
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 765 Session of
2007

INTRODUCED BY MCGEEHAN, CALTAGIRONE, FREEMAN, GALLOWAY, HERSHEY,
JAMES, KENNEY, LEACH, PALLONE, PHILLIPS, SIPTROTH, WHEATLEY,
BELFANTI, CURRY, SONNEY AND MAHONEY, MARCH 19, 2007

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 19, 2007

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for wrongful
3 conviction and imprisonment.

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

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. Chapter 85 of Title 42 of the Pennsylvania

1 Consolidated Statutes is amended by adding a subchapter to read:

2 SUBCHAPTER B.1

3 CLAIMS FOR WRONGFUL CONVICTION AND IMPRISONMENT

4 Sec.

5 8531. Eligibility.

6 8532. Statement of claim.

7 8533. Presentation of claim.

8 8534. Award.

9 8535. Notice.

10 8536. Statute of limitations.

11 8537. Right of appeal.

12 § 8531. Eligibility.

13 Except as otherwise provided in this subchapter, a person
14 convicted and subsequently imprisoned for one or more crimes
15 which he did not commit may present a claim for damages against
16 the Commonwealth.

17 § 8532. Statement of claim.

18 (a) Evidentiary proof required.--In order to obtain a
19 judgment in his claim for unjust conviction and imprisonment,
20 the claimant must file a verified claim and establish by
21 documentary evidence that is both clear and compelling that:

22 (1) the claimant was convicted of or was persuaded to
23 plead guilty, no contest or nolo contendere to one or more
24 criminal offenses against the Commonwealth and subsequently
25 sentenced to a term of imprisonment and has served all or any
26 part of the sentence;

27 (2) (i) the claimant was pardoned upon the ground of
28 innocence of the crime or crimes for which the claimant
29 was sentenced and which are the grounds for the
30 complaint; or

1 (ii) the claimant's judgment of conviction was
2 reversed or vacated, or his plea of guilty, no contest or
3 nolo contendere was withdrawn by leave of court, and the
4 indictment or information dismissed or, if a new trial
5 was ordered, either the claimant was found not guilty at
6 the new trial or was not retried and the indictment or
7 information dismissed, provided that the count or counts
8 dismissed were the sole basis for the imprisonment
9 complained of;

10 (3) the claimant's claim is not time-barred by the
11 provisions of section 8536 (relating to statute of
12 limitations); and

13 (4) the claimant has never been incarcerated in this
14 Commonwealth or in another jurisdiction for commission of a
15 felony.

16 (b) Statement of facts.--The claim shall state facts in
17 sufficient detail to permit the court to find that the claimant
18 is likely to succeed at trial in proving that:

19 (1) the claimant did not commit any of the acts charged
20 in the accusatory instrument or the claimant's acts or
21 omissions charged in the accusatory instrument did not
22 constitute a crime; and

23 (2) the claimant did not commit or suborn perjury or
24 fabricate evidence to cause or bring about his conviction. A
25 guilty plea to a crime the claimant did not commit does not
26 constitute perjury under this paragraph.

27 (c) Dismissal.--If the court finds after reading the claim
28 that the claimant is not likely to succeed at trial, it shall
29 dismiss the claim, either on its own motion or on the motion of
30 the Commonwealth.

1 § 8533. Presentation of claim.

2 All claims of wrongful conviction and imprisonment shall be
3 presented to and heard by the court of common pleas of this
4 Commonwealth in accordance with the Pennsylvania Rules of Civil
5 Procedure.

6 § 8534. Award.

7 (a) Damages.--If the court finds that the claimant was
8 wrongfully convicted and imprisoned, it shall award damages
9 amounting to the greater of the following:

10 (1) for each day that the claimant was incarcerated, a
11 sum of money equivalent to the highest amount that a member
12 of the General Assembly would have been entitled to collect
13 for that day as a per diem under section 162(h)(1)(B) of the
14 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. §
15 162(h)(1)(B)); or

16 (2) the claimant's actual salary or wage loss during the
17 period of incarceration, calculated on the basis of the
18 claimant's salary or wages immediately prior to the arrest
19 for the crime for which the claimant was unjustly convicted
20 and imprisoned.

21 (b) Award.--If the court finds that the claimant was
22 wrongfully convicted and imprisoned:

23 (1) (i) The court shall award damages which shall
24 include \$50,000 for each year served on death row, as
25 adjusted to account for:

26 (A) inflation from the date of enactment; and

27 (B) partial years served.

