



AN ACT PROVIDING COMPENSATION FOR PEOPLE WHO HAVE BEEN WRONGLY CONVICTED OF FELONY CRIMES AND EXONERATED; PROVIDING A PROCEDURE FOR FILING AND DETERMINING PETITIONS FOR COMPENSATION; PROVIDING FOR AN ELECTION OF REMEDIES; PROVIDING FOR EXPUNGEMENT OF CONVICTION AND THE PAYMENT OF DAMAGES FOR SUCCESSFUL PETITIONS; PROVIDING OFFSETS FOR DAMAGES OBTAINED IN OTHER LITIGATION; PROVIDING FOR COUNTY AND CONSOLIDATED GOVERNMENT CONTRIBUTION TOWARD DAMAGES, COSTS, AND ATTORNEY FEES AWARDED; CREATING A STATE SPECIAL REVENUE ACCOUNT; PROVIDING A TRANSFER; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 46-23-1041, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 8], the following definitions apply:

- (1) "Claimant" means a person who:
 - (a) was convicted and subsequently imprisoned for one or more felony crimes that the person did not commit; ~~and~~
 - (b) is not currently serving a term of imprisonment; and
 - (c) meets the requirements of [section 2].
- (2) "Imprisonment" means a term of confinement of at least 6 months in a correctional institution as defined in 45-2-101.

Section 2. Contents of petition -- establishment of claim for compensation. (1) A claimant may bring a civil action against the state and county of conviction in the district court in which the conviction originated to seek the relief provided for in [section 6]. All claims of compensation are governed by the Montana

Rules of Civil Procedure. The claim must be:

- (a) accompanied by a statement of facts explaining the basis of the claim, including a proffer establishing actual innocence;
 - (b) written and verified by the claimant under penalty of perjury; and
 - (c) filed within a period of 3 years after:
 - (i) dismissal of the criminal charges against the claimant or a finding of not guilty on retrial; or
 - (ii) the grant of a pardon to the claimant if the pardon is based on innocence for the act that was the basis of the conviction.
- (2) A claimant convicted, imprisoned, and released from custody before July 1, 2021, who intends to bring an action under [sections 1 through 8] shall commence the action no later than July 1, 2024.
- (3) All pleadings must be captioned as follows: "In the matter of the wrongful conviction of [name of claimant]."
- (4) (a) A claimant who meets the criteria in subsection (1) and intends to bring an action under [sections 1 through 8] must receive a transition assistance grant of \$5,000 from the department of corrections within 30 days of the claimant's release from imprisonment.
- (b) The claimant shall verify by affidavit filed with the department of corrections that the claimant satisfies the requirements set forth in subsection (1), under penalty of perjury.
- (c) If the claimant fails to file a claim within the time period described in this section, or if the claim is denied by the district court, the claimant shall reimburse the state in the amount of \$5,000 within 1 year following receipt of the grant money.

Section 3. Election of remedies. (1) To be eligible to receive relief under [section 2], the claimant shall affirmatively waive any and all other remedies, causes of action, and other forms of relief or compensation against the state, any political subdivision of the state, and their officers, employees, agents, and volunteers related to the claimant's wrongful conviction and imprisonment. This waiver includes all state, common law, and federal claims for relief, including claims pursuant to 42 U.S.C. 1983. The claimant shall execute a release of all claims against the state, any political subdivision of the state, and their officers, employees, agents and volunteers arising from the facts contained in the petition prior to the payment of any damages or compensation

or the receipt of a housing voucher under [section 6].

(2) An individual who has a legal proceeding pending or in which judgment has been entered in state or federal court seeking damages or relief for wrongful conviction or imprisonment based on facts that could establish a cognizable claim pursuant to [sections 1 through 8] may not bring a claim under [section 2].

Section 4. Commencement of proceedings -- burden of proof. (1) A claimant is entitled to a hearing in district court as expeditiously as possible after filing a claim for compensation.

(2) A claim filed pursuant to [sections 1 through 8] must be served on the department of justice and the county of conviction. The department shall provide a defense for the state and the county of conviction shall provide its own defense for claims filed under [sections 1 through 8].

(3) A claim filed under [sections 1 through 8] must be tried by a jury unless a jury trial is waived upon agreement of the parties.

(4) If a claimant dies prior to filing or during pendency of a claim under [sections 1 through 8], the person's estate may file or maintain a claim pursuant to [sections 1 through 8].

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

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

(b) the claimant did not commit perjury under 45-7-201, fabricate evidence, or by the claimant's own conduct cause or bring about the conviction. A confession or admission that is later found to be false or a guilty plea that is withdrawn does not constitute committing perjury, fabricating evidence, or causing or bringing about the conviction, and 45-7-201 does not apply.

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

(ii) the claimant was pardoned by the board of pardons and parole or the governor on the grounds that the claimant was innocent of the act for which the claimant was convicted.

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

(7) If the court finds that the claimant is entitled to judgment, the court shall enter a certificate of innocence finding that the claimant is innocent of all crimes for which the claimant was mistakenly convicted. The clerk of the court shall send a certified copy of the certificate of innocence and the judgment to the department of justice and the county of conviction for payment pursuant to [sections 1 through 8].

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

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

(2) The order of expungement must state:

- (a) the claimant's current full name;
- (b) the claimant's full name at the time of arrest and conviction, if different from the claimant's current name;
- (c) the claimant's sex, race, and date of birth;
- (d) the crime for which the claimant was arrested and convicted;
- (e) the date of the claimant's arrest and the date of the claimant's conviction; and
- (f) the identity of the arresting law enforcement authority and the identity of the district court that rendered the conviction.

