

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes

VETO MESSAGE: Yes

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

LAW/KR

P.L.2013, CHAPTER 171, *approved December 27, 2013*
Senate, No. 1219 (*Second Reprint*)

1 AN ACT concerning compensation for wrongful imprisonment,
2 amending and supplementing P.L.1997, c.227 and amending
3 P.L.1967, c.43.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.1997, c.227 (C.52:4C-1) is amended to read
9 as follows:

10 1. The Legislature finds and declares that innocent persons who
11 have been convicted of crimes and subsequently imprisoned have
12 been frustrated in seeking legal redress and that such persons should
13 have an available avenue of redress **[over and above the existing**
14 **tort remedies]** to seek compensation for damages. The Legislature
15 intends by enactment of the provisions of this act that those
16 innocent persons who can demonstrate by clear and convincing
17 evidence that they were mistakenly convicted and imprisoned be
18 able to recover damages against the State.

19 In light of the substantial burden of proof that must be carried by
20 such persons, it is the intent of the Legislature that the court, in
21 exercising its discretion as permitted by law regarding the weight
22 and admissibility of evidence submitted pursuant to this section,
23 may, in the interest of justice, give due consideration to difficulties
24 of proof caused by the passage of time, the death or unavailability
25 of witnesses, the destruction of evidence or other factors not caused
26 by such persons or those acting on their behalf.

27 (cf: P.L.1997, c.227, s.1)

28

29 2. Section 2 of P.L.1997, c.227 (C.52:4C-2) is amended to read
30 as follows:

31 2. a. Notwithstanding the provisions of any other law, any
32 person convicted and subsequently imprisoned for one or more
33 crimes which he did not commit may, under the conditions
34 hereinafter provided, bring a suit for damages in Superior Court
35 against the Department of the Treasury.

36 b. Any award of damages to such person in an action against
37 the State or any political subdivision thereof or against any
38 employee of the State or any political subdivision thereof with

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SBA committee amendments adopted October 1, 2012.

²Senate amendments adopted in accordance with Governor's
recommendations September 12, 2013.

1 respect to the same subject matter shall be offset by any award of
2 damages awarded under this act.

3 (cf: P.L.1997, c.227, s.2)

4

5 3. Section 3 of P.L.1997, c.227 (C.52:4C-3) is amended to read
6 as follows:

7 3. The person (hereinafter titled, "the claimant") shall establish
8 the following by clear and convincing evidence:

9 a. That he was convicted of a crime and subsequently
10 sentenced to a term of imprisonment, served all or any part of his
11 sentence; and

12 b. He did not commit the crime for which he was convicted;
13 and

14 c. He did not **【**by his own conduct cause or bring about his
15 conviction**】** commit or suborn perjury, fabricate evidence, or by his
16 own conduct cause or bring about his conviction. Neither a
17 confession or admission later found to be false ²【, nor a guilty plea
18 to a crime the claimant did not commit,】² shall constitute
19 committing or suborning perjury, fabricating evidence, or causing
20 or bringing about his conviction under this subsection ²; and

21 d. He did not plead guilty to the crime for which he was
22 convicted².

23 (cf: P.L.1997, c.227, s.3)

24

25 4. Section 5 of P.L.1997, c.227 (C.52:4C-5) is amended to read
26 as follows:

27 5. a. (1) **【Damages】** ²【Except as otherwise provided in
28 paragraph (2) of this subsection, damages】 Damages² awarded
29 under this act shall not exceed the greater of:

30 (a) twice the amount of the claimant's income in the year prior
31 to his incarceration; or **【\$20,000.00】**

32 (b) \$50,000 for each year of incarceration【, whichever is
33 greater】.

