chapter 4.100 RCW/Laws of 2013, ch. 175.¹

Ultimately, the legislature “provide[d] an avenue for those who have

¹The Legislature considered bills that compensate wrongfully convicted individuals in 2007, 2010, 2011, 2012, and 2013. *See* HB 2122 (2007); HB 2864 (2010); HB 1435 (2011); SB 5139 (2011); SSB 5139 (2011); HB 2221 (2012); SHB 2221 (2012); HB 1341 (2013); SHB 1341 (2013); ESHB 1341 (2013).

been wrongly convicted in Washington state to redress the lost years of their lives, and help to address the unique challenges faced by the wrongly convicted after exoneration.” RCW 4.100.010. This new cause of action, which is brought against the State, contains a number of strict criteria that narrows its reach and its fiscal impact. *See generally Larson v. State*, No. 93421-5, Petition for Review at 11-12 (discussing bill reports and fiscal notes).

One of the strict narrowing criteria is a requirement that the plaintiff prove by clear, cogent and convincing evidence that he was “actually innocent” and did not engage in any illegal conduct alleged in the charging document. *See* RCW 4.100.020(1); RCW 4.100.040(1)(c) and (2)(a). A second narrowing criteria is that the plaintiff must establish by clear, cogent and convincing evidence that his “judgment of conviction was reversed or vacated and the charging document dismissed on the basis of significant new exculpatory information or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the charging document dismissed.” *See* RCW 4.100.040(1)(c)(ii) and RCW 4.100.060(1)(c)(ii).

The Court of Appeals’ decision rewrites both these criteria in a manner that vastly expands the legislature’s original article II, section 26

consent to suit. The propriety of the Court of Appeals' decision raises a significant question under the Washington Constitution that requires consideration by this Court. *See* RAP 13.4(b)(3). The Court of Appeals' relaxation of the limiting criteria greatly increases the cost of Laws of 2013, ch. 175, diverting state funds from other purposes, such as education. This presents an issue of substantial public interest that should be resolved by this Court. *See* RAP 13.4(b)(4).

B. A Statute that Creates a New Cause of Action is Substantive, Not Remedial.

The Court of Appeals justified its expansive construction of Chapter 4.100 RCW by labeling it a "remedial statute." *See Larson v. State*, 194 Wn. App. 722, 735, 375 P.3d 1096 (2016) ("The statute is remedial in nature, and "remedial statutes are liberally construed to suppress the evil and advance the remedy.""). This characterization of Chapter 4.100 RCW conflicts with decisions issued by this Court.

Chapter 4.100 RCW created a new cause of action against the State. In *Johnston v. Benefit Management Corp.*, 85 Wn.2d 637, 641, 538 P.2d 510 (1975), this Court recognized the long standing rule that a statute is remedial only "when it relates to practice, procedure or remedies and does not affect a substantive or vested right." *Id.*, at 641. This Court applied the test to an amendment to the Consumer Protection Act which authorized an injured person to bring a civil action to enjoin violations as to himself and others, to

maintain a private damage action, and to receive an award of treble damages. Ultimately, this Court held that “RCW 19.86.090 is not merely remedial. It creates a new right of action.” *Id.*, at 641.

In *Bayless v. Community College Dist. No. XIX*, 84 Wn. App. 309, 927 P.2d 254 (1996), the Court of Appeals recognized that a “remedial statute” includes a statute that affords a remedy or increases the remedies already existing for the enforcement of rights and the redress of injuries. *Id.*, at 312 (quoting *Haddenham v. State*, 87 Wn.2d 145, 148, 550 P.2d 9 (1976)). In *Bayless*, the court held that a 1992 amendment that authorized a whistleblower to seek damages for lost wages and benefits was “remedial” because it enhanced the existing cause of action for attorney fees. *Id.*, at 312-13.

The Court of Appeals’ characterizing Chapter 4.100 RCW as a “remedial statute” conflicts with the decision in *Bayless*, as Chapter 4.100 RCW did not enhance an existing cause of action and cannot be combined with existing causes of action. See RCW 4.100.080 (remedies and compensation provided by Chapter 4.100 RCW are exclusive to all other remedies at law and in equity). Chapter 4.100 RCW created a new cause of action for individuals who had “no remedy available under the law.” RCW 4.100.010. This Court should accept review to clear up the conflict between this Court’s rule that new causes of action are not properly labeled a

“remedial statute” and the *Larson* court’s labeling Chapter 4.100 as “remedial.” *See* RAP 13.4(b)(1).

C. Liberal Construction of a Remedial Statute Does Not Allow a Court to Expand a Term to Include Items Not Contemplated by the Legislature.

This Court also recognizes that a remedial statute can include an act that is designed to protect vulnerable individuals. *See, e.g., Jametsky v. Olsen*, 179 Wn.2d 756, 765, 317 P.3d 1003 (2014) (statute that protects vulnerable homeowners is a “remedial statute”); *Perez-Farias v. Global Horizons, Inc.*, 175 Wn.2d 518, 530, 286 P.3d 46 (2012) (statutes protecting workers are remedial statutes). While such statutes are to be liberally construed to effect its purpose, a court may not extend the statute beyond the legislative purpose and cannot redefine terms to increase available compensation or to increase the class of beneficiaries. *See, e.g., Teamsters, Local 117 v. NW Beverages*, 95 Wn. App. 767, 976 P.2d 1262 (1999) (“wage” in RCW 49.48.010 cannot be stretched to include accrued sick leave, a “contingent benefit”). A remedial statute, like any other statute, must also be construed “to effectuate its purpose while avoiding absurd, strained, or unlikely consequences.” *State v. Villanueva*, 177 Wn. App. 251, 257, 311 P.3d 79 (2013).

The differences between proper liberal interpretation and an improper rewriting of a statute is illustrated by cases involving the self-defense

reimbursement statute, RCW 9A.16.110. The self-defense reimbursement statute has been classified by the Court of Appeals as a “remedial statute.” See *Villanueva*, 177 Wn. App. at 257. This statute provides compensation to a person who is acquitted of a crime based upon a successful claim of self-defense. Specifically, the statute creates a right to reimbursement from the State for “all reasonable costs, including loss of time, legal fees incurred, and other expenses involved in his or her defense. This reimbursement is not an independent cause of action.” RCW 9A.16.110(2).

Numerous claims for reimbursement under RCW 9A.16.110 have been heard by the appellate courts. The cases address the types of expenses that may be recovered, who is required to pay the restitution, and who is entitled to receive compensation. In each of these cases, courts have declined to expand the plain language of the statute, while broadly construing the provision as written. Compare *Villanueva*, 177 Wn. App. at 257-58 (pre-charging, post-arrest lost wages are recoverable under the statute as “involved in his or her defense”); *State v. Jones*, 92 Wn. App. 555, 964 P.2d 398 (1998) (self-defense acquittee entitled to reimbursement for costs incurred in first trial that ended in hung jury), with *Seattle v. Fontanilla*, 128 Wn.2d 492, 909 P.2d 1294 (1996) (reference to “the state of Washington” in RCW 9A.16.110 does not include political subdivisions; reimbursement claim may not be maintained against a city); *State v. Anderson*, 72 Wn. App.

253, 863 P.2d 1370 (1993) (no reimbursement for loss of time absent evidence of earnings that would have been received but for being prosecuted); *State v. Joswick*, 71 Wn. App. 311, 858 P.2d 280 (1993) (no reimbursement for lost time and expenses after charges were dismissed before trial because the legislature only intended reimbursement for those acquitted of the charged offense).

The Court of Appeals' opinion in this case conflicts with the careful line drawn by the above cited cases. Its opinion construed the "significant new exculpatory information" requirement in a manner not supported by the statute's plain language and inconsistent with the legislative intent. See *Larson*, 194 Wn. App. at 725. Its conclusion that "significant new exculpatory information" includes "information that was available at the criminal trial but was not presented to the fact finder," *Larson*, 194 Wn. App. at 736, represents an enormous expansion of the cause of action beyond that which the Legislature authorized.

The phrase "significant new exculpatory evidence" is limited by its context. RCW 4.100.040(c)(ii) and RCW 4.100.060(c)(ii) link this phrase to the standards for a new trial: "if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the charging document dismissed." A new trial may only be ordered on the basis

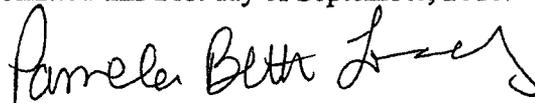
of new evidence if the evidence

(1) will probably change the result of the [proceeding]; (2) was discovered since the [proceeding]; (3) could not have been discovered before [the proceeding] by the exercise of due diligence; (4) is material; and (5) is not merely cumulative or impeaching. The absence of any one of the five factors is grounds for the denial of a new” proceeding.

In re Pers. Restraint of Brown, 143 Wn.2d 431, 453, 21 P.3d 687 (2001).

This test has long been applied to other related statutes. *See, e.g., In re Personal Restraint of Faircloth*, 177 Wn. App. 161, 311 P.3d 47 (2013) (RCW 10.73.100(1)’s exception to the one-year time limit for newly discovered evidence requires a petition to show that his new evidence meets the five requirements of newly discovered evidence). The order vacating the plaintiffs’ convictions in this case was based upon ineffective assistance of counsel and does not address the five-prong test for new evidence. *See* Exhibits P13 - P18; CP 412-13, FOF 37-41. This Court should accept review to address the conflict between the *Larson* court’s construction of Chapter 4.100 and cases interpreting when new evidence will support a new trial.

Respectfully submitted this 21st day of September, 2016.



Pamela B. Loginsky, WSBA 18096
Washington Association of Prosecuting Attorneys
206 10th Ave. SE
Olympia, WA 98501
E-mail: pamloginsky@waprosecutors.org

APPENDIX A

HB 2122 (2007)	A1
HB 2864 (2010)	A6
HB 1435 (2011)	A11
SB 5139 (2011)	A17
SSB 5139 (2011)	A22
HB 2221 (2012)	A26
SHB 2221(2012)	A32
HB 1341 (2013)	A38
SHB 1341 (2013)	A43
ESHB 1341 (2013)	A48

BILL REQ. #: H-0268.2

HOUSE BILL 2122

State of Washington**60th Legislature****2007 Regular Session**

By Representatives McDermott, Flannigan, Appleton, Santos and Ormsby

Read first time 02/09/2007. Referred to Committee on Judiciary.

AN ACT Relating to providing compensation for persons who have been wrongfully convicted and imprisoned; adding a new section to chapter 41.05 RCW; adding a new section to chapter 72.09 RCW; and adding a new chapter to Title 4 RCW.

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

NEW SECTION. Sec. 1 INTENT. (1) The legislature finds that persons who have been wrongfully convicted and imprisoned for crimes they did not commit have been uniquely victimized and have suffered substantial injustice. The legislature also finds that those persons do not have adequate legal redress to recover damages and restore their lives. Thus, the legislature intends to create a civil cause of action that is above and beyond any existing tort remedy and that is specifically created to address the unique situation faced by those who have been wrongfully convicted and imprisoned.

(2) The legislature also recognizes that persons who have been wrongfully convicted and imprisoned may need more than monetary damages to assist them in restoring their lives. The legislature finds that programs such as Washington's corrections clearinghouse and reentry services established by the department of corrections offer valuable workforce training, educational services, and other resources that can help offenders reintegrate back into society. The legislature encourages the courts to assist persons who have been wrongfully convicted and imprisoned in accessing these resources. In addition, because of the wrongfully convicted person's substantial burden of proof required under this legislation before the person can recover damages, the legislature encourages the court, in exercising its discretion regarding the weight and admissibility of evidence, to give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the wrongfully convicted person or those acting on his or her behalf.

NEW SECTION. Sec. 2 STATEMENT OF CLAIM. (1) Any person convicted in a court in this state and subsequently imprisoned for one or more felonies which he or she was wrongfully convicted may file a claim for damages against the state.

(2) If the person is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be filed on behalf of that person by any relative, attorney, or agent acting as the person's representative. However, if the person entitled to file a claim under subsection (1) of this section is deceased, no claim may be brought on his or her behalf.

A-1

NEW SECTION. Sec. 3 VENUE AND SERVICE OF PROCESS. (1) All claims of wrongful conviction and imprisonment shall be filed in superior court. The venue for such actions shall be governed by RCW 4.92.010.

(2) Service of the summons and complaint shall be governed by RCW 4.92.020.

NEW SECTION. Sec. 4 PRESENTATION OF CLAIM. (1) In order to file an actionable claim for wrongful conviction and imprisonment, the claimant must establish by documentary evidence that:

- (a) The claimant has been convicted of one or more felonies in state court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence;
- (b) The claimant is not currently incarcerated for any offense;
- (c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies for which the claimant was sentenced and which are grounds for the complaint; or
- (ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed or, if a new trial was ordered, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed; provided that the judgment of conviction was reversed or vacated, or the accusatory instrument was dismissed, on grounds consistent with innocence or because the statute on which the accusatory instrument was based or the application of the statute violated the Constitution of the United States or the state Constitution; and
- (d) The claim is not time-barred by the provisions of section 9 of this act.

(2) In addition to the requirements in subsection (1) of this section, the claim shall state facts in sufficient detail to permit the court to determine whether the claimant is likely to succeed at trial in proving that:

- (a) The claimant did not commit any of the acts charged in the accusatory instrument or the claimant's acts or omissions charged in the accusatory instrument did not constitute a crime; and
- (b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later proven to be false, does not constitute perjury or fabricated evidence under this subsection.

(3) The claimant shall verify the claim unless he or she is incapacitated, in which case the person filing on behalf of the claimant shall verify the claim.

(4)(a) If the court finds after reading the claim that the claimant is not likely to succeed at trial, it shall dismiss the claim, either on its own motion or on the motion of the state.

(b) If the court dismisses the claim, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law.

NEW SECTION. Sec. 5 RIGHT OF APPEAL. Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action shall be de novo.

NEW SECTION. Sec. 6 JUDGMENT AND AWARD. (1) In order to obtain a judgment in his or her favor, the claimant must show by clear and convincing evidence that:

- (a) The claimant was convicted of one or more felonies in state court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
- (b) The claimant is not currently incarcerated for any offense;
- (c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies for which the claimant was sentenced and which are the grounds for the complaint; or
- (ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed or, if a new trial was ordered, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed; provided that the judgment of conviction was reversed or vacated, or the accusatory instrument was dismissed, on grounds

A-2

consistent with innocence or because the statute on which the accusatory instrument was based or the application of the statute violated the Constitution of the United States or the state Constitution;

(d) The claimant did not commit any of the acts charged in the accusatory instrument, or the claimant's acts or omissions charged in the accusatory instrument did not constitute a crime; and

(e) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later proven to be false, does not constitute perjury or fabricated evidence under this subsection.

(2) Any pardon or proclamation issued to the claimant by the governor shall be admissible as evidence when it is certified by the officer having lawful custody of the pardon or proclamation, with the seal of the office affixed, or with the official certificate of such officer.

