

1 **** BILL NO. ****
2 INTRODUCED BY ****
3 BY REQUEST OF THE ****
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING COMPENSATION FOR PEOPLE WHO HAVE BEEN
6 WRONGLY CONVICTED OF FELONY CRIMES AND EXONERATED; PROVIDING A PROCEDURE FOR
7 FILING AND DETERMINING PETITIONS FOR COMPENSATION; PROVIDING FOR AN ELECTION OF
8 REMEDIES; EXCLUDING COMPENSATION FOR CONVICTION OF A CRIME NOW LEGAL; PROVIDING
9 FOR EXPUNGEMENT OF CONVICTION AND THE PAYMENT OF DAMAGES FOR SUCCESSFUL
10 PETITIONS; PROVIDING OFFSETS FOR DAMAGES OBTAINED IN OTHER LITIGATION; PROVIDING FOR
11 COUNTY AND CONSOLIDATED GOVERNMENT CONTRIBUTION TOWARD DAMAGES, COSTS, AND
12 ATTORNEY FEES AWARDED; CREATING A STATE SPECIAL REVENUE ACCOUNT; PROVIDING A
13 TRANSFER; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTION 46-23-1041, MCA;
14 PROVIDING AN EFFECTIVE DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
17

18 **NEW SECTION. Section 1. Definitions.** As used in this part, the following definitions apply:

- 19 (1) "Claimant" means a person who:
20 (a) was convicted and subsequently imprisoned for one or more felony crimes that the person did
21 not commit;
22 (b) is not currently serving a term of imprisonment; and
23 (c) meets the requirements of [section 2].
24 (2) "Date of exoneration" means the date of dismissal of the criminal charges against the claimant
25 or a finding of not guilty on retrial.
26 (3) "Imprisonment" means a term of confinement of at least 6 months in a correctional institution as
27 defined in 45-2-101.
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1 NEW SECTION. Section 2. Contents of petition -- establishment of claim for compensation. (1)

2 A claimant may bring a civil action against the state and county of conviction in the district court in which the
3 conviction originated to seek the relief provided for in [section 6]. All claims of compensation are governed by
4 the Montana Rules of Civil Procedure. The claim must be:

5 (a) accompanied by a statement of facts explaining the basis of the claim, including if:

6 (i) the charge for which the claimant seeks compensation was dismissed;

7 (ii) the claimant was found not guilty at a retrial; or

8 (iii) only if either (1)(a)(i) or (1)(a)(ii) is not met, a proffer establishing actual innocence;

9 (b) written and verified by the claimant under penalty of perjury; and

10 (c) filed within a period of 3 years after the date of exoneration.

11 (2) A claimant convicted, imprisoned, and released from custody before July 1, 2025, who intends
12 to bring an action under this part shall commence the action no later than July 1, 2028.

13 (3) All pleadings must be captioned as follows: "In the matter of the wrongful conviction of [name of
14 claimant]."

15 (4) (a) A claimant may receive a transition assistance grant of \$5,000. The claimant shall verify by
16 affidavit filed with the department of corrections that the claimant satisfies the requirements set forth in
17 subsection (1), under penalty of perjury. Within 30 days of receiving the claimant's affidavit, the department of
18 corrections shall issue the grant funds to the claimant.

19 (b) If the claimant fails to file a claim within the time period described in this section, or if the claim
20 is denied by the district court, the claimant shall reimburse the state in the amount of \$5,000 within 1 year
21 following receipt of the grant money.

22 (5) Nothing in this part permits a person who petitions a court for expungement of a felony
23 conviction for a crime that is now legal under Title 16, chapter 12, to seek compensation for a wrongful
24 conviction.

25
26 NEW SECTION. Section 3. Election of remedies. (1)(a) Except as provided in subsection (1)(b), to
27 be eligible to receive relief under [section 2], the claimant shall affirmatively waive any and all other remedies,
28 causes of action, and other forms of relief or compensation against the state, any political subdivision of the

1 state, and their officers, employees, agents, and volunteers related to the claimant's wrongful conviction and
2 imprisonment. This waiver includes all state, common law, and federal claims for relief, including claims
3 pursuant to 42 U.S.C. 1983. The claimant shall execute a release of all claims against the state, any political
4 subdivision of the state, and their officers, employees, agents and volunteers arising from the facts contained in
5 the petition prior to the payment of any damages or compensation or the receipt of a housing voucher under 46-
6 23-1041. For the purposes of any insurance claim made for this type of claim, the date of exoneration is the
7 occurrence date.