34 ²【(2) Beginning on the first day of the fifth July following
35 enactment, and on the first day of each fifth July thereafter, the
36 amount set forth in subparagraph (b) of paragraph (1) of subsection
37 a. of this section shall be increased to reflect changes in the
38 Consumer Price Index (CPI) for all urban consumers for the nation,
39 as reported by the United States Department of Labor. The State
40 Treasurer shall be responsible for calculating the amount of the
41 increases required by this section, and shall make that information
42 available through publication on the Department of Treasury
43 website.

44 (3) **【**(2)² In the event that damages exceed \$1 million, the court
45 may order that the award be paid as an annuity with a payout over a
46 maximum period of 20 years. The court shall consider the best
47 interests of the claimant in making such determination.

1 b. In addition to the damages awarded pursuant to subsection
2 a., the claimant shall be entitled to receive¹ [;]:

3 (1) ¹ reasonable attorney fees¹ [;] ¹ and

4 ¹ [(2) other services as may be ordered by the court. The court
5 shall order any such services following an evaluation by the
6 probation department of the claimant's family situation, educational
7 history, vocational training, employment history, and financial
8 resources, including whether or not the claimant is eligible to be an
9 enrollee or covered person under a health insurance contract, policy
10 or plan. Services may also include] costs related to the litigation.
11 A claimant may also be awarded other non-monetary relief as
12 sought in the complaint including, but not limited to¹ vocational
13 training, tuition assistance, counseling, housing assistance, and
14 health insurance coverage as appropriate.

15 c. Damages awarded under this act shall not be subject to
16 treatment as gross income to the claimant under the provisions of
17 the ¹ [State tax code] "New Jersey Gross Income Tax Act,"
18 N.J.S.54A:1-1 et seq.¹

19 (cf: P.L.1997, c.227, s.5)

20
21 5. Section 17 of P.L.1967, c.43 (C.2A:158A-17) is amended to
22 read as follows:

23 17. a. The reasonable value of the services rendered to a
24 defendant pursuant to [this act] P.L.1967, c.43 (C.2A:158A-1 et
25 seq.) may in all cases be a lien on any and all property to which the
26 defendant shall have or acquire an interest. The Public Defender
27 shall effectuate such lien whenever the reasonable value of the
28 services rendered to a defendant appears to exceed \$150.00 and
29 may effectuate such lien where the reasonable value of those
30 services appears to be less than \$150.00.

31 To effectuate such a lien, the Public Defender shall file a notice
32 setting forth the services rendered to the defendant and the
33 reasonable value thereof with the Clerk of the Superior Court. The
34 filing of said notice with the Clerk of the Superior Court shall from
35 the date thereof constitute a lien on said property for a period of 10
36 years, unless sooner discharged and except for such time limitations
37 shall have the force and effect of a Judgment at Law. Within 10
38 days of the filing of the Notice of Lien, the Public Defender shall
39 send by certified mail, or serve personally, a copy of such notice
40 with a statement of the date of the filing thereof to or upon the
41 defendant at his last known address. If the Public Defender shall
42 fail to give notice, the lien shall be void.

43 b. In any case where the defendant is awarded damages
44 pursuant to P.L.1997, c.227 (C.52:4C-1 et seq.) on grounds that the
45 defendant did not commit the crime for which he was convicted and
46 imprisoned, the Public Defender shall discharge any lien for

1 services rendered concerning that crime.

2 (cf: P.L.1969, c.29, s.1)

3

4 6. (New section) The provisions of this amendatory and
5 supplementary act (P.L. , c.) (pending before the Legislature
6 as this bill) shall apply to any claimant released from imprisonment
7 or granted a pardon on or after the effective date of this act.

8

9 7. This act shall take effect immediately.

10

11

12

13

14

Increases compensation for wrongful imprisonment.

