
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. The legislature recognized



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

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

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



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

11 Accordingly, the purpose of this Act is to:

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



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



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

4 SECTION 2. Chapter 661B, Hawaii Revised Statutes, is
5 amended by adding six 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 Reversal or vacation of conviction; procedure.

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

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

18 (2) Award advance compensation payments pursuant to
19 section 661B-C unless the court orders the award under
20 paragraph (5);



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

5 (4) Make the following findings:

6 (A) Whether the person was convicted in a court of
7 the State and subsequently imprisoned for one or
8 more crimes and the crime or crimes upon which
9 that conviction was based were reversed or
10 vacated;

11 (B) Whether the grounds for the reversal or vacation
12 of the crime or crimes support the conclusion
13 that the person did not commit the crime or
14 crimes;

15 (C) Whether the charges were dismissed;

16 (D) The number of years, months, and days that the
17 person spent in prison for the crime or crimes
18 described in subparagraph (B), including time
19 served before conviction, if any; and

20 (E) At the rate of \$50,000 for each year of actual
21 confinement, including time spent awaiting trial,



1 the total amount of compensation the person would
2 receive under section 661B-3;

3 (5) If the person wishes to seek relief pursuant to this
4 chapter at the time of the reversal or vacation and
5 the court answers in the affirmative with respect to
6 paragraphs (4) (A) and (B), the court shall order the
7 award as calculated pursuant to paragraph (4) (E);
8 provided that neither the State nor a county
9 prosecuting authority has filed new charges based on
10 the same alleged act or acts for which the petitioner
11 was originally convicted; and

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

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

17 §661B-C Advance compensation; requirements. (a) The
18 State shall pay advance compensation to any petitioner who was
19 convicted in a court of the State, imprisoned for at least one
20 year, and whose judgment of conviction was reversed or vacated,
21 or was pardoned, on grounds consistent with innocence; provided



1 that the charges were dismissed and neither the State nor a
2 county prosecuting authority has filed new charges based on the
3 same alleged act or acts for which the petitioner was originally
4 convicted.

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



1 §661B-D Case manager; appointment. (a) Upon the reversal
2 or vacation of a person's judgment of conviction on grounds
3 consistent with innocence and where the charges were dismissed,
4 the department of human services, in collaboration with the
5 department of corrections and rehabilitation, shall contract
6 with a community-based agency to appoint a case manager to the
7 person. Services shall commence immediately and continue for
8 sixty days from the day of the person's release.

9 (b) Case manager duties shall include assisting the person
10 in obtaining the following:

11 (1) Housing;

12 (2) State identification;

13 (3) Medical, dental, and mental health insurance and
14 appointments;

15 (4) A cell phone; and

16 (5) Employment.

17 §661B-E Medical coverage; petitioner. (a) Upon the
18 reversal or vacation of a person's judgment of conviction on
19 grounds consistent with innocence and where the charges were
20 dismissed, the person shall be eligible to obtain medical
21 coverage from the State.



1 (b) The State shall provide medical coverage to a
2 petitioner under subsection (a) for a period of time equal to
3 that of the petitioner's wrongful imprisonment, including any
4 period during which the petitioner was released on parole.

5 **§661B-F Jurisdiction over the person.** The judiciary and
6 department of corrections and rehabilitation shall retain
7 jurisdiction over the person for the purposes of effectuating
8 this chapter.

9 **§661B-G Reimbursement; counties.** The State may seek
10 reimbursement from the applicable county for any losses incurred
11 by the State pursuant to this chapter.

12 **§661B-H Annual report.** The department of the attorney
13 general shall submit an annual report of its findings and
14 recommendations, including any proposed legislation, to the
15 legislature no later than twenty days prior to the convening of
16 each regular session. The report shall detail the
17 implementation and application of this chapter and shall include
18 the following:

19 (1) The name of any person whose judgment of conviction
20 was reversed or vacated, or who was pardoned, on



- 1 grounds consistent with innocence, and whose charges
2 were dismissed;
- 3 (2) Whether the State or a county prosecuting authority
4 filed new charges based on the same alleged act or
5 acts for which the petitioner was originally
6 convicted;
- 7 (3) The court's findings pursuant to section 661B-B;
- 8 (4) Whether the person chose to seek relief and whether
9 the person chose to do so at the time of reversal or
10 vacation, or later;
- 11 (5) If the person, subsequent to the court's findings,
12 filed a petition:
- 13 (A) The date on which the petition was filed;
14 (B) The circuit in which the petition was filed;
15 (C) Whether the department of the attorney general
16 admitted or denied that the petitioner is
17 entitled to compensation;
- 18 (D) The date on which the department of the attorney
19 general's response was filed; and
- 20 (E) The status of the petition on the date on which
21 the report is submitted; and



1 (6) Whether any compensation has been made to the
2 petitioner, including any advance compensation
3 rendered pursuant to section 661B-C, and the dates on
4 which the compensation was disbursed."

