

Senate Bill 312

By: Senators Jordan of the 6th, Sims of the 12th, Lucas of the 26th, Seay of the 34th, Orrock of the 36th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to
2 sentence and punishment, so as to enact the "Georgia Restoring Justice Act"; to provide a
3 short title; to provide for definitions; to provide for a cause of action; to provide for service
4 of process; to provide for damages; to provide for limitations; to provide for related matters;
5 to provide for an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 10 of Title 17 of the Official Code of Georgia Annotated, relating to sentence and
9 punishment, is amended by adding a new Code section to read as follows:

10 "17-10-22.

11 (a) This Code section shall be known and may be cited as the 'Georgia Restoring Justice
12 Act.'

13 (b) As used in this Code section, the term:

14 (1) 'Conviction' means a final judgment entered upon a verdict or finding of guilty of a
15 crime or upon a guilty plea and shall include an adjudication as a youthful offender, if

16 such adjudication resulted in the youthful offender's incarceration in state prison or a
17 house of correction.

18 (2) 'Expungement' means the permanent erasure and destruction of records.

19 (3) 'Victim' means a person against whom a crime has been perpetrated and shall have
20 the same meaning as defined in Code Section 17-17-3.

21 (c) Individuals eligible to file a claim against the State of Georgia for an erroneous felony
22 conviction shall be limited to:

23 (1) Those who have been granted a full pardon, if the State Board of Pardons and Paroles
24 expressly states in writing belief in the individual's innocence; or

25 (2) Those who have been granted judicial relief by a state court of competent
26 jurisdiction, on grounds which tend to establish the innocence of the individual, and if:

27 (A) The judicial relief vacates or reverses the judgment of a felony conviction, and the
28 felony indictment or complaint used to charge the individual with such felony has been
29 dismissed;

30 (B) If a new trial was ordered, the individual was not retried, and the felony indictment
31 or complaint was dismissed;

32 (C) A plea of nolle prosequi was entered; or

33 (D) If a new trial was ordered, the individual was found not guilty at the new trial, and
34 at the time of the filing of an action under this Code section no criminal proceeding is
35 pending or can be brought against the individual by a district attorney or the Attorney
36 General for any act associated with such felony conviction.

37 (d) For an individual to prevail and recover damages against the state in a cause of action
38 brought under this Code section, the individual must establish, by clear and convincing
39 evidence, that:

40 (1) He or she is a member of the class of persons defined in subsection (c) of this Code
41 section;

42 (2) He or she was convicted of an offense classified as a felony;

43 (3) He or she did not plead guilty to the offense charged, or to any lesser included
44 offense, unless such guilty plea was withdrawn, vacated, or nullified by operation of law
45 on a basis other than a claimed deficiency in the plea warnings;

46 (4) He or she was sentenced to incarceration for not less than one year in state prison or
47 a house of correction as a result of the conviction and has served all or any part of such
48 sentence;

49 (5) He or she was incarcerated solely on the basis of the conviction for the offense that
50 is the subject of the claim;

51 (6) He or she did not commit the crimes or crime charged in the indictment or complaint
52 or any other felony arising out of or reasonably connected to the facts supporting the
53 indictment or complaint, or any lesser included felony; and

54 (7) To the extent that he or she is guilty of conduct that would have justified a conviction
55 of any lesser included misdemeanor arising out of or reasonably connected to facts
56 supporting the indictment or complaint, that he or she has served the maximum sentence
57 he or she would have received for such lesser included misdemeanor and not less than
58 one additional year in state prison or a house of correction.

59 (e) The claimant shall attach to his or her claim certified copies of the warrant that shows
60 the claimant's sentence to incarceration and the criminal case docket entry information or
61 other related documents.

62 (f) The State of Georgia and any individual filing an action for compensation under this
63 Code section shall have the right to a jury trial on any action so filed. In the interest of
64 doing substantial justice, with regard to weight and admissibility of evidence submitted by
65 the claimant or the state, the court presiding at a jury-waived trial shall exercise its
66 discretion by giving due consideration to any difficulties of proof caused by the passage
67 of time, the death or unavailability of witnesses, or other factors not caused by the
68 claimant, or those acting on the claimant's or the state's behalf. At a jury trial, the court
69 shall consider these same factors as part of the exercise of its discretion when determining

70 the admissibility and weight of evidence, and the court shall instruct the jury that it may
71 consider the same factors when it weighs the evidence presented at trial. No evidence
72 proffered by any party shall be excluded on grounds that it was seized or obtained in
73 violation of the Fourth, Fifth, or Sixth amendment to the Constitution of the United States,
74 or in violation of Article I, Section I, Paragraph XIII, XIV, or XVI of the Constitution of
75 Georgia.

