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# A BILL FOR AN ACT

RELATING TO REDRESS FOR WRONGFUL CONVICTION AND IMPRISONMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1       SECTION 1. The legislature finds that Act 156, Session  
2       Laws of Hawaii 2016, was enacted to monetarily compensate  
3       individuals who had been wrongfully convicted and imprisoned in  
4       the Hawaii criminal justice system. The Act created chapter  
5       661B, Hawaii Revised Statutes, which is entitled "Redress for  
6       Wrongful Conviction and Imprisonment", and through which the  
7       compensation scheme has been in effect for eight years.

8       In enacting Act 156, the legislature found that individuals  
9       who were wrongfully convicted and imprisoned by the State  
10      deserved "an avenue of redress over and above the existing tort  
11      remedies to seek compensation for damages from the jurisdiction  
12      that convicted and imprisoned them". Pursuant to section  
13      661B-3(b), Hawaii Revised Statutes, if a court finds that a  
14      person has proven a claim for wrongful conviction and  
15      imprisonment, the court is to award the person \$50,000 for each  
16      year of actual confinement, including time spent awaiting trial.  
17      The legislature recognizes that although the process does not



1 explicitly require a court trial to determine if a petitioner is  
2 entitled to compensation and the amount of compensation, in  
3 practice, petitioners have been subjected to lengthy trials.

4       The legislature also recognizes the recent Hawai'i supreme  
5 court decision in *Jardine v. Hawai'i*, 155 Haw. 60 (2024). The  
6 court considered the language of section 661B-1, Hawaii Revised  
7 Statutes, which in part requires that a petitioner's judgment of  
8 conviction be reversed or vacated "because the petitioner was  
9 actually innocent of the crimes for which the petitioner was  
10 convicted, and the court decision so states". The supreme court  
11 held that the statute does not require the exact words "actual  
12 innocence" to appear in the order. However, the court also held  
13 that the statute "does, however, require that such an order  
14 state a finding that supports a petitioner's 'actual innocence'  
15 - that is, the order should support the conclusion that the  
16 petitioner did not commit the crime".

17       The legislature notes that rather than claims for  
18 compensation for wrongful conviction and imprisonment  
19 languishing for years as a potential liability to the State,  
20 this Act provides a timely manner for deciding if claims are to  
21 be paid, giving certainty to the budgeting process.



1 Accordingly, the purpose of this Act is to make  
2 improvements to the State's wrongful imprisonment compensation  
3 law.

4 SECTION 2. Chapter 661B, Hawaii Revised Statutes, is  
5 amended by adding four new sections to be appropriately  
6 designated and to read as follows:

7 **"§661B-A Liberal construction.** This chapter shall be  
8 liberally construed to ensure that those persons who were  
9 wrongfully convicted and imprisoned by the State receive  
10 compensation.

11 **§661B-B Notice of the right to petition.** The department  
12 of corrections and rehabilitation shall provide written notice  
13 of the ability to file a claim under this chapter to any person  
14 whose judgment of conviction was reversed or vacated, or was  
15 pardoned, on grounds consistent with innocence. The notice  
16 shall state the applicable filing deadline and include copies of  
17 the statutory sections related to the filing requirements and a  
18 copy of the person's order or pardon.

19 **§661B-C Procedure upon reversal or vacation of conviction.**  
20 (a) Upon the reversal or vacation of a judgment of conviction  
21 on grounds consistent with innocence, the court shall inquire



1 whether the person wishes to seek relief pursuant to chapter  
2 661B. If the answer is affirmative, the court shall make  
3 findings whether the person:

4 (1) Is eligible to seek compensation in accordance with  
5 the requirements set forth in section 661B-1;

6 (2) Was convicted in a court of the State and subsequently  
7 imprisoned for one or more crimes, but the findings  
8 support the conclusion that the person did not commit  
9 the crime upon which that conviction was based; and

10 (3) Served time in prison for the crime or crimes,  
11 including time served prior to conviction, if any.

