



SPONSOR: Sen. Hoffner & Rep. Lynn & Rep. Bush &
Rep. Dorsey Walker
Sens. Huxtable, Lockman, Paradee, Pinkney, Sokola,
Sturgeon, Townsend; Reps. Baumbach, Bolden, Griffith,
K. Johnson, Parker Selby, Wilson-Anton

DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 169

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:

1 Section 1. Amend Part IV, Title 10 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 Chapter 70. Delaware Wrongful Conviction Compensation and Services Act.

4 § 7001. Short title.

5 This chapter is to be known and may be cited as the “Delaware Wrongful Conviction Act”.

6 § 7002. Declaration of purpose.

7 The State recognizes that certain individuals have served sentences of incarceration, parole, probation, and sex
8 offender registration in the State for crimes they did not commit, and that such individuals have been denied compensation
9 for their wrongful convictions unless they can prove their wrongful incarceration was caused by official misconduct. The
10 State believes that individuals who were innocent of the crimes for which they were convicted suffer long term hardships as
11 a result of their wrongful convictions, and are entitled to compensation for the sentences they wrongfully served, regardless
12 of whether their convictions resulted from official misconduct. Therefore, this Act provides compensation to individuals
13 who are pardoned, or whose convictions have been overturned followed by either acquittal or dismissal of charges, and
14 whom the evidence shows were factually innocent of the crime or crimes at issue, for time that they served sentences due
15 solely to the wrongful incarceration.

16 The Act denies compensation to individuals who intentionally caused their convictions in order to prevent the
17 convictions of the true perpetrators of the crimes at issue.

18 The State recognizes that individuals who receive pardons or whose convictions are overturned in most cases have
19 been released from prison without any reintegration services, even those services that are routinely provided to releasees

20 whose convictions have not been overturned. The State finds that this lack of services unjustly hampers the ability of these
21 individuals to reintegrate into society. Accordingly, this Act provides reintegration services to such individuals.

22 § 7003. Definitions.

23 When used in this chapter:

24 (1) "Conviction" means as defined under § 222 of Title 11. "Conviction" also includes a case in which a person is
25 adjudicated delinquent under § 1002 of this title.

26 (2) "Defendant" means a defendant in a criminal case or a respondent in a juvenile delinquency case.

27 (3) "Heirs" means the executor or administrator of a decedent's estate, the decedent's personal representatives, or
28 both.

29 (4) "Incarceration," in addition to its ordinary meaning, means any of the following:

30 a. Imprisonment in a Department of Correction facility.

31 b. Involuntary confinement in the Delaware Psychiatric Center.

32 c. Placement in the custody of the Department of Services for Children, Youth and Their Families.

33 d. Pre-trial detention.

34 (5) "Petitioner" means the individual claiming wrongful conviction and, if that individual is deceased, the
35 individual's heirs. In petitions brought by heirs, the term "petitioner" also means the deceased individual who claimed
36 wrongful conviction where it is used to describe the petitioner's prosecution, the petitioner's conviction, the petitioner's
37 sentence, the petitioner's pardon, settlements by and civil awards to the petitioner, and the petitioner's costs for
38 reintegrative services, mental health care, or physical health care.

39 § 7004. Cause of action against the State for wrongful conviction.

40 (a) Who may bring. An individual claiming wrongful conviction, or the heirs of the individual if the individual is
41 deceased, may bring a petition for an award and other relief against the State, as set forth in this section.

42 (b) Filing and service. The petition must be filed in the Superior Court. Upon presentation of a petition, the court
43 shall fix a time and place to hear the claim. At least 15 days prior to the time fixed for the hearing, the court shall mail
44 notice thereof to the petitioner and to the Department of Justice. The Department of Justice may offer evidence and argue in
45 opposition to the claim for compensation.

46 (c) Required showing – Robinson plea. A petitioner may make a prima facie showing of entitlement to
47 compensation under this section by establishing all of the following elements by a preponderance of the evidence:

48 (1) The petitioner was convicted.

49 (2) The petitioner served all or part of a sentence of incarceration, probation, parole, or registration on the

50 sex offender registry based on that conviction.

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

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

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

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

59 (d) Affirmative Defenses. If the petitioner makes the showing required by subsection (c) of this section, the
60 petitioner is entitled to an award under § 7005 of this title, unless the Department of Justice appearing in opposition to the
61 petition establishes at least one of the following, by a preponderance of the evidence:

62 (1) That the petitioner was an accomplice in the commission of the crime for which the petitioner was
63 convicted.

