

LAWS OF DELAWARE  
VOLUME 85  
CHAPTER 272  
153rd GENERAL ASSEMBLY  
FORMERLY  
SENATE SUBSTITUTE NO. 1  
FOR  
SENATE BILL NO. 282

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO WRONGFUL CONVICTION COMPENSATION AND SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 70, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 7004. Cause of action against the State for wrongful conviction.

(c) Required showing. — A petitioner makes a prima facie showing of entitlement to compensation under this section by establishing all of the following by a preponderance of the evidence:

(1) The petitioner was convicted.

(2) The petitioner served all or part of a sentence of incarceration or time spent in a psychiatric institution, probation, parole, or registration on the sex offender registry based on that conviction.

(3) The conviction was overturned, reversed, or vacated on direct or collateral review.

(4) One of the following occurred:

a. After the conviction was overturned, reversed, or vacated on direct or collateral appeal, the charge at issue was dismissed or the petitioner was acquitted of the charge upon retrial.

b. The petitioner entered a Robinson plea, or entered a plea of no contest, while maintaining a claim of innocence, after the conviction was overturned, reversed, or vacated on direct or collateral review when the petitioner would otherwise have been entitled to a new trial.

(5) The petitioner ~~was not convicted of~~ did not commit any lesser ~~included~~ felony arising from the same transaction as the crime for which the petitioner was originally convicted.

(6) The petitioner did not commit the crime that resulted in the conviction, or there was no crime committed.

(f) Hearing; admissibility. —

(1) The Court may conduct a hearing on the petition, at which the parties may introduce evidence in support of or in opposition to the petition. The parties may introduce any relevant evidence, including any of the following:

a. Any evidence that was introduced at trial.

b. The trial transcript.

c. Any relevant police or investigative report.

(2) ~~Physical evidence~~ Evidence no longer available due to the passage of time or destroyed pursuant to a valid evidence destruction policy or court order does not create a presumption or inference.

(3) An inference may not be drawn in any other proceeding from the grant or denial of a petition under this section.

§ 7005. Remedies awarded on a successful claim for wrongful conviction.

(a) Damages. — A petitioner who prevails on a cause of action under § 7004 of this title shall be awarded the following categories of damages:

(1) Noneconomic damages arising from the wrongful conviction, including damages for loss of liberty and pain and suffering, according to proof, for a total sum ~~not less than the equivalent of~~ to:

a. \$100,000 for each year of incarceration while awaiting a sentence of death based on the conviction at issue, prorated for any partial years and adjusted by subsection (b) of this section.

b. \$75,000 for each year of incarceration based on the conviction at issue, prorated for any partial years and adjusted by subsection (b) of this section.

c. \$50,000 for each year spent on probation or parole or subject to a requirement of registration pursuant to § 4120 et seq. of Title 11 (sex offender registry) based on the conviction at issue, prorated for any partial years and adjusted by subsection (b) of this section.

(2) Economic damages arising from the wrongful conviction, according to proof.

(3) Compensation to those entitled to child support payments owed by the petitioner that became due, and interest on child support arrearages that accrued, but were not paid, during the time the petitioner served in prison.

~~(4) Reasonable attorneys' fees, costs and expenses incurred in overturning, reversing, or vacating the petitioner's conviction.~~

~~(5) Reasonable attorneys' fees, costs and expenses incurred in obtaining relief under this section and § 7004 of this title. Petitioner's attorneys may not collect any fees or costs in excess of the amounts awarded under this paragraph.~~

~~(6) (4) Reimbursement of any unreimbursed costs, fines, fees, or surcharges imposed on petitioner as a result of the former conviction which were paid by or on behalf of the petitioner.~~

~~(7) (5) Reimbursement of any unreimbursed restitution money paid by or on behalf of the petitioner as a result of the former conviction.~~

~~(8) (6) Compensation for any reasonable reintegrative services and mental and physical health care costs incurred by the petitioner for the period between the petitioner's release from incarceration and the date of the petitioner's award.~~

(b) Attorneys' fees. —

A petitioner who prevails on a cause of action under § 7004 of this title shall be awarded reasonable attorneys' fees, costs, and expenses incurred in overturning, reversing, or vacating the petitioner's conviction, and reasonable attorneys' fees, costs, and expenses incurred in obtaining relief under § 7004 of this title. Attorneys' fees shall be awarded based on hours reasonably expended at the prevailing market rate at the time of the award of damages under subsection (a) of this section for similar legal services in Delaware, notwithstanding the date the services were rendered. Attorneys' fees awarded under this subsection shall not exceed the total amount awarded under subsection (a) of this section. If the petitioner was represented by different counsel at different stages of the proceedings, the court shall allocate the fee award in a manner it deems equitable, with primary consideration given to the services that resulted in the overturning, reversal, or vacatur of the conviction. No attorney representing a petitioner under this chapter shall charge, demand, receive, or collect any fee, cost, or expense from the petitioner beyond the amounts awarded under this subsection.

