

Senate Bill 176

By: Senators Robertson of the 29th, Albers of the 56th, Summers of the 13th, Williams of the 25th, Dixon of the 45th and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 so as to establish the "Victims of Wrongful Incarceration Compensation Act"; to provide for
3 a short title; to provide for eligibility; to provide for definitions; to provide for the
4 compensation of wrongfully incarcerated persons; to provide for procedures allowing an
5 exonerated person to petition the sentencing court or other court of competent jurisdiction
6 for an order that he or she be eligible for compensation; to provide for procedures for
7 prosecuting authorities to respond to such petitions; to provide for hearings; to provide for
8 dismissal; to provide for ineligibility; to provide for requisition procedures and for
9 certification of eligibility for compensation; to provide for criminal records checks; to
10 provide for the calculation, payment, and limit of such compensation; to provide for waivers
11 and release; to provide for related matters; to provide an effective date; to repeal conflicting
12 laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
16 amended by adding a new chapter to read as follows:

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17 "CHAPTER 2218 17-22-1.19 This chapter shall be known and may be cited as the 'Wrongful Incarceration Compensation
20 Act.'21 17-22-2.22 As used in this chapter, the term:23 (1) 'Competent evidence' means evidence that is legally admissible.24 (2) 'Department' means the Department of Law.25 (3) 'Exonerated' or 'exonerating' means when a person:26 (A) Has been pardoned based upon a finding of innocence by the State Board of
27 Pardons and Paroles;28 (B) Was granted a new trial and, upon retrial, has been acquitted; or29 (C) Has had his or her judgment of conviction reversed or vacated or was granted a
30 new trial, and the indictment or accusation dismissed or nolle prossed, based on the
31 existence of verifiable competent and material substantive evidence of such person's
32 actual innocence.33 (4) 'Material evidence' means evidence that is relevant and of sufficient importance to
34 be allowed into evidence35 (5) 'Serious violent felony' shall have the same meaning as provided in Code Section
36 17-10-6.1.37 (6) 'Substantive evidence' means evidence that supports a fact in issue relative to the
38 necessary elements of a charge. Such term shall not include evidence relative to
39 procedural or collateral issues.

40 17-22-3.

41 (a) To be eligible for compensation under this chapter, an exonerated person shall set forth
42 a claim of wrongful incarceration under oath and with particularity by filing a petition with
43 the sentencing court, with a copy of the petition and notice provided to the prosecuting
44 authority in the criminal case for which the exonerated person was incarcerated. At a
45 minimum, the petition shall state that:

46 (1) Verifiable competent and material substantive evidence of the petitioner's actual
47 innocence exists and shall describe with particularity the nature and significance of such
48 evidence of actual innocence; and

49 (2) The petitioner is not ineligible for compensation under the provisions of Code
50 Section 17-22-4.

51 (b) The petition provided for in subsection (a) of this Code section shall be filed with the
52 court:

53 (1) Within 90 days after a final order exonerating the petitioner, if such order becomes
54 final on or after July 1, 2025; or

55 (2) By June 30, 2026, if such exonerating order became final prior to July 1, 2025.

56 (c) The prosecuting authority in the criminal case for which the exonerated person was
57 incarcerated shall be provided with a copy of the petition provided for in subsection (a) of
58 this Code section and shall respond to the petition within 30 days of receipt of such petition
59 by:

60 (1) Certifying to the court that, based upon the petition and the verifiable competent and
61 material substantive evidence of actual innocence, no further criminal proceedings will
62 be initiated by the prosecuting authority, that no questions of fact remain as to the
63 petitioner's wrongful incarceration, and that the petitioner is not ineligible for
64 compensation under the provisions of Code Section 17-22-4; or

65 (2) Contesting:

- 66 (A) Whether the petitioner is ineligible for compensation under the provisions of Code
67 Section 17-22-4; or
- 68 (B) The nature, significance, or effect of the evidence of the petitioner's alleged actual
69 innocence or the facts related to the petitioner's alleged wrongful incarceration.
- 70 (d) Following a prosecuting authority's response under paragraph (1) of subsection (c) of
71 this Code section, the court shall be authorized to issue an order:
- 72 (1) That the petitioner is eligible for compensation under this chapter, based upon:
- 73 (A) The verifiable competent and material substantive evidence of the petitioner's
74 actual innocence;
- 75 (B) The prosecuting authority's certification provided pursuant to paragraph (1) of
76 subsection (c) of this Code section; and
- 77 (C) The court's finding that the petitioner has presented verifiable competent and
78 material substantive evidence that the petitioner committed neither the act nor the
79 offense that served as the basis for the incarceration, and that the petitioner did not aid,
80 abet, or act as an accomplice to a person who committed such act or offense; and
- 81 (2) That the petitioner is not ineligible for compensation under the provisions of Code
82 Section 17-22-4.
- 83 (e) Following a prosecuting authority's response under subparagraph (c)(2)(A) of this Code
84 section, the court shall make a determination from the pleadings and supporting
85 documentation whether, by clear and convincing evidence, the petitioner is ineligible for
86 compensation under the provisions of Code Section 17-22-4. If the court finds the
87 petitioner ineligible under the provisions of Code Section 17-22-4, it shall be authorized
88 to dismiss the petition with a written order setting forth the court's findings.
- 89 (f) Following a prosecuting authority's response under subparagraph (c)(2)(B) of this Code
90 section, and the court determines that the petitioner is not ineligible for compensation under
91 the provisions of Code Section 17-22-4, a hearing shall be conducted no later than 120 days
92 after the prosecuting authority's response to determine whether the petitioner has proved

93 by clear and convincing evidence that the petitioner committed neither the act nor the
94 offense that served as the basis for the incarceration, and that the petitioner did not aid,
95 abet, or act as an accomplice to a person who committed such act or offense.