64 (2) That the petitioner intentionally and voluntarily caused the conviction at issue by committing perjury
65 at trial or fabricating evidence at trial, in order to prevent the conviction of the true perpetrator of the crime at
66 issue.

67 (e) Required showing – all other claims. If the petitioner cannot make a prima facie showing of entitlement to
68 compensation under section (c), the petitioner may make a prima facie showing of entitlement to compensation under this
69 section by establishing all of the following elements by a preponderance of the evidence:

70 (1) The petitioner was convicted.

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

73 (3) One of the following elements:

74 a. The charges against the petitioner were dismissed after the conviction was overturned,
75 reversed, or vacated on direct or collateral review.

76 b. The petitioner was acquitted of the charges upon retrial after the conviction was overturned,
77 reversed, or vacated on direct or collateral review.

78 c. The petitioner received a pardon for the offense that was the subject of the conviction.

79 d. The petitioner received a sentence commutation.

80 (4) The petitioner was not convicted of any lesser included felony arising from the same transaction as the
81 crime for which the petitioner was originally convicted, other than a conviction resulting from a Robinson plea, or
82 a plea of no contest while maintaining a claim of innocence, after the original conviction resulted in an outcome as
83 outlined under (3) of this section.

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

86 (f) Affirmative Defenses. If the petitioner makes the showing required by subsection (e) of this section, the
87 petitioner is entitled to an award under § 7005, unless the Department of Justice appearing in opposition to the petition
88 establishes at least one of the following, by clear and convincing evidence:

89 (1) That the petitioner committed the crime that resulted in the conviction.

90 (2) That the petitioner was an accomplice in the commission of the crime for which the petitioner was
91 convicted.

92 (3) That the petitioner intentionally and voluntarily caused the conviction at issue by committing perjury
93 at trial or fabricating evidence in order to prevent the conviction of the true perpetrator of the crime at issue.

94 (g) Weight and Admissibility of Evidence. In exercising its discretion regarding the weight and admissibility of
95 evidence, the court must give due consideration to difficulties of proof caused by the passage of time, the death or
96 unavailability of witnesses, the destruction of evidence, or other factors not caused by the parties.

97 (h) Admissibility. Neither the grant nor the denial of a petition under this section is admissible in any other
98 proceeding.

99 § 7005. Remedies awarded on a successful claim for wrongful conviction.

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

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

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

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

108 c. \$50,000 for each year spent on probation or parole or subject to a requirement of registration
109 pursuant to §4120, et seq. of Title 11 (sex offender registry) based on the conviction at issue, prorated for

110 any partial years and adjusted by subsection (b) of this section.

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

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

114 (4) Reasonable attorney fees, costs, and expenses incurred in overturning, reversing, or vacating the
115 petitioner's conviction, or in obtaining a pardon, or both.

116 (5) Reasonable attorney fees, costs, and expenses incurred in obtaining relief under this section and §
117 7004 of this title. Petitioner's attorneys may not collect any fees or costs in excess of the amounts awarded under
118 this paragraph.

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

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

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

126 (b) Annual adjustment. Beginning in 2024, and every year thereafter, the State Court Administrator shall
127 determine the percentage increase or decrease in the cost of living for the previous calendar year, based on changes in the
128 Consumer Price Index for All Urban Consumers, Mid-Atlantic Region (All), as published by the Bureau of Labor Statistics
129 of the United States Department of Labor. On or before July 1 of the year in which the State Court Administrator makes the
130 determination required by this subsection, the State Court Administrator shall adjust the amounts prescribed under
131 paragraphs (a)(1) through (a)(3) of this section for the following calendar year by multiplying the amounts applicable to the
132 calendar year in which the adjustment is made by the percentage amount determined under this subsection. The State Court
133 Administrator shall round the adjusted limitation amount to the nearest \$100, but the unrounded amount shall be used to
134 calculate the adjustments to the amounts in subsequent calendar years. The adjusted amounts become effective on July 1 of
135 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
136 before July 1 of the subsequent year.

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

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

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

147 (d) Timing of award. An award of damages under this section shall be paid to the petitioner in a lump sum.

