

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2773

By: Munson

7 COMMITTEE SUBSTITUTE

8 An Act relating to wrongful convictions; amending 22
9 O.S. 2021, Section 19, as amended by Section 2,
10 Chapter 143, O.S.L. 2022 (22 O.S. Supp. 2022, Section
11 19), which relates to procedures for filing requests
12 for expungement; authorizing expungement hearings
13 within certain period of time; establishing notice
14 requirement; amending 51 O.S. Section 154, which
15 relates to The Governmental Tort Claims Act;
16 modifying scope of certain definition; increasing
17 liability amount for claims of wrongful
18 incarceration; providing for supplemental
19 compensation under certain circumstances; authorizing
20 standard annuity payments; providing guidelines and
21 limitations for standard annuity payments; allowing
22 claimants to obtain group health benefit plan
23 coverage through the Department of Corrections;
24 providing limitations; requiring payment of monthly
contribution for coverage; modifying effective dates
for certain claims; directing the Department of
Corrections to provide certain notice to wrongfully
imprisoned persons; providing for the waiver of
resident and nonresident tuition, room and board, and
mandatory fees for wrongfully incarcerated persons
and their children; providing limitation for credit
hours; defining term; providing for codification;
providing an effective date; and declaring an
emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 22 O.S. 2021, Section 19, as
2 amended by Section 2, Chapter 143, O.S.L. 2022 (22 O.S. Supp. 2022,
3 Section 19), is amended to read as follows:

4 Section 19. A. Any person qualified under Section 18 of this
5 title may petition the district court of the district in which the
6 arrest information pertaining to the person is located for the
7 sealing of all or any part of the record, except basic
8 identification information.

9 B. The process for the automatic expungement of a clean slate
10 eligible case as defined in subsection C of Section 18 of this title
11 is as follows:

12 1. On a monthly basis, the Oklahoma State Bureau of
13 Investigation shall identify cases which are clean slate eligible by
14 conducting a search of the criminal history repository records of
15 the Bureau;

16 2. The Bureau shall, on a monthly basis, provide a list of
17 clean slate eligible cases to the prosecuting agency and the
18 arresting agency;

19 3. The prosecuting agency, arresting agency, and the Bureau
20 may, no later than forty-five (45) days from the day on which the
21 notice described in paragraph 2 of this subsection is transmitted,
22 object to an automatic expungement and such objection shall be
23 transmitted to all parties. An objection may be made for any of the
24 following reasons:

- 1 a. after reviewing the agency record, the agency believes
2 the case does not meet the definition of a clean slate
3 eligible case,
4 b. the individual has not paid court-ordered restitution
5 to the victim, or
6 c. the agency has a reasonable belief, grounded in
7 supporting facts, that an individual with a clean
8 slate eligible case is continuing to engage in
9 criminal activity, whether charged or not charged,
10 within or outside the state;

11 4. If an agency identified in paragraph 3 of this subsection
12 objects for a reason described in paragraph 3 of this subsection
13 within forty-five (45) days of the day on which the notice described
14 in paragraph 2 of this subsection is transmitted, the record shall
15 not be expunged. Once a year, the Bureau shall submit a report to
16 the Legislature with a list of all cases where a record was not
17 expunged pursuant to this paragraph; and

18 5. After forty-five (45) days pass from the day on which the
19 notice described in paragraph 2 of this subsection is sent, the
20 Bureau shall provide to the courts a list of all cases where
21 responses from all parties were received and no parties objected.
22 The court shall review this list and provide to all agencies that
23 have criminal history records a signed expungement order for all
24

1 cases approved. Upon receipt of a signed expungement order, each
2 agency shall seal the relevant records.

3 The Bureau and the Oklahoma Supreme Court may promulgate rules
4 to govern the process for automatic expungement of records for a
5 clean slate eligible case in accordance with this subsection.

6 C. 1. Nothing in this section precludes an individual from
7 filing a petition for expungement of records that are eligible for
8 automatic expungement under subsection C of Section 18 of this title
9 if an automatic expungement has not occurred pursuant to subsection
10 B of this section.

