

# State of Connecticut

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Good morning Senator Coleman, Representative Tong and distinguished members of the Judiciary Committee. I appreciate the opportunity to testify about Senate Bill 460, *An Act Concerning Compensation for Wrongful Incarceration*.

By way of background, my Office is responsible for defending the State against wrongful incarceration claims brought pursuant to Section 54-102uu of the General Statutes. Under subsection (a) of that statute, a person is eligible for compensation from the State if "(1) Such person has been convicted by this state of one or more crimes, **of which the person was innocent**, has been sentenced to a term of imprisonment for such crime or crimes and has served all or part of such sentence; **and** (2) Such person's conviction was vacated or reversed and the complaint or information dismissed on grounds of innocence, or the complaint or information dismissed on a ground consistent with innocence." (Emphasis added).

My Office has interpreted the bolded language in subdivision (a)(1) of the statute to require a claimant to demonstrate that he or she was factually innocent of the crime for which he or she served a sentence of imprisonment. In addition to this requirement, subdivision (a)(2) of the statute also requires a claimant to demonstrate that a court has vacated or reversed a conviction on grounds of innocence or dismissed a complaint or information on a ground consistent with innocence.

If the Claims Commissioner finds that a claimant is eligible for compensation and makes an award, subsection (d) of the statute provides that he or she "shall order the immediate payment to such person of compensation for such wrongful incarceration." Thus, wrongful incarceration rewards under the statute are not subject to review or approval by the General Assembly.

SB 460 proposes a number of significant changes to the existing statutory scheme. First, it seeks to clarify that under the existing eligibility criteria, a claimant must demonstrate he or she was actually innocent of the crimes for which he or she was convicted. Second, it would make claimants eligible for compensation even if they fail to prove actual innocence if their convictions are reversed or vacated or their complaints or information are dismissed on grounds citing negligence or misconduct by any officer, agent, employee or official of the state or any political subdivision of the state that contributed to their arrest, prosecution, conviction or incarceration.

I have several suggestions concerning these proposed changes. First, if the legislature adopts these changes, it should delete the existing language in subdivision (a)(1) of the statute requiring a claimant to prove he or she has been convicted of one or more crimes "of which the person was innocent." This change is important for two reasons. First, it would become redundant of the new language contemplated in subdivision (2)(A) of the bill. Second, and perhaps more importantly, it would conflict with the new eligibility criteria, which makes claimants eligible for compensation even if they cannot demonstrate actual innocence. I also suggest deleting the new language in lines 29-35 of the bill. Simply

providing that a claimant has the burden of establishing the eligibility requirements of subsection (a) of the statute sufficiently sets forth what claimants must prove.

Second, if the legislature chooses to compensate individuals even if they cannot demonstrate actual innocence, which would be a significant departure from current state policy, I do not believe it would be appropriate to do so in cases where a claimant is only able to demonstrate a state actor's "negligence" contributed to their arrest, prosecution, conviction or incarceration. That standard could expose the State to significant liabilities in cases where a state actor did not act intentionally or recklessly. If the legislature is inclined to provide compensation to individuals in cases where they cannot demonstrate actual innocence, I believe it would be prudent for the legislature to postpone any action during this short legislative session so that it can take the time to study and fully understand the fiscal and policy implications of such a change. At a minimum, however, I recommend limiting eligibility to instances in which a claimant demonstrates a state actor caused an incarceration through intentional or reckless misconduct. I note that monetary damages for deprivation of federal civil rights are typically not available in cases of negligence, but rather require showings of intentional or reckless misconduct. (As you may know, in federal civil rights litigation, prosecutors are protected by absolute immunity even in instances of intentional conduct relating to their prosecutorial functions as a matter of federal common law.) I also recommend denying eligibility in such cases if the claimant is re-tried, convicted, and sentenced to a term of imprisonment equal to or greater than the time he or she served under a reversed conviction.

In addition to these suggestions, I note that the bill does not include a requirement that the legislature review and approve awards prior to payment. Rather, it would continue to require the Claims Commissioner to make an immediate payment unless a claimant seeks legislative review for purposes of confirming or modifying an award.

Lastly, subsection (g) of the bill provides that a person compensated under the statute shall not be allowed to pursue any other actions or remedies against the state, a political subdivision, or any officers, agents, employees or officials thereof arising out of a wrongful conviction and incarceration for which such claimant was so compensated. While I applaud the intent of this change, which is to prevent claimants from obtaining multiple recoveries for the same conduct, I am concerned that, as presently drafted, it would be vulnerable to a legal challenge under the Supremacy Clause of the United States Constitution. The legislature lacks the authority to extinguish federal civil rights claims against state actors. The better approach would be to require claimants, as a condition of receiving compensation under the statute, to provide a broad general release of all state and federal claims.

I hope this testimony is helpful. Please feel free to contact me if you have questions or comments.