

B-Engrossed
Senate Bill 1584

Ordered by the Senate February 25
Including Senate Amendments dated February 11 and February 25

Sponsored by Senators THATCHER, GORSEK, Representative POWER, Senators DEMBROW, GELSER BLOUIN, JAMA, LAWRENCE SPENCE, LIEBER, PROZANSKI, SOLLMAN, Representative BYNUM; Senators HANSELL, MANNING JR, Representatives HUDSON, KROPP, MORGAN, NOBLE, REYNOLDS, SANCHEZ, SMITH DB, SMITH WARNER, WILLIAMS (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 procedure for filing petition for compensation for wrongful conviction.
Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to wrongful conviction; and declaring an emergency.

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

SECTION 1. (1) A person may petition for compensation for wrongful conviction against the state if all of the following requirements are satisfied:

(a) The person was convicted of one or more felonies and subsequently imprisoned as a result of the conviction or convictions;

(b)(A) The person's conviction was reversed or vacated and either the charges were dismissed or on retrial the person was found not guilty; or

(B) The person received a grant of gubernatorial pardon;

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

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

(2) For the purposes of subsection (1) of this section:

(a) Reversal or vacation of a conviction because the conviction was obtained following a finding of guilt by a nonunanimous jury is not, by itself, sufficient to prove that the person did not commit the crime or crimes for which the person was convicted.

(b) "Convicted" or "conviction" includes an adjudication of a person within the jurisdiction of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years of age if the adjudication resulted in the person's placement in custody of the Oregon Youth Authority or the Department of Corrections for at least one year.

(3) A person may file a petition for compensation under this section in the Circuit Court

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 for Marion County or in the circuit court for the county of conviction. The petitioner shall
2 serve the petition on the Attorney General, who shall represent the state in all proceedings
3 on the petition. The petitioner shall also mail a copy of the complaint to the District Attor-
4 ney of the county of conviction.

5 (4)(a) A petition under this section is a civil action. The Oregon Rules of Civil Procedure
6 and the Oregon Evidence Code apply to a petition under this section unless otherwise speci-
7 fied in this section.

8 (b) The court, in exercising its discretion regarding the weight and admissibility of evi-
9 dence submitted under this section may in the interest of justice give due consideration to
10 difficulties of proof caused by the passage of time, the death or unavailability of witnesses,
11 the destruction of evidence or other factors not caused by a petitioner or those acting on a
12 petitioner's behalf. The court may not diminish the petitioner's burden of proof as set forth
13 in subsection (5)(a) of this section.

14 (c) The fact finder in a proceeding under this section may receive proof by declarations,
15 depositions, oral testimony or other competent evidence, including but not limited to tran-
16 scripts of testimony or documents and evidence filed with the court in any proceeding that
17 gave rise to the conviction, reversal or vacation of the conviction, or from retrial following
18 reversal.

19 (5)(a) If a petitioner proves the elements of subsection (1) of this section by a prepon-
20 derance of the evidence, the court shall enter a judgment awarding damages as follows:

21 (A) Except as provided in paragraph (b) of this subsection, \$65,000 for each year of
22 imprisonment, as adjusted under subsection (8) of this section; and

23 (B) \$25,000, as adjusted under subsection (8) of this section, for each additional year
24 served on parole or post-prison supervision or each additional year the petitioner was re-
25 quired to register as a sex offender, whichever is greater.

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

29 (c) Punitive damages may not be awarded under this section.

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

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

37 (7) In addition to the damages awarded under subsection (5) of this section, the court:

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

40 (b) Shall award to the petitioner reimbursement for all restitution, assessments, fees,
41 court costs and all other sums paid by the petitioner as required by pretrial orders,
42 incarceration, and the judgment and sentence in any proceeding that gave rise to the con-
43 viction, reversal or vacation of the conviction, or from retrial following reversal; and

44 (c) May award to the petitioner access to existing state, local or other programs that
45 provide services, including, but not limited to, counseling, housing assistance, eligibility for

1 medical assistance as defined in ORS 414.025, educational assistance, job training, legal ser-
2 vices to regain custody of children, assistance with food and transportation and personal fi-
3 nancial literacy assistance, as appropriate.

