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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 3
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 Compensation and Services
6 Act”.

7 § 7002. Declaration of purpose.

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

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

19 The State recognizes that individuals whose convictions are overturned in most cases have been released from
20 prison without any reintegration services, even those services that are routinely provided to releasees whose convictions
21 have not been overturned. The State finds that this lack of services unjustly hampers the ability of these individuals to
22 reintegrate into society. Accordingly, this Act provides reintegration services to such individuals.

23 § 7003. Definitions.

24 When used in this chapter:

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

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

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

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

31 a. Imprisonment in a Department of Correction facility.

32 b. Involuntary confinement in the Delaware Psychiatric Center.

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

34 d. Pre-trial detention.

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

40 § 7004. Cause of action against the State for wrongful conviction.

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

43 (b) Filing and service. The petition must be filed in the Superior Court. Upon presentation of a petition, the court
44 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
45 notice thereof to the petitioner and to the Department of Justice. The Department of Justice may offer evidence and argue in
46 opposition to the claim for compensation.

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

49 (1) The petitioner was convicted.

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

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

53 (4) One of the following occurred:

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

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

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

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

63 (d) A prior finding from a court that the petitioner did not commit the crime that resulted in the conviction, or that
64 there was no crime committed, is binding for purposes of subsection (c).

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

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

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

73 (f) Admissibility. No inference may be drawn in any other proceeding from the grant or the denial of a petition
74 under this section.

75 § 7005. Remedies awarded on a successful claim for wrongful conviction.

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

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

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

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

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

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

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

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

92 (5) Reasonable attorney fees, costs, and expenses incurred in obtaining relief under this section and §
93 7004 of this title. Petitioner's attorneys may not collect any fees or costs in excess of the amounts awarded under
94 this paragraph.

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

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

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

102 (b) Annual adjustment. Beginning in 2025, and every year thereafter, the State Treasurer shall determine the
103 percentage increase or decrease in the cost of living for the previous calendar year, based on changes in the Consumer Price
104 Index for All Urban Consumers, Mid-Atlantic Region (All), as published by the Bureau of Labor Statistics of the United
105 States Department of Labor. On or before July 1 of the year in which the State Treasurer makes the determination required
106 by this subsection, the State Treasurer shall adjust the amounts prescribed under paragraphs (a)(1) through (a)(3) of this
107 section for the following calendar year by multiplying the amounts applicable to the calendar year in which the adjustment

108 is made by the percentage amount determined under this subsection. The State Treasurer shall round the adjusted limitation
109 amount to the nearest \$100, but the unrounded amount shall be used to calculate the adjustments to the amounts in
110 subsequent calendar years. The adjusted amounts become effective on July 1 of the year in which the adjustment is made,
111 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.

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

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

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

122 (d) Timing of award. An award of damages under this section of \$1 million or less shall be paid to the petitioner in
123 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
124 petitioner in a lump sum and the remainder shall be paid annually in equal payments over 5 years.

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

127 (1) Costs or expenses incurred by the State or any of its agencies or subdivisions, including costs under §
128 8913 of Title 29 (financial liability of committed person), expenses incurred to secure the petitioner's
129 incarceration, and expenses to feed, clothe, or provide medical services for the petitioner while incarcerated.

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

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

132 (f) Expungement of criminal record. When a petitioner prevails on a petition under § 7004 of this title, the court
133 shall enter an order of expungement pursuant to § 1017 of this title, for juvenile delinquency adjudications, pursuant to §
134 4373 of Title 11, for criminal convictions, or both, as applicable to the convictions at issue in the petition. The
135 expungement order must provide that the petitioner is entitled, upon request to the State Bureau of Identification, to copies
136 of the arrest and criminal records related to the convictions at issue in the petition.

137 (g) Certificate of innocence. When a petitioner prevails on a cause of action under § 7004 of this title, the Superior
138 Court shall give notice to the Department of Justice, including a description of each applicable conviction, the fact and date
139 of the Superior Court’s finding of innocence on each such conviction, and the time periods for which the petitioner was
140 awarded damages under paragraphs (a)(1) through (a)(3) of this section. Within 60 days of receiving the notice from the
141 Superior Court, the Department of Justice shall provide to the petitioner a 1-page letter on Department of Justice letterhead,
142 signed by or on behalf of the Attorney General, stating that the petitioner has been found to be innocent of the crimes at
143 issue, and listing the time periods that the petitioner spent wrongfully incarcerated, or wrongfully in a psychiatric hospital,
144 the time periods the petitioner spent wrongfully on parole or probation, if applicable, and the time periods the petitioner
145 wrongfully spent on the sex offender registry, if applicable.

