

HOUSE BILL NO. 93

INTRODUCED BY K. SEEKINS-CROWE

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING COMPENSATION FOR PEOPLE WHO HAVE BEEN
WRONGLY CONVICTED OF FELONY CRIMES AND EXONERATED; PROVIDING A PROCEDURE FOR
FILING AND DETERMINING PETITIONS FOR COMPENSATION; PROVIDING FOR AN ELECTION OF
REMEDIES; EXCLUDING COMPENSATION FOR CONVICTION OF A CRIME NOW LEGAL; PROVIDING
FOR EXPUNGEMENT OF CONVICTION AND THE PAYMENT OF DAMAGES FOR SUCCESSFUL
PETITIONS; PROVIDING OFFSETS FOR DAMAGES OBTAINED IN OTHER LITIGATION; PROVIDING FOR
COUNTY AND CONSOLIDATED GOVERNMENT CONTRIBUTION TOWARD DAMAGES, COSTS, AND
ATTORNEY FEES AWARDED; CREATING A STATE SPECIAL REVENUE ACCOUNT; PROVIDING A
TRANSFER OF FUNDS; AMENDING SECTION 46-23-1041, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Definitions. As used in [sections 1 through 8], the following definitions
apply:

(1) "Claimant" means a person who:
(a) was convicted and subsequently imprisoned for one or more felony crimes that the person did
not commit;

(b) is not currently serving a term of imprisonment; and

(c) meets the requirements of [section 2].

(2) "Date of ~~exoneration~~ DISPOSITION" means the date of dismissal of the criminal charges against
~~the claimant or a finding of not guilty on retrial~~ CONVICTION AGAINST THE CLAIMANT OR A FINDING OF NOT GUILTY ON
RETRIAL OF A PRIOR CONVICTION.

(3) "Imprisonment" means a term of confinement of at least 6 months in a correctional institution as
defined in 45-2-101.

NEW SECTION. Section 2. Contents of petition -- establishment of claim for compensation. (1)

A claimant may bring a civil action against the state ~~or~~ AND THE county of conviction in the district court in which the conviction originated to seek the relief provided for in [section 6]. All claims of compensation are governed by the Montana Rules of Civil Procedure. The ~~claim~~ PETITION must be:

(a) ~~accompanied by a statement of facts explaining the basis of the claim, including if~~ INCLUDE A PRIMA FACIE SHOWING THAT THE CLAIMANT HAS RELIABLE FACTUAL EVIDENCE ESTABLISHING ALL THE ELEMENTS SET FORTH IN [SECTION 4(5)(A) THROUGH (5)(C)]:-

(i) ~~the charge for which the claimant seeks compensation was dismissed;~~

(ii) ~~the claimant was found not guilty at a retrial; or~~

(iii) ~~only if either (1)(a)(i) or (1)(a)(ii) is not met, a proffer establishing actual innocence;~~

(b) BE written and verified by the claimant under penalty of perjury; and

(c) BE filed within a period of 3 years after the date of ~~exoneration~~ DISPOSITION.

(2) A claimant convicted, imprisoned, and released from custody before July 1, 2025, who intends to bring an action under [sections 1 through 8] shall commence the action no later than July 1, 2028.

(3) All pleadings must be captioned as follows: "In the matter of the wrongful conviction of [name of claimant]."

(4) (a) A claimant may receive a transition assistance grant of \$5,000. The claimant shall verify by affidavit filed with the department of corrections that the claimant satisfies the requirements set forth in subsection (1), under penalty of perjury. Within 30 days of receiving the claimant's affidavit, the department of corrections shall issue the grant funds to the claimant.

(b) If the claimant fails to file a claim within the time period described in this section, or if the claim is denied by the district court, the claimant shall reimburse the state in the amount of \$5,000 within 1 year following receipt of the grant money.

(5) Nothing in [sections 1 through 8] permits a person who petitions a court for expungement of a felony conviction for a crime that is now legal under Title 16, chapter 12, to seek compensation for a wrongful conviction.

