

SENATE No. 1011**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 relative to compensation for victims of wrongful conviction.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	
<i>Liz Miranda</i>	<i>Second Suffolk</i>	
<i>Rebecca L. Rausch</i>	<i>Norfolk, Worcester and Middlesex</i>	<i>1/23/2023</i>
<i>Ruth B. Balser</i>	<i>12th Middlesex</i>	<i>2/3/2023</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/14/2023</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>2/14/2023</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>2/17/2023</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>2/23/2023</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>2/23/2023</i>
<i>Adam Gomez</i>	<i>Hampden</i>	<i>3/3/2023</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>3/14/2023</i>
<i>Paul W. Mark</i>	<i>Berkshire, Hampden, Franklin and Hampshire</i>	<i>4/27/2023</i>
<i>Sally P. Kerans</i>	<i>13th Essex</i>	<i>5/18/2023</i>
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>5/18/2023</i>

SENATE No. 1011

By Ms. Jehlen, a petition (accompanied by bill, Senate, No. 1011) of Patricia D. Jehlen, Liz Miranda, Rebecca L. Rausch, Ruth B. Balser and other members of the General Court for legislation relative to compensation for victims of wrongful conviction. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1055 OF 2021-2022.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act relative to compensation for victims of wrongful conviction.

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

1 SECTION 1. Section 9 of Chapter 211D of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by striking subsection (e) and inserting in place thereof the
3 following words:

4 (e) a method for the provision of social services including, but not limited to, referrals for
5 transitional services relating to the physical, social, and emotional needs of persons after release
6 from incarceration.

7 SECTION 2. Chapter 211D of the General Laws, is hereby amended by inserting after
8 section 16 the following section:

9 Section 17. The Committee shall establish, supervise and maintain a system for the
10 assignment of social service advocates to assist indigents who are eligible for transitional
11 assistance under Chapter 258D of the General Laws section 10(B).

12 SECTION 3. Section 1 of Chapter 258D of the General Laws, as so appearing, is hereby
13 amended by striking subsection (B)(ii) and inserting in place thereof the following words:-

14 (ii) those who have been granted judicial relief by a state court of competent jurisdiction,
15 on grounds consistent with the innocence of the individual as set forth in clause (vi) of
16 subsection (C), provided however that if the state court granting judicial relief does not address
17 all grounds for relief, as asserted in an appeal or a motion for post-conviction relief, and if at
18 least one of such grounds is consistent with innocence, the grounds asserted in such motion may
19 be relied upon by the claimant to satisfy the requirement that there are grounds which are
20 consistent with innocence, and if (a) the judicial relief vacates or reverses the judgment of a
21 felony conviction, and the felony indictment or complaint used to charge the individual with
22 such felony has been dismissed, or if a new trial was ordered, the individual was not retried and
23 the felony indictment or complaint was dismissed or a nolle prosequi was entered, or if a new
24 trial was ordered and the individual was found not guilty at the new trial; and (b) at the time of
25 the filing of an action under this chapter no criminal proceeding is pending or can be brought
26 against the individual by a district attorney or the attorney general for any act associated with
27 such felony conviction.

28 SECTION 4. Section 1(C) of Chapter 258D of the General Laws, is hereby amended by
29 striking the words “clear and convincing” and inserting in place thereof the following words:- “a
30 preponderance of the”.

SECTION 5. Section 1 of Chapter 258D of the General Laws, is hereby amended by striking subsection (G) and inserting in place thereof the following:-

(G) A claimant shall be entitled to preliminary relief under subsection (E) of section 5 upon filing a complaint pursuant to this chapter that avers that the claimant meets the eligibility requirements as stated in subsection (B) above.

SECTION 6. Section 3 of Chapter 258D of the General Laws, is hereby amended by adding at the end the following words:- In any event a case filed pursuant to this chapter shall be placed on a fast track.

SECTION 7. Section 5 of Chapter 258D of the General Laws, is hereby amended by striking subsection (A) and inserting in place thereof the following subsection:-

