

Senate Bill 1007

Sponsored by Senators THATCHER, PROZANSKI; Senators GORSEK, NASH, SMITH DB, STARR, WAGNER, Representatives ANDERSEN, CHOTZEN, GRAYBER, WALLAN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act makes changes to the laws that let a person get compensation for a wrongful conviction. (Flesch Readability Score: 65.1).

Modifies provisions relating to petitions for compensation for wrongful conviction.

Declares an emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to wrongful conviction; creating new provisions; amending ORS 30.657 and 30.659; and de-
3 claring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 30.657 is amended to read:

6 30.657. (1) **The Legislative Assembly finds and declares that individuals who have been**
7 **wrongly convicted of crimes and imprisoned in this state have been unable to obtain legal**
8 **redress due to a number of substantive and technical obstacles in the law and that these**
9 **individuals should have a timely avenue to obtain compensation and a finding of innocence**
10 **following a wrongful conviction.**

11 [(1)] (2) A person may petition for compensation for wrongful conviction against the state if all
12 of the following requirements are satisfied:

13 (a) The person was convicted of one or more felonies and subsequently imprisoned as a result
14 of the conviction or convictions;

15 (b)(A) The person's conviction was reversed or vacated and either the charges were dismissed
16 or on retrial the person was found not guilty; or

17 (B) The person received a grant of gubernatorial [*pardon*] **clemency**;

18 (c) The person did not commit the crime or crimes for which the person was convicted and was
19 not an accessory or accomplice to or otherwise involved in the acts that were the basis of the
20 conviction; and

21 (d) The person did not commit perjury, fabricate evidence or by the person's own conduct cause
22 or bring about the conviction. A confession or admission later found to be false or a guilty plea does
23 not constitute committing perjury, fabricating evidence or causing or bringing about the conviction
24 under this paragraph.

25 [(2)] (3) For the purposes of subsection [(1)] (2) of this section:

26 (a) Reversal or vacation of a conviction because the conviction was obtained following a finding
27 of guilt by a nonunanimous jury is not sufficient to prove that the person did not commit the crime
28 or crimes for which the person was convicted.

29 **(b) A Governor's grant of clemency with a written statement consistent with innocence**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **or a prior court's finding consistent with innocence by a preponderance of the evidence is**
 2 **sufficient to prove that the person did not commit the crime or crimes for which the person**
 3 **was convicted.**

4 [(b)] (c) "Convicted" or "conviction" includes an adjudication of a person within the jurisdiction
 5 of the juvenile court under ORS 419C.005 for an act committed when the person was under 18 years
 6 of age if the adjudication resulted in the person's placement in custody of the Oregon Youth Au-
 7 thority or the Department of Corrections for at least one year.

8 [(3)] (4) A person may file a petition for compensation under this section in the Circuit Court
 9 for Marion County or in the circuit court for the county of conviction. The petitioner shall serve
 10 the petition on the Attorney General, who shall represent the state in all proceedings on the peti-
 11 tion. The petitioner shall also mail a copy of the complaint to the District Attorney of the county
 12 of conviction.

13 [(4)(a)] (5)(a) A petition under this section is a civil action. The Oregon Rules of Civil Procedure
 14 and the Oregon Evidence Code apply to a petition under this section unless otherwise specified in
 15 this section.

16 (b) The court, in exercising its discretion regarding the *[weight and]* admissibility of evidence
 17 submitted under this section, may in the interest of justice give due consideration to difficulties of
 18 proof caused by the passage of time, the death or unavailability of witnesses, the destruction of ev-
 19 idence or other factors not caused by a petitioner or those acting on a petitioner's behalf. The court
 20 may not diminish the petitioner's burden of proof as set forth in subsection [(5)(a)] (6)(a) of this
 21 section.

22 (c) **The fact finder, in exercising the fact finder's discretion regarding the weight of evi-**
 23 **dence submitted under this section, may in the interest of justice give due consideration to**
 24 **the difficulties of proof caused by the passage of time, the death or unavailability of wit-**
 25 **nesses, the destruction of evidence or other factors not caused by a petitioner or those act-**
 26 **ing on a petitioner's behalf.**

27 [(c)] (d) The fact finder in a proceeding under this section may receive proof by declarations,
 28 depositions, oral testimony or other competent evidence **from any proceeding arising out of the**
 29 **facts or events that resulted in the petitioner's conviction, or arising out of the conviction**
 30 **itself**, including but not limited to transcripts of testimony or documents and evidence filed with the
 31 court [*in any proceeding that gave rise to the conviction, reversal or vacation of the conviction, or from*
 32 *retrial following reversal*].

