

H.564

Introduced by Representative Dolan of Essex Junction

Referred to Committee on

Date:

Subject: Criminal procedures; innocence protection; compensation for  
wrongful convictions

Statement of purpose of bill as introduced: This bill proposes to clarify that a  
person who is convicted and imprisoned for a crime, and subsequently  
exonerated after being found innocent of the crime, is entitled to compensation  
for the wrongful conviction irrespective of whether the person was exonerated  
because of DNA testing or for other reasons.

An act relating to compensation for wrongful convictions

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 13 V.S.A. chapter 182, subchapter 2 is amended to read:

Subchapter 2. Compensation for Wrongful Convictions

§ 5572. RIGHT OF ACTION; PROCEDURE

(a) A person convicted and imprisoned for a crime of which the person was  
exonerated pursuant to this chapter shall have a cause of action for damages  
against the State.

1       (b) A person is exonerated under subsection (a) of this section if the person  
2       establishes the following by clear and convincing evidence:

3           (1) The person was convicted of a felony crime, was sentenced to a term  
4       of imprisonment, and served at least six months of the sentence in a  
5       correctional facility.

6           (2)(A) the person's conviction was reversed or vacated, the  
7       complainant's information or indictment was dismissed, or the complainant  
8       was acquitted after a second or subsequent trial; or

9           (B) the person was pardoned for the crime for which the person was  
10       sentenced.

11          (3) The person is actually innocent of the felony or felonies that are the  
12       basis for the claim. As used in this chapter, a person is "actually innocent" of a  
13       felony or felonies if the person did not engage in any illegal conduct alleged in  
14       the charging documents for which the person was charged, convicted, and  
15       imprisoned, and that served as the basis for the conviction.

16          (4) The person did not fabricate evidence or commit or suborn perjury  
17       during any proceedings related to the crime with which the person was  
18       charged.

19       (c) An action brought under this subchapter shall be filed in Washington  
20       County Superior Court. Notice of the action shall be served upon the Attorney  
21       General.

~~(d)~~(e) The Attorney General may consider, adjust, determine, and settle any claim for damages brought against the State of Vermont under this subchapter.

## § 5574. BURDEN OF PROOF; FINDINGS; JUDGMENT; DAMAGES

(1) The complainant was convicted of a felony crime, was sentenced to a term of imprisonment, and served at least six months of the sentence in a correctional facility.

(B) the complainant was pardoned for the crime for which ~~he or she~~ the complainant was sentenced.

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1 innocent” of a felony or felonies if ~~he or she~~ the person did not engage in any  
2 illegal conduct alleged in the charging documents for which ~~he or she~~ the  
3 person was charged, convicted, and imprisoned, and that served as the basis for  
4 the conviction.

5 (4) The complainant did not fabricate evidence or commit or suborn  
6 perjury during any proceedings related to the crime with which ~~he or she~~ the  
7 complainant was charged.

8 (b) A claimant awarded judgment in an action under this subchapter shall  
9 be entitled to damages in an amount to be determined by the trier of fact for  
10 each year the claimant was incarcerated, provided that the amount of damages  
11 shall not be less than \$30,000.00 nor greater than \$60,000.00 for each year the  
12 claimant was incarcerated, adjusted proportionally for partial years served.

13 The damage award may also include:

14 (1) economic damages, including lost wages and costs incurred by the  
15 claimant for ~~his or her~~ the claimant's criminal defense and for efforts to prove  
16 ~~his or her~~ the claimant's innocence;

17 (2) up to 10 years of eligibility for State-funded health coverage  
18 equivalent to Medicaid services;

19 (3) compensation for any reasonable reintegrative services and mental  
20 and physical health care costs incurred by the claimant for the time period

1 between ~~his or her~~ the claimant's release from mistaken incarceration and the  
2 date of the award; and

3 (4) reasonable attorney's fees and costs for the action brought under this  
4 subchapter.

5 (c) Damages awarded under this section:

6 (1) shall not be subject to any State taxes, except for the portion of the  
7 judgment awarded as attorney's fees; and

8 (2) shall not be offset by any services awarded to the claimant pursuant  
9 to this section or by any expenses incurred by the State or any political  
10 subdivision of the State, including expenses incurred to secure or maintain the  
11 claimant's custody or to feed, clothe, or provide medical services for the  
12 claimant.

13 (d) The claimant's acceptance of a damages award, compromise, or  
14 settlement as a result of a claim under this subchapter shall be in writing and,  
15 except when procured by fraud, shall be final and conclusive on the claimant,  
16 and constitute a complete release by the claimant of any claim against the State  
17 and a complete bar to any action by the claimant against the State with respect  
18 to the same subject matter.

19 (e) A claimant shall be entitled to compensation under this subchapter only  
20 for the years in which ~~he or she~~ the claimant would not otherwise have been  
21 incarcerated for another sentence.

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§ 5576. LIMITATIONS

(a) Except as provided in subsection (b) of this section, an action for compensation under this subchapter shall be commenced within three years after the person is exonerated ~~pursuant to subchapter 1 of this chapter as~~ defined in subdivisions 5572(b)(1)–(4) of this title through the person's conviction being reversed or vacated, the information or indictment being dismissed, the person being acquitted after a second or subsequent trial, or through the granting of a pardon.

(b)(1) If the State challenges the exoneration of a person entitled to bring an action under this subchapter, the limitations period shall not commence until the challenge is finally resolved.

(2) If a person entitled to bring an action under this subchapter is not provided the notice required by section 5577 of this title, the person shall have an additional year within which to bring the action.

§ 5577. NOTICE OF RIGHT OF ACTION

(a) A copy of this subchapter shall be provided to a person by a court:

(1) exonerating a person ~~pursuant to subchapter 1 of this chapter as~~ defined in subdivisions 5572(b)(1)–(4) of this title through vacating or reversing the person's conviction, dismissing the information or indictment, or entering judgment on an acquittal after a second or subsequent trial; or

1           (2) receiving notice of a pardon.

2           (b) A person receiving a copy of this subchapter pursuant to subsection (a)  
3 of this section shall be required to acknowledge its receipt in writing on a form  
4 established by the Court Administrator. The acknowledgement shall be  
5 entered on the docket by the court and shall be admissible in an action filed  
6 under this subchapter.

7       § 5578. APPLICABILITY; RETROACTIVITY

8           Notwithstanding 1 V.S.A. § 214(b), this subchapter and any amendments  
9 thereto shall apply to any exoneration that occurs on or after July 1, 2007.

10       § 5579. ACTION SURVIVES

11           An action for compensation under this subchapter shall survive the death of  
12 the person who has the right to bring the action under section 5572 of this title,  
13 and the action may be commenced and prosecuted by the executor or  
14 administrator of the person's estate.

15       Sec. 2. EFFECTIVE DATE

16           This act shall take effect on passage.