(A) Upon a finding or verdict that the claimant has met the requirements of section 1 by the requisite standard of proof and is not barred from compensation by section 2, the court or the jury shall determine the damages that shall be payable to the claimant. In making such determination, the court or jury shall consider, but not be limited to, the consideration of: the income the claimant would have earned, but for his conviction, incarceration, parole or other supervised release, or collateral consequences of his conviction or sentence; the particular circumstances of the claimant's trial and other proceedings; the length and conditions under which the claimant was incarcerated or on parole or other supervised release and; any other factors deemed appropriate under the circumstances in order to fairly and reasonably compensate the claimant. The court, in its discretion, may admit expert testimony on these or any factors. The court may include, as part of its judgment against the commonwealth, an order requiring the commonwealth to provide the claimant with services to address the individual's physical, social,

and emotional needs, including financial literacy training, and waive tuition and fees for the claimant for any educational services from a state or community college in the commonwealth including, but not limited to, the University of Massachusetts at Amherst and its satellite campuses. Once the damages have been determined, the court shall enter a judgment against the commonwealth for the claimant in an amount certain. A judgment against the commonwealth may not include punitive or exemplary damages. The damages award shall not be reduced by any transitional assistance grant or award of services, tuition or fees under Sections 5(A) or (E) or Section 10 or any award of reasonable attorney fees and costs of litigation as provided in section 6 below. Notwithstanding any general or special law to the contrary, the clerk of court shall not add to the judgment and the commonwealth shall not be liable for paying, any prejudgment or post judgment interest on damages. Subject to section 4, relative to award or settlements, the rights and remedies afforded to certain individuals by this chapter are not intended to limit in any way any rights or remedies that such individuals or other individuals may be entitled to exercise and pursue under common law or under any other state or federal statute including without limitation chapter 258 and 42 U.S.C. Sec. 1983.

SECTION 8. Section 5 of Chapter 258D of the General Laws, is hereby amended by striking subsection (E) and inserting in place thereof the following subsection:-

(E) Upon a ruling in favor of a claimant moving for preliminary relief under subsection (G) of section 1, the court shall enter an order requiring the commonwealth to provide the claimant with a transitional assistance grant of \$15,000 and services to address the claimant's physical, social, and emotional needs and waive tuition and fees for the claimant for any educational services from a state or community college in the commonwealth including, but not limited to, the University of Massachusetts at Amherst and its satellite campuses.

SECTION 9. Section 6 of Chapter 258D of the General Laws, is hereby amended by inserting after the word “chapter,” the following words:- “, or who enters into a settlement agreement with the commonwealth in connection with a claim asserted under this chapter”.

SECTION 10. Section 7 of Chapter 258D of the General Laws, is hereby amended by striking subsection (A) and inserting in place thereof the following words:-

(A) Upon the entry of a judgment in favor of a claimant under this chapter or upon settlement of a claim brought pursuant to this chapter and following a separate hearing on the matter, on motion of the claimant the court shall enter an order either directing the expungement or sealing 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 case, including documents and other materials and any samples obtained from the claimant. The commonwealth, as well as any other law enforcement agency that may be directly affected by such expungement or sealing of such records including, but not limited to, the district attorney that prosecuted the felony case against the claimant, shall be given reasonable notice and an opportunity to be heard on the issue of whether such records, documents and materials shall be so expunged or sealed. In making its determination as to whether such records, documents and materials shall be so expunged or sealed, the court shall consider the interests of privacy and justice pertaining to the claimant's erroneous felony conviction as well as the probable effect of such expungement or sealing on relevant law enforcement entities and their ability to appropriately investigate and prosecute other persons for the felony which forms the basis of the claim or other crimes that may relate to the information contained in such records, documents and materials. In addition to an order directing expungement or sealing of the record, a claimant who prevails in a claim brought under

99 this chapter by way of judgment or settlement, shall be entitled to an order and judgment, signed
100 by a Judge of the Superior Court, which shall attest that the claimant has been exonerated of the
101 subject crime or crimes.

102 SECTION 11. Section 7 (B) of Chapter 258D of the General Laws, is hereby amended by
103 inserting after the words “conducted by the court,” the following words:-

104 “on motion of the claimant”

105 SECTION 12. Chapter 258D of the General Laws, is hereby amended by inserting after
106 section 9 the following:-

107 Section 10. Transitional Assistance for Persons Released from Incarceration for
108 Erroneous Felony Convictions

109 (A) Upon a person's release from incarceration for an erroneous felony conviction as
110 defined in Section 1(B), the trial court in which the conviction originated shall order payment of
111 transitional financial assistance in the amount of \$5000 to the formerly incarcerated person.

112 (B) Upon the release from incarceration of an indigent person whose felony conviction is
113 vacated, reversed, or pardoned, the trial court in which the conviction originated shall, upon
114 motion demonstrating indigency, authorize funds for a social service advocate from the
115 Committee for Public Counsel Services’ approved vendor list to assist the formerly incarcerated
116 person in obtaining transitional services including, but not limited to, referrals for their physical,
117 social and emotional needs.