(3) If the jury or, in the case where the right to a jury is waived, the court finds by clear and convincing evidence that the claimant was wrongfully convicted and imprisoned, the court shall award the following damages to the claimant:

(a) Not less than fifty thousand dollars for each year of actual confinement including time spent awaiting trial, with an additional fifty thousand dollars for each year served on death row, as adjusted for partial years served and to account for inflation from the effective date of this section;

(b) Economic damages including but not limited to loss of earnings, costs associated with the claimant's criminal defense at trial and on appeal, restitution paid by the claimant that was a requirement of the judgment and sentence, and medical expenses for mental and physical health costs incurred after the claimant's release that are reasonably related to the claimant's imprisonment;

(c) Compensation for any reasonable reintegrative services, such as job training, that are paid for by the claimant;

(d) Up to ten years of eligibility to participate in the health insurance plans and contracts offered by the public employees' benefits board. The court shall issue an order directing the health care authority to enroll the claimant as provided for in section 10 of this act. The court order must specify the amount of time for which the claimant is eligible to receive benefits and that the claimant shall not be responsible for any costs associated with participation. The claimant's eligibility under this subsection shall not extend to the claimant's spouse or dependents; and

(e) Reasonable attorneys' fees for successfully bringing the wrongful conviction claim. The attorneys' fees shall be calculated at ten percent of the damage award plus expenses. However, attorneys' fees, exclusive of expenses, shall not exceed seventy-five thousand dollars. These fees shall not be deducted from the compensation due to the claimant and counsel shall not be entitled to receive additional fees from the client. The court may not award any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongfully convicted and imprisoned.

(4) The damage award shall not include any punitive or noneconomic damages.

(5) The damage award shall not be offset by any expenses incurred by the state or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant, nor shall the court offset against the award the value of any services or reduction in fees for services to be provided to the claimant as part of the damages awarded to the claimant pursuant to this section.

(6) The court may order the claimant's record of conviction vacated if the record has not already been vacated, sealed, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 shall not apply.

(7) Upon request of the claimant, the court shall refer the claimant to the department of corrections for access to the department's reentry services, if available, including but not limited to the department's community-based transition programs and long-term support programs for education, monitoring, mentoring, life skills training, assessment, job skills development, mental health and substance abuse treatment.

A-3

NEW SECTION. Sec. 7 NOTICE. (1) On or after the effective date of this section, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in section 4(1)(c)(ii) of this act, the court shall provide to the person at the time the relief is granted a copy of sections 2 through 11 of this act.

(2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after the effective date of this section, shall provide a copy of sections 2 through 11 of this act to the individual pardoned.

(3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she shall have an additional twelve months, beyond the statute of limitations under section 9 of this act, to bring a claim under this chapter.

NEW SECTION. Sec. 8 LEGAL REMEDIES NOT BARRED. (1) The provisions of this chapter shall not preclude any other legal remedy available to the claimant to seek redress for the wrongful conviction and imprisonment.

(2) The state may not assert as a defense to a claim under this chapter a release dismissal agreement, plea agreement, or any similar agreement whereby the prosecutor's office or an agent acting on its behalf agrees to take or refrain from certain action if the accused individual agrees to forgo legal action against the government.

NEW SECTION. Sec. 9 STATUTE OF LIMITATIONS. Except as provided in section 7(3) of this act, an action for compensation under this chapter shall be commenced within three years after either the grant of a pardon or the grant of judicial relief and satisfaction of other conditions described in section 5 of this act; provided, however, that any action by the state challenging or appealing the grant of judicial relief shall toll the three-year period. Persons who have been wrongfully convicted, imprisoned, and released from custody before the effective date of this section may commence an action under this chapter within five years of the effective date of this section.

NEW SECTION. Sec. 10 A new section is added to chapter 41.05 RCW to read as follows:

(1) An individual who was awarded damages under section 6 of this act is eligible to participate in the health insurance plans and contracts offered by the public employees' benefits board as prescribed by court order, and the individual is not responsible for any costs associated with that participation.

(2) The health care authority, upon receipt of the court order, must enroll the individual in a health insurance plan in compliance with the terms and conditions of the court order.

(3) The director shall adopt rules under RCW 41.50.050 as the director may find necessary to implement this section and to avoid conflicts with any applicable federal or state laws.

NEW SECTION. Sec. 11 A new section is added to chapter 72.09 RCW to read as follows:

When a court refers a person to the department under section 6 of this act as part of the person's judgment in a wrongful conviction claim, the department shall provide reasonable reentry services to the person. Nothing in this section requires the department to establish new reentry programs or services.

NEW SECTION. Sec. 12 SEVERABILITY CLAUSE. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 13 CAPTIONS NOT LAW. Captions used in this chapter are not any part of the law.

A-4

NEW SECTION. Sec. 14 CODIFICATION DIRECTION. Sections 1 through 9, 12, and 13 of this act constitute a new chapter in Title 4 RCW.

--- END ---

A-5

BILL REQ. #: H-4338.1

HOUSE BILL 2864

State of Washington**61st Legislature****2010 Regular Session**

By Representatives Appleton and Santos

Read first time 01/15/10. Referred to Committee on Judiciary.

AN ACT Relating to providing compensation for persons who have been wrongfully convicted and imprisoned; adding a new section to chapter 41.05 RCW; adding a new section to chapter 72.09 RCW; and adding a new chapter to Title 4 RCW.

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

NEW SECTION. Sec. 1 INTENT. (1) The legislature finds that persons who have been wrongfully convicted and imprisoned for crimes they did not commit have been uniquely victimized and have suffered substantial injustice. The legislature also finds that those persons do not have adequate legal redress to recover damages and restore their lives. Thus, the legislature intends to create a civil cause of action that is above and beyond any existing tort remedy and that is specifically created to address the unique situation faced by those who have been wrongfully convicted and imprisoned.

(2) The legislature also recognizes that persons who have been wrongfully convicted and imprisoned may need more than monetary damages to assist them in restoring their lives. The legislature finds that programs such as Washington's corrections clearinghouse and reentry services established by the department of corrections offer valuable workforce training, educational services, and other resources that can help offenders reintegrate back into society. The legislature encourages the courts to assist persons who have been wrongfully convicted and imprisoned in accessing these resources. In addition, because of the wrongfully convicted person's substantial burden of proof required under this legislation before the person can recover damages, the legislature encourages the court, in exercising its discretion regarding the weight and admissibility of evidence, to give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the wrongfully convicted person or those acting on his or her behalf.

NEW SECTION. Sec. 2 STATEMENT OF CLAIM. (1) Any person convicted in a court in this state and subsequently imprisoned for one or more felonies which he or she was wrongfully convicted may file a claim for damages against the state.

(2) If the person is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be filed on behalf of that person by any relative, attorney, or agent acting as the person's representative. However, if the person entitled to file a claim under subsection (1) of this section is deceased, no claim may be brought on his or her behalf.

A-6

NEW SECTION. Sec. 3 VENUE AND SERVICE OF PROCESS. (1) All claims of wrongful conviction and imprisonment shall be filed in superior court. The venue for such actions shall be governed by RCW 4.92.010.

(2) Service of the summons and complaint shall be governed by RCW 4.92.020.

NEW SECTION. Sec. 4 PRESENTATION OF CLAIM. (1) In order to file an actionable claim for wrongful conviction and imprisonment, the claimant must establish by documentary evidence that:

- (a) The claimant has been convicted of one or more felonies in state court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence;
- (b) The claimant is not currently incarcerated for any offense;
- (c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies for which the claimant was sentenced and which are grounds for the complaint; or
- (ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed or, if a new trial was ordered, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed; provided that the judgment of conviction was reversed or vacated, or the accusatory instrument was dismissed, on grounds consistent with innocence or because the statute on which the accusatory instrument was based or the application of the statute violated the Constitution of the United States or the state Constitution; and
- (d) The claim is not time-barred by the provisions of section 9 of this act.

(2) In addition to the requirements in subsection (1) of this section, the claim shall state facts in sufficient detail to permit the court to determine whether the claimant is likely to succeed at trial in proving that:

- (a) The claimant did not commit any of the acts charged in the accusatory instrument or the claimant's acts or omissions charged in the accusatory instrument did not constitute a crime; and
 - (b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later proven to be false, does not constitute perjury or fabricated evidence under this subsection.
- (3) The claimant shall verify the claim unless he or she is incapacitated, in which case the person filing on behalf of the claimant shall verify the claim.
- (4)(a) If the court finds after reading the claim that the claimant is not likely to succeed at trial, it shall dismiss the claim, either on its own motion or on the motion of the state.
- (b) If the court dismisses the claim, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law.

NEW SECTION. Sec. 5 RIGHT OF APPEAL. Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action shall be de novo.

NEW SECTION. Sec. 6 JUDGMENT AND AWARD. (1) In order to obtain a judgment in his or her favor, the claimant must show by clear and convincing evidence that:

- (a) The claimant was convicted of one or more felonies in state court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
- (b) The claimant is not currently incarcerated for any offense;
- (c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies for which the claimant was sentenced and which are the grounds for the complaint; or
- (ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed or, if a new trial was ordered, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed; provided that the judgment of conviction was reversed or vacated, or the accusatory instrument was dismissed, on grounds

A-7

consistent with innocence or because the statute on which the accusatory instrument was based or the application of the statute violated the Constitution of the United States or the state Constitution;

(d) The claimant did not commit any of the acts charged in the accusatory instrument, or the claimant's acts or omissions charged in the accusatory instrument did not constitute a crime; and

(e) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later proven to be false, does not constitute perjury or fabricated evidence under this subsection.

(2) Any pardon or proclamation issued to the claimant by the governor shall be admissible as evidence when it is certified by the officer having lawful custody of the pardon or proclamation, with the seal of the office affixed, or with the official certificate of such officer.

(3) If the jury or, in the case where the right to a jury is waived, the court finds by clear and convincing evidence that the claimant was wrongfully convicted and imprisoned, the court shall award the following damages to the claimant:

(a) Not less than fifty thousand dollars for each year of actual confinement including time spent awaiting trial, with an additional fifty thousand dollars for each year served on death row, as adjusted for partial years served and to account for inflation from the effective date of this section;

(b) Economic damages including but not limited to loss of earnings, costs associated with the claimant's criminal defense at trial and on appeal, restitution paid by the claimant that was a requirement of the judgment and sentence, and medical expenses for mental and physical health costs incurred after the claimant's release that are reasonably related to the claimant's imprisonment;

(c) Compensation for any reasonable reintegrative services, such as job training, that are paid for by the claimant;

(d) Up to ten years of eligibility to participate in the health insurance plans and contracts offered by the public employees' benefits board. The court shall issue an order directing the health care authority to enroll the claimant as provided for in section 10 of this act. The court order must specify the amount of time for which the claimant is eligible to receive benefits and that the claimant shall not be responsible for any costs associated with participation. The claimant's eligibility under this subsection shall not extend to the claimant's spouse or dependents; and

(e) Reasonable attorneys' fees for successfully bringing the wrongful conviction claim. The attorneys' fees shall be calculated at ten percent of the damage award plus expenses. However, attorneys' fees, exclusive of expenses, shall not exceed seventy-five thousand dollars. These fees shall not be deducted from the compensation due to the claimant and counsel shall not be entitled to receive additional fees from the client. The court may not award any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongfully convicted and imprisoned.

(4) The damage award shall not include any punitive or noneconomic damages.

(5) The damage award shall not be offset by any expenses incurred by the state or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant, nor shall the court offset against the award the value of any services or reduction in fees for services to be provided to the claimant as part of the damages awarded to the claimant pursuant to this section.

(6) The court may order the claimant's record of conviction vacated if the record has not already been vacated, sealed, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 shall not apply.

(7) Upon request of the claimant, the court shall refer the claimant to the department of corrections for access to the department's reentry services, if available, including but not limited to the department's community-based transition programs and long-term support programs for education, monitoring, mentoring, life skills training, assessment, job skills development, mental health and substance abuse treatment.

A-8

NEW SECTION. Sec. 7 NOTICE. (1) On or after the effective date of this section, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in section 4(1)(c)(ii) of this act, the court shall provide to the person at the time the relief is granted a copy of sections 2 through 11 of this act.

(2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after the effective date of this section, shall provide a copy of sections 2 through 11 of this act to the individual pardoned.

(3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she shall have an additional twelve months, beyond the statute of limitations under section 9 of this act, to bring a claim under this chapter.

NEW SECTION. Sec. 8 LEGAL REMEDIES NOT BARRED. (1) The provisions of this chapter shall not preclude any other legal remedy available to the claimant to seek redress for the wrongful conviction and imprisonment.

(2) The state may not assert as a defense to a claim under this chapter a release dismissal agreement, plea agreement, or any similar agreement whereby the prosecutor's office or an agent acting on its behalf agrees to take or refrain from certain action if the accused individual agrees to forgo legal action against the government.

NEW SECTION. Sec. 9 STATUTE OF LIMITATIONS. Except as provided in section 7(3) of this act, an action for compensation under this chapter shall be commenced within three years after either the grant of a pardon or the grant of judicial relief and satisfaction of other conditions described in section 5 of this act; provided, however, that any action by the state challenging or appealing the grant of judicial relief shall toll the three-year period. Persons who have been wrongfully convicted, imprisoned, and released from custody before the effective date of this section may commence an action under this chapter within five years of the effective date of this section.

NEW SECTION. Sec. 10 A new section is added to chapter 41.05 RCW to read as follows:

(1) An individual who was awarded damages under section 6 of this act is eligible to participate in the health insurance plans and contracts offered by the public employees' benefits board as prescribed by court order, and the individual is not responsible for any costs associated with that participation.

(2) The health care authority, upon receipt of the court order, must enroll the individual in a health insurance plan in compliance with the terms and conditions of the court order.

(3) The director shall adopt rules under RCW 41.50.050 as the director may find necessary to implement this section and to avoid conflicts with any applicable federal or state laws.

NEW SECTION. Sec. 11 A new section is added to chapter 72.09 RCW to read as follows:

When a court refers a person to the department under section 6 of this act as part of the person's judgment in a wrongful conviction claim, the department shall provide reasonable reentry services to the person. Nothing in this section requires the department to establish new reentry programs or services.

NEW SECTION. Sec. 12 SEVERABILITY CLAUSE. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 13 CAPTIONS NOT LAW. Captions used in this chapter are not any part of the law.

A.9

NEW SECTION. **Sec. 14** CODIFICATION DIRECTION. Sections 1 through 9, 12, and 13 of this act constitute a new chapter in Title 4 RCW.

--- END ---

A-10

BILL REQ. #: H-0770.1

HOUSE BILL 1435

State of Washington**62nd Legislature****2011 Regular Session**

By Representatives Orwall, Appleton, Roberts, Goodman, Upthegrove, Carlyle, Hunt, Hudgins, Rolfes, Kagi, and Sells

Read first time 01/21/11. Referred to Committee on Judiciary.

AN ACT Relating to providing compensation for persons who have been wrongly convicted and imprisoned; adding a new section to chapter 28B.15 RCW; adding a new section to chapter 41.05 RCW; adding a new section to chapter 72.09 RCW; adding a new chapter to Title 4 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1 (1) Any person convicted in a court in this state and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation and damages against the state.

(2) For purposes of this chapter, a person is:

(a) "Actually innocent" of a felony if he or she did not commit any of the acts charged in the accusatory instrument, or the person's acts or omissions charged in the accusatory instrument did not constitute a crime;

(b) "Wrongly convicted" if he or she was charged, convicted, and imprisoned for one or more felonies of which he or she is actually innocent.

