

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



KRISTEN JURAS
LT. GOVERNOR

May 1, 2023

The Honorable Jason Ellsworth
President of the Senate
State Capitol
Helena, MT 59620

The Honorable Matt Regier
Speaker of the House
State Capitol
Helena, MT 59620

Dear President Ellsworth and Speaker Regier:

When any Montanan is convicted and incarcerated for a crime he or she didn't commit, that individual deserves redress and compensation. We owe it to wrongfully convicted individuals to help them make their lives whole.

I appreciate the 67th Legislature for establishing an optional path for compensation and am grateful for the 68th Legislature's work to continue the wrongful conviction compensation program and clarify several of its procedural aspects through House Bill 423. However, this bill can be improved.

Therefore, in accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments House Bill 423: "AN ACT GENERALLY REVISING EXONEREE COMPENSATION LAWS; MAKING THE COMPENSATION PROCESS PERMANENT; REVISING WHAT INFORMATION MUST ACCOMPANY A CLAIM FOR COMPENSATION; REVISING WHEN A CLAIMANT CONVICTED PRIOR TO JULY 2021 MAY FILE A CLAIM; LIMITING WHEN A PROFFER OF ACTUAL INNOCENCE MAY BE REQUIRED; REMOVING A PARDON AS AN ACT THAT CAN BE USED TO ESTABLISH A CLAIM FOR COMPENSATION; REVISING WHEN A TRANSITION ASSISTANCE GRANT MUST BE PAID; ELIMINATING COUNTY OF CONVICTION AS A PARTY TO A CLAIM; PROVIDING FOR A TRANSFER OF FUNDS TO THE EXONEREE COMPENSATION FUND; MAKING THE STATUTORY APPROPRIATION OF THE EXONEREE COMPENSATION FUND PERMANENT; AMENDING SECTIONS 46-32-101, 46-32-102, 46-32-103, 46-32-104, AND 46-32-108, MCA; REPEALING SECTION 15, CHAPTER 574, LAWS OF 2021; AND PROVIDING EFFECTIVE DATES."

Historically, counties have been liable for approximately 77% of the damages paid to persons wrongfully convicted, and the state has been liable for approximately 23%. That is why, in 2021, I worked with the legislature through House Bill 92 to allocate responsibility for 75% of the costs associated with the wrongful conviction compensation program to counties and 25% to the state. House Bill 423 eliminates the counties' responsibility for wrongful convictions, placing 100% of the responsibility on state taxpayers.

To ensure financial and legal responsibility for harm rests with the party best able to keep it from happening again, and to protect Montana taxpayers, the amendatory language I offer restores the 75% to 25% compensation equation established through House Bill 92 in 2021.

Additionally, with enactment of the Montana Marijuana Regulation and Taxation Act (MMRTA) in 2021, certain acts relating to the possession of marijuana were decriminalized and persons convicted of those acts may petition for expungement of the conviction or for re-sentencing as a misdemeanor or civil infraction. Another amendment I offer clarifies that an individual seeking expungement of a felony conviction for a crime that is now legal under MMRTA is not eligible to seek compensation for a wrongful conviction.

Again, I appreciate your efforts to ensure we compensate Montanans who are wrongfully convicted and imprisoned for crimes they didn't commit. As a society, it is the right thing to do, and I respectfully ask for your support of this amendment.

Sincerely,



Greg Gianforte
Governor

Enclosure

cc: Legislative Services Division
Christi Jacobsen, Secretary of State

HOUSE BILL NO. 423

INTRODUCED BY A. REGIER, B. LER, B. USHER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING EXONEREE COMPENSATION LAWS; MAKING THE COMPENSATION PROCESS PERMANENT; REVISING WHAT INFORMATION MUST ACCOMPANY A CLAIM FOR COMPENSATION; REVISING WHEN A CLAIMANT CONVICTED PRIOR TO JULY 2021 MAY FILE A CLAIM; LIMITING WHEN A PROFFER OF ACTUAL INNOCENCE MAY BE REQUIRED; REMOVING A PARDON AS AN ACT THAT CAN BE USED TO ESTABLISH A CLAIM FOR COMPENSATION; REVISING WHEN A TRANSITION ASSISTANCE GRANT MUST BE PAID; ~~ELIMINATING THE COUNTY OF CONVICTION AS A PARTY TO A CLAIM; EXCLUDING COMPENSATION FOR CONVICTION OF A CRIME NOW LEGAL; ELIMINATING COUNTY OF CONVICTION AS A PARTY TO A CLAIM;~~ PROVIDING FOR A TRANSFER OF FUNDS TO THE EXONEREE COMPENSATION FUND; MAKING THE STATUTORY APPROPRIATION OF THE EXONEREE COMPENSATION FUND PERMANENT; AMENDING SECTIONS 46-32-101, 46-32-102, 46-32-103, 46-32-104, AND 46-32-108, MCA; REPEALING SECTION 15, CHAPTER 574, LAWS OF 2021; AND PROVIDING EFFECTIVE DATES."

