

Robert B Rocklin

Re: SB 499, Relating to Compensation for Wrongful Conviction

I am writing today as a former Oregon assistant attorney general who handled hundreds of criminal appeals and current *pro tem* faculty at the University of Oregon School of Law who teaches courses in criminal law. Let me begin by stating that I wholeheartedly support the concept behind SB 499. Oregon is currently among the minority of states that do not have a provision for compensating those who have been incarcerated on the basis of convictions that have been shown to be wrongfully obtained. It is high time that Oregon joins the federal government and the 35 other states that provide compensation in such circumstances.

That said, I believe that the bill as introduced could amended in ways that will make its provisions clearer and more focused. I have set out some suggestions below.

Place of and manner of filing

The bill provides that a person may bring a claim against the state for wrongful conviction under certain circumstances. But the bill does not specify how or where such a claim can be brought. I believe that the bill should include such a provision. An analogous example can be found in ORS 138.560(1), which provides, in part:

A proceeding for post-conviction relief pursuant to ORS 138.510 to 138.680 shall be commenced by filing a petition and two copies thereof with the clerk of the circuit court for the county in which the petitioner is imprisoned or, if the petitioner is not imprisoned, within which the petitioner's conviction and sentence was rendered.

Similarly, Washington State's provision regarding the filing of claims for compensation for wrongful conviction specifies a procedure:

(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.

Wash. Rev. Code § 4.100.030. Other states' provisions also set out the procedure for filing such a claim. To make it clear how such a claim should be filed and to avoid litigation over the proper procedure, SB 499 should specify a procedure for the filing of a claim for compensation in the case of a wrongful conviction.

Standard and Burden of Proof

The bill provides compensation if *all* of the following criteria are met:

- The claimant was convicted of a felony and imprisoned;

- The claimant's conviction was reversed or vacated and either (1) the charges were dismissed, or (2) on retrial the claimant was found not guilty;
- The claimant did not commit the crimes at issue and was not an accomplice or accessory to the crimes at issue; and
- The claimant did not commit or suborn perjury, fabricate evidence, or by his or her own conduct cause or bring about the conviction.

To be sure, some of those matters will be easy for the claimant to establish. But others (*e.g.*, did the claimant by the claimant's own conduct bring about the conviction?) will be subject to proof. Accordingly, the court and parties should be given guidance regarding what the standard of proof is and what evidence is relevant and admissible. Moreover, it is not clear under the current bill's wording whether an adverse party will be able to contest the claim.

Basis for Claim

As stated above, claimants may receive compensation under the bill if their convictions are reversed or vacated and, on remand (if any) they are found not guilty or the charges are dismissed. Those seem to be appropriate bases for relief. I have some concern, however, whether dismissal of the charges on any ground should be a basis for compensation under this bill. As you know, a prosecutor may choose to dismiss charges for a variety of reasons, only one of which is that the defendant is innocent.

Connecticut has approached the issue by providing compensation only if the claimant's "conviction was vacated or reversed and the complaint or information dismissed on grounds of innocence, or the complaint or information dismissed on a ground consistent with innocence." Conn. Gen. Stat. § 54-102uu (2012). The committee should consider whether similar language should be inserted into SB 499.

In addition to the ground set out above, the committee should consider whether other proof of the claimant's innocence should also be grounds for compensation. Many states include an executive pardon on the basis of innocence as a ground for compensation. For example, New York allows compensation for a claimant who "has been pardoned upon the ground of innocence of the crime or crimes for which he was sentenced and which are the grounds for the complaint[.]" N.Y. Ct. Cl. Act § 8-b (McKinney 2021). Other states also set out a pardon on the basis of innocence as a ground for compensation. (I note that a "grant of pardon" is referred to in subsection (6) of SECTION 1 of the bill, but only regarding the statute of limitations for bringing a claim. It seems that the pardon should be a ground for compensation if a period of limitations may be dependent on that action.)

Legislative Findings

Finally, I note that the bill is not supported by legislative findings. I believe that the importance of providing compensation for the wrongfully convicted is of sufficient weight that the bill should be accompanied by such findings. Several states have included such

findings in support of their legislation creating an avenue for compensation. Here is an example, from Nebraska:

The Legislature finds that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned have been uniquely victimized, have distinct problems reentering society, and have difficulty achieving legal redress due to a variety of substantive and technical obstacles in the law. The Legislature also finds that such persons should have an available avenue of redress. In light of the particular and substantial horror of being imprisoned for a crime one did not commit, the Legislature intends by enactment of the Nebraska Claims for Wrongful Conviction and Imprisonment Act that persons who can demonstrate that they were wrongfully convicted shall have a claim against the state as provided in the act.

Neb. Rev. Stat. § 29-4602. Such findings should be added to SB 499.

In sum, I strongly support the concept of SB 499. I hope that your committee will consider the comments above.