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MINORITY

changes from majority **highlighted**

COMMITTEE AMENDMENT “.” To LD 1061, An Act To Establish a Fund To Compensate Unjustly Incarcerated Persons

Amend the bill to read (changes are in *italics*)

Sec. 1. 5 MRSA §1524 is enacted to read:

§1524. Unjustly Incarcerated Persons Compensation Fund established

The Unjustly Incarcerated Persons Compensation Fund, referred to in this section as "the compensation fund," is established as a nonlapsing fund. The compensation fund receives funds allocated or transferred by the Legislature from the unappropriated surplus of the General Fund. The State Controller shall disburse funds in accordance with the provisions established under chapter 603. The State Controller shall provide quarterly financial reports regarding the compensation fund to the joint standing committee of the Legislature having jurisdiction over appropriations and financial affairs.

Sec. 2. 5 MRSA c. 603 is enacted to read:

CHAPTER 603

UNJUSTLY INCARCERATED PERSONS COMPENSATION FUND

§22101. Compensation payments

The State Controller shall make compensation payments in the amounts directed by this chapter to persons entitled to compensation from the Unjustly Incarcerated Persons Compensation Fund established in section 1524.

§22102. Persons entitled to compensation

1. Requirements. A person is entitled to compensation if:

A. The person has served in whole or in part a sentence of imprisonment under the laws of this State; and

- (1) Has received a full and free pardon on the basis of innocence for the crime for which the person was sentenced;
- (2) Has been granted relief in accordance with a writ of habeas corpus that is based on a court finding or determination that the person is actually innocent of the crime for which the person was sentenced; or
- (3) Has been granted relief in accordance with a writ of habeas corpus and:
 - (a) The court in which the person was convicted has entered an order dismissing the charge; and
 - (b) The court's dismissal order is based on a motion to dismiss in which the district attorney or the Attorney General states that no credible evidence exists that inculpatates the defendant and, either in the motion or in an affidavit, the district attorney or the Attorney General states that the district attorney or Attorney General believes that the defendant is actually innocent of the crime for which the person was sentenced.

B. The person has established by a preponderance of the evidence that the person:

- (1) Was convicted of murder or a Class A, B or C crime and subsequently imprisoned;
- (2) The conviction was reversed or vacated and either the charges were dismissed or on retrial the claimant was found not guilty;
- (3) Did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial; and
- (4) Did not commit or suborn perjury, fabricate evidence or by the person's own conduct or bring about the conviction. Neither a confession nor admission later found to be false or a guilty plea constitute committing or suborning perjury, fabricating evidence or bringing about the conviction under this subsection.

2. Concurrent sentence. A person is not entitled to compensation under subsection 1 for any part of a sentence of imprisonment during which the person was also serving a concurrent sentence for another crime to which subsection 1 does not apply.

3. Deceased person. If a deceased person would be entitled to compensation under subsection 1 if living, including a person who received a posthumous pardon, the person's heirs, legal representatives and estate are is entitled to lump-sum compensation under section 22106.

§22103. Notice to person entitled to compensation

1. Information. The Department of Corrections shall provide to each person entitled to compensation under section 22102, subsection 1 information, both orally and in writing, that includes:

A. Guidance on how to obtain compensation under this chapter; and

B. A list of and contact information for nonprofit advocacy groups, identified by the Department of Corrections, that assist persons in filing claims for compensation under this chapter.

2. Timing. The Department of Corrections shall provide the information required under subsection 1:

A. At the time of the release of the person from imprisonment; or

B. As soon as practicable after the Department of Corrections has reason to believe that the person is entitled to compensation under section 22102, subsection 1.

§ 22104. Limitation on time to file

A person seeking compensation under this chapter must file an application with the State Controller for compensation under this chapter not later than the 3rd year after the date a claim in district court, verified in the manner provided for the verification of complaints in the Maine Rules of Civil Procedure. The claim must be brought by the person within a period of 2 years after the dismissal of the criminal charges against the claimant or a finding of not guilty on retrial. If the person had the criminal charges dismissed or a finding of not guilty on retrial prior to the effective date of this chapter, the person has 2 years from the effective date of this chapter to file a claim.

