

SB 499-6
(LC 1287)
4/12/21 (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 judgment include a certificate of inno-
13 cence finding that the petitioner was innocent of all crimes for which
14 the petitioner was wrongfully convicted.

15 “(b) Upon entry of a judgment granting a petition under this sec-
16 tion, the court shall order the associated convictions and arrest re-
17 cords be set aside and sealed from all applicable state and federal
18 systems pursuant to this subsection. The court shall enter the set
19 aside order regardless of whether the petitioner has other criminal
20 convictions or pending criminal cases.

21 “(11) A person who meets the requirements of subsection (1) of this
22 section and who intends to file a petition for compensation for
23 wrongful conviction under this section may apply to the county of
24 conviction for a transition assistance grant of \$5,000 within 30 days of
25 release from custody. The person or person’s counsel must declare
26 under penalty of perjury that the person satisfies the requirements of
27 subsection (1) of this section to the best of the person’s knowledge,
28 information and belief. The person shall reimburse the county in the
29 amount of \$5,000 within one year after the person fails to file a petition
30 under this section within the time period described in subsection (12)

1 of this section, or the petition is denied by the circuit court and no
2 right of appeal remains.

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

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

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

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

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

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

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