11 2. An individual does not have a cause of action for damages as
12 a result of the failure of the Bureau to identify a case as eligible
13 for automatic expungement.

14 D. An automatic expungement granted under subsection B of this
15 section does not preclude an individual from requesting the
16 unsealing of records in accordance with subsection O of this
17 section.

18 E. Upon the filing of a petition or entering of a court order
19 as prescribed in subsection A of this section, the court shall set a
20 date for a hearing and shall provide thirty (30) days of notice of
21 the hearing to the prosecuting agency, the arresting agency, the
22 Oklahoma State Bureau of Investigation, and any other person or
23 agency whom the court has reason to believe may have relevant
24 information related to the sealing of such record.

1 F. Upon a finding that the harm to privacy of the person in
2 interest or dangers of unwarranted adverse consequences outweigh the
3 public interest in retaining the records, the court may order such
4 records, or any part thereof except basic identification
5 information, to be sealed. If the court finds that neither sealing
6 of the records nor maintaining of the records unsealed by the agency
7 would serve the ends of justice, the court may enter an appropriate
8 order limiting access to such records.

9 Any order entered under this subsection shall specify those
10 agencies to which such order shall apply. Any order entered
11 pursuant to this subsection may be appealed by the petitioner, the
12 prosecuting agency, the arresting agency, or the Oklahoma State
13 Bureau of Investigation to the Oklahoma Supreme Court in accordance
14 with the rules of the Oklahoma Supreme Court. In all such appeals,
15 the Oklahoma State Bureau of Investigation is a necessary party and
16 must be given notice of the appellate proceedings.

17 G. Upon the entry of an order to seal the records, or any part
18 thereof, or upon an automatic expungement described in subsection B
19 of this section, the subject official actions shall be deemed never
20 to have occurred, and the person in interest and all criminal
21 justice agencies may properly reply, upon any inquiry in the matter,
22 that no such action ever occurred and that no such record exists
23 with respect to such person.

24

1 H. Inspection of the records included in the order may
2 thereafter be permitted by the court only upon petition by the
3 person in interest who is the subject of such records, the Attorney
4 General, or by the prosecuting agency and only to those persons and
5 for such purposes named in such petition.

6 I. Employers, educational institutions, state and local
7 government agencies, officials, and employees shall not, in any
8 application or interview or otherwise, require an applicant to
9 disclose any information contained in sealed records. An applicant
10 need not, in answer to any question concerning arrest and criminal
11 records, provide information that has been sealed, including any
12 reference to or information concerning such sealed information and
13 may state that no such action has ever occurred. Such an
14 application may not be denied solely because of the refusal of the
15 applicant to disclose arrest and criminal records information that
16 has been sealed.

17 J. All arrest and criminal records information existing prior
18 to the effective date of this section, except basic identification
19 information, is also subject to sealing in accordance with
20 subsection F of this section.

21 K. Nothing in this section shall be construed to authorize the
22 physical destruction of any criminal justice records.

23 L. For the purposes of this section, sealed materials which are
24 recorded in the same document as unsealed material may be recorded

1 in a separate document, and sealed, then obliterated in the original
2 document.

3 M. For the purposes of this section, district court index
4 reference of sealed material shall be destroyed, removed or
5 obliterated.

6 N. Any record ordered to be sealed pursuant to this section, if
7 not unsealed within ten (10) years of the expungement order, may be
8 obliterated or destroyed at the end of the ten-year period.

9 O. Subsequent to records being sealed as provided herein, the
10 prosecuting agency, the arresting agency, the Oklahoma State Bureau
11 of Investigation, or other interested person or agency may petition
12 the court for an order unsealing said records. Upon filing of a
13 petition the court shall set a date for hearing, which hearing may
14 be closed at the discretion of the court, and shall provide thirty
15 (30) days of notice to all interested parties. If, upon hearing,
16 the court determines there has been a change of conditions or that
17 there is a compelling reason to unseal the records, the court may
18 order all or a portion of the records unsealed.