(3)(a) If the person entitled to file a claim under subsection (1) of this section is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be filed on behalf of that person by any relative, attorney, or agent acting as the person's representative.

(b) If the person entitled to file a claim under subsection (1) of this section is deceased, the claim may be filed on behalf of his or her estate by the person's surviving spouse or domestic partner, attorney, or agent acting as the person's personal representative.

NEW SECTION. Sec. 2 (1) All claims of wrongful conviction and imprisonment shall be filed in superior court. The venue for such actions shall be governed by RCW 4.92.010.

(2) Service of the summons and complaint shall be governed by RCW 4.92.020.

NEW SECTION. Sec. 3 (1) In order to file an actionable claim for wrongful conviction and imprisonment, the claimant must establish by documentary evidence that:

(a) The claimant has been convicted of one or more felonies in state court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence;

A - 11

- (b)(i) The claimant is not currently incarcerated for any offense; and
- (ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies for which the claimant was sentenced and which are grounds for the compensation claim;
- (c)(i) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new information or, if a new trial was ordered following the presentation of significant new information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed; or
- (ii) The statute on which the accusatory instrument was based or the application of the statute violated the Constitution of the United States or the state Constitution; and
- (d) The claim is not time-barred by section 8 of this act.
- (2) In addition to the requirements in subsection (1) of this section, the claim shall state facts in sufficient detail for the finder of fact to determine that:
- (a) The claimant did not commit any of the acts charged in the accusatory instrument or the claimant's acts or omissions charged in the accusatory instrument did not constitute a crime; and
- (b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or a confession that is proven to be false, does not constitute perjury or fabricated evidence under this subsection.
- (3) The claimant shall verify the claim unless he or she is incapacitated or deceased, in which case the person filing on behalf of the claimant shall verify the claim.
- (4) The office of the county prosecuting attorney responsible for charging and prosecuting the felony or felonies for which the claimant was sentenced and which are grounds for the complaint is not a party to the action, but may submit briefs to the court related to a claim for compensation under this section.
- (5)(a) If the court finds after reading the claim that the claimant does not meet the filing criteria set forth in section 3 of this act, it shall dismiss the claim, either on its own motion or on the motion of the state.
- (b) If the court dismisses the claim, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law.

NEW SECTION. Sec. 4 Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action shall be de novo.

NEW SECTION. Sec. 5 (1) In order to obtain a judgment in his or her favor, the claimant must show by a preponderance of the evidence that:

- (a) The claimant was convicted of one or more felonies in state court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
- (b) The claimant is not currently incarcerated for any offense;
- (c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies for which the claimant was sentenced and which are the grounds for the compensation claim;
- (ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new information or, if a new trial was ordered following the presentation of significant new information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed; or
- (iii) The statute on which the accusatory instrument was based or the application of the statute violated the Constitution of the United States or the state Constitution;
- (d) The claimant did not commit any of the acts charged in the accusatory instrument, or the claimant's acts or omissions charged in the accusatory instrument did not constitute a crime; and

A-12

(e) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction. A guilty plea to a crime the claimant did not commit, or a confession that is proven to be false, does not constitute perjury or fabricated evidence under this subsection.

(2) Any pardon or proclamation issued to the claimant by the governor shall be admissible as evidence when it is certified by the officer having lawful custody of the pardon or proclamation, with the seal of the office affixed, or with the official certificate of such officer.

(3) In exercising its discretion regarding the weight and admissibility of evidence, the court shall give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the wrongly convicted person or those acting on his or her behalf.

(4) If the state concedes that the claimant was wrongly convicted, the court shall award compensation as provided in subsection (5) of this section.

(5) If the jury or, in the case where the right to a jury is waived, the court finds by a preponderance of the evidence that the claimant was wrongly convicted, the court shall award the following compensation and damages to the claimant:

(a) Compensation, as adjusted for partial years served and to account for inflation from the effective date of this section, in an amount not less than:

(i) Fifty thousand dollars for each year of actual confinement including time spent awaiting trial; and

(ii) Fifty thousand dollars for each year served on death row; and

(iii) Twenty-five thousand dollars for each year served on parole, community custody, or as a registered sex offender pursuant only to the felony or felonies which are grounds for the compensation claim;

(b) Compensation for child support payments owed by the claimant that became due and interest on child support arrearages that accrued while the claimant was in custody on the felony or felonies which are grounds for the compensation claim. Such funds shall be paid on the person's behalf in a lump-sum payment to the department of social and health services for disbursement under Title 26 RCW;

(c) Economic damages for lost wages including but not limited to the greater amount equal to:

(i) Loss of earnings calculated by the claimant's gross income the year before the wrongful conviction, multiplied by each year of incarceration for the felony or felonies which are grounds for the compensation claim; or

(ii) Gross wages earned by the claimant while incarcerated for the felony or felonies which are grounds for the complaint, adjusted to the minimum hourly wage in effect in the state the year the claimant was released from custody and offset by any portion already received by the claimant;

(d) Reimbursement for all restitution, assessments, fees, and any other sums paid by the claimant as required by the judgment and sentence;

(e) Higher education tuition waivers for the claimant and all qualifying children as provided in section 9 of this act;

(f) Up to ten years of eligibility to participate in the health and dental insurance plans and contracts offered by the public employees' benefits board. The court shall issue an order directing the health care authority to enroll the claimant and his or her dependent children and spouse or domestic partner as provided for in section 10 of this act. The court order must specify the amount of time for which the claimant and his or her dependent children and spouse or domestic partner are eligible to receive benefits, and that the claimant and his or her dependent children and spouse or domestic partner shall not be responsible for any costs associated with participation; and

(g) Reasonable attorneys' fees for successfully bringing the wrongful conviction claim. The attorneys' fees shall be calculated at ten percent of the damage award plus expenses. However, attorneys' fees, exclusive of expenses, shall not exceed seventy-five thousand dollars. These fees shall

A-13

not be deducted from the compensation due to the claimant, and counsel shall not be entitled to receive additional fees from the client. The court may not award any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongly convicted.

(6) The compensation and damage award shall not include any punitive damages.

(7) The compensation and damage award shall not be offset by any expenses incurred by the state or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant. The court shall not offset against the award the value of any services or reduction in fees for services to be provided to the claimant as part of the damages awarded to the claimant pursuant to this section.

(8) Except attorneys' fees under subsection (5)(g) of this section, compensation and damages awarded under this act shall not be considered income for tax purposes.

(9)(a) Upon finding that the claimant was wrongly convicted, the court shall seal the claimant's record of conviction.

(b) Upon request of the claimant, the court may order the claimant's record of conviction vacated if the record has not already been vacated, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 shall not apply.

(10) Upon request of the claimant, the court shall refer the claimant to the department of corrections or the department of social and health services for access to reentry services, if available, including but not limited to the community-based transition programs and long-term support programs for education, mentoring, life skills training, assessment, job skills development, and mental health and substance abuse treatment.

NEW SECTION. Sec. 6 (1) On or after the effective date of this section, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in section 3(1)(c)(i) of this act, the court shall provide to the person at the time the relief is granted a copy of chapter 4---RCW (the new chapter created in section 13 of this act).

(2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after the effective date of this section, shall provide a copy of sections 1 through 10 of this act to the individual pardoned.

(3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she shall have an additional twelve months, beyond the statute of limitations under section 8 of this act, to bring a claim under this chapter.

NEW SECTION. Sec. 7 (1) The provisions of this chapter shall not preclude any other legal remedy available to the claimant to seek redress for the wrongful conviction and imprisonment.

(2) If the claimant pursues a separate claim for tortious conduct or a civil rights violation based on the wrongful conviction, the related arrest, or subsequent incarceration, the statute of limitations under this chapter is tolled pending resolution of that claim, and the tort award shall offset any compensation awarded under this chapter.

(3) The state may not assert as a defense to a claim under this chapter a release dismissal agreement, plea agreement, or any similar agreement whereby the prosecutor's office or an agent acting on its behalf agrees to take or refrain from certain action if the accused individual agrees to forgo legal action against the state.

NEW SECTION. Sec. 8 Except as provided in section 6(3) of this act, an action for compensation under this chapter must be commenced within three years after the grant of judicial relief and satisfaction of other conditions described in section 4 of this act; provided, however, that any action by the state challenging or appealing the grant of judicial relief shall toll the three-year period. Any

A.14

person meeting the criteria set forth in section 1 of this act who was wrongly convicted before the effective date of this section may commence an action under this chapter within three years after the effective date of this section.

NEW SECTION. Sec. 9 A new section is added to chapter 28B.15 RCW to read as follows:

(1) Subject to the conditions in subsection (2) of this section and the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, shall waive all tuition and fees for the following persons:

(a) A wrongly convicted person; and

(b) Any child or stepchild of a wrongly convicted person who was born or became the stepchild of, or was adopted by, the wrongly convicted person before compensation is awarded under section 5 of this act.

(2) The following conditions apply to waivers under subsection (1) of this section:

(a) A wrongly convicted person must be a Washington domiciliary to be eligible for the tuition waiver.

(b) A child must be a Washington domiciliary between the age of seventeen and twenty-six years to be eligible for the tuition waiver. A child's marital status does not affect eligibility.

(c) Each recipient's continued participation is subject to the school's satisfactory progress policy.

(d) Tuition waivers for graduate students are not required for those who qualify under subsection (1) of this section but are encouraged.

(e) Recipients who receive a waiver under subsection (1) of this section may attend full-time or part-time. Total credits earned using the waiver may not exceed two hundred quarter credits, or the equivalent of semester credits.

(3) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms of this section.

(4) The definitions in this subsection apply throughout this section.

(a) "Child" means a biological child, stepchild, or adopted child who was born of, became the stepchild of, or was adopted by a wrongly convicted person before compensation is awarded under section 5 of this act.

(b) "Fees" includes all assessments for costs incurred as a condition to a student's full participation in coursework and related activities at an institution of higher education.

(c) "Washington domiciliary" means a person whose true, fixed, and permanent house and place of habitation is the state of Washington. In ascertaining whether a wrongly convicted person or child is domiciled in the state of Washington, public institutions of higher education shall, to the fullest extent possible, rely upon the standards provided in RCW 28B.15.013.

(d) "Wrongly convicted person" means a Washington domiciliary who was awarded damages under section 5 of this act.

NEW SECTION. Sec. 10 A new section is added to chapter 41.05 RCW to read as follows:

(1) An individual who was awarded damages under section 5 of this act and his or her dependent children and spouse or domestic partner are eligible to participate in the health and dental insurance plans and contracts offered by the board as prescribed by court order, and no person eligible under this section is responsible for any costs associated with that participation.

(2) The authority, upon receipt of the court order, must enroll the individual and his or her dependent children and spouse or domestic partner in a health and dental insurance plan in compliance with the terms and conditions of the court order.

(3) The administrator shall adopt rules under RCW 41.50.050 as the administrator may find necessary to implement this section and to avoid conflicts with any applicable federal or state laws.

A-15

NEW SECTION. Sec. 11 A new section is added to chapter 72.09 RCW to read as follows:

When a court refers a person to the department under section 5 of this act as part of the person's award in a wrongful conviction claim, the department shall provide reasonable access to existing reentry programs and services. Nothing in this section requires the department to establish new reentry programs or services.

NEW SECTION. Sec. 12 If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 13 Sections 1 through 8 of this act constitute a new chapter in Title 4 RCW.

NEW SECTION. Sec. 14 This act takes effect July 1, 2014.

--- END ---

A-16

BILL REQ. #: S-0485.1

SENATE BILL 5139

State of Washington**62nd Legislature****2011 Regular Session**

By Senators Hargrove and Shin

Read first time 01/17/11. Referred to Committee on Human Services & Corrections.

AN ACT Relating to creating a claim for wrongful conviction and imprisonment; adding a new section to chapter 72.09 RCW; and adding a new chapter to Title 4 RCW.

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

NEW SECTION. Sec. 1 INTENT. The legislature finds that persons who have been convicted and imprisoned for crimes they did not commit have been uniquely victimized and have suffered tremendous injustice by being stripped of their lives and liberty and forced to endure the horror of prison. A majority of those wrongly convicted do not have legal redress to recover damages in order to restore their lives. The legislature, therefore, intends to provide redress for those who have been wrongly convicted in recognition of the lost years of their lives, and the unique circumstances they face after exoneration.

NEW SECTION. Sec. 2 STATEMENT OF CLAIM. (1) Any person convicted in a court in this state and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation and damages against the state.

(2) For purposes of this chapter, a person is:

(a) "Actually innocent" of a felony if he or she did not commit any of the acts charged in the accusatory instrument, or the person's acts or omissions charged in the accusatory instrument did not constitute a crime;

(b) "Wrongly convicted" if he or she was charged, convicted, and imprisoned for one or more felonies of which he or she is actually innocent.

(3)(a) If the person entitled to file a claim under subsection (1) of this section is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be filed on behalf of that person by any relative, attorney, or agent acting as the person's representative.

(b) If the person entitled to file a claim under subsection (1) of this section is deceased, the claim may be filed on behalf of his or her estate by the person's surviving spouse or domestic partner, attorney, or agent acting as the person's personal representative.

NEW SECTION. Sec. 3 VENUE AND SERVICE OF PROCESS. (1) All claims of wrongful conviction and imprisonment shall be filed in superior court. The venue for such actions shall be

A-17

governed by RCW 4.92.010.

(2) Service of the summons and complaint shall be governed by RCW 4.92.020.

NEW SECTION. Sec. 4 PRESENTATION OF CLAIM. (1) In order to file an actionable claim for wrongful conviction and imprisonment, the claimant must establish by documentary evidence that:

(a) The claimant has been convicted of one or more felonies in state court and subsequently sentenced to a term of imprisonment for the conviction or convictions, and has served all or part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies for which the claimant was sentenced and which are grounds for the compensation claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies for which the claimant was sentenced and which are grounds for the compensation claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new information or, if a new trial was ordered following the presentation of significant new information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed; and

(d) The claim is not time-barred by the provisions of section 9 of this act.

(2) In addition to the requirements in subsection (1) of this section, the claim shall state facts in sufficient detail for the finder of fact to determine that:

(a) The claimant did not commit any of the acts charged in the accusatory instrument or the claimant's acts or omissions charged in the accusatory instrument did not constitute a crime; and

(b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or a confession that is proven to be false, does not constitute perjury or fabricated evidence under this subsection.

(3) The claimant shall verify the claim unless he or she is incapacitated or deceased, in which case the person filing on behalf of the claimant shall verify the claim.

(4) The office of the county prosecuting attorney responsible for charging and prosecuting the felony or felonies for which the claimant was sentenced and which are grounds for the complaint is not a party to the action, but may submit briefs to the court related to a claim for compensation under this section.

(5)(a) If the court finds after reading the claim that the claimant does not meet the filing criteria set forth in section 2 of this act, it shall dismiss the claim, either on its own motion or on the motion of the state.

(b) If the court dismisses the claim, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law.

NEW SECTION. Sec. 5 RIGHT OF APPEAL. Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action shall be de novo.

