

ASSEMBLY BILL NO. 267—ASSEMBLYMEN YEAGER, FUMO, MCCURDY, FLORES; COHEN, MILLER, NGUYEN, PETERS, TORRES AND WATTS

MARCH 14, 2019

JOINT SPONSOR: SENATOR BROOKS

Referred to Committee on Judiciary

SUMMARY—Provides compensation to certain persons who were wrongfully convicted. (BDR 3-657)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact. Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to actions concerning persons; providing for the compensation of certain persons who were wrongfully convicted; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 **Section 2** of this bill authorizes a person who was wrongfully convicted in this
- 2 State to bring an action for damages and other relief. Pursuant to **section 2**, a person
- 3 may prevail in an action for wrongful conviction if the person did not commit
- 4 perjury or fabricate evidence on the underlying criminal proceeding and the person
- 5 was convicted of a felony in this State and subsequently imprisoned or sentenced to
- 6 a condition of parole or probation and: (1) the person’s conviction was reversed or
- 7 vacated and his or her charges were dismissed on the basis of new exculpatory
- 8 evidence; (2) if a new trial was ordered on the basis of new exculpatory evidence,
- 9 the person was found not guilty at the new trial or the person was not retried and his
- 10 or her charges were dismissed; or (3) the person was pardoned by the State Board
- 11 of Pardons Commissioners on the grounds that the person was innocent. **Section 4**
- 12 of this bill waives the State’s immunity from liability in actions brought for such
- 13 wrongful conviction.
- 14 **Section 3** of this bill requires a court to enter a certificate of innocence if the
- 15 person was successful in his or her wrongful conviction action. **Section 3** also
- 16 requires a court to seal all records relating to the underlying wrongful conviction at
- 17 the time the court enters a certificate of innocence.
- 18 **Section 5** of this bill sets forth certain filing requirements and appellate rights
- 19 relating to a wrongful conviction action. **Section 6** of this bill sets forth a 2-year



20 statute of limitations under certain circumstances for the filing of an action for
21 wrongful conviction.

22 **Section 7** of this bill requires a court in a wrongful conviction action to award:
23 (1) if the person was wrongfully imprisoned for 1 to 10 years, \$50,000 for each
24 year of imprisonment; (2) if the person was wrongfully imprisoned for 11 to 20
25 years, \$75,000 for each year of imprisonment; or (3) if the person was wrongfully
26 imprisoned for 21 years or more, \$100,000 for each year of imprisonment. **Section**
27 **7** also requires a court to award not less than \$25,000 for each year the person was
28 sentenced to a condition of parole or probation or was required to register as a sex
29 offender, whichever period of time was greater. **Section 7** also authorizes the court
30 to order certain other relief, such as payment for the cost of tuition assistance and
31 health care.

32 **Section 8** of this bill sets forth certain limitations on the award amount a person
33 can receive in his or her wrongful conviction action if the person has previously
34 received a monetary award of damages against this State or entered into a
35 settlement agreement with this State relating to his or her wrongful conviction.

36 **Section 8** also requires a person to reimburse this State for an award received as a
37 result of an action brought pursuant to **section 2** if the person subsequently files
38 another civil action relating to the same wrongful conviction.

1 WHEREAS, Nationally there are more than 2,395 persons listed
2 on the National Registry of Exonerations, including 13 persons who
3 were convicted in Nevada; and

4 WHEREAS, Convictions of innocent persons may be the result of
5 many causes, including, without limitation, eyewitness
6 misidentification, false confessions, improper forensic science and
7 governmental misconduct; and

8 WHEREAS, Innocent persons who have been wrongfully
9 convicted of crimes and subsequently imprisoned have been
10 uniquely victimized, have distinct challenges reentering society and
11 have difficulty achieving legal redress due to a variety of
12 substantive and technical obstacles in the law; and

13 WHEREAS, Innocent persons who have been wrongfully
14 convicted of crimes and subsequently imprisoned deserve an avenue
15 of redress over and above existing tort remedies to seek
16 compensation for damages; and

17 WHEREAS, Those innocent persons who can demonstrate by a
18 preponderance of the evidence that they were wrongfully convicted
19 of crimes and subsequently imprisoned should be able to recover
20 damages against this State; now, therefore,



1 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
2 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
3

4 **Section 1.** Chapter 41 of NRS is hereby amended by adding
5 thereto the provisions set forth as sections 2 to 8, inclusive, of this
6 act.

