

2001 Alabama Laws Act 2001-659 (S.B. 166)

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Act 2001-659

S.B. No. 166

WRONGFUL INCARCERATION--COMMITTEE--COMPENSATION

By: Senators McClain and Smitherman

Enrolled, An Act, Provides for compensation from the state for wrongful incarceration; creates the Committee on Compensation for Wrongful Incarceration to certify eligible applicants for compensation and to recommend additional compensation, if warranted; provides for committee membership, expenses and duties; provides immunity for civil liability; provides for eligibility and the procedure for submitting applications; provides for a limited period for submitting applications; provides that an appropriations act must be enacted prior to payment and receipt of any base or supplemental compensation; provides that the state is not obligated to compensate a person wrongfully incarcerated; provides that the Comptroller is not authorized to pay any such compensation until appropriated by the Legislature for that purpose; and provides for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The Legislature intends that this act shall serve as the method of compensating certain innocent persons who have been wrongfully incarcerated by the State of Alabama.

Section 2. There is hereby created the Committee on Compensation for Wrongful Incarceration. The Committee on Compensation for Wrongful Incarceration may hereinafter be referred to as the "Committee." The Committee shall certify applicants who have met the eligibility criteria for payment pursuant to this act and may recommend to the Legislature an amount of additional compensation to be paid by the state as authorized by Section 10(b) of this act.

Section 3. (a) The Committee shall consist of the following nine voting members:

- (1) the Chair of the House Ways and Means-General Fund Committee;
- (2) the Chair of the Senate Finance and Taxation-General Fund Committee;
- (3) the Chair of the House Judiciary Committee;
- (4) the Chair of the Senate Judiciary Committee;
- (5) the Speaker of the House of Representatives or his or her designee;
- (6) the Speaker Pro Tempore of the House of Representatives or his or her designee;
- (7) the President Pro Tempore of the Senate or his or her designee;
- (8) the Lieutenant Governor or his or her designee; and
- (9) the Director of Finance.

(b) Each year the Committee shall elect a chair and vice chair from its membership.

(c) Any four members of the Committee shall be required to be in attendance for the purpose of transacting the business of the Committee and a vote of four members in favor of a motion shall be necessary for any decision regarding certification of compensation pursuant to this act or a recommendation for additional compensation pursuant to Section 10. The term for service on this Committee shall be the same as the quadrennium of the Legislature.

(d) The Committee shall meet as often as necessary but at least quarterly if an applicant's eligibility for compensation has been verified by the Division of Risk Management of the Department of Finance.

(e) The Division of Risk Management shall make a record of and file in such office a history of each case, together with the findings of the Division and any certification of awards by the Committee. The Division shall also provide necessary administrative and legal support to the Committee.

Section 4. (a) Members of the Committee shall serve without compensation.

(b) Members of the Committee are entitled to reimbursement for expenses while on official business of the Committee or attending its meetings. Expenses shall be paid as follows:

(1) The expenses of members who are legislators may be paid out of any funds appropriated to the Legislature or out of any funds appropriated for joint interim committees of the Legislature, but in the amounts as if they were performing legislative duties.

(2) The expenses of the Director of Finance may be paid out of any funds available to the Office of the Director of Finance.

Section 5. From time to time the Committee shall establish rules and regulations for the administration of its duties and responsibilities as well as those of the Division of Risk Management as relates to this act.

Section 6. No civil action may be brought against the Committee or any of its members, for providing any reports, records, opinions or any actions or recommendations pursuant to this act. In addition, any persons acting in good faith and without negligence or malicious intent in providing information to the Committee in furtherance of this act shall have the immunity from civil liability that might otherwise be incurred or imposed.

Section 7. In order to be eligible to receive compensation for wrongful incarceration a person must: (1) have been convicted by the State of one or more felony offenses, all of which the person was innocent, and have served time in prison as a result of the conviction or convictions; or (2) have been incarcerated pretrial on a state felony charge, for at least two years through no fault of his or her own, before having charges dismissed based on innocence.

Section 8. For purposes of determination of eligibility for compensation for wrongful incarceration, innocence shall be evidenced by at least one of the following:

(1) The conviction vacated or reversed and the accusatory instrument dismissed on grounds of innocence; or

(2) The accusatory instrument dismissed on a ground consistent with innocence.

Section 9. (a) Any individual who meets the eligibility criteria established in this act and desires compensation shall submit such application to the Division of Risk Management which shall immediately provide notice to the members of the Committee.

(b) An application for compensation must include a full statement of the facts upon which the claim is based, which shall be verified by the Division of Risk Management in the manner provided for verifying complaints in civil actions, and may be supported by affidavits substantiating such claim. If the Division of Risk Management verifies that an individual is eligible for compensation under that act, notification of that fact shall be made to the Committee within 10 days of such verification. The Committee shall within 90 days of such notification meet to certify the award. If after receiving verification of eligibility from the Division of Risk Management an eligible applicant seeks additional compensation over that amount designated in Section 10(a) the Committee shall fix a time and a place for a hearing, and shall mail notice to the applicant, and shall notify the Attorney General and the appropriate district attorney, at least 30 days before the time fixed therefor.

