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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1053 Session of  
2018

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INTRODUCED BY GREENLEAF, LEACH, SCHWANK, COSTA, YUDICHAK,  
HAYWOOD, BREWSTER, HUGHES AND WHITE, FEBRUARY 14, 2018

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REFERRED TO JUDICIARY, FEBRUARY 14, 2018

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, in matters affecting  
3 government units, further providing for exceptions to  
4 sovereign immunity and providing for claims for wrongful  
5 conviction and imprisonment.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 Section 1. Section 8522(b) of Title 42 of the Pennsylvania  
9 Consolidated Statutes is amended by adding a paragraph to read:

10 § 8522. Exceptions to sovereign immunity.

11 \* \* \*

12 (b) Acts which may impose liability.--The following acts by  
13 a Commonwealth party may result in the imposition of liability  
14 on the Commonwealth and the defense of sovereign immunity shall  
15 not be raised to claims for damages caused by:

16 \* \* \*

17 (10) Wrongful conviction and imprisonment.--Wrongful  
18 conviction and imprisonment for which claims may be brought  
19 under Subchapter D (relating to claims for wrongful

1 conviction and imprisonment).

2 Section 2. Chapter 85 of Title 42 is amended by adding a  
3 subchapter to read:

4 SUBCHAPTER D

5 CLAIMS FOR WRONGFUL CONVICTION AND IMPRISONMENT

6 Sec.

7 8581. Eligibility.

8 8582. Statement of claim and basis of award.

9 8583. Commonwealth Court.

10 8584. Presentation of claim.

11 8585. Damages.

12 8586. Report and order.

13 8587. Notice.

14 8588. Statute of limitations.

15 § 8581. Eligibility.

16 (a) Persons who may present claims.--A person who was  
17 convicted and subsequently imprisoned for one or more crimes  
18 that the person did not commit and who has been released from  
19 prison and is not subject to retrial, or the heirs of the person  
20 if the person is deceased, may present a claim for damages  
21 against the Commonwealth.

22 (b) Consecutive or concurrent sentences.--Other than credit  
23 for time served, a claimant is not entitled to compensation  
24 under this subchapter for any portion of a sentence spent  
25 incarcerated during which the claimant was also serving a  
26 consecutive or concurrent sentence for another crime to which  
27 this subchapter does not apply.

28 (c) Effect of acceptance by claimant.--The acceptance by the  
29 claimant of a judicial award, compromise or settlement shall be  
30 in writing and shall, except when procured by fraud, be final

1 and conclusive on the claimant and completely bar any further  
2 action by the claimant against the Commonwealth for the same  
3 subject matter.

4 § 8582. Statement of claim and basis of award.

5 (a) Evidence of claim.--To present a claim for wrongful  
6 conviction and imprisonment, the claimant must establish that:

7 (1) The claimant has been convicted of one or more  
8 crimes and subsequently sentenced to a term of imprisonment  
9 and has served all or any part of the sentence.

10 (2) The claimant's actual innocence has been established  
11 by:

12 (i) being pardoned by the Governor for the crime or  
13 crimes for which the claimant was sentenced, and which  
14 are the basis for the claim, on the grounds that the  
15 crime or crimes were either not committed at all or, if  
16 committed, were not committed by the defendant;

17 (ii) having the judgment of conviction of the  
18 claimant reversed or vacated and the accusatory  
19 instrument dismissed if the judgment of conviction was  
20 reversed or vacated or the accusatory instrument was  
21 dismissed on grounds consistent with innocence; or

22 (iii) if a new trial was ordered, either being found  
23 not guilty at the new trial or not being retried and the  
24 accusatory instrument dismissed.

25 (b) Basis of award.--To obtain a judgment in the claimant's  
26 favor, the claimant must demonstrate that:

27 (1) The claimant was convicted of one or more crimes and  
28 subsequently sentenced to a term of imprisonment and has  
29 served all or any part of the sentence.

30 (2) The claimant's actual innocence has been established

1 by clear and convincing evidence under subsection (a) (2).

2 § 8583. Commonwealth Court.

3 Proceedings before Commonwealth Court shall be governed by  
4 rules established by Commonwealth Court, which shall emphasize,  
5 to the greatest extent possible, informality of proceedings. No  
6 claimant shall be required to be represented or accompanied by  
7 an attorney.

8 § 8584. Presentation of claim.

9 (a) Procedure.--

10 (1) A claim of wrongful conviction and imprisonment must  
11 be presented to and heard by Commonwealth Court.

12 (2) Upon presentation of a claim under section 8582  
13 (relating to statement of claim and basis of award), the  
14 court shall fix a time and place to hear the claim.

15 (3) At least 15 days prior to the time fixed for the  
16 hearing, the court shall mail notice to the claimant and to  
17 the district attorney in the district where the claimant was  
18 prosecuted for the crimes that serve as the basis for the  
19 claim.

20 (4) The district attorney may offer evidence and argue  
21 in opposition to the claim for damages.

22 (b) Notice to office of Attorney General.--If the claimant  
23 was prosecuted by the Office of Attorney General, that office,  
24 rather than the district attorney, shall be notified that the  
25 office may oppose the claim under this section.

26 § 8585. Damages.

27 If Commonwealth Court finds that the claimant was wrongfully  
28 convicted and imprisoned, it may award damages as follows:

29 (1) A minimum of \$50,000 for each year of incarceration,  
30 as adjusted annually to account for inflation from the

1 effective date of this section, and prorated for partial  
2 years served.

3 (2) In a lump sum or as an annuity as chosen by the  
4 claimant.

