

Regular Session, 2003

SENATE BILL NO. 520

BY SENATOR C. JONES

LIABILITY. Creates a cause of action for compensation for wrongful conviction and imprisonment.

1 AN ACT

2 To enact R.S. 9:2800.13, relative to offenses and quasi offenses; to create a
3 cause of action against the state for wrongful conviction and
4 imprisonment; to provide for compensation; to provide procedures for
5 filing the cause of action; to provide for the period of time in which the
6 cause of action shall be filed; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:2800.13 is hereby enacted to read as follows:

9 §2800.13. Action for wrongful conviction and imprisonment;
10 compensation; proof

11 **R.S. 9:2800.13 is all proposed new law.**

12 A. A person is entitled to compensation if the person has served
13 in whole or in part a sentence in prison under the laws of this state for
14 the crime for which the person was convicted and imprisoned and has
15 either:

1 (1) Received a full pardon on the basis of innocence.

2 (2) Been granted relief on the basis of actual innocence of the
3 crime for which the person was sentenced.

4 B.(1) Suit pursuant to this Section shall be initiated by verified
5 petition alleging that the petitioner is entitled to compensation.

6 (2) The suit shall be brought in district court either in the parish
7 of the petitioner's residence at the time the suit is commenced or in East
8 Baton Rouge Parish.

9 (3) The petition shall be served on the attorney general who
10 shall represent the state in the proceeding.

11 C. The petitioner must establish by a preponderance of the
12 evidence that he is entitled to compensation and the amount of
13 compensation to which he is entitled.

14 D. The following shall not be defenses to an action brought
15 under this Section:

16 (1) The judgment of conviction in the trial that resulted in the
17 petitioner's imprisonment.

18 (2) An indictment, information, complaint, or other formal
19 accusation.

20 E.(1) In the suit, the court may admit as evidence the record of
21 the trial at which the petitioner was convicted and, if applicable, the
22 pardon issued to the petitioner by the governor.

23 (2) The court may also admit all court papers, orders, docket
24 notations, or other writings of record in any court in this state as proof
25 of the facts set forth in the writings.

26 F.(1) If the trier of fact finds that the petitioner is entitled to
27 compensation, the petitioner is entitled to:

1 (a) Expenses incurred by the petitioner in connection with all
2 associated criminal proceedings and appeals and in connection with
3 obtaining the petitioner's discharge from imprisonment, including any
4 fine or court costs paid and reasonable attorney's fees, including
5 reasonable attorney's fees for representing the petitioner in the suit
6 under this Section.

7 (b) Wages, salary, or other earned income that was lost as a
8 direct result of the arrest, prosecution, conviction, or wrongful
9 imprisonment.

10 (c) Medical and counseling expenses incurred by the petitioner
11 as a direct result of the arrest, prosecution, conviction, or wrongful
12 imprisonment.

13 (d) Twenty-five thousand dollars for each full year that the
14 petitioner was wrongfully imprisoned and, for each part of a year that
15 the petitioner was wrongfully imprisoned, a prorated share of twenty-
16 five thousand dollars.

17 (2) In determining the sum of money owed to the petitioner, the
18 trier of fact may not deduct any expenses incurred by the state or any
19 of its political subdivisions in connection with the arrest, prosecution,
20 conviction, and wrongful imprisonment of the petitioner, including
21 expense for food, clothing, shelter, and medical services.

22 G.(1) A person who claims compensation from a sentence
23 served in whole or in part after September 1, 2003 must bring the action
24 within three years after:

25 (a) The person ceased serving the sentence of imprisonment.

26 (b) The person was released from custody.

27 (c) The person was discovered or should have discovered the

1 evidence substantiating the person's innocence.

2 (2) A person who claims compensation for a sentence served
3 before September 1, 2003 must bring the action within three years after
4 the person discovered or should have discovered the evidence
5 substantiating the person's innocence.

6 Section 2. This Act shall become effective on September 1, 2003.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Yolanda Johnson Dixon.

DIGEST

Proposed law provides that a person is entitled to compensation if the person has served in whole or in part a sentence in prison under the laws of this state for the crime for which the person was convicted and imprisoned and has either (1) received a full pardon on the basis of innocence or (2) been granted relief on the basis of actual innocence of the crime for which the person was sentenced.

Requires that suit pursuant to proposed law be initiated by verified petition alleging that the petitioner is entitled to compensation. Requires that the suit be brought in district court either in the parish of the petitioner's residence at the time the suit is commenced or in East Baton Rouge Parish. Requires that the petition be served on the attorney general who shall represent the state in the proceeding.

Requires that the petitioner establish by a preponderance of the evidence that he is entitled to compensation and the amount of compensation to which he is entitled.

Provides that the following are not defenses to an action brought under proposed law:

- (1) The judgment of conviction in the trial that resulted in the petitioner's imprisonment.
- (2) An indictment, information, complaint, or other formal accusation.

Authorizes the court to admit as evidence the record of the trial at which the petitioner was convicted and, if applicable, the pardon issued to the petitioner by the governor as well as all court papers, orders, docket notations, or other writings of record in any court in this state as proof of the facts set forth in the writings.

Provides that if the trier of fact finds that the petitioner is entitled to

compensation, the petitioner is entitled to:

- (1) Expenses incurred by the petitioner in connection with all associated criminal proceedings and appeals and in connection with obtaining the petitioner's discharge from imprisonment, including any fine or court costs paid and reasonable attorney's fees, including reasonable attorney's fees for representing the petitioner in the suit under proposed law.
- (2) Wages, salary, or other earned income that was lost as a direct result of the arrest, prosecution, conviction, or wrongful imprisonment.
- (3) Medical and counseling expenses incurred by the petitioner as a direct result of the arrest, prosecution, conviction, or wrongful imprisonment.
- (4) \$25,000 for each full year that the petitioner was wrongfully imprisoned and, for each part of a year that the petitioner was wrongfully imprisoned, a prorated share of \$25,000.

Provides that in determining the sum of money owed to the petitioner, the trier of fact may not deduct any expenses incurred by the state or any of its political subdivisions in connection with the arrest, prosecution, conviction, and wrongful imprisonment of the petitioner, including expense for food, clothing, shelter, and medical services.

Provides that a person who claims compensation from a sentence served in whole or in part after 9/1/03 must bring the action within three years after:

- (1) The person ceased serving the sentence of imprisonment.
- (2) The person was released from custody.
- (3) The person was discovered or should have discovered the evidence substantiating the person's innocence.

Provides that a person who claims compensation for a sentence served before 9/1/03, must bring the action within three years after the person discovered or should have discovered the evidence substantiating the person's innocence.

Effective 9/1/03.

(Adds R.S. 9:2800.13)