

The House Committee on Judiciary Non-Civil offers the following substitute to HB 364:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 5 of Title 28 of the Official Code of Georgia Annotated,
2 relating to the Claims Advisory Board, so as to create the Wrongful Conviction
3 Compensation Review Panel; to provide for a short title; to provide for applicability; to
4 provide for definitions; to provide for the composition of such panel; to provide for the
5 burden of proof and evidence to be considered by such panel; to provide for evaluation of
6 claims by such panel; to provide for notice of claims, forms, and hearings; to provide for
7 such panel to make recommendations to such board; to provide for payments; to provide for
8 related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **SECTION 1.**

11 Article 4 of Chapter 5 of Title 28 of the Official Code of Georgia Annotated, relating to the
12 Claims Advisory Board, is amended in Part 1, relating to general provisions, by revising
13 Code Section 28-5-60, relating to such board's creation, membership, and representation of
14 members by deputies or other designated employees, as follows:

H. B. 364 (SUB)

15 "28-5-60.

16 (a) As used in this article, the term:

17 (1) 'Board' means the Claims Advisory Board created in subsection (b) of this Code
 18 section.

19 (2) 'The state or any of its departments or agencies' means any department, agency,
 20 bureau, or commission of state government, excluding state authorities, and also
 21 excluding any county or municipal department, agency, bureau, commission, or authority.

22 (b) There is created the Claims Advisory Board, ~~hereinafter called the board, to be~~
 23 composed of the Secretary of State, who shall be the ~~chairman~~ chairperson, the
 24 commissioner of human services, the commissioner of corrections, and the commissioner
 25 of transportation. Whenever the board takes any official action authorized under the law
 26 or duly promulgated rules and regulations, three of the members shall constitute a quorum,
 27 ~~; however, any of those individuals named above may be represented by a deputy or other~~
 28 ~~designated employee;~~ and any such action shall be valid if any two of the remaining three
 29 ~~individuals~~ members are present during such action. Any board member may be
 30 represented by a deputy or other designated employee, and such individual's actions shall
 31 have the same effect as a board member's actions.

32 (b)(c) The ~~Claims Advisory Board~~ board is assigned to the Secretary of State for
 33 administrative purposes only as prescribed in Code Section 50-4-3."

34 **SECTION 2.**

35 Said article is further amended in said part by repealing Code Section 28-5-60.1, relating to
 36 "the state or any of its departments or agencies" defined, in its entirety.

37 **SECTION 3.**

38 Said article is further amended in Part 2, relating to claims against state or departments or
 39 agencies, by adding a new Code section to read as follows:

H. B. 364 (SUB)

40 "28-5-87.

41 The provisions of this part shall not apply to a claim made pursuant to Part 4 of this article."

42 **SECTION 4.**

43 Said article is further amended by adding a new part to read as follows:

44 "Part 4

45 28-5-110.

46 This part shall be known and may be cited as the 'Wrongful Conviction Compensation Act.'

47 28-5-111.

48 (a) As used in this part, the term:

49 (1) 'Exonerated' means an individual:

50 (A) Had his or her judgment of conviction reversed or vacated, or was granted a new
51 trial, and had the indictment or accusation dismissed or nolle prossed;

52 (B) Had his or her judgment of conviction reversed or vacated, or was granted a new
53 trial and, upon retrial, acquitted; or

54 (C) Received a pardon based on innocence.

55 (2) 'Panel' means the Wrongful Conviction Compensation Review Panel.

56 (b) The board shall have the authority to consider claims of wrongful conviction and
57 recommend compensation pursuant to this part to the Chief Justice of the Supreme Court
58 of Georgia.

59 (c)(1) For purposes of considering claims of wrongful conviction and making
60 recommendations of compensation to the board pursuant to this part, there is created the
61 Wrongful Conviction Compensation Review Panel, to be formed under the board.

62 (2) The panel shall consist of five members, and each member shall serve for a term of
63 three years; provided, however, that the two members first appointed under
64 subparagraphs (A) and (B) of this paragraph shall be appointed for an initial term of one
65 year and the two members first appointed under subparagraphs (C) and (D) of this
66 paragraph shall be appointed for an initial term of two years; provided, however, that any
67 member appointed to a partial initial term may serve two additional successive terms or
68 until his or her successor has been appointed. Any member of the panel may serve two
69 successive terms or until his or her successor has been appointed. The members of the
70 panel shall be:

71 (A) A judge, retired judge, or retired justice who presides over felony criminal matters
72 in any state court of record, appointed by the Chief Justice of the Supreme Court of
73 Georgia;

74 (B) A current district attorney appointed by the Governor;

75 (C) A criminal defense attorney appointed by the Governor;

76 (D) An attorney, forensic science expert, or law professor, with expertise in wrongful
77 convictions, appointed by the Speaker of the House of Representatives; and

78 (E) An attorney, forensic science expert, or law professor, with expertise in wrongful
79 convictions, appointed by the President of the Senate.

