

House Bill 988

By: Representatives Hugley of the 136th and Smyre of the 135th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 5 of Title 28 of the Official Code of Georgia Annotated,
2 relating to the Claims Advisory Board, so as to provide for compensation of persons
3 wrongfully convicted and imprisoned; to provide for legislative findings; to provide for a
4 short title; to provide for recommendations by the board as to payment of compensation; to
5 provide for procedural rules; to provide for claims for compensation; to provide for uniform
6 standards for compensation; to provide when compensation may be recommended and the
7 factors to be considered; to provide for limitations of claims; to provide for reports on claims
8 being transmitted to the General Assembly; to provide for exceptions; to provide for related
9 matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 The General Assembly finds that due to advancements in science and technology, wrongfully
13 convicted persons are being discovered with a higher frequency than in the past. The
14 General Assembly is sympathetic to the tremendous burden a wrongfully convicted person
15 faces and further finds that there is a need to create a uniform method for fairly and
16 reasonably compensating wrongfully convicted persons.

17 **SECTION 2.**

18 Article 4 of Chapter 5 of Title 28 of the Official Code of Georgia Annotated, relating to the
19 Claims Advisory Board, is amended by adding a new part to read as follows:

20 "Part 4

21 28-5-110.

22 This Act shall be known and may be cited as the 'Innocent Persons' Compensation Act.'

23 28-5-111.

24 (a) The Claims Advisory Board shall have authority to consider and make
25 recommendations to the General Assembly concerning payment of compensation to any
26 innocent person who has been convicted of and imprisoned for one or more crimes which
27 he or she did not commit. In a particular case the board may appoint a special master to
28 take testimony, supervise or conduct necessary investigations, and report to the board, but
29 ultimate recommendation on any claim shall be made only by the board.

30 (b) Proceedings before the board shall be governed by rules established by the board, and
31 such rules shall emphasize, to the greatest extent possible, informality of proceedings. No
32 claimant shall be required to be represented or accompanied by an attorney.

33 (c) In order to be eligible for compensation under this part, the claimant shall establish by
34 clear and convincing evidence to the board that:

35 (1) The claimant was convicted of one or more crimes and was sentenced to a term of
36 imprisonment;

37 (2) The claimant has served all or part of the sentence of imprisonment;

38 (3) The claimant proclaims his or her innocence; and

39 (4) The claimant's innocence has been established by:

40 (A) Pardon by the State Board of Pardons and Paroles;

41 (B) An order reversing or vacating the claimant's conviction, and the indictment or
42 accusation is dismissed or nolle prossed; or

43 (C) Issuance of an order for a new trial, and either the indictment or accusation is
44 dismissed or nolle prossed.

45 (d) A claimant shall not be entitled to compensation under this part for any portion of a
46 sentence spent incarcerated during which the claimant was also serving a concurrent
47 sentence for another crime to which this part does not apply.

48 (e) A claimant shall not be entitled to compensation under this part if he or she contributed
49 to the wrongful conviction and incarceration by pleading guilty, committing perjury,
50 fabricating evidence, or making an uncoerced false confession. If a guilty plea is found to
51 have been improper and overturned by a court, then a claimant shall be entitled to
52 compensation under this part if he or she is otherwise eligible under this part.

53 28-5-112.

54 (a) Any person who is eligible for compensation under this part shall give notice thereof
55 in accordance with Part 2 of Article 4 of this chapter in order to have such claim brought
56 before the General Assembly for action.

57 (b) Any such claimant shall also, prior to introduction of a resolution for compensation,
58 submit all documents called for by the board, including the documents required by

59 subsection (c) of Code Section 28-5-111 and reports or documents detailing any type of
60 compensation that the claimant is seeking in relation to the injury for which compensation
61 is claimed.

62 28-5-113.

63 (a) In making its recommendation, the board shall, insofar as practicable, formulate
64 standards for uniform application in recommending compensation, taking into
65 consideration rates and amounts of compensation payable for injuries or property damage
66 under other laws of this state and of the United States. In making its recommendation, the
67 board shall:

68 (1) Include not less than \$50,000.00 per year for each year of imprisonment up to 20
69 years. A pro rata amount for any portion of each year of imprisonment shall be awarded.

70 In calculating time of imprisonment, the board shall include any time spent awaiting trial;

71 (2) Annually adjust the maximum awards authorized by this Code section to reflect the
72 percentage of any increase in the Consumer Price Index of the Bureau of Labor Statistics
73 of the United States Department of Labor for the immediately preceding calendar year;

74 provided, however, that such annual percentage increase in the award amount shall not
75 exceed 5 percent regardless of the percentage increase in the Consumer Price Index. In
76 any year in which there is no percentage increase in such Consumer Price Index, there
77 shall be no adjustment to the award amount for that calendar year; and

78 (3) Include the amount of any fine or court costs imposed and paid and the reasonable
79 attorney's fees and other expenses incurred by the claimant in connection with all
80 associated criminal proceedings and appeals and, if applicable, in connection with
81 obtaining the claimant's discharge from confinement.