NEW SECTION. Sec. 6 JUDGMENT AND AWARD. (1) In order to obtain a judgment in his or her favor, the claimant must show by a preponderance of the evidence that:

(a) The claimant was convicted of one or more felonies in state court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(b) The claimant is not currently incarcerated for any offense;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies for which the claimant was sentenced and which are the grounds for the compensation claim;

A-18

or

(ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new information or, if a new trial was ordered following the presentation of significant new information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed;

(d) The claimant did not commit any of the acts charged in the accusatory instrument, or the claimant's acts or omissions charged in the accusatory instrument did not constitute a crime; and

(e) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction. A guilty plea to a crime the claimant did not commit, or a confession that is proven to be false, does not constitute perjury or fabricated evidence under this subsection.

(2) Any pardon or proclamation issued to the claimant by the governor shall be admissible as evidence when it is certified by the officer having lawful custody of the pardon or proclamation, with the seal of the office affixed, or with the official certificate of such officer.

(3) In exercising its discretion regarding the weight and admissibility of evidence, the court shall give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the wrongly convicted person or those acting on his or her behalf.

(4) If the state concedes that the claimant was wrongly convicted, the court shall award compensation as provided in subsection (5)(a) through (d) of this section.

(5) If the jury or, in the case where the right to a jury is waived, the court finds by a preponderance of the evidence that the claimant was wrongly convicted, the court shall award the following compensation and damages to the claimant:

(a) Compensation, as adjusted for partial years served and to account for inflation from the effective date of this section, in an amount up to twenty thousand dollars for each year of actual confinement including time spent awaiting trial and time spent on death row.

(b) The court may direct that a portion of the amount awarded in (a) of this subsection be for child support payments owed by the claimant that became due, and interest on child support arrearages that accrued while the claimant was in custody on the felony or felonies which are grounds for the compensation claim. Such funds shall be paid on the person's behalf in a lump sum payment to the department of social and health services for disbursement under the child support order;

(c) The court may direct that a portion of the amount awarded in (a) of this subsection be for economic damages for lost wages.

(d) The court may award reasonable attorneys' fees for successfully bringing the wrongful conviction claim. The attorneys' fees shall be calculated at ten percent of the damage award plus expenses. However, attorneys' fees, exclusive of expenses, shall not exceed seventy-five thousand dollars. These fees shall not be deducted from the compensation due to the claimant and counsel shall not be entitled to receive additional fees from the client. The court may not award any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongly convicted.

(6) The amount awarded in subsection (5)(a) of this section shall not include any punitive damages.

(7) The award shall not be offset by any expenses incurred by the state or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant. The court shall not offset against the award the value of any services or reduction in fees for services to be provided to the claimant as part of the damages awarded to the claimant pursuant to this section.

(8) Except attorneys' fees under subsection (5)(d) of this section, compensation awarded under this section shall not be considered "income" for tax purposes.

(9)(a) Upon finding that the claimant was wrongly convicted, the court shall seal the claimant's record of conviction.

A-19

(b) Upon request of the claimant, the court may order the claimant's record of conviction vacated if the record has not already been vacated, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 shall not apply.

(10) Upon request of the claimant, the court shall refer the claimant to the department of corrections, the department of social and health services, or the employment security department, whichever is appropriate, for access to reentry services, if available, including but not limited to the community-based transition programs and long-term support programs for education, mentoring, life skills training, assessment, job skills development, and mental health and substance abuse treatment.

NEW SECTION. Sec. 7 NOTICE. (1) On or after the effective date of this section, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in section 4(1)(c)(ii) of this act, the court shall provide to the person at the time the relief is granted a copy of this chapter.

(2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after the effective date of this section, shall provide a copy of this chapter to the individual pardoned.

(3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she shall have an additional twelve months, beyond the statute of limitations under section 9 of this act, to bring a claim under this chapter.

NEW SECTION. Sec. 8 LEGAL REMEDIES NOT BARRED. (1) The provisions of this chapter shall not preclude any other legal remedy available to the claimant to seek redress for the wrongful conviction and imprisonment.

(2) If the claimant pursues a separate claim for tortious conduct pursuant to the wrongful conviction, the related arrest, or subsequent incarceration, the statute of limitations under this chapter is tolled pending resolution of that claim, and the tort award shall offset any compensation awarded under this chapter.

(3) The state may not assert as a defense to a claim under this chapter a release dismissal agreement, plea agreement, or any similar agreement whereby the prosecutor's office or an agent acting on its behalf agrees to take or refrain from certain action if the accused individual agrees to forgo legal action against the state.

NEW SECTION. Sec. 9 STATUTE OF LIMITATIONS. Except as provided in section 7(3) of this act, an action for compensation under this chapter must be commenced within three years after either the grant of a pardon or the grant of judicial relief and satisfaction of other conditions described in section 5 of this act; provided, however, that any action by the state challenging or appealing the grant of judicial relief shall toll the three-year period. Any persons meeting the criteria set forth in section 2 of this act who was wrongly convicted before the effective date of this section may commence an action under this chapter within three years after the effective date of this section.

NEW SECTION. Sec. 10 A new section is added to chapter 72.09 RCW to read as follows:

When a court refers a person to the department under section 6 of this act as part of the person's award in a wrongful conviction claim, the department shall provide reasonable access to existing reentry programs and services. Nothing in this section requires the department to establish new reentry programs or services.

NEW SECTION. Sec. 11 SEVERABILITY CLAUSE. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

A-20

NEW SECTION. **Sec. 12** CODIFICATION DIRECTION. Sections 1 through 9 of this act constitute a new chapter in Title 4 RCW.

--- END ---

A.21

BILL REQ. #: S-1659.1

SUBSTITUTE SENATE BILL 5139

State of Washington

62nd Legislature

2011 Regular Session

By Senate Human Services & Corrections (originally sponsored by Senators Hargrove and Shin)

READ FIRST TIME 02/21/11.

AN ACT Relating to creating a claim for wrongful conviction and imprisonment; adding a new section to chapter 72.09 RCW; and adding a new chapter to Title 4 RCW.

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

NEW SECTION. **Sec. 1 INTENT.** The legislature finds that persons who have been convicted and imprisoned for crimes they did not commit have been uniquely victimized and have suffered tremendous injustice by being stripped of their lives and liberty. A majority of those wrongly convicted do not have legal redress to recover damages in order to restore their lives. The legislature, therefore, intends to provide redress for those who have been wrongly convicted in recognition of the lost years of their lives, and the unique circumstances they face after exoneration.

NEW SECTION. **Sec. 2 STATEMENT OF CLAIM.** (1) Any person convicted in a court in this state and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation and damages against the state.

(2) For purposes of this chapter, a person is:

(a) "Actually innocent" of a felony if he or she did not commit any of the acts in the charging documents;

(b) "Wrongly convicted" if he or she was charged, convicted, and imprisoned for one or more felonies of which he or she is actually innocent.

(3)(a) If the person entitled to file a claim under subsection (1) of this section is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be filed on behalf of that person by any relative, attorney, or agent acting as the person's representative.

(b) If the person entitled to file a claim under subsection (1) of this section is deceased, the claim may be filed on behalf of his or her estate by the person's surviving spouse or domestic partner, attorney, or agent acting as the person's personal representative.

NEW SECTION. **Sec. 3 VENUE AND SERVICE OF PROCESS.** (1) All claims of wrongful conviction and imprisonment shall be filed in superior court. The venue for such actions shall be governed by RCW 4.92.010.

(2) Service of the summons and complaint shall be governed by RCW 4.92.020.

A.22

NEW SECTION. Sec. 4 PRESENTATION OF CLAIM. (1) In order to file an actionable claim for wrongful conviction and imprisonment, the claimant must establish by documentary evidence that:

(a) The claimant has been convicted of one or more felonies in state court and subsequently sentenced to a term of imprisonment for the conviction or convictions, and has served all or part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies for which the claimant was sentenced and which are grounds for the compensation claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies for which the claimant was sentenced and which are grounds for the compensation claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new information or, if a new trial was ordered following the presentation of significant new information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed; and

(d) The claim is not time-barred by the provisions of section 9 of this act.

(2) In addition to the requirements in subsection (1) of this section, the claim shall state facts in sufficient detail for the finder of fact to determine that:

(a) The claimant did not commit any of the acts in the charging documents; and

(b) In light of all the evidence whether or not admissible at trial, the claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction.

(3) The claimant shall verify the claim unless he or she is incapacitated or deceased, in which case the person filing on behalf of the claimant shall verify the claim.

(4) The office of the county prosecuting attorney responsible for charging and prosecuting the felony or felonies for which the claimant was sentenced and which are grounds for the complaint is not a party to the action, but may submit briefs to the court related to a claim for compensation under this section.

(5)(a) If the court finds after reading the claim that the claimant does not meet the filing criteria set forth in section 2 of this act, it shall dismiss the claim, either on its own motion or on the motion of the state.

(b) If the court dismisses the claim, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law.

NEW SECTION. Sec. 5 RIGHT OF APPEAL. Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action shall be de novo.

NEW SECTION. Sec. 6 JUDGMENT AND AWARD. (1) In order to obtain a judgment in his or her favor, the claimant must show by clear and convincing evidence that:

(a) The claimant was convicted of one or more felonies in state court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(b) The claimant is not currently incarcerated for any offense;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies for which the claimant was sentenced and which are the grounds for the compensation claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new information or, if a new trial was ordered following the presentation of significant new information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed;

A-23

(d) The claimant did not commit any of the acts in the charging documents; and

(e) In light of all the evidence whether or not admissible at trial, the claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction.

(2) Any pardon or proclamation issued to the claimant by the governor shall be admissible as evidence when it is certified by the officer having lawful custody of the pardon or proclamation, with the seal of the office affixed, or with the official certificate of such officer.

(3) In exercising its discretion regarding the weight and admissibility of evidence, the court shall give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the parties.

(4) If the state concedes that the claimant was wrongly convicted, the court shall award compensation as provided in subsection (5)(a) through (d) of this section.

(5) If the jury or, in the case where the right to a jury is waived, the court finds by clear and convincing evidence that the claimant was wrongly convicted, the court shall award the following compensation and damages to the claimant:

(a) Compensation, as adjusted for partial years served and to account for inflation from the effective date of this section, in an amount up to twenty thousand dollars for each year of actual confinement including time spent awaiting trial and time spent on death row.

(b) The court may direct that a portion of the amount awarded in (a) of this subsection be for child support payments owed by the claimant that became due, and interest on child support arrearages that accrued while the claimant was in custody on the felony or felonies which are grounds for the compensation claim. Such funds shall be paid on the person's behalf in a lump sum payment to the department of social and health services for disbursement under the child support order;

(c) The court may direct that a portion of the amount awarded in (a) of this subsection be for economic damages for lost wages.

(d) The court may award reasonable attorneys' fees for successfully bringing the wrongful conviction claim. The attorneys' fees shall be calculated at ten percent of the damage award plus expenses. However, attorneys' fees shall not exceed seventy-five thousand dollars. These fees shall not be deducted from the compensation due to the claimant and counsel shall not be entitled to receive additional fees from the client. The court may not award any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongly convicted.

(6) The amount awarded in subsection (5)(a) of this section shall not include any punitive damages.

(7) The award shall not be offset by any expenses incurred by the state or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant. The court shall not offset against the award the value of any services or reduction in fees for services to be provided to the claimant as part of the damages awarded to the claimant pursuant to this section.

(8) Except attorneys' fees under subsection (5)(d) of this section, compensation awarded under this section shall not be considered "income" for tax purposes.

(9)(a) Upon finding that the claimant was wrongly convicted, the court shall seal the claimant's record of conviction.

(b) Upon request of the claimant, the court may order the claimant's record of conviction vacated if the record has not already been vacated, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 shall not apply.

(10) Upon request of the claimant, the court shall refer the claimant to the department of corrections, the department of social and health services, or the employment security department, whichever is appropriate, for access to reentry services, if available, including but not limited to the community-based transition programs and long-term support programs for education, mentoring, life skills training, assessment, job skills development, and mental health and substance abuse treatment.

A 24

NEW SECTION. Sec. 7 NOTICE. (1) On or after the effective date of this section, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in section 4(1)(c)(ii) of this act, the court shall provide to the person at the time the relief is granted a copy of this chapter.

(2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after the effective date of this section, shall provide a copy of this chapter to the individual pardoned.

(3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she shall have an additional twelve months, beyond the statute of limitations under section 9 of this act, to bring a claim under this chapter.

NEW SECTION. Sec. 8 LEGAL REMEDIES NOT BARRED. (1) The provisions of this chapter shall not preclude any other legal remedy available to the claimant to seek redress for the wrongful conviction and imprisonment.

(2) If the claimant pursues a separate claim for tortious conduct pursuant to the wrongful conviction, the related arrest, or subsequent incarceration, the statute of limitations under this chapter is tolled pending resolution of that claim, and the tort award shall offset any compensation awarded under this chapter.

NEW SECTION. Sec. 9 STATUTE OF LIMITATIONS. Except as provided in section 7(3) of this act, an action for compensation under this chapter must be commenced within three years after either the grant of a pardon or the grant of judicial relief and satisfaction of other conditions described in section 5 of this act; provided, however, that any action by the state challenging or appealing the grant of judicial relief shall toll the three-year period. Any persons meeting the criteria set forth in section 2 of this act who was wrongfully convicted before the effective date of this section may commence an action under this chapter within three years after the effective date of this section.

NEW SECTION. Sec. 10 A new section is added to chapter 72.09 RCW to read as follows:

When a court refers a person to the department under section 6 of this act as part of the person's award in a wrongful conviction claim, the department shall provide reasonable access to existing reentry programs and services. Nothing in this section requires the department to establish new reentry programs or services.

NEW SECTION. Sec. 11 SEVERABILITY CLAUSE. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 12 CODIFICATION DIRECTION. Sections 1 through 9 of this act constitute a new chapter in Title 4 RCW.

--- END ---

A-25

BILL REQ. #: H-3285.1

HOUSE BILL 2221

State of Washington

62nd Legislature

2012 Regular Session

By Representatives Orwall, Appleton, Jinkins, Pollet, Upthegrove, Roberts, and Kagi

Prefiled 12/30/11. Read first time 01/09/12. Referred to Committee on Judiciary.

AN ACT Relating to creating a claim for wrongful conviction and imprisonment; adding a new section to chapter 28B.15 RCW; adding a new section to chapter 41.05 RCW; adding a new section to chapter 72.09 RCW; and adding a new chapter to Title 4 RCW.

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

NEW SECTION. **Sec. 1** The legislature finds that persons convicted and imprisoned for crimes they did not commit have been uniquely victimized. They have suffered tremendous injustice by being stripped of their lives and liberty, forced to endure prison for a crime they did not commit. A majority of those wrongly convicted do not have legal redress to recover damages in order to restore their lives. The legislature intends to provide redress for those who have been wrongly convicted in Washington state, in recognition of the lost years of their lives and the unique challenges they face after exoneration. The legislature further intends that compensation be paid by the county in which the wrongful conviction occurred, and under no circumstances will a person found wrongly convicted in this state be deprived of his or her award once a judgment for compensation has been successfully secured.

NEW SECTION. **Sec. 2** (1) Any person convicted in state court and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation and damages against the county in which he or she was prosecuted.

