
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 provide monetary
3 compensation to individuals who had been wrongfully convicted
4 and imprisoned in the State's criminal justice system. Act 156
5 established a compensation scheme, which has been in effect for
6 approximately ten years, to provide redress to those who have
7 been wrongfully imprisoned.

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



1 does not explicitly require a court trial to determine if a
2 petitioner is entitled to compensation and the amount of
3 compensation, in practice, petitioners have been subjected to
4 lengthy trials. According to the National Registry of
5 Exonerations, of the thirty-eight states that have wrongful
6 conviction and imprisonment laws, the State is the only one to
7 have not rendered payment to any claimants.

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



1 The legislature also finds that wrongful compensation
2 claims in the State have often been subject to prolonged
3 litigation and delay, including delay caused by the State. The
4 prolonged uncertainty and financial hardship caused by a delay
5 is unjust to those wrongfully convicted. In at least one
6 situation, the wrongfully convicted individual passed away
7 before receiving any compensation after almost a decade of
8 litigation seeking compensation. The legislature finds that
9 these unresolved claims are also a potential liability to the
10 State. The legislature therefore concludes that rather than
11 allow claims for compensation for wrongful conviction and
12 imprisonment to languish for years, the law should be amended to
13 give certainty to the budgeting process and to those who were
14 wrongfully convicted.

15 Accordingly, the purpose of this Act is to:

16 (1) Establish the procedure that a court of the State
17 shall follow upon the reversal or vacation of an
18 individual's judgment or conviction on grounds
19 consistent with innocence, and where the charges were
20 dismissed;



- 1 (2) Require the department of corrections and
2 rehabilitation to immediately alert the department of
3 human services to assign a case manager to a
4 petitioner upon the petitioner's release;
- 5 (3) Require the State to provide medical coverage to a
6 person for a certain duration upon the reversal or
7 vacation of a person's judgment of conviction on
8 grounds consistent with innocence and where the
9 charges were dismissed;
- 10 (4) Clarify that any benefits that a petitioner is
11 qualified for, including any benefits under chapter
12 346, Hawaii Revised Statutes, continue until the
13 petitioner is gainfully employed or no longer
14 qualifies for the benefits;
- 15 (5) Require the department of corrections and
16 rehabilitation to provide a petitioner with a state
17 identification card upon release;
- 18 (6) Require the department of the attorney general to
19 submit an annual report to the legislature;
- 20 (7) Clarify that a person whose judgment of conviction was
21 reversed or vacated, or who was pardoned, on grounds



1 consistent with innocence, and where the charges were
2 dismissed, may petition for redress;

3 (8) Shift the burden of proof in wrongful conviction
4 claims from the petitioner to the State;

5 (9) Require the State to prove by a preponderance of the
6 evidence that the reversal or vacation of the order of
7 conviction for a petitioner, or the pardoning of the
8 petitioner, was inconsistent with innocence;

9 (10) Specify that any award under chapter 661B, Hawaii
10 Revised Statutes, is only to settle claims with the
11 State and not any third party; and

12 (11) Prohibit the attorney general from offsetting third-
13 party claims against an award made under chapter 661B,
14 Hawaii Revised Statutes.

15 SECTION 2. Chapter 661B, Hawaii Revised Statutes, is
16 amended by adding seven new sections to be appropriately
17 designated and to read as follows:

18 "§661B-A Liberal construction. This chapter shall be
19 liberally construed to ensure that those persons who were
20 wrongfully convicted and imprisoned by the State receive
21 compensation.



1 §661B-B Reversal or vacation of conviction; procedure.