33 (e) **The fact finder in a proceeding under this section shall be instructed to find that the**
 34 **petitioner did not commit the crime or crimes of which the petitioner was convicted if:**

35 (A) **The petitioner presents evidence from which the fact finder can conclude by a pre-**
 36 **ponderance of the evidence that the petitioner did not commit the crime or crimes of which**
 37 **the petitioner was convicted; and**

38 (B) **The rebuttal evidence offered by the state does not establish guilt beyond a reason-**
 39 **able doubt.**

40 [(5)(a)] (6)(a) If a petitioner proves the elements of subsection [(1)] (2) of this section by a pre-
 41 ponderance of the evidence, the court shall enter a judgment awarding damages as follows:

42 (A) Except as provided in paragraph (b) of this subsection, \$65,000 for each year of imprisonment
 43 **or confinement on the charge resulting in the conviction that was reversed, vacated or sub-**
 44 **ject to clemency, including time spent awaiting trial or retrial**, as adjusted under subsection
 45 [(8)] (9) of this section; and

1 (B) \$25,000, as adjusted under subsection [(8)] (9) of this section, for each additional year served
 2 on parole [*or*], post-prison supervision **or pretrial supervision** or each additional year the petitioner
 3 was required to register as a sex offender, whichever is greater.

4 (b) A petitioner is not entitled to damages for any period of incarceration during which the
 5 petitioner was concurrently serving a sentence for a conviction of another crime for which the
 6 petitioner was lawfully incarcerated.

7 (c) Punitive damages may not be awarded under this section.

8 [(6)(a)] (7)(a) Except as provided in paragraph (b) of this subsection, the court shall order that
 9 an award under subsection [(5)] (6) of this section be paid as a combination of an initial payment
 10 not to exceed \$100,000 or 25 percent of the award, whichever is greater, and the remainder as an
 11 annuity not to exceed \$80,000 per year. The petitioner shall designate a beneficiary or beneficiaries
 12 for the annuity.

13 (b) The court may order that the award be paid in one lump sum if the court finds that it is in
 14 the best interests of the petitioner.

15 [(7)] (8) In addition to the damages awarded under subsection [(5)] (6) of this section, the court:

16 (a) Shall award to the petitioner reasonable attorney fees and costs, **including expert witness**
 17 **fees**, incurred in [*connection with a petition*] **an action** filed under this section;

18 (b) Shall award to the petitioner reimbursement for all restitution, assessments, fees, court costs
 19 and all other sums paid by the petitioner as required by pretrial orders, incarceration, and the
 20 judgment and sentence in any proceeding that gave rise to the conviction, reversal or vacation of
 21 the conviction, or from retrial following reversal; and

22 (c) May award to the petitioner **the costs of:**

23 **(A) Tuition, books and fees for up to four years for the petitioner to attend a public in-**
 24 **stitution as defined in ORS 352.002 or a community college as defined in ORS 341.005;**

25 **(B) Participation by the petitioner in a health benefit plan as defined in ORS 743B.005 (16)**
 26 **for up to 10 years; and**

27 **(C) [Access to] Accessing** existing state, local or other programs that provide services, includ-
 28 ing, but not limited to, counseling, housing assistance, [*eligibility for medical assistance as defined*
 29 *in ORS 414.025, educational assistance,*] job training, legal services to regain custody of children,
 30 assistance with food and transportation and personal financial literacy assistance, as appropriate.

31 [(8)] (9) Beginning in 2023, and every year thereafter, the State Court Administrator shall de-
 32 termine the percentage increase or decrease in the cost of living for the previous calendar year,
 33 based on changes in the Consumer Price Index for All Urban Consumers, West Region (All Items),
 34 as published by the Bureau of Labor Statistics of the United States Department of Labor. On or
 35 before July 1 of the year in which the State Court Administrator makes the determination required
 36 by this subsection, the State Court Administrator shall adjust the amounts prescribed under sub-
 37 section [(5)] (6) of this section for the following calendar year by multiplying the amounts applicable
 38 to the calendar year in which the adjustment is made by the percentage amount determined under
 39 this subsection. The adjustment may not exceed three percent for any year. The State Court Ad-
 40 ministrator shall round the adjusted limitation amount to the nearest \$100, but the unrounded
 41 amount shall be used to calculate the adjustments to the amounts in subsequent calendar years. The
 42 adjusted amounts become effective on July 1 of the year in which the adjustment is made, and apply
 43 to all petitions filed under this section on or after July 1 of that year and before July 1 of the
 44 subsequent year.