12 If the findings are all in the affirmative, a petition  
13 shall be deemed to have been filed that satisfies section  
14 661B-2. The court shall indicate the filing on the record and  
15 provide notice of the deemed petition to the appropriate county  
16 prosecutor and the attorney general, which shall satisfy the  
17 service requirements of section 661B-2. The court shall also  
18 provide notice of the deemed petition and corresponding order to  
19 the comptroller to commence advance compensation payments  
20 pursuant to section 661B-D.



1       The petition shall be held in abeyance for two weeks. If  
2       after two weeks, a county prosecutor or the attorney general has  
3       not brought, or announced that it will bring, new charges  
4       against the petitioner, the petition shall be deemed admitted by  
5       the attorney general and that the petitioner is entitled  
6       compensation pursuant to this chapter. The court shall award  
7       compensation pursuant to section 661B-3 minus any advance  
8       payment made to the petitioner.

9       (b) Any person whose conviction was reversed or vacated  
10       with prejudice shall be deemed innocent and entitled to  
11       compensation under this chapter. The court shall award  
12       compensation pursuant to section 661B-3 minus any advance  
13       payment to the petitioner.

14       (c) The court may appoint an attorney for the petitioner  
15       if the court determines that the interests of justice require  
16       one be appointed.

17       **\$661B-D Advance compensation.** (a) The State shall pay  
18       advance compensation to any petitioner who was convicted in a  
19       court of the State, imprisoned for at least one year, and whose  
20       judgment of conviction was reversed or vacated, or was pardoned,  
21       on grounds consistent with innocence; provided that neither the



1 State nor a county prosecuting authority have filed new charges  
2 based on the same alleged act or acts for which the petitioner  
3 was originally convicted.

4 (b) Within seven days of service of the petition pursuant  
5 to section 661B-2 or notice of the filing and service pursuant  
6 to section 661B-C, the comptroller shall issue a warrant  
7 pursuant to section 40-51 for a payment of \$5,000 to the  
8 petitioner. Subsequently, on the first day of every month, the  
9 comptroller shall issue a warrant for payment of \$5,000 to the  
10 petitioner until the State has paid in the aggregate an amount  
11 equal to the payment for one year of imprisonment, as specified  
12 in section 661B-3(c); provided that the payments shall cease if  
13 the attorney general or a county prosecuting attorney files new  
14 charges based on the same alleged act or acts for which the  
15 petitioner was originally convicted.

16 (c) Any advance compensation paid to the petitioner shall  
17 be deducted from any compensation to which the petitioner is  
18 entitled under this chapter. If the petition is subsequently  
19 denied, the petitioner shall not need to repay any funds  
20 disbursed."



SECTION 3. Section 661B-1, Hawaii Revised Statutes, is amended to read as follows:

**"~~{}~~\$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]~~ for whom the judgment of conviction was reversed or vacated, or who was pardoned, on grounds consistent with innocence, 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)]~~ this section 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~~ 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~~



1       ~~+(2) The] or the~~ petitioner was pardoned [~~because the~~  
2               ~~petitioner was actually innocent of the crimes for~~  
3               ~~which the petitioner was convicted and the pardon so~~  
4               ~~states.]~~ on grounds consistent with innocence."

5       SECTION 4. Section 661B-2, Hawaii Revised Statutes, is  
6       amended to read as follows:

7       "**[+]§661B-2[+]** **Presentation of claim.** (a) A petition for  
8       relief filed pursuant to this chapter shall be filed in the  
9       circuit court of the circuit in which the petitioner lives, or  
10      if the petitioner lives outside the State, in the circuit court  
11      of the first circuit. The petitioner shall serve the petition  
12      upon the attorney general, and if the prosecuting authority was  
13      other than the attorney general, upon the prosecuting authority.  
14      The petition shall set forth the facts and authority that  
15      support the petitioner's claim.

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

20      If the attorney general admits that the petitioner is  
21      entitled to compensation, the court shall conduct a trial to





1 determine the amount of compensation; provided that if the  
2 attorney general and the petitioner agree on the amount of the  
3 compensation, the court may issue a final judgment awarding the  
4 petitioner the amount agreed upon or, in its discretion, conduct  
5 a trial to determine the amount to award the petitioner.

