

House Bill 533

By: Representatives Dempsey of the 13th, Holcomb of the 101st, Efstation of the 104th,
Wiedower of the 121st, Smith of the 18th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Titles 17 and 28 of the Official Code of Georgia Annotated, relating to criminal
2 procedure and General Assembly, respectively, so as to allow for wrongful conviction
3 compensation claims; to provide for a short title; to provide for notice of claims; to require
4 administrative law judges within the Office of State Administrative Hearings to hear and
5 evaluate such claims; to provide for the burden of proof and evidence to be considered by an
6 administrative law judge; to require an administrative law judge to make eligibility and
7 compensation recommendations to the Chief Justice of the Supreme Court of Georgia; to
8 establish guidelines for determining compensation and provide for payments; to require the
9 Supreme Court of Georgia and the State Board of Pardons and Paroles to provide certain
10 individuals with a copy of this Act; to provide for definitions; to exclude wrongful conviction
11 compensation claims from the purview of the Claims Advisory Board; to provide for related
12 matters; to repeal conflicting 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:

H. B. 533

17 "CHAPTER 22

18 17-22-1.

19 This chapter shall be known and may be cited as the 'Wrongful Conviction Compensation
20 Act.'

21 17-22-2.

22 As used in this chapter, the term 'conviction' includes a juvenile delinquency adjudication
23 under Code Section 15-11-582.

24 17-22-3.

25 (a) The Office of State Administrative Hearings, established pursuant to Code Section
26 50-13-40, shall have the authority to consider claims of wrongful conviction and
27 recommend compensation pursuant to this chapter to the Chief Justice of the Supreme
28 Court of Georgia.

29 (b) For purposes of considering claims of wrongful conviction and making
30 recommendations of compensation pursuant to this chapter, an administrative law judge
31 appointed pursuant to Code Section 50-13-40 shall be designated by the Office of State
32 Administrative Hearings for each claim filed under this chapter.

33 (c) Any such administrative law judge shall be authorized to determine:

34 (1) Whether a claimant qualifies for compensation under this chapter; and

35 (2) The amount of compensation, if any, to be awarded, with any such amount to be
36 included in the administrative law judge's transmittal provided for in subsection (a) of
37 Code Section 17-22-8.

38 17-22-4.

39 (a) A claim for compensation under this chapter shall be:

40 (1) Filed directly with the Office of State Administrative Hearings;

41 (2) Filed within three years after the date of the acknowledgment provided pursuant to
42 Code Section 17-22-10, or within three years of July 1, 2025, whichever occurs later,
43 except as provided in subsections (b) and (c) of this Code section; and

44 (3) Captioned 'In the Matter of the Wrongful Conviction of [Claimant].'

45 (b) If, during the two years before the limitations period under paragraph (2) of
46 subsection (a) of this Code section would otherwise expire, the claimant obtains new
47 evidence of innocence that the claimant could not previously have obtained with reasonable
48 diligence, the claimant may file a claim under this chapter within two years of the date on
49 which the claimant obtains such new evidence.

50 (c) If, after the limitations period under paragraph (2) of subsection (a) of this Code section
51 has expired, the claimant obtains new evidence of innocence that the claimant could not
52 previously have obtained with reasonable diligence, the claimant may file a claim under
53 this chapter within two years of the date on which the claimant obtains such new evidence.

54 (d) A claim may be brought under this chapter by the heirs at law of a deceased individual.

55 17-22-5.

56 (a) As used in this Code section, the term 'Alford plea' means a plea of guilty entered by
57 a defendant while maintaining his or her innocence, as recognized by the United States
58 Supreme Court in North Carolina v. Alford, 400 U.S. 25 (1970).

59 (b) To receive compensation under this chapter, a claimant must establish by a
60 preponderance of evidence to the administrative law judge that:

61 (1) The claimant was convicted of a felony by a court of this state and served all or part
62 of the sentence for that felony;

63 (2) The claimant did not commit the crime for which the claimant was convicted and did
64 not commit any lesser included offense; and

65 (3) One of the following apply to the claimant:

66 (A) The claimant's conviction was reversed or vacated, and the charges against the
67 claimant were dismissed after the conviction was reversed or vacated;

68 (B) The claimant's conviction was reversed or vacated, and the claimant was acquitted
69 of the charges upon retrial;

70 (C) The claimant's conviction was reversed or vacated, and the claimant entered an
71 Alford plea or a plea of nolo contendere, when the claimant would otherwise have been
72 entitled to a new trial; or

73 (D) The claimant received a pardon based on innocence for the conviction.

