



Senate

General Assembly

File No. 637

February Session, 2016

Substitute Senate Bill No. 460

Senate, April 14, 2016

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING COMPENSATION FOR WRONGFUL INCARCERATION.

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

1 Section 1. Section 54-102uu of the general statutes is repealed and
2 the following is substituted in lieu thereof (*Effective from passage*):

3 (a) A person is eligible to receive compensation for wrongful
4 incarceration if:

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

9 (2) Such person's conviction was vacated or reversed and (A) the
10 complaint or information dismissed by a court of competent
11 jurisdiction on grounds of innocence, [or] (B) the complaint or
12 information dismissed by a court of competent jurisdiction on a

13 ground consistent with innocence, or (C) the complaint or information
14 dismissed by a court of competent jurisdiction on a ground citing an
15 act or omission by any officer, agent, employee or official of the state
16 or any political subdivision of the state that contributed to such
17 person's arrest, prosecution, conviction or incarceration.

18 (b) A person who meets the eligibility requirements of subsection (a)
19 of this section may present a claim against the state for such
20 compensation with the Claims Commissioner in accordance with the
21 provisions of chapter 53. The provisions of said chapter shall be
22 applicable to the presentment, hearing and determination of such
23 claim except as otherwise provided in this section.

24 (c) At the hearing on such claim, such person shall have the burden
25 of establishing by a preponderance of the evidence that such person
26 meets the eligibility requirements of subsection (a) of this section. In
27 addition, such person shall present evidence as to [the damages
28 suffered by such person which may include, but are not limited to,
29 claims for loss of liberty and enjoyment of life, loss of earnings, loss of
30 earning capacity, loss of familial relationships, loss of reputation,
31 physical pain and suffering, mental pain and suffering and attorney's
32 fees and other expenses] (1) the person's age, income, vocational
33 training and level of education at the time of conviction, (2) loss of
34 familial relationships, (3) damage to reputation, (4) the severity of the
35 crime for which such person was convicted and whether such person
36 was under a sentence of death pursuant to section 53a-46a for any
37 period of time, (5) whether such person was required to register
38 pursuant to section 54-251 or 54-252, and for what length of time such
39 person complied with the registration requirements of chapter 969, and
40 (6) any other damages such person may have suffered arising from or
41 related to such person's arrest, prosecution, conviction and
42 incarceration.

43 (d) (1) If the Claims Commissioner determines that such person has
44 established such person's eligibility under subsection (a) of this section
45 by a preponderance of the evidence, the Claims Commissioner shall

46 order the immediate payment to such person of compensation for such
47 wrongful incarceration in an amount determined pursuant to
48 subdivision (2) of this subsection, unless (A) such compensation award
49 is in an amount exceeding twenty thousand dollars, or (B) such person
50 requests, in accordance with section 4-158, that the General Assembly
51 review such compensation award, in which cases the General
52 Assembly shall review any such compensation award and the claim
53 from which it arose not later than forty-five days after such claim is
54 submitted to the General Assembly and may deny such claim or
55 confirm or modify such compensation award. If the General Assembly
56 modifies the amount of the compensation award, the General
57 Assembly may award any amount of compensation the General
58 Assembly deems just and reasonable. If the General Assembly takes no
59 action on such compensation award or the claim from which it arose,
60 the determination made by the Claims Commissioner shall be deemed
61 confirmed.

62 (2) In determining the amount of such compensation, the Claims
63 Commissioner shall [consider] award an amount based on the median
64 household income for the state for each year such person was
65 incarcerated, as determined by the United States Department of
66 Housing and Urban Development, adjusted for inflation using the
67 consumer price index for urban consumers, provided the amount for
68 any partial year shall be prorated in order to compensate only for the
69 portion of such year in which such person was incarcerated. The
70 Claims Commissioner may increase or decrease the award amount by
71 twenty-five per cent based on an assessment of relevant factors
72 including, but not limited to, the evidence presented by the person
73 under subdivisions (1) to (6), inclusive, of subsection (c) of this section,
74 [as to the damages suffered by such person and whether any
75 negligence or misconduct by any officer, agent, employee or official of
76 the state or any political subdivision of the state contributed to such
77 person's arrest, prosecution, conviction or incarceration.]

78 (e) In addition to the compensation paid under subsection (d) of this
79 section, the Claims Commissioner may order payment for the expenses

80 of employment training and counseling, tuition and fees at any
81 constituent unit of the state system of higher education and any other
82 services such person may need to facilitate such person's reintegration
83 into the community.

84 (f) Any person claiming compensation under this section based on a
85 pardon that was granted or the dismissal of a complaint or information
86 that occurred before October 1, 2008, shall file such claim not later than
87 two years after October 1, 2008. Any person claiming compensation
88 under this section based on a pardon that was granted or the dismissal
89 of a complaint that occurred on or after October 1, 2008, shall file such
90 claim not later than two years after the date of such pardon or
91 dismissal.

92 (g) No person who is compensated pursuant to this section shall
93 pursue any other action or remedy under state law or in equity against
94 the state or any officer, agent, employee or official of the state arising
95 out of such wrongful conviction and incarceration. Nothing in this
96 section shall be construed to prevent any such person from pursuing
97 any other action or remedy at law or in equity that such person may
98 have [against the state and any political subdivision of the state and
99 any officer, agent, employee or official thereof] arising out of such
100 wrongful conviction and incarceration.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	54-102uu

Statement of Legislative Commissioners:

In Section 1(a)(2) "by a court of competent jurisdiction" was added for internal consistency, in Section 1(c)(4), the reference to death row was changed to reference a sentence of death for accuracy and Section 1(d)(1) was rewritten for clarity and accuracy.

