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# A BILL FOR AN ACT

RELATING TO WRONGFUL 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 (Act 156), was enacted to monetarily  
3 compensate individuals who had been wrongfully convicted and  
4 imprisoned in the Hawai'i criminal justice system. Act 156  
5 established a compensation scheme, which has been in effect for  
6 several years, to provide redress to those who have been  
7 wrongfully imprisoned.

8           The legislature further finds that in its findings for  
9 Act 156, it found that individuals who were wrongfully convicted  
10 and imprisoned by the State deserved "an avenue of redress over  
11 and above the existing tort remedies to seek compensation for  
12 damages from the jurisdiction that convicted and imprisoned  
13 them". The legislature also finds that existing law stipulates  
14 that if a court finds that a person has proven a claim for  
15 wrongful conviction and imprisonment, the court is required to  
16 award the person \$50,000 for each year of actual confinement,  
17 including time spent awaiting trial. However, the legislature



1 recognizes that, in practice, petitioners have been subjected to  
2 lengthy trials to determine whether a petitioner is entitled to  
3 compensation and the amount of compensation.

4 The legislature recognizes the recent Hawaii supreme court  
5 decision in *Jardine v. State*, 155 Hawaii 60 (2024). The court  
6 considered the provisions 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 Hawaii  
11 supreme court held that the statute does not require the exact  
12 words "actually innocent" to appear in the order. However, the  
13 court also held that the statute "does, however, require that  
14 such an order state a finding that supports a petitioner's  
15 'actual innocence' - that is, the order should support the  
16 conclusion that the petitioner did not commit the crime".

17 The legislature also finds that wrongful compensation  
18 claims in Hawaii have often been subject to prolonged litigation  
19 and delay, including delay caused by the State. The prolonged  
20 uncertainty and financial hardship caused by a delay are unjust  
21 to those wrongfully convicted. In at least one situation, the



1 wrongfully convicted individual passed away before receiving any  
2 compensation after almost a decade of litigation seeking  
3 compensation. The legislature finds that these unresolved  
4 claims are also a potential liability to the State. The  
5 legislature therefore concludes that rather than allow claims  
6 for compensation for wrongful conviction and imprisonment to  
7 languish for years, the law should be amended to give certainty  
8 to the budgeting process and to those who were wrongfully  
9 convicted.

10 Accordingly, the purpose of this Act is to:

- 11 (1) Establish the procedure that a circuit court shall  
12 follow upon the reversal or vacation of a person's  
13 judgment of conviction on grounds consistent with  
14 innocence, and where the charges were dismissed;
- 15 (2) Require the State to pay, through a warrant for  
16 payment issued by the comptroller, advance  
17 compensation to any person who was convicted in a  
18 court of the State, imprisoned for at least one year,  
19 and whose judgment of conviction was reversed or  
20 vacated, or was pardoned, on grounds consistent with  
21 innocence;



- 1           (3) Require the department of human services, in  
2           collaboration with the department of corrections and  
3           rehabilitation, to contract with a community-based  
4           agency to assign a case manager to a person upon the  
5           person's release;
- 6           (4) Require the State to provide medical coverage to a  
7           person for a certain duration upon the reversal or  
8           vacation of the person's judgment of conviction on  
9           grounds consistent with innocence and where the  
10          charges were dismissed;
- 11          (5) Require the department of the attorney general to  
12          submit an annual report to the legislature;
- 13          (6) Clarify eligibility to seek compensation for persons  
14          whose judgment of conviction was reversed or vacated,  
15          or who were pardoned, on grounds consistent with  
16          innocence, and whose charges were dismissed; and
- 17          (7) Shift the burden of proof to the State to prove by a  
18          preponderance of evidence that the reversal or  
19          vacating of the judgment of conviction, or the pardon,  
20          was inconsistent with innocence.



1 SECTION 2. Chapter 661B, Hawaii Revised Statutes, is  
2 amended by adding six new sections to be appropriately  
3 designated and to read as follows:

4 "§661B-A Liberal construction. This chapter shall be  
5 liberally construed to ensure that those persons who were  
6 wrongfully convicted and imprisoned by the State receive  
7 compensation.