2 (a) Upon the reversal or vacation of a judgment or conviction
3 on grounds consistent with innocence, and where the charges were
4 dismissed, the court shall:

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

7 (2) Order the department of corrections and rehabilitation
8 to immediately alert the department of human services
9 so the department of human services may assign a case
10 manager to the person pursuant to section 661B-C;

11 (3) Make the following findings:

12 (A) Whether the person was convicted in a court of
13 the State and subsequently imprisoned for one or
14 more crimes and the crime or crimes upon which
15 that conviction was based were reversed or
16 vacated;

17 (B) Whether the grounds for the reversal or vacation
18 of the crime or crimes support the conclusion
19 that the person did not commit the crime or
20 crimes;

21 (C) Whether the charges were dismissed;



- 1 (D) The number of years, months, and days that the
- 2 person spent in prison for the crime or crimes,
- 3 including time served prior to conviction, if
- 4 any; and
- 5 (E) At the rate of \$50,000 for each year of actual
- 6 confinement, including time spent awaiting trial,
- 7 the amount of total compensation the person would
- 8 receive under section 661B-3;
- 9 (4) If the person wishes to seek relief pursuant to this
- 10 chapter at the time of the reversal or vacation and
- 11 the court answers in the affirmative with respect to
- 12 paragraphs (3)(A) and (B), the court shall order the
- 13 award as calculated pursuant to paragraph (3)(E);
- 14 provided that neither the State nor a county
- 15 prosecuting authority has filed new charges based on
- 16 the same alleged act or acts for which the petitioner
- 17 was originally convicted; and
- 18 (5) Award reasonable attorneys' fees not exceeding \$10,000
- 19 pursuant to section 661B-3(d).



1 (b) A person does not waive their right to seek relief
2 pursuant to this chapter if they do not elect to seek relief at
3 the time of reversal or vacation.

4 **§661B-C Case manager; appointment.** (a) Upon the reversal
5 or vacation of a person's judgment of conviction on grounds
6 consistent with innocence and where the charges were dismissed,
7 the department of corrections and rehabilitation shall
8 immediately notify the department of human services so the
9 department of human services may appoint a case manager to the
10 person. Services shall commence immediately and continue for
11 sixty days from the day of the person's release.

12 (b) Case manager duties shall include assisting the person
13 in obtaining the following:

14 (1) Housing;

15 (2) State identification card;

16 (3) Medical, dental, and mental health insurance and
17 appointments;

18 (4) Mental health counseling;

19 (5) A cell phone for one year;

20 (6) Employment; and



1 (7) Expedited processing of benefit assistance for the
2 person.

3 **§661B-D Medical coverage; petitioner; spouse and**
4 **dependents.** (a) Upon the reversal or vacation of a person's
5 judgment of conviction on grounds consistent with innocence and
6 where the charges were dismissed, the person shall be eligible
7 to obtain medical coverage from the State.

8 (b) The medical coverage offered under subsection (a) may
9 include the person's spouse and dependents.

10 (c) The State shall provide medical coverage to a
11 petitioner under subsection (a) for a period of time equal to
12 that of the petitioner's wrongful imprisonment, including any
13 period during which the petitioner was released on parole.

14 **§661B-E Department of corrections and rehabilitation;**
15 **required actions.** The department of corrections and
16 rehabilitation shall:

17 (1) Once made aware that an individual is pursuing a
18 reversal on a prior court decision where innocence is
19 in question, work in conjunction with the department
20 of human services to assist the petitioner in
21 preparing applications for individual financial and



1 medical assistance, so that processing may be
2 expedited upon release; and

3 (2) Upon the reversal or vacation of a judgment or
4 conviction on grounds consistent with innocence, and
5 where the charges were dismissed, provide the person a
6 state identification card upon release.

7 **§661B-F Compensation; benefits; continuity.** Any benefits
8 that a petitioner is qualified for, including any benefits under
9 chapter 346, shall continue until the petitioner is gainfully
10 employed and no longer qualifies for the benefits.

11 **§661B-G Annual report.** The department of the attorney
12 general shall submit an annual report of its findings and
13 recommendations, including any proposed legislation, to the
14 legislature no later than twenty days prior to the convening of
15 each regular session. The report shall detail the
16 implementation and application of this chapter and shall include
17 the following:

18 (1) The name of any person for whom their judgment of
19 conviction was reversed or vacated, or who was
20 pardoned, on grounds consistent with innocence, and
21 for whom the charges were dismissed;



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

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 for whom the judgment of conviction was reversed or vacated, or
5 who was pardoned, on grounds consistent with innocence, and
6 where the charges were dismissed, may file a petition for relief
7 pursuant to this chapter for an award of damages against the
8 State; provided that the requirements of ~~[subsection (b)]~~ this
9 section are met.

