
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 38 Session of
2013

INTRODUCED BY FERLO, WILLIAMS, FARNESE, WASHINGTON, STACK AND
HUGHES, JANUARY 4, 2013

REFERRED TO JUDICIARY, JANUARY 4, 2013

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 those 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. Judgment and award.

9 8535. Notice.

10 8536. Statute of limitations.

11 8537. Right of appeal.

12 § 8531. Eligibility.

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

17 § 8532. Statement of claim.

18 (a) Evidence of claim.--In order to present an actionable
19 claim for wrongful conviction and imprisonment, a claimant must
20 establish by documentary evidence that:

21 (1) The claimant has been convicted of one or more
22 crimes and subsequently sentenced to a term of imprisonment
23 and has served all or any part of the sentence.

24 (2) The claimant's actual innocence has been established
25 by:

26 (i) being pardoned for the crime or crimes for which
27 the claimant was sentenced and which are the grounds for
28 the complaint; or

29 (ii) having the judgment of conviction of the
30 claimant reversed or vacated and the accusatory

1 instrument dismissed or, if a new trial was ordered,
2 either being found not guilty at the new trial or not
3 being retried and the accusatory instrument dismissed;
4 provided that the judgment of conviction was reversed or
5 vacated, or the accusatory instrument was dismissed on
6 grounds not inconsistent with innocence or because the
7 statute, or application of the statute, on which the
8 accusatory instrument was based violated the Constitution
9 of the United States or the Constitution of Pennsylvania.

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

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

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

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

24 (c) Verification.--The claim shall be verified by the
25 claimant.

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

30 § 8533. Presentation of claim.

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

5 § 8534. Judgment and award.

6 (a) Elements of proof.--In order to obtain a judgment in the
7 claimant's favor, the claimant must provide evidence to prove
8 that:

9 (1) the claimant was convicted of one or more crimes and
10 subsequently sentenced to a term of imprisonment and has
11 served all or any part of the sentence;

12 (2) (i) the claimant has been pardoned for the crime or
13 crimes for which he was sentenced and which are the
14 grounds for the complaint; or

15 (ii) the claimant's judgment of conviction was
16 reversed or vacated and the criminal action against the
17 claimant was dismissed or, if a new trial was ordered,
18 either the claimant was found not guilty at the new trial
19 or he was not retried and the criminal action dismissed;
20 provided that the judgment of conviction was reversed or
21 vacated, or the criminal proceeding was dismissed, on
22 grounds not inconsistent with innocence or because the
23 statute, or application of the statute, on which the
24 accusatory instrument was based violated the Constitution
25 of the United States or the Constitution of Pennsylvania;

26 (3) the claimant did not commit any of the acts charged
27 in the accusatory instrument, nor did the claimant's acts or
28 omissions charged in the accusatory instrument constitute a
29 crime; and

30 (4) the claimant did not commit or suborn perjury, or

1 fabricate evidence to cause or bring about his conviction. A
2 guilty plea to a crime the claimant did not commit does not
3 constitute perjury for the purposes of this paragraph.

4 (b) Damages.--If the court finds that the claimant was
5 wrongfully convicted and imprisoned, it shall award damages as
6 follows:

7 (1) not less than \$50,000 for each year of
8 incarceration, with an additional \$50,000 for each year
9 served on death row, as adjusted by the Auditor General to
10 account for:

11 (i) inflation from the effective date of this
12 section; and

13 (ii) partial years served;

14 (2) economic damages, including, but not limited to,
15 lost wages, costs associated with the claimant's criminal
16 defense and efforts to prove the claimant's innocence and
17 medical expenses required after release;

18 (3) up to ten years of physical and mental health care
19 through the State employees' health care system, to be offset
20 by any amount provided through the claimant's employers
21 during that time period;

22 (4) compensation for any reasonable reintegrative
23 services and mental and physical health care costs incurred
24 by the claimant for the time period between the claimant's
25 release from mistaken incarceration and the date of the
26 claimant's award; and

27 (5) reasonable attorney fees calculated at 10% of the
28 damage award plus expenses. These fees, exclusive of
29 expenses, shall not exceed \$75,000, as adjusted by the
30 Auditor General to account for inflation from the effective

1 date of this section. These fees shall not be deducted from
2 the compensation due the claimant nor is counsel entitled to
3 receive additional fees from the claimant.

4 (c) Limitations.--The damage award shall not be subject to:

5 (1) any cap applicable to private parties in civil
6 lawsuits; or

7 (2) any taxes, except for those portions of the judgment
8 awarded as attorney fees for bringing a claim under this
9 subchapter.

10 (d) Award, compromise and settlement.--The acceptance by the
11 claimant of any such award, compromise or settlement shall be in
12 writing and shall, except when procured by fraud, be final and
13 conclusive on the claimant and shall constitute a complete
14 release of any claim against the Commonwealth and a complete bar
15 to any action by the claimant against the Commonwealth by reason
16 of the same subject matter.

17 (e) Offset.--The damage award shall not be offset by any
18 expenses incurred by the Commonwealth or any political
19 subdivision of the Commonwealth, including, but not limited to,
20 expenses incurred to secure the claimant's custody, or to feed,
21 clothe or provide medical services for the claimant, nor shall
22 the court offset against the award the value of any services or
23 reduction in fees for services to be provided to the claimant
24 that may be awarded to the claimant pursuant to this section.

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 the relief at the
29 time the court determines that a claim under this subchapter is
30 likely to succeed. The individual shall be required to

1 acknowledge receipt of a copy of this subchapter in writing on a
2 form established by the Supreme Court. The acknowledgment shall
3 be 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 receipt
10 of a copy of this subchapter in writing on a form established by
11 the parole board, which shall be retained on file by the parole
12 board as part of its official records and shall be admissible in
13 any proceeding filed by a claimant under this subchapter.

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

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

26 § 8536. Statute of limitations.

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

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

8 § 8537. Right of appeal.

9 Any party to a claim under this subchapter is entitled to the
10 rights of appeal afforded parties in a civil action in
11 accordance with the Pennsylvania Rules of Civil Procedure.

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