

**SENATE . . . . . No. 957**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Patricia D. Jehlen***

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to compensation for victims of wrongful conviction.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>1/29/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>1/31/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/1/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>2/11/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/11/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>2/13/2019</i>
<i>Cindy F. Friedman</i>	<i>Fourth Middlesex</i>	<i>2/21/2019</i>

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By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 957) of Patricia D. Jehlen, Jason M. Lewis, Mary S. Keefe, Denise Provost and other members of the General Court for legislation relative to compensation for victims of wrongful conviction. The Judiciary.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
\_\_\_\_\_

An Act relative to compensation for victims of wrongful conviction.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 1 of Chapter 258D of the General Laws, is hereby amended by  
2 striking subsection (B)(ii) and inserting in its place the following words:-

3 (ii) those who have been granted judicial relief by a state court of competent jurisdiction,  
4 on grounds consistent with the innocence of the individual as set forth in clause (vi) of  
5 subsection (C), provided however that if the state court granting judicial relief does not address  
6 all grounds for relief, as asserted in an appeal or a motion for post-conviction relief, and if at  
7 least one of such grounds is consistent with innocence, the grounds asserted in such motion may  
8 be relied upon by the claimant to satisfy the requirement that there are grounds which are  
9 consistent with innocence, and if (a) the judicial relief vacates or reverses the judgment of a  
10 felony conviction, and the felony indictment or complaint used to charge the individual with  
11 such felony has been dismissed, or if a new trial was ordered, the individual was not retried and  
12 the felony indictment or complaint was dismissed or a nolle prosequi was entered, or if a new

13 trial was ordered the individual was found not guilty at the new trial; and (b) at the time of the  
14 filing of an action under this chapter no criminal proceeding is pending or can be brought against  
15 the individual by a district attorney or the attorney general for any act associated with such  
16 felony conviction.

17 SECTION 2. Section 1 of Chapter 258D of the General Laws, is hereby amended by  
18 striking the words “clear and convincing” and inserting in their place “a preponderance of the”.

19 SECTION 3. Section 1 of Chapter 258D of the General Laws, is hereby amended by  
20 striking subsection (G) and inserting in its place the following words:-

21 (G) A claimant shall be entitled to preliminary relief under subsection (E) of section 5  
22 upon filing a complaint pursuant to this chapter that avers that the claimant meets the eligibility  
23 requirements as stated in subsection (B) above.

24 SECTION 4. Section 3 of Chapter 258D of the General Laws, is hereby amended by  
25 adding to the end the following words:-

26 In any event a case filed pursuant to this chapter shall be placed on a fast track.

27 SECTION 5. Section 5 of Chapter 258D of the General Laws, is hereby amended by  
28 striking subsection (A) and inserting in its place the following words:-

29 (A) Upon a finding or verdict that the claimant has met the requirements of section 1 by  
30 the requisite standard of proof and is not barred from compensation by section 2, the court or the  
31 jury shall determine the damages that shall be payable to the claimant. In making such  
32 determination, the court or jury shall consider, but not be limited to, the consideration of: the  
33 income the claimant would have earned, but for his incarceration; the particular circumstances of

34 the claimant's trial and other proceedings; the length and conditions under which the claimant  
35 was incarcerated and; any other factors deemed appropriate under the circumstances in order to  
36 fairly and reasonably compensate the claimant. The court, in its discretion, may admit expert  
37 testimony on these or any factors. The court may include, as part of its judgment against the  
38 commonwealth, an order requiring the commonwealth to provide the claimant with services that  
39 are reasonable and necessary to address the individual's physical and emotional needs and waive  
40 tuition and fees for the claimant for any educational services from a state or community college  
41 in the commonwealth including, but not limited to, the University of Massachusetts at Amherst  
42 and its satellite campuses. Once the damages have been determined, the court shall enter a  
43 judgment against the commonwealth for the claimant in an amount certain, payable in either a  
44 lump sum or in annuity installment payments set by the court; provided, however, that any such  
45 annuity installment payments shall have fixed limits on their annual amount and on the time  
46 period which they shall be paid to the claimant. A judgment against the commonwealth may not  
47 include punitive or exemplary damages. The total liability of the commonwealth for any award  
48 of damages entered as part of a judgment under this chapter shall not exceed \$1,000,000, which  
49 limit shall not include any transitional assistance grant or award of services, tuition or fees under  
50 Section 5(A) and (E) or any award of reasonable attorney fees and costs of litigation as provided  
51 in section 6 below. Notwithstanding any general or special law to the contrary, the clerk of court  
52 shall not add to the judgment and the commonwealth shall not be liable for paying, any  
53 prejudgment or post judgment interest on damages. Subject to section 4, relative to award or  
54 settlements, the rights and remedies afforded to certain individuals by this chapter are not  
55 intended to limit in any way any rights or remedies that such individuals or other individuals may  
56 be entitled to exercise and pursue under common law or under any other state or federal statute,