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

SECTION 1. SECTION 46-32-101, MCA, IS AMENDED TO READ:

"46-32-101. ~~(Temporary)~~ 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 46-32-102.

(2) "Date of exoneration" means the date of dismissal of the criminal charges against the claimant or a finding of not guilty on retrial.

(2)(3) "Imprisonment" means a term of confinement of at least 6 months in a correctional institution as

1 defined in 45-2-101. (~~Terminates June 30, 2023—sec. 15, Ch. 574, L. 2021.~~)"

2

3 **Section 2.** Section 46-32-102, MCA, is amended to read:

4 **"46-32-102 ~~(Temporary)~~ Contents of petition -- establishment of claim for compensation.** (1) A

5 claimant may bring a civil action against the state ~~and county of conviction~~ AND COUNTY OF CONVICTION ~~and~~

6 county of conviction in the district court in which the conviction originated to seek the relief provided for in 46-

7 32-106. All claims of compensation are governed by the Montana Rules of Civil Procedure. The claim must be:

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

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

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

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

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

13 (c) filed within a period of 3 years after THE DATE OF EXONERATION:

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

15 (ii) ~~the grant of a pardon to the claimant if the pardon is based on innocence for the act that was the~~
16 ~~basis of the conviction.~~

17 (2) A claimant convicted, imprisoned, and released from custody before July 1, 2024 2023, who
18 intends to bring an action under this part shall commence the action no later than July 1, 2024 2026.

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

21 (4) (a) ~~A claimant who meets the criteria in subsection (1) and intends to bring an action under this~~
22 ~~part must receive a transition assistance grant of \$5,000 from the department of corrections within 30 days of~~
23 ~~the claimant's release from imprisonment.~~

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

28 (c)(b) If the claimant fails to file a claim within the time period described in this section or if the claim

1 is denied by the district court, the claimant shall reimburse the state in the amount of \$5,000 within 1 year
2 following receipt of the grant money.

3 (5) Nothing in this part permits a person who petitions a court for expungement of a felony
4 conviction for a crime that is now legal under Title 16, chapter 12, to seek compensation for a wrongful
5 conviction. ~~(Terminates June 30, 2023—sec. 15, Ch. 574, L. 2021.)~~"

6
7 **SECTION 3. SECTION 46-32-103, MCA, IS AMENDED TO READ:**

8 **"46-32-103. (Temporary) Election of remedies.** (1) To be eligible to receive relief under 46-32-102,
9 the claimant shall affirmatively waive any and all other remedies, causes of action, and other forms of relief or
10 compensation against the state, any political subdivision of the state, and their officers, employees, agents, and
11 volunteers related to the claimant's wrongful conviction and imprisonment. This waiver includes all state,
12 common law, and federal claims for relief, including claims pursuant to 42 U.S.C. 1983. The claimant shall
13 execute a release of all claims against the state, any political subdivision of the state, and their officers,
14 employees, agents and volunteers arising from the facts contained in the petition prior to the payment of any
15 damages or compensation or the receipt of a housing voucher under 46-32-106. For the purposes of any
16 insurance claim made for this type of claim, the date of exoneration is the occurrence date.

17 (2) An individual who has a legal proceeding pending or in which judgment has been entered in
18 state or federal court seeking damages or relief for wrongful conviction or imprisonment based on facts that
19 could establish a cognizable claim pursuant to this part may not bring a claim under 46-32-102. ~~(Terminates~~
20 ~~June 30, 2023—sec. 15, Ch. 574, L. 2021.)~~"

21
22 **Section 4.** Section 46-32-104, MCA, is amended to read:

23 **"46-32-104. (Temporary) Commencement of proceedings -- burden of proof.** (1) A claimant is
24 entitled to a hearing in district court as expeditiously as possible after filing a claim for compensation.

