



One Hundred First Legislature - First Session - 2009
Introducer's Statement of Intent
LB 260

Chairperson: Brad Ashford
Committee: Judiciary
Date of Hearing: February 19, 2009

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 260 establishes the Nebraska Claims for Wrongful Conviction and Imprisonment Act.

This legislation seeks to provide a statutory avenue for persons wrongfully convicted, incarcerated and released to be able to file a claim in the district court in the county where the conviction occurred and to provide evidence based on grounds not inconsistent with innocence under Section 3 and Section 5 that the claimant is entitled under the Act to receive compensation and immediate services upon release as well as reimbursement for those services.

Under Section 3, the evidence on grounds not inconsistent with innocence includes a pardon, a statute or application that violated the US Constitution, or a judgment of conviction that was vacated or reversed.

If the court determines a favorable judgment on the claim, compensation shall be no less than \$50,000 for each year incarcerated and an additional \$50,000 for each year served on death row.

This amount reflects compensation for immediate services upon exoneration and release including housing, transportation and subsistence, re-integrative services, mental and physical health care costs in between the release and the date of award as well as the consideration (see subsection 1, (b)) of economic and non-economic damages as a result of incarceration.

This amount may include child support payment debts, tuition and fee reimbursement for education, reimbursement for vocational rehabilitation programs and employment skills development training, attorney's fees for the claim and up to 5 years of physical and mental health care through the state employee group health insurance program (to be offset by the amount provided through an employer during that period).

Damage awards are not subject to limits on private parties in civil suits, not subject to state taxes and are not treated as gross income. Future damages awarded from action against the state or political subdivisions are offset by the awards received under the act.

Any person wrongfully convicted and proven so under the elements of Section 3 and Section 5 of the Act shall receive up to 2 years of immediate services needed upon release including housing, secondary or postsecondary education, vocational training, transportation, subsistence monetary assistance, re-integrative services and mental, physical and dental health care.

The need for these services is reviewed and determined by the Department of Health and Human Services or for similar services by a judge when a conviction is vacated.

Under LB 260, when the court has reversed a criminal conviction or vacated a judgment of conviction on grounds that are not inconsistent with innocence under criteria in Section 3, the court shall provide a copy of the Act to the defendant, and the defendant will acknowledge in writing that the defendant has received a copy on a form prescribed by the Supreme Court.

The Supreme Court will then enter the acknowledgment on the docket.

The Nebraska State Pardons Board will provide a copy of the Act to all persons with a full pardon for innocence, and these persons will then acknowledge in writing that they have received a copy and this copy shall be retained on file in the Board's official records.

The State Court Administrator will notify persons pardoned PRIOR to the effective date of this Act or those granted judicial relief under the criteria of Section 3 and on grounds not inconsistent with innocence of their rights under the Act.

A statute of limitations states an action must be brought within 2 years after a grant of judicial relief or pardon on grounds not inconsistent with innocence. Any action by the state to challenge the grant of judicial relief shall toll the two year period.

The bill stipulates that PRIOR to the effective date of this act, persons convicted, incarcerated and released from custody must file a claim within 3 years after the effective date of this act. If such a person did not receive a copy of the Act, a 1 year extension on the 3 year statute of limitations is provided to that person.

Under Section 12, a process is provided for persons who have obtained any post-conviction exoneration through a pardon based on innocence from an erroneous felony conviction or an order vacating or reversing an erroneous felony conviction, to petition the district court for an order to seal or expunge all records, data and forensic samples, including DNA records and profiles related to the conviction.

Principal Introducer:

Senator Kent Rogert