~~(b) (c) Annual adjustment. —~~

Beginning in 2025, and every year thereafter, the ~~State Treasurer~~ Office of Management and Budget shall determine the percentage increase or decrease in the cost of living for the previous calendar year, based on changes in the Consumer Price Index for All Urban Consumers, Mid-Atlantic Region (All), as published by the Bureau of Labor Statistics of the United States Department of Labor. On or before July 1 of the year in which the ~~State Treasurer~~ Office of Management and Budget makes the determination required by this subsection, the ~~State Treasurer~~ Office of Management and Budget shall adjust the amounts prescribed under paragraphs (a)(1) through (a)(3) of this section for the following calendar year by multiplying the amounts applicable to the calendar year in which the adjustment is made by the percentage amount determined under this subsection. The ~~State Treasurer~~ Office of Management and Budget shall round the adjusted limitation amount to the nearest \$100, but the unrounded amount shall be used to calculate the adjustments to the amounts in subsequent calendar years. The adjusted amounts become effective on July 1 of the year in which the adjustment is made, and apply to all claims filed under this section on or after July 1 of that year and before July 1 of the subsequent year.

~~(c) (d) Exclusions. —~~

A petitioner is not entitled to compensation under paragraphs (a)(1) and (a)(2) of this section for any period during which the petitioner was serving a concurrent sentence for another crime for which the petitioner's conviction was not overturned or vacated, and except to the extent:

(1) The sentence for that other crime was longer than it would have been without 1 or more of the crimes at issue in the petition.

(2) The intact conviction was based on a Robinson plea or a plea of no contest while maintaining a claim of innocence, that the petitioner took in order to resolve the underlying case after the original conviction was overturned, reversed, or vacated on direct or collateral review, and the petitioner proves by a preponderance of the evidence that the petitioner did not commit the crime that resulted in the Robinson plea or no contest plea, or that there was no crime committed.

~~(d) (e) Timing of award. —~~ An award of damages under this section of \$1 million or less shall be paid to the petitioner in a lump sum. If an award of damages under this section exceeds \$1 million, then \$1 million of the award shall be paid to the

petitioner in a lump sum and the remainder shall be paid annually in equal payments over 5 years. Attorneys' fees under this section of \$300,000 or less shall be paid to the petitioner's attorneys in a lump sum. If an award of attorneys' fees under this section exceeds \$300,000, then \$300,000 of the attorneys' fees shall be paid to the petitioner's attorneys in a lump sum and the remainder shall be paid in annual installments of not more than \$300,000 until the award is satisfied.

§ 7008. Wrongful Conviction Compensation Fund.

(a) ~~The Wrongful Conviction Compensation Fund ("Fund") is created as a separate fund in the Office of the State Treasurer.~~ shall exist with the legal services appropriation within the Office of Management and Budget.

(b) ~~The State Treasurer may receive money or other assets from any source for deposit into the Fund.~~

(c) ~~The State Treasurer shall expend money from the Fund only for the purpose of paying claims authorized under this chapter and costs of administration. The State Treasurer~~ The Office of Management and Budget shall pay money from the Fund in amounts and at the times as ordered by the Superior Court under this chapter.

(d) ~~(b)~~ Money in the Fund at the close of a fiscal year must remain in the Fund and not revert to the General Fund.

(e) ~~(c)~~ If there is insufficient money in the Fund to pay claims as ordered under this chapter, the State Treasurer shall pay claims that are ordered but not paid if money becomes available in the Fund, and pay those claims before subsequently ordered claims. The State Treasurer The Office of Management and Budget shall develop and implement a process to notify the General Assembly, ~~Director of the Office of Management and Budget,~~ and Controller General that money in the Fund may be insufficient to cover future claims when the ~~State Treasurer~~ Office of Management and Budget reasonably believes that within 60 days the money in the Fund will be insufficient to pay claims. The process must, at a minimum, do all of the following:

(1) Identify a specific date by which the money in the Fund will become insufficient to pay claims.

(2) Outline a clear process indicating the order in which claims pending with the Fund will be paid.

(3) Outline a clear process indicating the order in which claims that were pending with the Fund when money became insufficient will be paid, if money subsequently becomes available.

(f) ~~(d)~~ The State Treasurer Office of Management and Budget shall report quarterly to the Joint Finance ~~Committee,~~ Committee and the Controller General, ~~and Director of the Office of Management and Budget~~ all of the following as of the end of the quarter:

(1) All payments made from the Fund in the quarter, indicating for each payment whether it is for a new settlement or award or continued payment for a previous settlement or award.

(2) Any settlements that have been reached or awards that have been made for which payments have not been made.

(3) The number of actions in which an order or judgment has been entered denying the claim, and the reasons for each denial.

(4) The number of known claims for compensation under this chapter for which there are no final settlements or awards, indicating for each claim, if pending, the amount claimed and the potential payment.

Section 2. This Act takes effect upon its enactment into law.

Approved May 21, 2026