
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1029 Session of
2005

INTRODUCED BY COSTA, KITCHEN, FONTANA, GREENLEAF, LEMMOND,
C. WILLIAMS, LAVALLE AND STOUT, NOVEMBER 22, 2005

REFERRED TO JUDICIARY, NOVEMBER 22, 2005

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 this act that those persons who can demonstrate
14 that they were imprisoned despite their actual innocence be able
15 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

4 CONVICTION AND IMPRISONMENT

5 Sec.

6 8531. Eligibility.

7 8532. Statement of claim.

8 8533. Jurisdiction.

9 8534. Award.

10 8535. Notice.

11 8536. Statute of limitations.

12 8537. Right of appeal.

13 § 8531. Eligibility.

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

18 § 8532. Statement of claim.

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

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

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

1 complaint; or

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4 nolo contendere was withdrawn by leave of court, and the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

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

14 (4) at the time of presenting the claim, the claimant is
15 not currently incarcerated for the commission of a
16 misdemeanor in this Commonwealth or in another jurisdiction;
17 and

18 (5) the claimant has never been incarcerated in this
19 Commonwealth or in another jurisdiction for commission of a
20 felony.

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

24 (1) the claimant did not commit any of the acts charged
25 in the accusatory instrument or the claimant's acts or
26 omissions charged in the accusatory instrument did not
27 constitute a crime; and

28 (2) the claimant did not commit or suborn perjury or
29 fabricate evidence to cause or bring about his conviction. A
30 guilty plea to a crime the claimant did not commit does not

1 constitute perjury under this paragraph.

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

6 § 8533. Jurisdiction.

7 All claims of wrongful conviction and imprisonment shall be
8 presented to and heard by the court of common pleas of this
9 Commonwealth in accordance with the Pennsylvania Rules of Civil
10 Procedure.

11 § 8534. Award.

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

15 (1) \$50,000 per year; 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 and annually adjusted for inflation based on
21 the consumer price index for Pennsylvania as published by the
22 United States Department of Labor, Bureau of Labor
23 Statistics.

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

26 (1) (i) The court shall award damages in addition to
27 those provided in subsection (a) which shall include
28 \$50,000 for each year served on death row, as adjusted to
29 account for:

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

1 (B) partial years served.

2 (ii) Tuition costs for education at a State-related
3 university, university of the State system of higher
4 education or community college.

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

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

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

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

22 (i) any cap applicable to private parties in civil
23 lawsuits; or

24 (ii) any taxes, except for those portions of the
25 judgment awarded as attorney fees for bringing a claim
26 under this subchapter.

27 (3) The acceptance by the claimant of any such award,
28 compromise or settlement shall be in writing and shall,
29 except when procured by fraud, be final and conclusive on the
30 claimant, and shall constitute a complete release of any

1 claim against the Commonwealth and all political subdivisions
2 of the Commonwealth and a complete bar to any action by the
3 claimant against the Commonwealth or any political
4 subdivision of the Commonwealth by reason of the same subject
5 matter.

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

15 (c) Source of funds.--

16 (1) Except as provided in paragraph (2), damages awarded
17 shall be paid out of the General Fund.

18 (2) Where the court finds by clear and convincing
19 evidence that prosecutorial misconduct has occurred and
20 resulted in the prior conviction of the petitioner that is
21 the subject of a petition under this subchapter, the amount
22 awarded shall be paid by the Commonwealth or the political
23 subdivision that was responsible for the conviction pleas of
24 guilty, no contest or nolo contendere of the petitioner.

25 § 8535. Notice.

26 (a) Court.--A court granting judicial relief consistent with
27 the criteria set forth in this subchapter shall provide a copy
28 of this subchapter to the individual seeking such relief at the
29 time the court determines that the claimant's claim is likely to
30 succeed. The individual shall be required to acknowledge his

1 receipt of a copy of this subchapter in writing on a form
2 established by the Supreme Court. The acknowledgment shall be
3 entered on the docket by the court and shall be admissible in
4 any proceeding filed by a claimant under this subchapter.

5 (b) Parole board.--The Pennsylvania Board of Probation and
6 Parole, upon the issuance of a full pardon on or after the
7 effective date of this subchapter, shall provide a copy of this
8 subchapter to the individual at the time of the granting of the
9 pardon. The individual shall be required to acknowledge his
10 receipt of a copy of this subchapter in writing on a form
11 established by the parole board, which shall be retained on file
12 by the parole board as part of its official records and shall be
13 admissible in any proceeding filed by a claimant under this
14 subchapter.

15 (c) Failure to provide notice.--In the event a claimant
16 granted judicial relief or a full pardon on or after the
17 effective date of this subchapter shows he did not properly
18 receive a copy of the information required by this section, the
19 claimant shall receive a one-year extension on the three-year
20 time limit provided in section 8536 (relating to statute of
21 limitations).

22 (d) Notice by Supreme Court.--The Supreme Court shall make
23 reasonable attempts to notify all persons pardoned or granted
24 judicial relief consistent with this subchapter before the
25 enactment of this subchapter of their rights under this
26 subchapter.

27 § 8536. Statute of limitations.

28 An action for compensation brought by a wrongfully convicted
29 person under the provisions of this subchapter shall be
30 commenced within three years after either the grant of a pardon

1 or the grant of judicial relief and satisfaction of other
2 conditions described in section 8532 (relating to statement of
3 claim), provided, however, that any action by the Commonwealth
4 challenging or appealing the grant of judicial relief shall toll
5 the three-year period. Persons convicted, incarcerated and
6 released from custody prior to the effective date of this
7 subchapter shall commence an action under this subchapter within
8 five years of the effective date.

9 § 8537. Right of appeal.

10 Any party is entitled to the rights of appeal afforded
11 parties in a civil action in accordance with the Constitution of
12 Pennsylvania and the Pennsylvania Rules of Civil Procedure.

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