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

and arrest. The department of justice shall provide confirmation of the action to the court.

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

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

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

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

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

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

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

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

(a) \$60,000 for each year of imprisonment; and

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

(2) Compensation awarded under [sections 1 through 8] is not subject to the monetary limitation under 2-9-108.

(3) All damages must be paid out of the account provided for in [section 8].

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

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

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

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

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

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

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

(i) is entitled to receive costs, including but not limited to the actual cost of all expenses reasonably incurred in an action brought pursuant to [sections 1 through 8], and reasonable attorney fees, not to exceed a total of \$25,000;

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

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

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

(7) The department of corrections shall provide a housing voucher pursuant to 46-23-1041 to the claimant while an action under [sections 1 through 8] is pending.

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

(1) if, at the time of an award of monetary damages or compensation under [section 6], the claimant has also been awarded damages against the state, a political subdivision, or their officers, employees, agents,

or volunteers in a civil action related to the claimant's same wrongful conviction or imprisonment, including any settlement, the amount awarded under [section 6] must be reduced by the amount of damages or compensation previously awarded; and

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

Section 8. Exoneree compensation fund. (1) There is an account in the state special revenue fund established in 17-2-102 known as the exoneree compensation fund.

(2) Money in this account may be used only to pay compensation awarded under [sections 1 through 8].

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

(b) The county or consolidated government where the exoneree was convicted is responsible for 75% of the damages, costs of medical insurance and tuition, costs, and attorney fees awarded to a claimant.

(c) The department of administration shall invoice the responsible county or consolidated government no later than 30 days from the appeal deadline, if no appeal is filed, or no later than 30 days from entry of remittitur by the Montana supreme court.

(d) The county or consolidated local government shall remit payment to the state no later than 30 days of receipt of the invoice.

(4) The money in the account may be invested pursuant to Title 17, chapter 6. The income and earnings on the account must be deposited in the account.

(5) Funds in the account are statutorily appropriated, as provided in 17-7-502, to the department of administration for payment of damages, costs of medical insurance and tuition, costs, and attorney fees awarded pursuant to [section 6].

Section 9. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-802; 10-3-1304; 10-4-304; 15-1-121; 15-1-218; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-117; 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534; 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; [section 8]; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-11-115; 61-3-321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-151; 76-13-150; 76-17-103; 76-22-109; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-2-526; 85-20-1504; 85-20-1505; [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the

inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015, the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of 50-1-115 terminates June 30, 2021; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec. 33, Ch. 457, L. 2015, the inclusion of 20-9-905 terminates December 31, 2023; pursuant to sec. 12, Ch. 55, L. 2017, the inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates September 30, 2025; pursuant to sec. 55, Ch. 151, L. 2017, the inclusion of 30-10-1004 terminates June 30, 2021; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023; pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023; pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to sec. 5, Ch. 50, L. 2019, the inclusion of 37-50-209 terminates September 30, 2023; pursuant to sec. 1, Ch. 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 7, Ch. 465, L. 2019, the inclusion of 85-2-526 terminates July 1, 2023; and pursuant to sec. 5, Ch. 477, L. 2019, the inclusion of 10-3-802 terminates June 30, 2023.)"

Section 10. Section 46-23-1041, MCA, is amended to read:

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

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

(2)(3) The voucher provided pursuant to subsection (1) must be provided in conjunction with additional transition support that enables the offender to participate in programs and services, including but not

limited to substance abuse treatment, mental health treatment, sex offender treatment, educational programming, or employment programming."

Section 11. Transfer of funds. After the appeal deadline, if no appeal is filed, or no later than 30 days from entry of remittitur by the Montana supreme court, 25% of the damages, costs of medical insurance and tuition, costs, and attorney fees awarded to the claimant shall be transferred from the general fund to the account established in [section 8].

Section 12. Codification instruction. [Sections 1 through 8] are intended to be codified as an integral part of Title 46, and the provisions of Title 46 apply to [sections 1 through 8].

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

Section 14. Effective date. [This act] is effective July 1, 2021.

Section 15. Termination. [This act] terminates June 30, 2023.

- END -

I hereby certify that the within bill,
HB 92, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2021.

President of the Senate

Signed this _____ day
of _____, 2021.

HOUSE BILL NO. 92

INTRODUCED BY K. KELKER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

AN ACT PROVIDING COMPENSATION FOR PEOPLE WHO HAVE BEEN WRONGLY CONVICTED OF FELONY CRIMES AND EXONERATED; PROVIDING A PROCEDURE FOR FILING AND DETERMINING PETITIONS FOR COMPENSATION; PROVIDING FOR AN ELECTION OF REMEDIES; PROVIDING FOR EXPUNGEMENT OF CONVICTION AND THE PAYMENT OF DAMAGES FOR SUCCESSFUL PETITIONS; PROVIDING OFFSETS FOR DAMAGES OBTAINED IN OTHER LITIGATION; PROVIDING FOR COUNTY AND CONSOLIDATED GOVERNMENT CONTRIBUTION TOWARD DAMAGES, COSTS, AND ATTORNEY FEES AWARDED; CREATING A STATE SPECIAL REVENUE ACCOUNT; PROVIDING A TRANSFER; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 17-7-502 AND 46-23-1041, MCA; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE.