

**" [CHAPTER 661B]
REDRESS FOR WRONGFUL CONVICTION AND IMPRISONMENT**

Section

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[\$661B-1] Statement of claim for compensation. (a) Any person convicted in a court of the State and imprisoned for one or more crimes of which the person was actually innocent may file a petition for relief pursuant to this chapter for an award of damages against the State; provided that the requirements of subsection (b) are met.

(b) To present an actionable claim against the State for wrongful conviction and imprisonment, the petitioner shall allege that the petitioner was convicted of one or more crimes under the laws of the State, was subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence and either that:

- (1) The judgment of conviction was reversed or vacated because the petitioner was actually innocent of the crimes for which the petitioner was convicted, and the court decision so states; or
- (2) The petitioner was pardoned because the petitioner was actually innocent of the crimes for which the petitioner was convicted and the pardon so states.

[\$661B-2] Presentation of claim. (a) A petition for relief filed pursuant to this chapter shall be filed in the circuit court of the circuit in which the petitioner lives, or if the petitioner lives outside the State, in the circuit court of the first circuit. The petitioner shall serve the petition upon the attorney general, and if the prosecuting authority was other than the attorney general, upon the prosecuting authority. The petition shall set forth the facts and authority that support the petitioner's claim.

(b) No later than sixty days after service, the attorney general shall file with the court an answer that shall either admit that the petitioner is entitled to compensation or deny the petitioner's claim.

If the attorney general admits that the petitioner is entitled to compensation, the court shall conduct a trial to determine the amount of compensation; provided that if the attorney general and the petitioner agree on the amount of the compensation, the court may issue a final judgment awarding the petitioner the amount agreed upon or, in its discretion, conduct a trial to determine the amount to award the petitioner.

If the attorney general denies that the petitioner is entitled to compensation, then the court shall conduct a trial to determine if the petitioner is entitled to compensation and the amount, if any.

(c) Notwithstanding any other provision of law to the contrary, no person shall be allowed to intervene in the proceeding; provided that if the attorney general did not obtain the conviction of the petitioner, then the prevailing

prosecuting authority may state its position on the petitioner's claim in a statement to the court. If the attorney general did not obtain the conviction of the petitioner, then the prevailing prosecuting authority shall provide the attorney general with any information or assistance that the attorney general may request.

(d) Any action against the State under this chapter shall be tried by the court without a jury; provided that the court, with the consent of all the parties, may order a trial with a jury whose verdict shall have the same effect as if trial by jury had been a matter of right.

[\$661B-3] Judgment and award. (a) The petitioner shall have the burden to prove by a preponderance of the evidence:

- (1) That the petitioner is eligible to seek compensation in accordance with the requirements set forth in section 661B-1;
- (2) That the petitioner was convicted in a court of the State and subsequently imprisoned for one or more crimes, but the petitioner was actually innocent of the crimes at issue; and
- (3) That the petitioner served time in prison for the crime or crimes, including time served prior to conviction, if any.

(b) The following shall be affirmative defenses, on which the State shall have the burden of proof by a preponderance of the evidence:

- (1) The petitioner was serving a term of imprisonment for another crime, including crimes under the laws of the United States, concurrently with imprisonment for the crime or crimes for which petitioner was actually innocent; provided that if the petitioner served additional time in prison due to the conviction that is the basis of the petition, then the petitioner shall receive compensation for that portion of the time served in prison during which the petitioner was serving no other sentence;
- (2) The petitioner committed perjury or fabricated evidence or induced another person to commit perjury or fabricate evidence to cause or bring about the conviction at issue;
- (3) The petitioner fabricated evidence or committed or suborned perjury during any proceeding related to the crime for which the petitioner was convicted;
- (4) The petitioner solicited the commission of the crime at issue or any crime factually related to the crime at issue;

- (5) The petitioner conspired to commit the crime at issue or any crime factually related to the crime at issue;
- (6) The petitioner attempted to commit the crime at issue or any crime factually related to the crime at issue;
- (7) The petitioner assisted in the commission of the crime at issue or any crime factually related to the crime at issue; or
- (8) The petitioner assisted any person to avoid apprehension, arrest, or conviction for the crime at issue or any crime factually related to the crime at issue.

If the State proves one or more of the affirmative defenses enumerated in this subsection, the petitioner shall receive no compensation except as provided in paragraph (1).

(c) If the court finds that the petitioner has proven a claim for wrongful conviction and imprisonment, the court shall award the petitioner \$50,000 for each year of actual confinement, including time spent awaiting trial, served by the petitioner for the crime or crimes for which the petitioner was actually innocent; provided that:

- (1) The petitioner shall not be compensated for the time imprisoned if the petitioner was concurrently imprisoned for a different conviction, even if the other conviction was related to the conviction that was vacated or reversed or for which the petitioner was pardoned because of actual innocence;
- (2) The award shall be prorated for partial years of imprisonment; and
- (3) If the court finds, by a preponderance of the evidence, extraordinary circumstances pertain to a conviction that is set aside or a pardon that is granted because of actual innocence, the court may award the petitioner a maximum of \$100,000 in additional compensation.

(d) The court shall award reasonable attorneys' fees not to exceed \$10,000 for fees incurred in preparing and prosecuting the claim for the prevailing petitioner. The attorney for the petitioner shall not charge, demand, receive, or collect fees for services rendered in excess of twenty-five per cent of any amount awarded by the circuit court.

(e) In an action under this chapter, court costs and fees as established by law may be allowed to the prevailing party.

(f) On all moneys awarded to the petitioner for claims instituted under this chapter, interest shall be computed at the rate of four per cent a year from the date of judgment up to, but not exceeding, thirty days after the date of approval of any appropriation act providing for payment of the judgment.

(g) Any moneys awarded to the petitioner for claims instituted under this chapter, other than for attorneys' fees, shall not be subject to any tax by the State or any county, including any income or general excise tax, any law to the contrary notwithstanding.

[\$661B-4] Time limitations. Every claim arising under this chapter shall forever be barred unless the action is commenced by filing a petition with the circuit court within two years after the conviction that is the subject of the petition is either reversed or vacated, or the petitioner is pardoned for that conviction; provided that:

- (1) If the claim is based on a conviction reversed or vacated or a pardon granted prior to June 29, 2016, the claim shall be commenced by filing a petition with the circuit court no later than July 1, 2018, or be forever barred; and
- (2) Notwithstanding any other law to the contrary, this limitation of actions shall not be tolled for any reason.

[\$661B-5] Right of appeal. Review of any final judgment of the circuit court shall be governed by chapter 602.

[\$661B-6] Waiver of sovereign immunity. This chapter shall constitute a waiver of sovereign immunity by the State only for the claims brought pursuant to this chapter. The State makes no other waiver of sovereign immunity, and fully retains its sovereign immunity as to all other claims, however denominated, that seek compensation of any kind or nature that are a result of, related to, or arise from a conviction and imprisonment for crimes for which the claimant alleges actual innocence. This section shall be broadly construed in favor of the State and against any waiver of sovereign immunity.

[\$661B-7] Exclusive remedy. (a) Notwithstanding any other law, including the common law, to the contrary, this chapter sets forth the exclusive remedy for any person seeking compensation of any kind or nature whatsoever, as a result of, related to, or arising from a conviction and imprisonment for crimes for which the person was actually innocent. This section shall be strictly construed in favor of any person against whom a claim is asserted, and against the person asserting the claim.

(b) Notwithstanding any law to the contrary, should the petitioner die before a final judgment in the circuit court is entered, the petitioner's claim shall abate in its entirety.

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