NEW SECTION. Section 3. Election of remedies. (1) ~~(a) Except as provided in subsection (1)(b), to~~
~~To be eligible to receive relief under [section 2], the claimant shall affirmatively waive any and all other~~
~~remedies, causes of action, and other forms of relief or compensation against the state, any political subdivision~~
~~of the state and their officers, employees, agents, and volunteers related to the claimant's wrongful conviction~~
~~and imprisonment. This waiver includes all state, common law, and federal claims for relief, including claims~~
~~pursuant to 42 U.S.C. 1983. The claimant shall execute a release of all claims against the state, any political~~
~~subdivision of the state, and their officers, employees, agents, and volunteers arising from the facts contained~~
~~in the petition prior to the payment of any damages or compensation or the receipt of a rental voucher under~~
~~46-23-1041. For the purposes of any insurance claim made for this type of claim, the date of exoneration~~
DISPOSITION is the occurrence date.

~~(b) If a claim filed pursuant to [sections 1 through 8] is denied, the claimant is not subject to the~~
~~restrictions as described in subsection (1)(a) and the waiver is void and may not be enforced.~~

(2) An individual who has a legal proceeding pending or in which judgment has been entered in
state or federal court seeking damages or relief for wrongful conviction or imprisonment based on facts that
could establish a cognizable claim pursuant to [sections 1 through 8] may not bring a claim under [section 2].

NEW SECTION. Section 4. Commencement of proceedings -- burden of proof. (1) A claimant is
entitled to a hearing in district court as expeditiously as possible after filing a claim for compensation.

(2) A claim filed pursuant to [sections 1 through 8] must be served on the department of justice
and the county of conviction. The department shall provide a defense for the state and the county of conviction
shall provide its own defense for claims filed under [sections 1 through 8].

(3) A claim filed under [sections 1 through 8] must be tried by a jury unless a jury trial is waived
upon agreement of the parties.

(4) If a claimant dies prior to filing or during pendency of a claim under [sections 1 through 8], the
person's estate may file or maintain a claim pursuant to [sections 1 through 8].

(5) The claimant must prove by ~~a preponderance of the~~ CLEAR AND CONVINCING evidence ~~that ALL~~
OF THE FOLLOWING:

(a) THAT the claimant did not commit the crime or crimes for which the claimant was convicted, did

1 not aid, abet, or act as an accomplice or accessory to a person who committed the acts that were the basis of
2 the conviction, and did not commit a lesser offense necessarily included in the crime for which the claimant was
3 convicted;

4 (b) THAT the claimant did not commit perjury under 45-7-201, fabricate evidence, or by the
5 claimant's own conduct cause or bring about the conviction. A confession or admission that is later found to be
6 false or a guilty plea that is withdrawn does not constitute committing perjury, fabricating evidence, or causing
7 or bringing about the conviction, and 45-7-201 does not apply.

8 (c) THAT the claimant's conviction was reversed or vacated and either the claimant was not retried
9 and the charges were dismissed, or the claimant was retried and was found not guilty, and the basis for
10 reversing or vacating the conviction was not legal error unrelated to factual innocence, AND THE CLAIMANT IS NOT
11 STILL SUBJECT TO PROSECUTION FOR THE SAME CRIME OR A LESSER INCLUDED OFFENSE OF THE SAME CRIME.

12 (6) The court, in exercising its discretion regarding the weight and admissibility of evidence
13 submitted under this section, may in the interest of justice give due consideration to difficulties of proof caused
14 by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not
15 caused by claimants, the state, the county of conviction, or those acting on their behalf.

16 (7) If the court finds that the claimant is entitled to judgment, the court shall enter a certificate of
17 innocence finding that the claimant is innocent of all crimes for which the claimant was mistakenly convicted.
18 The clerk of the court shall send a certified copy of the certificate of innocence and the judgment to the
19 department of justice and the county of conviction for payment pursuant to [sections 1 through 8].

20 (8) The decision of the district court may be appealed directly to the supreme court.
21

22 NEW SECTION. Section 5. Expungement. (1) Upon entry of a certificate of innocence, the court
23 shall order the associated convictions and arrest records expunged and purged from all applicable systems,
24 including both electronic and hard copy systems. The court shall enter the expungement order regardless of
25 whether the claimant has prior criminal convictions in other cases that are not the subject of the claim for
26 compensation.