7 **Sec. 2. 1.** *A person may bring a civil action for his or her*
8 *wrongful conviction against this State in a district court seeking*
9 *damages or other relief provided by section 7 of this act.*

10 **2.** *The court shall award damages for wrongful conviction in*
11 *accordance with section 7 of this act if the person proves by a*
12 *preponderance of the evidence that:*

13 *(a) He or she was convicted of a felony in this State and was*
14 *subsequently imprisoned or sentenced to a condition of parole or*
15 *probation for the conviction;*

16 *(b) Any of the following occurred:*

17 *(1) The judgment of conviction was reversed or vacated and*
18 *the charging document was dismissed on the basis of new*
19 *exculpatory information;*

20 *(2) If a court ordered a new trial on the basis of new*
21 *exculpatory information, the person was found not guilty at the*
22 *new trial or the person was not retried and the charging document*
23 *was dismissed; or*

24 *(3) The person was pardoned by the State Board of Pardons*
25 *Commissioners on the grounds that he or she was innocent; and*

26 *(c) The person did not commit perjury or fabricate evidence at*
27 *the criminal proceeding that brought about his or her felony*
28 *conviction and the person did not by his or her own conduct cause*
29 *or bring about his or her felony conviction.*

30 **3.** *The court, in exercising its discretion as permitted by law*
31 *regarding the weight and admissibility of evidence, may, in the*
32 *interest of justice, give due consideration to:*

33 *(a) The difficulty of providing evidence caused by the passage*
34 *of time;*

35 *(b) The death or unavailability of a witness;*

36 *(c) The destruction of evidence; or*

37 *(d) Any other factor not caused by the person or any other*
38 *person acting on his or her behalf.*

39 **4.** *The court may appoint an attorney to aid a person in an*
40 *action brought pursuant to this section.*

41 **5.** *For the purposes of subsection 2, the following do not*
42 *constitute committing perjury, fabricating evidence or causing or*
43 *bringing about the conviction of the person:*

44 *(a) A confession or an admission later found to be false; or*



1 (b) *If the judgment of conviction was reversed or vacated and*
2 *the charging document dismissed on the basis of new exculpatory*
3 *evidence, a guilty plea for a felony.*

4 **Sec. 3.** 1. *If a court finds that a person is entitled to a*
5 *judgment pursuant to section 2 of this act, the court shall enter a*
6 *certificate of innocence finding that the person was innocent of*
7 *the felony for which the person was wrongfully convicted.*

8 2. *If a court does not find that a person is entitled to a*
9 *judgment pursuant to section 2 of this act, the action must be*
10 *dismissed and the court shall not enter a certificate of innocence.*

11 3. *Upon an entry of a certificate of innocence pursuant to*
12 *subsection 1, the court shall order sealed all records of the*
13 *conviction which are in the custody of any agency of criminal*
14 *justice or any public or private agency, company, official or other*
15 *custodian of records in the State of Nevada and shall order all*
16 *such records of the person returned to the file of the court where*
17 *the underlying criminal action was commenced from, including,*
18 *without limitation, the Federal Bureau of Investigation and all*
19 *other agencies of criminal justice which maintain such records*
20 *and which are reasonably known by either the person or the court*
21 *to have possession of such records. Such records must be sealed*
22 *regardless of whether the person has any prior criminal*
23 *convictions in this State.*

24 **Sec. 4.** *The State of Nevada waives its immunity from*
25 *liability in any action brought pursuant to section 2 of this act and*
26 *consents to have its liability determined in accordance with the*
27 *same rules of law as are applied to civil actions against natural*
28 *persons and corporations.*

29 **Sec. 5.** 1. *All pleadings filed pursuant to section 2 of this*
30 *act must be captioned, "In the matter of the wrongful conviction*
31 *of [name of the person bringing the action]."*

