



Benjamin N. Cardozo School of Law, Yeshiva University

MODEL LEGISLATION, 2006 STATE LEGISLATIVE SESSIONS

**AN ACT CONCERNING CLAIMS FOR WRONGFUL CONVICTION AND IMPRISONMENT**

*PREAMBLE*

The legislature finds that innocent persons who have been wrongfully convicted of crimes and subsequently imprisoned have been uniquely victimized, and have difficulty achieving legal redress due to a variety of substantive and technical obstacles in the law, and that such persons should have an available avenue of redress over and above the existing tort remedies to seek compensation for damages. In light of the particular and substantial horror of being imprisoned for a crime one did not commit, the legislature intends by enactment of the provisions of this Act that those persons who can demonstrate that they were imprisoned despite their actual innocence be able to recover damages.

SECTION 1. ELIGIBILITY:

Any person convicted and subsequently imprisoned for one or more crimes which he did not commit may, under the conditions hereinafter provided, present a claim for damages against the state.

SECTION 2. STATEMENT OF CLAIM:

A. In order to present an actionable claim for wrongful conviction and imprisonment, claimant must establish by documentary evidence that:

1. He has been convicted of one or more crimes and subsequently sentenced to a term of



imprisonment and has served all or any part of the sentence;

2. His actual innocence has been established by:

a. Being pardoned for the crime or crimes for which he was sentenced and which are the grounds for the complaint; or

b. Having his judgment of conviction reversed or vacated and the accusatory instrument dismissed; or

c. If a new trial was ordered, either being found not guilty at the new trial or not being retried and the accusatory instrument dismissed, provided that;

i. The judgment of conviction was reversed or vacated, or;

ii. The accusatory instrument was dismissed on grounds not inconsistent with innocence, or;

iii. Because the statute, or application thereof, on which the accusatory instrument was based violated the Constitution of the United States or (the state); and

3. His claim is not time-barred by the provisions of section 6 of this Act.

B. The claim shall state facts in detail sufficient to permit a court to find that the claimant likely will succeed in proving at trial that:

1. He did not commit any of the acts charged in the accusatory instrument or his acts or omissions charged in the accusatory instrument did not constitute a crime; and

2. He did not commit or suborn perjury, or fabricate evidence to cause or bring about his conviction. Neither a confession later found to be false nor a guilty plea to a crime the claimant did not commit constitutes perjury under this clause.

C. The claim shall be verified by the claimant.

D. If the court finds after reading the claim that claimant is not likely to succeed at trial, it shall dismiss the claim, either on its own motion or on the state's motion.

SECTION 3: PRESENTATION OF CLAIM:

A. All claims of wrongful conviction and imprisonment shall be presented to and heard by the state's civil court or the state's other appropriate administrative structure that handles similar compensation claims.

SECTION 4: JUDGMENT AND AWARD:

A. In order to obtain a judgment in his favor, claimant must provide evidence to prove that:

1. He was convicted of one or more crimes and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and
  - a. He has been pardoned for the crime or crimes for which he was sentenced and which are the grounds for the complaint; or
  - b. His judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or,
  - c. If a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument dismissed, provided that:
    - i. The judgment of conviction was reversed or vacated, or the accusatory instrument was dismissed, on grounds not inconsistent with innocence; or,
    - ii. Because the statute, or application thereof, on which the accusatory instrument was based violated the Constitution of the United States or (the state); and;
2. He did not commit any of the acts charged in the accusatory instrument, or did his acts or omissions charged in the accusatory instrument did not constitute a crime; and
3. He did not commit or suborn perjury, or fabricate evidence to cause or bring about his conviction. Neither a confession later found to be false nor a guilty plea to a crime the

claimant did not commit constitutes perjury under this clause.