96 (g) If the court concludes that the petitioner is eligible for compensation under this chapter,
97 such court shall be authorized to include in its order a certification to the department that:

98 (1) The petitioner has met his or her burden of establishing by clear and convincing
99 evidence that the petitioner committed neither the act nor the offense that served as the
100 basis for the incarceration, and that the petitioner did not aid, abet, or act as an
101 accomplice to a person who committed the act or offense; and

102 (2) The establishment of the method by which an exonerated person may petition to be
103 deemed eligible for compensation under this chapter in no way creates any right of due
104 process beyond those set forth herein, nor is there created any right to further petition or
105 appeal beyond the scope of the method set forth herein.

106 17-22-4.

107 An exonerated person shall not be eligible for compensation under this chapter if:

108 (1) Before the exonerated person's wrongful incarceration, he or she was convicted of,
109 or pled guilty or nolo contendere to, regardless of adjudication, any serious violent
110 felony, or a crime committed in another jurisdiction the elements of which would
111 constitute a serious violent felony in this state, or a crime committed against the United
112 States which is designated a serious violent felony, excluding any delinquency
113 disposition;

114 (2) Before the exonerated person's wrongful incarceration, he or she was convicted of,
115 or pled guilty or nolo contendere to, regardless of adjudication, more than one felony that
116 is not a serious violent felony, or more than one crime committed in another jurisdiction,
117 the elements of which would constitute a felony in this state, or more than one crime

118 committed against the United States which is designated a felony, excluding any
119 delinquency disposition;

120 (3) During the exonerated person's wrongful incarceration, he or she was convicted of,
121 or pled guilty or nolo contendere to, regardless of adjudication, any serious violent
122 felony;

123 (4) During the exonerated person's wrongful incarceration, he or she was convicted of,
124 or pled guilty or nolo contendere to, regardless of adjudication, more than one felony that
125 is not a serious violent felony; or

126 (5) During the exonerated person's wrongful incarceration, he or she was also serving a
127 concurrent sentence for another felony for which the person was not wrongfully
128 incarcerated.

129 17-22-5.

130 (a) An exonerated person who has been found by a court of competent jurisdiction to be
131 eligible for compensation under this chapter pursuant to either subsection (d) or (g) of Code
132 Section 17-22-3 shall initiate his or her requisition for such compensation no more than two
133 years after the entry of the order that includes such finding.

134 (b) The requisition provided for in subsection (a) of this Code section shall be delivered
135 to the department in person or by registered or certified mail or statutory overnight delivery
136 and shall include:

137 (1) A certified copy of his or her exonerating order;

138 (2) A certified copy of the order issued pursuant to subsection (d) or (g) of Code Section
139 17-22-3 finding that he or she is eligible for compensation under this chapter;

140 (3) Certified copies of the original judgment and sentence;

141 (4) Documentation demonstrating the length of the sentence served, including
142 documentation from the Department of Corrections regarding his or her admission into
143 and release from the custody of the Department of Corrections;

144 (5) Positive proof of identification, including two full sets of fingerprints administered
145 by a law enforcement agency and a current form of photo identification, demonstrating
146 that the person requisitioning compensation is the same individual who was exonerated;
147 (6) All supporting documentation of any fine, penalty, or court costs imposed that were
148 actually paid by the exonerated person; and
149 (7) All supporting documentation of the amount of any reasonable attorney's fees and
150 expenses incurred and paid by the exonerated person in connection with all criminal
151 proceedings and appeals regarding his or her wrongful incarceration.

152 (c) Upon receipt of a requisition made pursuant to and in accordance with subsections (a)
153 and (b) of this Code section, the department shall examine such requisition and within 30
154 calendar days shall notify the exonerated person of any errors or omissions and may
155 request any additional information relevant to the review of the requisition. The
156 exonerated person shall have 15 days after proper notification of any existing errors or
157 omissions to supplement or amend the requisition. The department shall not deny any
158 requisition for failure of the exonerated person to correct an error or omission or supply
159 additional information unless the department timely notified the exonerated person of such
160 errors or omissions or requested the additional information within the 30 day period
161 specified in this subsection. The department shall process and review each completed
162 requisition within 90 calendar days. Once the department determines whether a requisition
163 meets the requirements set forth in this chapter, it shall notify the exonerated person and
164 the prosecuting authority within five business days of such determination.