32 2. *The initial complaint filed in an action brought pursuant*
33 *to section 2 of this act must be accompanied by a statement of*
34 *facts verified by the person and served upon the Attorney General*
35 *pursuant to the Nevada Rules of Civil Procedure.*

36 3. *All proceedings held pursuant to section 2 of this act must*
37 *be tried before a court without a jury.*

38 4. *A judgment issued pursuant to section 2 of this act may be*
39 *appealed to an appellate court of competent jurisdiction.*

40 5. *The doctrines of res judicata and collateral estoppel do not*
41 *apply to a judgment issued pursuant to section 2 of this act.*

42 **Sec. 6.** 1. *Except as otherwise provided in subsection 2, a*
43 *person must bring an action pursuant to section 2 of this act*
44 *within 2 years after:*



1 (a) A judgment of conviction of the person was reversed or
2 vacated and the charging document was dismissed on the basis of
3 new exculpatory information;

4 (b) If a court ordered a new trial on the basis of new
5 exculpatory information, the person was found not guilty at the
6 new trial or the person was not retried and the charging document
7 was dismissed; or

8 (c) The person was pardoned by the State Board of Pardons
9 Commissioners on the grounds that the person is innocent.

10 2. If any of the events described in subsection 1 occurred
11 before October 1, 2019, an action brought pursuant to section 2 of
12 this act must be commenced not later than October 1, 2021.

13 **Sec. 7. 1.** In an action brought pursuant to section 2 of this
14 act which results in the court entering a certificate of innocence
15 pursuant to section 3 of this act, the court shall award the person:

16 (a) If the person was imprisoned for:

17 (1) 1 to 10 years, \$50,000 for each year of imprisonment;

18 (2) 11 to 20 years, \$75,000 for each year of imprisonment;

19 or

20 (3) 21 years or more, \$100,000 for each year of
21 imprisonment; and

22 (b) Not less than \$25,000 for each year the person was
23 sentenced to a condition of probation or parole, or not less than
24 \$25,000 for each year the person was required to register as a sex
25 offender, whichever period of time was greater.

26 2. In addition to any damages awarded pursuant to
27 subsection 1, the court may award:

28 (a) Reasonable attorney's fees, not to exceed \$25,000, unless a
29 greater amount is authorized by a court upon a finding of good
30 cause shown.

31 (b) Payment for the cost of:

32 (1) Tuition, books and fees for the person to attend an
33 institution operated by the Nevada System of Higher Education;

34 (2) Participation by the person in a health care program of
35 this State;

36 (3) Programs for reentry into the community for the
37 person; and

38 (4) Counseling services for the person;

39 (c) Reimbursement for:

40 (1) Restitution ordered to be paid by the person in the
41 criminal proceeding for which he or she was wrongfully
42 convicted; and

43 (2) Medical care paid for by the person while he or she was
44 imprisoned for his or her wrongful conviction; and



1 (d) Any other relief, including, without limitation, housing
2 assistance or assistance for financial literacy for the person.

3 3. Any award of damages issued pursuant to subsection 1
4 must be rounded up to the nearest half year.

5 4. A court shall not award and a person shall not receive
6 compensation for any period of imprisonment during which the
7 person was concurrently serving a sentence for a conviction of
8 another offense for which the person was lawfully convicted and
9 imprisoned.

10 **Sec. 8. 1.** If a person in an action brought pursuant to
11 section 2 of this act has previously won a monetary award against
12 this State in a civil action related to his or her wrongful
13 conviction, the person is only entitled to receive any amount
14 described in section 7 of this act less the award obtained in the
15 previous civil action.

16 2. If a person in an action brought pursuant to section 2 of
17 this act has entered into a settlement agreement with this State
18 related to his or her wrongful conviction, the person is entitled to
19 receive any amount described in section 7 of this act, less the
20 amount of the settlement agreement.

21 3. A person who was successful in his or her action brought
22 pursuant to section 2 of this act and who subsequently filed
23 another civil action relating to his or her wrongful conviction
24 shall reimburse this State for his or her award of damages issued
25 pursuant to section 7 of this act.



