

House Bill 230

By: Representatives Hugley of the 136<sup>th</sup>, Abrams of the 89<sup>th</sup>, Allison of the 8<sup>th</sup>, Harbin of the 122<sup>nd</sup>, Mayo of the 84<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 4 of Chapter 5 of Title 28 and Code Section 35-3-37 of the Official Code  
2 of Georgia Annotated, relating to the Claims Advisory Board and review of individual's  
3 criminal history record information, definitions, privacy considerations, and inspections,  
4 respectively, so as to provide for compensation of persons wrongfully convicted and  
5 imprisoned; to provide for legislative findings; to provide for definitions; to provide for  
6 applicability; to provide for a short title; to provide for recommendations by the board as to  
7 payment of compensation; to provide for procedural rules; to provide for claims for  
8 compensation; to provide for standards for compensation; to provide for limitations of  
9 claims; to provide for exceptions; to provide for reports on claims being transmitted to the  
10 executive and legislative branch; to provide for record restriction; to provide for related  
11 matters; to repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 style="text-align:center">**SECTION 1.**

14 The General Assembly finds that due to advancements in science and technology, wrongfully  
15 convicted persons are being discovered with a higher frequency than in the past. The  
16 General Assembly is sympathetic to the tremendous burden a wrongfully convicted person  
17 faces and further finds that there is a need to create a uniform method for fairly and  
18 reasonably compensating wrongfully convicted persons.

19 style="text-align:center">**SECTION 2.**

20 Article 4 of Chapter 5 of Title 28 of the Official Code of Georgia Annotated, relating to the  
21 Claims Advisory Board, is amended by revising Code Section 28-5-60, relating to the  
22 creation, membership, and representation of members by deputies or other designated  
23 employees, as follows:

24 "28-5-60.

25 (a) As used in this article, the term:

26 (1) 'Board' means the Claims Advisory Board.

27 (2) 'The state or any of its departments or agencies' includes any department, agency,  
 28 bureau, or commission of state government but does not include state authorities or any  
 29 county or municipal department, agency, bureau, commission, or authority.

30 ~~(a)~~(b) There is created the Claims Advisory Board, ~~hereinafter called the board,~~ to which  
 31 shall be composed of the Secretary of State, who shall be the ~~chairman~~ chairperson, the  
 32 commissioner of human services, the commissioner of corrections, and the commissioner  
 33 of transportation. Whenever the board takes any official action authorized under the law  
 34 or duly promulgated rules and regulations, three of the members shall constitute a quorum;  
 35 ~~however, any of those individuals named above may be represented by a deputy or other~~  
 36 ~~designated employee;~~ and any such action shall be valid if any two of the remaining three  
 37 ~~individuals~~ members are present during such action. Any board member may be  
 38 represented by a deputy or other designated employee, and such individual's actions shall  
 39 have the same effect as a board member's actions.

40 ~~(b)~~(c) ~~The Claims Advisory Board is~~ board shall be assigned to the Secretary of State for  
 41 administrative purposes only as prescribed in Code Section 50-4-3."

42 **SECTION 3.**

43 Said article is further amended by repealing in its entirety Code Section 28-5-60.1, relating  
 44 to "the state or any of its departments or agencies" defined.

45 **SECTION 4.**

46 Said article is further amended by adding a new Code section to Part 2, relating to claims  
 47 against the state or departments or agencies, to read as follows:

48 "28-5-87.

49 The provisions of this part shall not apply to a claim against the state or any of its  
 50 departments or agencies that may be made pursuant to Part 4 of this article."

51 **SECTION 5.**

52 Said article is further amended by adding a new part to read as follows:

53 "Part 4

54 28-5-110.

55 This part shall be known and may be cited as the 'Innocent Persons' Compensation Act.'

56 28-5-111.

57 The Claims Advisory Board shall have authority to consider and make recommendations  
58 to the General Assembly concerning payment of compensation to any individual who has  
59 been convicted of and imprisoned for one or more crimes which he or she did not commit.  
60 The board may appoint a special master to take testimony, supervise or conduct necessary  
61 investigations, and report to the board, but the ultimate recommendation on any claim to  
62 the General Assembly shall be made only by the board.

63 28-5-112.

