

(Reprinted with amendments adopted on May 20, 2019)

SECOND REPRINT

A.B. 267

ASSEMBLY BILL NO. 267—ASSEMBLYMEN YEAGER, FUMO, MCCURDY, FLORES; BACKUS, COHEN, DALY, HANSEN, KRASNER, MILLER, NGUYEN, PETERS, TORRES AND WATTS

MARCH 14, 2019

JOINT SPONSOR: SENATORS BROOKS; HANSEN AND OHRENSCHALL

Referred to Committee on Judiciary

SUMMARY—Provides compensation to certain persons who were wrongfully convicted. (BDR 3-657)

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.

AN ACT relating to actions concerning persons; providing for the compensation of certain persons who were wrongfully convicted; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 **Section 2** of this bill authorizes a person who was wrongfully convicted in this
2 State to bring an action for damages and other relief. Pursuant to **section 2**, a person
3 may prevail in an action for wrongful conviction if: (1) the person did not commit
4 perjury or fabricate evidence on the underlying criminal proceeding; (2) the person
5 was convicted of a felony in this State and subsequently imprisoned or sentenced to
6 a condition of parole or probation; (3) the person did not commit the crime for
7 which he or she was convicted and the person was not an accessory or accomplice
8 to the acts that were the basis of the conviction; and (4) the person’s conviction was
9 reversed or vacated and his or her charges were dismissed, if a new trial was
10 ordered, the person was found not guilty at the new trial or the person was not
11 retried and his or her charges were dismissed or the person was pardoned by the
12 State Board of Pardons Commissioners on the grounds that the person was
13 innocent. **Section 4** of this bill waives the State’s immunity from liability in actions
14 brought for such wrongful conviction and provides that any action brought pursuant
15 to **section 2** is not subject to a limitation on the amount of an award of damages
16 under certain circumstances.

17 **Section 3** of this bill requires a court to enter a certificate of innocence if the
18 person was successful in his or her wrongful conviction action. **Section 3** also



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19 requires a court to seal all records relating to the underlying wrongful conviction at
20 the time the court enters a certificate of innocence.

21 **Section 5** of this bill sets forth certain filing requirements and appellate rights
22 relating to a wrongful conviction action. **Section 6** of this bill sets forth a 2-year
23 statute of limitations under certain circumstances for the filing of an action for
24 wrongful conviction.

25 **Section 7** of this bill requires a court in a wrongful conviction action to award:
26 (1) if the person was wrongfully imprisoned for 1 to 10 years, \$50,000 for each
27 year of imprisonment; (2) if the person was wrongfully imprisoned for 11 to 20
28 years, \$75,000 for each year of imprisonment; or (3) if the person was wrongfully
29 imprisoned for 21 years or more, \$100,000 for each year of imprisonment. **Section**
30 **7** also requires a court to award not less than \$25,000 for each year the person was
31 sentenced to a condition of parole or probation or was required to register as a sex
32 offender, whichever period of time was greater. **Section 7** also authorizes the court
33 to order certain other relief, such as payment for the cost of tuition assistance and
34 health care.

35 **Section 8** of this bill sets forth certain limitations on the award amount a person
36 can receive in his or her wrongful conviction action if the person has previously
37 received a monetary award of damages against this State or entered into a
38 settlement agreement with this State relating to his or her wrongful conviction.

39 **Section 8** also requires a person to reimburse this State for an award received as a
40 result of an action brought pursuant to **section 2** if the person subsequently files
41 another civil action relating to the same wrongful conviction.

42 To recover damages or other monetary relief awarded in a wrongful conviction
43 action, **section 8.5** of this bill requires the person who successfully brought the
44 action to submit a claim to the State Board of Examiners for payment from the
45 Reserve for Statutory Contingency Account, upon approval of the State Board of
46 Examiners. **Section 10** of this bill makes conforming changes.

47 **Section 9** of this bill authorizes a court to give preference in setting the date of
48 a trial in an action brought pursuant to **section 2**.