(2) For purposes of this chapter, a person is:

(a) "Actually innocent" of a felony if he or she did not engage in any illegal conduct alleged in the accusatory instrument; and

(b) "Wrongly convicted" if he or she was charged, convicted, and imprisoned for one or more felonies of which he or she is actually innocent.

(3)(a) If the person entitled to file a claim under subsection (1) of this section is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be filed on behalf of the claimant by an authorized agent.

(b) A claim filed under this chapter survives to the personal representative of the claimant as provided in RCW 4.20.046.

NEW SECTION. **Sec. 3** (1) All claims of wrongful conviction and imprisonment shall be filed in superior court. The venue for such actions shall be governed by RCW 4.12.020.

A-26

(2) Service of the summons and complaint shall be governed by RCW 4.28.080.

(3) The attorney general shall represent any county named as the adverse party in a claim for compensation under this chapter.

NEW SECTION. Sec. 4 (1) In order to file an actionable claim for wrongful conviction and imprisonment, the claimant must establish by documentary evidence that:

(a) The claimant has been convicted of one or more felonies in state court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the compensation claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the compensation claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new information or, if a new trial was ordered following the presentation of significant new information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed; and

(d) The claim is not time barred by section 9 of this act.

(2) In addition to the requirements in subsection (1) of this section, the claim shall state facts in sufficient detail for the finder of fact to determine that:

(a) The claimant did not engage in any illegal conduct alleged in the accusatory instrument; and

(b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later proven to be false, does not constitute perjury or fabricated evidence under this subsection.

(3) Convictions vacated, overturned, or subject to resentencing pursuant to *In re: Personal Detention of Andress*, 147 Wn.2d 602 (2002) may not serve as the basis for a compensation claim under this chapter unless the claimant otherwise satisfies the qualifying criteria set forth in section 2 of this act and this section.

(4) The claimant shall verify the claim unless he or she is incapacitated, in which case the personal representative or agent filing on behalf of the claimant shall verify the claim.

(5)(a) If the court finds after reading the claim that the claimant does not meet the filing criteria set forth in this section, it shall dismiss the claim, either on its own motion or on the motion of the attorney general.

(b) If the court dismisses the claim, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law.

(6) If the attorney general concedes that the claimant was wrongly convicted, the court shall award compensation as provided in section 6 of this act.

NEW SECTION. Sec. 5 Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action shall be de novo.

NEW SECTION. Sec. 6 (1) In order to obtain a judgment in his or her favor, the claimant must show by a preponderance of the evidence that:

(a) The claimant was convicted of one or more felonies in state court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant

A-27

was not serving a term of imprisonment or a concurrent sentence for any crime other than those that are the basis for the compensation claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the compensation claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new information or, if a new trial was ordered following the presentation of significant new information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed;

(d) The claimant did not engage in any illegal conduct alleged in the accusatory instrument; and

(e) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later proven to be false, does not constitute perjury or fabricated evidence under this subsection. Evidence of a guilty plea or confession later proven to be false may be considered by the trier of fact in determining a claim for compensation under this chapter.

(2) Any pardon or proclamation issued to the claimant by the governor shall be admissible as evidence when it is certified by the officer having lawful custody of the pardon or proclamation, with the seal of the office of the governor affixed, or with the official certificate of such officer.

(3) In exercising its discretion regarding the weight and admissibility of evidence, the court shall give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the parties.

(4) The claimant shall not be compensated for any period of time in which he or she was serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the compensation claim.

(5) If the jury or, in the case where the right to a jury is waived, the court finds by a preponderance of the evidence that the claimant was wrongly convicted, the court shall award the claimant and order the county to pay the following compensation, as adjusted for partial years served and to account for inflation from the effective date of this section:

(a) Monetary damages in an amount not less than:

(i) Fifty thousand dollars for each year of actual confinement including time spent awaiting trial; and

(ii) Fifty thousand dollars for each year served on death row; and

(iii) Twenty-five thousand dollars for each year served on parole, community custody, or as a registered sex offender pursuant only to the felony or felonies which are grounds for the compensation claim;

(b) Compensation for child support payments owed by the claimant that became due and interest on child support arrearages that accrued while the claimant was in custody on the felony or felonies which are grounds for the compensation claim. Such funds shall be paid on the claimant's behalf in a lump sum payment to the department of social and health services for distribution to the obligee under the child support order;

(c) Reimbursement for all restitution, assessments, fees, court costs, and all other sums paid by the claimant as required by pretrial orders and the judgment and sentence;

(d) Higher education tuition waivers for the claimant and all qualifying children as provided in section 10 of this act;

(e) Up to ten years of eligibility to participate in the health and dental insurance plans and contracts offered by the public employees' benefits board. The court shall issue an order directing the health care authority to enroll the claimant and his or her dependent children and spouse or domestic partner under an appropriate existing eligibility type, as provided for in section 11 of this act. The court order must specify the amount of time for which the claimant and his or her dependent children and spouse or domestic partner are eligible to receive benefits, and that the claimant and his or her dependents

A-28

shall not be responsible for any costs associated with participation; and

(f) Reasonable attorneys' fees for successfully bringing the wrongful conviction claim. The attorneys' fees shall be calculated at ten percent of the monetary damage awarded under subsection (5) (a) of this section, plus expenses. However, attorneys' fees, exclusive of expenses, shall not exceed seventy-five thousand dollars. These fees shall not be deducted from the compensation due to the claimant and counsel shall not be entitled to receive additional fees from the client. The court may not award any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongly convicted.

(6) The compensation and damage award shall not include any punitive damages.

(7) The compensation and damage award shall not be offset by any expenses incurred by the state, the county, or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant. The court shall not offset against the award the value of any services or reduction in fees for services to be provided to the claimant as part of the damages awarded to the claimant pursuant to this section.

(8) Compensation awarded under this act shall not be considered income for tax purposes.

(9)(a) Upon finding that the claimant was wrongly convicted, the court shall seal the claimant's record of conviction.

(b) Upon request of the claimant, the court may order the claimant's record of conviction vacated if the record has not already been vacated, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 shall not apply.

(10) Upon request of the claimant, the court shall refer the claimant to the department of corrections or the department of social and health services for access to reentry services, if available, including but not limited to the community-based transition programs and long-term support programs for education, mentoring, life skills training, assessment, job skills development, mental health and substance abuse treatment.

NEW SECTION. Sec. 7 (1) On or after the effective date of this section, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in section 4(1)(c)(ii) of this act, the court shall provide to the claimant a copy of sections 2 through 11 of this act at the time the relief is granted.

(2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after the effective date of this section, shall provide a copy of sections 2 through 11 of this act to the individual pardoned.

(3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she shall have an additional twelve months, beyond the statute of limitations under section 9 of this act, to bring a claim under this chapter.

NEW SECTION. Sec. 8 (1) As a condition of accepting compensation under this chapter, the claimant forfeits all other claims related to the underlying wrongful conviction cognizable under state tort law. However, nothing in this chapter precludes any federal remedy available to the claimant related to his or her wrongful conviction and imprisonment.

(2) In the event that the claimant receives a federal tort award related to his or her wrongful conviction and incarceration, the claimant shall reimburse the entity that provided compensation under this act for the amount of compensation received or the amount received by the claimant under the tort award, whichever is less.

(3) The county may not assert as a defense to a claim under this chapter a release dismissal agreement, plea agreement, or any similar agreement whereby the prosecutor's office or an agent acting on its behalf agrees to take or refrain from certain action if the accused individual agrees to

A.29

forgo legal action against the county, the state of Washington, or any political subdivision.

(4) If the county does not pay the claim within one hundred eighty days of the court order, the court shall order the state to satisfy the judgment. Upon payment by the state, the state is entitled to reimbursement, from the county named as the adverse party in the compensation claim, in an amount equal to the value of the claim paid and any reasonable fees and interest imposed by the court.

NEW SECTION. Sec. 9 Except as provided in section 7(3) of this act, an action for compensation under this chapter must be commenced within three years after the grant of a pardon, the grant of judicial relief and satisfaction of other conditions described in section 5 of this act, or release from custody, whichever is later; provided, however, that any action by the state challenging or appealing the grant of judicial relief or release from custody shall toll the three-year period. Any persons meeting the criteria set forth in section 2 of this act who was wrongly convicted before the effective date of this section may commence an action under this chapter within three years after the effective date of this section.

NEW SECTION. Sec. 10 A new section is added to chapter 28B.15 RCW to read as follows:

(1) Subject to the conditions in subsection (2) of this section and the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, shall waive all tuition and fees for the following persons:

(a) A wrongly convicted person; and
 (b) Any child or stepchild of a wrongly convicted person who was born or became the stepchild of, or was adopted by, the wrongly convicted person before compensation is awarded under section 6 of this act.

(2) The following conditions apply to waivers under subsection (1) of this section:

(a) A wrongly convicted person must be a Washington domiciliary to be eligible for the tuition waiver.

(b) A child must be a Washington domiciliary between the age of seventeen and twenty-six to be eligible for the tuition waiver. A child's marital status does not affect eligibility.

(c) Each recipient's continued participation is subject to the school's satisfactory progress policy.

(d) Tuition waivers for graduate students are not required for those who qualify under subsection (1) of this section but are encouraged.

(e) Recipients who receive a waiver under subsection (1) of this section may attend full time or part time. Total credits earned using the waiver may not exceed two hundred quarter credits, or the equivalent of semester credits.

(3) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms of this section.

(4) For the purposes of this section:

(a) "Child" means a biological child, stepchild, or adopted child who was born of, became the stepchild of, or was adopted by a wrongly convicted person before compensation is awarded under section 6 of this act.

(b) "Fees" includes all assessments for costs incurred as a condition to a student's full participation in coursework and related activities at an institution of higher education.

(c) "Washington domiciliary" means a person whose true, fixed, and permanent house and place of habitation is the state of Washington. In ascertaining whether a wrongly convicted person or child is domiciled in the state of Washington, public institutions of higher education shall, to the fullest extent possible, rely upon the standards provided in RCW 28B.15.013.

(d) "Wrongly convicted person" means a Washington domiciliary who was awarded damages under section 6 of this act.

A 30

NEW SECTION. **Sec. 11** A new section is added to chapter 41.05 RCW to read as follows:

(1) An individual who was awarded damages under section 6 of this act and his or her dependent children and spouse or domestic partner are eligible to participate in the health insurance plans and contracts offered by the public employees' benefits board as prescribed by court order, and none of those persons eligible under this section are responsible for any costs associated with that participation.

(2) The health care authority, upon receipt of the court order, shall enroll the individual and his or her dependent children and spouse or domestic partner in a health insurance plan under an appropriate existing eligibility type in compliance with the terms and conditions of the court order.

(3) The director shall adopt rules under RCW 41.50.050 as the director may find necessary to implement this section and to avoid conflicts with any applicable federal or state laws. However, nothing in this section requires the director or the health care authority to develop a new eligibility type.

NEW SECTION. **Sec. 12** A new section is added to chapter 72.09 RCW to read as follows:

When a court refers a person to the department under section 6 of this act as part of the person's award in a wrongful conviction claim, the department shall provide reasonable access to existing reentry programs and services. Nothing in this section requires the department to establish new reentry programs or services.

NEW SECTION. **Sec. 13** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 14** Sections 1 through 9 and 13 of this act constitute a new chapter in Title 4 RCW.

--- END ---

A - 31

BILL REQ. #: H-3452.4

SUBSTITUTE HOUSE BILL 2221

State of Washington**62nd Legislature****2012 Regular Session**

By House Judiciary (originally sponsored by Representatives Orwall, Appleton, Jinkins, Pollet, Upthegrove, Roberts, and Kagi)

READ FIRST TIME 01/26/12.

AN ACT Relating to creating a claim for wrongful conviction and imprisonment; adding a new section to chapter 28B.15 RCW; adding a new section to chapter 41.05 RCW; adding a new section to chapter 72.09 RCW; and adding a new chapter to Title 4 RCW.

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

NEW SECTION. Sec. 1 The legislature finds that persons convicted and imprisoned for crimes they did not commit have been uniquely victimized. They have suffered tremendous injustice by being stripped of their lives and liberty, forced to endure prison for a crime they did not commit. A majority of those wrongly convicted do not have legal redress to recover damages in order to restore their lives. The legislature intends to provide redress for those who have been wrongly convicted in Washington state, in recognition of the lost years of their lives and the unique challenges they face after exoneration. The legislature further intends that claims be paid by the county in which the wrongful conviction occurred, and that no person found wrongly convicted in this state be deprived of his or her award once a judgment has been successfully secured.

NEW SECTION. Sec. 2 (1) Any person convicted in superior court and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation and monetary damages against the county in which he or she was convicted.

(2) For purposes of this chapter, a person is:

(a) "Actually innocent" of a felony if he or she did not engage in any illegal conduct alleged in the charging documents; and

(b) "Wrongly convicted" if he or she was charged, convicted, and imprisoned for one or more felonies of which he or she is actually innocent.

(3)(a) If the person entitled to file a claim under subsection (1) of this section is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be filed on behalf of the claimant by an authorized agent.

(b) A claim filed under this chapter survives to the personal representative of the claimant as provided in RCW 4.20.046.

NEW SECTION. Sec. 3 (1) All claims under this chapter shall be filed in superior court. The venue for such actions shall be governed by RCW 4.12.020.

A-32

(2) Service of the summons and complaint shall be governed by RCW 4.28.080.

(3) The attorney general shall represent any county named as the adverse party in a claim under this chapter.

NEW SECTION. Sec. 4 (1) In order to file an actionable claim for wrongful conviction and imprisonment, the claimant must establish by documentary evidence that:

(a) The claimant has been convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new exculpatory information or, if a new trial was ordered following the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed; and

(d) The claim is not time barred by section 9 of this act.

(2) In addition to the requirements in subsection (1) of this section, the claim shall state facts in sufficient detail for the finder of fact to determine that:

(a) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later proven to be false, does not constitute perjury or fabricated evidence under this subsection.

(3) Convictions vacated, overturned, or subject to resentencing pursuant to *In re: Personal Detention of Andress*, 147 Wn.2d 602 (2002) may not serve as the basis for a claim under this chapter unless the claimant otherwise satisfies the qualifying criteria set forth in section 2 of this act and this section.

(4) The claimant shall verify the claim unless he or she is incapacitated, in which case the personal representative or agent filing on behalf of the claimant shall verify the claim.

(5) If the attorney general concedes that the claimant was wrongly convicted, the court shall award compensation as provided in section 6 of this act.

(6)(a) If the attorney general does not concede that the claimant was wrongly convicted and the court finds after reading the claim that the claimant does not meet the filing criteria set forth in this section, it shall dismiss the claim, either on its own motion or on the motion of the attorney general.

(b) If the court dismisses the claim, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law.

NEW SECTION. Sec. 5 Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action shall be de novo.

NEW SECTION. Sec. 6 (1) In order to obtain a judgment in his or her favor, the claimant must show by clear and convincing evidence that:

(a) The claimant was convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant

A-33

was not serving a term of imprisonment or a concurrent sentence for any conviction other than those that are the basis for the claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new exculpatory information or, if a new trial was ordered following the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed;

(d) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(e) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later proven to be false, does not constitute perjury or fabricated evidence under this subsection. Evidence of a guilty plea or confession later proven to be false may be considered by the trier of fact in determining a claim for compensation under this chapter.