8 §661B-B Reversal or vacation of conviction; procedure.

9 (a) Upon the reversal or vacation of a judgment of conviction  
10 on grounds consistent with innocence, and where the charges were  
11 dismissed, the circuit court in which the charge was originally  
12 filed shall:

13 (1) Provide oral and written notice of the person's  
14 ability to file a claim under this chapter;

15 (2) Award advance compensation payments pursuant to  
16 section 661B-C unless the court orders the award under  
17 paragraph (5);

18 (3) Order the department of human services, in  
19 collaboration with the department of corrections and  
20 rehabilitation, to assign a case manager to the person  
21 pursuant to section 661B-D;



- 1        (4) Make the following findings:
- 2            (A) Whether the person was convicted in a court of
- 3            the State and subsequently imprisoned for one or
- 4            more crimes and the crime or crimes upon which
- 5            that conviction was based were reversed or
- 6            vacated;
- 7            (B) Whether the grounds for the reversal or vacation
- 8            of the crime or crimes support the conclusion
- 9            that the person did not commit the crime or
- 10           crimes;
- 11           (C) Whether the charges were dismissed;
- 12           (D) The number of years, months, and days that the
- 13           person spent in prison for the crime or crimes
- 14           described in subparagraph (B), including time
- 15           served before conviction, if any; and
- 16           (E) At the rate of \$50,000 for each year of actual
- 17           confinement, including time spent awaiting trial,
- 18           the total amount of compensation the person would
- 19           receive under section 661B-3;
- 20        (5) If the person elects to seek relief pursuant to this
- 21        chapter at the time of the reversal or vacation and



1 the court answers in the affirmative with respect to  
2 paragraphs (4) (A) and (B), the court shall order the  
3 award as calculated pursuant to paragraph (4) (E);  
4 provided that neither the State nor a county  
5 prosecuting authority has filed new charges based on  
6 the same alleged act or acts for which the person was  
7 originally convicted; and

8 (6) Award reasonable attorney's fees not exceeding \$10,000  
9 pursuant to section 661B-3.

10 (b) A person does not waive the person's right to seek  
11 relief pursuant to this chapter if the person does not elect to  
12 seek relief at the time of reversal or vacation.

13 **§661B-C Advance compensation; requirements.** (a) The  
14 State shall pay advance compensation to any person who was  
15 convicted in a court of the State, imprisoned for at least one  
16 year, and whose judgment of conviction was reversed or vacated,  
17 or was pardoned, on grounds consistent with innocence; provided  
18 that the charges were dismissed and neither the State nor a  
19 county prosecuting authority has filed new charges based on the  
20 same alleged act or acts for which the person was originally  
21 convicted.

1        (b) Within five business days of the reversal or vacation,  
2 the comptroller shall issue a warrant pursuant to section 40-51  
3 for a payment of \$5,000 to the person. Subsequently, on the  
4 first day of every month, the comptroller shall issue a warrant  
5 for a payment of \$5,000 to the person until the State has paid  
6 in the aggregate an amount equal to the payment for one year of  
7 imprisonment pursuant to section 661B-3(c); provided that the  
8 payments shall cease if the attorney general or a county  
9 prosecuting attorney files new charges based on the same alleged  
10 act or acts for which the person was originally convicted.

11        (c) Any advance compensation paid to the person shall be  
12 deducted from any compensation to which the person is entitled  
13 under this chapter. If the petition is subsequently denied, the  
14 petitioner shall not be required to repay any funds disbursed.

15        **§661B-D Case manager; appointment.** (a) Upon the reversal  
16 or vacation of a person's judgment of conviction on grounds  
17 consistent with innocence and where the charges were dismissed,  
18 the department of human services, in collaboration with the  
19 department of corrections and rehabilitation, shall contract  
20 with a community-based agency to appoint a case manager to the



1 person. Services shall commence immediately and continue for  
2 sixty days from the day of the person's release.

3 (b) Case manager duties shall include assisting the person  
4 in obtaining the following:

5 (1) Housing;

6 (2) State identification;

7 (3) Medical, dental, and mental health insurance and  
8 appointments;

9 (4) A cell phone; and

10 (5) Employment.

