SENATE DOCKET, NO. 2045 FILED ON: 1/20/2017

SENATE . . . . . No. 877

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia D. Jehlen

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act updating the wrongful conviction compensation law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Patricia D. Jehlen	*Second Middlesex*	
James B. Eldridge	*Middlesex and Worcester*	*2/2/2017*
Kenneth I. Gordon	*21st Middlesex*	*2/2/2017*
Mary S. Keefe	*15th Worcester*	*2/2/2017*
Marjorie C. Decker	*25th Middlesex*	*2/3/2017*
Mike Connolly	*26th Middlesex*	*2/3/2017*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/3/2017*
Cindy F. Friedman	*Fourth Middlesex*	*10/3/2017*
Jeffrey N. Roy	*10th Norfolk*	*10/3/2017*
Jay R. Kaufman	*15th Middlesex*	*10/3/2017*

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By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 877) of Patricia D. Jehlen, James B. Eldridge, Kenneth I. Gordon, Mary S. Keefe and other members of the General Court for legislation to update the wrongful conviction compensation law. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act updating the wrongful conviction compensation law.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 1 of chapter 258D of the General Laws, as appearing in the 2014 Official Edition, is hereby amended by striking out, in line 10, the words "which tend to establish" and inserting in place thereof the words:-

consistent with.

SECTION 2. Section 1 of said chapter 258D is hereby further amended by inserting the following subsection:-

(G) A claimant shall be entitled to entitled to preliminary relief under section 5(E) of this chapter upon an initial showing that there is a substantial likelihood of success on the merits of the case.

SECTION 3. Section 3 of said chapter 258D, as so appearing, is hereby amended by inserting, after the word "actions.", in line 4, the following:-

The court shall, upon motion of the claimant, advance the proceeding for expedited discovery and a speedy trial so that it may be heard and determined with as little delay as possible.

SECTION 4. Section 4 of said chapter 258D, as so appearing, is hereby amended by inserting after the word “finance,” at line 24, the following:-

The attorney general shall not proffer and the claimant shall not agree to any arbitration or settlement or other term by which the claimant is required to make payment to the commonwealth of any amount obtained from an individual or individuals or entity or entities, by agreement, settlement or arbitration or in court or other proceedings, concerning the claimant’s conviction, civil rights violations or other related claims.

SECTION 5. Section 5 of said chapter 258D, as so appearing, is hereby amended by striking out, in lines 12 through 34, the fourth through sixth sentences and inserting in place thereof the following:-

The court may also include, as part of its judgment against the commonwealth, an order requiring the commonwealth to provide the claimant with services that are reasonable and necessary to address any deficiencies in the individual's physical and emotional condition and waive tuition and fees for the claimant for any educational services from any state or community college of the commonwealth including, but not limited to, the University of Massachusetts at Amherst and its satellite campuses.

SECTION 6. Section 5 of said chapter 258D, as so appearing, is hereby further amended by striking out, at lines 42 through 46, the ninth sentence.

SECTION 7. Section 5 of said chapter 258D is hereby further amended by inserting the following subsection:-

(E) Upon ruling in favor of a claimant moving for preliminary relief under section 1(G) of this chapter, the court shall enter a judgment against the commonwealth for the claimant for the amount of $50,000, payable in either a lump sum or as monthly payments over a timeframe no longer than 1 year. The court may also include, as part of its judgment against the commonwealth, an order requiring the commonwealth to provide the claimant with services that are reasonable and necessary to address any deficiencies in the individual's physical and emotional condition and waive tuition and fees for the claimant for any educational services from any state or community college of the commonwealth including, but not limited to, the University of Massachusetts at Amherst and its satellite campuses.

SECTION 8. Said chapter 258D is hereby further amended by striking out Section 6, and inserting in place thereof the following section:-

Section 6. Any claimant who prevails in an action authorized by this chapter shall be entitled to an award of the costs of the litigation and reasonable attorneys' fees in an amount to be fixed by the court.

SECTION 9. Section 7 of said chapter 258D is hereby amended by striking out, in lines 3 through 4, the words “either directing the expungement or sealing” and inserting in place there of the following:-

“directing the expungement”.

SECTION 10. Said section 7 of said chapter 258D, as so appearing, is hereby further amended by inserting the following new subsections:-

(E) A settlement agreement under this chapter may include an agreement to an order of expungement to be entered by the court. Such stipulation or agreement shall be filed with the court, which shall enter an order directing the expungement of those records of the claimant maintained by the department of criminal justice information services, the probation department, and the sex offender registry that directly pertain to the claimant's erroneous felony conviction, including documents and other materials and any biological samples or other materials obtained from the claimant. If the settlement does not include an agreement to an order of expungement, the claimant is entitled to seek expungement from the court.

(F) For the purposes of this chapter, expungement shall mean permanent erasure and destruction of records.

SECTION 11. Section 8 of said chapter 258D, as so appearing, is hereby amended by striking out, in line 2, the number “2” and inserting in place thereof the number:- 3.

SECTION 12. Section 8 of said chapter 258D, as so appearing, is hereby amended by striking out, in line 6, the number “2” and inserting in place thereof the number:- 3.

SECTION 13. Section 9 of said chapter 258D is hereby amended by striking out subsection (C).