19 P. Nothing herein shall prohibit the introduction of evidence
20 regarding actions sealed pursuant to the provisions of this section
21 at any hearing or trial for purposes of impeaching the credibility
22 of a witness or as evidence of character testimony pursuant to
23 Section 2608 of Title 12 of the Oklahoma Statutes.

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1 Q. If a person qualifies for an expungement under the
2 provisions of paragraph 3 of subsection A of Section 18 of this
3 title and said petition for expungement is granted by the court, the
4 court shall order the reimbursement of all filing fees and court
5 costs incurred by the petitioner as a result of filing the
6 expungement request.

7 R. If a person qualifies for an expungement under the
8 provisions of paragraph 3 or 4 of subsection A of Section 18 of this
9 title, the person may request a hearing be set within thirty (30)
10 days after the date of filing the petition for expungement. The
11 court shall grant the request for the hearing and shall provide a
12 notice of no less than ten (10) days for said hearing to the
13 prosecuting agency, the arresting agency, the Oklahoma State Bureau
14 of Investigation, and any other person or agency whom the court has
15 reason to believe may have relevant information related to the
16 sealing of such record. Any order entered pursuant to the
17 provisions of this subsection shall be subject to the provisions of
18 subsections F through P of this section.

19 SECTION 2. AMENDATORY 51 O.S. 2021, Section 154, is
20 amended to read as follows:

21 Section 154. A. The total liability of the state and its
22 political subdivisions on claims within the scope of The
23 Governmental Tort Claims Act, arising out of an accident or
24

1 occurrence happening after October 1, 1985, Section 151 et seq. of
2 this title, shall not exceed:

3 1. Twenty-five Thousand Dollars (\$25,000.00) for any claim or
4 to any claimant who has more than one claim for loss of property
5 arising out of a single act, accident, or occurrence;

6 2. Except as otherwise provided in this paragraph, One Hundred
7 Twenty-five Thousand Dollars (\$125,000.00) to any claimant for a
8 claim for any other loss arising out of a single act, accident, or
9 occurrence. The limit of liability for the state or any city or
10 county with a population of three hundred thousand (300,000) or more
11 according to the latest Federal Decennial Census, or a political
12 subdivision as defined in subparagraph s of paragraph 11 of Section
13 152 of this title, shall not exceed One Hundred Seventy-five
14 Thousand Dollars (\$175,000.00). Except however, the limits of the
15 liability for the University Hospitals and State Mental Health
16 Hospitals operated by the Department of Mental Health and Substance
17 Abuse Services for claims arising from medical negligence shall be
18 Two Hundred Thousand Dollars (\$200,000.00). For claims arising from
19 medical negligence by any licensed physician, osteopathic physician
20 or certified nurse-midwife rendering prenatal, delivery or infant
21 care services from September 1, 1991, through June 30, 1996,
22 pursuant to a contract authorized by subsection B of Section 1-106
23 of Title 63 of the Oklahoma Statutes and in conformity with the
24 requirements of Section 1-233 of Title 63 of the Oklahoma Statutes,

1 the limits of the liability shall be Two Hundred Thousand Dollars
2 (\$200,000.00); or

3 3. One Million Dollars (\$1,000,000.00) for any number of claims
4 arising out of a single occurrence or accident.

5 B. 1. Beginning on ~~May 28, 2003~~ July 1, 2023, claims shall be
6 allowed for wrongful criminal felony conviction resulting in
7 imprisonment if the claimant has received a full pardon on the basis
8 of a written finding by the Governor of actual innocence for the
9 crime for which the claimant was sentenced or has been granted
10 judicial relief absolving the claimant of guilt on the basis of
11 actual innocence of the crime for which the claimant was sentenced.
12 The Governor or the court shall specifically state, in the pardon or
13 order, the evidence or basis on which the finding of actual
14 innocence is based.

