



# House of Representatives

**File No. 752**

General Assembly

February Session, 2008

**(Reprint of File No. 556)**

Substitute House Bill No. 5933  
As Amended by House Amendment Schedules  
"A" and "B"

Approved by the Legislative Commissioner  
April 28, 2008

**AN ACT CONCERNING THE COMPENSATION OF WRONGFULLY  
CONVICTED AND INCARCERATED PERSONS, THE DUTIES AND  
DURATION OF THE SENTENCING TASK FORCE AND THE  
PREPARATION OF RACIAL AND ETHNIC IMPACT STATEMENTS.**

Be it enacted by the Senate and House of Representatives in General  
Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2008*) (a) A person is eligible to  
2 receive compensation for wrongful incarceration if:

3 (1) Such person has been convicted by this state of one or more  
4 crimes, of which the person was innocent, has been sentenced to a term  
5 of imprisonment for such crime or crimes and has served all or part of  
6 such sentence; and

7 (2) Such person's conviction was vacated or reversed and the  
8 complaint or information dismissed on grounds of innocence, or the  
9 complaint or information dismissed on a ground consistent with  
10 innocence.

11 (b) A person who meets the eligibility requirements of subsection (a)  
12 of this section may present a claim against the state for such

13 compensation with the Claims Commissioner in accordance with the  
14 provisions of chapter 53 of the general statutes. The provisions of said  
15 chapter shall be applicable to the presentment, hearing and  
16 determination of such claim except as otherwise provided in this  
17 section.

18 (c) At the hearing on such claim, such person shall have the burden  
19 of establishing by a preponderance of the evidence that such person  
20 meets the eligibility requirements of subsection (a) of this section. In  
21 addition, such person shall present evidence as to the damages  
22 suffered by such person which may include, but are not limited to,  
23 claims for loss of liberty and enjoyment of life, loss of earnings, loss of  
24 earning capacity, loss of familial relationships, loss of reputation,  
25 physical pain and suffering, mental pain and suffering and attorney's  
26 fees and other expenses arising from or related to such person's arrest,  
27 prosecution, conviction and incarceration.

28 (d) If the Claims Commissioner determines that such person has  
29 established such person's eligibility under subsection (a) of this section  
30 by a preponderance of the evidence, the Claims Commissioner shall  
31 order the immediate payment to such person of compensation for such  
32 wrongful incarceration. In determining the amount of such  
33 compensation, the Claims Commissioner shall consider relevant  
34 factors including, but not limited to, the evidence presented by the  
35 person under subsection (c) of this section as to the damages suffered  
36 by such person and whether any negligence or misconduct by any  
37 officer, agent, employee or official of the state or any political  
38 subdivision of the state contributed to such person's arrest,  
39 prosecution, conviction or incarceration.

40 (e) In addition to the compensation paid under subsection (d) of this  
41 section, the Claims Commissioner may order payment for the expenses  
42 of employment training and counseling, tuition and fees at any  
43 constituent unit of the state system of higher education and any other  
44 services such person may need to facilitate such person's reintegration  
45 into the community.

46 (f) Any person claiming compensation under this section based on a  
47 pardon that was granted or the dismissal of a complaint or information  
48 that occurred before the effective date of this section shall file such  
49 claim not later than two years after the effective date of this section.  
50 Any person claiming compensation under this section based on a  
51 pardon that was granted or the dismissal of a complaint that occurred  
52 on or after the effective date of this section shall file such claim not  
53 later than two years after the date of such pardon or dismissal.

54 (g) Nothing in this section shall be construed to prevent such person  
55 from pursuing any other action or remedy at law or in equity that such  
56 person may have against the state and any political subdivision of the  
57 state and any officer, agent, employee or official thereof arising out of  
58 such wrongful conviction and incarceration.

59 Sec. 2. (*Effective from passage*) (a) The advisory commission on  
60 wrongful convictions established pursuant to section 54-102pp of the  
61 general statutes shall monitor and evaluate the implementation of (1)  
62 the procedure for the compensation of wrongfully incarcerated  
63 persons established under section 1 of this act, (2) the pilot program to  
64 electronically record the interrogations of arrested persons, and (3)  
65 eyewitness identification procedures that, when practicable, use a  
66 double-blind administration wherein the person conducting the  
67 identification procedure is not aware of which person in the photo  
68 lineup or live lineup is suspected as being the perpetrator of the crime.

69 (b) Not later than January 7, 2009, the advisory commission shall  
70 report its findings and recommendations to the joint standing  
71 committee of the General Assembly on judiciary in accordance with  
72 section 11-4a of the general statutes.