45 [(9)(a)] (10)(a) If, on the date a judgment is entered under subsection [(5)] (6) of this section, the

1 petitioner has won a monetary award against a public body as defined in ORS 174.109 in a separate
 2 civil action related to the same subject, or has entered into a settlement agreement with a public
 3 body as defined in ORS 174.109 related to the same subject, the amount of economic damages
 4 awarded in the separate action or received in the settlement agreement, less any sums paid to liti-
 5 gate the other civil action or obtain the settlement agreement, including, but not limited to, attorney
 6 fees, costs and expert fees, shall be deducted from the sum of money to which the petitioner is en-
 7 titled under this section. The court shall include in the judgment an award to the state of any
 8 amount deducted pursuant to this subsection.

9 (b) If paragraph (a) of this subsection does not apply and if, after the date the judgment is en-
 10 tered under subsection ~~[(5)]~~ **(6)** of this section, the petitioner wins a monetary award against a public
 11 body as defined in ORS 174.109 in a separate civil action related to the same subject, or enters into
 12 a settlement agreement with a public body as defined in ORS 174.109 related to the same subject,
 13 the petitioner shall reimburse the state for the sum of money paid under the judgment entered under
 14 subsection ~~[(5)]~~ **(6)** of this section, less any sums paid to litigate the other civil action or obtain the
 15 settlement agreement, including, but not limited to, attorney fees, costs and expert fees. A re-
 16 imbursement required under this subsection may not exceed the amount of the economic damages
 17 awarded in the separate civil action or received in the settlement agreement.

18 (c) An award under this section shall not be offset by any expenses incurred by a public body
 19 as defined in ORS 174.109 to secure the petitioner's custody or conviction, or to feed, clothe, house
 20 or provide medical services to the petitioner as a result of the petitioner's incarceration.

21 ~~[(10)]~~ **(11)** Compensation awarded as a result of a petition for compensation for wrongful con-
 22 viction under this section is excluded from gross income and is not subject to taxation.

23 ~~[(11)]~~ **(12)** A petition under this section is not subject to ORS 30.260 to 30.300.

24 ~~[(12)(a) If the petitioner prevails on a petition under this section, the petitioner may request that~~
 25 ~~judgment include a certificate of innocence finding that the petitioner was innocent of all crimes for~~
 26 ~~which the petitioner was wrongfully convicted.]~~

27 **(13)(a) If the court enters a judgment under subsection (6) of this section, the court shall**
 28 **include in the judgment a certificate of innocence stating that the petitioner has established**
 29 **by a preponderance of the evidence that the petitioner is innocent of all crimes for which the**
 30 **petitioner was wrongfully convicted.**

31 (b) Upon entry of a judgment granting a petition under this section, the court shall order the
 32 associated convictions and arrest records be set aside and sealed from all applicable state and fed-
 33 eral systems pursuant to this subsection. The court shall enter the set aside order regardless of
 34 whether the petitioner has other criminal convictions or pending criminal cases.

35 ~~[(13)]~~ **(14)** Notwithstanding ORS 12.115, a petition under this section must be filed no later than
 36 two years after:

37 (a) The date of dismissal of the criminal charges against the petitioner or finding of not guilty
 38 on retrial, whichever is later; or

39 (b) The grant of ~~[pardon]~~ **Clemency** to the petitioner.

40 ~~[(14)]~~ **(15)** Any party to a proceeding under this section may appeal from the judgment of the
 41 circuit court on a petition filed under this section by filing a notice of appeal within the time and
 42 in the manner specified in ORS chapter 19 for civil appeals to the Court of Appeals. Any party filing
 43 a notice of appeal under this subsection must note in the notice of appeal that the case is subject
 44 to this subsection. For purposes of any appeals under this section, the Attorney General shall rep-
 45 resent the state in all appellate proceedings. The party filing the notice of appeal shall serve the

1 notice of appeal on the Attorney General and on the district attorney for the county of conviction.

2 [(15)] (16) This section does not preclude the Department of Corrections from providing reentry
3 services to a petitioner under this section that are provided to other persons, including, but not
4 limited to, financial assistance, housing assistance, mentoring and counseling. Services may be pro-
5 vided while an action is pending and after any judgment is entered, as appropriate for the petitioner.

