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**** BILL NO. ****
INTRODUCED BY ****
BY REQUEST OF THE ****

A BILL FOR AN ACT ENTITLED: "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; EXCLUDING COMPENSATION FOR CONVICTION OF A CRIME NOW LEGAL; 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 SECTION 46-23-1041, MCA; PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Definitions. As used in this part, 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;
 - (b) is not currently serving a term of imprisonment; and
 - (c) meets the requirements of [section 2].
- (2) "Date of exoneration" means the date of dismissal of the criminal charges against the claimant or a finding of not guilty on retrial.
- (3) "Imprisonment" means a term of confinement of at least 6 months in a correctional institution as defined in 45-2-101.

1 NEW SECTION. Section 2. Contents of petition -- establishment of claim for compensation. (1)

2 A claimant may bring a civil action against the state and county of conviction in the district court in which the
3 conviction originated to seek the relief provided for in [section 6]. All claims of compensation are governed by
4 the Montana Rules of Civil Procedure. The claim must be:

5 (a) accompanied by a statement of facts explaining the basis of the claim, including if:

6 (i) the charge for which the claimant seeks compensation was dismissed;

7 (ii) the claimant was found not guilty at a retrial; or

8 (iii) only if either (1)(a)(i) or (1)(a)(ii) is not met, a proffer establishing actual innocence;

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

10 (c) filed within a period of 3 years after the date of exoneration.

11 (2) A claimant convicted, imprisoned, and released from custody before July 1, 2025, who intends
12 to bring an action under this part shall commence the action no later than July 1, 2028.

13 (3) All pleadings must be captioned as follows: "In the matter of the wrongful conviction of [name of
14 claimant]."

15 (4) (a) A claimant may receive a transition assistance grant of \$5,000. The claimant shall verify by
16 affidavit filed with the department of corrections that the claimant satisfies the requirements set forth in
17 subsection (1), under penalty of perjury. Within 30 days of receiving the claimant's affidavit, the department of
18 corrections shall issue the grant funds to the claimant.

19 (b) If the claimant fails to file a claim within the time period described in this section, or if the claim
20 is denied by the district court, the claimant shall reimburse the state in the amount of \$5,000 within 1 year
21 following receipt of the grant money.

22 (5) Nothing in this part permits a person who petitions a court for expungement of a felony
23 conviction for a crime that is now legal under Title 16, chapter 12, to seek compensation for a wrongful
24 conviction.

25
26 NEW SECTION. Section 3. Election of remedies. (1) To be eligible to receive relief under [section
27 2], the claimant shall affirmatively waive any and all other remedies, causes of action, and other forms of relief
28 or compensation against the state, any political subdivision of the state, and their officers, employees, agents,

1 and volunteers related to the claimant's wrongful conviction and imprisonment. This waiver includes all state,
2 common law, and federal claims for relief, including claims pursuant to 42 U.S.C. 1983. The claimant shall
3 execute a release of all claims against the state, any political subdivision of the state, and their officers,
4 employees, agents and volunteers arising from the facts contained in the petition prior to the payment of any
5 damages or compensation or the receipt of a housing voucher under [section ____]. For the purposes of any
6 insurance claim made for this type of claim, the date of exoneration is the occurrence date.

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

10
11 **NEW SECTION. Section 4. Commencement of proceedings -- burden of proof.** (1) A claimant is
12 entitled to a hearing in district court as expeditiously as possible after filing a claim for compensation.

13 (2) A claim filed pursuant to this part must be served on the department of justice and the county of
14 conviction. The department shall provide a defense for the state and the county of conviction shall provide its
15 own defense for claims filed under this part.

16 (3) A claim filed under this part must be tried by a jury unless a jury trial is waived upon agreement
17 of the parties.

18 (4) If a claimant dies prior to filing or during pendency of a claim under this part, the person's
19 estate may file or maintain a claim pursuant to this part.

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

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

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

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

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

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

12 (8) The decision of the district court may be appealed directly to the supreme court.
13

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

19 (2) The order of expungement must state:

20 (a) the claimant's current full name;

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

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

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

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

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

28 (3) The order of expungement also must direct the department of justice to purge the conviction and

1 arrest information from the central repository of the criminal justice information network and all applicable
2 databases. The clerk of the court shall send a certified copy of the order to the department of justice for
3 immediate action, and the department shall carry out the order and notify the federal bureau of investigation,
4 the department of corrections, and any other criminal justice agency that may have a record of the conviction
5 and arrest. The department of justice shall provide confirmation of the action to the court.