1 WHEREAS, Nationally there are more than 2,395 persons listed
2 on the National Registry of Exonerations, including 13 persons who
3 were convicted in Nevada; and

4 WHEREAS, Convictions of innocent persons may be the result of
5 many causes, including, without limitation, eyewitness
6 misidentification, false confessions, improper forensic science and
7 governmental misconduct; and

8 WHEREAS, Innocent persons who have been wrongfully
9 convicted of crimes and subsequently imprisoned have been
10 uniquely victimized, have distinct challenges reentering society and
11 have difficulty achieving legal redress due to a variety of
12 substantive and technical obstacles in the law; and

13 WHEREAS, Innocent persons who have been wrongfully
14 convicted of crimes and subsequently imprisoned deserve an avenue
15 of redress over and above existing tort remedies to seek
16 compensation for damages; and

17 WHEREAS, Those innocent persons who can demonstrate by a
18 preponderance of the evidence that they were wrongfully convicted



1 of crimes and subsequently imprisoned should be able to recover
2 damages against this State; now, therefore,

3
4 THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
5 SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:
6

7 **Section 1.** Chapter 41 of NRS is hereby amended by adding
8 thereto the provisions set forth as sections 2 to 8.5, inclusive, of this
9 act.

10 **Sec. 2. 1.** *A person may bring a civil action for his or her*
11 *wrongful conviction against this State in a district court seeking*
12 *damages or other relief provided by section 7 of this act.*

13 **2.** *The court shall award damages for wrongful conviction in*
14 *accordance with section 7 of this act if the person proves by a*
15 *preponderance of the evidence that:*

16 *(a) He or she was convicted of a felony in this State and was*
17 *subsequently imprisoned or sentenced to a condition of parole or*
18 *probation for the conviction;*

19 *(b) He or she did not commit the felony for which he or she*
20 *was convicted and the person was not an accessory or accomplice*
21 *to the acts that were the basis of the conviction;*

22 *(c) Any of the following occurred:*

23 *(1) The judgment of conviction was reversed or vacated and*
24 *the charging document was dismissed;*

25 *(2) If a court ordered a new trial, the person was found not*
26 *guilty at the new trial or the person was not retried and the*
27 *charging document was dismissed; or*

28 *(3) The person was pardoned by the State Board of Pardons*
29 *Commissioners on the grounds that he or she was innocent; and*

30 *(d) The person did not commit perjury or fabricate evidence at*
31 *the criminal proceeding that brought about his or her felony*
32 *conviction and the person did not by his or her own conduct cause*
33 *or bring about his or her felony conviction.*

34 **3.** *The court, in exercising its discretion as permitted by law*
35 *regarding the weight and admissibility of evidence, may, in the*
36 *interest of justice, give due consideration to:*

37 *(a) The difficulty of providing evidence caused by the passage*
38 *of time;*

39 *(b) The death or unavailability of a witness;*

40 *(c) The destruction of evidence; or*

41 *(d) Any other factor not caused by the person or any other*
42 *person acting on his or her behalf.*

43 **4.** *The court may appoint an attorney to aid a person in an*
44 *action brought pursuant to this section.*



1 5. For the purposes of subsection 2, the following do not
2 constitute committing perjury, fabricating evidence or causing or
3 bringing about the conviction of the person:

4 (a) A confession or an admission later found to be false; or

5 (b) If the judgment of conviction was reversed or vacated and
6 the charging document dismissed, a guilty plea for a felony.

7 **Sec. 3. 1.** If a court finds that a person is entitled to a
8 judgment pursuant to section 2 of this act, the court shall enter a
9 certificate of innocence finding that the person was innocent of
10 the felony for which the person was wrongfully convicted.

11 2. If a court does not find that a person is entitled to a
12 judgment pursuant to section 2 of this act, the action must be
13 dismissed and the court shall not enter a certificate of innocence.

14 3. Upon an entry of a certificate of innocence pursuant to
15 subsection 1, the court shall order sealed all records of the
16 conviction which are in the custody of any agency of criminal
17 justice or any public or private agency, company, official or other
18 custodian of records in the State of Nevada and shall order all
19 such records of the person returned to the file of the court where
20 the underlying criminal action was commenced from, including,
21 without limitation, the Federal Bureau of Investigation and all
22 other agencies of criminal justice which maintain such records
23 and which are reasonably known by either the person or the court
24 to have possession of such records. Such records must be sealed
25 regardless of whether the person has any prior criminal
26 convictions in this State.

27 **Sec. 4. 1.** The State of Nevada waives its immunity from
28 liability in any action brought pursuant to section 2 of this act and
29 consents to have its liability determined in accordance with the
30 same rules of law as are applied to civil actions against natural
31 persons and corporations.