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

10 (c) Notwithstanding any other provision of law to the  
11 contrary, no person shall be allowed to intervene in the  
12 proceeding; provided that if the attorney general did not obtain  
13 the conviction of the petitioner, then the prevailing  
14 prosecuting authority may state its position on the petitioner's  
15 claim in a statement to the court. If the attorney general did  
16 not obtain the conviction of the petitioner, then the prevailing  
17 prosecuting authority shall provide the attorney general with  
18 any information or assistance that the attorney general may  
19 request.

20 (d) Any action against the State under this chapter shall  
21 be tried by the court without a jury; provided that the court,



1 with the consent of all the parties, may order a trial with a  
2 jury whose verdict shall have the same effect as if trial by  
3 jury had been a matter of right.

4 (e) This section shall be inapplicable to any petitioner  
5 for whom a deemed petition was filed pursuant to section  
6 661B-C."

7 SECTION 5. Section 661B-3, Hawaii Revised Statutes, is  
8 amended as follows:

9 1. By amending subsections (a) to (c) to read:

10 "(a) The [~~petitioner~~] State shall have the burden to prove  
11 by a preponderance of the evidence[+]

12 ~~(1) That the petitioner is eligible to seek compensation~~  
13 ~~in accordance with the requirements set forth in~~  
14 ~~section 661B-1;~~

15 ~~(2) That the petitioner was convicted in a court of the~~  
16 ~~State and subsequently imprisoned for one or more~~  
17 ~~crimes, but the petitioner was actually innocent of~~  
18 ~~the crimes at issue; and~~

19 ~~(3) That the petitioner served time in prison for the~~  
20 ~~crime or crimes, including time served prior to~~  
21 ~~conviction, if any.] that the reversal or vacating of~~



1        the order of conviction for the petitioner, or the  
2        pardoning of the petitioner, was inconsistent with  
3        innocence.

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

7        (1) The petitioner was serving a term of imprisonment for  
8 another crime, including crimes under the laws of the  
9 United States, concurrently with imprisonment for the  
10 crime or crimes for which petitioner [~~was actually~~  
11 ~~innocent;~~] whose judgment of conviction was reversed  
12 or vacated or who was pardoned on grounds consistent  
13 with innocence; provided that if the petitioner served  
14 additional time in prison due to the conviction that  
15 is the basis of the petition, then the petitioner  
16 shall receive compensation for that portion of the  
17 time served in prison during which the petitioner was  
18 serving no other sentence;

19        (2) The petitioner committed perjury or fabricated  
20 evidence or induced another person to commit perjury



1 or fabricate evidence to cause or bring about the  
2 conviction at issue;

3 (3) The petitioner fabricated evidence or committed or  
4 suborned perjury during any proceeding related to the  
5 crime for which the petitioner was convicted;

6 (4) The petitioner solicited the commission of the crime  
7 at issue or any crime factually related to the crime  
8 at issue;

9 (5) The petitioner conspired to commit the crime at issue  
10 or any crime factually related to the crime at issue;

11 (6) The petitioner attempted to commit the crime at issue  
12 or any crime factually related to the crime at issue;

13 (7) The petitioner assisted in the commission of the crime  
14 at issue or any crime factually related to the crime  
15 at issue; or

16 (8) The petitioner assisted any person to avoid  
17 apprehension, arrest, or conviction for the crime at  
18 issue or any crime factually related to the crime at  
19 issue.



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

4 (c) If the court finds that the petitioner has [~~proven~~]  
5 filed a claim for wrongful conviction and imprisonment[~~7~~] and  
6 the State has not met its burden of proof under subsection (a)  
7 or proven an affirmative defense pursuant to subsection (b) or a  
8 deemed petition was filed for the petitioner and subsequently  
9 deemed admitted pursuant to section 661B-C, the court shall  
10 award the petitioner \$50,000 for each year of actual  
11 confinement, including time spent awaiting trial, served by the  
12 petitioner for the crime or crimes for which the petitioner was  
13 actually innocent; provided that:

14 (1) The petitioner shall not be compensated for the time  
15 imprisoned if the petitioner was concurrently  
16 imprisoned for a different conviction, even if the  
17 other conviction was related to the conviction that  
18 was vacated or reversed or for which the petitioner  
19 was pardoned [~~because of actual innocence;~~] on grounds  
20 consistent with innocence;



1 (2) The award shall be prorated for partial years of  
2 imprisonment; ~~and~~

3 (3) Any advance compensation paid to the petitioner shall  
4 be deducted from the award; and

5 ~~[-3-]~~ (4) If the court finds, by a preponderance of the  
6 evidence, extraordinary circumstances pertain to a  
7 conviction that is set aside or a pardon that is  
8 granted ~~[because of actual innocence,]~~ on grounds  
9 consistent with innocence, the court may award the  
10 petitioner a maximum of \$100,000 in additional  
11 compensation."