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

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

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

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

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

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

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

21
22 **NEW SECTION. Section 6. Damages.** (1) Damages, except as provided in subsection (3), awarded
23 under this section are:

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

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

27 (2) Compensation awarded under this part is not subject to the monetary limitation under 2-9-108.

28 (3) All damages must be paid out of the account provided for in 46-32-108.

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

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

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

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

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

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

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

17 (i) is entitled to receive costs, including but not limited to the actual cost of all expenses reasonably
18 incurred in an action brought pursuant to this part, and reasonable attorney fees, not to exceed a total of
19 \$25,000;

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

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

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

25 (7) The department of corrections shall provide a housing voucher pursuant to 46-23-1041 to the
26 claimant while an action under this part is pending.

27

28 NEW SECTION. **Section 7. Offset provision.** In the event the waiver or release provided under

1 [section 3(1)] is held invalid in whole or in part for any reason:

2 (1) if, at the time of an award of monetary damages or compensation under [section 6], the
3 claimant has also been awarded damages against the state, a political subdivision, or their officers, employees,
4 agents, or volunteers in a civil action related to the claimant's same wrongful conviction or imprisonment,
5 including any settlement, the amount awarded under [section 6] must be reduced by the amount of damages or
6 compensation previously awarded; and

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

12
13 **NEW SECTION. Section 8. Exoneree compensation fund.** (1) There is an account in the state
14 special revenue fund established in 17-2-102 known as the exoneree compensation fund.

15 (2) Money in this account may be used only to pay compensation awarded under this part.

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

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

20 (ii) For the purposes of an insurance claim made by the state, a political subdivision of the state,
21 and the officers, employees, agents, and volunteers of the state or a political subdivision of the state for any
22 wrongful incarceration claim, the date of exoneration is the occurrence date.

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

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

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

1 earnings on the account must be deposited in the account.

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

5

6 **Section 9.** Section 46-23-1041, MCA, is amended to read:

7 **"46-23-1041. Rental vouchers.** (1) If the department does not approve an offender's parole plan
8 because the offender is unable to secure suitable living arrangements, the department may provide rental
9 vouchers to the offender for a period not to exceed 3 months if the rental assistance will result in an approved
10 parole plan.

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

12 ~~(2)(3)~~ The voucher provided pursuant to subsection (1) must be provided in conjunction with
13 additional transition support that enables the offender to participate in programs and services, including but not
14 limited to substance abuse treatment, mental health treatment, sex offender treatment, educational
15 programming, or employment programming.

16 (3) To receive rental vouchers and transitional assistance funds from the department of corrections, a
17 recovery residence:

18 (a) must be a certified recovery residence, as defined in 53-24-310;

19 (b) shall notify a resident's probation or parole officer within 24 hours of the resident moving out, if a
20 resident is on probation or parole when the resident moves out of the recovery residence; and

21 (c) shall permit residents to receive treatment and take medication prescribed by a qualified health care
22 provider. The provisions of this subsection (3)(c) do not include a recovery residence or program that limits or
23 prohibits the use of narcotic medication in order to provide a safe recovery environment to individuals who may
24 be addicted to legal medication. The recovery residence or program shall report this practice as required in 53-
25 24-311(3)(b) and 53-24-313."

26

27 NEW SECTION. **Section 10. Transfer of Funds.** After the appeal deadline, if no appeal is filed, or no
28 16 later than 30 days from entry of remittitur by the Montana supreme court, 25% of the damages, costs of

1 medical insurance and tuition, costs, and attorney fees awarded to the claimant shall be transferred from the
2 general fund to the account established in [section 8].

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5 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 through 8] are intended to be
6 codified as a new part of Title 46, and the provisions of Title 46 apply to [sections 1 through 8].

7

8 **NEW SECTION. Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are
9 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
10 the part remains in effect in all valid applications that are severable from the invalid applications.

11

12 **NEW SECTION. Section 13. Effective date.** [This act] is effective July 1, 2025.

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- END -