148 (e) No offset for costs of services, indigent defense, or incarceration. An award of damages under this section is
149 not subject to offset for any of the following:

150 (1) Costs or expenses incurred by the State or any of its agencies or subdivisions, including costs under §
151 8913 of Title 29 (financial liability of committed person), expenses incurred to secure the petitioner's
152 incarceration, and expenses to feed, clothe, or provide medical services for the petitioner while incarcerated.

153 (2) The value of any goods or services provided to the petitioner pursuant to § 7009 of this title.

154 (3) Costs of defense pursuant to § 8601 of this title (recoupment of costs).

155 (f) Expungement of criminal record. When a petitioner prevails on a petition under § 7004 of this title, the court
156 shall enter an order of expungement pursuant to § 1017 of this title, for juvenile delinquency adjudications, pursuant to §
157 4373 of Title 11, for criminal convictions, or both, as applicable to the convictions at issue in the petition. The
158 expungement order must provide that the petitioner is entitled, upon request to the State Bureau of Identification, to copies
159 of the arrest and criminal records related to the convictions at issue in the petition.

160 (g) Certificate of innocence. When a petitioner prevails on a cause of action under § 7004 of this title, the Superior
161 Court shall give notice to the Department of Justice, including a description of each applicable conviction, the fact and date
162 of the Superior Court's finding of innocence on each such conviction, and the time periods for which the petitioner was
163 awarded damages under paragraphs (a)(1) through (a)(3) of this section. Within 60 days of receiving the notice from the
164 Superior Court, the Department of Justice shall provide to the petitioner a 1-page letter on Department of Justice letterhead,
165 signed by or on behalf of the Attorney General, stating that the petitioner has been found to be innocent of the crimes at
166 issue, and listing the time periods that the petitioner spent wrongfully incarcerated, the time periods the petitioner spent
167 wrongfully on parole, if applicable, and the time periods the petitioner wrongfully spent on the sex offender registry, if
168 applicable.

169 (h) Restoration of rights for pardoned petitioner. When a petitioner prevails on a cause of action under § 7004 of

170 this title based on a pardon for a particular conviction, any limitation on civil rights based upon that conviction shall be
171 removed pursuant to § 4364 of Title 11 (effect of pardon; restoration of civil rights).

172 (i) Other remedies. The acceptance by the petitioner of an award of damages or other relief (or both) under this
173 section does not preclude the petitioner from obtaining damages or other relief available under law.

174 § 7006. Notice.

175 (a) Court. A court entering a dismissal or judgment of acquittal after a defendant's criminal conviction has been
176 overturned, vacated, or reversed shall provide a copy of this chapter to the defendant at the time of entry of the dismissal or
177 acquittal. The defendant must acknowledge receipt of a copy of this chapter in writing on a form established by the
178 Supreme Court. The acknowledgment shall be entered on the docket by the court and shall be admissible in any proceeding
179 subsequently filed by the defendant under this chapter.

180 (b) Board of Pardons. Upon the issuance of a pardon, the Board of Pardons shall provide a copy of this chapter to
181 the individual pardoned. The individual must acknowledge receipt of a copy of this chapter in writing on a form established
182 by the Board, which shall be retained on file by the Board as part of its official records and shall be admissible in any
183 proceeding subsequently filed by the individual under this chapter.

184 § 7007. Time to file.

185 (a) Statute of limitations. A petition under § 7004 of this title must be brought within 6 years after the provision of
186 notice as required in § 7006 of this title.

187 (b) Pre-Enactment Claims. A petitioner who was incarcerated, placed on probation or parole, or required to
188 register as a sex offender based on a criminal conviction prior to [the implementation date of this Act] may bring a petition
189 under §7004 of this title based on the that conviction within 6 years of [the implementation date of this Act].

190 (c) If, on or after a date 2 years before the limitations period under this section would otherwise expire, the
191 petitioner obtains new evidence of innocence that the petitioner could not previously have obtained with reasonable
192 diligence, the petitioner may file a petition under § 7004 of this title within 4 years of the date on which the petitioner
193 obtains the new evidence.

194 § 7008. Wrongful conviction compensation fund.

195 (a) The Wrongful Conviction Compensation Fund ("Fund") is created as a separate fund in the Office of the State
196 Treasurer.

