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ASSEMBLY BILL NO. 104—ASSEMBLYMAN YEAGER

FEBRUARY 8, 2021

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to wrongful convictions.  
(BDR 3-586)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

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AN ACT relating to actions concerning persons; exempting certain records concerning a civil action for wrongful conviction from the requirement to be sealed; exempting the State from provisions governing offers of judgment in an action for wrongful conviction; exempting a judgment for wrongful conviction from interest on certain judgments; clarifying the period of time used to calculate the amount of a judgment for wrongful conviction; limiting the amount of monetary compensation which may be awarded to a person who has previously obtained an award of monetary compensation or a settlement from this State or other governmental entity; requiring a person who previously received compensation for a wrongful conviction, and who subsequently obtains an award of monetary compensation or a settlement from this State for the wrongful conviction, to reimburse the State for the amount previously obtained; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

- 1 Existing law requires a court to seal all records of a conviction upon entry of a
- 2 certificate of innocence, if a person is successful in a wrongful conviction action.
- 3 (NRS 41.910) **Section 1** of this bill exempts records of a conviction maintained by
- 4 the parties concerning a civil action for wrongful conviction from this requirement.
- 5 **Section 1** also specifies that such records maintained by the parties must remain
- 6 confidential.
- 7 Under existing law, the State waives its immunity from liability in civil actions
- 8 brought for a wrongful conviction and consents to have its liability determined in



9 accordance with the rules of law governing civil actions against natural persons and  
10 corporations. (NRS 41.920) Existing law authorizes a party in a civil action to serve  
11 an offer of judgment upon another party prior to trial and subjects the offeree to  
12 certain penalties if the offeree rejects the offer and fails to obtain a more favorable  
13 judgment at trial. (NRS 17.117) Existing law also provides that a judgment draws  
14 interest from the time of service of the summons and complaint until the judgment  
15 is satisfied. (NRS 17.130) **Section 2** of this bill exempts the State from the  
16 requirements of the provisions governing offers of judgment in civil actions  
17 brought for a wrongful conviction. **Section 2** also exempts a judgment for a  
18 wrongful conviction from provisions governing interest on judgments.

19 Existing law requires a court to award a person who has obtained a certificate  
20 of innocence in a wrongful conviction action a certain amount of monetary  
21 compensation for each year of imprisonment. (NRS 41.950) **Section 3** of this bill  
22 establishes that the period of time used to calculate an award of monetary  
23 compensation begins on the date the person was wrongfully convicted and  
24 imprisoned and ends on the date the wrongful conviction was reversed or the  
25 person was released from prison, whichever is earlier.

26 Existing law limits an award of monetary compensation for a person who has  
27 obtained a certificate of innocence in an action for wrongful conviction and who  
28 has previously obtained an award or settlement from the State for the wrongful  
29 conviction to the amount provided in NRS 41.950, less the amount previously  
30 obtained. (NRS 41.960) **Section 4** of this bill expands the applicability of this  
31 limitation to awards and settlements for the wrongful conviction obtained from this  
32 State or any other governmental entity. Existing law requires a person who was  
33 successful in his or her action against the State for a wrongful conviction pursuant  
34 to NRS 41.900, and who subsequently obtains an award or settlement for  
35 the wrongful conviction that exceeds the amount previously obtained, to reimburse  
36 the State for the amount previously obtained. (NRS 41.960) **Section 4** expands the  
37 application of this requirement to compensation received from the State whether  
38 through an award of damages or a settlement. **Section 4** also exempts awards for  
39 certain items including, without limitation, payment for tuition, health care and  
40 counseling services from the calculation of the amount of an award or settlement  
41 for the purposes of limiting an award or requiring an award to be reimbursed.

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THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 **Section 1.** NRS 41.910 is hereby amended to read as follows:

2 41.910 1. If a court finds that a person is entitled to a  
3 judgment pursuant to NRS 41.900, the court shall enter a certificate  
4 of innocence finding that the person was innocent of the felony for  
5 which the person was wrongfully convicted.

6 2. If a court does not find that a person is entitled to a judgment  
7 pursuant to NRS 41.900, the action must be dismissed and the court  
8 shall not enter a certificate of innocence.

9 3. Upon an entry of a certificate of innocence pursuant to  
10 subsection 1, the court shall order sealed all records of the  
11 conviction , *except such records maintained by the parties*  
12 *concerning a civil action for wrongful conviction brought*  
13 *pursuant to NRS 41.900*, which are in the custody of any agency of



1 criminal justice or any public or private agency, company, official  
2 or other custodian of records in the State of Nevada and shall order  
3 all such records of the person returned to the file of the court where  
4 the underlying criminal action was commenced from, including,  
5 without limitation, the Federal Bureau of Investigation and all other  
6 agencies of criminal justice which maintain such records and which  
7 are reasonably known by either the person or the court to have  
8 possession of such records. Such records must be sealed regardless  
9 of whether the person has any prior criminal convictions in this  
10 State.

