

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO WRONGFUL CONVICTION AND IMPRISONMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The legislature finds that innocent persons who  
2 have been wrongfully convicted of crimes and subsequently  
3 imprisoned have been uniquely victimized, and that such persons  
4 should have an available avenue of redress to seek compensation  
5 for damages.

6 The legislature further finds that ensuring compensation to  
7 those who are wrongfully convicted is an important step toward  
8 guaranteeing that the criminal justice system achieves justice  
9 in all cases.

10 The purpose of this Act is to provide innocent persons who  
11 can demonstrate by clear and convincing evidence that they were  
12 unjustly convicted and imprisoned with a straightforward and  
13 just process for receiving compensation.

14 SECTION 2. The Hawaii Revised Statutes is amended by  
15 adding a new chapter to be appropriately designated and to read  
16 as follows:

17 "CHAPTER

18 **WRONGFUL CONVICTION AND IMPRISONMENT**



1           **§ -1 Eligibility.** Any person convicted and subsequently  
2 imprisoned for one or more felonies or misdemeanors against the  
3 State that the person did not commit may present a claim for  
4 damages against the State under the conditions provided in this  
5 chapter.

6           **§ -2 Statement of claim.** (a) To state a claim upon  
7 which relief may be granted, a person shall establish by  
8 documentary evidence that:

9           (1) The person was convicted of one or more felonies or  
10 misdemeanors against the State and subsequently  
11 sentenced to a term of imprisonment and has served all  
12 or any part of the sentence;

13           (2) The person's actual innocence has been established by:

14           (A) Being pardoned for the crime or crimes for which  
15 the person was sentenced and which are the  
16 grounds for the complaint; or

17           (B) Having the judgment of conviction reversed or  
18 vacated, and indictment or information dismissed  
19 or, if a new trial was ordered, either being  
20 found not guilty at the new trial or not being  
21 retried and the indictment or information  
22 dismissed; provided that the judgment of



1 conviction was reversed or vacated, or the  
2 indictment or information was dismissed on  
3 grounds not inconsistent with innocence or  
4 because the statute, or applications thereof, on  
5 which the indictment or information was based  
6 violated the United States Constitution or the  
7 state constitution; and

8 (3) The claim is not time-barred.

9 (b) The claim shall state facts in sufficient detail to  
10 permit the court to find that the person is likely to succeed at  
11 trial in proving that:

12 (1) The person did not commit any of the acts charged in  
13 the indictment or information or the person's acts or  
14 omissions charged in the indictment or information did  
15 not constitute a crime; and

16 (2) The person did not commit or suborn perjury, or  
17 fabricate evidence to cause or bring about a  
18 conviction. A guilty plea to a crime the person did  
19 not commit does not constitute perjury under this  
20 chapter.

21 (c) The complaint shall be verified.



1 (d) If the court finds after reading the complaint that  
2 the person is not likely to succeed at trial, it shall dismiss  
3 the claim, either on its own motion or on the motion of the  
4 State.

5 § -3 **Presentation of claim.** All claims of wrongful  
6 conviction and imprisonment shall be presented to and heard by  
7 the circuit court.

8 § -4 **Judgment and award.** (a) In order to obtain a  
9 favorable judgment, a person shall prove by clear and convincing  
10 evidence that:

11 (1) The person was convicted of one or more felonies or  
12 misdemeanors against the State and subsequently  
13 sentenced to a term of imprisonment and has served all  
14 or any part of the sentence;

15 (2) The person was pardoned upon the ground of innocence  
16 of the crime or crimes for which the person was  
17 sentenced and which are the grounds for the complaint;  
18 or

19 (3) The judgment of conviction was reversed or vacated,  
20 and the indictment or information dismissed or, if a  
21 new trial was ordered, the person was either found not  
22 guilty at the new trial or is not being retried and



1 the indictment or information was dismissed; provided  
2 that the judgment of conviction was reversed or  
3 vacated, or the indictment or information was  
4 dismissed on grounds not inconsistent with innocence  
5 or because the statute, or applications thereof, on  
6 which the indictment or information was based violated  
7 the United States Constitution or the state  
8 constitution;

9 (4) The person did not commit any of the acts charged in  
10 the indictment or information or the person's acts or  
11 omissions charged in the indictment or information did  
12 not constitute a crime; and

13 (5) The person did not commit or suborn perjury, or  
14 fabricate evidence to cause or bring about a  
15 conviction.