32 2. An action brought pursuant to section 2 of this act is not
33 subject to any requirement of an action brought pursuant to NRS
34 41.031, including, without limitation, the limitations on an award
35 of damages described in NRS 41.035.

36 **Sec. 5. 1.** All pleadings filed pursuant to section 2 of this
37 act must be captioned, "In the matter of the wrongful conviction
38 of [name of the person bringing the action]."

39 2. The initial complaint filed in an action brought pursuant
40 to section 2 of this act must be accompanied by a statement of
41 facts verified by the person and served upon the Attorney General
42 pursuant to the Nevada Rules of Civil Procedure.

43 3. All proceedings held pursuant to section 2 of this act must
44 be tried before a court without a jury.



1 4. A judgment issued pursuant to section 2 of this act may be
2 appealed to an appellate court of competent jurisdiction.

3 5. The doctrines of res judicata and collateral estoppel do not
4 apply to an action brought pursuant to section 2 of this act.

5 **Sec. 6. 1.** Except as otherwise provided in subsection 2, a
6 person must bring an action pursuant to section 2 of this act
7 within 2 years after:

8 (a) A judgment of conviction of the person was reversed or
9 vacated and the charging document was dismissed;

10 (b) If a court ordered a new trial, the person was found not
11 guilty at the new trial or the person was not retried and the
12 charging document was dismissed; or

13 (c) The person was pardoned by the State Board of Pardons
14 Commissioners on the grounds that the person is innocent.

15 2. If any of the events described in subsection 1 occurred
16 before October 1, 2019, an action brought pursuant to section 2 of
17 this act must be commenced not later than October 1, 2021.

18 **Sec. 7. 1.** In an action brought pursuant to section 2 of this
19 act which results in the court entering a certificate of innocence
20 pursuant to section 3 of this act, the court shall award the person:

21 (a) If the person was imprisoned for:

22 (1) One to 10 years, \$50,000 for each year of
23 imprisonment;

24 (2) Eleven to 20 years, \$75,000 for each year of
25 imprisonment; or

26 (3) Twenty-one years or more, \$100,000 for each year of
27 imprisonment; and

28 (b) Not less than \$25,000 for each year the person was
29 sentenced to a condition of probation or parole, or not less than
30 \$25,000 for each year the person was required to register as a sex
31 offender, whichever period of time was greater.

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

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

37 (b) Payment for the cost of:

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

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

42 (3) Programs for reentry into the community for the
43 person; and

44 (4) Counseling services for the person;

45 (c) Reimbursement for:



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

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

6 (d) *Any other relief, including, without limitation, housing*
7 *assistance or assistance for financial literacy for the person.*

8 3. *Any award of damages issued pursuant to subsection 1*
9 *must be rounded up to the nearest half year.*

10 4. *A court shall not award and a person shall not receive*
11 *compensation for any period of imprisonment during which the*
12 *person was concurrently serving a sentence for a conviction of*
13 *another offense for which the person was lawfully convicted and*
14 *imprisoned.*

15 5. *If counseling services are awarded to the person pursuant*
16 *to subsection 2, the person may select a relative to receive*
17 *counseling with the person. As used in this subsection, "relative"*
18 *means a person who is related by blood, adoption, marriage or*
19 *domestic partnership within the third degree of consanguinity or*
20 *affinity.*

21 **Sec. 8. 1.** *If a person in an action brought pursuant to*
22 *section 2 of this act has previously won a monetary award against*
23 *this State in a civil action related to his or her wrongful*
24 *conviction, the person is only entitled to receive any amount*
25 *described in section 7 of this act, less the award obtained in the*
26 *previous civil action.*

27 2. *If a person in an action brought pursuant to section 2 of*
28 *this act has entered into a settlement agreement with this State*
29 *related to his or her wrongful conviction, the person is entitled to*
30 *receive any amount described in section 7 of this act, less the*
31 *amount of the settlement agreement.*

32 3. *A person who was successful in his or her action brought*
33 *pursuant to section 2 of this act and who subsequently filed*
34 *another civil action relating to his or her wrongful conviction*
35 *shall reimburse this State for his or her award of damages issued*
36 *pursuant to section 7 of this act.*

37 4. *The calculation of an award of damages or a settlement*
38 *amount pursuant to this section must not include attorney's fees*
39 *and the costs for bringing the action.*