11 §661B-E Medical coverage. (a) Upon the reversal or  
12 vacation of a person's judgment of conviction on grounds  
13 consistent with innocence and where the charges were dismissed,  
14 the person shall be eligible to obtain medical coverage from the  
15 State.

16 (b) The State shall provide medical coverage to a person  
17 under subsection (a) for a period of time equal to that of the  
18 person's wrongful imprisonment, including any period during  
19 which the person was released on parole.

20 §661B-F Jurisdiction over the person. The judiciary and  
21 department of corrections and rehabilitation shall retain



1 jurisdiction over the person for the purposes of effectuating  
2 this chapter.

3 §661B-G Reimbursement; counties. The State may seek  
4 reimbursement from the applicable county for any losses incurred  
5 by the State pursuant to this chapter.

6 §661B-H Annual report. The department of the attorney  
7 general shall submit an annual report of its findings and  
8 recommendations, including any proposed legislation, to the  
9 legislature no later than twenty days prior to the convening of  
10 each regular session. The report shall detail the  
11 implementation and application of this chapter and shall include  
12 the following:

- 13 (1) The name of any person whose judgment of conviction  
14 was reversed or vacated, or who was pardoned, on  
15 grounds consistent with innocence, and where the  
16 charges were dismissed;
- 17 (2) Whether the State or a county prosecuting authority  
18 filed new charges based on the same alleged act or  
19 acts for which the person was originally convicted;
- 20 (3) The court's findings pursuant to section 661B-B;



- 1        (4) Whether the person chose to seek relief and whether
- 2                    the person chose to do so at the time of reversal or
- 3                    vacation, or later;
- 4        (5) If the person, subsequent to the court's findings,
- 5                    filed a petition:
- 6                    (A) The date on which the petition was filed;
- 7                    (B) The circuit in which the petition was filed;
- 8                    (C) Whether the department of the attorney general
- 9                    admitted or denied that the petitioner is
- 10                   entitled to compensation;
- 11                   (D) The date on which the department of the attorney
- 12                   general's response was filed; and
- 13                   (E) The status of the petition on the date on which
- 14                   the report is submitted; and
- 15        (6) Whether any compensation has been made to the person,
- 16                   including any advance compensation rendered pursuant
- 17                   to section 661B-C, and the dates on which the
- 18                   compensation was disbursed."

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

1 " ~~[+]§661B-1[+]~~ **Statement of claim for compensation.** ~~[(a)]~~

2 Any person convicted in a court of the State and imprisoned for  
3 one or more crimes ~~[of which the person was actually innocent]~~  
4 whose judgment of conviction was reversed or vacated, or who was  
5 pardoned, on grounds consistent with innocence, and where the  
6 charges were dismissed, may file a petition for relief pursuant  
7 to this chapter for an award of damages against the State;  
8 provided that the requirements of ~~[subsection (b)]~~ this section  
9 are met[-]; provided further that the court has not previously  
10 awarded compensation to the person pursuant to section 661B-B.

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

17 (1) The judgment of conviction was reversed or vacated  
18 ~~[because the petitioner was actually innocent of the~~  
19 ~~crimes for which the petitioner was convicted, and the~~  
20 ~~court decision so states]; or~~



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

6           SECTION 4. Section 661B-3, Hawaii Revised Statutes, is  
7           amended as follows:

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

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

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

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

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



1           pardoning of the petitioner was inconsistent with  
2           innocence.

