

SENATE No.

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:

Patricia D. Jehlen

DISTRICT/ADDRESS:

Second Middlesex

SENATE No.

[Pin Slip]

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 1011 OF 2023-2024.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Fourth General Court
(2025-2026)**

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 2022
2 Official Edition, is hereby amended by striking out subsection (e) and inserting in place thereof
3 the following subsection:-

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 adding the
8 following section:-

9 Section 18. 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 pursuant to chapter 258D.

12 SECTION 3. Chapter 258D of the General Laws is hereby repealed and replaced with
13 the following chapter:-

14 Section 1. (a) There shall be within the office of the attorney general a division of
15 erroneous felony convictions compensation that shall administer the provisions of this chapter,
16 referred to throughout this chapter as the division. The attorney general shall designate a
17 program director for the division who shall be a licensed attorney with experience in criminal
18 law and erroneous convictions. The director may appoint and remove, subject to the approval of
19 the attorney general, such investigative, legal and clerical or other staff as the work of the
20 division requires. The director shall prepare an annual report which shall include the number of
21 applications received, the number of applications granted and denied, and the number of hearings
22 held before the division director or its staff. The director shall file such report annually to the
23 general court and governor.

24 (b) The program director may promulgate rules and regulations pursuant to chapter 30A
25 as may be necessary to carry out the provisions of this chapter.

26 (c) The program director may apply for and receive sums which may be transmitted to
27 the erroneous felony convictions compensation fund maintained by the treasurer and for any
28 other such funds as may become available to administer the requirements of this chapter.

29 Section 2. (a) A person shall be eligible to receive compensation and services through an
30 administrative claims process for erroneous felony conviction if:

- 31 (i) the person was convicted of an offense classified as a felony;
- 32 (ii) the person did not plead guilty to the offense charged, or to any lesser included
33 offense, unless such guilty plea was withdrawn, vacated or nullified by operation of law on a
34 basis other than a claimed deficiency in the plea warnings required by section 29 D of chapter
35 278;
- 36 (iii) the person was sentenced to incarceration for not less than 1 year in state prison or
37 a house of correction as a result of the conviction and has served all or any part of such sentence;
38 the person was incarcerated on the basis of the conviction for the offense that is the subject of the
39 claim; and
- 40 (iv) (A) the person has been granted a full pardon for such offense pursuant to section
41 152 of chapter 127, and the governor states that the pardon was granted because there is a
42 reasonable possibility that the individual is innocent; or
- 43 (B) (i) the person has been granted judicial relief by a state court of competent
44 jurisdiction on grounds specific to the person's case, and that judicial relief vacates or reverses
45 the judgment of a felony conviction; and
- 46 (a) the felony indictment or complaint used to charge the person with such felony has
47 been dismissed; or
- 48 (b) a new trial was ordered, the person was not retried and the felony indictment or
49 complaint was dismissed, or a nolle prosequi was entered; or (c) a new trial was ordered and the
50 person was found not guilty at the new trial; and
- 51 (ii) 60 days have passed since the judgment of conviction was reversed or vacated, and

52 (a) the district attorney or the attorney general has not filed any felony charges against the
53 person for any act associated with the felony conviction that is the subject of the claim, or

54 (b) if the district attorney or attorney general did file felony charges against the person for
55 an act associated with the felony conviction that is the subject of the claim, those felony charges
56 were dismissed, a nolle prosequi was entered, or the defendant was found not guilty at the new
57 trial.

58 (b) For the purposes of this chapter “conviction” or “convicted” shall include an
59 adjudication as a youthful offender, if such adjudication resulted in the youthful offender’s
60 incarceration in a house of correction or state prison.

61 (c) Pursuant to this section, the committee for public counsel services shall appoint
62 counsel for any individual who is indigent and eligible to apply for relief under this chapter.