12 2. By amending subsection (f) to read:

13 "(f) On all moneys awarded to the petitioner for claims  
14 instituted under this chapter, interest shall be computed at the  
15 rate of four per cent a year from the date of judgment up to,  
16 but not exceeding, thirty days after the date of approval of any  
17 appropriation act providing for payment of the judgment~~[-]~~ or  
18 after the date the comptroller was required to issue a warrant  
19 pursuant to section 661B-D."

20 SECTION 6. Section 661B-6, Hawaii Revised Statutes, is  
21 amended to read as follows:



1        "[~~§~~§661B-6[~~§~~] **Waiver of sovereign immunity.** This chapter  
2 shall constitute a waiver of sovereign immunity by the State  
3 only for the claims brought pursuant to this chapter. The State  
4 makes no other waiver of sovereign immunity, and fully retains  
5 its sovereign immunity as to all other claims, however  
6 denominated, that seek compensation of any kind or nature that  
7 are a result of, related to, or arise from a conviction and  
8 imprisonment for crimes for which the claimant [~~alleges actual~~  
9 ~~innocence.~~] whose judgment of conviction was reversed or  
10 vacated, or who was pardoned, on grounds consistent with  
11 innocence. This section shall be broadly construed in favor of  
12 the State and against any waiver of sovereign immunity."

13        SECTION 7. Section 661B-7, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15        "(a) Notwithstanding any other law, including the common  
16 law, to the contrary, this chapter sets forth the exclusive  
17 remedy for any person seeking compensation of any kind or nature  
18 whatsoever, as a result of, related to, or arising from a  
19 conviction and imprisonment for crimes for which the person [~~was~~  
20 ~~actually innocent.~~] whose judgment of conviction was reversed or  
21 vacated, or who was pardoned, on grounds consistent with



1 innocence. This section shall be strictly construed in favor of  
2 any person against whom a claim is asserted, and against the  
3 person asserting the claim."

4 SECTION 8. No later than forty days before the convening  
5 of each of the regular sessions of 2026, 2027, and 2028, the  
6 department of the attorney general shall submit to the  
7 legislature a report on the status of all petitions filed under  
8 chapter 661B, Hawaii Revised Statutes. The report shall  
9 include, for each petition:

- 10 (1) The name of the petitioner;
- 11 (2) The date the petition was filed and the circuit in  
12 which it was filed;
- 13 (3) Whether the department granted or denied the petition,  
14 and the date the department's response was filed;
- 15 (4) Whether any compensation has been made to the  
16 petitioner, including any compensation pursuant to  
17 section 661B-2(b), Hawaii Revised Statutes, and the  
18 dates of the compensation, if any; and
- 19 (5) The current status of the petition.

20 SECTION 9. In codifying the new sections added by section  
21 2 of this Act, the revisor of statutes shall substitute





1 appropriate section numbers for the letters used in designating  
2 the new sections in this Act.

3 SECTION 10. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 11. This Act shall take effect upon its approval.



**Report Title:**

Wrongful Convictions; Civil Remedies; Redress; Compensation

**Description:**

Requires the Department of Corrections and Rehabilitation to provide written notice to certain persons regarding the ability to file a claim for redress under applicable wrongful conviction law. Requires the liberal construction of that law. Changes the standard for a claim for compensation for wrongful imprisonment from actual innocence to grounds consistent with innocence. Provides for advance compensation for petitioners under certain circumstances. Requires the State to prove, for claims for compensation for wrongful imprisonment, that the reversal or vacating of the petitioner's conviction or pardoning of the petitioner was inconsistent with innocence. Requires reports to Legislature from the Department of the Attorney General. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