SENATE, No. 1219

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED JANUARY 30, 2012

Sponsored by:

Senator RICHARD J. CODEY

District 27 (Essex and Morris)

Senator RAYMOND J. LESNIAK

District 20 (Union)

SYNOPSIS

Increases compensation for wrongful imprisonment.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/5/2012)

1 AN ACT concerning compensation for wrongful imprisonment,
2 amending and supplementing P.L.1997, c.227 and amending
3 P.L.1967, c.43.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 1 of P.L.1997, c.227 (C.52:4C-1) is amended to read
9 as follows:

10 1. The Legislature finds and declares that innocent persons who
11 have been convicted of crimes and subsequently imprisoned have
12 been frustrated in seeking legal redress and that such persons should
13 have an available avenue of redress **[over and above the existing**
14 **tort remedies]** to seek compensation for damages. The Legislature
15 intends by enactment of the provisions of this act that those
16 innocent persons who can demonstrate by clear and convincing
17 evidence that they were mistakenly convicted and imprisoned be
18 able to recover damages against the State.

19 In light of the substantial burden of proof that must be carried by
20 such persons, it is the intent of the Legislature that the court, in
21 exercising its discretion as permitted by law regarding the weight
22 and admissibility of evidence submitted pursuant to this section,
23 may, in the interest of justice, give due consideration to difficulties
24 of proof caused by the passage of time, the death or unavailability
25 of witnesses, the destruction of evidence or other factors not caused
26 by such persons or those acting on their behalf.

27 (cf: P.L.1997, c.227, s.1)

28
29 2. Section 2 of P.L.1997, c.227 (C.52:4C-2) is amended to read
30 as follows:

31 2. a. Notwithstanding the provisions of any other law, any
32 person convicted and subsequently imprisoned for one or more
33 crimes which he did not commit may, under the conditions
34 hereinafter provided, bring a suit for damages in Superior Court
35 against the Department of the Treasury.

36 b. Any award of damages to such person in an action against
37 the State or any political subdivision thereof or against any
38 employee of the State or any political subdivision thereof with
39 respect to the same subject matter shall be offset by any award of
40 damages awarded under this act.

41 (cf: P.L.1997, c.227, s.2)

42
43 3. Section 3 of P.L.1997, c.227 (C.52:4C-3) is amended to read
44 as follows:

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 3. The person (hereinafter titled, "the claimant") shall establish
2 the following by clear and convincing evidence:

3 a. That he was convicted of a crime and subsequently
4 sentenced to a term of imprisonment, served all or any part of his
5 sentence; and

6 b. He did not commit the crime for which he was convicted;
7 and

8 c. He did not ~~by his own conduct cause or bring about his~~
9 ~~conviction~~ commit or suborn perjury, fabricate evidence, or by his
10 own conduct cause or bring about his conviction. Neither a
11 confession or admission later found to be false, nor a guilty plea to
12 a crime the claimant did not commit, shall constitute committing or
13 suborning perjury, fabricating evidence, or causing or bringing
14 about his conviction under this subsection.

15 (cf: P.L.1997, c.227, s.3)

16

17 4. Section 5 of P.L.1997, c.227 (C.52:4C-5) is amended to read
18 as follows:

19 5. a. ~~(1) [Damages] Except as otherwise provided in paragraph~~
20 ~~(2) of this subsection, damages awarded under this act shall not~~
21 ~~exceed the greater of:~~

22 ~~(a) twice the amount of the claimant's income in the year prior~~
23 ~~to his incarceration; or [\$20,000.00]~~

24 ~~(b) \$50,000 for each year of incarceration[, whichever is~~
25 ~~greater].~~

26 ~~(2) Beginning on the first day of the fifth July following~~
27 ~~enactment, and on the first day of each fifth July thereafter, the~~
28 ~~amount set forth in subparagraph (b) of paragraph (1) of subsection~~
29 ~~a. of this section shall be increased to reflect changes in the~~
30 ~~Consumer Price Index (CPI) for all urban consumers for the nation,~~
31 ~~as reported by the United States Department of Labor. The State~~
32 ~~Treasurer shall be responsible for calculating the amount of the~~
33 ~~increases required by this section, and shall make that information~~
34 ~~available through publication on the Department of Treasury~~
35 ~~website.~~