~~1. Pardon.~~ The person on whose imprisonment the claim is based received a full and free pardon as provided by section 22102, subsection 1, paragraph B, subparagraph (1);

~~2. Writ of habeas corpus.~~ The application for a writ of habeas corpus of the person on whose imprisonment the claim is based was granted as provided by section 22102, subsection 1, paragraph B, subparagraph (2); or

~~3. Order of dismissal.~~ An order of dismissal was granted as provided by section 22102, subsection 1, paragraph B, subparagraph (3).

§ 22105. Application procedure—Determination of eligibility

~~1. Application for compensation.~~ To apply for compensation under this chapter, a claimant must file with the State Controller:

- A. An application for compensation provided for that purpose by the State Controller;
- B. A verified copy of the pardon, court order, motion to dismiss and affidavit as described in section 22102, subsection 1, paragraph B, as applicable, justifying the application for compensation;
- C. A statement provided by the Department of Corrections and any county or municipality that incarcerated the person on whose imprisonment the claim is based in connection with the relevant sentence verifying the length of imprisonment; and
- D. If applicable, a statement from the Department of Public Safety, State Bureau of Identification verifying the registration as a sex offender of the person on whose imprisonment the claim is based and length of registration.

2. Determination. The ~~State Controller~~ District Court shall determine:

- A. The eligibility of the claimant pursuant to ~~subsection 3~~ section 22101; and
- B. The amount of compensation owed to an eligible claimant pursuant to section 22106.

3. Attorney General. Any claim filed pursuant to this section must be served on the Attorney General in accordance with the Maine Rules of Civil Procedure.

4. Jury trial. The claimant may request a jury trial, otherwise the suit for a claim filed pursuant to this chapter will be by the court. If a jury trial is requested, the claim must be transferred to the Superior Court.

5. Appeal. The claimant may appeal a claim that is **denied to the Supreme Judicial Court sitting as the law court.**

3. Basis of determination. In determining the eligibility of a claimant, the State Controller shall consider only the verified copies of documents filed under subsection 1, paragraph B. If the filed documents do not clearly indicate that the person is entitled to compensation under section 22102, subsection 1, paragraph B, the State Controller shall deny the claim. The State Controller's duty to determine the eligibility of a claimant under this section is purely ministerial.

4. Determination within 45 days. The State Controller must make a determination of eligibility and the amount owed as required by subsection 2 not later than the 45th day after the date an application is received.

5. Denial of claim. If the State Controller denies the claim, the State Controller shall state the reason for the denial. Not later than the 30th day after the date the denial is received, the claimant shall submit an application to resolve any problem identified. Not later than the 45th day after the date an application is received under this subsection, the State Controller shall determine the claimant's eligibility and the amount owed.

6. Action for mandamus. If the State Controller denies a claim after the claimant submits an application under subsection 5, the claimant may bring an action for mandamus.

§22106. Amount of compensation

1. Compensation; time served. A person who meets the requirements of section 22102 is entitled to compensation in an amount equal to ~~\$25,000~~ \$50,000 multiplied by the number of years served in imprisonment, expressed as a fraction to reflect partial years. **total compensation limited by subsection 4.**

2. Compensation; registration as sex offender. A person who, after serving a sentence of imprisonment in this State for which the person is entitled to compensation under subsection 1, was required to register as a sex offender is entitled to additional compensation in an amount equal to \$10,000 multiplied by the number of years served as a registered sex offender, expressed as a fraction to reflect partial years. **total compensation limited by subsection 4.**

3. Offset. *This subsection applies to compensation under this chapter if the claimant previously received a qualifying monetary award or subsequently receives a qualifying monetary award.*

A. If at the time of the judgment entry the claimant has won a monetary award against the State or any political subdivision of the State in a civil action related to the same subject, or has entered into a settlement agreement with the State or any political subdivision of the State related to the same subject, the amount of the award in the action or the amount received in the settlement agreement, less any sums paid to attorneys or for costs in litigating the other civil action or obtaining the settlement agreement, must be deducted from the sum of money to which the claimant is entitled under this section. The court shall include in the judgment entry an award to the State of any amount deducted pursuant to this section.