63 (d) A person shall not be entitled to compensation from the commonwealth for any
64 incarceration or portion thereof, which was or will be credited toward a sentence for, or during
65 which the claimant was also serving a concurrent sentence for, the conviction of a lesser included
66 offense or of another offense that does not itself meet the eligibility requirements of section 2. In
67 those cases in which only a pardon from the governor is used to support a claim for
68 compensation brought under this chapter, the subsequent exercise of the governor’s authority to
69 revoke such pardon pursuant to section 150 of chapter 127 shall immediately negate the validity
70 of any such claim.

71 Section 3. A person who meets the eligibility requirements of section 2 may present an
72 administrative claim for such compensation and services to the division. A person eligible under
73 section 2 shall be referred to throughout this chapter as the claimant.

74 (a) The claimant shall attach to the claim:

75 (i) a sworn statement asserting innocence;

76 (ii) certified copies of the mittimus that shows the claimant's sentence to incarceration
77 and the warrants necessary to grant a pardon pursuant to section 152 of chapter 127; or criminal
78 case docket entries or documents related thereto in the case of judicial relief, including but not
79 limited to a copy of the judicial decision and any relevant pleadings that support the claim for
80 post-conviction relief; and

81 (iii) a statement from the department of correction or other authority verifying the length
82 of incarceration.

83 For the purposes of this section, a claim for compensation or services shall not be deemed
84 to have been submitted until all documents required of the claimant by the division have been
85 submitted.

86 (b) The division shall have 30 days after the division receives the documents a claimant
87 has initially transmitted in the form of a claim to notify the claimant in writing of any omissions
88 or deficiencies in the claim submission and provide the claimant with opportunity to complete
89 the claim submission and correct such omissions or deficiencies. Any claim not completed by the
90 expiration of the limit included in Section 5 shall be deemed unsupported and closed.

91 (c) If the division determines a claimant's eligibility solely on the basis of the claim and
92 supporting documents, the division shall order immediate payment to the claimant under section
93 4 without a hearing.

94 (d) If the division determines that a claim and supporting documents are not sufficient to
95 establish eligibility under section 2 , the division shall hold a hearing on the claim. The hearing
96 shall be set to occur within 60 days after the date upon which the claim was submitted. Prior to
97 the hearing, the division shall notify the claimant in writing of the deficiencies in the claim
98 submission that necessitates the hearing and allow for the submission of any information the
99 claimant offers for eligibility. The division may cancel the hearing if the claimant's further
100 submissions establish eligibility, and the division shall issue such decision. At the hearing, the
101 claimant shall have the burden of establishing by a preponderance of the evidence that such
102 person meets the eligibility requirements of section 2.

103 (e) The division shall approve or reject a claim for compensation or services filed within
104 60 days after the hearing. The division shall provide written notice of its decision to the person
105 who filed the petition. The written notice shall include any amount due to the claimant, as
106 specified in section 4, and any services to be provided to the claimant.

107 (f) With respect to a claim that involves an offense prosecuted by the attorney general's
108 office, the attorney general shall duly appoint, pursuant to chapter 12, a special assistant attorney
109 with experience in criminal law and erroneous convictions to administer the provisions of this
110 chapter. The attorney general's office shall in all respects treat such claims as presenting an
111 unwaivable conflict of interest.

112 Section 4. (a) If the division determines that the claimant has established eligibility under
113 section 2 by a preponderance of the evidence, the division shall order the payment to such person
114 of compensation for such erroneous felony conviction.

115 (b) Except as limited by the provisions of this chapter, a person determined to be eligible
116 for compensation shall receive \$115,000 per year of incarceration, and not less than \$57,500 for
117 each year the person was on parole or probation, or for each year the person was required to
118 register as a sex offender, whichever period of time was greater.

119 (c) These awards shall be adjusted for inflation using the Consumer Price Index for all
120 urban consumers. This adjustment shall not result in a reduction of the amount calculated in the
121 prior year.

122 (d) Any partial year of incarceration for the erroneous felony conviction shall be prorated
123 in order to compensate only for the portion of such year in which such person was incarcerated.

124 (e) If a person is determined to be eligible for compensation under section 2, the person
125 shall also be eligible for other services, including:

126 (i) waiver of tuition and fees for any educational services from a state or community
127 college in the commonwealth including, but not limited to, the University of Massachusetts at
128 Amherst and its satellite campuses;

129 (ii) health care benefits available under MassHealth, if the person resides in
130 Massachusetts; and

131 (iii) reentry planning, transitional assistance, housing assistance.

