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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO CRIMINAL PROCEDURE

Introduced By: Representative Gregg Amore

Date Introduced: April 27, 2017

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 33

4 CLAIMS FOR WRONGFUL CONVICTION AND IMPRISONMENT

5 **12-33-1. Legislative intent.** -- (a) The general assembly finds that innocent persons who
6 have been mistakenly convicted of crimes through no fault of their own or the state have been
7 uniquely victimized and are deserving of consideration and remuneration for this miscarriage of
8 justice.

9 (b) For purposes of this chapter, a mistaken conviction is a finding of guilt by a jury or
10 judge, later proven incorrect, which results in incarceration for more than one year.

11 (c) For purposes of this chapter, a mistaken conviction is not a finding of guilty by a jury
12 or judge later determined to be the result of misfeasance or malfeasance by the state or any of its
13 political subdivisions.

14 **12-33-2. Statement of claim for compensation.** -- (a) In order to present an actionable
15 claim pursuant to this chapter, the claimant must establish by documentary evidence that:

16 (1) Claimant has been convicted of one or more crimes and, as a result of said conviction,
17 was sentenced to a term of imprisonment and has served all or part of said sentence; and

18 (2) On grounds not inconsistent with innocence:

19 (i) Claimant was pardoned of the crime or crimes upon which claimant was sentenced

1 and which are the grounds for the complaint; or

2 (ii) The judgment of conviction was vacated; or

3 (iii) The judgment of conviction was reversed; and

4 (iv) The accusatory instrument was dismissed, and

5 (3) The claim is not time-barred by the provisions of this chapter.

6 (b) The claims shall be verified by the claimant; and

7 (c) If the court determines after an examination of the claim that the claimant has not
8 alleged sufficient facts to succeed at trial it shall dismiss the claim, either on its own motion or on
9 the state's motion.

10 **12-33-3. Presentation of claim. -- All claims of mistaken conviction and imprisonment**
11 under this chapter shall be presented to and heard by the presiding justice of the superior court.

12 **12-33-4. Judgment and award. -- (a) In order to obtain a judgment in their favor, the**
13 claimant must prove by a preponderance of the evidence that:

14 (1) Claimant was convicted of one or more crimes and subsequently sentenced to a term
15 of imprisonment for more than one year, and has served all or any part of the sentence; and

16 (i) Claimant has been pardoned for the crime or crimes upon which claimant was
17 sentenced and which are the grounds for the complaint; or

18 (ii) Claimant's judgment of conviction was reversed or vacated, and the accusatory
19 instrument was dismissed, and

20 (2) Claimant did not commit any of the crimes charged in the accusatory instrument; and

21 (3) Claimant did not commit or suborn perjury, or fabricate evidence to cause or bring
22 about their own conviction; and

23 (4) Claimant was incarcerated solely for the crimes they were mistakenly convicted of
24 and was not serving another sentence concurrently or as a result of an enhancement from a
25 previous conviction.

26 (b) If the court finds that the claimant was mistakenly convicted and incarcerated
27 pursuant to this section the court shall grant:

28 (1) An award for mistaken conviction and incarceration calculated at the state's median
29 single person income at the time of release and paid for each year and portion of year served in a
30 correctional facility. The award may be expanded to include, at the discretion of the court in the
31 interest of justice:

32 (i) Release from any child support payments owed the state by the claimant that became
33 due, and interest on child support arrearages that accrued, during the time served in prison but
34 were not paid as well as reasonable attorney's fees where legal proceedings are required to

1 remedy outstanding obligations resulting from an order to pay child support:

2 (ii) Compensation for any reasonable costs, not exceeding the pro rata award, incurred by
3 the claimant for immediate services secured upon exoneration and release; including housing,
4 transportation, subsistence, re-integrative services, and mental and physical health care costs
5 incurred by the claimant for the time period between the claimant's release from wrongful
6 incarceration and the date of claimant's award; and

7 (iii) Reasonable attorney's fees for bringing a claim under this chapter calculated at a rate
8 of fifteen percent (15%) of the total amount awarded. Any such fees granted shall not be deducted
9 from the compensation due the claimant, nor is counsel entitled to receive additional fees from
10 the client.

11 (c) No damages or amounts awarded pursuant to this chapter shall be subject to:

12 (1) Any cap or limit that may be applicable to private parties in civil lawsuits;

13 (2) Any taxes, except for those portions of the judgment awarded as attorney's fees for
14 bringing a claim under this chapter; or

15 (3) Treatment as gross income to a claimant under the provisions of title 44.

16 (d) The acceptance by a claimant of any such award, compromise, or settlement shall:

17 (1) Be memorialized in writing;

18 (2) Act to release the state and any of its political subdivisions from any other action
19 arising out of the mistaken conviction and incarceration of the claimant; and

20 (3) Except when procured by fraud, be final and conclusive on the claimant.

21 (e) The court shall, upon determining that the claimant is entitled to compensation under
22 this chapter, forward to the general treasurer an inventory and description of the award, including
23 any attorney's fees awarded, for disbursement.

24 **12-33-5. Funding. -- Any awards, amounts, or fees awarded pursuant to the provisions of**
25 **this chapter shall, at the direction of the court, be provided by the general treasurer from the**
26 **general fund.**

27 **12-33-6. Non-exclusivity. -- The provisions of this chapter shall not be construed to**
28 **prohibit a person who has been wrongfully convicted and incarcerated as a result of the**
29 **misfeasance or malfeasance on the part of the state or any of its political subdivisions from**
30 **seeking compensation or relief pursuant to any other action or suit authorized by law.**

31 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE

1 This act would create an action at law authorizing any person who has been sentenced to
2 a term of imprisonment greater than one year subsequent to being wrongfully convicted of a
3 criminal offense to petition the presiding justice of the superior court for an award of
4 compensation and damages, including attorney's fees.

5 This act would take effect upon passage.

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