Public Hearing 3/20/08
Summed 4/10/08

DAVID CUTLER
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Room 2500, Legislative Office Building
Hartford, CT 06106

Re: House Bill 5933

At the urging of Attorney Tiffany Stevens of McCarter & English, I am writing to voice both my support and concerns regarding House Bill 5933 (Compensation of Wrongfully Convicted and Incarcerated Persons).

It is reasonable to believe that those wrongfully convicted would be under-employed as well as in need of counseling. This gives rise to the likelihood that social services agencies would have a lien for any expenditures (medical or otherwise) rendered to any of the persons who would be compensated under this Bill. I believe any compensation rendered to those persons should be exempt from such a lien

Thank you for your hard work.

Very truly yours,

DAVID CUTLER

Updated: November, 2007

Benjamin N. Cardozo School of Law, Yeshiva University

MODEL LEGISLATION, 2008 STATE LEGISLATIVE SESSIONS

AN ACT CONCERNING CLAIMS FOR WRONGFUL CONVICTION AND IMPRISONMENT

SECTION 1. LEGISLATIVE INTENT

The legislature finds that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned have been uniquely victimized, have distinct problems re-entering society, have difficulty achieving legal redress due to a variety of substantive and technical obstacles in the law, and that such persons should have an available avenue of redress over and above the existing tort remedies to seek compensation for damages. 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 provisions of this Act that those persons who can demonstrate that they were wrongfully convicted receive immediate services upon release, and those who can meet the higher standard of proving their actual innocence be able to receive monetary compensation.

SECTION 2. STATEMENT OF CLAIM FOR COMPENSATION

A. In order to present an actionable claim for wrongful conviction and imprisonment, claimant must establish by documentary evidence that:

1. He has been convicted of one or more crimes and subsequently sentenced to a term of imprisonment and has served all or any part of the sentence;
2. On grounds not inconsistent with innocence:
   a. He was pardoned for the crime or crimes for which he was sentenced and which are the grounds for the complaint;
   b. The statute, or application thereof, on which the accusatory instrument was

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based, violated the Constitution of the United States or the [State];

c. The judgment of conviction was vacated; or

d. *The judgment of conviction was reversed;*

3. If there was a vacatur or reversal, either the accusatory instrument was dismissed; or if a new trial was held, the defendant was found not guilty; and

4. His claim is not time-barred by the provisions of Section 6 of this Act.

B. The claim shall be verified by the claimant.

C. If the court finds after reading the claim that the claimant has not alleged sufficient facts to succeed at trial, it shall dismiss the claim, either on its own motion or on the state's motion.

SECTION 3: PRESENTATION OF CLAIM

All claims of wrongful conviction and imprisonment shall be presented to and heard by the state's civil court or the state's other appropriate administrative structure that handles similar compensation claims.

SECTION 4: JUDGMENT AND AWARD

A. In order to obtain a judgment in his favor, claimant must prove by a preponderance of the evidence that:

1. He was convicted of one or more crimes and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

a. He has been pardoned for the crime or crimes for which he was sentenced and which are the grounds for the complaint; or

b. His judgment of conviction was reversed or vacated, and:

i. The accusatory instrument was dismissed; or

ii. If a new trial was ordered, either he was found not guilty at the new

trial or he was not retried and the accusatory instrument was dismissed, *provided that:*

a. The judgment of conviction was reversed or vacated, or the accusatory instrument was dismissed, on grounds not inconsistent with innocence; or

b. The statute, or application thereof, on which the accusatory instrument was based violated the Constitution of the United States or the [State]; and

2. He did not commit any of the crimes charged in the accusatory instrument, or the acts or omissions charged in the accusatory instrument did not constitute a crime; and

3. He did not commit or suborn perjury, or fabricate evidence to cause or bring about his conviction. However, neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit constitutes bringing about his own conviction under this Act.

B. If the court finds that the claimant was wrongfully convicted and incarcerated pursuant to Section 4, subsection A of this Act, the court shall award:

1. Damages for the physical injury of wrongful conviction and incarceration which shall be:

a. Not less than $50,000 for each year of incarceration, with an additional $50,000 for each year served on death row. This amount shall reflect:

i. Inflation from the date of enactment as adjusted by the state auditor, and partial years the claimant served;

ii. Consideration of:

a. Economic damages including but not limited to:

i. Lost wages;

ii. Costs associated with his criminal defense and efforts to prove innocence; and

iii. Medical and dental expenses incurred or expected to be incurred after release;

b. Non-economic damages for:

i. Personal physical injuries or physical sickness; and

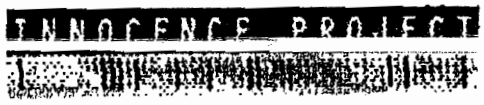
ii. Any non-physical injuries or sickness arising out of same, incurred during or as a result of incarceration;

2. Up to ten years of physical and mental health care through the state employees' health care system, to be offset by any amount provided through claimant's employers during that time period;