74 (c) In evaluating whether a claimant has met the requirements of subsection (b) of this
75 Code section, an administrative law judge may, in the interest of justice, give due
76 consideration to difficulties of proof caused by the passage of time, the death or
77 unavailability of witnesses, the destruction of evidence, and other factors not caused by the
78 claimant or those acting on the claimant's behalf.

79 (d) Upon determining that a claimant meets the criteria of subsection (b) of this Code
80 section, an administrative law judge shall recommend to the Chief Justice of the Supreme
81 Court of Georgia that the claimant be awarded compensation for wrongful conviction and
82 incarceration, unless the administrative law judge determines by a preponderance of the
83 evidence that:

84 (1) The claimant was an accomplice in the commission of the crime for which the
85 claimant was convicted; or

86 (2) For the purpose of protecting the true perpetrator from conviction, the claimant
87 intentionally and voluntarily caused the conviction by entering a guilty plea, by
88 committing perjury at trial, or by fabricating evidence at trial.

89 17-22-6.

90 (a) Upon receiving a claim under this chapter filed in accordance with Code Section
91 17-22-4, the Office of State Administrative Hearings shall, within 15 days, designate an
92 administrative law judge to adjudicate the claim.

93 (b) Any such administrative law judge shall:

94 (1) Within 15 days of being designated to adjudicate the claim, provide the Attorney
95 General with notice of the claim and an opportunity to respond within 60 days; and

96 (2) Within 180 days of being designated to adjudicate the claim, commence a hearing to
97 determine if the claimant is eligible for compensation under this chapter, and if so, the
98 amount of compensation to be recommended to the Chief Justice of the Supreme Court
99 of Georgia.

100 (c) Except as otherwise provided in this chapter:

101 (1) All proceedings pursuant to this chapter shall be conducted in accordance with the
102 provisions of Article 2 of Chapter 13 of Title 50; and

103 (2) The rules of evidence established in Code Section 50-13-15 shall apply in any
104 hearing held under this Code section.

105 (d) A claimant may obtain judicial review of the final decision of the administrative law
106 judge under this chapter in accordance with Code Section 50-13-19, and all administrative
107 remedies shall be deemed to have been exhausted for purposes of review in accordance
108 with Code Section 50-13-19.

109 17-22-7.

110 (a) As used in this Code section, the term 'Alford plea' shall have the same meaning as set
111 forth in Code Section 17-22-5.

112 (b) In recommending compensation to the Chief Justice of the Supreme Court of Georgia
113 pursuant to subsection (a) of Code Section 17-22-8, an administrative law judge shall
114 include:

- 115 (1) For each year of incarceration, \$75,000.00, provided that a prorated amount shall be
116 allocated to any partial year served;
- 117 (2) An additional \$25,000.00 for each year of incarceration while awaiting a sentence of
118 death based on the conviction at issue, provided that a prorated amount shall be allocated
119 to any partial year served;
- 120 (3) The reasonable and necessary attorney's fees, costs, and expenses incurred by the
121 claimant or on the claimant's behalf in reversing or vacating the claimant's conviction,
122 obtaining a pardon, and filing a claim for compensation under this chapter;
- 123 (4) Reimbursement for restitution, costs, fines, fees, or surcharges paid by or on behalf
124 of the claimant as a result of the conviction at issue; and
- 125 (5) Reimbursement for any reasonable reintegrative services and mental and physical
126 healthcare costs incurred by the claimant for the period between the claimant's release
127 from incarceration and the date of the claimant's award.
- 128 (c) In calculating time of incarceration, an administrative law judge shall only include time
129 served for the charge for which the claimant is making a claim under this chapter,
130 consistent with the requirements of Code Section 17-10-11; provided, however, that a
131 claimant shall not be entitled to compensation under this chapter for any portion of a
132 sentence spent incarcerated during which the claimant was also serving a concurrent
133 sentence of incarceration for another crime for which the claimant's conviction was not
134 overturned and for which the claimant was not pardoned based on innocence, except to the
135 extent that:
- 136 (1) The sentence for that crime was longer than it would have been without consideration
137 by the sentencing court of one or more of the crimes at issue; or
- 138 (2) The intact conviction was based on an Alford plea or a plea of nolo contendere
139 maintaining a claim of innocence that the claimant accepted to resolve the underlying
140 case after the original conviction was overturned, and the claimant proves by a

141 preponderance of the evidence that the claimant did not commit the crime that resulted
142 in the Alford plea or the plea of nolo contendere, and that there was no crime committed.

143 (d)(1) Any payment of compensation may be made to or for the benefit of the claimant,
144 or, in the case of the death of the claimant, to or for the benefit of one or more heirs at
145 law or designated beneficiaries of the claimant.

146 (2) Payment of compensation shall be made in the form of cash; provided, however, that
147 payment of any amount in excess of \$1.5 million shall be made in three equal annual
148 installments.