5 (3) Compensation for reasonable reintegrative services  
6 and mental and physical health care costs incurred by the  
7 claimant for the time period between the claimant's release  
8 from incarceration and the date of the claimant's award.

9 (4) (i) Reasonable attorney fees calculated at 10% of  
10 the damage award plus expenses. Exclusive of expenses,  
11 attorney fees may not exceed \$75,000, as adjusted  
12 annually to account for inflation from the effective date  
13 of this section, unless the court approves an additional  
14 amount for good cause.

15 (ii) Attorney fees may not be deducted from the  
16 compensation due the claimant nor may the claimant's  
17 counsel receive additional attorney fees from the client  
18 for the matter.

19 (5) Compensation to those entitled to child support  
20 payments owed by the claimant that became due and interest on  
21 child support arrearages that accrued during the time the  
22 claimant served in prison but were not paid. The compensation  
23 shall be provided out of the total cash award to the claimant  
24 under paragraph (1).

25 (6) If compensation is authorized by this subchapter,  
26 the payment of compensation may be:

27 (i) to or for the benefit of the claimant; or

28 (ii) in the case of death of the claimant, to or for  
29 the benefit of any one or more of the heirs at law of the  
30 claimant who at the time of the claimant's demise were

1           dependent upon the claimant for support.

2           (7) To decide damages, Commonwealth Court shall consider  
3 all circumstances surrounding the claim, including, but not  
4 limited to, the length of the claimant's wrongful  
5 incarceration, injuries the claimant sustained while  
6 incarcerated, other need for financial aid and any other  
7 relevant matter. Insofar as practical, Commonwealth Court  
8 shall formulate standards for uniform application in  
9 recommending compensation.

10          (8) The damage award shall not be subject to a cap  
11 applicable to private parties in civil lawsuits.

12          (9) The damage award may not be offset by expenses  
13 incurred by the Commonwealth or a political subdivision of  
14 the Commonwealth, including, but not limited to, expenses  
15 incurred to secure the claimant's custody or to feed, clothe  
16 or provide medical services for the claimant, nor may the  
17 court offset the value of services or reduction in fees for  
18 services or the value thereof to be provided to the claimant  
19 that may be awarded to the claimant under this section.

20          (10) The award of damages shall include reimbursement  
21 for statutorily mandated and court-assessed costs, fines,  
22 restitution and fees to the extent that they have been  
23 collected.

24          (11) (i) A decision of Commonwealth Court on behalf of  
25 the claimant shall result in the automatic expungement of  
26 the criminal history record of the claimant as it relates  
27 to the crimes that form the basis of the claim.

28                 (ii) As part of its decision, Commonwealth Court  
29 shall specifically direct the Pennsylvania State Police  
30 and the prosecuting district attorney of the original

1 crimes that form the basis of this claim to expunge the  
2 record consistent with this paragraph.

3 (iii) Accordingly, Commonwealth Court shall forward  
4 a copy of its decision to the Pennsylvania State Police  
5 and to the prosecuting district attorney.

6 (12) The damage award is not subject to Commonwealth  
7 taxes.

8 § 8586. Report and order.

9 Commonwealth Court shall issue a ruling and order and provide  
10 the State Treasurer a statement of the total compensation due  
11 and owing to the claimant from the Commonwealth.

12 § 8587. Notice.

13 (a) Court.--

14 (1) A court granting judicial relief as described in  
15 section 8582(a) (relating to statement of claim and basis of  
16 award) shall provide a copy of this subchapter to the  
17 individual seeking relief at the time the court determines  
18 that the claimant's claim is likely to succeed.

19 (2) The individual shall acknowledge receipt of a copy  
20 of this subchapter in writing on a form established by the  
21 Supreme Court.

22 (3) The acknowledgment shall be entered on the docket by  
23 the court and shall be admissible in a proceeding filed by a  
24 claimant under this subchapter.

25 (b) Board of Pardons.--

26 (1) Upon the issuance of a full pardon on or after the  
27 effective date of this subchapter, the Board of Pardons shall  
28 provide a copy of this subchapter to an individual when  
29 pardoned as described in section 8582(a).

30 (2) The individual shall acknowledge receipt of a copy

1 of this subchapter in writing on a form established by the  
2 board.

3 (3) The acknowledgment shall be retained on file by the  
4 board as part of its official records and shall be admissible  
5 in any proceeding filed by a claimant under this subchapter.

6 (c) Failure to provide notice.--In the event a claimant  
7 granted judicial relief or a full pardon on or after the  
8 effective date of this subchapter shows the claimant did not  
9 properly receive a copy of the information required by this  
10 section, the claimant shall receive a one-year extension on the  
11 two-year time limit provided in section 8588 (relating to  
12 statute of limitations).

13 (d) Notice by Supreme Court.--The Supreme Court shall make  
14 reasonable attempts to notify all persons who were granted  
15 judicial relief as described in section 8582(a), prior to the  
16 effective date of this section, of their rights under this  
17 subchapter.

18 § 8588. Statute of limitations.

19 (a) General rule.--Except as otherwise provided in  
20 subsection (c), an action for compensation brought by a  
21 wrongfully convicted person under this subchapter must be  
22 commenced within two years after either the grant of a pardon or  
23 the grant of judicial relief and satisfaction of other  
24 conditions described in section 8582 (relating to statement of  
25 claim and basis of award).

26 (b) Tolling.--Action by the Commonwealth challenging or  
27 appealing the grant of judicial relief shall toll the two-year  
28 period.

29 (c) Exception.--A person convicted, incarcerated and  
30 released from custody prior to the effective date of this



- 1 section must commence an action under this subchapter within
- 2 five years of the effective date.
- 3 Section 3. This act shall take effect in 180 days.