

2019 Regular Session

HOUSE BILL NO. 492

BY REPRESENTATIVES LARVADAIN, AMEDEE, ARMES, BRASS, TERRY BROWN, CARMODY, CARPENTER, GARY CARTER, COX, DUPLESSIS, GAINES, GLOVER, JIMMY HARRIS, LANCE HARRIS, HOWARD, JAMES, JEFFERSON, JENKINS, MIKE JOHNSON, ROBERT JOHNSON, JORDAN, TERRY LANDRY, LYONS, MARCELLE, MARINO, MCFARLAND, MOORE, JAY MORRIS, NORTON, PIERRE, SEABAUGH, AND SMITH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/PROCEDURE: Provides relative to the compensation of persons wrongfully convicted

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AN ACT

To amend and reenact R.S. 15:572.8(H) and (N)(1) and (3) and to repeal Code of Civil Procedure Article 87, relative to compensation for wrongful conviction and imprisonment; to provide relative to the compensation received by the petitioner for the loss of life opportunities resulting from the time spent incarcerated; to provide relative to the purposes for which a person who is wrongfully convicted may receive compensation for loss of life opportunities; to provide relative to the Innocence Compensation Fund; to provide relative to the authority of the Louisiana Commission of Law Enforcement and Administration of Criminal Justice in this regard; to provide relative to the venue in which an application for compensation based upon wrongful conviction and imprisonment may be filed; to provide relative to changes made to R.S. 15:572.8(H)(1) and (2)(introductory paragraph) in Section 4 of Act No. 612 of the 2018 Regular Session of the Legislature and the repeal of R.S. 15:572.8(N) and (S) in Section 22 of Act No. 612 of the 2018 Regular Session of the Legislature; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. R.S. 15:572.8(H) and (N)(1) and (3) are hereby amended and reenacted
3 to read as follows:

4 §572.8. Compensation for wrongful conviction and imprisonment; petition process;
5 compensation; proof; assignment of powers and duties

6 * * *

7 H.(1) After a contradictory hearing with the attorney general, the court shall
8 render a decision as soon as practical. If, from its findings of fact, the court
9 determines that the petitioner is entitled to compensation because he is found to be
10 factually innocent of the crime of which he was convicted, it shall determine the
11 amount of compensation due in accordance with the provisions of this Section, and
12 it shall order payment to the petitioner from the Innocence Compensation Fund
13 which shall be created specifically for the administration of awards under this
14 Section.

15 (2) Compensation for the physical harm and injury suffered by the petitioner
16 shall be calculated at a rate of twenty-five thousand dollars per year incarcerated, not
17 to exceed a maximum total amount of two hundred fifty thousand dollars, ~~for the~~
18 ~~physical harm and injury suffered by the petitioner~~ to be paid at a rate of twenty-five
19 thousand dollars annually. ~~As~~

20 (3) In addition to the compensation provided in Paragraph (2) of this
21 Subsection, the court shall order that the petitioner receive eighty thousand dollars
22 total in compensation for the loss of life opportunities resulting from the time spent
23 incarcerated, the court shall also review requests for payment and order payment, not
24 to exceed eighty thousand dollars, which the court finds reasonable and appropriate
25 and to cover expenses relating to job skills training, education, housing, and any
26 other services the wrongfully convicted person may need. Any petitioner who has
27 been awarded compensation pursuant to the provisions of this Paragraph and who
28 has received a portion of the compensation prior to August 1, 2019, may file a
29 petition prior to August 1, 2020, seeking the remainder of the compensation, not to

1 exceed eighty thousand dollars total, authorized by the provisions of this Paragraph
2 or be forever barred from filing the petition. Compensation ordered pursuant to the
3 provisions of this Paragraph shall be paid from the Innocence Compensation Fund
4 to:

5 (a) ~~Pay the costs of job-skills training for three years.~~

6 (b) ~~Pay for appropriate medically necessary medical and counseling services~~
7 ~~for six years to the petitioner at a mutually agreed upon location at no charge to the~~
8 ~~petitioner, but only if such services are not available from a state or other public~~
9 ~~facility, clinic, or office that is reasonably accessible to the petitioner.~~

10 (c)(i) ~~Provide expenses for tuition and fees at any community college or unit~~
11 ~~of the public university system of the state of Louisiana.~~

12 (ii) ~~State aid in accordance with this Subparagraph shall include assistance~~
13 ~~in meeting any admission standards or criteria required at any of the applicable~~
14 ~~institutions, including but not limited to assistance in satisfying requirements for a~~
15 ~~certificate of equivalency of completion of secondary education and assistance in~~
16 ~~completing any adult education program or courses.~~