64 (a) In order to be eligible for compensation under this part, the claimant shall establish by  
65 clear and convincing evidence to the board that:

66 (1) The claimant was convicted of one or more crimes and was sentenced to a term of  
67 imprisonment;

68 (2) The claimant has served all or part of the sentence of imprisonment;

69 (3) The claimant proclaims his or her innocence even when he or she entered a plea of  
70 guilty, so long as such plea was entered pursuant to *North Carolina v. Alford*, 400 U.S.  
71 25 (1970); and

72 (4) The claimant's wrongful conviction has been established by:

73 (A) An order reversing or vacating the claimant's conviction, and the claimant's  
74 indictment or accusation has been dismissed or nolle prossed; or

75 (B) Issuance of an order for a new trial, and the claimant's indictment or accusation has  
76 been dismissed or nolle prossed.

77 (b) A court granting judicial relief as contemplated by this Code section, on or after July  
78 1, 2015, shall provide a copy of this part to the individual seeking such relief. The  
79 individual shall be required to acknowledge receipt of a copy of this part in writing on a  
80 form established by the Administrative Office of the Courts. Such acknowledgment shall  
81 be entered on the docket by the court granting such relief and shall be admissible in any  
82 proceeding filed by a claimant under this part.

83 28-5-113.

84 (a) No claim for the payment of compensation under this part shall be considered by the  
85 board unless a notice of claim has been filed with the board within three years after the date  
86 the claimant's eligibility has been established as set forth in Code Section 28-5-112 or  
87 within three years of July 1, 2015, whichever occurs later.

88 (b) The board shall provide forms to be used in filing a notice of claim and shall make  
89 them available for such purpose. When a notice of claim is filed, the board shall inform  
90 the individual filing the notice, in writing, of the information it will require in order to take

91 action on the claim. Such information shall include documentation supporting the  
92 claimant's eligibility for compensation. The board may request the claimant submit any  
93 other supporting information that it deems is necessary. The claimant may request a  
94 hearing before the board.

95 (c) Once a claimant has submitted a notice of claim and any information deemed necessary  
96 by the board, the chairperson, after consultation with the other members of the board, shall  
97 set a time for acting on the claim and shall set a date for a hearing if the board determines  
98 that a hearing is necessary. In the event a hearing is to be held, the claimant shall be  
99 notified of the date, time, and place of the hearing and may present evidence at such  
100 hearing. Such other persons as the board deems necessary shall likewise be notified and  
101 allowed to present evidence.

102 (d) Proceedings before the board shall be governed by rules established by the board, and  
103 such rules shall emphasize, to the greatest extent possible, the informality of proceedings.  
104 A claimant shall not be required to be represented or accompanied by an attorney.

105 28-5-114.

106 (a) In making its recommendation to the General Assembly, the board shall:

107 (1) Formulate standards for uniform application in recommending compensation;

108 (2) If the claimant was imprisoned for four years or less, include \$50,000.00 per year for  
109 each year of imprisonment; such compensation shall be payable in a lump sum award;

110 (3) If the claimant was imprisoned for more than four years, include \$50,000.00 per year  
111 for each year of imprisonment; such compensation shall be payable in an initial lump sum  
112 of at least \$50,000.00, and the remaining balance shall be in the form of annuity contract  
113 funded by the board on behalf of the claimant, provided that:

114 (A) Such annuity contract shall be secured from an insurance company licensed under  
115 the laws of this state and whose claims-paying ability is rated as superior or excellent  
116 by at least two nationally recognized rating services; and

117 (B) Such annuity contract, by its terms, cannot be sold, transferred, assigned,  
118 discounted, or used as security for a loan;

119 (4) If requested by the claimant, provide a voucher for tuition for up to 120 hours and  
120 any ancillary student fees for any undergraduate program of any Georgia public  
121 postsecondary institution, including all four-year and two-year colleges and universities  
122 and institutions of the University System of Georgia and the Technical College System  
123 of Georgia; provided, however, that this shall not be construed to guarantee acceptance  
124 of the claimant into any such public postsecondary institution nor prohibit the claimant  
125 from participating in any other program of financial assistance for postsecondary  
126 education. The board shall coordinate with the Board of Regents of the University

127 System of Georgia and the State Board of the Technical College System of Georgia to  
128 develop the form of the voucher; and

129 (5) Include reasonable attorney's fees and other expenses incurred by the claimant in  
130 connection with all associated criminal proceedings and appeals and, if applicable, in  
131 connection with obtaining the claimant's discharge from confinement.