36 ~~(3) In the event that damages exceed \$1 million, the court may~~
37 ~~order that the award be paid as an annuity with a payout over a~~
38 ~~maximum period of 20 years. The court shall consider the best~~
39 ~~interests of the claimant in making such determination.~~

40 b. In addition to the damages awarded pursuant to subsection
41 a., the claimant shall be entitled to receive:

42 ~~(1) reasonable attorney fees; and~~

43 ~~(2) other services as may be ordered by the court. The court~~
44 ~~shall order any such services following an evaluation by the~~
45 ~~probation department of the claimant's family situation, educational~~
46 ~~history, vocational training, employment history, and financial~~
47 ~~resources, including whether or not the claimant is eligible to be an~~

1 enrollee or covered person under a health insurance contract, policy
2 or plan. Services may also include vocational training, tuition
3 assistance, counseling, housing assistance, and health insurance
4 coverage as appropriate.

5 c. Damages awarded under this act shall not be subject to
6 treatment as gross income to the claimant under the provisions of
7 the State tax code.

8 (cf: P.L.1997, c.227, s.5)

9

10 5. Section 17 of P.L.1967, c.43 (C.2A:158A-17) is amended to
11 read as follows:

12 17. a. The reasonable value of the services rendered to a
13 defendant pursuant to **[this act]** P.L.1967, c.43 (C.2A:158A-1 et
14 seq.) may in all cases be a lien on any and all property to which the
15 defendant shall have or acquire an interest. The Public Defender
16 shall effectuate such lien whenever the reasonable value of the
17 services rendered to a defendant appears to exceed \$150.00 and
18 may effectuate such lien where the reasonable value of those
19 services appears to be less than \$150.00.

20 To effectuate such a lien, the Public Defender shall file a notice
21 setting forth the services rendered to the defendant and the
22 reasonable value thereof with the Clerk of the Superior Court. The
23 filing of said notice with the Clerk of the Superior Court shall from
24 the date thereof constitute a lien on said property for a period of 10
25 years, unless sooner discharged and except for such time limitations
26 shall have the force and effect of a Judgment at Law. Within 10
27 days of the filing of the Notice of Lien, the Public Defender shall
28 send by certified mail, or serve personally, a copy of such notice
29 with a statement of the date of the filing thereof to or upon the
30 defendant at his last known address. If the Public Defender shall
31 fail to give notice, the lien shall be void.

32 b. In any case where the defendant is awarded damages
33 pursuant to P.L.1997, c.227 (C.52:4C-1 et seq.) on grounds that the
34 defendant did not commit the crime for which he was convicted and
35 imprisoned, the Public Defender shall discharge any lien for
36 services rendered concerning that crime.

37 (cf: P.L.1969, c.29, s.1)

38

39 6. (New section) The provisions of this amendatory and
40 supplementary act (P.L. , c.) (pending before the Legislature
41 as this bill) shall apply to any claimant released from imprisonment
42 or granted a pardon on or after the effective date of this act.

43

44 7. This act shall take effect immediately.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

This bill would increase the amount of compensation awarded under current law to persons mistakenly convicted and imprisoned and would provide for additional services for such persons.

Under current law, set out in P.L.1997, c.227 (C.52:4C-1 et seq.), any person convicted and imprisoned for a crime which he did not commit may bring a suit for damages in Superior Court against the Department of the Treasury. Damages under the statute may be awarded in an amount up to twice the amount of the claimant's income in the year prior to his incarceration or \$20,000 for each year of incarceration, whichever is greater.

This bill would increase the \$20,000 per year amount to \$50,000 per year and would provide for adjustments to this amount every five years in accordance with changes in the Consumer Price Index.

