**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE ****

HJ-36-1DD A BILL FOR AN ACT ENTITLED: “AN ACT DISCUSSION DRAFT OF HJ-36-1***; PROVIDING AN EFFECTIVE DATE; PROVIDING A RETROACTIVE APPLICABILITY DATE.”

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

NEW SECTION. **Section 1. Definitions.** As used in [Section 1] through [Section___], the following definitions apply:

(1) “Claimant” means a person convicted and subsequently imprisoned for one or more felony crimes that the person did not commit who is not currently serving a term of imprisonment, and who meets the requirements of [section 1].

(2) "Imprisonment" means a term of confinement of at least 6 months in a "correctional institution" as defined in 45-2-101, MCA.

NEW SECTION. **Section 2. Contents of petition -- establishment of claim for compensation.**

(1) A claimant may bring a civil action against the state of Montana in the district court where the conviction originated. All claims 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 for compensation;

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

(c) filed within a period of three years after:

(i) dismissal of the criminal charges against the claimant or finding of not guilty on retrial; or

(ii) the grant of a pardon to the claimant.

(2) A claimant convicted, imprisoned and released from custody before July 1, 2021, must commence an action under this section no later than July 1, 2024.

(3) All pleadings must be captioned, “In the matter of the wrongful conviction of [name of claimant].”

(4) A claimant who meets the criteria in subsection (3) (1) and who intends to bring an action under [section 1] through [section __] shall receive a transition assistance grant of $5,000 from the department of corrections within 30 days of their release from imprisonment.

(a) The claimant or claimant's counsel must verify by affidavit filed with the department of corrections that the person satisfies the requirements set forth in [section 3 2], under penalty of perjury.

(b) If the claimant fails to file a claim within the time period described in [section 3], or the claim is denied by the district court, the claimant shall reimburse the state in the amount of $5,000 within 1 year.

NEW SECTION. **Section 3. Contents of petition -- burden of proof.**

(1) A claimant is entitled to a hearing in district court as expeditiously as possible after the filing of claim.

(2) Any claim filed pursuant to [section 1] through [section __] must be served on the department of justice. The department must provide a defense for the state for claims under [section 1] through [section __].

(3) A claim for compensation filed under this section 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 this section, the person's estate may file or maintain a claim pursuant to [section 1] through [section __].

(5) The claimant shall prevail if they establish each of the following by a preponderance of the evidence:

(a) the claimant did not commit the crime or crimes for which the claimant was convicted; and 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, or 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, MCA, 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 under this subsection and 45-7-201, MCA does not apply;

(c) The claimant establishes that either of the following occurred:

(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 Montana board of pardons and parole or the governor on the grounds that the claimant was innocent;

(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, or those acting on their behalf.

(7) If the court finds that the claimant is entitled to judgment, the court must enter a certificate of innocence finding that the claimant was 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 for payment pursuant to [this act].

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

NEW SECTION. **Section 4. 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 must 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) claimant's full name;

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

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

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

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

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

(3) The order of expungement shall also direct the department of justice to purge the conviction and arrest information from the criminal justice information system central repository and all applicable databases. The clerk of the court shall send a certified copy of the order to the department, for immediate action and the department must 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 must provide confirmation of such action to the court.

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

(5) Upon entry of a certificate of innocence:

(a) the court must 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.

(b) the court must seal all district court records regarding the conviction. The district court records are only available where good cause is articulated upon motion and order of the court.

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

(d) the department is not required to expunge and destroy any samples record associated with the claimant related to any offense other than the offense(s) 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.

NEW SECTION. **Section 5. Damages.** (1) Damages awarded under this section are:

(a) $60,000 for each year of imprisonment, except as provided in subsection (3); and

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

(2) Compensation under [this act] is immune from the monetary limitation under 2-9-108, MCA.

(3) No individual or political subdivision of the State of Montana is responsible to pay for damages, if any, and all damages must be paid solely by the State of Montana.

(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 such claimant was lawfully convicted and incarcerated.

(5) Except as provided in subsection (a), 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 per year.

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

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

(c) The claimant shall designate a beneficiary or beneficiaries for the annuity by filing such 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) In addition to the damages awarded pursuant to subsection (1), a claimant:

(a) is entitled to receive costs, including, but not limited to, the actual cost of all expenses reasonably incurred in an action brought pursuant to this section, and reasonable attorney fees, not to exceed a total of $25,000, unless a greater amount is authorized by the court upon a finding of good cause;

(b) may also be awarded other non-monetary relief as sought in the complaint including, but not limited to, counseling, housing assistance and personal financial literacy assistance, as appropriate;

(c) is entitled to receive tuition assistance; and

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

(e) 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 must provide all reentry services to the claimant that are provided to other persons, including, but not limited to, financial assistance, housing assistance, mentoring and counseling. Such services must be provided while an action under this section is pending and after any judgment is

entered, provided the claimant prevails.

NEW SECTION. **Section 6. Offset provision.** (1) If, at the time of the damages award referred to in [section 4], the claimant has won a monetary award against the state or any political subdivision of the state in a civil action related to the same subject, or has entered into a settlement agreement with the state or any political subdivision of the state related to the same subject, the amount of the award in the action or the amount received in the settlement agreement, less any sums paid to attorneys for actual costs and expenses in litigating the other civil action or obtaining the settlement agreement, must be deducted from the sum of money to which the claimant is entitled under [section 1] through [section __]. The court must include in the judgment entry an award to the state of any amount deducted.

(2) If subsection (1) does not apply and if, after the time of the damages award referred to in [section 4], the claimant wins a monetary award against the state or any political subdivision of the state in a civil action related to the same subject, or enters into a settlement agreement with the state or any political subdivision of the state related to the same subject, the claimant shall reimburse the state for the sum of money paid under the damages award referred to in [section 5], less any sums paid to attorneys for actual costs and expenses in litigating the other civil actions or obtaining the settlement agreement. A reimbursement required under this subsection may not exceed the amount of the monetary award the claimant wins for damages in the other civil action or the amount received in the settlement agreement.

NEW SECTION. **Section 7. Special revenue account for exoneree compensation.** (1) There is a special revenue account for exoneree compensation in the state special revenue fund provided for in 17-2-102.

(2) There must be deposited in the account: [statutory appropriation, appropriation reference or other funding source].

(3) Money in this account must be used solely to pay qualifying claims for compensation under [section 1] through [section __]. [This section will have to be modified when funding decision made]

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

NEW SECTION. **Section 9. {standard} 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.

NEW SECTION. **Section 10. Effective date.** [This act] is effective on October 1, 2021.

NEW SECTION. **Section 11. Retroactive applicability.** [This act] applies retroactively, within the meaning of 1-2-109, to all claimants who meet the requirements in [section 1].

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