

First Regular Session of the 121st General Assembly (2019)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2018 Regular and Special Session of the General Assembly.

HOUSE ENROLLED ACT No. 1150

AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 5-2-23 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE NOVEMBER 1, 2019]:

Chapter 23. Restitution for Wrongfully Incarcerated Persons

Sec. 1. (a) This chapter does not apply to a person who has received, in any jurisdiction, an award for restitution or damages concerning a conviction, or a conviction's underlying criminal investigation, against the state of Indiana or a political subdivision and any applicable state agency, official, member, officer, agent, or employee, or the successor to any of those individuals, as applicable.

(b) Subject to subsection (a), this chapter applies to a person:

- (1) sentenced to the department of correction or a county jail as the result of a criminal conviction;**
- (2) who is pardoned by the governor, or whose conviction is vacated, reversed, or set aside;**
- (3) who is actually innocent; and**
- (4) who has not:**
 - (A) previously applied for restitution under this chapter for the same conviction or any associated criminal investigation; or**
 - (B) received compensation in any form from the state of**

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Indiana or a political subdivision for claims related to the conviction or any associated criminal investigation.

Sec. 2. As used in this chapter, "actually innocent" means, with respect to a particular offense, that a person:

- (1) did not commit the offense; and
 - (2) did not:
 - (A) commit;
 - (B) take part in; or
 - (C) plan, prepare for, or participate in the planning or preparation of;
- any other criminal act in connection with that offense.

The mere fact that the trier of fact acquitted or did not convict the person on remand is insufficient, standing alone, to establish that the person is actually innocent.

Sec. 3. (a) Subject to section 4 of this chapter, and except as provided in section 5 of this chapter, a person to whom this chapter applies is entitled to compensation in the amount of fifty thousand dollars (\$50,000) for each year that the person was incarcerated in the department of correction (including a facility under contract to the department of correction) or a county jail for a conviction that was vacated. Compensation for a partial year of incarceration shall be calculated on a pro rata basis.

(b) A person is not entitled to compensation under this chapter for time spent in pretrial detention, home detention, or work release.

(c) The criminal justice institute shall pay compensation owed under this chapter in equal sums distributed over five (5) years.

Sec. 4. A person to whom this chapter applies is entitled to compensation under this chapter only if the person forever releases, discharges, and waives any and all claims against the following persons or entities, as applicable:

- (1) The state of Indiana.
 - (2) A political subdivision.
 - (3) Any applicable state agency.
 - (4) Any current or former:
 - (A) official;
 - (B) member;
 - (C) officer;
 - (D) agent; or
 - (E) employee;
- of an entity described in subdivisions (1) through (3).
- (5) The successor to any person described in subdivision (4).



Sec. 5. (a) A person is entitled to compensation for only the period of incarceration that is solely attributable to the conviction that is vacated. A person is not entitled to compensation for the part of a sentence that is served concurrently with a sentence for a conviction that is not vacated.

(b) The maximum amount of compensation that a person may receive under this chapter is fifty thousand dollars (\$50,000) per year, regardless of the number of convictions vacated.

Sec. 6. (a) This section applies to treatments, programs, or services offered by one (1) or more of the following:

- (1)** The department of correction.
- (2)** A community corrections program (as defined under IC 35-38-2.6-2).
- (3)** A court.

(b) Nothing in this chapter shall be construed to prevent a person from enrolling in, participating in, or receiving the benefit of one (1) or more of the following treatments, programs, or services if the person is otherwise eligible to receive or participate in the treatment, program, or service:

- (1)** Mental health evaluation or treatment.
- (2)** Substance abuse evaluation or treatment.
- (3)** Community transition programs or services.
- (4)** Any other program, service, or treatment that is designed to provide rehabilitation or reintegration services to an incarcerated person.

Sec. 7. (a) The exoneration fund is established for the purpose of carrying out this chapter. The fund shall be administered by the criminal justice institute.

(b) The fund consists of appropriations from the general assembly.

Sec. 8. (a) A person to whom this chapter applies may seek compensation under this chapter by applying to the criminal justice institute on a form and in a manner to be determined by the criminal justice institute. An application must be submitted not later than:

- (1)** November 1, 2021; or
- (2)** two (2) years from the date the:
 - (A)** judgment vacating, reversing, or setting aside the person's conviction becomes final; or
 - (B)** governor pardons the person;

whichever is later. An applicant shall submit additional evidence to the criminal justice institute upon request by the criminal justice



institute.

(b) An applicant must demonstrate the following in any application submitted to the criminal justice institute:

- (1) The applicant's eligibility for compensation under this chapter as described in this chapter.**
- (2) The applicant's compliance with any rules promulgated or required by the criminal justice institute pursuant to section 9 of this chapter.**

(c) Upon receipt of:

- (1) a completed application; and**
- (2) any additional evidence required by the criminal justice institute;**

the criminal justice institute shall evaluate, investigate, and make a determination with respect to an applicant's claim.

(d) If, at the conclusion of an investigation performed pursuant to subsection (c), the criminal justice institute determines that the applicant qualifies for compensation under this chapter, the criminal justice institute shall pay, from the exoneration fund, any compensation due to the applicant, subject to the requirements of subsections (e) and (f).

(e) The criminal justice institute may not pay compensation to an applicant who:

- (1) has received an award for restitution or damages described in section 1 of this chapter in connection with the conviction;**
- (2) has a pending case that might result in an award for restitution or damages described in section 1 of this chapter with respect to the conviction; or**
- (3) has not executed the waiver described in section 4 of this chapter.**

(f) The criminal justice institute may only pay compensation to the individual who was wrongfully incarcerated or, on behalf of the individual, to the individual's guardian. The criminal justice institute may not pay compensation to:

- (1) the estate of;**
- (2) a fiduciary of;**
- (3) a trust on behalf of; or**
- (4) an assignee of;**

the wrongfully incarcerated individual.

Sec. 9. (a) The criminal justice institute may adopt rules under IC 4-22-2, including emergency rules under IC 4-22-2-37.1, to implement this chapter.



(b) An emergency rule adopted under this section expires on the earlier of the following dates:

(1) The expiration date stated in the emergency rule.

(2) The date the emergency rule is amended or repealed by a later rule adopted under IC 4-22-2-22.5 through IC 4-22-2-36 or under IC 4-22-2-37.1.

(c) The criminal justice institute may readopt an emergency rule that has expired.

Sec. 10. A person may seek judicial review of a determination made by the criminal justice institute under this chapter in accordance with IC 4-21.5-5. However, an applicant appealing an adverse determination is not required to pay for the cost of producing the record.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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