57 including without limitation chapter 258 and 42 U.S.C. Sec. 1983, nor shall funds paid pursuant  
58 to such other causes of action be an off-set against any damage award that may be entered by  
59 way of judgment or settlement in an action brought pursuant to this chapter.

60 SECTION 6. Section 5 of Chapter 258D of the General Laws, is hereby amended by  
61 striking subsection (E) and inserting in its place the following words:-

62 (E) Upon a ruling in favor of a claimant moving for preliminary relief under subsection  
63 (G) of section 1, the court shall enter an order requiring the commonwealth to provide the  
64 claimant with a transitional assistance grant of \$15,000 and services that are reasonable and  
65 necessary to address the individual's physical and emotional condition and reintegration needs  
66 and waive tuition and fees for the claimant for any educational services from a state or  
67 community college in the commonwealth including, but not limited to, the University of  
68 Massachusetts at Amherst and its satellite campuses.

69 SECTION 7. Section 6 of Chapter 258D of the General Laws, is hereby amended by  
70 inserting in line \_\_\_\_, after the word "chapter," the following words:-

71 Or who enters into a settlement agreement with the commonwealth in connection with a  
72 claim asserted under this chapter

73 SECTION 8. Section 7 of Chapter 258D of the General Laws, is hereby amended by  
74 striking subsection (A) and inserting in its place the following words:-

75 (A) Upon the entry of a judgment in favor of a claimant under this chapter or upon  
76 settlement of a claim brought pursuant to this chapter and following a separate hearing on the  
77 matter, the court shall enter an order either directing the expungement or sealing of those records

78 of the claimant maintained by the department of criminal justice information services, the  
79 probation department, and the sex offender registry that directly pertain to the claimant's  
80 erroneous felony conviction case, including documents and other materials and any samples  
81 obtained from the claimant. The commonwealth, as well as any other law enforcement agency  
82 that may be directly affected by such expungement or sealing of such records including, but not  
83 limited to, the district attorney that prosecuted the felony case against the claimant, shall be  
84 given reasonable notice and an opportunity to be heard on the issue of whether such records,  
85 documents and materials shall be so expunged or sealed. In making its determination as to  
86 whether such records, documents and materials shall be so expunged or sealed, the court shall  
87 consider the interests of privacy and justice pertaining to the claimant's erroneous felony  
88 conviction as well as the probable effect of such expungement or sealing on relevant law  
89 enforcement entities and their ability to appropriately investigate and prosecute other persons for  
90 the felony which forms the basis of the claim or other crimes that may relate to the information  
91 contained in such records, documents and materials. In addition to an order directing  
92 expungement or sealing of the record, a claimant who prevails in a claim brought under this  
93 chapter by way of judgment or settlement, shall be entitled to an order and judgment, signed by a  
94 Judge of the Superior Court, which shall attest that the claimant has been exonerated of the  
95 subject crime or crimes.

96 SECTION 9. Chapter 258D of the General Laws, is hereby amended by adding the  
97 following section to the end of said chapter:-

98 Section 11. Transitional Assistance for Erroneously Convicted Persons

99 (A). For purposes of this section, an erroneously convicted person is an individual

100 (1) who meets the requirements of section 1(B), or

101 (i) whose felony conviction has been vacated by a judge under Massachusetts Rule of  
102 Criminal Procedure 30, resulting in dismissal of the felony charge (s) for which he or she was  
103 incarcerated or following a determination that the person is entitled to release on his or her own  
104 recognizance or to bail pending retrial or pending appeal.

105 (B). The Department of Probation shall provide to an erroneously convicted person

106 (i) \$5000 in transitional financial assistance upon release from incarceration, and

107 (ii) An offer of transitional assistance and services for the erroneously convicted person's  
108 physical and mental health needs. Such assistance and services shall be offered within one week  
109 of the individual's release from incarceration and again within 30 days of release from  
110 incarceration. Such assistance and services shall be provided for a period of not less than six  
111 months and not more than one year from the date of release from incarceration unless additional  
112 services and assistance are included as part of a court order or settlement pursuant to section 5  
113 above.