76 (g)(1) A civil action brought against the state under this Code section shall be brought
77 in the county where the claimant was convicted or in Fulton County. The superior court
78 shall have exclusive jurisdiction of all such actions. Except as otherwise provided in this
79 Code section, all civil actions brought pursuant to this Code section shall in all manner
80 be governed by Title 9.

81 (2) Service of process for a civil action brought pursuant to this Code section shall be
82 made upon the Attorney General, who shall defend the state against all such claims. The
83 Attorney General shall immediately notify the district attorney for the county that
84 prosecuted the felony that forms the basis for the claim.

85 (3) Such district attorney shall immediately notify any concerned victim involved in the
86 felony conviction that forms the basis for the claim. Such victim shall be allowed, but
87 shall not be compelled, to testify or furnish other evidence. If such victim is unavailable
88 to testify or decides not to testify, his or her prior recorded testimony, given under oath
89 at a relevant proceeding, shall only be admissible after judicial review and determination
90 that such testimony, or portion thereof, may be helpful to the fact finder.

91 (4) The Attorney General shall consult with the appropriate district attorney relative to
92 the merits of such action and, following consultation, shall have discretion to determine
93 whether to proffer as evidence any documents, records, testimony, or other information
94 brought forward to the Attorney General by such district attorney in defense of the state
95 at a time deemed appropriate by the Attorney General.

96 (h) Upon a finding or verdict that the claimant has met the requirements of the requisite
97 standard of proof and is not barred from compensation pursuant to subsection (d) of this
98 Code section, the court or the jury shall determine the damages that shall be payable to the
99 claimant. In making such determination, the court or jury shall consider, but not be limited
100 to:

101 (1) The income the claimant would have earned, but for his or her incarceration;
102 (2) The particular circumstances of the claimant's trial and other related proceedings;
103 (3) The length and conditions under which the claimant was incarcerated; and
104 (4) Any other factors deemed appropriate under the circumstances in order to fairly and
105 reasonably compensate the claimant.

106 (i)(1) The court, in its discretion, may admit expert testimony on damages or any factors.
107 The court may include, as part of its judgment against the state, an order requiring the
108 state to provide the claimant with services that are reasonable and necessary to address
109 any deficiencies in the individual's physical and emotional condition and waive tuition
110 and fees for the claimant for any educational services from a state or community college
111 or technical school in the state. Once the damages have been determined, the court shall
112 enter a judgment against the state for the claimant in an amount certain, payable in either
113 a lump sum or in annuity installment payments set by the court; provided, however, that
114 any such annuity installment payments shall have fixed limits on their annual amount and
115 on the time period which they shall be paid to the claimant. A judgment against the state
116 shall not include punitive or exemplary damages. The total liability of the state for any
117 judgment entered under this Code section that awards damages to a claimant shall not
118 exceed \$1 million.

119 (2) Any costs and attorneys' fees awarded pursuant to this Code section shall not be
120 included in the calculation of the amount of the total liability of the state.
121 Notwithstanding any law to the contrary, the state shall not be liable for paying, any
122 prejudgment or postjudgment interest on damages.

123 (3) In awarding damages under this Code section, the court or jury shall not offset the
124 award by any expenses incurred by the state or any political subdivision of the state,
125 including, but not limited to, expenses incurred to secure the claimant's custody, or to
126 feed, clothe, or provide medical services for the claimant, nor shall the court offset
127 against the award the value of any reduction in tuition or fees for educational services or
128 the value of services to be provided to the claimant that may be awarded to the claimant
129 pursuant to this Code section.

130 (4) The state shall not be liable to levy of execution on any real or personal property to
131 satisfy a judgment ordered pursuant to this Code section, and any judgments ordered by
132 the court shall be paid from funds appropriated by the General Assembly for such
133 purposes. Payments by the state under this Code section are made to remedy the
134 claimant's injury of unjust incarceration. Only those portions of a judgment that are paid
135 or retained as compensation for services in bringing a claim under this Code section by
136 an attorney representing the claimant pursuant to a signed agreement with the claimant
137 or otherwise shall be subject to taxation by the state.