165 (d) The department shall forward two full sets of fingerprints of the exonerated person to
166 the Georgia Crime Information Center, which shall submit the fingerprints to the Federal
167 Bureau of Investigation for a search of bureau records and an appropriate report and shall
168 promptly conduct a search of state records based upon the fingerprints. After receiving the
169 report from the Georgia Crime Information Center and the Federal Bureau of Investigation,
170 the department shall review such records.

171 (e) When the department determines that the exonerated person meets the requirements
172 of this chapter, the department shall certify in writing that such person is eligible for and
173 entitled to compensation under this chapter, subject to the provisions in Code Section
174 17-22-6, and shall provide a copy of such certification to the exonerated person and the
175 prosecuting authority within five business days of such determination.

176 (f) Prior to the department's approval of the exonerated person's requisition for
177 compensation under this chapter, the exonerated person shall sign a release and waiver on
178 behalf of himself or herself and his or her heirs, successors, and assigns, forever releasing
179 the state or any agency, instrumentality, or any political subdivision thereof, the
180 prosecuting authority, and the sentencing court from all present or future claims that the
181 exonerated person or his or her heirs, successors, or assigns may have against such entities
182 arising out of the facts in connection with the wrongful incarceration for which
183 compensation is being sought under this chapter.

184 (g)(1) An exonerated person shall not be authorized to submit a requisition for
185 compensation under this chapter if he or she has a lawsuit pending against the state or any
186 agency, instrumentality, or any political subdivision thereof, the prosecuting authority,
187 or the sentencing court in state or federal court requesting compensation arising out of the
188 facts in connection with his or her conviction and incarceration.

189 (2) Any amount of compensation calculated and paid under this chapter is intended to
190 provide the sole, final, and exclusive compensation by the state or any agency,
191 instrumentality, or any political subdivision thereof, the prosecuting authority, or the
192 sentencing court for any and all present and future claims arising out of the facts in
193 connection with the exonerated person's wrongful incarceration.

194 (h) No estate of or personal representative for a decedent shall be entitled to requisition or
195 otherwise seek compensation under this chapter on behalf of the decedent.

196 17-22-6.

197 (a)(1) Except as otherwise provided in this chapter and subject to the limitations and
198 procedures prescribed in paragraph (2) of this subsection, an exonerated person who has
199 been certified by the department as eligible for and entitled to compensation under this
200 chapter shall be entitled to:

201 (A) Monetary compensation for wrongful incarceration, which shall be calculated at
202 a rate of \$50,000.00 for each year of wrongful incarceration, prorated as necessary to
203 account for a portion of a year;

204 (B) A waiver of tuition and fees for up to 120 hours of instruction at any institution of
205 the University System of Georgia or unit of the Technical College System of Georgia,
206 if the exonerated person meets and maintains the regular admission requirements of
207 such postsecondary educational institution, remains registered at such postsecondary
208 educational institution, and makes satisfactory academic progress as defined by the
209 postsecondary educational institution in which such person is enrolled;

210 (C) The amount of any fine, penalty, or court costs imposed and paid by the exonerated
211 person;

212 (D) The amount of any reasonable attorney's fees and expenses incurred and paid by
213 the exonerated person in connection with all criminal proceedings and appeals
214 regarding the wrongful incarceration, to be calculated by the department based upon the
215 supporting documentation submitted as specified in Code Section 17-22-5; and

216 (E) Notwithstanding any provision of law to the contrary, immediate administrative
217 expunction of the exonerated person's criminal record of or relating to his or her
218 wrongful incarceration. The Department of Law and the Department of Public Safety
219 shall, upon a determination that an exonerated person is eligible for and entitled to
220 compensation under this chapter, immediately take all action necessary to
221 administratively expunge the exonerated person's criminal record of or related to his or
222 her wrongful incarceration. All fees for this process shall be waived.

223 (2) The total amount of compensation calculated as provided for in subparagraphs (A),
224 (C), and (D) of paragraph (1) of this subsection shall not exceed \$1 million. No further
225 award for attorney's fees, lobbying fees, costs, or other similar expenses shall be made
226 by the state.

227 (b) In calculating any monetary compensation under paragraph (1) of subsection (a) of this
228 Code section:

229 (1) An exonerated person who is placed on parole or community supervision while
230 serving the sentence resulting from his or her conviction leading to his or her wrongful
231 incarceration and who commits no more than one felony that is not a serious violent
232 felony which results in revocation of the parole or community supervision shall be
233 eligible for compensation for the total number of years incarcerated; and

234 (2) An exonerated person who commits one serious violent felony or more than one
235 felony that is not a serious violent felony that results in revocation of such parole or
236 community supervision shall be ineligible for any compensation under paragraph (1) of
237 subsection (a) of this Code section.

238 (c) Within 12 months after receiving the department's certification that the exonerated
239 person is eligible for and entitled to compensation under this chapter, the prosecuting
240 authority shall execute all necessary agreements to implement this chapter and to maximize
241 the benefit to such exonerated person.

242 17-22-7.

243 Any payment made under this chapter shall not constitute a waiver of any defense of
244 sovereign immunity."

245 **SECTION 2.**

246 This Act shall become effective on July 1, 2025.

247

SECTION 3.

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