132 (b) In calculating time of imprisonment, the board shall include any time a claimant spent  
133 awaiting trial; provided, however, that a claimant shall not be entitled to compensation  
134 under this part for any portion of a sentence spent incarcerated during which the claimant  
135 was also serving a concurrent sentence for another crime to which this part does not apply.  
136 A pro rata amount for any portion of each year of imprisonment shall be awarded.

137 (c) In making its recommendation to the General Assembly, the board may recommend  
138 payment of compensation:

139 (1) To or for the benefit of the claimant; or

140 (2) In the case of death of the claimant, to or for the benefit of any one or more of the  
141 heirs at law of the claimant who, at the time of the claimant's demise, were dependent  
142 upon the claimant for more than one-half of their support.

143 (d) The board shall prepare a statement including its findings, its determination of the  
144 merits of the claim, its recommendation as to the payment of the claim, and such other  
145 information as the board deems advisable; and transmit such statement to the chairperson  
146 of the House Committee on Appropriations. Such chairperson shall present such  
147 information to the full committee if a resolution seeking compensation is filed. The board's  
148 recommendation shall be advisory only. The General Assembly shall act on such  
149 recommendation in accordance with law and the rules of the House of Representatives and  
150 Senate for action upon compensation resolutions.

151 (e) When a notice of claim is filed on or before the fifteenth day of October, the board  
152 shall make its recommendation on such claim on or before the fifth day of the subsequent  
153 year's legislative session. If the notice of claim is filed after the fifteenth day of October,  
154 the board shall make its recommendation on or before the thirty-first day of December of  
155 the following year.

156 28-5-115.

157 (a) The General Assembly may by resolution appropriate money for payment of a claim  
158 for compensation upon the recommendation of the board.

159 (b) Any resolution relative to a claim made pursuant to this part must be introduced in the  
160 House of Representatives on or before the tenth day of any regular session. Such  
161 resolution shall not be filed until the board has made a recommendation on a claim. If the

162 board's recommendation occurs subsequent to the fifth day of a regular session, a resolution  
 163 shall be filed at the next regular session.

164 (c) Any resolution filed pursuant to this part shall be referred by the Speaker of the House  
 165 to the House Committee on Appropriations.

166 (d) Any award of compensation made by the General Assembly shall not be:

167 (1) Subject to any monetary limitation of damages awarded in civil actions;

168 (2) Subject to state income taxes; provided, however, that the award of attorney's fees  
 169 shall be subject to taxation; or

170 (3) Offset by any expense incurred by this state or any political subdivision thereof for  
 171 expenses related to the claimant's incarceration.

172 (e) The General Assembly waives the sovereign immunity of this state for the purpose of  
 173 authorizing the payment of claims against this state pursuant to the authority of this part.

174 28-5-116.

175 Not later than January 5 of each year, the board shall prepare and transmit to the Governor,  
 176 the Lieutenant Governor, the Speaker of the House of Representatives, the chairperson of  
 177 the Senate Appropriations Committee, and the chairperson of the House Committee on  
 178 Appropriations a report including the name of each claimant with a claim pending pursuant  
 179 to this part, a brief description of the facts surrounding such claim, the amount of  
 180 compensation recommended, and the board's reasons for its recommendation.

181 28-5-117.

182 (a) Any claimant who receives compensation under this part shall not bring any action  
 183 involving the same subject matter, including an action involving the claimant's arrest,  
 184 conviction, or length of confinement, against this state.

185 (b) This part shall not affect any liability of this state or of its employees to a claimant's  
 186 cause of action that is not based on the wrongful conviction, including, but not limited to,  
 187 a cause of action that arises out of circumstances occurring during the claimant's  
 188 incarceration."

189 **SECTION 6.**

190 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of  
 191 individual's criminal history record information, definitions, privacy considerations, and  
 192 inspections, by revising subparagraph (h)(2)(A) as follows:

193 "(A) Except as provided in subsection (i) of this Code section, all charges were  
 194 dismissed or nolle prossed including offenses occurring before July 1, 2013;"

195

**SECTION 7.**

196 All laws and parts of laws in conflict with this Act are repealed.