8 (b) If a claim filed pursuant to this part is denied, the claimant is not subject to the restrictions as
9 described in subsection (1)(a) and the waiver is void and may not be enforced.

10 (2) An individual who has a legal proceeding pending or in which judgment has been entered in state
11 or federal court seeking damages or relief for wrongful conviction or imprisonment based on facts that could
12 establish a cognizable claim pursuant to this part may not bring a claim under [section 2].

13
14 **NEW SECTION. Section 4. Commencement of proceedings -- burden of proof.** A claimant is
15 entitled to a hearing in district court as expeditiously as possible after filing a claim for compensation.

16 (2) A claim filed pursuant to this part must be served on the department of justice and the county of
17 conviction. The department shall provide a defense for the state and the county of conviction shall provide its
18 own defense for claims filed under this part.

19 (3) A claim filed under this part must be tried by a jury unless a jury trial is waived upon agreement
20 of the parties.

21 (4) If a claimant dies prior to filing or during pendency of a claim under this part, the person's
22 estate may file or maintain a claim pursuant to this part.

23 (5) The claimant must prove by a preponderance of the evidence that:

24 (a) the claimant did not commit the crime or crimes for which the claimant was convicted, did not
25 aid, abet, or act as an accomplice or accessory to a person who committed the acts that were the basis of the
26 conviction, and did not commit a lesser offense necessarily included in the crime for which the claimant was
27 convicted;

28 (b) the claimant did not commit perjury under 45-7-201, fabricate evidence, or by the claimant's

1 own conduct cause or bring about the conviction. A confession or admission that is later found to be false or a
2 guilty plea that is withdrawn does not constitute committing perjury, fabricating evidence, or causing or bringing
3 about the conviction, and 45-7-201 does not apply.

4 (c) the claimant's conviction was reversed or vacated and either the claimant was not retried and
5 the charges were dismissed, or the claimant was retried and was found not guilty, and the basis for reversing or
6 vacating the conviction was not legal error unrelated to factual innocence.

7 (6) The court, in exercising its discretion regarding the weight and admissibility of evidence
8 submitted under this section, may in the interest of justice give due consideration to difficulties of proof caused
9 by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not
10 caused by claimants, the state, the county of conviction, or those acting on their behalf.

11 (7) If the court finds that the claimant is entitled to judgment, the court shall enter a certificate of
12 innocence finding that the claimant is innocent of all crimes for which the claimant was mistakenly convicted.
13 The clerk of the court shall send a certified copy of the certificate of innocence and the judgment to the
14 department of justice and the county of conviction for payment pursuant to this part.

15 (8) The decision of the district court may be appealed directly to the supreme court.

16
17 **NEW SECTION. Section 5. Expungement.** (1) Upon entry of a certificate of innocence, the court
18 shall order the associated convictions and arrest records expunged and purged from all applicable systems,
19 including both electronic and hard copy systems. The court shall enter the expungement order regardless of
20 whether the claimant has prior criminal convictions in other cases that are not the subject of the claim for
21 compensation.

22 (2) The order of expungement must state:

23 (a) the claimant's current full name;

24 (b) the claimant's full name at the time of arrest and conviction, if different from the claimant's current
25 name;

26 (c) the claimant's sex, race, and date of birth;

27 (d) the crime for which the claimant was arrested and convicted;

28 (e) the date of the claimant's arrest and the date of the claimant's conviction; and

1 (f) the identity of the arresting law enforcement authority and the identity of the district court that
2 rendered the conviction.

3 (3) The order of expungement also must direct the department of justice to purge the conviction and
4 arrest information from the central repository of the criminal justice information network and all applicable
5 databases. The clerk of the court shall send a certified copy of the order to the department of justice for
6 immediate action, and the department shall carry out the order and notify the federal bureau of investigation,
7 the department of corrections, and any other criminal justice agency that may have a record of the conviction
8 and arrest. The department of justice shall provide confirmation of the action to the court.

