

**Unofficial Draft Copy**

As of: 2020/04/09 09:03:26

Drafter: Julianne Burkhardt, 406-444-4025

PD 0002

67th Legislature

1 \*\*\*\* BILL NO. \*\*\*\*  
2 INTRODUCED BY \*\*\*\*  
3 BY REQUEST OF THE \*\*\*\*  
4

5 HJ36-1 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING COMPENSATION TO WRONGFULLY  
6 CONVICTED AND EXONERATED PEOPLE \*\*\*"

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
9

10 **NEW SECTION. Section 1. Establishing a claim for compensation.** (1) As used in [this act],  
11 "claimant" means a person convicted and subsequently imprisoned for one or more crimes that person did not  
12 commit who is not currently serving a term of imprisonment, and who meets the criteria in subsection (2).

13 (2) A claimant under [this act] a person must establish the following by a preponderance of evidence:

14 (a) the person was convicted of a felony crime and subsequently imprisoned;

15 (b) the claimant's judgment of conviction was reversed or vacated and either the charges were  
16 dismissed or on retrial the claimant was found to be not guilty;

17 (c) the claimant did not commit the crime or crimes for which the claimant was convicted and was not  
18 an accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the  
19 judgment of conviction, dismissal of the charges or finding of not guilty on retrial; and

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22 guilty plea that is withdrawn does not constitute committing perjury, fabricating evidence or causing or bringing  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

24 (3) A claimant may file a petition in district court where the petitioner resides seeking damages from the  
25 state under to [this act] if they are able establish the criteria in subsection (2)(a) through (2)(d).

26 (4) The court, in exercising its discretion regarding the weight and admissibility of evidence submitted  
27 under this section may in the interest of justice give due consideration to difficulties of proof caused by the  
28 passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not

**Commented [BJ1]:** This draft was created based on the LJIC's direction in consultation with Rep. Kelker.

The administrative mechanism in this draft lies with the Department of Justice.

Further research and discussion must occur regarding:

- (1) which division or department of the DOJ is appropriate to administer this program;
- (2) whether and how the Risk Management and Tort Claims Division would be involved in the administration of this program;
- (3) and appropriate funding mechanisms.

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1 caused by claimants or those acting on their behalf.

2 (a) A claimant who meets the criteria in subsection (2) and who intends to bring an action under  
3 [section 2] shall receive a transition assistance grant of \$5,000 within 30 days of their release from  
4 imprisonment. The claimant or claimant's counsel must verify by affidavit that the person satisfies the  
5 requirements set forth in [section 2], under penalty of perjury. If the claimant fails to file a claim within the time  
6 period described in [section 2], or the claim is denied by the district court, the claimant shall reimburse the state  
7 in the amount of \$5,000 within 1 year.

8

9

10 **NEW SECTION. Section 2. Claim in district court**

11 (1) If a claimant meets the requirements in [section 1] the claimant may file a claim for compensation in  
12 district court. The claim must be:

13 (a) accompanied by a statement of facts explaining the basis of the claim for compensation;

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

15 (c) filed within a period of two years after:

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

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

18 (2) A claimant convicted, imprisoned and released from custody before July 1, 2021, must commence  
19 an action under this section no later than July 1, 2023.

20 (3) All pleadings must be captioned, "In the matter of the wrongful conviction of \_\_\_\_\_."

21 (4) Any claim filed pursuant to [this act] must be served on the Department of Justice.

22 (5) A claim for compensation filed under this section will be tried by the court without a jury present.

23 (6) If the court finds that the claimant is entitled to judgment, the court must enter a certificate of  
24 innocence finding that the claimant was innocent of all crimes for which the claimant was mistakenly convicted.

25 The clerk of the court shall send a certified copy of the certificate of innocence and the judgment to the  
26 Department of Justice for payment pursuant to [this act].

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

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1            **NEW SECTION. Section 3. Expungement.** (1) Upon entry of a certificate of innocence, the court  
2 shall order the associated convictions and arrest records expunged and purged from all applicable state and  
3 federal systems including both electronic and hard copy systems. The court must enter the expungement order  
4 regardless of whether the claimant has prior criminal convictions in other cases that are not the subject of the  
5 claim for compensation.

6            (2) The order of expungement must state:

7            (a) claimant's full name;

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

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

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

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

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

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

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

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

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

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

28           (c) the department is no required to expunge and destroy any samples record associated with the

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1 claimant related to any offense other than the offense(s) for which the court has entered a certificate of  
2 innocence.

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

5

6 **NEW SECTION. Section 4. Damages.** (1) Damages awarded under this section are:

7 (a) \$60,000 for each year of imprisonment, except as provided in subsection (2); and

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

10 (2) A claimant is not entitled to receive compensation for any period of incarceration during which the  
11 claimant was concurrently serving a sentence for a conviction of another crime for which such claimant was  
12 lawfully convicted and incarcerated.

13 (3)(a) Except as provided in subsection (b), the court shall order that the award be paid as a  
14 combination of an initial payment not to exceed \$100,000 or 25% of the award, whichever is greater, and the  
15 remainder as an annuity not to exceed \$80,000 per year. The claimant shall designate a beneficiary or  
16 beneficiaries for the annuity by filing such designation with the court.

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

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

20 (a) is entitled to receive reasonable attorney fees and costs incurred in the action brought pursuant to  
21 this section not to exceed a total of \$25,000, unless a greater reasonable total is authorized by the court upon a  
22 finding of good cause;

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

25 (c) is entitled to receive tuition assistance; and

26 (d) is entitled to health care through Montana Medicaid for a period of 1 year regardless of income.

27 (5) The department of corrections must provide all reentry services to the claimant that are provided to  
28 other persons, including, but not limited to, financial assistance, housing assistance, mentoring and counseling.

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1 Such services must be provided while an action under this section is pending and after any judgment is  
2 entered, provided the claimant prevails.  
3

4 **NEW SECTION. Section 5. Offset provision.** (1) If, at the time of the damages award referred to in  
5 [section 4], the claimant has won a monetary award against the state or any political subdivision in a civil action  
6 related to the same subject, or has entered into a settlement agreement with the state or any political  
7 subdivision related to the same subject, the amount of the award in the action or the amount received in the  
8 settlement agreement, less any sums paid to attorneys or for costs in litigating the other civil action or obtaining  
9 the settlement agreement, must be deducted from the sum of money to which the claimant is entitled under  
10 [this act]. The court must include in the judgment entry an award to the state of any amount deducted.

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

19

20

- END -