B. If paragraph A does not apply and if, after the time of the judgment entry, the claimant wins a monetary award against the State or any political subdivision of the State in a civil action related to the same subject, or enters into a settlement agreement with the State or any political subdivision of the State related to the same subject, the claimant shall reimburse the State for the sum of money paid under the judgment entry, less any sums paid to attorneys for costs in litigating the other civil action or obtaining the settlement agreement. A reimbursement required under this subsection may not exceed the amount of the monetary award the claimant wins for damages in the other civil action or the amount received in the settlement agreement.

4. Maximum compensation. *The total compensation paid under this subsection may not exceed \$500,000.*

§22107. Payment of compensation

1. Choice of compensation. A person entitled to compensation under section 22102, subsection 1 may choose a lump-sum payment or annuity payments as provided in subsection 2.

2. Annuity payments. Annuity payments under this subsection are based on a present value sum equal to the amount to which the person is entitled under section 22106, subsections 1 and 2 and are payable in equal monthly installments actuarially estimated for the life of the claimant until paid in full.

Annuity payments under this subsection must be based on a 5% per annum interest rate and other actuarial factors within the discretion of the State Controller. Annuity payments under this subsection may not be accelerated, deferred, increased or decreased. A person entitled to annuity payments under this subsection may not sell, mortgage or otherwise encumber, or anticipate the payments, wholly or partly, by assignment or otherwise.

§22108. Exceptions to immunity

Notwithstanding any immunity of the State from suit or liability, including the Maine Tort Claims Act, the State is liable for the unjust incarceration of a person as provided in this chapter.

§22109. Certificate of innocence and expungement

1. Certificate of innocence. If the court finds that the claimant is entitled to a judgment, it shall enter a certificate of innocence finding that the claimant was innocent of all crimes for which the claimant was mistakenly convicted.

2. Expungement. Upon entry of a certificate of innocence, the court shall order the associated conviction and arrest records expunged and purged from all applicable State and federal systems pursuant to this subsection.

Sec. 3. 14 MRSA c. 747, as amended, is repealed.

SUMMARY

This amendment is the **minority** report of the Joint Standing Committee on Judiciary.

The bill repeals the existing compensation law that relies on a pardon based on innocence and establishes a new compensation fund and process. This amendment changes the standard for eligibility. Under this amendment, the claimant must establish by a preponderance of the evidence that the person:

1. Was convicted of murder or a Class A, B or C crime and subsequently imprisoned;
2. The conviction was reversed or vacated and either the charges were dismissed or on retrial the claimant was found not guilty;
3. Did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial; and
4. Did not commit or suborn perjury, fabricate evidence or by the person's own conduct bring about the conviction.

The amendment provides that the person seeking compensation must file a claim with the district court within a period of 2 years after the dismissal of the criminal charges or a finding of not guilty on retrial, or 2 years from the effective date of this new law if the criminal charges were dismissed or the person received a finding of not guilty on retrial prior to the effective date of this law.

The amendment moves the determination from the State Controller to the District Court, although the claim must be transferred if the person requests a jury trial. The person seeking compensation must also serve the claim on the Attorney General.

The amendment increases the compensation to \$50,000 for each year of imprisonment, and \$10,000 for each year served as a registered sex offender. It limits total compensation to \$500,000.

The amendment provides that any monetary award already received by the claimant or settlement received by the claimant reduces the compensation under this law. Subsequent awards or settlements will result in the claimant reimbursing the State for compensation paid under this law.

The amendment provides that if the court finds that the claimant is entitled to a judgment of compensation, it shall enter a certificate of innocence finding that the claimant was innocent of all crimes for which the claimant was mistakenly convicted, and the court shall order the associated conviction and arrest records expunged and purged from all applicable State and federal systems.