(2) Any pardon or proclamation issued to the claimant by the governor shall be admissible as evidence when it is certified by the officer having lawful custody of the pardon or proclamation, with the seal of the office of the governor affixed, or with the official certificate of such officer.

(3) In exercising its discretion regarding the weight and admissibility of evidence, the court shall give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the parties.

(4) The claimant shall not be compensated for any period of time in which he or she was serving a term of imprisonment or a concurrent sentence for any conviction other than the felony or felonies that are the basis for the claim.

(5) If the jury or, in the case where the right to a jury is waived, the court finds by clear and convincing evidence that the claimant was wrongly convicted, the court shall order the county to pay the claimant the following monetary damages, as adjusted for partial years served and to account for inflation from the effective date of this section:

(a) Fifty thousand dollars for each year of actual confinement including time spent awaiting trial and an additional fifty thousand dollars for each year served on death row;

(b) Twenty-five thousand dollars for each year served on parole, community custody, or as a registered sex offender pursuant only to the felony or felonies which are grounds for the claim;

(c) Reimbursement for all restitution, assessments, fees, court costs, and all other sums paid by the claimant as required by pretrial orders and the judgment and sentence; and

(d) Attorneys' fees for successfully bringing the wrongful conviction claim calculated at ten percent of the monetary damages awarded under subsection (5)(a) and (b) of this section. However, attorneys' fees shall not exceed seventy-five thousand dollars. These fees shall not be deducted from the compensation due to the claimant and counsel shall not be entitled to receive additional fees from the client related to the claim. The court may not award any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongly convicted.

(6) In addition to monetary damages and attorneys' fees awarded under subsection (5) of this section:

(a) The state shall waive any interest on child support arrearages that accrued while the claimant was in custody on the felony or felonies which are grounds for the claim.

(b) The claimant and his or her dependent children and spouse or registered domestic partner are eligible to participate in the health and dental insurance plans and contracts offered by the public employees' benefits board for a period of up to ten years following the date of judgment. Upon request of the claimant the court shall issue an order directing the health care authority to enroll the claimant and his or her dependent children and spouse or registered domestic partner under an appropriate existing nonemployee eligibility type, as provided for in section 11 of this act. The court order must

A-34

specify the amount of time for which the claimant and his or her dependent children and spouse or registered domestic partner are eligible to receive benefits, and that the claimant and his or her dependent children and spouse or registered domestic partner shall not be responsible for any premiums associated with participation.

(7) The compensation and monetary damages award shall not include any punitive damages.

(8) The compensation and monetary damages award shall not be offset by any expenses incurred by the state, the county, or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant. The court shall not offset against the monetary damages award the value of any services or reduction in fees for services to be provided to the claimant as part of the award under this section.

(9) Compensation awarded under this act is not income for tax purposes.

(10)(a) Upon finding that the claimant was wrongly convicted, the court shall seal the claimant's record of conviction.

(b) Upon request of the claimant, the court may order the claimant's record of conviction vacated if the record has not already been vacated, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 shall not apply.

(11) Upon request of the claimant, the court shall refer the claimant to the department of corrections or the department of social and health services for access to reentry services, if available, including but not limited to the community-based transition programs and long-term support programs for education, mentoring, life skills training, assessment, job skills development, mental health and substance abuse treatment.

NEW SECTION. Sec. 7 (1) On or after the effective date of this section, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in section 4(1)(c)(ii) of this act, the court shall provide to the claimant a copy of sections 2 through 11 of this act at the time the relief is granted.

(2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after the effective date of this section, shall provide a copy of sections 2 through 11 of this act to the individual pardoned.

(3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she shall have an additional twelve months, beyond the statute of limitations under section 9 of this act, to bring a claim under this chapter.

NEW SECTION. Sec. 8 (1) As a condition of accepting compensation under this chapter, the claimant forfeits all other claims related to the underlying wrongful conviction cognizable under state tort law. However, nothing in this chapter precludes any federal remedy available to the claimant related to his or her wrongful conviction and imprisonment.

(2) In the event that the claimant receives a federal tort award related to his or her wrongful conviction and incarceration, the claimant shall reimburse the entity that provided compensation under this act for the amount of compensation received or the amount received by the claimant under the tort award, whichever is less.

(3) A release dismissal agreement, plea agreement, or any similar agreement whereby the prosecutor's office or an agent acting on its behalf agrees to take or refrain from certain action if the accused individual agrees to forgo legal action against the county, the state of Washington, or any political subdivision, is admissible and should be evaluated in light of all the evidence. However, any such agreement is not dispositive of the question of whether the claimant was wrongly convicted or entitled to compensation under this act.

(4) The county is responsible for monetary damages awarded under this chapter. Nothing in this

A-35

chapter shall preclude the county from satisfying its obligation through risk pool or insurance coverage.

(5) If the county does not pay the claim within one hundred eighty days of the court order, the court shall order the state to satisfy the judgment. Upon payment by the state, the state is entitled to reimbursement, from the county named as the adverse party in the claim, in an amount equal to the value of the claim paid and any reasonable fees and interest imposed by the court.

NEW SECTION. Sec. 9 Except as provided in section 7(3) of this act, an action for compensation under this chapter must be commenced within three years after the grant of a pardon, the grant of judicial relief and satisfaction of other conditions described in section 4 of this act, or release from custody, whichever is later; provided, however, that any action by the state challenging or appealing the grant of judicial relief or release from custody shall toll the three-year period. Any persons meeting the criteria set forth in section 2 of this act who was wrongly convicted before the effective date of this section may commence an action under this chapter within three years after the effective date of this section.

NEW SECTION. Sec. 10 A new section is added to chapter 28B.15 RCW to read as follows:

(1) Subject to the conditions in subsection (2) of this section and the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, shall waive all tuition and fees for the following persons:

- (a) A wrongly convicted person; and
- (b) Any child or stepchild of a wrongly convicted person who was born or became the stepchild of, or was adopted by, the wrongly convicted person before compensation is awarded under section 6 of this act.

(2) The following conditions apply to waivers under subsection (1) of this section:

- (a) A wrongly convicted person must be a Washington domiciliary to be eligible for the tuition waiver.
- (b) A child must be a Washington domiciliary ages seventeen through twenty-six years to be eligible for the tuition waiver. A child's marital status does not affect eligibility.
- (c) Each recipient's continued participation is subject to the school's satisfactory progress policy.
- (d) Tuition waivers for graduate students are not required for those who qualify under subsection (1) of this section but are encouraged.
- (e) Recipients who receive a waiver under subsection (1) of this section may attend full time or part time. Total credits earned using the waiver may not exceed two hundred quarter credits, or the equivalent of semester credits.

(3) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms of this section.

(4) For the purposes of this section:

- (a) "Child" means a biological child, stepchild, or adopted child who was born of, became the stepchild of, or was adopted by a wrongly convicted person before compensation is awarded under section 6 of this act.
- (b) "Fees" includes all assessments for costs incurred as a condition to a student's full participation in coursework and related activities at an institution of higher education.
- (c) "Washington domiciliary" means a person whose true, fixed, and permanent house and place of habitation is the state of Washington. In ascertaining whether a wrongly convicted person or child is domiciled in the state of Washington, public institutions of higher education shall, to the fullest extent possible, rely upon the standards provided in RCW 28B.15.013.

(d) "Wrongly convicted person" means a Washington domiciliary who was awarded damages under section 6 of this act.

A-36

NEW SECTION. Sec. 11 A new section is added to chapter 41.05 RCW to read as follows:

(1) An individual who was awarded a judgment in his or her favor under section 6 of this act and his or her dependent children and spouse or registered domestic partner are eligible to participate in the health insurance plans and contracts offered by the public employees' benefits board as prescribed by court order, and none of those persons eligible under this section are responsible for any premiums associated with that participation.

(2) The health care authority, upon receipt of the court order, shall enroll the individual and his or her dependent children and spouse or registered domestic partner in a health insurance plan under an appropriate existing nonemployee eligibility type in compliance with the terms and conditions of the court order.

(3) The director shall adopt rules under RCW 41.05.050 as the director may find necessary to implement this section and to avoid conflicts with any applicable federal or state laws. However, nothing in this section requires the director or the health care authority to develop a new eligibility type.

NEW SECTION. Sec. 12 A new section is added to chapter 72.09 RCW to read as follows:

When a court refers a person to the department under section 6 of this act as part of the person's award in a wrongful conviction claim, the department shall provide reasonable access to existing reentry programs and services. Nothing in this section requires the department to establish new reentry programs or services.

NEW SECTION. Sec. 13 If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 14 Sections 1 through 9 of this act constitute a new chapter in Title 4 RCW.

--- END ---

A. 37

BILL REQ. #: H-0484.1

HOUSE BILL 1341

State of Washington**63rd Legislature****2013 Regular Session**

By Representatives Orwall, Goodman, Pollet, Jenkins, Carlyle, Roberts, Appleton, Hunt, Upthegrove, Green, Kagi, Seaquist, Moeller, Kirby, Santos, Ryu, Pedersen, and Moscoso

Read first time 01/23/13. Referred to Committee on Judiciary.

AN ACT Relating to creating a claim for compensation for wrongful conviction and imprisonment; adding a new section to chapter 28B.15 RCW; adding a new section to chapter 72.09 RCW; and adding a new chapter to Title 4 RCW.

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

NEW SECTION. Sec. 1 The legislature recognizes that persons convicted and imprisoned for crimes they did not commit have been uniquely victimized. Having suffered tremendous injustice by being stripped of their lives and liberty, they are forced to endure imprisonment and are later stigmatized as felons. A majority of those wrongly convicted in Washington state have no remedy available under the law for the destruction of their personal lives resulting from errors in our criminal justice system. The legislature intends to provide an avenue for those who have been wrongly convicted in Washington state to redress the lost years of their lives, and help to address the unique challenges faced by the wrongly convicted after exoneration.

NEW SECTION. Sec. 2 (1) Any person convicted in superior court and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation against the state.

(2) For purposes of this chapter, a person is:

(a) "Actually innocent" of a felony if he or she did not engage in any illegal conduct alleged in the charging documents; and

(b) "Wrongly convicted" if he or she was charged, convicted, and imprisoned for one or more felonies of which he or she is actually innocent.

(3)(a) If the person entitled to file a claim under subsection (1) of this section is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be filed on behalf of the claimant by an authorized agent.

(b) A claim filed under this chapter survives to the personal representative of the claimant as provided in RCW 4.20.046.

NEW SECTION. Sec. 3 (1) All claims under this chapter shall be filed in superior court. The venue for such actions shall be governed by RCW 4.12.020.

(2) Service of the summons and complaint shall be governed by RCW 4.28.080.

A-38

NEW SECTION. Sec. 4 (1) In order to file an actionable claim for compensation under this act, the claimant must establish by documentary evidence that:

- (a) The claimant has been convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence;
- (b)(i) The claimant is not currently incarcerated for any offense; and
- (ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the claim;
- (c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or
- (ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new exculpatory information or, if a new trial was ordered following the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed;
- (d) The claim is not time barred by section 9 of this act.

(2) In addition to the requirements in subsection (1) of this section, the claimant shall state facts in sufficient detail for the finder of fact to determine that:

- (a) The claimant did not engage in any illegal conduct alleged in the charging documents; and
- (b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not constitute perjury or fabricated evidence under this subsection.

(3) Convictions vacated, overturned, or subject to resentencing pursuant to *In re: Personal Detention of Andress*, 147 Wn.2d 602 (2002) may not serve as the basis for a claim under this chapter unless the claimant otherwise satisfies the qualifying criteria set forth in section 2 of this act and this section.

(4) The claimant shall verify the claim unless he or she is incapacitated, in which case the personal representative or agent filing on behalf of the claimant shall verify the claim.

(5) If the attorney general concedes that the claimant was wrongly convicted, the court shall award compensation as provided in section 6 of this act.

(6)(a) If the attorney general does not concede that the claimant was wrongly convicted and the court finds after reading the claim that the claimant does not meet the filing criteria set forth in this section, it may dismiss the claim, either on its own motion or on the motion of the attorney general.

(b) If the court dismisses the claim, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law.

NEW SECTION. Sec. 5 Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action shall be de novo.

NEW SECTION. Sec. 6 (1) In order to obtain a judgment in his or her favor, the claimant must show by clear and convincing evidence that:

- (a) The claimant was convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;
- (b)(i) The claimant is not currently incarcerated for any offense; and
- (ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any conviction other than those that are the basis for the claim;
- (c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or

A-39

felonies that are the basis for the claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new exculpatory information or, if a new trial was ordered following the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed;

(d) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(e) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not constitute perjury or fabricated evidence under this subsection.

(2) Any pardon or proclamation issued to the claimant by the governor shall be admissible as evidence when it is certified by the officer having lawful custody of the pardon or proclamation, with the seal of the office of the governor affixed, or with the official certificate of such officer.

(3) In exercising its discretion regarding the weight and admissibility of evidence, the court shall give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the parties.

(4) The claimant shall not be compensated for any period of time in which he or she was serving a term of imprisonment or a concurrent sentence for any conviction other than the felony or felonies that are the basis for the claim.

(5) If the jury or, in the case where the right to a jury is waived, the court finds by clear and convincing evidence that the claimant was wrongly convicted, the court shall order the state to pay the claimant the following compensation award, as adjusted for partial years served and to account for inflation from the effective date of this section:

(a) Fifty thousand dollars for each year of actual confinement including time spent awaiting trial and an additional fifty thousand dollars for each year served on death row;

(b) Twenty-five thousand dollars for each year served on parole, community custody, or as a registered sex offender pursuant only to the felony or felonies which are grounds for the claim;

(c) Compensation for child support payments owed by the claimant that became due and interest on child support arrearages that accrued while the claimant was in custody on the felony or felonies that are grounds for the compensation claim. The funds shall be paid on the claimant's behalf in a lump sum payment to the department of social and health services for disbursement under Title 26 RCW;

(d) Reimbursement for all restitution, assessments, fees, court costs, and all other sums paid by the claimant as required by pretrial orders and the judgment and sentence; and

(e) Attorneys' fees for successfully bringing the wrongful conviction claim calculated at ten percent of the monetary damages awarded under subsection (5)(a) and (b) of this section, plus expenses. However, attorneys' fees and expenses shall not exceed seventy-five thousand dollars. These fees shall not be deducted from the compensation award due to the claimant and counsel shall not be entitled to receive additional fees from the client related to the claim. The court may not award any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongly convicted.

(6) The compensation award shall not include any punitive damages.

(7) The compensation award shall not be offset by any expenses incurred by the state, the county, or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant. The court shall not offset against the compensation award the value of any services or reduction in fees for services to be provided to the claimant as part of the award under this section.

(8) The compensation award is not income for tax purposes, except attorneys' fees awarded under subsection (5)(e) of this section.

(9)(a) Upon finding that the claimant was wrongly convicted, the court shall seal the claimant's

A - 40

record of conviction.

(b) Upon request of the claimant, the court may order the claimant's record of conviction vacated if the record has not already been vacated, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 shall not apply.

(10) Upon request of the claimant, the court shall refer the claimant to the department of corrections or the department of social and health services for access to reentry services, if available, including but not limited to the community-based transition programs and long-term support programs for education, mentoring, life skills training, assessment, job skills development, mental health and substance abuse treatment.

