

Enrolled
Senate Bill 1584

Sponsored by Senators THATCHER, GORSEK, Representative POWER, Senators DEMBROW, GELSER BLOUIN, JAMA, LAWRENCE SPENCE, LIEBER, PROZANSKI, SOLLMAN, Representative BYNUM; Senators HANSELL, LINTHICUM, MANNING JR, Representatives ALONSO LEON, BONHAM, CAMPOS, DEXTER, GEORGE, HAYDEN, HIEB, HUDSON, KROPF, LEWIS, MOORE-GREEN, MORGAN, NOBLE, RESCHKE, REYNOLDS, SANCHEZ, SMITH DB, SMITH WARNER, WALLAN, WILLIAMS, WRIGHT (Presession filed.)

CHAPTER

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) May award to the petitioner access to existing state, local or other programs that provide services, including, but not limited to, counseling, housing assistance, eligibility for medical assistance as defined in ORS 414.025, educational assistance, job training, legal services to regain custody of children, assistance with food and transportation and personal financial literacy assistance, as appropriate.

(8) Beginning in 2023, and every year thereafter, the State Court Administrator shall determine the percentage increase or decrease in the cost of living for the previous calendar year, based on changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor. On or before July 1 of the year in which the State Court Administrator makes the determination required by this subsection, the State Court Administrator shall adjust the amounts prescribed under subsection (5) of this section for the following calendar year by multiplying the amounts applicable to the calendar year in which the adjustment is made by

the percentage amount determined under this subsection. The adjustment may not exceed three percent for any year. The State Court Administrator shall round the adjusted limitation amount to the nearest \$100, but the unrounded amount shall be used to calculate the adjustments to the amounts in subsequent calendar years. The adjusted amounts become effective on July 1 of the year in which the adjustment is made, and apply to all petitions filed under this section on or after July 1 of that year and before July 1 of the subsequent year.

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

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

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

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

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

(12)(a) If the petitioner prevails on a petition under this section, the petitioner may request that judgment include a certificate of innocence finding that the petitioner was innocent of all crimes for which the petitioner was wrongfully convicted.

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

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

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

(b) The grant of pardon to the petitioner.

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

notice of appeal shall serve the notice of appeal on the Attorney General and on the district attorney for the county of conviction.

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

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

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

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

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

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

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

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

(4) Formal notice of petition is a written communication from a claimant or representative of a claimant containing:

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

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

(c) The name of the claimant and the mailing address to which correspondence concerning the petition may be sent.

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

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

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

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

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

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

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

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

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

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

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

Passed by Senate March 1, 2022

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House March 4, 2022

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Dan Rayfield, Speaker of House

Received by Governor:

.....M.,....., 2022

Approved:

.....M.,....., 2022

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2022

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Shemia Fagan, Secretary of State