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

7 "~~{}~~§661B-1~~{}~~ **Statement of claim for compensation.** ~~{(a)}~~

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

17 ~~{(b)}~~ To present an actionable claim against the State for
18 wrongful conviction and imprisonment, the petitioner shall
19 allege that the petitioner was convicted of one or more crimes
20 under the laws of the State, was subsequently sentenced to a



1 term of imprisonment, and has served all or any part of the
2 sentence and either that:

3 (1) The judgment of conviction was reversed or vacated
4 ~~[because the petitioner was actually innocent of the~~
5 ~~crimes for which the petitioner was convicted, and the~~
6 ~~court decision so states]; or~~

7 (2) The petitioner was pardoned ~~[because the petitioner~~
8 ~~was actually innocent of the crimes for which the~~
9 ~~petitioner was convicted and the pardon so states.],~~

10 on grounds consistent with innocence and where the charges were
11 dismissed."

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

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

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

17 ~~(1) That the petitioner is eligible to seek compensation~~
18 ~~in accordance with the requirements set forth in~~
19 ~~section 661B-1;~~

20 ~~(2) That the petitioner was convicted in a court of the~~
21 ~~State and subsequently imprisoned for one or more~~



1 ~~crimes, but the petitioner was actually innocent of~~
2 ~~the crimes at issue; and~~

3 ~~(3) That the petitioner served time in prison for the~~
4 ~~crime or crimes, including time served prior to~~
5 ~~conviction, if any.]~~ that the reversal or vacation of
6 the judgment of conviction for the petitioner or the
7 pardoning of the petitioner was inconsistent with
8 innocence.

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

12 (1) The petitioner was serving a term of imprisonment for
13 another crime, including crimes under the laws of the
14 United States, concurrently with imprisonment for the
15 crime or crimes for which the petitioner, [was
16 ~~actually innocent;~~] whose judgment of conviction was
17 reversed or vacated or who was pardoned on grounds
18 consistent with innocence; provided that if the
19 petitioner served additional time in prison due to the
20 conviction that is the basis of the petition, then the
21 petitioner shall receive compensation for that portion



- 1 of the time served in prison during which the
2 petitioner was serving no other sentence;
- 3 (2) The petitioner committed perjury or fabricated
4 evidence or induced another person to commit perjury
5 or fabricate evidence to cause or bring about the
6 conviction at issue;
- 7 (3) The petitioner fabricated evidence or committed or
8 suborned perjury during any proceeding related to the
9 crime for which the petitioner was convicted;
- 10 (4) The petitioner solicited the commission of the crime
11 at issue or any crime factually related to the crime
12 at issue;
- 13 (5) The petitioner conspired to commit the crime at issue
14 or any crime factually related to the crime at issue;
- 15 (6) The petitioner attempted to commit the crime at issue
16 or any crime factually related to the crime at issue;
- 17 (7) The petitioner assisted in the commission of the crime
18 at issue or any crime factually related to the crime
19 at issue; or
- 20 (8) The petitioner assisted any person to avoid
21 apprehension, arrest, or conviction for the crime at



1 issue or any crime factually related to the crime at
2 issue.

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

6 (c) If the court finds that the petitioner has [~~proven~~
7 filed a claim for wrongful conviction and imprisonment~~]~~ and
8 the State has not met its burden of proof under subsection (a)
9 or proven an affirmative defense pursuant to subsection (b), the
10 court shall 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;~~] judgment of conviction was reversed or
14 vacated or for which the petitioner was pardoned on grounds
15 consistent with innocence; provided that:

16 (1) The petitioner shall not be compensated for the time
17 imprisoned if the petitioner was concurrently
18 imprisoned for a different conviction, even if the
19 other conviction was related to the conviction that
20 was vacated or reversed or for which the petitioner



1 was pardoned [~~because of actual innocence;~~] on grounds
2 consistent with innocence;

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

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

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

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

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



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

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

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

17 "(a) Notwithstanding any other law, including the common
18 law, to the contrary, this chapter sets forth the exclusive
19 remedy for any person seeking compensation of any kind or nature
20 whatsoever, as a result of, related to, or arising from a
21 conviction and imprisonment for crimes for which the person [~~was~~



1 ~~actually innocent.]~~ whose judgment of conviction was reversed or
2 vacated, or who was pardoned, on grounds consistent with
3 innocence. This section shall be strictly construed in favor of
4 any person against whom a claim is asserted, and against the
5 person asserting the claim."

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

10 SECTION 8. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

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



Report Title:

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

Description:

Establishes the procedure that a circuit court shall follow upon the reversal or vacation of an individual's judgment of conviction on grounds consistent with innocence, and where the charges were dismissed. Requires the State to pay 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 Comptroller to issue a warrant for payment of advance compensation to a petitioner. 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 individuals 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. (HD2)

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