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

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

18           (2) The petitioner committed perjury or fabricated  
19 evidence or induced another person to commit perjury  
20 or fabricate evidence to cause or bring about the  
21 conviction at issue;



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

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

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

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

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

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

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

1 (c) If the court finds that the petitioner has [~~proven~~]  
2 filed a claim for wrongful conviction and imprisonment[~~7~~] and  
3 the State has not met its burden of proof under subsection (a)  
4 or proven an affirmative defense pursuant to subsection (b), the  
5 court shall award the petitioner \$50,000 for each year of actual  
6 confinement, including time spent awaiting trial, served by the  
7 petitioner for the crime or crimes for which the [~~petitioner was~~  
8 ~~actually innocent;~~] judgment of conviction was reversed or  
9 vacated or for which the petitioner was pardoned on grounds  
10 consistent with innocence; provided that:

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

18 (2) The award shall be prorated for partial years of  
19 imprisonment; [~~and~~]

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



1        [~~3~~] (4) If the court finds, by a preponderance of the  
2                    evidence, extraordinary circumstances pertain to a  
3                    conviction that is set aside or a pardon that is  
4                    granted [~~because of actual innocence,~~] on grounds  
5                    consistent with innocence, the court may award the  
6                    petitioner a maximum of \$100,000 in additional  
7                    compensation."

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

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

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

18            "[~~§~~]**661B-6**[~~§~~] **Waiver of sovereign immunity.** This chapter  
19            shall constitute a waiver of sovereign immunity by the State  
20            only for the claims brought pursuant to this chapter. The State  
21            makes no other waiver of sovereign immunity, and fully retains



1 its sovereign immunity as to all other claims, however  
2 denominated, that seek compensation of any kind or nature that  
3 are a result of, related to, or arise from a conviction and  
4 imprisonment for crimes for which the claimant [~~alleges actual~~  
5 ~~innocence.~~] whose judgment of conviction was reversed or  
6 vacated, or who was pardoned, on grounds consistent with  
7 innocence. This section shall be broadly construed in favor of  
8 the State and against any waiver of sovereign immunity."

9 SECTION 6. Section 661B-7, Hawaii Revised Statutes, is  
10 amended by amending subsection (a) to read as follows:

11 "(a) Notwithstanding any other law, including the common  
12 law, to the contrary, this chapter sets forth the exclusive  
13 remedy for any person seeking compensation of any kind or nature  
14 whatsoever, as a result of, related to, or arising from a  
15 conviction and imprisonment for crimes for which the person [~~was~~  
16 ~~actually innocent.~~] whose judgment of conviction was reversed or  
17 vacated, or who was pardoned, on grounds consistent with  
18 innocence. This section shall be strictly construed in favor of  
19 any person against whom a claim is asserted, and against the  
20 person asserting the claim."



1           SECTION 7. In codifying the new sections added by  
2 section 2 of this Act, the revisor of statutes shall substitute  
3 appropriate section numbers for the letters used in designating  
4 the new sections in this Act.

5           SECTION 8. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7           SECTION 9. This Act shall take effect on July 1, 3000.



**Report Title:**

AG; DAGS; DCR; DHS; Wrongful Conviction and Imprisonment;  
Compensation; Annual Report

**Description:**

Establishes the procedure that a circuit court shall follow upon the reversal or vacation of a person's judgment of conviction on grounds consistent with innocence, and where the charges were dismissed. Requires the State to pay, through a warrant for payment issued by the Comptroller, advance compensation to any petitioner who was convicted in a court of the State, imprisoned for at least one year, and whose judgment of conviction was reversed or vacated, or was pardoned, on grounds consistent with innocence. Requires the Department of Human Services, in collaboration with the Department of Corrections and Rehabilitation, to contract with a community-based agency to assign a case manager to a petitioner upon the petitioner's release. Requires the State to provide medical coverage to a person for a certain duration upon the reversal or vacation of the person's judgment of conviction on grounds consistent with innocence and where the charges were dismissed. Provides that the Judiciary and Department of Corrections and Rehabilitation shall retain jurisdiction over the person for the purposes of effectuating this process. Authorizes the State to seek reimbursement from the applicable county for any losses incurred by the State pursuant to this process. Requires the Department of the Attorney General to submit an annual report to the Legislature. Clarifies eligibility to seek compensation for persons whose judgment of conviction was reversed or vacated, or who were pardoned, on grounds consistent with innocence, and where the charges were dismissed. Shifts the burden of proof to the State to prove by a preponderance of evidence that the reversal or vacation of the judgment of conviction for a petitioner, or the pardoning of the petitioner, was inconsistent with innocence. Effective 7/1/3000. (HD1)

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