4 (8) Beginning in 2023, and every year thereafter, the State Court Administrator shall
5 determine the percentage increase or decrease in the cost of living for the previous calendar
6 year, based on changes in the Consumer Price Index for All Urban Consumers, West Region
7 (All Items), as published by the Bureau of Labor Statistics of the United States Department
8 of Labor. On or before July 1 of the year in which the State Court Administrator makes the
9 determination required by this subsection, the State Court Administrator shall adjust the
10 amounts prescribed under subsection (5) of this section for the following calendar year by
11 multiplying the amounts applicable to the calendar year in which the adjustment is made by
12 the percentage amount determined under this subsection. The adjustment may not exceed
13 three percent for any year. The State Court Administrator shall round the adjusted limita-
14 tion amount to the nearest \$100, but the unrounded amount shall be used to calculate the
15 adjustments to the amounts in subsequent calendar years. The adjusted amounts become
16 effective on July 1 of the year in which the adjustment is made, and apply to all petitions
17 filed under this section on or after July 1 of that year and before July 1 of the subsequent
18 year.

19 (9)(a) If, on the date a judgment is entered under subsection (5) of this section, the
20 petitioner has won a monetary award against a public body as defined in ORS 174.109 in a
21 separate civil action related to the same subject, or has entered into a settlement agreement
22 with a public body as defined in ORS 174.109 related to the same subject, the amount of
23 economic damages awarded in the separate action or received in the settlement agreement,
24 less any sums paid to litigate the other civil action or obtain the settlement agreement, in-
25 cluding, but not limited to, attorney fees, costs and expert fees, shall be deducted from the
26 sum of money to which the petitioner is entitled under this section. The court shall include
27 in the judgment an award to the state of any amount deducted pursuant to this subsection.

28 (b) If paragraph (a) of this subsection does not apply and if, after the date the judgment
29 is entered under subsection (5) of this section, the petitioner wins a monetary award against
30 a public body as defined in ORS 174.109 in a separate civil action related to the same subject,
31 or enters into a settlement agreement with a public body as defined in ORS 174.109 related
32 to the same subject, the petitioner shall reimburse the state for the sum of money paid un-
33 der the judgment entered under subsection (5) of this section, less any sums paid to litigate
34 the other civil action or obtain the settlement agreement, including, but not limited to, at-
35 torney fees, costs and expert fees. A reimbursement required under this subsection may not
36 exceed the amount of the economic damages awarded in the separate civil action or received
37 in the settlement agreement.

38 (c) An award under this section shall not be offset by any expenses incurred by a public
39 body as defined in ORS 174.109 to secure the petitioner's custody or conviction, or to feed,
40 clothe, house or provide medical services to the petitioner as a result of the petitioner's
41 incarceration.

42 (10) Compensation awarded as a result of a petition for compensation for wrongful con-
43 viction under this section is excluded from gross income and is not subject to taxation.

44 (11) A petition under this section is not subject to ORS 30.260 to 30.300.

45 (12)(a) If the petitioner prevails on a petition under this section, the petitioner may re-

1 quest that judgment include a certificate of innocence finding that the petitioner was inno-
2 cent of all crimes for which the petitioner was wrongfully convicted.

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

8 (13) Notwithstanding ORS 12.115, a petition under this section must be filed no later than
9 two years after:

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

12 (b) The grant of pardon to the petitioner.

13 (14) Any party to a proceeding under this section may appeal from the judgment of the
14 circuit court on a petition filed under this section by filing a notice of appeal within the time
15 and in the manner specified in ORS chapter 19 for civil appeals to the Court of Appeals. Any
16 party filing a notice of appeal under this subsection must note in the notice of appeal that
17 the case is subject to this subsection. For purposes of any appeals under this section, the
18 Attorney General shall represent the state in all appellate proceedings. The party filing the
19 notice of appeal shall serve the notice of appeal on the Attorney General and on the district
20 attorney for the county of conviction.

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

26 **SECTION 2.** (1) A person may not file a petition under section 1 of this 2022 Act unless
27 notice of petition is given as required by this section.

28 (2) Notice of petition shall be given within 180 days after the date on which the charges
29 were dismissed, the person was found not guilty on retrial or the person received a grant
30 of pardon. The period of time shall not include the period, not exceeding 90 days, during
31 which the person is unable to give notice because of injury or because of minority, incom-
32 petency or other incapacity.