82 (b) If requested by the claimant:

83 (1) The Attorney General shall provide appropriate legal counseling and representation,
84 at no charge to the claimant, for the purpose of facilitating the expungement of the
85 claimant's criminal record regarding the offense or offenses for which he or she was
86 wrongfully convicted; and

87 (2) The board shall include tuition for up to 120 hours of career and technical training
88 at any institution in the University System of Georgia or in the Technical College System
89 of Georgia, which amount is contingent upon successful completion of the training.

90 (c) The board may direct that payment of compensation claims be in a lump sum or in the
91 form of an annuity contract funded by the board on behalf of the claimant, provided that:

92 (1) Such annuity contract shall be secured from an insurance company licensed under the
93 laws of the State of Georgia and whose claims paying ability is rated as superior or
94 excellent by at least two nationally recognized rating services; and

95 (2) Such annuity contract, by its terms, cannot be sold, transferred, assigned, discounted,
96 or used as security for a loan.

97 28-5-114.

98 (a) In any case in which a person is harmed or injured and compensation is authorized by
99 this part, the board may recommend to the General Assembly payment of compensation:

100 (1) To or for the benefit of the claimant; or

101 (2) In the case of death of the claimant, to or for the benefit of any one or more of the
102 heirs at law of the claimant who, at the time of the claimant's demise, were dependent
103 upon the claimant for more than one-half of their support.

104 (b) In making its recommendation to the General Assembly, the board shall consider all
105 circumstances surrounding the claim, including, but not limited to, the length of the
106 claimant's wrongful incarceration, the circumstances and any injuries the claimant
107 sustained while incarcerated, any need for financial aid, and any other relevant matters.

108 (c) The board shall, in an advisory way only, recommend to the General Assembly
109 payment of compensation and the amount thereof, and the General Assembly shall act on
110 such recommendation in accordance with law and the rules of the House of Representatives
111 and Senate for action upon compensation resolutions.

112 28-5-115.

113 (a) The General Assembly may by resolution appropriate money for payment of a claim
114 for compensation upon the recommendation of the board as set forth in Code Section
115 28-5-113. Any award made by the General Assembly shall not be:

116 (1) Subject to any monetary limitation of damages awarded in civil actions;

117 (2) Subject to state income taxes; provided, however, that the award of attorney's fees
118 shall be subject to taxation; or

119 (3) Offset by any expense incurred by the state or any political subdivision thereof for
120 expenses related to the claimant's incarceration.

121 (b) No resolution for the payment of compensation under this part shall be adopted unless
122 a notice of claim has been filed with the board within three years after the date the
123 claimant's innocence has been established as set forth in Code Section 28-5-111 or within
124 three years of July 1, 2014, whichever occurs last.

125 (c) The board shall prepare and transmit to the General Assembly, along with its
126 recommendation on each claim, a report of its activities in connection therewith, including
127 the name of the claimant, a brief description of the facts surrounding the claim, the amount
128 of compensation recommended, and the board's reasons therefor.

129 28-5-116.

130 (a) Any claimant who receives compensation under this part may not bring any action
131 involving the same subject matter, including an action involving the claimant's arrest,
132 conviction, or length of confinement, against the state.

133 (b) This Code section does not affect any liability of the state or of its employees to a
134 claimant's cause of action that is not based on the wrongful conviction, including, but not
135 limited to, a cause of action that arises out of circumstances occurring during the claimant's
136 confinement.

137 28-5-117.

138 Not later than January 1 of each year, the board shall provide the Governor, the Lieutenant
139 Governor, and the chairpersons of the appropriations committees in the House of
140 Representatives and Senate with a list of claimants entitled to payment under this part and
141 the amounts due to each claimant.

142 28-5-118.

143 (a) A court granting judicial relief as contemplated by Code Section 28-5-111, on or after
144 July 1, 2014, shall provide a copy of this part to the individual seeking such relief. The
145 individual shall be required to acknowledge receipt of a copy of this part in writing on a
146 form established by the Administrative Office of the Courts. Such acknowledgment shall
147 be entered on the docket by the court and shall be admissible in any proceeding filed by a
148 claimant under this part.

149 (b) The State Board of Pardons and Paroles, upon the issuance of a pardon as contemplated
150 by Code Section 28-5-111, on or after July 1, 2014, shall provide a copy of this part to the
151 individual seeking such relief. The individual shall be required to acknowledge receipt of
152 a copy of this part in writing on a form established by the parole board, which shall be
153 retained on file by the parole board as part of its official records and shall be admissible in
154 any proceeding filed by a claimant under this part."

155 **SECTION 3.**

156 All laws and parts of laws in conflict with this Act are repealed.