11 *4. The records maintained by the parties concerning a civil*  
12 *action for wrongful conviction pursuant to subsection 3 must*  
13 *remain confidential.*

14 **Sec. 2.** NRS 41.920 is hereby amended to read as follows:

15 41.920 1. The State of Nevada waives its immunity from  
16 liability in any action brought pursuant to NRS 41.900 and consents  
17 to have its liability determined in accordance with the same rules of  
18 law as are applied to civil actions against natural persons and  
19 corporations ~~§~~, *except that:*

20 *(a) The State shall be exempt from the requirements of NRS*  
21 *17.117; and*

22 *(b) A person who has obtained a certificate of innocence*  
23 *pursuant to NRS 41.910 shall not be entitled to prejudgment or*  
24 *postjudgment interest.*

25 2. An action brought pursuant to NRS 41.900 is not subject to  
26 any requirement of an action brought pursuant to NRS 41.031,  
27 including, without limitation, the limitations on an award of  
28 damages described in NRS 41.035.

29 3. All provisions of existing law relating to the absolute or  
30 qualified immunity of any judicial officer, prosecutor or law  
31 enforcement officer, including all applicable provisions of federal  
32 and state law, apply to an action brought pursuant to NRS 41.900.

33 **Sec. 3.** NRS 41.950 is hereby amended to read as follows:

34 41.950 1. In an action brought pursuant to NRS 41.900 which  
35 results in the court entering a certificate of innocence pursuant to  
36 NRS 41.910, the court shall award the person:

37 (a) If the person was imprisoned for:

38 (1) One to 10 years, \$50,000 for each year ~~of~~  
39 ~~imprisonment;~~ *from the date the person was imprisoned after his*  
40 *or her wrongful conviction until the date the wrongful conviction*  
41 *was reversed or the person was released from prison, whichever is*  
42 *earlier;*

43 (2) Eleven to 20 years, \$75,000 for each year ~~of~~  
44 ~~imprisonment;~~ *from the date the person was imprisoned after his*  
45 *or her wrongful conviction until the date the wrongful conviction*



1 *was reversed or the person was released from prison, whichever is*  
2 *earlier;* or

3 (3) Twenty-one years or more, \$100,000 for each year ~~of~~  
4 *imprisonment;] from the date the person was imprisoned after his*  
5 *or her wrongful conviction until the date the wrongful conviction*  
6 *was reversed or the person was released from prison, whichever is*  
7 *earlier;* and

8 (b) Not less than \$25,000 for each year the person was on parole  
9 or not less than \$25,000 for each year the person was required to  
10 register as a sex offender, whichever period of time was greater.

11 2. In addition to any damages awarded pursuant to subsection  
12 1, the court may award:

13 (a) Reasonable attorney's fees, not to exceed \$25,000, unless a  
14 greater amount is authorized by a court upon a finding of good  
15 cause shown.

16 (b) Payment for the cost of:

17 (1) Tuition, books and fees for the person to attend an  
18 institution operated by the Nevada System of Higher Education;

19 (2) Participation by the person in a health care program of  
20 this State;

21 (3) Programs for reentry into the community for the person;  
22 and

23 (4) Counseling services for the person;

24 (c) Reimbursement for:

25 (1) Restitution ordered to be paid by the person in the  
26 criminal proceeding for which he or she was wrongfully convicted;  
27 and

28 (2) Medical care paid for by the person while he or she was  
29 imprisoned for his or her wrongful conviction; and

30 (d) Any other relief, including, without limitation, housing  
31 assistance or assistance for financial literacy for the person.

32 3. Any award of damages issued pursuant to subsection 1 must  
33 be rounded up to the nearest half year.

34 4. A court shall not award and a person shall not receive  
35 compensation for any period of imprisonment during which the  
36 person was concurrently serving a sentence for a conviction of  
37 another offense for which the person was lawfully convicted and  
38 imprisoned.

39 5. If counseling services are awarded to the person pursuant to  
40 subsection 2, the person may select a relative to receive counseling  
41 with the person. As used in this subsection, "relative" means a  
42 person who is related by blood, adoption, marriage or domestic  
43 partnership within the third degree of consanguinity or affinity.



1       **Sec. 4.** NRS 41.960 is hereby amended to read as follows:  
2       41.960 1. If a person in an action brought pursuant to NRS  
3       41.900 has previously won a monetary award against this State *or*  
4       *against any other governmental entity* in a civil action related to his  
5       or her wrongful conviction, the person is only entitled to receive any  
6       amount described in NRS 41.950, less the award obtained in the  
7       previous civil action.

8       2. If a person in an action brought pursuant to NRS 41.900 has  
9       entered into a settlement agreement with this State *or with any*  
10       *other governmental entity* related to his or her wrongful conviction,  
11       the person is *only* entitled to receive any amount described in NRS  
12       41.950, less the amount of the settlement agreement.

13       3. A person who ~~[was successful]~~ *received compensation from*  
14       *this State* in his or her action brought pursuant to NRS 41.900 ,  
15       *whether through an award of damages or a settlement*, and who  
16       subsequently receives a civil settlement or award relating to his or  
17       her wrongful conviction ~~[that exceeds the amount awarded pursuant~~  
18       ~~to NRS 41.950]~~ shall reimburse this State for ~~[his or her award of~~  
19       ~~damages issued pursuant to this act.]~~ *the compensation previously*  
20       *received, not to exceed the amount of the monetary compensation*  
21       *which the person receives in the subsequent civil action.*

22       4. The calculation of an award of damages or a settlement  
23       amount pursuant to this section must not include *items listed in*  
24       *subsection 2 of NRS 41.950, including, without limitation,*  
25       attorney's fees and the costs for bringing the action.

26       5. *As used in this section, "governmental entity" has the*  
27       *meaning ascribed to it in NRS 363C.040.*

28       **Sec. 5.** This act becomes effective on July 1, 2021.