NEW SECTION. Sec. 7 (1) On or after the effective date of this section, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in section 4 of this act, the court shall provide to the claimant a copy of sections 2 through 11 of this act at the time the relief is granted.

(2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after the effective date of this section, shall provide a copy of sections 2 through 11 of this act to the individual pardoned.

(3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she shall have an additional twelve months, beyond the statute of limitations under section 9 of this act, to bring a claim under this chapter.

NEW SECTION. Sec. 8 (1) Nothing in this chapter precludes any existing remedy available to the claimant related to his or her wrongful conviction and imprisonment.

(2) If a claimant is awarded compensation under this act and receives a tort award related to his or her wrongful conviction and incarceration, the claimant shall reimburse the state for the lesser of:

- (a) The amount of the compensation award, excluding the portion awarded pursuant to section 6(5) (c) through (e) of this act; or
- (b) The amount received by the claimant under the tort award.

(3) A release dismissal agreement, plea agreement, or any similar agreement whereby a prosecutor's office or an agent acting on its behalf agrees to take or refrain from certain action if the accused individual agrees to forgo legal action against the county, the state of Washington, or any political subdivision, is admissible and should be evaluated in light of all the evidence. However, any such agreement is not dispositive of the question of whether the claimant was wrongly convicted or entitled to compensation under this act.

NEW SECTION. Sec. 9 Except as provided in section 7 of this act, an action for compensation under this chapter must be commenced within three years after the grant of a pardon, the grant of judicial relief and satisfaction of other conditions described in section 2 of this act, or release from custody, whichever is later; provided, however, that any action by the state challenging or appealing the grant of judicial relief or release from custody shall toll the three-year period. Any persons meeting the criteria set forth in section 2 of this act who was wrongly convicted before the effective date of this section may commence an action under this chapter within three years after the effective date of this section.

NEW SECTION. Sec. 10 A new section is added to chapter 28B.15 RCW to read as follows:

(1) Subject to the conditions in subsection (2) of this section and the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, shall waive all tuition and fees for the following persons:

- (a) A wrongly convicted person; and

A-41

(b) Any child or stepchild of a wrongly convicted person who was born or became the stepchild of, or was adopted by, the wrongly convicted person before compensation is awarded under section 6 of this act.

(2) The following conditions apply to waivers under subsection (1) of this section:

(a) A wrongly convicted person must be a Washington domiciliary to be eligible for the tuition waiver.

(b) A child must be a Washington domiciliary ages seventeen through twenty-six years to be eligible for the tuition waiver. A child's marital status does not affect eligibility.

(c) Each recipient's continued participation is subject to the school's satisfactory progress policy.

(d) Tuition waivers for graduate students are not required for those who qualify under subsection (1) of this section but are encouraged.

(e) Recipients who receive a waiver under subsection (1) of this section may attend full time or part time. Total credits earned using the waiver may not exceed two hundred quarter credits, or the equivalent of semester credits.

(3) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms of this section.

(4) For the purposes of this section:

(a) "Child" means a biological child, stepchild, or adopted child who was born of, became the stepchild of, or was adopted by a wrongly convicted person before compensation is awarded under section 6 of this act.

(b) "Fees" includes all assessments for costs incurred as a condition to a student's full participation in coursework and related activities at an institution of higher education.

(c) "Washington domiciliary" means a person whose true, fixed, and permanent house and place of habitation is the state of Washington. In ascertaining whether a wrongly convicted person or child is domiciled in the state of Washington, public institutions of higher education shall, to the fullest extent possible, rely upon the standards provided in RCW 28B.15.013.

(d) "Wrongly convicted person" means a Washington domiciliary who was awarded damages under section 6 of this act.

NEW SECTION. Sec. 11 A new section is added to chapter 72.09 RCW to read as follows:

When a court refers a person to the department under section 6 of this act as part of the person's award in a wrongful conviction claim, the department shall provide reasonable access to existing reentry programs and services. Nothing in this section requires the department to establish new reentry programs or services.

NEW SECTION. Sec. 12 If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 13 Sections 1 through 9 of this act constitute a new chapter in Title 4 RCW.

--- END ---

A-42

BILL REQ. #: H-1273.1

SUBSTITUTE HOUSE BILL 1341

State of Washington**63rd Legislature****2013 Regular Session**

By House Judiciary (originally sponsored by Representatives Orwall, Goodman, Pollet, Jinkins, Carlyle, Roberts, Appleton, Hunt, Upthegrove, Green, Kagi, Seaquist, Moeller, Kirby, Santos, Ryu, Pedersen, and Moscoso)

READ FIRST TIME 02/14/13.

AN ACT Relating to creating a claim for compensation for wrongful conviction and imprisonment; adding a new section to chapter 28B.15 RCW; adding a new section to chapter 72.09 RCW; and adding a new chapter to Title 4 RCW.

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

NEW SECTION. Sec. 1 The legislature recognizes that persons convicted and imprisoned for crimes they did not commit have been uniquely victimized. Having suffered tremendous injustice by being stripped of their lives and liberty, they are forced to endure imprisonment and are later stigmatized as felons. A majority of those wrongly convicted in Washington state have no remedy available under the law for the destruction of their personal lives resulting from errors in our criminal justice system. The legislature intends to provide an avenue for those who have been wrongly convicted in Washington state to redress the lost years of their lives, and help to address the unique challenges faced by the wrongly convicted after exoneration.

NEW SECTION. Sec. 2 (1) Any person convicted in superior court and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation against the state.

(2) For purposes of this chapter, a person is:

(a) "Actually innocent" of a felony if he or she did not engage in any illegal conduct alleged in the charging documents; and

(b) "Wrongly convicted" if he or she was charged, convicted, and imprisoned for one or more felonies of which he or she is actually innocent.

(3)(a) If the person entitled to file a claim under subsection (1) of this section is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be filed on behalf of the claimant by an authorized agent.

(b) A claim filed under this chapter survives to the personal representative of the claimant as provided in RCW 4.20.046.

A-43

NEW SECTION. Sec. 3 (1) All claims under this chapter shall be filed in superior court. The venue for such actions shall be governed by RCW 4.12.020.

(2) Service of the summons and complaint shall be governed by RCW 4.28.080.

NEW SECTION. Sec. 4 (1) In order to file an actionable claim for compensation under this act, the claimant must establish by documentary evidence that:

(a) The claimant has been convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new exculpatory information or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed; and

(d) The claim is not time barred by section 9 of this act.

(2) In addition to the requirements in subsection (1) of this section, the claimant shall state facts in sufficient detail for the finder of fact to determine that:

(a) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.

(3) Convictions vacated, overturned, or subject to resentencing pursuant to *In re: Personal Detention of Andress*, 147 Wn.2d 602 (2002) may not serve as the basis for a claim under this chapter unless the claimant otherwise satisfies the qualifying criteria set forth in section 2 of this act and this section.

(4) The claimant shall verify the claim unless he or she is incapacitated, in which case the personal representative or agent filing on behalf of the claimant shall verify the claim.

(5) If the attorney general concedes that the claimant was wrongly convicted, the court shall award compensation as provided in section 6 of this act.

(6)(a) If the attorney general does not concede that the claimant was wrongly convicted and the court finds after reading the claim that the claimant does not meet the filing criteria set forth in this section, it may dismiss the claim, either on its own motion or on the motion of the attorney general.

(b) If the court dismisses the claim, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law.

NEW SECTION. Sec. 5 Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action shall be de novo.

NEW SECTION. Sec. 6 (1) In order to obtain a judgment in his or her favor, the claimant must show by clear and convincing evidence that:

(a) The claimant was convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

A-44

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any conviction other than those that are the basis for the claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the accusatory instrument dismissed on the basis of significant new exculpatory information or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed;

(d) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(e) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.

(2) Any pardon or proclamation issued to the claimant must be certified by the officer having lawful custody of the pardon or proclamation, and be affixed with the seal of the office of the governor, or with the official certificate of such officer before it may be offered as evidence.

(3) In exercising its discretion regarding the weight and admissibility of evidence, the court shall give due consideration to difficulties of proof caused by the passage of time or by release of evidence pursuant to a plea, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the parties.

(4) The claimant shall not be compensated for any period of time in which he or she was serving a term of imprisonment or a concurrent sentence for any conviction other than the felony or felonies that are the basis for the claim.

(5) If the jury or, in the case where the right to a jury is waived, the court finds by clear and convincing evidence that the claimant was wrongly convicted, the court shall order the state to pay the actually innocent claimant the following compensation award, as adjusted for partial years served and to account for inflation from the effective date of this section:

(a) Fifty thousand dollars for each year of actual confinement including time spent awaiting trial and an additional fifty thousand dollars for each year served on death row;

(b) Twenty-five thousand dollars for each year served on parole, community custody, or as a registered sex offender pursuant only to the felony or felonies which are grounds for the claim;

(c) Compensation for child support payments owed by the claimant that became due and interest on child support arrearages that accrued while the claimant was in custody on the felony or felonies that are grounds for the compensation claim. The funds shall be paid on the claimant's behalf in a lump sum payment to the department of social and health services for disbursement under Title 26 RCW;

(d) Reimbursement for all restitution, assessments, fees, court costs, and all other sums paid by the claimant as required by pretrial orders and the judgment and sentence; and

(e) Attorneys' fees for successfully bringing the wrongful conviction claim calculated at ten percent of the monetary damages awarded under subsection (5)(a) and (b) of this section, plus expenses. However, attorneys' fees and expenses shall not exceed seventy-five thousand dollars. These fees shall not be deducted from the compensation award due to the claimant and counsel shall not be entitled to receive additional fees from the client related to the claim. The court may not award any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongly convicted.

(6) The compensation award shall not include any punitive damages.

(7) The compensation award shall not be offset by any expenses incurred by the state, the county, or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant. The court shall not

A-45

offset against the compensation award the value of any services or reduction in fees for services to be provided to the claimant as part of the award under this section.

(8) The compensation award is not income for tax purposes, except attorneys' fees awarded under subsection (5)(e) of this section.

(9)(a) Upon finding that the claimant was wrongly convicted, the court shall seal the claimant's record of conviction.

(b) Upon request of the claimant, the court may order the claimant's record of conviction vacated if the record has not already been vacated, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 shall not apply.

(10) Upon request of the claimant, the court shall refer the claimant to the department of corrections or the department of social and health services for access to reentry services, if available, including but not limited to the community-based transition programs and long-term support programs for education, mentoring, life skills training, assessment, job skills development, mental health and substance abuse treatment.

NEW SECTION. Sec. 7 (1) On or after the effective date of this section, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in section 4 of this act, the court shall provide to the claimant a copy of sections 2 through 11 of this act at the time the relief is granted.

(2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after the effective date of this section, shall provide a copy of sections 2 through 11 of this act to the individual pardoned.

(3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she shall have an additional twelve months, beyond the statute of limitations under section 9 of this act, to bring a claim under this chapter.

NEW SECTION. Sec. 8 (1) Nothing in this chapter precludes any existing remedy available to the claimant related to his or her wrongful conviction and imprisonment.

(2) If a claimant is awarded compensation under this act and receives a tort award related to his or her wrongful conviction and incarceration, the claimant shall reimburse the state for the lesser of:

(a) The amount of the compensation award, excluding the portion awarded pursuant to section 6(5)(c) through (e) of this act; or

(b) The amount received by the claimant under the tort award.

(3) A release dismissal agreement, plea agreement, or any similar agreement whereby a prosecutor's office or an agent acting on its behalf agrees to take or refrain from certain action if the accused individual agrees to forgo legal action against the county, the state of Washington, or any political subdivision, is admissible and should be evaluated in light of all the evidence. However, any such agreement is not dispositive of the question of whether the claimant was wrongly convicted or entitled to compensation under this act.

NEW SECTION. Sec. 9 Except as provided in section 7 of this act, an action for compensation under this chapter must be commenced within three years after the grant of a pardon, the grant of judicial relief and satisfaction of other conditions described in section 2 of this act, or release from custody, whichever is later; provided, however, that any action by the state challenging or appealing the grant of judicial relief or release from custody shall toll the three-year period. Any persons meeting the criteria set forth in section 2 of this act who was wrongly convicted before the effective date of this section may commence an action under this chapter within three years after the effective date of this section.

A 46

NEW SECTION. Sec. 10 A new section is added to chapter 28B.15 RCW to read as follows:

(1) Subject to the conditions in subsection (2) of this section and the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, shall waive all tuition and fees for the following persons:

(a) A wrongly convicted person; and
(b) Any child or stepchild of a wrongly convicted person who was born or became the stepchild of, or was adopted by, the wrongly convicted person before compensation is awarded under section 6 of this act.

(2) The following conditions apply to waivers under subsection (1) of this section:

(a) A wrongly convicted person must be a Washington domiciliary to be eligible for the tuition waiver.

(b) A child must be a Washington domiciliary ages seventeen through twenty-six years to be eligible for the tuition waiver. A child's marital status does not affect eligibility.

(c) Each recipient's continued participation is subject to the school's satisfactory progress policy.

(d) Tuition waivers for graduate students are not required for those who qualify under subsection (1) of this section but are encouraged.

(e) Recipients who receive a waiver under subsection (1) of this section may attend full time or part time. Total credits earned using the waiver may not exceed two hundred quarter credits, or the equivalent of semester credits.

(3) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms of this section.

(4) For the purposes of this section:

(a) "Child" means a biological child, stepchild, or adopted child who was born of, became the stepchild of, or was adopted by a wrongly convicted person before compensation is awarded under section 6 of this act.

(b) "Fees" includes all assessments for costs incurred as a condition to a student's full participation in coursework and related activities at an institution of higher education.

(c) "Washington domiciliary" means a person whose true, fixed, and permanent house and place of habitation is the state of Washington. In ascertaining whether a wrongly convicted person or child is domiciled in the state of Washington, public institutions of higher education shall, to the fullest extent possible, rely upon the standards provided in RCW 28B.15.013.

(d) "Wrongly convicted person" means a Washington domiciliary who was awarded damages under section 6 of this act.

NEW SECTION. Sec. 11 A new section is added to chapter 72.09 RCW to read as follows:

When a court refers a person to the department under section 6 of this act as part of the person's award in a wrongful conviction claim, the department shall provide reasonable access to existing reentry programs and services. Nothing in this section requires the department to establish new reentry programs or services.

NEW SECTION. Sec. 12 If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 13 Sections 1 through 9 of this act constitute a new chapter in Title 4 RCW.

--- END ---

A-47

ENGROSSED SUBSTITUTE HOUSE BILL 1341

State of Washington**63rd Legislature****2013 Regular Session**

By House Judiciary (originally sponsored by Representatives Orwall, Goodman, Pollet, Jinkins, Carlyle, Roberts, Appleton, Hunt, Upthegrove, Green, Kagi, Seaquist, Moeller, Kirby, Santos, Ryu, Pedersen, and Moscoso)

READ FIRST TIME 02/14/13.

AN ACT Relating to creating a claim for compensation for wrongful conviction and imprisonment; adding a new section to chapter 28B.15 RCW; adding a new section to chapter 72.09 RCW; and adding a new chapter to Title 4 RCW.