In addition, the bill authorizes the court to order other appropriate services for the claimant, at the discretion of the court. Any such services would be ordered after the probation department conducts an evaluation of the claimant's family situation, educational history, vocational training, employment history, and financial resources, including whether or not the claimant is an enrollee or covered person under a health insurance contract, policy or plan. Services ordered by the court could include, but would not be limited to, vocational training, tuition assistance, counseling, housing assistance and health insurance coverage as appropriate.

Under the bill, damages would not be subject to State income tax.

The bill provides that if the person also files suit against the State, a political subdivision, or an employee of the State or any political subdivision with respect to the same subject matter, any damages awarded in that suit would be offset by any damages awarded under P.L.1997, c.227 (C.52:4C-1 et seq.)

The bill also provides that if damages exceed \$1 million, the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years. The court would consider the best interests of the claimant in making such determination.

In addition, the bill adds new language concerning eligibility for damages. Under current law, the claimant must establish that "he did not by his own conduct cause or bring about his conviction." The bill clarifies this provision. Under the bill, the claimant must establish that he did not commit or suborn perjury, fabricate evidence, or by his own conduct cause or bring about his conviction. The bill specifies that neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit, shall constitute committing or suborning perjury, fabricating evidence, or causing or bringing about his conviction under the statute.

S1219 CODEY, LESNIAK

6

1 Finally, the bill provides that any lien for Public Defender
2 services would be eliminated in cases where the defendant is
3 awarded damages under the statute. Current law, set out in sections
4 17 and 18 of P.L.1967, c.43 (C.2A:58A-17 and -18), provides that
5 the Public Defender must effectuate a lien on a defendant's property
6 in cases where the defendant may have means to meet part of the
7 cost of Public Defender services.

8 The bill would apply to any claimant released from
9 imprisonment or granted a pardon on or after the effective date.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1219

STATE OF NEW JERSEY

DATED: JUNE 21, 2012

The Senate Judiciary Committee reports favorably Senate Bill No. 1219.

Under the statutory scheme set forth at P.L.1997, c.227 (C.52:4C-1 et seq.), any person convicted and imprisoned for a crime which the person did not commit may bring a suit for damages in Superior Court against the Department of the Treasury. This bill concerns compensation for such wrongful imprisonment, including increases to the amounts awarded in lawsuits to persons wrongfully imprisoned and the provision of additional services to such persons.

The bill first clarifies who may be eligible to bring such a claim. Under the current law, the claimant must establish that “he did not by his own conduct cause or bring about his conviction” as one element of establishing wrongful imprisonment. This is expanded upon under the bill, so that the eligible claimant must also establish that “he did not commit or suborn perjury, [or] fabricate evidence,” or otherwise by the claimant’s own conduct cause or bring about the conviction being challenged. The bill further specifies that neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit, would constitute committing or suborning perjury, fabricating evidence, or causing or bringing about a conviction by the claimant’s own conduct.

As to damages for eligible claimants, under current law, damages cannot exceed twice the amount of the claimant’s income in the year prior to the claimant’s incarceration or \$20,000 for each year of incarceration, whichever is greater. The bill does not alter this measurement between the greater of income in the year prior to the claimant’s incarceration or the total per year amount for each year of incarceration, but this latter amount would be calculated at \$50,000 per year instead of the current \$20,000 per year. Additionally, the bill provides for adjustments to this per year amount once every five years in accordance with changes in the Consumer Price Index as reported by the United States Department of Labor.

In any successful suit in which a claimant’s damages exceed \$1 million, the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years. The court would consider the best interests of the claimant in making such determination.

Also with respect to damages: (1) any damages awarded would not be subject to treatment as gross income to the claimant under the State tax code; and (2) any damages awarded in an additional suit, if any, filed by the claimant against the State, a political subdivision of the State, or any employee thereof, with respect to the same subject matter as a wrongful imprisonment suit would be offset by the damages awarded under P.L.1997, c.227 (C.52:4C-1 et seq.) for wrongful imprisonment.

