

West's Vermont Statutes Annotated [Currentness](#)

Title Thirteen. Crimes and Criminal Procedure ([Refs & Annos](#))

Part 3. Proceedings Before Trial ([Refs & Annos](#))

▢ [Chapter 182. Innocence Protection](#)

→ [Subchapter 2. Compensation for Wrongful Convictions](#)

→ **§ 5572. Right of action; procedure**

(a) A person convicted and imprisoned for a crime of which the person was exonerated pursuant to subchapter 1 of this chapter shall have a cause of action for damages against the state.

(b) An action brought under this subchapter shall be filed in Washington County superior court. Notice of the action shall be served upon the attorney general.

(c) The Vermont Rules of Civil Procedure shall apply to actions brought under this subchapter, and the plaintiff shall have a right to trial by jury. The Vermont Rules of Appellate Procedure shall apply to appeals from orders and judgments issued under this subchapter.

(d) The attorney general may consider, adjust, determine, and settle any claim for damages brought against the state of Vermont under this subchapter.

§ 5573. Complaint

(a) A complaint filed under this subchapter shall be supported by facts and shall allege that:

(1) the complainant has been convicted of a crime, been sentenced to a term of imprisonment, and served all or any part of the sentence; and

(2) the complainant was exonerated pursuant to subchapter 1 of this chapter through the complainant's conviction being reversed or vacated, the information or indictment being dismissed, the complainant being acquitted after a second or subsequent trial, or the granting of a pardon.

(b) The court may dismiss the complaint, upon its own motion or upon motion of the state, if it determines that the complaint does not state a claim for which relief may be granted.

§ 5574. Burden of proof; judgment; damages

(a) A claimant shall be entitled to judgment in an action under this subchapter if the claimant establishes each

of the following by a preponderance of the evidence:

(1) The complainant was convicted of a crime, was sentenced to a term of imprisonment, and served all or any part of the sentence.

(2) As a result of DNA evidence:

(A) The complainant's conviction was reversed or vacated, the complainant's information or indictment was dismissed, or the complainant was acquitted after a second or subsequent trial; or

(B) The complainant was pardoned for the crime for which he or she was sentenced.

(3) DNA evidence establishes that the complainant did not commit the crime for which he or she was sentenced.

(4) The complainant did not fabricate evidence or commit or suborn perjury during any proceedings related to the crime with which he or she was charged.

(b) A claimant awarded judgment in an action under this subchapter shall be entitled to damages in an amount to be determined by the trier of fact for each year the claimant was incarcerated, provided that the amount of damages shall not be less than \$30,000.00 nor greater than \$60,000.00 for each year the claimant was incarcerated, adjusted proportionally for partial years served. The damage award may also include:

(1) Economic damages, including lost wages and costs incurred by the claimant for his or her criminal defense and for efforts to prove his or her innocence.

(2) Notwithstanding the income eligibility requirements of the Vermont Health Access Plan in [section 1973 of Title 33](#), and notwithstanding the requirement that the individual be uninsured, up to ten years of eligibility for the Vermont Health Access Plan using state-only funds.

(3) Compensation for any reasonable reintegrative services and mental and physical health care costs incurred by the claimant for the time period between his or her release from mistaken incarceration and the date of the award.

(4) Reasonable attorney's fees and costs for the action brought under this subchapter.

(c) Damages awarded under this section:

(1) shall not be subject to any state taxes, except for the portion of the judgment awarded as attorney's fees; and

(2) shall not be offset by any services awarded to the claimant pursuant to this section or by any expenses incurred by the state or any political subdivision of the state, including expenses incurred to secure or maintain the claimant's custody or to feed, clothe, or provide medical services for the claimant.

(d) The claimant's acceptance of a damages award, compromise, or settlement as a result of a claim under this subchapter shall be in writing and, except when procured by fraud, shall be final and conclusive on the claimant, and constitute a complete release by the claimant of any claim against the state and a complete bar to any action by the claimant against the state with respect to the same subject matter.

(e) A claimant shall be entitled to compensation under this subchapter only for the years in which he or she would not otherwise have been incarcerated for another sentence.

§ 5575. Payment

(a) Any award made or compromise or settlement against the state of Vermont agreed upon by the attorney general in response to an action brought under this subchapter shall be paid by the state treasurer out of the treasury, and the emergency board shall reimburse the state treasurer therefor from time to time.

(b) If the state elects to self-insure for liability as defined in [section 5601 of Title 12](#), any award, compromise, or settlement against the state of Vermont agreed to by the attorney general shall be paid by the treasurer from the liability self-insurance fund.

(c) To the extent that an award, settlement, or compromise is covered by a policy of liability insurance, payment will be governed by the terms of the policy.

§ 5576. Limitations

(a) Except as provided in subsection (b) of this section, an action for compensation under this subchapter shall be commenced within three years after the person is exonerated pursuant to subchapter 1 of this chapter through the person's conviction being reversed or vacated, the information or indictment being dismissed, the person being acquitted after a second or subsequent trial, or through the granting of a pardon.

(b)(1) If the state challenges the exoneration of a person entitled to bring an action under this subchapter, the limitations period shall not commence until the challenge is finally resolved.

(2) If a person entitled to bring an action under this subchapter is not provided the notice required by [section](#)

5577 of this title, the person shall have an additional year within which to bring the action.

§ 5577. Notice of right of action

(a) A copy of this subchapter shall be provided to a person by a court:

(1) exonerating a person pursuant to subchapter 1 of this chapter through vacating or reversing the person's conviction, dismissing the information or indictment, entering judgment on an acquittal after a second or subsequent trial; or

(2) receiving notice of a pardon.

(b) A person receiving a copy of this subchapter pursuant to subsection (a) of this section shall be required to acknowledge its receipt in writing on a form established by the court administrator. The acknowledgement shall be entered on the docket by the court and shall be admissible in an action filed under this subchapter.

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