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

198 (c) The State Treasurer shall expend money from the Fund only for the purpose of paying claims authorized under
199 this chapter and costs of administration. The State Treasurer shall pay money from the Fund in amounts and at the times as

200 ordered by the Superior Court under this chapter.

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

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

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

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

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

212 (f) The Attorney General shall report quarterly to the Joint Finance Committee, Controller General, and Director
213 of the Office of Management and Budget all of the following as of the end of the quarter:

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

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

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

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

222 (5) The balance in the Fund.

223 § 7009. Eligibility for Services for Individuals Released After Convictions Overturned or Pardon Granted.

224 (a) An individual released from incarceration as the result of the reversal, overturning, or vacation of a
225 conviction(s), or pardon granted, is eligible for and entitled to, and the State shall provide, all of the following:

226 (1) Emergency Assistance. An emergency assistance stipend under § 521 of Title 31, in the maximum
227 amount set forth in that section, to be provided upon release from custody, or as soon thereafter as possible.

228 (2) Services. For a period of 2 years from the individual's release from custody:

229 a. Services, programs, and housing at community corrections centers.

230 b. General Assistance pursuant to § 503 and § 505 of Title 31, notwithstanding the eligibility
231 requirements of those sections, and notwithstanding the eligibility requirements and exclusions of §§
232 3019, 3020 of Title 16 of the Administrative Code.

233 c. Medicaid pursuant to § 503 and § 505 of Title 31, notwithstanding the eligibility requirements
234 of those sections.

235 d. Food stamps in the maximum food benefit amount for a household size of 1 pursuant to §
236 9000, et seq. of Title 16 of the Administrative Code, notwithstanding any otherwise applicable resource
237 limits, income limits, and employment requirements.

238 (b) Within 120 days of the enactment of this section, the Department of Health and Social Services shall
239 promulgate regulations sufficient to implement the provision of benefits under this section, including:

240 (1) Creation of an application form for benefits under this section.

241 (2) Designation of an individual or division to process application forms for benefits under this section
242 that are received by the Department of Health and Social Services.

243 (3) Drafting of procedures and guidelines for making determinations on applications for benefits under
244 this section within 14 days of receipt.

245 (4) Commencement of benefits under this section within 7 days of approval of each application.

246 (c) Within 120 days of the enactment of this section, the Department of Correction shall promulgate regulations to
247 ensure that the Department of Health and Social Services receives identifying information for each individual who is
248 released from incarceration based on the overturning, vacation, or reversal of the individual's conviction or based on
249 pardon, and to ensure that the individual is provided with all of the following:

250 (1) An application form for benefits under this section.

251 (2) The emergency assistance stipend provided in paragraph (a)(1) of this section.

252 § 7010. Construction of chapter.

253 This chapter and the regulations promulgated under it must be construed liberally to effectuate the legislative
254 intent and as complete authority for the performance of each act and thing authorized in the chapter.

255 Section 2. Implementation date. This Act is effective immediately and is to be implemented the earlier of the
256 following:

257 (a) 180 days after its enactment into law.

258 (b) Notice published in the Register of Regulations that all of the final regulations to implement this Act have been
259 adopted.

SYNOPSIS

This Act is a substitute for Senate Bill No. 169. Like Senate Bill No. 169, this act does all of the following:

This Act creates a process for compensating individuals who have been wrongfully convicted in the State. To obtain compensation, a petitioner must show (i) that the petitioner was pardoned, or, after the conviction was overturned, the charges were dismissed, or the petitioner was acquitted on retrial; or (ii) that the petitioner entered a Robinson plea after the conviction was overturned and that the petitioner was innocent of the crimes for which the petitioner was convicted.

The prosecuting agency can prevent compensation by showing that petitioners were accomplices to the crimes at issue, or that petitioners intentionally “took the fall” for the true perpetrators. Successful petitioners are awarded damages based on the amount of time they served sentences of incarceration, parole, or registration on the sex offender registry solely as a result of the wrongful convictions, as well as reimbursement of fines, fees, and costs related to the wrongful conviction.

The Act also provides an emergency stipend and post-release services for individuals who are released from incarceration and who receive pardons or whose convictions are overturned, vacated, or reversed.

This Act differs from Senate Bill No. 169 in that it makes technical corrections and reorganizes sections for clarity. It also replaces “Alford” plea with “Robinson” plea to conform with *Robinson v. State*, 291 A.2d 279 (Del. 1972).

Author: Senator Hoffner