27 (2) The order of expungement must state:

28 (a) the claimant's current full name;

(b) the claimant's full name at the time of arrest and conviction, if different from the claimant's current name;

(c) the claimant's sex, race, and date of birth;

(d) the crime for which the claimant was arrested and convicted;

(e) the date of the claimant's arrest and the date of the claimant's conviction; and

(f) the identity of the arresting law enforcement authority and the identity of the district court that rendered the conviction.

(3) The order of expungement also must direct the department of justice to purge the conviction and arrest information from the central repository of the criminal justice information network and all applicable databases. The clerk of the court shall send a certified copy of the order to the department of justice for immediate action, and the department shall carry out the order and notify the federal bureau of investigation, the department of corrections, and any other criminal justice agency that may have a record of the conviction and arrest. The department of justice shall provide confirmation of the action to the court.

(4) If a certificate of innocence and an order of expungement are entered, the claimant must be treated as not having been arrested or convicted of the crime or crimes to which the certificate of innocence applies.

(5) (a) Upon entry of a certificate of innocence:

(i) the court shall order the expungement and destruction of any associated biological samples from the claimant. The order must state the information required to be expunged and destroyed.

(ii) the court shall seal all district court records regarding the conviction. The district court records are only available upon a good cause finding by the court.

(iii) the clerk of the court shall send a certified copy of the order to the department of justice, which must carry out the order and provide confirmation of the action to the court.

(b) The department is not required to expunge and destroy any samples record associated with the claimant related to an offense other than the offense or offenses for which the court has entered a certificate of innocence.

(6) The decision to grant or deny a certificate of innocence does not have a res judicata effect on any other criminal proceedings involving the claimant.

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2 **NEW SECTION. Section 6. Damages.** (1) Damages, except as provided in subsection (3), awarded
3 under this section are:

4 (a) ~~\$65,000~~ \$80,000 for each year of imprisonment; and

5 (b) \$25,000 for each additional year served on parole or probation supervision or for each
6 additional year the claimant was required to register as a sexual or violent offender, whichever is greater.

7 (2) Compensation awarded under [sections 1 through 8] is not subject to the monetary limitation
8 under 2-9-108.

9 (3) All damages must be paid out of the account provided for in [section 8].

10 (4) A claimant is not entitled to receive compensation for any period of imprisonment during which
11 the claimant was concurrently serving a sentence for a conviction of another crime for which the claimant was
12 lawfully convicted and incarcerated.

13 (5) (a) Except as provided in subsection (5)(b), the court shall order that the award be paid as a
14 combination of an initial payment not to exceed \$100,000 or 25% of the award, whichever is greater, and the
15 remainder as an annuity not to exceed \$80,000 a year.

16 (b) (i) On July 1 of each year, the award increases by an amount equal to the percentage increase,
17 if any, for the preceding calendar year in the annual average consumer price index for urban wage earners,
18 compiled by the bureau of labor statistics of the United States department of labor or its successor agency.

19 (ii) The amount for any partial year must be prorated in order to compensate only for the portion of
20 the year when the claimant was incarcerated.

21 (c) The claimant shall designate a beneficiary or beneficiaries for the annuity by filing a beneficiary
22 designation with the court.

23 (d) The court may order that the award be paid in one lump sum if the court finds that it is in the
24 best interests of the claimant.

25 (6) (a) In addition to the damages awarded pursuant to subsection (1), a claimant:

26 (i) is entitled to receive costs, including but not limited to the actual cost of all expenses
27 reasonably incurred in an action brought pursuant to [sections 1 through 8], and reasonable attorney fees, not
28 to exceed a total of \$25,000;

(ii) is entitled to up to 2 years of tuition assistance at any unit or campus of the Montana university system, which must be used during the first 5 years after receiving a damages award; and

(iii) is entitled to 1 year of state-funded medical insurance.

(b) All funds received by the claimant and the value of services provided, except any attorney fees retained by counsel, are exempt from state income taxes.

(7) The department of corrections shall provide a rental voucher pursuant to 46-23-1041 to the claimant while an action under [sections 1 through 8] is pending.

