**152nd GENERAL ASSEMBLY**
**FISCAL NOTE**
***REVISED***

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| **BILL:** | **SENATE SUBSTITUTE NO. 2 FOR SENATE BILL NO. 169** |
| **SPONSOR:** | **Senator Hoffner** |
| **DESCRIPTION:** | **AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO WRONGFUL CONVICTION COMPENSATION AND SERVICES.** |

1. This Act, known as the Delaware Wrongful Conviction Act, becomes effective upon signature by the Governor and implemented the earlier of 180 days after its enactment into law or notice published in the Register of Regulations that all of the final regulations to implement this Act have been adopted.
2. This Act creates a process for compensating individuals wrongfully convicted in the State. To obtain compensation, a petitioner must show that the petitioner was pardoned, or after the conviction was overturned, the charges were dismissed, or the petitioner was acquitted on retrial. Or 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.
    a. Successful petitioners are awarded damages based on the time they served sentences of incarceration, parole, or registration on the sex offender registry solely due to the wrongful conviction, as well as reimbursement of fines, fees, and costs related to the wrongful conviction. This Act also provides emergency assistance and post-release services, including access to services, programs, and housing at community corrections centers, general assistance, Medicaid, and food stamps for individuals who are released from incarceration and who receive pardons or whose convictions are overturned, vacated, or reversed.
3. This Act creates the Wrongful Conviction Compensation Fund (Fund) to be administered by the Office of the State Treasurer, which may deposit money or other assets from any source into the fund or expend money to pay authorized claims. The Fund does not revert to the General Fund at the close of a fiscal year.
4. This Act establishes several categories of compensation based on the conviction at issue that could potentially be awarded to a prevailing petitioner:
    a. $100,000 for each year of incarceration while awaiting a sentence of death based on the conviction at issue, subject to an annual adjustment by the State Treasurer based on changes in the Consumer Price Index.
    b. $75,000 for each year of incarceration based on the conviction at issue, subject to an annual adjustment by the State Treasurer based on changes in the Consumer Price Index.
    c. $50,000 for each year spent on probation or parole or subject to the requirement of sex offender registration, subject to an annual adjustment by the State Treasurer based on changes in the Consumer Price Index.
    d. Economic damages arising from the wrongful conviction.
    e. 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 when the petitioner was incarcerated.
    f. Reasonable attorney fees, costs, and expenses incurred in overturning, reversing, or vacating the petitioner's conviction, or in obtaining a pardon, or both.

g. Reasonable attorney fees, costs, and expenses incurred in obtaining relief under the Delaware Wrongful Conviction Act.

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

i. Reimbursement of any unreimbursed restitution money paid by or on behalf of the petitioner as a result of the former conviction.

j. 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.

5. According to the National Registry of Exonerations, this State has had four exonerations in the past 35 years. If these four individuals petition the court and are awarded compensation, the estimated minimum cost to the State would be $4,550,000.

   a. This estimate does not include costs for economic damages, compensation to those entitled to child support payments, reasonable attorney fees, reimbursement of other eligible costs, and compensation for reintegrative services as specified in assumptions 4d through 4j above. The timing and outcome of these cases in the Superior Court are unknown and indeterminable.

6. It is also challenging to determine the number of claims that could be filed under the provisions of this Act. This Act defines incarceration to include imprisonment in a Department of Correction facility, involuntary confinement in the Delaware Psychiatric Center, placement in the custody of the Department of Services for Children, Youth and Their Families, and pre-trial detention. It is unknown and indeterminable how many petitioners may meet the required showing criteria as prescribed in this Act, have a successful claim, and be awarded compensation by the Superior Court.

7. This Act provides emergency assistance and stipends, including an emergency assistance stipend in the maximum amount ($1,850)(31 Del. C. § 521), to be provided upon release from custody or as soon after that as possible; other general assistance provided for in 31 Del. C. § 503 and § 505 (Temporary Assistance for Needy Families, Medicaid, Child care assistance, etc.); services, programs, and housing at community corrections centers; Medicaid; food stamps in the maximum food benefit amount.

   a. While it is anticipated that there would be an additional cost for the State to have to provide emergency assistance, stipends, services, programs, and housing since the number of individuals released from incarceration as the result of a reversal, overturn, or vacation of a conviction(s), or pardon granted is unknown, this cost cannot be determined.

8. Due to the timing of the implementation period of this Act, the uncertainties surrounding the timing and outcome of these types of cases before the Superior Court, the level and types of compensation that may be awarded, and the number of individuals who may file a compensation claim are unknown, therefore, overall, the fiscal impact of this Act is indeterminable.

**Cost:**

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| **Fiscal Year 2025:** | Indeterminable |
| **Fiscal Year 2026:** | Indeterminable, Potentially Significant |
| **Fiscal Year 2027:** | Indeterminable, Potentially Significant |

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