80 (3) The members of the panel shall designate one of the members as the panel's
81 chairperson.

82 (4) The panel shall have the authority to promulgate rules and regulations to govern its
83 consideration of claims brought before the panel and the recommendations by the panel
84 to the board.

85 28-5-112.

86 (a) In order to be eligible for compensation under this part, a claimant shall establish by
87 a preponderance of evidence to the panel that:

- 88 (1) The claimant was convicted of one or more felonies and subsequently incarcerated;
89 (2) The claimant proclaims his or her innocence;
90 (3) The claimant did not commit or suborn perjury, fabricate evidence, or engage in
91 conduct intended to bring about the conviction. A confession later found to be false, an
92 admission of guilt later found to be false, or a guilty plea shall not constitute committing
93 or suborning perjury, fabricating evidence, or engaging in conduct intended to bring
94 about the conviction under this part; and
95 (4) The claimant was exonerated of the crime for which the claim for compensation for
96 wrongful conviction and incarceration is being made.
97 (b) In order to receive compensation under this part, the claimant shall establish by a
98 preponderance of evidence to the panel that:
99 (1) The claimant received a pardon based on innocence for the conviction;
100 (2) The claimant was exonerated based on grounds of innocence; or
101 (3) The claimant did not commit the crime for which the claimant was convicted and did
102 not commit any lesser included offenses.
103 (c) The panel, in evaluating a claim brought under this part, may, in the interest of justice,
104 give due consideration to difficulties of proof caused by the passage of time, the death or
105 unavailability of witnesses, the destruction of evidence, and other factors not caused by the
106 claimant or those acting on his or her behalf.
107 (d) The panel is authorized to determine:
108 (1) Whether a claimant qualified for compensation under this part; and
109 (2) The recommended amount of compensation, if any, with any such amount to be
110 included in the board's transmittal provided for in subsection (b) of Code
111 Section 28-5-115.

112 28-5-113.

113 (a) No claim for payment of compensation under this part shall be considered by the panel
114 unless a notice of claim has been filed with the board within three years after the date the
115 claimant's eligibility has been established as set forth in paragraph (4) of subsection (a) of
116 Code Section 28-5-112 or within three years of July 1, 2023, whichever occurs later.

117 (b) The panel shall provide forms to be used in filing a notice of claim and shall make
118 them available for such purpose. The forms shall specify what evidence the panel will
119 require in order to process a claim pursuant to subsections (a) and (b) of Code
120 Section 28-5-112. Such information shall include documentation supporting a claimant's
121 eligibility for compensation and showing of innocence. If a claim does not contain all
122 information requested in the form, the panel shall contact the claimant to request this
123 information, in writing, within 30 days of discovering the information is missing, and
124 provide the claimant 60 days to supplement his or her claim.

125 (c) Once the panel is in receipt of all information requested under subsection (b) of this
126 Code section, and if the panel determines the claimant is eligible under subsection (a) of
127 Code Section 28-5-112 for consideration for compensation, the panel shall, within 90 days
128 of receiving the notice of claim and requested information:

129 (1) Conduct a hearing if it determines a hearing is necessary to make a recommendation
130 under this part; or

131 (2) Make a provisional judgment on the eligibility of the claimant and the recommended
132 award and provide its provisional judgment to the claimant. Upon receiving notice of the
133 panel's provisional judgment, the claimant shall have 14 days to request a hearing before
134 the panel if the claimant wishes for further review of his or her claim. If the claimant
135 requests a hearing under this paragraph, the panel shall conduct a hearing within 60 days.

136 (d) In the event a hearing is to be held, the claimant, the district attorney for the circuit in
137 which the conviction occurred, and the Attorney General shall be notified of the date, time,
138 and place of the hearing and shall be entitled to present evidence at such hearing.

139 (e) Proceedings before the panel shall be governed by rules established by the panel. A
140 claimant may be represented by an attorney as he or she shall choose.

141 28-5-114.

142 (a) Upon determining a claimant meets the criteria of subsections (a) and (b) of Code
143 Section 28-5-112, the panel shall recommend to the board that the claimant be awarded
144 compensation for wrongful conviction and incarceration.