73 Sec. 3. Subsection (d) of section 6 of public act 06-193 is repealed and  
74 the following is substituted in lieu thereof (*Effective from passage*):

75 (d) The task force shall:

76 (1) Identify overarching criminal justice and sentencing goals and

77 policies;

78 (2) Define current sentencing models including sentencing  
79 guidelines, criteria, exemptions and enhancements;

80 (3) Analyze sentencing trends by offense types and offender  
81 characteristics;

82 (4) Review the actual versus intended impact of sentencing policies;

83 (5) Determine the direct and indirect costs associated with  
84 sentencing policies;

85 (6) Review the fines and terms of imprisonment specified for  
86 violations of criminal statutes that are classified or unclassified felonies  
87 or misdemeanors and make recommendations including, but not  
88 limited to: (A) Whether crimes that are currently unclassified should  
89 be classified; (B) whether certain classified crimes should be  
90 reclassified or the penalties for certain unclassified crimes should be  
91 revised in order to make the penalties for similar crimes more uniform;  
92 (C) whether the penalty or type of penalty for certain crimes should be  
93 revised or eliminated where such penalty or type of penalty is no  
94 longer deemed necessary or appropriate or is disproportionate to the  
95 severity of the crime; and (D) whether crimes that are obsolete should  
96 be repealed; [and]

97 (7) Make any recommendations for the revision of criminal justice  
98 and sentencing policies as deemed necessary; and

99 (8) Not later than January 7, 2009, make a recommendation as to  
100 whether a permanent sentencing commission should be established  
101 and, if so, make recommendations concerning the mission, duties,  
102 membership and procedures of such a commission.

103 Sec. 4. Subsection (g) of section 6 of public act 06-193 is repealed and  
104 the following is substituted in lieu thereof (*Effective from passage*):

105 (g) The task force shall report its findings and recommendations to

106 the joint standing committee of the General Assembly on the judiciary  
 107 in accordance with section 11-4a of the general statutes not later than  
 108 [December 1, 2008] July 1, 2009. The task force shall terminate upon the  
 109 completion of its duties.

110 Sec. 5. (NEW) (*Effective from passage*) (a) Beginning with the session  
 111 of the General Assembly commencing on January 7, 2009, a racial and  
 112 ethnic impact statement shall be prepared with respect to certain bills  
 113 and amendments that could, if passed, increase or decrease the pretrial  
 114 or sentenced population of the correctional facilities in this state.

115 (b) Not later than January 1, 2009, the joint standing committee of  
 116 the General Assembly on judiciary shall make recommendations for a  
 117 provision to be included in the joint rules of the House of  
 118 Representatives and the Senate concerning the procedure for the  
 119 preparation of such racial and ethnic impact statements, the content of  
 120 such statements and the types of bills and amendments with respect to  
 121 which such statements should be prepared.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	New section
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	PA 06-193, Sec. 6(d)
Sec. 4	<i>from passage</i>	PA 06-193, Sec. 6(g)
Sec. 5	<i>from passage</i>	New section

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Comptroller - Adjudicated Claims Account	GF - Cost	Potential	Potential
Judicial Dept.	GF - Cost	Minimal	None
Legislative Mgmt.	GF - Cost	Minimal	None
See Below	GF - Cost	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill results in a potential significant cost to the state by clarifying and formalizing a process to address the compensation of wrongfully convicted and incarcerated individuals. It is possible that clarifying and formalizing the process will result in more successful claims against the state. The Claims Commissioner can accommodate any additional examination of claims with existing resources.

Any costs to convene the advisory commission on wrongful convictions under the bill in order to monitor, evaluate and report on implementation of the public policies listed in Section 2 of the bill would be minimal.

The Office of Legislative Management would incur minimal costs associated with mileage reimbursement of 50.5 cents per mile for legislators participating on a task force.

The bill requires that racial and ethnic impact statements be prepared for bills and amendments that increase or decrease the pretrial or sentenced population of the state's correctional facilities.

It is unclear which agency would be responsible for performing

these new duties, additional personnel and resources may be required. These costs may be significant.

House "A" (LCO 4339) results in a minimal cost to Legislative Management as it extends the timeline, from December 1, 2008 to July 1, 2009, that the task force has to report its findings and recommendations to the Judiciary Committee. The Office of Legislative Management would incur minimal costs associated with mileage reimbursement of 50.5 cents per mile for legislators participating on the task force.

House "B" (LCO 5020) added language concerning racial and ethnic impact statements and results in the potential cost as described above.

### ***The Out Years***

The potential significant cost of claims would continue in to the out years as would any costs associated with the preparation of racial and ethnic impact statements.

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**OLR Bill Analysis****sHB 5933 (as amended by House "A" and "B")\******AN ACT CONCERNING THE COMPENSATION OF WRONGFULLY CONVICTED AND INCARCERATED PERSONS.*****SUMMARY:**

This bill authorizes certain people convicted in state court and sentenced to a term of imprisonment to present a claim against the state for compensation for wrongful conviction with the claims commissioner. The bill applies only to those:

1. who served all or part of their sentence;
2. who were innocent of the crime or crimes they were convicted of; and
3. whose conviction was vacated or reversed and whose case was dismissed on grounds of innocence, or on a ground consistent with innocence.

The bill requires that they follow the procedures in place for filing a claim against the state.

The bill gives the person filing the claim the burden of establishing by a preponderance of the evidence to the claims commissioner that he or she meets the bill's eligibility requirements. In addition, the bill requires the claimant to present evidence of damages arising from, or related to, the claimant's arrest, prosecution, conviction, and incarceration. If the claims commissioner determines that the claimant is eligible by a preponderance of the evidence, he must order the immediate payment of compensation for the wrongful incarceration.