The bill further provides that any lien for Public Defender services would be discharged in cases where the claimant is awarded damages for wrongful imprisonment. Current law, set out in sections 17 and 18 of P.L.1967, c.43 (C.2A:58A-17 and -18), provides that the Public Defender must effectuate a lien on a defendant's property in cases where the defendant may have means to meet part of the cost of Public Defender services; however, the bill's provision requiring discharge of such lien with respect to wrongful imprisonment awards prevents enforcement of such lien against a successful claimant.

Finally, the bill, in addition to damages awarded, authorizes the court to order appropriate services for the claimant, at the discretion of the court. Any such services would be ordered after the probation department conducts an evaluation of the claimant's family situation, educational history, vocational training, employment history, and financial resources, including whether or not the claimant is an enrollee or covered person under a health insurance contract, policy, or plan. Services ordered by the court could include, but would not be limited to, vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

This bill would apply to any claimant released from imprisonment or granted a pardon on or after the effective date.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 1219

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 1, 2012

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 1219, with committee amendments.

As amended, this bill increases the statutory damage amounts awarded in lawsuits that may be brought by any person convicted and imprisoned for a crime which the person did not commit. Such person may bring a suit for damages in Superior Court against the Department of the Treasury pursuant to P.L.1997, c.227 (C.52:4C-1 et seq.). The bill also allows such claimants wrongfully imprisoned to seek and be awarded in such lawsuits the provision of additional services including but not limited to vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

The bill first clarifies who may be eligible to bring such a claim. Under the current law, the claimant must establish that “he did not by his own conduct cause or bring about his conviction” as one element of establishing wrongful imprisonment. This is expanded upon under the bill, so that the eligible claimant must also establish that “he did not commit or suborn perjury, [or] fabricate evidence,” or otherwise by the claimant’s own conduct cause or bring about the conviction being challenged. The bill further specifies that neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit, would constitute committing or suborning perjury, fabricating evidence, or causing or bringing about a conviction by the claimant’s own conduct.

As to damages for eligible claimants, under current law, damages cannot exceed twice the amount of the claimant’s income in the year prior to the claimant’s incarceration or \$20,000 for each year of incarceration, whichever is greater. The bill does not alter this measurement between the greater of income in the year prior to the claimant’s incarceration or the total per year amount for each year of incarceration, but this latter amount will be calculated at \$50,000 per year instead of the current \$20,000 per year. Additionally, the bill provides for adjustments to this per year amount once every five years in accordance with changes in the Consumer Price Index as reported by the United States Department of Labor.

In any successful suit in which a claimant's damages exceed \$1 million, the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years. The court would consider the best interests of the claimant in making such determination.

Also with respect to damages: (1) any damages awarded would not be subject to treatment as gross income to the claimant under the New Jersey gross income tax; and (2) any damages awarded in an additional suit, if any, filed by the claimant against the State, a political subdivision of the State, or any employee thereof, with respect to the same subject matter as a wrongful imprisonment suit would be offset by the damages awarded under P.L.1997, c.227 (C.52:4C-1 et seq.) for wrongful imprisonment.

The bill further provides that any lien for Public Defender services would be discharged in cases where the claimant is awarded damages for wrongful imprisonment. Current law, set out in sections 17 and 18 of P.L.1967, c.43 (C.2A:58A-17 and -18), provides that the Public Defender must effectuate a lien on a defendant's property in cases where the defendant may have means to meet part of the cost of Public Defender services; however, the bill's provision requiring discharge of such lien with respect to wrongful imprisonment awards prevents enforcement of such lien against a successful claimant.

Finally, the bill, as amended, in addition to damages awarded, requires the court to award reasonable attorney fees and reimbursement of litigation costs, and permits the court, at its discretion, to order appropriate services for the claimant that are sought in the complaint. Services that may be ordered by the court may include, but are not limited to, vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

This bill will apply to any claimant released from imprisonment or granted a pardon on or after the effective date, the date of enactment.