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

148 (i) Offset. If the petitioner previously won a monetary award in a civil action for wrongful conviction or
149 imprisonment for the crimes at issue in the petition, or has entered into a settlement agreement for a civil action for
150 wrongful conviction or imprisonment for the crimes at issue in the petition, any award of non-economic damages under §
151 7005 of this title will be reduced to the extent of any non-economic damages, and any award of economic damages under §
152 7005 of this title will be reduced to the extent of any economic damages, that the petitioner has received in the civil action
153 award or settlement agreement, less any attorneys’ fees, expenses and out-of-pocket costs paid by the petitioner in
154 connection with obtaining the civil action award or settlement.

155 (j) Reimbursement. If the petitioner has received an award under this Chapter, and subsequently wins a monetary
156 award in a civil action for wrongful conviction or imprisonment for the crimes at issue in the petition, or has entered into a
157 settlement agreement for wrongful conviction or imprisonment for the crimes at issue in the petition, the petitioner shall
158 reimburse the State to the extent of any non-economic damages awarded under § 7005 of this title, and to the extent of any
159 economic damages awarded under § 7005 of this title, less any attorneys’ fees, expenses and out-of-pocket costs paid by the
160 petitioner in connection with obtaining the civil action award or settlement, up to the full amount awarded under this
161 Chapter for economic and non-economic damages, respectively.

162 § 7006. Notice.

163 (a) Court. A court entering a dismissal or judgment of acquittal after a defendant’s criminal conviction has been
164 overturned, vacated, or reversed shall provide a copy of this chapter to the defendant at the time of entry of the dismissal or
165 acquittal. The defendant must acknowledge receipt of a copy of this chapter in writing on a form established by the

166 Supreme Court. The acknowledgment shall be entered on the docket by the court and shall be admissible in any proceeding
167 subsequently filed by the defendant under this chapter.

168 § 7007. Time to file.

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

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

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

178 § 7008. Wrongful conviction compensation fund.

179 (a) The Wrongful Conviction Compensation Fund (“Fund”) is created as a separate fund in the Office of the State
180 Treasurer.

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

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

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

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

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

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

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

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

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

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

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

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

206 (5) The balance in the Fund.

207 § 7009. Eligibility for Services for Individuals Released After Convictions Overturned.

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

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

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

213 a. Services, programs, and housing at community service centers.

214 b. General Assistance pursuant to § 503 and § 505 of Title 31, notwithstanding the eligibility
215 requirements of those sections, and notwithstanding the eligibility requirements and exclusions of §§
216 3019, 3020 of Title 16 of the Administrative Code.

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

219 d. Food stamps in the maximum food benefit amount for a household size of 1 pursuant to §
220 9000, et seq. of Title 16 of the Administrative Code, notwithstanding any otherwise applicable resource
221 limits, income limits, and employment requirements.

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

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

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

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

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

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

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

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

236 § 7010. Construction of chapter.

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

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

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

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

SYNOPSIS

This Act creates the Delaware Wrongful Conviction Compensation and Service Act. The Act provides compensation and reintegration services to individuals who have served sentences of incarceration, wrongful incarceration in a psychiatric institution, parole, probation, and sex offender registration in the State for crimes that they did not commit. An individual claiming wrongful conviction or, if deceased, that individual's heirs, may bring a petition for compensation in Delaware Superior Court. A petitioner who makes the required showing is entitled to damages based on the type and period of wrongful incarceration, probation, parole, or registration, and other amounts, such as reasonable attorney fees in obtaining relief, subject to requirements of proof. However, a petitioner is not entitled to such compensation if the Department of Justice establishes that the petitioner was an accomplice in the commission of the crime or that the petitioner intentionally and voluntarily caused the conviction at issue by committing perjury or fabricating evidence at trial in order to prevent the conviction of the true perpetrator. In addition, an individual released from incarceration as the result of the reversal, overturning, or vacation of a conviction is entitled to emergency assistance and services.

Senate Substitute 3 for SB 169 differs from SS 2 for SB 169 in that it provides that a petitioner who served time in a psychiatric institution is eligible to apply for relief.

Senate Substitute 3 for SB 169 also provides that in all cases, in order to be compensated, a petitioner must establish by a preponderance of the evidence that the petitioner did not commit the crime that resulted in the conviction or that there was no crime committed. This provision differs from Senate Substitute 2, which required this showing only for a petitioner who entered a Robinson plea or entered a plea of no contest.

In addition, Senate Substitute 3 for SB 169 provides that persons who were pardoned are not eligible for post-release services under the Act.

Finally, Senate Substitute 3 for SB 169 provides that any award under the Act must be offset by any amounts the petitioner has recovered in a civil action or settlement of a civil action for wrongful conviction or imprisonment. If, after receiving an award under the Act, a petitioner subsequently recovers in such a civil action or settlement, the petitioner must reimburse the State to the extent of the amounts awarded in the civil action or settlement of the civil action.

Author: Senator Hoffner