138 (j) A claimant shall not be entitled to compensation for incarceration credited to a
139 concurrent sentence the claimant was serving for another crime.

140 (k) A claimant who prevails in an action under this Code section shall be entitled to an
141 award of the costs of the litigation and reasonable attorneys' fees in an amount to be fixed
142 by the court. An award of the costs of the litigation and reasonable attorneys' fees shall be
143 considered separately from any amount awarded to a claimant for damages and shall not
144 be included in any calculation of the state's total liability.

145 (l)(1) Upon the entry of a judgment in favor of a claimant under this Code section and
146 following a separate hearing on the matter, the court shall enter an order directing either
147 the expungement or sealing of those records of the claimant that directly pertain to the
148 claimant's erroneous felony conviction case, including documents and other materials and
149 any samples obtained from the claimant. The state, as well as any other law enforcement

150 agency that may be directly affected by such expungement or sealing of such records,
151 including, but not limited to, the district attorney that prosecuted the felony case against
152 the claimant, shall be given reasonable notice and an opportunity to be heard on the issue
153 of whether such records, documents, and materials shall be so expunged or sealed. In
154 making its determination as to whether such records, documents, and materials shall be
155 so expunged or sealed, the court shall consider the interests of privacy and justice
156 pertaining to the claimant's erroneous felony conviction as well as the probable effect of
157 such expungement or sealing on relevant law enforcement entities and their ability to
158 appropriately investigate and prosecute other persons for the felony which forms the basis
159 of the claim or other crimes that may relate to the information contained in such records,
160 documents, and materials.

161 (2) Following a separate hearing conducted by the court, the court may also order the
162 expungement or sealing of those records that directly pertain to the claimant's erroneous
163 felony conviction case that are currently in the care, custody, and control of other state,
164 municipal, or local departments, agencies, commissions, or committees, including law
165 enforcement entities. Any such agency, commission, committee, or entity shall be given
166 reasonable notice and an opportunity to be heard on the issue of whether such records,
167 documents and materials shall be expunged or sealed pursuant to this Code section. In
168 making its determination as to whether such records, documents, and materials shall be
169 expunged or sealed, the court shall consider those factors required for consideration by
170 the court in this subsection.

171 (3) Any order to expunge or seal entered by the court shall provide that, in any
172 employment application, the claimant may answer 'no record' as to any charges expunged
173 or sealed pursuant to this subsection in response to an inquiry regarding prior felony
174 arrests, court appearances, or criminal convictions.

175 (4) The charges and convictions expunged or sealed shall not operate to disqualify the
176 claimant in any examination, appointment, or application for public employment in the

177 service of the state or any other political subdivision thereof, nor shall such charges and
178 convictions be used against the claimant in any way in any court proceedings or hearings
179 before any court, board, or commission to which the claimant is a party.

180 (5) A settlement agreement made to resolve any claims brought pursuant to this Code
181 section may include a stipulation or agreement to an order of expungement or sealing to
182 be entered by the court. Such stipulation or agreement shall be filed with the court and
183 the court shall enter an order directing the expungement or sealing of those records of the
184 claimant that directly pertain to the claimant's erroneous felony conviction, including
185 documents and other materials and any biological samples or other materials obtained
186 from the claimant. If the settlement does not include an agreement to an order of
187 expungement or sealing, the claimant is entitled to seek expungement or sealing from the
188 court.

189 (m) A claim for compensation brought under this Code section shall be commenced within
190 two years after either the grant of a pardon or the grant of judicial relief and satisfaction of
191 other conditions described in subsection (c) of this Code section. Any action by the state
192 challenging or appealing the grant of such judicial relief shall toll the two-year period.
193 Every action brought pursuant to this Code section that is not commenced within the time
194 required is barred."

195 **SECTION 2.**

196 This Act shall become effective upon its approval by the Governor or upon its becoming law
197 without such approval. For any claim that has accrued prior to the enactment of this Act, the
198 two-year limitation period shall begin to run upon the effective date of this Act.

199 **SECTION 3.**

200 All laws and parts of laws in conflict with this Act are repealed.