33 (3) Notice of petition required by this section is satisfied by:

34 (a) Formal notice of petition as provided in subsection (4) of this section;

35 (b) Filing of a petition under section 1 of this 2022 Act by or on behalf of the person
36 within the applicable period of time provided in subsection (2) of this section;

37 (c) Notice of claim under ORS 30.275 for any action against a public body, as defined in
38 ORS 174.109, or any officer, employee or agent of the public body arising out of the facts and
39 circumstances that gave rise to the wrongful conviction; or

40 (d) Payment of compensation for wrongful conviction by or on behalf of the state at any
41 time.

42 (4) Formal notice of petition is a written communication from a claimant or represen-
43 tative of a claimant containing:

44 (a) A statement that a petition for wrongful conviction under section 1 of this 2022 Act
45 is or will be filed;

1 (b) The date on which the charges were dismissed, the person was found not guilty on
2 retrial or the person received a grant of pardon; and

3 (c) The name of the claimant and the mailing address to which correspondence concern-
4 ing the petition may be sent.

5 (5) Notice is sufficient where the communication is such that a reasonable person would
6 conclude that a particular person intends to assert a claim against the state arising out of
7 wrongful conviction.

8 (6) Formal notice of petition shall be given by mail, electronic mail or personal delivery
9 to the office of the Director of the Oregon Department of Administrative Services. Service
10 by mail is complete on mailing, and service by electronic mail is complete on sending.

11 (7) Failure to provide timely notice shall not be a bar to suit if good cause for the failure
12 is shown. Good cause shall not be unreasonably withheld.

13 (8) At the time of judgment after a person's conviction is reversed or vacated, and either
14 the charges are dismissed or on retrial the person is found not guilty, as described in section
15 1 (1)(b)(A) of this 2022 Act, the court shall advise the person of the right to file a notice
16 within 180 days under this section. If the person is not present, the court shall advise the
17 person in writing of the right to file a notice within 180 days under this section.

18 **SECTION 3.** (1) Notwithstanding the statute of limitations set forth in section 1 of this
19 2022 Act, a person convicted, imprisoned and released from custody before the effective date
20 of this 2022 Act may file a petition under section 1 of this 2022 Act no later than two years
21 after the effective date of this 2022 Act.

22 (2) Notwithstanding the notice requirement set forth in section 2 of this 2022 Act, a
23 person convicted, imprisoned and released from custody before the effective date of this 2022
24 Act may provide notice of petition under section 2 of this 2022 Act no later than 180 days
25 after the effective date of this 2022 Act.

26 **SECTION 4.** Notwithstanding any other law limiting expenditures, the limitation on
27 expenditures established by section 2 (7), chapter 427, Oregon Laws 2021, for the biennium
28 ending June 30, 2023, as the maximum limit for payment of expenses from fees, moneys or
29 other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal
30 funds, collected or received by the Department of Justice, for the Trial Division, is increased
31 by \$692,052 for state legal costs under sections 1 and 2 of this 2022 Act.

32 **SECTION 5.** Notwithstanding any other law limiting expenditures, the limitation on
33 expenditures established by section 2 (2), chapter 427, Oregon Laws 2021, for the biennium
34 ending June 30, 2023, as the maximum limit for payment of expenses from fees, moneys or
35 other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal
36 funds, collected or received by the Department of Justice, for the Appellate Division, is in-
37 creased by \$105,024 for state legal costs under sections 1 and 2 of this 2022 Act.

38 **SECTION 6.** In addition to and not in lieu of any other appropriation, there is appropri-
39 ated to the Oregon Department of Administrative Services, for the biennium ending June 30,
40 2023, out of the General Fund, the amount of \$973,638 for the payment of state legal costs
41 under sections 1 and 2 of this 2022 Act.

42 **SECTION 7.** In addition to and not in lieu of any other appropriation, there is appropri-
43 ated to the Oregon Department of Administrative Services, for the biennium ending June 30,
44 2023, out of the General Fund, the amount of \$4,026,362 for the payment of court-awarded
45 compensation and reasonable attorney fees under sections 1 and 2 of this 2022 Act.

1 **SECTION 8. This 2022 Act being necessary for the immediate preservation of the public**
2 **peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect**
3 **on its passage.**

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