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

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

20 ~~(2)~~ ~~The]~~ and the charges were dismissed, or the petitioner
21 was pardoned ~~[because the petitioner was actually~~



1 ~~innocent of the crimes for which the petitioner was~~
2 ~~convicted and the pardon so states.]~~ on grounds
3 consistent with innocence and the charges were
4 dismissed."

5 SECTION 4. Section 661B-3, Hawaii Revised Statutes, is
6 amended by amending subsections (a) through (c) to read as
7 follows:

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

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

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

17 ~~(3) That the petitioner served time in prison for the~~
18 ~~crime or crimes, including time served prior to~~
19 ~~conviction, if any.]~~ that the reversal or vacation of
20 the order 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 [~~petitioner was actually~~
10 ~~innocent;~~] the judgment of conviction was reversed or
11 vacated or the petitioner 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; provided that:

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

16 (2) The award shall be prorated for partial years of
17 imprisonment; and

18 (3) If the court finds, by a preponderance of the
19 evidence, extraordinary circumstances pertain to a
20 conviction that is set aside or a pardon that is
21 granted [~~because of actual innocence,~~] on grounds



1 consistent with innocence, the court may award the
2 petitioner a maximum of \$100,000 in additional
3 compensation."

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

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

18 SECTION 6. Section 661B-7, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "~~{}~~§661B-7~~{}~~ **Exclusive remedy.** (a) Notwithstanding any
21 other law, including the common law, to the contrary, this



1 chapter sets forth the exclusive remedy for any person seeking
2 compensation of any kind or nature whatsoever, as a result of,
3 related to, or arising from a conviction and imprisonment for
4 crimes for which the [~~person was actually innocent.~~] judgment of
5 conviction was reversed or vacated, or the person was pardoned,
6 on grounds consistent with innocence. This section shall be
7 strictly construed in favor of any person against whom a claim
8 is asserted, and against the person asserting the claim.

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

12 (c) Any award of compensation under this chapter shall
13 constitute a compromise and settlement of only claims against
14 the State arising from the claimant's conviction and
15 imprisonment for crimes for which the judgment of conviction was
16 reversed or vacated, or the person was pardoned, on grounds
17 consistent with innocence. Nothing in this chapter shall be
18 construed to waive, release, or otherwise affect any claim the
19 claimant may have against any person or entity other than the
20 State.



1 (d) No award of compensation under this chapter shall be
2 subject to any setoff, offset, recoupment, deduction, lien
3 enforcement, or reduction asserted on behalf of any person or
4 entity other than the State. The attorney general shall not
5 assert or apply any setoff or offset on behalf of any third
6 party against an award made under this chapter."

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

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

13 SECTION 9. This Act shall take effect on January 1, 2525.



Report Title:

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

Description:

Establishes the procedure that a court of the State shall follow upon the reversal or vacation of an individual's judgment or conviction on grounds consistent with innocence, and where the charges were dismissed. Requires the Department of Corrections and Rehabilitation to notify the Department of Human Services 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 a person's judgment of conviction on grounds consistent with innocence and where the charges were dismissed. Clarifies that any benefits that a petitioner is qualified for, including any benefits under chapter 346, HRS, continue until the petitioner is gainfully employed or no longer qualifies for the benefits. Requires the Department of Corrections and Rehabilitation to provide a state identification card to a petitioner upon release. Requires the Department of the Attorney General to submit an annual report to the Legislature. Clarifies that a person whose judgment of conviction was reversed or vacated, or who was pardoned, on grounds consistent with innocence, and where the charges were dismissed, may petition for compensation. Requires the State to prove by a preponderance of evidence that the reversal or vacation of the order of conviction for a petitioner, or the pardoning of the petitioner, was inconsistent with innocence. Specifies that any award under chapter 661B, HRS, is only to settle claims with the State and not any third party. Prohibits the Attorney General from offsetting third-party claims against an award made under chapter 661B, HRS. Effective 1/1/2525. (SD2)

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