B. If the court finds that the claimant was wrongfully convicted and incarcerated:

1. The court shall award damages for the physical injury of wrongful conviction and incarceration which shall include:

a. Not less than \$50,000 for each year of incarceration, with an additional \$50,000 for each year served on death row, as adjusted by the state auditor to account for:

- i. Inflation from the date of enactment, and
- ii. Partial years the claimant served;

b. Economic damages including but not limited to:

- i. Lost wages;
- ii. Costs associated with his criminal defense and efforts to prove innocence; and
- iii. Medical expenses required after release;

c. Non-economic damages for:

- i. Personal physical injuries or physical sickness; and
- ii. Any non-physical injuries or sickness arising out of same, incurred during or as a result of incarceration;

d. Up to ten years of physical and mental health care through the state employees' health care system, to be offset by any amount provided through claimant's employers during that time period;

e. Compensation for any reasonable re-integrative services and mental and physical health care costs incurred by claimant for the time period between his release from mistaken incarceration and the date of his award; and

f. Reasonable attorneys' fees calculated at ten percent of the damage award plus expenses.

- i. These fees, exclusive of expenses, shall not exceed \$75,000, as adjusted by the state auditor to account for inflation from the date of enactment; and
    - ii. These fees shall not be deducted from the compensation due claimant; nor is counsel entitled to receive additional fees from the client.
2. The damage award shall not be subject to:
  - a. Any cap applicable to private parties in civil lawsuits; or
  - b. Any taxes, except for those portions of the judgment awarded as attorneys fees for bringing a claim under this chapter; and
  - c. The appropriation shall not be treated as gross income to a claimant under the provisions of [the State's taxation code].
3. The acceptance by a claimant of any such award, compromise or settlement shall:
  - a. Be reduced to a writing; and shall
  - b. Except when procured by fraud, be final and conclusive on the claimant; and shall
  - c. Constitute a complete release of any claim against the state and a complete bar to any action by the claimant against the state by reason of the same subject matter.
4. The damage award shall not be offset by any expenses incurred by the state or any political subdivision of the state, including, but not limited to:
  - a. Expenses incurred:
    - i. To secure the claimant's custody, or
    - ii. To feed, clothe or provide medical services for said claimant; nor
  - b. The value of any services or reduction in fees for service, or the value thereof to be provided to the claimant that may be awarded to the claimant pursuant to



this section.

SECTION 5. NOTICE:

A. A court granting judicial relief consistent with the criteria set forth in subclause (b) of clause (2) of subsection A of Section 2 on or after the effective date of this chapter shall provide a copy of this chapter to the individual seeking such relief at the time the criteria of said subclause (b) of clause (2) of subsection A of Section 2 are satisfied.

B. The individual shall be required to acknowledge his receipt of a copy of this chapter in writing on a form established by the Chief Justice for administration and management of the Trial Court.

C. The court shall enter said acknowledgement on the docket and the acknowledgement shall be admissible in any proceeding filed by a claimant under this Act.

D. The parole board, upon the issuance of a full pardon under section XX of chapter XX on or after the effective date of this chapter, shall provide a copy of this chapter at the time the pardon is issued to the individual pardoned. The individual shall be required to acknowledge his receipt of a copy of this chapter in writing on a form established by the parole board, which shall be retained on file by the parole board as part of its official records and shall be admissible in any proceeding filed by a claimant under this chapter.

E. In the event a claimant granted judicial relief or a full pardon on or after the effective date of this chapter shows he did not properly receive a copy of the information required by this section, he shall receive a one-year extension on the three-year time limit provided in Section 6.

F. The Chief Justice for administration and management of the Trial Court shall make reasonable attempts to notify all persons pardoned or granted judicial relief consistent with the criteria set forth in subclause (b) of clause (2) of subsection A of Section 2 of



this act before enactment of said act of their rights under this act.

SECTION 6. STATUTE OF LIMITATIONS:

An action for compensation brought by a wrongfully convicted person under the provisions of this chapter shall be commenced within three years after either the grant of a pardon or the grant of judicial relief and satisfaction of other conditions described in subsection A of Section 2; provided, however, that any action by the state challenging or appealing the grant of said judicial relief shall toll said three-year period. Persons convicted, incarcerated and released from custody prior to the effective date of this act shall commence an action under this chapter within five years of said effective date.

SECTION 7. RIGHT OF APPEAL:

Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions as set forth in section XX of said chapter XXX in state code.