9 (4) If a certificate of innocence and an order of expungement are entered, the claimant must be
10 treated as not having been arrested or convicted of the crime or crimes to which the certificate of innocence
11 applies.

12 (5) (a) Upon entry of a certificate of innocence:

13 (i) the court shall order the expungement and destruction of any associated biological samples from
14 the claimant. The order must state the information required to be expunged and destroyed.

15 (ii) the court shall seal all district court records regarding the conviction. The district court records are
16 only available upon a good cause finding by the court.

17 (iii) the clerk of the court shall send a certified copy of the order to the department of justice, which
18 must carry out the order and provide confirmation of the action to the court.

19 (b) The department is not required to expunge and destroy any samples record associated with the
20 claimant related to an offense other than the offense or offenses for which the court has entered a certificate of
21 innocence.

22 (6) The decision to grant or deny a certificate of innocence does not have a res judicata effect on any
23 other criminal proceedings involving the claimant.

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25

26 **NEW SECTION. Section 6. Damages.** (1) Damages, except as provided in subsection (3), awarded
27 under this section are:

28 (a) \$65,000 for each year of imprisonment; and

1 (b) \$25,000 for each additional year served on parole or probation supervision or for each additional
2 year the claimant was required to register as a sexual or violent offender, whichever is greater.

3 (2) Compensation awarded under this part is not subject to the monetary limitation under 2-9-108.

4 (3) All damages must be paid out of the account provided for in 46-32-108.

5 (4) A claimant is not entitled to receive compensation for any period of imprisonment during which the
6 claimant was concurrently serving a sentence for a conviction of another crime for which the claimant was
7 lawfully convicted and incarcerated.

8 (5) (a) Except as provided in subsection (5)(b), the court shall order that the award be paid as a
9 combination of an initial payment not to exceed \$100,000 or 25% of the award, whichever is greater, and the
10 remainder as an annuity not to exceed \$80,000 a year.

11 (b) (i) On July 1 of each year, the award increases by an amount equal to the percentage increase, if
12 any, for the preceding calendar year in the annual average consumer price index for urban wage earners,
13 compiled by the bureau of labor statistics of the United States department of labor or its successor agency.

14 (ii) The amount for any partial year must be prorated in order to compensate only for the portion of the
15 year when the claimant was incarcerated.

16 (c) The claimant shall designate a beneficiary or beneficiaries for the annuity by filing a beneficiary
17 designation with the court.

18 (d) The court may order that the award be paid in one lump sum if the court finds that it is in the best
19 interests of the claimant.

20 (6) (a) In addition to the damages awarded pursuant to subsection (1), a claimant:

21 (i) is entitled to receive costs, including but not limited to the actual cost of all expenses reasonably
22 incurred in an action brought pursuant to this part, and reasonable attorney fees, not to exceed a total of
23 \$25,000;

24 (ii) is entitled to up to 2 years of tuition assistance at any unit or campus of the Montana university
25 system, which must be used during the first 5 years after receiving a damages award; and

26 (iii) is entitled to 1 year of state-funded medical insurance.

27 (b) All funds received by the claimant and the value of services provided, except any attorney fees
28 retained by counsel, are exempt from state income taxes.

1 (7) The department of corrections shall provide a housing voucher pursuant to 46-23-1041 to the
2 claimant while an action under this part is pending.

3

4 **NEW SECTION. Section 7. Offset provision.** In the event the waiver or release provided under
5 [section 3(1)] is held invalid in whole or in part for any reason:

6 (1) if, at the time of an award of monetary damages or compensation under [section 6], the
7 claimant has also been awarded damages against the state, a political subdivision, or their officers, employees,
8 agents, or volunteers in a civil action related to the claimant's same wrongful conviction or imprisonment,
9 including any settlement, the amount awarded under [section 6] must be reduced by the amount of damages or
10 compensation previously awarded; and

11 (2) if, after the time of an award of monetary damages or compensation under [section 6], the
12 claimant is awarded damages against the state, a political subdivision, or their officers, employees, agents, or
13 volunteers in a civil action related to the claimant's same wrongful conviction or imprisonment, including any
14 settlement, the claimant shall reimburse to the state or a political subdivision of the state any amount awarded
15 under [section 6].

