

SB 499-4  
(LC 1287)  
4/9/21 (MNJ/ps)

Requested by SENATE COMMITTEE ON JUDICIARY AND BALLOT MEASURE 110 IMPLEMENTATION

**PROPOSED AMENDMENTS TO  
SENATE BILL 499**

1 On page 1 of the printed bill, delete lines 4 through 32 and delete page  
2 2 and insert:

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

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

7 **“(b)(A) The person’s conviction was reversed or vacated and either**  
8 **the charges were dismissed or on retrial the person was found not**  
9 **guilty; or**

10 **“(B) The person received a grant of pardon on the grounds of in-**  
11 **nocence;**

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

16 **“(d) The person did not commit perjury, fabricate evidence or by**  
17 **the person’s own conduct cause or bring about the conviction. A con-**  
18 **fession or admission later found to be false or a guilty plea does not**  
19 **constitute committing perjury, fabricating evidence or causing or**  
20 **bringing about the conviction under this paragraph.**

21 **“(2) A person may bring a claim for compensation for wrongful**

1 conviction under this section by filing a petition in the circuit court  
2 for the county in which the person resides or in the circuit court for  
3 the county of conviction. The petition shall be captioned ‘In the mat-  
4 ter of the wrongful conviction of \_\_\_\_.’ The petitioner shall serve the  
5 petition on the Attorney General. The matter shall be decided by the  
6 court without a jury.

7 “(3) The court, in exercising its discretion regarding the weight and  
8 admissibility of evidence submitted under this section may in the in-  
9 terest of justice give due consideration to difficulties of proof caused  
10 by the passage of time, the death or unavailability of witnesses, the  
11 destruction of evidence or other factors not caused by a petitioner or  
12 those acting on a petitioner’s behalf. The court may not diminish the  
13 petitioner’s burden of proof as set forth in subsection (4)(a) of this  
14 section.

15 “(4)(a) If the court finds that a petitioner under this section has  
16 proven the elements of subsection (1) of this section by a preponder-  
17 ance of the evidence, the court may award to the petitioner:

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

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

25 “(b) A petitioner is not entitled to damages for any period of in-  
26 carceration during which the petitioner was concurrently serving a  
27 sentence for a conviction of another crime for which the petitioner  
28 was lawfully incarcerated.

29 “(5)(a) Except as provided in paragraph (b) of this subsection, the  
30 court shall order that an award under subsection (4) of this section

1 be paid as a combination of an initial payment not to exceed \$100,000  
2 or 25 percent of the award, whichever is greater, and the remainder  
3 as an annuity not to exceed \$80,000 per year. The petitioner shall des-  
4 ignate a beneficiary or beneficiaries for the annuity.

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

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

9 “(a) Shall award to the petitioner reasonable attorney fees and costs  
10 incurred in connection with a petition filed under this section; and

11 “(b) May award to the petitioner other relief as sought in the peti-  
12 tion, including, but not limited to, access to existing state, local or  
13 other programs that provide counseling, housing assistance, eligibility  
14 for medical assistance as defined in ORS 414.025, educational assist-  
15 ance, job training, legal services to regain custody of children, assist-  
16 ance with food and transportation and personal financial literacy  
17 assistance, as appropriate.

18 “(7) Beginning in 2022, and every year thereafter, the State Court  
19 Administrator shall determine the percentage increase or decrease in  
20 the cost of living for the previous calendar year, based on changes in  
21 the Consumer Price Index for All Urban Consumers, West Region (All  
22 Items), as published by the Bureau of Labor Statistics of the United  
23 States Department of Labor. On or before July 1 of the year in which  
24 the State Court Administrator makes the determination required by  
25 this subsection, the State Court Administrator shall adjust the  
26 amounts prescribed under subsection (4) of this section for the fol-  
27 lowing calendar year by multiplying the amounts applicable to the  
28 calendar year in which the adjustment is made by the percentage  
29 amount determined under this subsection. The adjustment may not  
30 exceed three percent for any year. The State Court Administrator shall

1 round the adjusted limitation amount to the nearest \$100, but the un-  
2 rounded amount shall be used to calculate the adjustments to the  
3 amounts in subsequent calendar years. The adjusted amounts become  
4 effective on July 1 of the year in which the adjustment is made, and  
5 apply to all petitions filed under this section on or after July 1 of that  
6 year and before July 1 of the subsequent year.

7 “(8) Compensation awarded as a result of a petition for compen-  
8 sation for wrongful conviction under this section is not subject to  
9 taxation.

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

11 “(10)(a) If the court grants a petition under this section, the  
12 petitioner may request that the court issue the petitioner a certificate  
13 of innocence finding that the petitioner was innocent of all crimes for  
14 which the petitioner was wrongfully convicted. A request under this  
15 paragraph must be accompanied by a proposed certificate on a form  
16 developed by the State Court Administrator.

17 “(b) Upon entry of a certificate of innocence, the court shall order  
18 the associated convictions and arrest records expunged and purged  
19 from all applicable state and federal systems pursuant to this sub-  
20 section. The court shall enter the expungement order regardless of  
21 whether the petitioner has prior criminal convictions.

22 “(11) A person who meets the requirements of subsection (1) of this  
23 section and who intends to file a petition for compensation for  
24 wrongful conviction under this section may apply to the county of  
25 conviction for a transition assistance grant of \$5,000 within 30 days of  
26 release from custody. The person or person’s counsel must declare  
27 under penalty of perjury that the person satisfies the requirements of  
28 subsection (1) of this section to the best of the person’s knowledge,  
29 information and belief. The person shall reimburse the county in the  
30 amount of \$5,000 within one year after the person fails to file a petition

1 under this section within the time period described in subsection (12)  
2 of this section, or the petition is denied by the circuit court and no  
3 right of appeal remains.

4 “(12) Notwithstanding ORS 12.115, a petition under this section must  
5 be filed no later than two years after:

6 “(a) The date of dismissal of the criminal charges against the  
7 petitioner or finding of not guilty on retrial, whichever is later; or

8 “(b) The grant of pardon to the petitioner.

9 “(13) Any party to a proceeding under this section may appeal from  
10 the judgment of the circuit court on a petition filed under this section  
11 by filing a notice of appeal within the time and in the manner specified  
12 in ORS chapter 19 for civil appeals to the Court of Appeals. Any party  
13 filing a notice of appeal under this subsection must note in the notice  
14 of appeal that the case is subject to this subsection.

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

21 “SECTION 2. Notwithstanding the statute of limitations set forth  
22 in section 1 of this 2021 Act, a person convicted, imprisoned and re-  
23 leased from custody before the effective date of this 2021 Act may file  
24 a petition under section 1 of this 2021 Act no later than two years after  
25 the effective date of this 2021 Act.”.

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