

HOUSE No. 1752

The Commonwealth of Massachusetts

PRESENTED BY:

Jeffrey N. Roy

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:	DATE ADDED:
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>	<i>1/18/2023</i>

HOUSE No. 1752

By Representative Roy of Franklin, a petition (accompanied by bill, House, No. 1752) of Jeffrey N. Roy relative to compensation for victims of wrongful conviction. The Judiciary.

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”.

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

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

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

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

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

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

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

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

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

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

81 (A) Upon the entry of a judgment in favor of a claimant under this chapter or upon
82 settlement of a claim brought pursuant to this chapter and following a separate hearing on the
83 matter, on motion of the claimant the court shall enter an order either directing the expungement
84 or sealing of those records of the claimant maintained by the department of criminal justice
85 information services, the probation department, and the sex offender registry that directly pertain
86 to the claimant's erroneous felony conviction case, including documents and other materials and
87 any samples obtained from the claimant. The commonwealth, as well as any other law
88 enforcement agency that may be directly affected by such expungement or sealing of such
89 records including, but not limited to, the district attorney that prosecuted the felony case against
90 the claimant, shall be given reasonable notice and an opportunity to be heard on the issue of
91 whether such records, documents and materials shall be so expunged or sealed. In making its
92 determination as to whether such records, documents and materials shall be so expunged or
93 sealed, the court shall consider the interests of privacy and justice pertaining to the claimant's
94 erroneous felony conviction as well as the probable effect of such expungement or sealing on
95 relevant law enforcement entities and their ability to appropriately investigate and prosecute
96 other persons for the felony which forms the basis of the claim or other crimes that may relate to
97 the information contained in such records, documents and materials. In addition to an order
98 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.