

A-Engrossed
Senate Bill 499

Ordered by the Senate April 26
Including Senate Amendments dated April 26

Sponsored by Senators THATCHER, GORSEK; Senators DEMBROW, GELSER, GIROD, HANSELL, JAMA (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Creates civil claim for wrongful conviction.

A BILL FOR AN ACT

1
2 Relating to claims for wrongful conviction.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. (1) A person may bring a claim against the state for wrongful conviction if:**

5 **(a) The person was convicted of a felony and subsequently imprisoned;**

6 **(b)(A) The person's conviction was reversed or vacated and either the charges were dis-**
7 **missed or on retrial the person was found not guilty; or**

8 **(B) The person received a grant of pardon on the grounds of innocence;**

9 **(c) The person did not commit the crime or crimes for which the person was convicted**
10 **and was not an accessory or accomplice to or otherwise involved in the acts that were the**
11 **basis of the conviction; and**

12 **(d) The person did not commit perjury, fabricate evidence or by the person's own conduct**
13 **cause or bring about the conviction. A confession or admission later found to be false or a**
14 **guilty plea does not constitute committing perjury, fabricating evidence or causing or**
15 **bringing about the conviction under this paragraph.**

16 **(2) A person may bring a claim for compensation for wrongful conviction under this**
17 **section by filing a petition in the circuit court for the county in which the person resides or**
18 **in the circuit court for the county of conviction. The petition shall be captioned "In the**
19 **matter of the wrongful conviction of _____." The petitioner shall serve the petition on the**
20 **Attorney General. The matter shall be decided by the court without a jury.**

21 **(3) The court, in exercising its discretion regarding the weight and admissibility of evi-**
22 **dence submitted under this section may in the interest of justice give due consideration to**
23 **difficulties of proof caused by the passage of time, the death or unavailability of witnesses,**
24 **the destruction of evidence or other factors not caused by a petitioner or those acting on a**
25 **petitioner's behalf. The court may not diminish the petitioner's burden of proof as set forth**
26 **in subsection (4)(a) of this section.**

27 **(4)(a) If the court finds that a petitioner under this section has proven the elements of**
28 **subsection (1) of this section by a preponderance of the evidence, the court may award to the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **petitioner:**

2 (A) Except as provided in paragraph (b) of this subsection, \$65,000 for each year of
3 imprisonment, as adjusted under subsection (7) of this section; and

4 (B) Not less than \$25,000, as adjusted under subsection (7) of this section, for each addi-
5 tional year served on parole or post-prison supervision or each additional year the petitioner
6 was required to register as a sex offender, whichever is greater.

7 (b) A petitioner is not entitled to damages for any period of incarceration during which
8 the petitioner was concurrently serving a sentence for a conviction of another crime for
9 which the petitioner was lawfully incarcerated.

10 (5)(a) Except as provided in paragraph (b) of this subsection, the court shall order that
11 an award under subsection (4) of this section be paid as a combination of an initial payment
12 not to exceed \$100,000 or 25 percent of the award, whichever is greater, and the remainder
13 as an annuity not to exceed \$80,000 per year. The petitioner shall designate a beneficiary or
14 beneficiaries for the annuity.

15 (b) The court may order that the award be paid in one lump sum if the court finds that
16 it is in the best interests of the petitioner.

17 (6) In addition to the damages awarded under subsection (4) of this section, the court:

18 (a) Shall award to the petitioner reasonable attorney fees and costs incurred in con-
19 nection with a petition filed under this section; and

20 (b) May award to the petitioner other relief as sought in the petition, including, but not
21 limited to, access to existing state, local or other programs that provide counseling, housing
22 assistance, eligibility for medical assistance as defined in ORS 414.025, educational assistance,
23 job training, legal services to regain custody of children, assistance with food and transpor-
24 tation and personal financial literacy assistance, as appropriate.

25 (7) Beginning in 2022, and every year thereafter, the State Court Administrator shall
26 determine the percentage increase or decrease in the cost of living for the previous calendar
27 year, based on changes in the Consumer Price Index for All Urban Consumers, West Region
28 (All Items), as published by the Bureau of Labor Statistics of the United States Department
29 of Labor. On or before July 1 of the year in which the State Court Administrator makes the
30 determination required by this subsection, the State Court Administrator shall adjust the
31 amounts prescribed under subsection (4) of this section for the following calendar year by
32 multiplying the amounts applicable to the calendar year in which the adjustment is made by
33 the percentage amount determined under this subsection. The adjustment may not exceed
34 three percent for any year. The State Court Administrator shall round the adjusted limita-
35 tion amount to the nearest \$100, but the unrounded amount shall be used to calculate the
36 adjustments to the amounts in subsequent calendar years. The adjusted amounts become
37 effective on July 1 of the year in which the adjustment is made, and apply to all petitions
38 filed under this section on or after July 1 of that year and before July 1 of the subsequent
39 year.

40 (8) Compensation awarded as a result of a petition for compensation for wrongful con-
41 viction under this section is not subject to taxation.

42 (9) A claim under this section is not subject to ORS 30.260 to 30.300.

43 (10)(a) If the court grants a petition under this section, the petitioner may request that
44 judgment include a certificate of innocence finding that the petitioner was innocent of all
45 crimes for which the petitioner was wrongfully convicted.

1 **(b) Upon entry of a judgment granting a petition under this section, the court shall order**
2 **the associated convictions and arrest records be set aside and sealed from all applicable state**
3 **and federal systems pursuant to this subsection. The court shall enter the set aside order**
4 **regardless of whether the petitioner has other criminal convictions or pending criminal**
5 **cases.**

6 **(11) A person who meets the requirements of subsection (1) of this section and who in-**
7 **tends to file a petition for compensation for wrongful conviction under this section may apply**
8 **to the county of conviction for a transition assistance grant of \$5,000 within 30 days of re-**
9 **lease from custody. The person or person's counsel must declare under penalty of perjury**
10 **that the person satisfies the requirements of subsection (1) of this section to the best of the**
11 **person's knowledge, information and belief. The person shall reimburse the county in the**
12 **amount of \$5,000 within one year after the person fails to file a petition under this section**
13 **within the time period described in subsection (12) of this section, or the petition is denied**
14 **by the circuit court and no right of appeal remains.**

15 **(12) Notwithstanding ORS 12.115, a petition under this section must be filed no later than**
16 **two years after:**

17 **(a) The date of dismissal of the criminal charges against the petitioner or finding of not**
18 **guilty on retrial, whichever is later; or**

19 **(b) The grant of pardon to the petitioner.**

20 **(13) Any party to a proceeding under this section may appeal from the judgment of the**
21 **circuit court on a petition filed under this section by filing a notice of appeal within the time**
22 **and in the manner specified in ORS chapter 19 for civil appeals to the Court of Appeals. Any**
23 **party filing a notice of appeal under this subsection must note in the notice of appeal that**
24 **the case is subject to this subsection.**

25 **(14) This section does not preclude the Department of Corrections from providing reentry**
26 **services to a petitioner under this section that are provided to other persons, including, but**
27 **not limited to, financial assistance, housing assistance, mentoring and counseling. Services**
28 **may be provided while an action is pending and after any judgment is entered, as appropriate**
29 **for the petitioner.**

30 **SECTION 2.** **Notwithstanding the statute of limitations set forth in section 1 of this 2021**
31 **Act, a person convicted, imprisoned and released from custody before the effective date of**
32 **this 2021 Act may file a petition under section 1 of this 2021 Act no later than two years after**
33 **the effective date of this 2021 Act.**

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