145 (b) In recommending compensation pursuant to subsection (a) of this Code section, the
146 panel:

147 (1) May include \$100,000.00 per year, but shall include no less than \$50,000.00 per year,
148 for each year of wrongful incarceration, provided that a prorated amount shall be
149 allocated to any partial year served; and

150 (2) May include the claimant's incurred reasonable attorney's fees and other expenses in
151 connection with all associated criminal and habeas corpus proceedings, obtaining the
152 claimant's discharge from confinement, and filing of a claim for compensation under this
153 part.

154 (c) In calculating time of incarceration, the panel shall only include time for the charge for
155 which the claimant is making a claim under this part consistent with the requirements of
156 Code Section 17-10-11; provided, however, that a claimant shall not be entitled to
157 compensation under this part for any portion of a sentence spent incarcerated during which
158 the claimant was also serving a concurrent sentence of incarceration for another crime to
159 which this part does not apply.

160 (d)(1) Any payment of compensation may be made to or for the benefit of the claimant;
161 or in the case of the death of the claimant, to or for the benefit of one or more of the heirs
162 at law of the claimant, or, if the claimant chooses, up to one other person who is not an
163 heir at law as designated by the claimant.

164 (2) Payment of compensation shall be made in the form of cash.

165 (e) In recommending compensation pursuant to subsection (a) of this Code section, the
166 panel shall strive for consistency between claimants.

167 (f) The dollar amounts specified in this Code section shall be adjusted annually by an
168 amount calculated by multiplying such dollar amounts (as adjusted for the preceding year)
169 by the annual percentage change in the consumer price index, or its successor or
170 appropriate replacement index, if any, published by the United States Department of Labor
171 for the preceding calendar year, commencing on July 1, 2023.

172 28-5-115.

173 (a) Within six months, or within a year if a hearing was held, of receiving the claimant's
174 notice of claim and all information requested under subsection (b) of Code
175 Section 28-5-113, the panel shall prepare a written recommendation to the board including:

176 (1) A statement of its findings as to whether the claimant has met the requirements of
177 subsections (a) and (b) of Code Section 28-5-112;

178 (2) A statement explaining the panel's calculation of compensable time; and

179 (3) A statement detailing the amount and forms of compensation.

180 (b) The board shall adopt the recommendation of the panel as its own and upon adopting
181 the recommendation of the panel shall transmit the recommendation and the statement of
182 the panel to the Chief Justice of the Supreme Court of Georgia within seven days of
183 receiving it from the panel.

184 (c) If the Chief Justice of the Supreme Court of Georgia receives the recommendation of
185 the board on or before September 1, he or she shall include the compensation
186 recommended by the board under this part in the amended budget for the Judicial Council
187 of Georgia for the current fiscal year. If the Chief Justice of the Supreme Court of Georgia
188 receives the recommendation of the board after September 1, he or she shall include the
189 compensation recommended by the board under this part in the budget for the Judicial
190 Council of Georgia for the next fiscal year.

191 (d) Any award of compensation made pursuant to this part shall not be:

192 (1) Subject to any monetary limitation of damages awarded in civil actions;

193 (2) Subject to any state income taxes; provided, however, that the award of attorney's
194 fees shall be subject to taxation; or

195 (3) Offset by any expense incurred by this state or any political subdivision thereof
196 related to the claimant's incarceration.

197 (e) The General Assembly waives sovereign immunity of this state for the purpose of
198 authorizing payment of claims against this state pursuant to the authority of this part.

199 (f) No award of compensation pursuant to this part shall be disbursed to a claimant who
200 had his or her judgment of conviction reversed or vacated, or was granted a new trial, and
201 had the indictment or accusation dismissed or nolle prossed until the time period set forth
202 in Code Section 17-3-3 has lapsed or the prosecutor has affirmatively declined further
203 prosecution.

204 28-5-116.

205 (a) If, at the time a claim is made under this part to the panel, the claimant has won a
206 monetary award against the state or any political subdivision thereof in the final judgment
207 of a civil action related to the wrongful conviction or has entered into a settlement
208 agreement with the state or any political subdivision thereof related to the wrongful
209 conviction, the amount of the award in the action or the amount received in the settlement
210 agreement, less any sums paid to attorneys for costs in litigating other civil action or
211 obtaining the settlement agreement, shall be deducted from the sum of money to which the
212 panel shall usually recommend under this part.

213 (b) If, after the time a claim is made under this part to the panel, the claimant wins a
214 monetary award against the state or any political subdivision thereof in the final judgment
215 of a civil action related to the wrongful conviction, the court shall deduct from such
216 monetary award an amount equal to the sum of money awarded under this part as

217 compensation for wrongful conviction, less any sums paid to attorneys or for costs in
218 litigating other civil action or obtaining the settlement agreement."

219

SECTION 5.

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