149 (e) The dollar amounts specified in this Code section shall be adjusted annually by an
150 amount calculated by multiplying such dollar amounts, as adjusted for the preceding year,
151 by the annual percentage change in the Consumer Price Index, or its successor or
152 appropriate replacement index, if any, published by the Bureau of Labor Statistics of the
153 United States Department of Labor for the preceding calendar year, commencing on
154 January 1, 2025.

155 17-22-8.

156 (a) Upon making a final determination that a claimant is eligible for compensation and of
157 the amount of compensation to be provided under this chapter, the administrative law judge
158 shall transmit a written recommendation to the Chief Justice of the Supreme Court of
159 Georgia, including:

160 (1) A statement of findings as to whether the claimant meets the requirements for
161 compensation under this chapter; and

162 (2) A statement explaining the administrative law judge's calculation of the amount of
163 compensation due, in accordance with Code Section 17-22-7.

164 (b) An award of compensation under this chapter shall be paid out of the funds
165 appropriated for the judiciary. If the Chief Justice receives the recommendation of the
166 administrative law judge before September 1, he or she shall include the compensation

167 recommended by the administrative law judge under this chapter in the amended budget
168 for the Judicial Council of Georgia for the current fiscal year, and shall issue a transitional
169 assistance advance to the successful claimant of \$6,000.00 within 60 days, to be deducted
170 from the aggregate award. If the Chief Justice receives the recommendation of the board
171 on or after September 1, he or she shall include the compensation recommended by the
172 administrative law judge under this chapter in the budget for the Judicial Council of
173 Georgia for the next fiscal year, and shall issue a transitional assistance advance to the
174 successful claimant of \$18,000.00 within 60 days, to be deducted from the aggregate
175 award.

176 (c) Any award of compensation made pursuant to this chapter shall not be:

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

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

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

182 (d) Claimant's attorneys may not collect any fees, costs, or expenses for obtaining relief
183 under this chapter, including any fees, costs, or expenses calculated on a contingency basis,
184 except for the amounts awarded under paragraph (3) of subsection (b) of Code
185 Section 17-22-7.

186 (e) The General Assembly waives sovereign immunity of this state for the purpose of
187 authorizing payment of claims against this state pursuant to the authority of this chapter.

188 17-22-9.

189 (a) If, at the time an administrative law judge makes a recommendation for compensation
190 under this chapter, the claimant has received a monetary award or settlement in a civil
191 action against the state or any political subdivision thereof arising from the wrongful
192 conviction, the amount previously received by the claimant, less any attorney's fees, costs,

193 and expenses paid by the claimant in obtaining the civil action award or settlement, shall
194 be deducted from the award to be recommended under this chapter.

195 (b) If, after the time an administrative law judge makes a recommendation for
196 compensation under this chapter, the claimant receives a monetary award or settlement in
197 a civil action against the state or any political subdivision thereof arising from the wrongful
198 conviction, the claimant shall reimburse the state for the amount of compensation the
199 claimant received in the civil action award or settlement, up to the full amount awarded
200 under this chapter, less any attorney's fees, costs, and expenses paid by the claimant in
201 obtaining the civil action award or settlement.

202 17-22-10.

203 (a) A court entering a dismissal or judgment of acquittal after a defendant's criminal
204 conviction has been overturned, vacated, or reversed shall provide a copy of this chapter
205 to the defendant at the time of entry of the dismissal or acquittal. The defendant must
206 acknowledge receipt of a copy of this chapter in writing on a form established by the
207 Supreme Court of Georgia. Such acknowledgment shall be entered on the docket by the
208 Supreme Court of Georgia and shall be admissible in any proceeding subsequently filed
209 by the defendant under this chapter.

210 (b) Upon the issuance of a pardon of innocence or a commutation of sentence resulting in
211 release, the State Board of Pardons and Paroles shall provide a copy of this chapter to the
212 individual receiving the pardon or commutation. The individual must acknowledge receipt
213 of a copy of this chapter in writing on a form established by the State Board of Pardons and
214 Paroles, which shall be retained on file by such board as part of its official records and shall
215 be admissible in any proceeding subsequently filed by the individual under this chapter."

216 **SECTION 2.**

217 Title 28 of the Official Code of Georgia Annotated, relating to General Assembly, is
218 amended in Part 2 of Article 4 of Chapter 5, relating to claims against state, departments, or
219 agencies, by adding a new Code section to read as follows:

220 "28-5-87.

221 The provisions of this part shall not apply to a claim made pursuant to Chapter 22 of Title
222 17, the 'Wrongful Conviction Compensation Act.'"

223 **SECTION 3.**

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