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

NEW SECTION. Sec. 1 The legislature recognizes that persons convicted and imprisoned for crimes they did not commit have been uniquely victimized. Having suffered tremendous injustice by being stripped of their lives and liberty, they are forced to endure imprisonment and are later stigmatized as felons. A majority of those wrongly convicted in Washington state have no remedy available under the law for the destruction of their personal lives resulting from errors in our criminal justice system. The legislature intends to provide an avenue for those who have been wrongly convicted in Washington state to redress the lost years of their lives, and help to address the unique challenges faced by the wrongly convicted after exoneration.

NEW SECTION. Sec. 2 (1) Any person convicted in superior court and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation against the state.

(2) For purposes of this chapter, a person is:

(a) "Actually innocent" of a felony if he or she did not engage in any illegal conduct alleged in the charging documents; and

(b) "Wrongly convicted" if he or she was charged, convicted, and imprisoned for one or more felonies of which he or she is actually innocent.

(3)(a) If the person entitled to file a claim under subsection (1) of this section is incapacitated and incapable of filing the claim, or if he or she is a minor, or is a nonresident of the state, the claim may be filed on behalf of the claimant by an authorized agent.

(b) A claim filed under this chapter survives to the personal representative of the claimant as provided in RCW 4.20.046.

NEW SECTION. Sec. 3 (1) All claims under this chapter must be filed in superior court. The venue for such actions is governed by RCW 4.12.020.

(2) Service of the summons and complaint is governed by RCW 4.28.080.

A-48

NEW SECTION. Sec. 4 (1) In order to file an actionable claim for compensation under this act, the claimant must establish by documentary evidence that:

(a) The claimant has been convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that are the basis for the claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or felonies that are the basis for the claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the charging document dismissed on the basis of significant new exculpatory information or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the charging document dismissed; and

(d) The claim is not time barred by section 9 of this act.

(2) In addition to the requirements in subsection (1) of this section, the claimant shall state facts in sufficient detail for the finder of fact to determine that:

(a) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(b) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about the conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.

(3) Convictions vacated, overturned, or subject to resentencing pursuant to *In re: Personal Detention of Andress*, 147 Wn.2d 602 (2002) may not serve as the basis for a claim under this chapter unless the claimant otherwise satisfies the qualifying criteria set forth in section 2 of this act and this section.

(4) The claimant shall verify the claim unless he or she is incapacitated, in which case the personal representative or agent filing on behalf of the claimant shall verify the claim.

(5) If the attorney general concedes that the claimant was wrongly convicted, the court shall award compensation as provided in section 6 of this act.

(6)(a) If the attorney general does not concede that the claimant was wrongly convicted and the court finds after reading the claim that the claimant does not meet the filing criteria set forth in this section, it may dismiss the claim, either on its own motion or on the motion of the attorney general.

(b) If the court dismisses the claim, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law.

NEW SECTION. Sec. 5 Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions. In the case of dismissal of a claim, review of the superior court action is de novo.

NEW SECTION. Sec. 6 (1) In order to obtain a judgment in his or her favor, the claimant must show by clear and convincing evidence that:

(a) The claimant was convicted of one or more felonies in superior court and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence;

(b)(i) The claimant is not currently incarcerated for any offense; and

(ii) During the period of confinement for which the claimant is seeking compensation, the claimant was not serving a term of imprisonment or a concurrent sentence for any conviction other than those that are the basis for the claim;

(c)(i) The claimant has been pardoned on grounds consistent with innocence for the felony or

A-49

felonies that are the basis for the claim; or

(ii) The claimant's judgment of conviction was reversed or vacated and the charging document dismissed on the basis of significant new exculpatory information or, if a new trial was ordered pursuant to the presentation of significant new exculpatory information, either the claimant was found not guilty at the new trial or the claimant was not retried and the charging document dismissed;

(d) The claimant did not engage in any illegal conduct alleged in the charging documents; and

(e) The claimant did not commit or suborn perjury, or fabricate evidence to cause or bring about his or her conviction. A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection.

(2) Any pardon or proclamation issued to the claimant must be certified by the officer having lawful custody of the pardon or proclamation, and be affixed with the seal of the office of the governor, or with the official certificate of such officer before it may be offered as evidence.

(3) In exercising its discretion regarding the weight and admissibility of evidence, the court shall give due consideration to difficulties of proof caused by the passage of time or by release of evidence pursuant to a plea, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by the parties.

(4) The claimant may not be compensated for any period of time in which he or she was serving a term of imprisonment or a concurrent sentence for any conviction other than the felony or felonies that are the basis for the claim.

(5) If the jury or, in the case where the right to a jury is waived, the court finds by clear and convincing evidence that the claimant was wrongly convicted, the court shall order the state to pay the actually innocent claimant the following compensation award, as adjusted for partial years served and to account for inflation from the effective date of this section:

(a) Fifty thousand dollars for each year of actual confinement including time spent awaiting trial and an additional fifty thousand dollars for each year served under a sentence of death pursuant to chapter 10.95 RCW;

(b) Twenty-five thousand dollars for each year served on parole, community custody, or as a registered sex offender pursuant only to the felony or felonies which are grounds for the claim;

(c) Compensation for child support payments owed by the claimant that became due and interest on child support arrearages that accrued while the claimant was in custody on the felony or felonies that are grounds for the compensation claim. The funds must be paid on the claimant's behalf in a lump sum payment to the department of social and health services for disbursement under Title 26 RCW;

(d) Reimbursement for all restitution, assessments, fees, court costs, and all other sums paid by the claimant as required by pretrial orders and the judgment and sentence; and

(e) Attorneys' fees for successfully bringing the wrongful conviction claim calculated at ten percent of the monetary damages awarded under subsection (5)(a) and (b) of this section, plus expenses. However, attorneys' fees and expenses may not exceed seventy-five thousand dollars. These fees may not be deducted from the compensation award due to the claimant and counsel is not entitled to receive additional fees from the client related to the claim. The court may not award any attorneys' fees to the claimant if the claimant fails to prove he or she was wrongly convicted.

(6) The compensation award may not include any punitive damages.

(7) The court may not offset the compensation award by any expenses incurred by the state, the county, or any political subdivision of the state including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe, or provide medical services for the claimant. The court may not offset against the compensation award the value of any services or reduction in fees for services to be provided to the claimant as part of the award under this section.

(8) The compensation award is not income for tax purposes, except attorneys' fees awarded under

A - 50

subsection (5)(e) of this section.

(9)(a) Upon finding that the claimant was wrongly convicted, the court shall seal the claimant's record of conviction.

(b) Upon request of the claimant, the court may order the claimant's record of conviction vacated if the record has not already been vacated, expunged, or destroyed under court rules. The requirements for vacating records under RCW 9.94A.640 do not apply.

(10) Upon request of the claimant, the court shall refer the claimant to the department of corrections or the department of social and health services for access to reentry services, if available, including but not limited to the community-based transition programs and long-term support programs for education, mentoring, life skills training, assessment, job skills development, mental health and substance abuse treatment.

NEW SECTION. Sec. 7 (1) On or after the effective date of this section, when a court grants judicial relief, such as reversal and vacation of a person's conviction, consistent with the criteria established in section 4 of this act, the court shall provide to the claimant a copy of sections 2 through 11 of this act at the time the relief is granted.

(2) The clemency and pardons board or the indeterminate sentence review board, whichever is applicable, upon issuance of a pardon by the governor on grounds consistent with innocence on or after the effective date of this section, shall provide a copy of sections 2 through 11 of this act to the individual pardoned.

(3) If an individual entitled to receive the information required under this section shows that he or she was not provided with the information, he or she has an additional twelve months, beyond the statute of limitations under section 9 of this act, to bring a claim under this chapter.

NEW SECTION. Sec. 8 (1) Nothing in this chapter precludes any existing remedy available to the claimant related to his or her wrongful conviction and imprisonment.

(2) If a claimant is awarded compensation under this act and receives a tort award related to his or her wrongful conviction and incarceration, the claimant shall reimburse the state for the lesser of:

(a) The amount of the compensation award, excluding the portion awarded pursuant to section 6(5)(c) through (e) of this act; or

(b) The amount received by the claimant under the tort award.

(3) A release dismissal agreement, plea agreement, or any similar agreement whereby a prosecutor's office or an agent acting on its behalf agrees to take or refrain from certain action if the accused individual agrees to forgo legal action against the county, the state of Washington, or any political subdivision, is admissible and should be evaluated in light of all the evidence. However, any such agreement is not dispositive of the question of whether the claimant was wrongly convicted or entitled to compensation under this act.

NEW SECTION. Sec. 9 Except as provided in section 7 of this act, an action for compensation under this chapter must be commenced within three years after the grant of a pardon, the grant of judicial relief and satisfaction of other conditions described in section 2 of this act, or release from custody, whichever is later; provided, however, that any action by the state challenging or appealing the grant of judicial relief or release from custody tolls the three-year period. Any persons meeting the criteria set forth in section 2 of this act who was wrongly convicted before the effective date of this section may commence an action under this chapter within three years after the effective date of this section.

NEW SECTION. Sec. 10 A new section is added to chapter 28B.15 RCW to read as follows:

(1) Subject to the conditions in subsection (2) of this section and the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen

A-SI

State College, and the community colleges, shall waive all tuition and fees for the following persons:

(a) A wrongly convicted person; and
(b) Any child or stepchild of a wrongly convicted person who was born or became the stepchild of, or was adopted by, the wrongly convicted person before compensation is awarded under section 6 of this act.

(2) The following conditions apply to waivers under subsection (1) of this section:

(a) A wrongly convicted person must be a Washington domiciliary to be eligible for the tuition waiver.

(b) A child must be a Washington domiciliary ages seventeen through twenty-six years to be eligible for the tuition waiver. A child's marital status does not affect eligibility.

(c) Each recipient's continued participation is subject to the school's satisfactory progress policy.

(d) Tuition waivers for graduate students are not required for those who qualify under subsection (1) of this section but are encouraged.

(e) Recipients who receive a waiver under subsection (1) of this section may attend full time or part time. Total credits earned using the waiver may not exceed two hundred quarter credits, or the equivalent of semester credits.

(3) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms of this section.

(4) For the purposes of this section:

(a) "Child" means a biological child, stepchild, or adopted child who was born of, became the stepchild of, or was adopted by a wrongly convicted person before compensation is awarded under section 6 of this act.

(b) "Fees" includes all assessments for costs incurred as a condition to a student's full participation in coursework and related activities at an institution of higher education.

(c) "Washington domiciliary" means a person whose true, fixed, and permanent house and place of habitation is the state of Washington. In ascertaining whether a wrongly convicted person or child is domiciled in the state of Washington, public institutions of higher education shall, to the fullest extent possible, rely upon the standards provided in RCW 28B.15.013.

(d) "Wrongly convicted person" means a Washington domiciliary who was awarded damages under section 6 of this act.

NEW SECTION. Sec. 11 A new section is added to chapter 72.09 RCW to read as follows:

When a court refers a person to the department under section 6 of this act as part of the person's award in a wrongful conviction claim, the department shall provide reasonable access to existing reentry programs and services. Nothing in this section requires the department to establish new reentry programs or services.

NEW SECTION. Sec. 12 If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 13 Sections 1 through 9 of this act constitute a new chapter in Title 4 RCW.

--- END ---

A-52

**RECEIVED
SUPREME COURT
STATE OF WASHINGTON
CLERK'S OFFICE**

Sep 21, 2016, 11:31 am

RECEIVED ELECTRONICALLY

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ROBERT E. LARSON, TYLER
W. GASSMAN, and PAUL E.
STATLER,

Respondents,

v.

STATE OF WASHINGTON,

Petitioner.

NO. 93421-5

PROOF OF SERVICE

I, Pamela B. Loginsky, declare that I have personal knowledge of the matters set forth below and that I am competent to testify to the matters stated herein.

On September 21, 2016, I deposited in the mails of the United States of America, postage prepaid, an envelop containing a copy of Washington Association of Prosecuting Attorneys' Amicus Curiae Memorandum , a copy of the motion for leave to file the amicus curiae memorandum, curiae, and a copy of this proof of service addressed to:

Rebecca Glasgow
Deputy Solicitor General
PO Box 4100
Olympia, WA 98504

Melanie Tratnik
Richard L. Weber
Assistant Attorney Generals
PO Box 4100
Olympia, WA 98504

Toby J. Marshall
Terrell Marshall Law Group PLLC
936 North 34th Street, Suite 300
Seattle, WA 98103-8869

Matthew J. Zuchetto
Attorney at Law
905 W. Riverside Ave., Suite 505
Spokane, WA 99201

Boyd B. Mayo
Law Office of Boyd M. Mayo, PLLC
601 S. Division Street, Suite B
Spokane, WA 99202

On the 21st day of September, 2016, I also e-mailed a copy of the Washington Association of Prosecuting Attorneys' Amicus Curiae Memorandum, a copy of the motion for leave to file the amicus curiae memorandum, curiae, and a copy of this proof of service to:

Toby J. Marshall at tmarshall@terrellmarshall.com

Boyd B. Mayo at mack@bmayolaw.com

Matthew J. Zuchetto at zuchettolaw@gmail.com

Rebecca Glasgow at rebeccag@atg.wa.gov

Melanie Tratnik at melaniet@atg.wa.gov

Richard L. Weber at RickW2@atg.wa.gov

Signed under the penalty of perjury under the laws of the state of
Washington this 21st day of September, 2016, at Olympia, Washington.



Pamela B. Loginsky, WSBA #18096

Washington Association of Prosecuting Attorneys

206 10th Ave. SE

Olympia, WA 98501

Phone: (360) 753-2175

E-mail: pamloginsky@waprosecutors.org

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Wednesday, September 21, 2016 11:32 AM
To: 'Pam Loginsky'; Melanie Tratnik; rebeccag@ATG.WA.GOV; rickW2@ATG.WA.GOV; mack@bmayolaw.com; zuchettolaw@gmail.com; tmarshall@terrellmarshall.com
Subject: RE: Larson, Tyler and Statler v. State, No. 93421-5

Received 9/21/16.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

Questions about the Supreme Court Clerk's Office? Check out our website:

http://www.courts.wa.gov/appellate_trial_courts/supreme/clerks/

Looking for the Rules of Appellate Procedure? Here's a link to them:

http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=app&set=RAP

Searching for information about a case? Case search options can be found here:

<http://dw.courts.wa.gov/>

From: Pam Loginsky [mailto:Pamloginsky@waprosecutors.org]
Sent: Wednesday, September 21, 2016 11:13 AM
To: Melanie Tratnik <MelanieT@ATG.WA.GOV>; rebeccag@ATG.WA.GOV; rickW2@ATG.WA.GOV; mack@bmayolaw.com; OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>; zuchettolaw@gmail.com; tmarshall@terrellmarshall.com
Subject: Larson, Tyler and Statler v. State, No. 93421-5

Dear Clerk and Counsel:

Attached, for filing, is a motion for leave to file an amicus curiae memorandum, the amicus curiae memorandum, and a proof of service.

Please contact me if you should encounter any difficulty in opening the documents.

Sincerely,

Pam Loginsky
Staff Attorney
Washington Association of Prosecuting Attorneys
206 10th Ave. SE

•
• Olympia, WA 98501

Phone (360) 753-2175

Fax (360) 753-3943

E-mail pamloginsky@waprosecutors.org