Section 10. (a) If an applicant's eligibility is verified by the Division of Risk Management, the Committee shall certify to the applicant an amount equal to fifty thousand dollars (\$50,000) for each year or the pro rata amount for the portion of each year of incarceration.

(b) The Committee, after hearing testimony, shall have the authority to recommend

some discretionary amount in addition to the base amount if circumstances warrant such a supplemental award. Any such supplemental amount shall be in the form of a bill to be presented to the Legislature.

(c) At the hearing on additional compensation the applicant may introduce evidence in the form of affidavits or testimony to support the additional compensation as provided in subsection (b) of this section and the Attorney General or the local prosecutor's office under whose jurisdiction the case was prosecuted may introduce counter affidavits or testimony in refutation. If the Committee finds from the evidence that the applicant warrants additional compensation, it shall recommend the amount the applicant is eligible to be paid for over the base amount and shall make a recommendation to the Legislature.

(d) The Comptroller upon proper certification from the Committee shall pay the amount of the base award to the applicant out of any available state funds appropriated by the Legislature for such purposes. Any amounts for additional compensation passed by the Legislature will be paid as provided for in such legislation.

(e) The Committee shall give written notice of its certifications within 10 days to all parties involved in the process as well as the appropriate state officials charged with processing the compensation. The determination of the committee shall not be subject to review upon appeal of the claimant or the State.

Section 11. (a) The Committee in its discretion may direct that payment of compensation claims be in a lump sum or in such installments as it deems appropriate, but no part of such claim shall be directed by the Committee to any person other than the person so pardoned or exonerated, nor shall the person so pardoned or exonerated pay any part of the sum received to any person for services rendered in connection with its collection. Notwithstanding the above, in the event that a person awarded compensation dies prior to receiving the full amount of his or her compensation, the person's estate shall be eligible to receive any remaining compensation.

(b) Any right to apply for compensation under the provisions of this act shall cease upon the death of the claimant.

(c) If a person has submitted an application for compensation to the Division of Risk Management but dies, prior to the application being certified for compensation, the estate of the person shall be eligible to receive said compensation.

(d) In awarding compensation under this section, the Committee shall not offset the award by any expenses incurred by the state or any political subdivision of the state in connection with the arrest, prosecution, and imprisonment of the individual, including, but not limited to, expenses for food, clothing, shelter, and medical care.

Section 12. (a) A person serving a term of imprisonment for a crime other than a crime for which the person was wrongfully incarcerated shall not be eligible to receive compensation pursuant to the provisions of this act.

(b) A person shall not be eligible to receive compensation pursuant to the provisions of this act if the sentence for the crime of which the person was mistakenly convicted was served concurrently with the sentence for the conviction of another crime.

(c) A person shall not be eligible for compensation if he or she was convicted of any of the acts charged with in conjunction with the charge which resulted in the wrongful conviction or his or her acts or omissions constituted a felony or misdemeanor against the state.

(d) To be eligible to recover a sum of money as described by this act because of his or her wrongful incarceration, an individual shall not have been the subject of an act of the Legislature that authorized an award of compensation for his or her wrongful incarceration.

(e) A person awarded compensation and subsequently convicted of a felony crime will not be eligible to receive any unpaid amounts from any compensation authorized by this act.

Section 13. Any person applying for compensation under this act based on exoneration that was granted before the effective date of this act or the dismissal of an accusatory instrument that occurred before the effective date of this act shall file his or her application within two years after the effective date of this act. Any persons applying for

compensation under this act based on an exoneration that was granted on or after the effective date of this act or the dismissal of any accusatory instrument that occurred on or after the effective date of this act shall file his or her application within two years after the exoneration or dismissal.

Section 14. The Division of Risk Management shall be responsible for verifying all information submitted by an applicant meeting the criteria established in Section 7 and verify that the applicant is not ineligible due to any of the exceptions provided for in Sections 12 and 13.

Section 15. Agencies of state government shall cooperate with the Committee and the staff of the Division of Risk Management as necessary for the Committee and the Division to carry out its responsibilities. Upon the request of the Committee or the Division, each agency and department of the state shall make its services, equipment, personnel, facilities, and information available to the greatest practicable extent to the Committee in the execution of its functions without cost to the Committee.

Section 16. Notwithstanding any other provisions of this act, payment and receipt of any base or supplemental compensation as provided by subsections (a), (b), (c), or (d) of Section 10 of this act is contingent upon the Legislature appropriating funds for that purpose. This act does not provide for an entitlement to compensation to persons determined to have been wrongfully incarcerated, does not require that the Legislature appropriate funds for payment of either base or supplemental compensation, and does not require or authorize the Comptroller to pay any such compensation until funds have been appropriated by the Legislature for that purpose.

Section 17. This act shall become effective immediately upon its passage and approval by the Governor, or its otherwise becoming law.

Approved May 21, 2001.

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