NEW SECTION. Section 7. Offset provision. In the event the waiver or release provided under [section 3(1)] is held invalid in whole or in part for any reason:

(1) if, at the time of an award of monetary damages or compensation under [section 6], the claimant has also been awarded damages against the state, a political subdivision, or their officers, employees, agents, or volunteers in a civil action related to the claimant's same wrongful conviction or imprisonment, including any settlement, the amount awarded under [section 6] must be reduced by the amount of damages or compensation previously awarded; and

(2) if, after the time of an award of monetary damages or compensation under [section 6], the claimant is awarded damages against the state, a political subdivision, or their officers, employees, agents, or volunteers in a civil action related to the claimant's same wrongful conviction or imprisonment, including any settlement, the claimant shall reimburse to the state or a political subdivision of the state any amount awarded under [section 6].

NEW SECTION. Section 8. Payment of compensation -- transfer and reimbursement -- exoneree compensation fund. (1) The county or consolidated government where the exoneree was convicted is responsible for ~~50%~~ 75% of the damages, costs of medical insurance and tuition, costs, and attorney fees awarded to a claimant.

(2) After the appeal deadline, if no appeal is filed, or no later than 30 days from entry of remittitur by the Montana supreme court, 100% of damages, costs of medical insurance and tuition, costs, and attorney fees awarded to the claimant must be transferred from the general fund to the account established in

1 subsection (4).

2 (3) (a) The department of administration may invoice the county or consolidated government
3 where the exoneree was convicted for up to 50% 75% of the compensation awarded to the claimant. The
4 invoice must contain:

5 (i) a copy of the claimant's original petition;

6 (ii) a statement that the requirements for a successful claim have been met; and

7 (iii) the amount owed to the state by the county or consolidated government.

8 (b) The county or consolidated government may petition the district court to void the invoice and
9 request that the state be responsible for the entirety of the compensation awarded to the claimant. The petition
10 may not include a refutation of the claim originally filed under [sections 1 through 8].

11 (c) The department of administration may not delay payment of funds to the claimant pending any
12 procedure outlined in subsection (3)(a) or any litigation under subsection (3)(b).

13 (4) There is an account in the state special revenue fund established in 17-2-102 known as the
14 exoneree compensation fund.

15 (5) Money in this account may be used only to pay compensation awarded under [sections 1
16 through 8].

17 (6) Funds in the account may come from grants, gifts, donations, fund transfers, and funds
18 received from counties and consolidated governments.

19 (7) For the purposes of an insurance claim made by the state, a political subdivision of the state,
20 and the officers, employees, agents, and volunteers of the state or a political subdivision of the state for any
21 wrongful incarceration claim, the date of ~~exoneration~~ DISPOSITION is the occurrence date.

22

23 **Section 9.** Section 46-23-1041, MCA, is amended to read:

24 **"46-23-1041. Rental vouchers.** (1) If the department does not approve an offender's parole plan
25 because the offender is unable to secure suitable living arrangements, the department may provide rental
26 vouchers to the offender for a period not to exceed 3 months if the rental assistance will result in an approved
27 parole plan.

28 (2) The department shall provide a rental voucher to a claimant if required by [section 6(7)].

(2)(3) The voucher must be provided in conjunction with additional transition support that enables the offender to participate in programs and services, including but not limited to substance abuse treatment, mental health treatment, sex offender treatment, educational programming, or employment programming.

(3)(4) To receive rental vouchers and transitional assistance funds from the department of corrections, a recovery residence:

(a) must be a certified recovery residence, as defined in 53-24-310;

(b) shall notify a resident's probation or parole officer within 24 hours of the resident moving out, if a resident is on probation or parole when the resident moves out of the recovery residence; and

(c) shall permit residents to receive treatment and take medication prescribed by a qualified health care provider. The provisions of this subsection (3)(e) (4)(c) do not include a recovery residence or program that limits or prohibits the use of narcotic medication in order to provide a safe recovery environment to individuals who may be addicted to legal medication. The recovery residence or program shall report this practice as required in 53-24-311(3)(b) and 53-24-313."

NEW SECTION. Section 10. Codification instruction. [Sections 1 through 8] are intended to be codified as a new part of Title 46, and the provisions of Title 46 apply to [sections 1 through 8].

NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 12. Effective date. [This act] is effective July 1, 2025.

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