The bill specifies factors the commissioner must consider when

determining the amount of compensation and additional amounts he may award for certain training and other specified services.

The bill requires people to file any claim based on a pre-October 1, 2008 pardon or dismissal by September 30, 2010. They must file any claim based on a pardon or dismissal that occurred on or after October 1, 2008 within two years after the pardon or dismissal.

The bill specifies that it may not be interpreted to prevent someone from pursuing any other action or remedy at law or in equity that he or she may have against the state and any political subdivision of the state and any officer, agent, employee, or official arising out of the wrongful conviction and incarceration.

The bill requires the Advisory Commission on Wrongful Convictions to monitor and evaluate the implementation of (1) the procedure the bill establishes for compensating wrongfully incarcerated persons; (2) the pilot program to electronically record interrogations of arrested persons; and (3) eyewitness identification procedures that, when practicable, use a double-blind administration. The bill specifies that a double-blind administration occurs when the person conducting the identification procedure is not aware of which person in the photo or live lineup is suspected as being the perpetrator of the crime.

By January 7, 2009, the commission must report its findings and recommendations to the Judiciary Committee.

The bill requires that beginning with the 2009 session of the General Assembly, a racial and ethnic impact statement be prepared for certain bills and amendments that could, if passed, increase or decrease the pretrial or sentenced prison population. It also requires that by January 1, 2009, the Judiciary Committee recommend a joint rule on the procedure for preparing them, their content, and the types of bills and amendments for which they should be prepared.

Finally, the bill extends the reporting deadline for the Connecticut

Sentencing Task Force from December 1, 2008 to July 1, 2009. It also requires the task force to recommend, by January 7, 2009, whether to establish a permanent sentencing commission and, if so, the permanent commission's mission, duties, membership, and procedures. The 28-member task force was established in 2006 to review the state's criminal justice and sentencing policies.

\*House Amendment "A" adds the provisions extending the Connecticut Sentencing Task Force's reporting deadline and requiring it to make recommendations on a permanent sentencing commission.

\*House Amendment "B" adds the racial and ethnic impact statement provision.

EFFECTIVE DATE: October 1, 2008, except for the provisions concerning the sentencing task force and the racial and ethnic impact statements, which take effect on passage.

### **DAMAGES**

The bill specifies that the evidence of damages that the claimant presents may include, but is not limited to, claims for:

1. loss of liberty and enjoyment of life, earnings and earning capacity, familial relationships, and reputation;
2. physical pain and suffering;
3. mental pain and suffering; and
4. attorney's fees and other expenses arising from or related to such person's arrest, prosecution, conviction, and incarceration.

### **AMOUNT OF COMPENSATION AWARDED**

In determining the amount of such compensation, the claims commissioner must consider relevant factors, including: (1) the evidence the claimant presented concerning the damages he or she suffered and (2) whether any negligence or misconduct by any officer, agent, employee, or official of the state or any political subdivision of

the state contributed to such person's arrest, prosecution, conviction, or incarceration.

The bill authorizes the commissioner to pay additional amounts for any other services a wrongfully convicted person may need to facilitate his or her reintegration into the community, including such:

1. the expenses of employment, training , and counseling; and
2. tuition and fees at any constituent unit of the state system of higher education.

## **BACKGROUND**

### ***Claims Commissioner***

Generally, the law requires those who wish to sue the state, or to present a claim against it, to file a claim with the claims commissioner unless their case falls within an exception established by law. They must file their claim with the commissioner within one year after it accrues. A claim accrues on the date the damage or injury is sustained or discovered or, in the exercise of reasonable care, should have been discovered. But, the law requires that the claim be submitted within three years after the date of the act or event that allegedly caused the damages (CGS § 4-148).

### ***Advisory Commission on Wrongful Convictions***

The chief court administrator established an advisory commission to review any criminal or juvenile case involving a wrongful conviction and recommend reforms to lessen the likelihood of a similar wrongful conviction occurring in the future. The advisory commission consists of the chief state's attorney, the chief public defender and the victim advocate, or their designees, a representative from the Connecticut Police Chiefs Association, a representative from the Connecticut Bar Association, and representatives from one or more Connecticut law schools or institutions of higher education that offer undergraduate programs in criminal justice and forensic science (CGS § 54-102pp).

**Related Law**

SA 07-5 required the comptroller to pay James Calvin Tillman \$5 million as full and final settlement of all claims he has against the state; any political subdivision of the state; and any state or local officer, agent, employee, or official, arising out of, or in any way related to, his arrest, prosecution, conviction, and incarceration from 1988 to 2006 for the crimes of kidnapping and sexual assault, which he did not commit. It exempted any payment he receives under the act from the state income tax. PA 07-04, June Special Session specified that this settlement is also exempt from claims or liens for incarceration costs that the law authorizes the state to recover from inmates.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 0 (03/24/2008)

Appropriations Committee

Joint Favorable

Yea 41 Nay 1 (04/18/2008)