25 (2) A claim filed pursuant to this part must be served on the department of justice ~~and the county of~~
26 ~~conviction AND THE COUNTY OF CONVICTION~~ and the county of conviction. The department shall provide a defense
27 for the state ~~and the county of conviction shall provide its own defense~~ AND THE COUNTY OF CONVICTION SHALL
28 PROVIDE ITS OWN DEFENSE and the county of conviction shall provide its own defense for claims filed under this

1 part.

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

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

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

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

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

15 (c) ~~(i)~~ the claimant's conviction was reversed or vacated and either the claimant was not retried
16 and the charges were dismissed, or the claimant was retried and was found not guilty, and the basis for
17 reversing or vacating the conviction was not legal error unrelated to factual innocence; ~~or~~

18 ~~(ii) the claimant was pardoned by the board of pardons and parole or the governor on the grounds that~~
19 ~~the claimant was innocent of the act for which the claimant was convicted.~~

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

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

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

1 June 30, 2023—sec. 15, Ch. 574, L. 2021.)"

2

3 **Section 5.** Section 46-32-108, MCA, is amended to read:

4 **"46-32-108. (Temporary) Exoneree compensation fund.** (1) There is an account in the state special
5 revenue fund established in 17-2-102 known as the exoneree compensation fund.

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

7 (3) (a)(A) (a) Funds in the account may come from grants, gifts, donations, and AND fund transfers,
8 and funds received from counties and consolidated local governments, and funds received from counties and
9 consolidated local governments, AND FUNDS RECEIVED FROM COUNTIES AND CONSOLIDATED LOCAL GOVERNMENTS.

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

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

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

17 (B) THE COUNTY OR CONSOLIDATED GOVERNMENT WHERE THE EXONEREE WAS CONVICTED IS
18 RESPONSIBLE FOR 75% OF THE DAMAGES, COSTS OF MEDICAL INSURANCE AND TUITION, COSTS, AND ATTORNEY FEES
19 AWARDED TO A CLAIMANT. FOR THE PURPOSES OF ANY INSURANCE CLAIM MADE BY THE STATE, ANY POLITICAL
20 SUBDIVISION OF THE STATE, AND THEIR OFFICERS, EMPLOYEES, AGENTS, AND VOLUNTEERS FOR ANY WRONGFUL
21 INCARCERATION CLAIM, THE DATE OF EXONERATION IS THE OCCURRENCE DATE.

22 (C) THE DEPARTMENT OF ADMINISTRATION SHALL INVOICE THE RESPONSIBLE COUNTY OR CONSOLIDATED
23 GOVERNMENT NO LATER THAN 30 DAYS FROM THE APPEAL DEADLINE, IF NO APPEAL IS FILED, OR NO LATER THAN 30
24 DAYS FROM ENTRY OF REMITTITUR BY THE MONTANA SUPREME COURT.

25 (D) THE COUNTY OR CONSOLIDATED LOCAL GOVERNMENT SHALL REMIT PAYMENT TO THE STATE NO LATER
26 THAN 30 DAYS FROM RECEIPT OF THE INVOICE.

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

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

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

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

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

(5) Funds in the account are statutorily appropriated, as provided in 17-7-502, to the department of administration for payment of damages, costs of medical insurance and tuition, costs, and attorney fees awarded pursuant to 46-32-106. ~~(Terminates June 30, 2023—sec. 15, Ch. 574, L. 2021.)~~"

NEW SECTION. Section 6. Transfer of funds. After the appeal deadline, if no appeal is filed, or no later than 30 days from entry of remittitur by the Montana supreme court, 100% ~~25%~~ 100%25% of the damages, costs of medical insurance and tuition, costs, and attorney fees awarded to the claimant shall be transferred from the general fund to the account established in 46-32-108.

NEW SECTION. Section 7. Repealer. Section 15, Chapter 574, Laws of 2021, is repealed.

NEW SECTION. Section 8. Codification instruction. [Section 4 6] is intended to be codified as an integral part of Title 46, chapter 32, part 1, and the provisions of Title 46, chapter 32, part 1, apply to [section 4 6].

NEW SECTION. Section 9. 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.

Amendment - Reference-white - Requested by: Governor - (H) Committee of the Whole

- 2023

68th Legislature 2023

Drafter: Todd Everts, 406-444-4023

HB0423.005.002

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2 NEW SECTION. **Section 10. Effective date.** (1) Except as provided in subsection (2), [this act] is

3 effective July 1, 2023.

4 (2) [Section 5 7] and this section are effective on passage and approval.

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- END -