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which makes a number of changes to procedures and allowable awards for wrongful incarceration claims presented to the claims commissioner, will not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 460*****AN ACT CONCERNING COMPENSATION FOR WRONGFUL INCARCERATION.*****SUMMARY:**

This bill makes a number of changes to procedures and allowable awards for wrongful incarceration claims presented to the claims commissioner. It:

1. expands the eligibility criteria for wrongful incarceration compensation by allowing claims in cases vacated or reversed on grounds of government negligence or misconduct;
2. prescribes specific evidence a claimant must present at a wrongful incarceration hearing before the claims commissioner, such as whether he or she was under a death sentence or spent time as a registered sex offender;
3. prescribes a new method the commissioner must use in determining the compensation amount, providing for an amount per year of incarceration indexed to the state median household income adjusted for inflation and prorated for partial years served in prison;
4. gives the commissioner discretion to increase or decrease the award amount by 25% after considering certain relevant factors;
5. requires the General Assembly to review any award that exceeds \$20,000 or for which a claimant requests review; and
6. prohibits a compensated claimant from pursuing, under state law or in equity, any further action or remedy that arises out of the claimant's wrongful conviction and incarceration, against the

state or any of its officers, agents, employees, or officials.

The law, unchanged by the bill, allows the commissioner to also award payment for reintegration services, such as employment training, counseling, and tuition and fees at state colleges and universities.

EFFECTIVE DATE: Upon passage

WRONGFUL INCARCERATION COMPENSATION

Eligibility for Compensation

By law, a person (1) wrongly convicted by the state of one or more crimes, of which he or she was innocent; (2) who has served time for the crime or crimes; and (3) whose conviction was vacated or reversed on grounds of innocence or a ground consistent with innocence may be eligible for wrongful incarceration compensation.

The bill expands the eligibility criteria, by allowing compensation when the ground for dismissal is government negligence or misconduct. It also specifies that any dismissal must have been made by a court of competent jurisdiction.

Hearing Before the Claims Commissioner

By law, a person who meets the eligibility criteria may file a claim against the state for compensation. Such a person must file the claim with the claims commissioner and prove his or her eligibility by a preponderance of the evidence.

Current law requires the claimant to also present evidence of the damages he or she suffered, such as claims for physical and mental pain and suffering; attorney's fees and other expenses; and claims for loss of liberty, enjoyment of life, earnings, earning capacity, familial relationships, or reputation. The bill, instead, requires the claimant to present evidence of:

1. his or her age, income, vocational training, and level of education at the time of conviction;

2. loss of familial relationships;
3. damage to reputation;
4. the severity of the crime for which he or she was convicted and whether he or she was under a death sentence;
5. whether he or she was required to register as a sex offender and the length of time spent as a registered sex offender; and
6. any other damages suffered that arose from or related to the arrest, prosecution, conviction, and incarceration.

Determining Compensation Amount

Under existing law, if the commissioner determines that a claimant is eligible for compensation, he must order immediate payment to the claimant for an amount he determines after assessing certain relevant factors. The bill prescribes a new method the commissioner must use in determining the compensation amount, and it requires the General Assembly to review any award that exceeds \$20,000 or for which the claimant requests a review.

Compensation Method. The bill requires the commissioner to award a claimant, for each year he or she was wrongfully incarcerated, an amount based on the median household income for the state, as determined by the U.S. Department of Housing and Urban Development, adjusted for inflation using the consumer price index for urban consumers. Under the bill, this amount must be prorated for any partial year served in incarceration.

The bill gives the commissioner the discretion to increase or decrease the award amount by 25% based on an assessment of relevant factors, including any of the evidence listed above that the claimant presented at the hearing.

Under current law, the commissioner has discretion in determining the award amount but must consider relevant factors such as (1) any evidence of damages suffered that the claimant presented at the

hearing and (2) whether any negligence or misconduct by an officer, agent, employee, or official of the state or any of its political subdivisions contributed to the person's arrest, prosecution, conviction, or incarceration.

Legislative Review of Compensation. Under the bill, the General Assembly must review a compensation award if the claimant makes such a request or the award exceeds \$20,000. The General Assembly must review any such award and the claim from which it arose within 45 days after receiving it and may (1) deny the claim, (2) confirm the award, or (3) modify the award to any amount it deems just and reasonable. If it takes no action on the award or the claim, the commissioner's determination is deemed confirmed.

Other Actions or Remedies

The bill prohibits a compensated claimant from pursuing, under state law or in equity, any further action or remedy against the state or any of its officers, agents, employees, or officials, arising from the wrongful conviction and incarceration. Current law does not prohibit a compensated claimant from pursuing such further action or remedy.

The bill allows a compensated claimant to pursue such further action or remedy arising out of the wrongful conviction and incarceration (e.g., against a political subdivision of the state).

BACKGROUND

Related Bill

sSB 458, reported favorably by the Judiciary Committee, requires the chief court administrator to designate one or more judge trial referees who can be available to the claims commissioner to hear and determine claims against the state. It also requires the claims commissioner to report to the Judiciary Committee on (1) the status of claims that were filed before December 2, 2014 and have not been disposed of and (2) any reforms undertaken to promote the simple, expeditious, and economical processing of claims.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 44 Nay 1 (03/30/2016)