132 (f) The commonwealth shall not be liable to levy of execution on any real or personal
133 property to satisfy an order of payment pursuant to this chapter. Any payment ordered by the
134 division pursuant to this chapter shall be paid from funds appropriated by the general court for
135 such purpose. Payments by the commonwealth under this chapter are made to remedy the

136 claimant's erroneous felony conviction and subsequent injury of erroneous incarceration. Only
137 those portions of a payment that are paid or retained as compensation for services in bringing a
138 claim under this chapter by an attorney representing the claimant pursuant to a signed agreement
139 with the claimant or otherwise shall be subject to taxation by the commonwealth.

140 Section 5. A claim for compensation brought under this chapter shall be filed within 3
141 years after either the grant of a pardon or the grant of judicial relief and satisfaction of other
142 conditions described in section 2. Any action by the commonwealth challenging or appealing the
143 grant of such judicial relief shall toll the 3-year period. Every claim brought pursuant to this
144 chapter that is not filed within the time required by this section is forever barred from
145 consideration by the division and the courts of the commonwealth.

146 Section 6. (a) If a claimant is aggrieved by the final decision of the division under
147 subsection (e) of section 3, the claimant may initiate an appeal with the division of administrative
148 law appeals, hereinafter referred to as "DALA" within 30 days after the claimant receives written
149 notice of the decision under said subsection (e).

150 (b) The presiding officer or a designee from DALA shall, in response to the filing of the
151 action, within 30 days, file in such court a copy of the division's decision and the claim
152 submitted by the claimant.

153 (c) At the claimant's administrative hearing, the presiding officer or a designee from
154 DALA shall conduct a de novo review of the decision of the division. The administrative hearing
155 shall be conducted in accordance with the standard adjudicatory rules of practice and procedure
156 pursuant to 801 CMR 1.00, and may include the presentation of additional records, evidence, or

157 live testimony. The claimant shall be afforded all rights under the federal Administrative
158 Procedure Act and chapter 30A.

159 (d) At the conclusion of the administrative hearing, the presiding officer or a designee
160 from DALA may affirm the decision of the division, set aside or modify the decision or compel
161 any action unlawfully withheld or unreasonably delayed. The presiding officer or a designee
162 from DALA shall consider whether the claimant is entitled to additional damages, including
163 attorney's fees, if it determines that the division denied the claimant's application in error.

164 (e) The division shall retain the authority to make a settlement offer to the claimant at any
165 point subsequent to the initiation of the claim.

166 Section 7. (a) Within 30 days of a person's release from incarceration for an erroneous
167 felony conviction, the trial court in which the conviction originated shall, upon a motion
168 demonstrating eligibility for compensation under section 2, order payment of transitional
169 financial assistance in the amount of \$15,000 to the formerly incarcerated person. These funds
170 shall be payable from the director as under section 1 in the same manner as an award under
171 section 4.

172 (b) Upon the release from incarceration of an indigent person whose felony conviction is
173 vacated, reversed or pardoned, the trial court in which the conviction originated shall, upon
174 motion demonstrating indigency, authorize funds for a social service advocate from the
175 committee for public counsel services' approved vendor list to assist the formerly incarcerated
176 person in obtaining transitional services including, but not limited to, referrals for their physical,
177 social and emotional needs.

178 (c) No person who received funds or services pursuant to this section shall be required to
179 repay such funds or the costs of such services if the person is subsequently determined to be
180 ineligible for compensation pursuant to sections 3 and 6.

181 (d) Funds and the cost of services provided under this section shall not offset any
182 compensation awarded pursuant to section 4.

183 SECTION 4. For 1 year after the effective date of this act, any person who meets the
184 eligibility requirements of this act who has timely filed a claim for compensation under the
185 previous chapter 258D of the General Laws may proceed with that claim or may file an
186 administrative claim for compensation under this act and a notice of dismissal of the previously
187 filed claim.