40 **Sec. 8.5.** *To recover damages or other monetary relief*
41 *awarded by a court pursuant to section 7 of this act, less any*
42 *adjustment pursuant to section 8 of this act, a person who was*
43 *successful in his or her action brought pursuant to section 2 of*
44 *this act must submit a claim to the State Board of Examiners. The*
45 *claim must be for payment of the damages or other monetary*



1 *relief from the Reserve for Statutory Contingency Account, upon*
2 *approval by the State Board of Examiners.*

3 **Sec. 9.** NRS 16.025 is hereby amended to read as follows:

4 16.025 1. Upon the motion of a party to an action who is 70
5 years of age or older, the court may give preference in setting a date
6 for the trial of the action, unless the court finds that the party does
7 not have a substantial interest in the case as a whole.

8 2. A court may grant a motion for preference in setting a date
9 for the trial of an action if the court determines that based upon clear
10 and convincing medical evidence, a party to the action suffers from
11 an illness or condition which raises a substantial medical doubt that
12 the party will survive for more than 6 months, and the court
13 determines that the interests of justice would be served by granting
14 the motion.

15 3. If a motion for preference is granted pursuant to subsection 1
16 or 2:

17 (a) The court shall set a date for the trial of the action that is not
18 more than 120 days after the hearing on the motion; and

19 (b) The court shall not continue the date for the trial of the
20 action beyond 120 days after the hearing on the motion, except for
21 the physical disability of a party or attorney in the action, or for
22 other good cause entered on the record.

23 4. If the plaintiff in an action seeks to recover damages
24 allegedly caused by a defendant during the commission of acts for
25 which the defendant is convicted of a crime punishable as a felony,
26 the court may, upon the motion of the plaintiff, give preference in
27 setting a date for the trial of the action. If the motion is granted, the
28 trial of the action must, unless the court deems it infeasible, be held
29 not more than 120 days after the hearing on the motion.

30 *5. A court may, upon the motion of a plaintiff in an action*
31 *brought pursuant to section 2 of this act, give preference in setting*
32 *a date for the trial of the action. If the motion is granted, the trial*
33 *of the action must be held not more than 120 days after the*
34 *hearing on the motion.*

35 **Sec. 10.** NRS 353.264 is hereby amended to read as follows:

36 353.264 1. The Reserve for Statutory Contingency Account
37 is hereby created in the State General Fund.

38 2. The State Board of Examiners shall administer the Reserve
39 for Statutory Contingency Account. The money in the Account must
40 be expended only for:

41 (a) The payment of claims which are obligations of the State
42 pursuant to NRS 41.03435, 41.0347, 621.025, 176.485, 179.310,
43 212.040, 212.050, 212.070, 281.174, 282.290, 282.315, 288.203,
44 293.253, 293.405, 353.120, 353.262, 412.154 and 475.235;



1 (b) The payment of claims which are obligations of the State
2 pursuant to:

3 (1) Chapter 472 of NRS arising from operations of the
4 Division of Forestry of the State Department of Conservation and
5 Natural Resources directly involving the protection of life and
6 property; and

7 (2) NRS 7.155, 34.750, 176A.640, 179.225 and 213.153,
8 ↪ except that claims may be approved for the respective purposes
9 listed in this paragraph only when the money otherwise appropriated
10 for those purposes has been exhausted;

11 (c) The payment of claims which are obligations of the State
12 pursuant to NRS 41.0349 and 41.037, but only to the extent that the
13 money in the Fund for Insurance Premiums is insufficient to pay the
14 claims; ~~and~~

15 (d) *The payment of claims which are obligations of the State*
16 *pursuant to section 7 of this act; and*

17 (e) The payment of claims which are obligations of the State
18 pursuant to NRS 535.030 arising from remedial actions taken by the
19 State Engineer when the condition of a dam becomes dangerous to
20 the safety of life or property.

21 3. The State Board of Examiners may authorize its Clerk or a
22 person designated by the Clerk, under such circumstances as it
23 deems appropriate, to approve, on behalf of the Board, the payment
24 of claims from the Reserve for Statutory Contingency Account. For
25 the purpose of exercising any authority granted to the Clerk of the
26 State Board of Examiners or to the person designated by the Clerk
27 pursuant to this subsection, any statutory reference to the State
28 Board of Examiners relating to such a claim shall be deemed to refer
29 to the Clerk of the Board or the person designated by the Clerk.