15 2. As used in paragraph 1 of this subsection, for a claimant to
16 recover based on "actual innocence", the individual must meet the
17 following criteria:

- 18 a. the individual was charged, by indictment or
19 information, with the commission of a public offense
20 classified as a felony,
- 21 b. ~~the individual did not plead guilty to the offense~~
22 ~~charged, or to any lesser included offense, but was~~
23 ~~convicted of the offense,~~

24

1 ~~e.~~ the individual was sentenced to incarceration for a
2 term of imprisonment as a result of the conviction,

3 ~~d.~~

4 c. the individual was imprisoned solely on the basis of
5 the conviction for the offense, and

6 ~~e.~~

7 d. (1) in the case of a pardon, a determination was made
8 by either the Pardon and Parole Board or the
9 Governor that the offense for which the
10 individual was convicted, sentenced and
11 imprisoned, including any lesser offenses, was
12 not committed by the individual, or

13 (2) in the case of judicial relief, a court of
14 competent jurisdiction found by clear and
15 convincing evidence that the offense for which
16 the individual was convicted, sentenced and
17 imprisoned, including any lesser included
18 offenses, was not committed by the individual and
19 issued an order vacating, dismissing or reversing
20 the conviction and sentence and providing that no
21 further proceedings can be or will be held
22 against the individual on any facts and
23 circumstances alleged in the proceedings which
24 had resulted in the conviction.

1 3. A claimant shall not be entitled to compensation for any
2 part of a sentence in prison during which the claimant was also
3 serving a concurrent sentence for a crime not covered by this
4 subsection.

5 4. The total liability of the state and its political
6 subdivisions on any claim within the scope of The Governmental Tort
7 Claims Act arising out of wrongful criminal felony conviction
8 resulting in imprisonment shall ~~not exceed One Hundred Seventy five~~
9 ~~Thousand Dollars (\$175,000.00)~~ be in an amount equal to Fifty
10 Thousand Dollars (\$50,000.00) multiplied by the number of years
11 served in prison, expressed as a fraction to reflect partial years.

12 5. In addition to the award of damages provided for in
13 paragraph 4 of this subsection, a claimant who served his or her
14 time on death row shall be entitled to receive supplemental
15 compensation in the amount of Fifty Thousand Dollars (\$50,000.00)
16 multiplied by the number of years the person served on death row,
17 expressed as a fraction to reflect partial years.

18 6. In addition to the award of damages provided for in
19 paragraph 4 of this subsection, a claimant who was released on
20 parole or released under conditions of probation shall be entitled
21 to receive supplemental compensation in the amount of Twenty-five
22 Thousand Dollars (\$25,000.00) multiplied by the number of years the
23 person was on parole or under probation, expressed as a fraction to
24 reflect partial years.

1 7. A claimant entitled to compensation under the provisions of
2 this subsection shall be entitled to standard annuity payments.
3 Standard annuity payments shall be based on a present value sum
4 equal to the amount to which the claimant is entitled under
5 paragraphs 4, 5, or 6 of this subsection. Standard annuity payments
6 shall be payable in equal monthly installments for the life of the
7 claimant. Annuity payments shall be based on a five percent (5%)
8 per annum interest rate and other actuarial factors within the
9 discretion of the Director of the Office of Management and
10 Enterprise Services. Annuity payments under the provisions of this
11 paragraph shall not be accelerated, deferred, increased, or
12 decreased. A claimant entitled to annuity payments under the
13 provisions of this paragraph shall not sell, mortgage or otherwise
14 encumber, or anticipate the payments, wholly or partly, by
15 assignment or otherwise.

16 8. A claimant entitled to compensation under the provisions of
17 this subsection shall be eligible to obtain group health benefit
18 plan coverage through the Department of Corrections as if the person
19 were an employee of the Department. The provisions of this
20 paragraph shall not entitle the spouse or other dependent or family
21 member to group health benefit plan coverage. Coverage may be
22 obtained under the provisions of this paragraph for a period of time
23 equal to the total period the claimant served for the crime for
24 which the claimant was wrongfully incarcerated, including any period

1 during which the claimant was released on parole or released under
2 conditions of probation. A claimant who elects to obtain coverage
3 under the provisions of this paragraph shall pay a monthly
4 contribution equal to the total amount of the monthly contributions
5 for that coverage for an employee of the Department.