3. Reimbursement for any tuition and fees paid for the education of the claimant and any biological children that were conceived prior to his incarceration for the wrongful conviction at any community college or other unit of the [State] public university system, including any necessary assistance to meet the criteria required therefor, or a mutually agreed upon vocational program; and employment skills development training;

4. Compensation for child support payments owed by the claimant that became due, and interest on child support arrearages that accrued, during the time served in prison but were not paid;

5. Compensation for any reasonable costs incurred by claimant for immediate services secured upon exoneration and release, including housing, transportation and subsistence, re-integrative services and mental and physical health care costs incurred by claimant for the time period between his release from wrongful incarceration and the date of his



award; and

6. Reasonable attorneys' fees for bringing a claim under this Act calculated at ten percent of the damage award plus expenses;

a. These fees, exclusive of expenses, shall not exceed $75,000, as adjusted by the state auditor to account for inflation from the date of enactment; and

b. These fees shall not be deducted from the compensation due claimant; nor is counsel entitled to receive additional fees from the client.

C. The damage award shall not be subject to:

1. Any cap applicable to private parties in civil lawsuits;

2. Any taxes, except for those portions of the judgment awarded as attorneys fees for bringing a claim under this Act; or

3. Treatment as gross income to a claimant under the provisions of [the State's taxation code].

D. The acceptance by a claimant of any such award, compromise or settlement shall:

1. Be reduced to writing; and

2. Except when procured by fraud, be final and conclusive on the claimant.

E. Any future damages awarded to the claimant resulting from an action by the claimaint against any unit of government within [State] by reason of the same subject shall be offset by the damage award received under this Act.

F. The damage award shall not be offset by any expenses incurred by the state or any political subdivision of the state, including, but not limited to:

1. Expenses incurred:

a. To secure the claimant's custody; or

b. To feed, clothe or provide medical services for said claimant; or

2. The value of any services or reduction in fees for service, or the value thereof to be provided to the claimant that may be awarded to the claimant pursuant to this Act.

SECTION 5. NOTICE

A. A court granting judicial relief consistent with the criteria set forth in clause (2) of subsection A of Section 2 of this Act on or after the effective date of this Act shall provide a copy of this to the individual granted such relief at the time the criteria of said clause (2) of subsection A of Section 2 of this Act are satisfied.

B. The individual shall be required to acknowledge his receipt of a copy of this Act in writing on a form established by the Chief Justice for administration and management of the Trial Court.

C. The court shall enter said acknowledgement on the docket and the acknowledgement shall be admissible in any proceeding filed by a claimant under this Act.

D. The parole board, upon the issuance of a full pardon under section XX of Chapter XX on or after the effective date of this Act, shall provide a copy of this Act at the time the pardon is issued to the individual pardoned. The individual shall be required to acknowledge his receipt of a copy of this Act in writing on a form established by the parole board, which shall be retained on file by the parole board as part of its official records and shall be admissible in any proceeding filed by a claimant under this Act.

E. In the event a claimant granted judicial relief or a full pardon on or after the effective date of this Act shows he did not properly receive a copy of the information required by this section, he shall receive a one-year extension on the three-year time limit provided in Section 6 of this Act.

F. The Chief Justice for administration and management of the Trial Court shall make reasonable attempts to notify all persons pardoned or granted judicial relief consistent with the criteria set forth in subclauses (b), (c), or (d) of clause (2) of subsection A of Section 2 of this

Act before enactment of said Act of their rights under this Act.

SECTION 6. TIME LIMITATIONS

A. An action for compensation brought by a wrongfully convicted person under the provisions of this Act shall be commenced within three years after either the grant of a pardon or the grant of judicial relief and satisfaction of other conditions described in subsection A of Section 2 of this Act; provided, however, that any action by the state challenging or appealing the grant of said judicial relief shall toll said three-year period. Persons convicted, incarcerated and released from custody prior to the effective date of this Act shall commence an action under this Act within three years of said effective date.

B. Notwithstanding any other provision of law, failure to file any applicable Notice of Claim shall not bar filing of a claim under this Act.

SECTION 7. RIGHT OF APPEAL

Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions as set forth in section XX of said Chapter XXX of the [State] code.

SECTION 8. ELIGIBILITY FOR IMMEDIATE SERVICES

A. Any person convicted and subsequently imprisoned for one or more crimes for which either he is pardoned on grounds not inconsistent with innocence, or the conviction(s) are reversed or vacated on the basis of newly discovered evidence, and either the charges are dismissed or he is subsequently re-tried and acquitted, shall receive up to two years of immediate services needed upon release and for successful return to society, including but not limited to: housing, which may include authorizing the prioritization of the wrongfully convicted as a category in [State's]

Section 8 Housing Voucher Program; secondary or higher education; vocational training; transportation; subsistence monetary assistance; re-integrative services, and mental, physical and dental health care. The need for these services shall be determined through a review by the appropriate staff at the Department of Social Services [or [State's] relevant agency], and provided by the appropriate state entities, or contractors thereof.

B. Where a conviction is vacated on legal grounds, a judge may order that services similar to those in Section 8(A) of this Act be provided.