16 (b) If the court finds that the person was wrongfully  
17 convicted and imprisoned, it shall award damages that shall  
18 include:

19 (1) Not less than \$50,000 for each year of incarceration,  
20 as adjusted by the state auditor to account for:

21 (A) Inflation from the date of enactment; and

22 (B) Partial years served;



- 1           (2) Economic damages including but not limited to lost  
2           wages, costs associated with the criminal defense and  
3           the efforts to prove the person's innocence, including  
4           the costs of the action under this chapter, and  
5           related medical expenses required after release;
- 6           (3) Up to ten years of physical and mental health care  
7           through the State employees health care system, to be  
8           offset by any amount provided through the person's  
9           employers during that time period;
- 10          (4) Compensation for any reasonable reintegrative services  
11          and mental and physical health care costs incurred by  
12          the person for the time period between the person's  
13          release from incarceration and the date of the award;  
14          and
- 15          (5) Reasonable attorneys fees calculated at ten per cent  
16          of the damage award plus expenses. These fees,  
17          exclusive of expenses, shall not exceed \$75,000, as  
18          adjusted by the state auditor to account for inflation  
19          from the date of enactment. These fees shall not be  
20          deducted from the compensation due the person.  
21          Counsel is not entitled to receive additional fees  
22          from the person.

1 (c) The damage award shall not be subject to:

2 (1) Any cap applicable to private parties in civil  
3 lawsuits; or

4 (2) Any taxes, except for those portions of the judgment  
5 awarded as attorneys fees for bringing a claim under  
6 this chapter.

7 (d) The acceptance by a person of any award, compromise,  
8 or settlement shall be in writing and, except when procured by  
9 fraud, shall be final and conclusive, and shall constitute a  
10 complete release of any claim against the State and a complete  
11 bar to any action by the person against the State by reason of  
12 the same subject matter.

13 (e) The damage award shall not be offset by any expenses  
14 incurred by the State or any political subdivision of the State,  
15 including expenses incurred to secure the person's custody, or  
16 to feed, clothe or provide medical services for the person nor  
17 shall the court offset against the award the value of any  
18 services or reduction in fees for services or the value thereof  
19 to be provided to the person that may be awarded to the person  
20 pursuant to this section.

21 § -5 Notice. (a) A court granting judicial relief  
22 consistent with the criteria in section -2(a)(2)(B), shall

1 provide a copy of this chapter to the person seeking relief at  
2 the time actual innocence is established. The person shall be  
3 required to acknowledge receipt of a copy of this chapter in  
4 writing on a form prescribed by the court. The acknowledgment  
5 shall be entered on the docket by the court and shall be  
6 admissible in any proceeding filed by a person under this  
7 chapter.

8 (b) The Hawaii paroling authority shall provide a copy of  
9 this chapter to a person granted clemency at the time that  
10 clemency is granted. The person shall be required to  
11 acknowledge receipt of a copy of this chapter in writing on a  
12 form prescribed by the Hawaii paroling authority. The  
13 acknowledgment shall be retained on file by the Hawaii paroling  
14 authority as part of its official records and shall be  
15 admissible in any proceeding filed by a person under this  
16 chapter.

17 (c) A person shall be entitled to a one-year extension on  
18 the statute of limitation upon a showing that the person did not  
19 receive a copy of this chapter pursuant to subsection (a) or  
20 (b).

21 **§ -6 Limitations on action.** Subject to section -5(c),  
22 the claim shall be forever barred unless the action is commenced



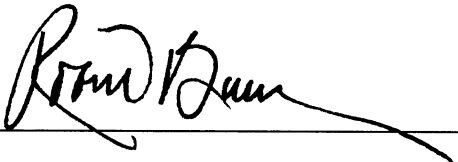


1 within two years after the claim first accrues in accordance  
2 with section 661-5. The claim shall accrue after either the  
3 grant of a pardon or the grant of judicial relief and  
4 satisfaction of other conditions described in section  
5 -2(a)(2)(B); provided that any action by the State  
6 challenging or appealing the grant of judicial relief shall toll  
7 the two-year period."

8 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:

  
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**Report Title:**

Claims for Wrongful Conviction and Imprisonment

**SB. NO. 3127**

**Description:**

Allows any person convicted and subsequently imprisoned for a crime the person did not commit to present a claim for damages against the State.

