SPONSOR: Sen. Hoffner & Rep. Bush & Rep. Dorsey Walker
Sens. Brown, Buckson, Gay, Hansen, Hocker, Huxtable, Lawson, Lockman, Mantzavinos, S. McBride, Paradee, Pettyjohn, Pinkney, Poore, Richardson, Sokola, Sturgeon, Townsend, Walsh, Wilson; Reps. Baumbach, Bolden, Collins, Harris, Hensley, K. Johnson, Lambert, Minor-Brown, Morrison, Parker Selby, Phillips, Yearick

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:

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

Chapter 70. Delaware Wrongful Conviction Compensation and Services Act.

§ 7001. Short title.

This chapter is to be known and may be cited as the "Delaware Wrongful Conviction Compensation and Services Act".

§ 7002. Declaration of purpose.

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

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

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

§ 7003. Definitions.

When used in this chapter:

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

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

(3) “Heirs” means the executor or administrator of a decedent’s estate, the decedent’s personal representatives, or both.

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

a. Imprisonment in a Department of Correction facility.

b. Involuntary confinement in the Delaware Psychiatric Center.

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

d. Pre-trial detention.

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

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

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

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

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

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

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

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

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

(f) Admissibility. No inference may be drawn in any other proceeding from the grant or the 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) Non-economic 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:

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 attorney fees, costs, and expenses incurred in overturning, reversing, or vacating the petitioner's conviction.

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

(8) 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) Annual adjustment. Beginning in 2025, and every year thereafter, the State Treasurer 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 makes the determination required by this subsection, the State Treasurer 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 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) 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 one 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) 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.

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

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

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

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

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

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

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

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

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

§ 7006. Notice.

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

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

§ 7007. Time to file.

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

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

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

§ 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.

(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 shall pay money from the Fund in amounts and at the times as ordered by the Superior Court under this chapter.

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

(e) 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 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 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) The Attorney General shall report quarterly to the Joint Finance Committee, 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.

(5) The balance in the Fund.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 7010. Construction of chapter.

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

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

(a) 180 days after its enactment into law.

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