6 **SECTION 2. (1) Upon service of a petition filed under ORS 30.657, the Attorney General**
7 **shall review the claim for compensation. The review must include consideration of any evi-**
8 **dence from the petitioner or the district attorney and any newly presented evidence that**
9 **tends to satisfy the requirements of ORS 30.657 (2).**

10 (2) Within 180 days after the date of service of the petition filed under ORS 30.657, the
11 Attorney General shall make a written determination whether the evidence, including newly
12 presented evidence of innocence, satisfies the requirements of ORS 30.657 (2). If the evidence,
13 including newly presented evidence of innocence, satisfies the requirements of ORS 30.657 (2)
14 by a preponderance of the evidence, the Attorney General and the petitioner shall jointly
15 petition the court to enter judgment in the petitioner's favor awarding the relief required
16 by ORS 30.657 (6), (7), (8) and (13).

17 (3) The Attorney General shall submit an annual report in the manner provided in ORS
18 192.245 to an interim committee of the Legislative Assembly relating to the judiciary. The
19 report must summarize the determinations made under this section in the preceding year
20 and include the amount of attorney fees incurred in connection with each notice and petition
21 filed in the preceding year.

22 **SECTION 3.** ORS 30.659 is amended to read:

23 30.659. (1) A person may not file a petition under ORS 30.657 unless notice of petition is given
24 as required by this section.

25 (2) Notice of petition shall be given within 180 days after the date on which the charges were
26 dismissed, the person was found not guilty on retrial or the person received a grant of pardon. The
27 period of time shall not include the period, not exceeding 90 days, during which the person is unable
28 to give notice because of injury or **the period during which the person is unable to give notice**
29 because of minority, incompetency or other incapacity.

30 (3) Notice of petition required by this section is satisfied by:

31 (a) Formal notice of petition as provided in subsection (4) of this section;

32 (b) Filing of a petition under ORS 30.657 by or on behalf of the person within the applicable
33 period of time provided in subsection (2) of this section;

34 (c) Notice of claim under ORS 30.275 for any action against a public body, as defined in ORS
35 174.109, or any officer, employee or agent of the public body arising out of the facts and circum-
36 stances that gave rise to the wrongful conviction; or

37 (d) Payment of compensation for wrongful conviction by or on behalf of the state at any time.

38 (4) Formal notice of petition is a written communication from a claimant or representative of a
39 claimant containing:

40 (a) A statement that a petition for wrongful conviction under ORS 30.657 is or will be filed;

41 (b) The date on which the charges were dismissed, the person was found not guilty on retrial
42 or the person received a grant of pardon; and

43 (c) The name of the claimant and the mailing address to which correspondence concerning the
44 petition may be sent.

45 (5) Notice is sufficient where the communication is such that a reasonable person would con-

1 clude that a particular person intends to assert a claim against the state arising out of wrongful
 2 conviction.

3 (6) Formal notice of petition shall be given by mail, electronic mail or personal delivery to the
 4 office of the Director of the Oregon Department of Administrative Services. Service by mail is
 5 complete on mailing, and service by electronic mail is complete on sending.

6 (7) Failure to provide timely notice shall not be a bar to suit if good cause for the failure is
 7 shown. Good cause shall not be unreasonably withheld.

8 (8) At the time of judgment after a person’s conviction is reversed or vacated, and either the
 9 charges are dismissed or on retrial the person is found not guilty, as described in ORS 30.657
 10 [(1)(b)(A)] (2)(b)(A), the court shall advise the person of the right to file a notice within 180 days
 11 under this section. If the person is not present, the court shall advise the person in writing of the
 12 right to file a notice within 180 days under this section.

13 **SECTION 4. (1) The amendments to ORS 30.657 and 30.659 by sections 1 and 3 of this 2025**
 14 **Act apply to petitions filed under ORS 30.657 before, on or after the effective date of this 2025**
 15 **Act for which a court has not entered a final judgment before the effective date of this 2025**
 16 **Act.**

17 (2) As used in subsection (1) of this section, “final judgment” means a judgment that is
 18 not subject to further appeal or review or for which the time to file an appeal has expired
 19 without a party filing an appeal.

20 **SECTION 5. Section 2 of this 2025 Act applies to petitions filed under ORS 30.657 on or**
 21 **after the effective date of this 2025 Act.**

22 **SECTION 6. This 2025 Act being necessary for the immediate preservation of the public**
 23 **peace, health and safety, an emergency is declared to exist, and this 2025 Act takes effect**
 24 **on its passage.**

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