17 (iii) ~~The right to receive aid in accordance with this Subparagraph shall be~~
18 ~~for ten years after the release of a petitioner who qualifies for aid. State education~~
19 ~~aid shall continue for up to a total of five years of aid when initiated within the ten-~~
20 ~~year period or until the degree or program for which the petitioner is authorized is~~
21 ~~completed, whichever is less, as long as the petitioner makes satisfactory progress~~
22 ~~in the courses or program in which he is enrolled. Aid shall be available for~~
23 ~~completion of any degree or program which the petitioner chooses and which is~~
24 ~~available from the applicable institutions.~~

25 (3)(4) In determining the compensation owed to the petitioner, the court may
26 not deduct any expenses incurred by the state or any of its political subdivisions in
27 connection with the arrest, prosecution, conviction, and imprisonment of the
28 petitioner for a crime of which the board finds he was factually innocent, including
29 expense for food, clothing, shelter, and medical services.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 492 Reengrossed

2019 Regular Session

Larvadain

Abstract: Provides relative to compensation of persons who are wrongfully convicted for loss of life opportunities and other expenses, and provides relative to the Innocence Compensation Fund.

Present law provides that any person who has served, in whole or in part, a sentence of imprisonment under the laws of this state for a crime for which he was convicted is entitled to receive compensation if the conviction has been reversed or vacated and the person has proved by clear and convincing evidence that he is factually innocent of the crime for which he was convicted.

In this regard, present law provides that if, after a contradictory hearing with the attorney general, the court determines that the petitioner is entitled to compensation because he is found to be factually innocent of the crime for which he was convicted, the court shall order that the petitioner receive the following:

- (1) Compensation for the physical harm and injury suffered by the petitioner in an amount equal to \$25,000 per year incarcerated, not to exceed a maximum total amount of \$250,000. Such compensation is payable from the Innocence Compensation Fund at a rate of \$25,000 annually.
- (2) Compensation for the loss of life opportunities resulting from the time spent incarcerated. In this regard, the court shall review requests for payment and order payment, not to exceed \$80,000, which the court finds reasonable and appropriate. Such compensation shall be paid from the Innocence Compensation Fund and only for the following purposes:
 - (a) The costs of job-skills training for three years.
 - (b) Appropriate medically necessary medical and counseling services for six years.
 - (c) Tuition, fees, and certain other expenses associated with attendance at any community college or unit of the public university system of the state of Louisiana for ten years after the release of the petitioner.

Proposed law amends present law to require the court, upon determining that the petitioner is factually innocent of the crime for which he was convicted, to order compensation for the physical harm and injury suffered by the petitioner at the rate set forth in present law, and shall also order that the petitioner receive \$80,000 in compensation for the loss of life opportunities and to cover expenses relating to job skills training, education, housing, and any other services such wrongfully convicted person may need. Proposed law removes from present law the criteria for each category of compensation and the limitations placed on the number of years for which the petitioner may receive compensation for loss of life opportunities.

Proposed law further provides that any petitioner who has been awarded compensation and who has received a portion of such compensation prior to Aug. 1, 2019, may petition the court by Aug. 1, 2020, to seek the remainder of the compensation, not to exceed \$80,000, or be forever barred from filing such petition.

Present law establishes in the state treasury a special fund, to be known as the Innocence Compensation Fund, administered by the La. Commission on Law Enforcement and Administration of Criminal Justice (LCLE). Present law provides that the fund shall be used exclusively to compensate petitioners who are found to be factually innocent of the crime for which they were convicted. Present law further authorizes LCLE to adopt rules for the purpose of administering the fund and implementing the provisions of present law.

Act No. 612 of the 2018 R.S., eliminates the present law Innocence Compensation Fund and LCLE's rulemaking authority with regard to the fund effective July 1, 2020, and upon elimination of the fund, provides for the payment of compensation awarded pursuant to present law from the state general fund.

Proposed law provides that Act No. 612 of the 2018 R.S., that eliminates the present law Innocence Compensation Fund and the authority of LCLE to administer the fund effective July 1, 2020, shall not go into effect and that the provisions of proposed law shall control.

Proposed law further repeals a provision of present law (C.C.P. Art. 87) that conflicts with the present law (R.S. 15:572.8(C)) requirement that petitions for wrongful conviction be filed in the district court in which the original conviction was obtained.

(Amends R.S. 15:572.8(H) and (N)(1) and (3); Repeals C.C.P. Art. 87)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Add that any petitioner who has been awarded compensation and who has received a portion of such compensation prior to Aug. 1, 2019, may petition the court by Aug. 1, 2020, to seek the remainder of the compensation, not to exceed \$80,000, or be forever barred from filing such petition.