28 (ii) Economic damages, including, but not limited
29 to, lost wages, costs associated with the claimant's
30 criminal defense and efforts to prove the claimant's

1 innocence and medical expenses required after release.

2 (iii) Up to ten years of physical and mental health
3 care through the State employees health care system, to
4 be offset by any amount provided through the claimant's
5 employers during that time period.

6 (iv) Compensation for any reasonable reintegrative
7 services and mental and physical health care costs
8 incurred by the claimant for the time period between the
9 claimant's release from mistaken incarceration and the
10 date of the claimant's award.

11 (v) Reasonable attorney fees calculated at 10% of
12 the damage award plus expenses. These fees, exclusive of
13 expenses, shall not exceed \$75,000, as adjusted to
14 account for inflation from the date of enactment. These
15 fees shall not be deducted from the compensation due to
16 the claimant, nor is counsel entitled to receive
17 additional fees from the client.

18 (2) The damage award shall not be subject to:

19 (i) any cap applicable to private parties in civil
20 lawsuits; or

21 (ii) any taxes, except for those portions of the
22 judgment awarded as attorney fees for bringing a claim
23 under this chapter.

24 (3) The acceptance by the claimant of any such award,
25 compromise or settlement shall be in writing and shall,
26 except when procured by fraud, be final and conclusive on the
27 claimant and shall constitute a complete release of any claim
28 against the Commonwealth and all political subdivisions of
29 the Commonwealth and a complete bar to any action by the
30 claimant against the Commonwealth or any political

1 subdivision of the Commonwealth by reason of the same subject
2 matter.

3 (4) The damage award shall not be offset by any expenses
4 incurred by the Commonwealth or any political subdivision of
5 the Commonwealth, including, but not limited to, expenses
6 incurred to secure the claimant's custody or to feed, clothe
7 or provide medical services for the claimant, nor shall the
8 court offset against the award the value of any services or
9 reduction in fees for services or the value thereof to be
10 provided to the claimant that may be awarded to the claimant
11 pursuant to this section.

12 (c) Source of funds.--Damages awarded shall be paid out of
13 the General Fund.

14 § 8535. Notice.

15 (a) Court.--A court granting judicial relief consistent with
16 the criteria set forth in this subchapter shall provide a copy
17 of this subchapter to the individual seeking such relief at the
18 time the court determines that the claimant's claim is likely to
19 succeed. The individual shall be required to acknowledge his
20 receipt of a copy of this subchapter in writing on a form
21 established by the Supreme Court. The acknowledgment shall be
22 entered on the docket by the court and shall be admissible in
23 any proceeding filed by a claimant under this subchapter.

24 (b) Parole board.--The Pennsylvania Board of Probation and
25 Parole, upon the issuance of a full pardon on or after the
26 effective date of this subchapter, shall provide a copy of this
27 subchapter to the individual at the time of the granting of the
28 pardon. The individual shall be required to acknowledge his
29 receipt of a copy of this subchapter in writing on a form
30 established by the parole board, which shall be retained on file

1 by the parole board as part of its official records and shall be
2 admissible in any proceeding filed by a claimant under this
3 subchapter.

4 (c) Failure to provide notice.--In the event a claimant
5 granted judicial relief or a full pardon on or after the
6 effective date of this subchapter shows he did not properly
7 receive a copy of the information required by this section, the
8 claimant shall receive a one-year extension on the three-year
9 time limit provided in section 8536 (relating to statute of
10 limitations).

11 (d) Notice by Supreme Court.--The Supreme Court shall make
12 reasonable attempts to notify all persons pardoned or granted
13 judicial relief consistent with this subchapter before the
14 enactment of this subchapter of their rights under this
15 subchapter.
16 § 8536. Statute of limitations.

17 An action for compensation brought by a wrongfully convicted
18 person under the provisions of this subchapter shall be
19 commenced within three years after either the grant of a pardon
20 or the grant of judicial relief and satisfaction of other
21 conditions described in section 8532 (relating to statement of
22 claim), provided, however, that any action by the Commonwealth
23 challenging or appealing the grant of such judicial relief shall
24 toll the three-year period. Persons convicted, incarcerated and
25 released from custody prior to the effective date of this
26 subchapter shall commence an action under this subchapter within
27 five years of the effective date.

28 § 8537. Right of appeal.

29 Any party is entitled to the rights of appeal afforded
30 parties in a civil action in accordance with the Pennsylvania

1 Rules of Civil Procedure.

2 Section 2. This act shall take effect in 60 days.