16

17 **NEW SECTION. Section 8. Payment of compensation -- transfer and reimbursement --**
18 **exoneree compensation fund.** (1) The county or consolidated government where the exoneree was convicted
19 is responsible for 50% of the damages, costs of medical insurance and tuition, costs, and attorney fees
20 awarded to a claimant.

21 (2) After the appeal deadline, if no appeal is filed, or no later than 30 days from entry of remittitur
22 by the Montana supreme court, 100% of the damages, costs of medical insurance and tuition, costs, and
23 attorney fees awarded to the claimant must be transferred from the general fund to the account established in
24 subsection (4).

25 (3) (a) The department of administration may invoice the county or consolidated government
26 where the exoneree was convicted for up to 50% of the compensation awarded to the claimant. The invoice
27 must contain:

28 (i) a copy of the claimant's original petition;

1 (ii) a statement that the requirements for a successful claim have been met; and

2 (iii) the amount owed to the state by the county or consolidated government.

3 (b) The county or consolidated government may petition the district court to void the invoice and
4 request that the state be responsible for the entirety of the compensation awarded to the claimant. The petition
5 may not include a refutation of the claim originally filed under this part.

6 (c) The department of administration may not delay payment of funds to the claimant pending any
7 procedure outlined in subsection (3)(a) or any litigation under subsection (3)(b).

8 (4) There is an account in the state special revenue fund established in 17-2-102 known as the
9 exoneree compensation fund.

10 (5) Money in this account may be used only to pay compensation awarded under this part.

11 (6) Funds in the account may come from grants, gifts, donations, fund transfers, and funds
12 received from counties and consolidated local governments.

13 (7) For the purposes of an insurance claim made by the state, a political subdivision of the state,
14 and the officers, employees, agents, and volunteers of the state or a political subdivision of the state for any
15 wrongful incarceration claim, the date of exoneration is the occurrence date.

16

17 **Section 9.** Section 46-23-1041, MCA, is amended to read:

18 **"46-23-1041. Rental vouchers.** (1) If the department does not approve an offender's parole plan
19 because the offender is unable to secure suitable living arrangements, the department may provide rental
20 vouchers to the offender for a period not to exceed 3 months if the rental assistance will result in an approved
21 parole plan.

22 ~~(2)~~ (2) The department shall provide a rental voucher to a claimant if required by [section 6(7)].

23 ~~(2)-(3)~~ (2)-(3) The voucher must be provided in conjunction with additional transition support that enables the
24 offender to participate in programs and services, including but not limited to substance abuse treatment, mental
25 health treatment, sex offender treatment, educational programming, or employment programming.

26 ~~(3)-(4)~~ (3)-(4) To receive rental vouchers and transitional assistance funds from the department of
27 corrections, a recovery residence:

28 (a) must be a certified recovery residence, as defined in 53-24-310;

1 (b) shall notify a resident's probation or parole officer within 24 hours of the resident moving out, if a
2 resident is on probation or parole when the resident moves out of the recovery residence; and

3 (c) shall permit residents to receive treatment and take medication prescribed by a qualified health care
4 provider. The provisions of this subsection ~~(3)(c)~~(4)(c) do not include a recovery residence or program that
5 limits or prohibits the use of narcotic medication in order to provide a safe recovery environment to individuals
6 who may be addicted to legal medication. The recovery residence or program shall report this practice as
7 required in 53-24-311(3)(b) and 53-24-313."

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9 **NEW SECTION. Section 10. Codification instruction.** [Sections 1 through 8] are intended to be
10 codified as a new part of Title 46, and the provisions of Title 46 apply to [sections 1 through 8].

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12 **NEW SECTION. Section 11. Severability.** If a part of [this act] is invalid, all valid parts that are
13 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
14 the part remains in effect in all valid applications that are severable from the invalid applications.

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16 **NEW SECTION. Section 12. Effective date.** [This act] is effective July 1, 2025.

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