6 9. The provisions of this subsection shall apply to convictions
7 occurring on ~~or before May 28, 2003,~~ as well as convictions
8 ~~occurring~~ and after May 28, 2003 July 1, 2023. ~~If a court of~~
9 ~~competent jurisdiction finds that retroactive application of this~~
10 ~~subsection is unconstitutional, the prospective application of this~~
11 ~~subsection shall remain valid.~~

12 C. No award for damages in an action or any claim against the
13 state or a political subdivision shall include punitive or exemplary
14 damages.

15 D. When the amount awarded to or settled upon multiple
16 claimants exceeds the limitations of this section, any party may
17 apply to the district court which has jurisdiction of the cause to
18 apportion to each claimant the claimant's proper share of the total
19 amount as limited herein. The share apportioned to each claimant
20 shall be in the proportion that the ratio of the award or settlement
21 made to him bears to the aggregate awards and settlements for all
22 claims against the state or its political subdivisions arising out
23 of the occurrence. When the amount of the aggregate losses
24 presented by a single claimant exceeds the limits of paragraph 1 or

1 2 of subsection A of this section, each person suffering a loss
2 shall be entitled to that person's proportionate share.

3 E. The total liability of resident physicians and interns while
4 participating in a graduate medical education program of the
5 University of Oklahoma College of Medicine, its affiliated
6 institutions and the Oklahoma College of Osteopathic Medicine and
7 Surgery shall not exceed One Hundred Thousand Dollars (\$100,000.00).

8 F. The state or a political subdivision may petition the court
9 that all parties and actions arising out of a single accident or
10 occurrence shall be joined as provided by law, and upon order of the
11 court the proceedings upon good cause shown shall be continued for a
12 reasonable time or until such joinder has been completed. The state
13 or political subdivision shall be allowed to interplead in any
14 action which may impose on it any duty or liability pursuant to The
15 Governmental Tort Claims Act.

16 G. The liability of the state or political subdivision under
17 The Governmental Tort Claims Act shall be several from that of any
18 other person or entity, and the state or political subdivision shall
19 only be liable for that percentage of total damages that corresponds
20 to its percentage of total negligence. Nothing in this section
21 shall be construed as increasing the liability limits imposed on the
22 state or political subdivision under The Governmental Tort Claims
23 Act.

24

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 360.2 of Title 57, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Department of Corrections shall provide to each
5 wrongfully imprisoned person information, both orally and in
6 writing, that includes:

7 1. Guidance on how to obtain compensation pursuant to
8 subsection B of Section 154 of Title 51 of the Oklahoma Statutes;
9 and

10 2. A list of and contact information for nonprofit advocacy
11 groups, identified by the Department, that assist wrongfully
12 imprisoned persons in filing claims for compensation under The
13 Governmental Tort Claims Act.

14 B. The Department shall provide the information:

15 1. At the time of the release of the wrongfully imprisoned
16 person from a penal institution; or

17 2. As soon as practicable after the Department has reason to
18 believe that the person is entitled to compensation.

19 SECTION 4. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 3218.7-2 of Title 70, unless
21 there is created a duplication in numbering, reads as follows:

22 A. Within The Oklahoma State System of Higher Education or the
23 system of career technology districts, no resident tuition,
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1 nonresident tuition, room and board, and any mandatory fees
2 associated with such attendance shall be charged to:

3 1. A person who was wrongfully incarcerated and awarded
4 compensation pursuant to the provisions of subsection B of Section 2
5 of this act; and

6 2. Children of any person wrongfully incarcerated and the
7 person was awarded compensation pursuant to the provisions of
8 subsection B of Section 2 of this act.

9 B. Such waiver of resident tuition, nonresident tuition, room
10 and board, and mandatory fees associated with such attendance shall
11 be limited to one hundred twenty (120) credit hours.

12 C. As used in this section, the term "children" includes
13 children by birth and by adoption.

14 SECTION 5. This act shall become effective July 1, 2023.

15 SECTION 6. It being immediately necessary for the preservation
16 of the public peace, health or safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

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20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
21 02/23/2023 - DO PASS, As Amended.

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