COMMITTEE AMENDMENTS:

The committee amendments clarify that a court's award of appropriate services is at the discretion of the court, but must be requested by the claimant in the complaint filed in Superior Court, and are thus to be presented as part of the claimant's civil case. The amendments delete the requirement that a probation department conduct an evaluation of the claimant's family situation, educational history, vocational training, employment history, and financial resources, or health insurance coverage. The amendments also clarify a legal citation to the New Jersey gross income tax under which no damage award will be considered taxable gross income.

FISCAL IMPACT:

In a fiscal note for a similar bill during the 2008 Legislative Session (A4018 of 2009), the Office of the Attorney General stated that there were two pending claims. The first claimant was incarcerated for 16.5 years and exonerated on May 26, 2006. Under current law this claimant would receive \$330,000 plus attorneys fees. Under the bill, his compensation would increase to \$825,000 plus attorneys fees, an increase of \$495,000 plus any additional services mandated by the court. Information about the second pending claimant was not available because the Office of the Attorney General was in the process of negotiating the actual claim. Updated information is not currently available.

The Office of Legislative Services (OLS) notes that the bill would allow the court to order additional services such as vocational training, tuition assistance, counseling, housing assistance and health insurance coverage, if appropriate. The OLS notes there is no data available with which to estimate that additional cost. The OLS also notes that the bill would provide for automatic annual increases in the payment, to reflect changes in the Consumer Price Index (CPI) for all urban consumers for the nation, as reported by the United States Department of Labor beginning five years after the bill's enactment. The amount of these future increases cannot be estimated.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1219

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2012

The Assembly Judiciary Committee reports favorably Senate Bill No. 1219 (1R).

This bill increases the statutory damage amounts awarded in lawsuits that may be brought by any person convicted and imprisoned for a crime which the person did not commit. Such person may bring a suit for damages in Superior Court against the Department of the Treasury pursuant to P.L.1997, c.227 (C.52:4C-1 et seq.). The bill also allows such claimants wrongfully imprisoned to seek and be awarded in such lawsuits the provision of additional services including but not limited to vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

The bill first clarifies who may be eligible to bring such a claim. Under the current law, the claimant must establish that “he did not by his own conduct cause or bring about his conviction” as one element of establishing wrongful imprisonment. This is expanded upon under the bill, so that the eligible claimant must also establish that “he did not commit or suborn perjury, [or] fabricate evidence,” or otherwise by the claimant’s own conduct cause or bring about the conviction being challenged. The bill further specifies that neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit, would constitute committing or suborning perjury, fabricating evidence, or causing or bringing about a conviction by the claimant’s own conduct.

As to damages for eligible claimants, under current law, damages cannot exceed twice the amount of the claimant’s income in the year prior to the claimant’s incarceration or \$20,000 for each year of incarceration, whichever is greater. The bill does not alter this measurement between the greater of income in the year prior to the claimant’s incarceration or the total per year amount for each year of incarceration, but this latter amount will be calculated at \$50,000 per year instead of the current \$20,000 per year. Additionally, the bill provides for adjustments to this per year amount once every five years in accordance with changes in the Consumer Price Index as reported by the United States Department of Labor.

In any successful suit in which a claimant's damages exceed \$1 million, the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years. The court would consider the best interests of the claimant in making such determination.

Also with respect to damages: (1) any damages awarded would not be subject to treatment as gross income to the claimant under the New Jersey gross income tax; and (2) any damages awarded in an additional suit, if any, filed by the claimant against the State, a political subdivision of the State, or any employee thereof, with respect to the same subject matter as a wrongful imprisonment suit would be offset by the damages awarded under P.L.1997, c.227 (C.52:4C-1 et seq.) for wrongful imprisonment.

The bill further provides that any lien for Public Defender services would be discharged in cases where the claimant is awarded damages for wrongful imprisonment. Current law, set out in sections 17 and 18 of P.L.1967, c.43 (C.2A:58A-17 and -18), provides that the Public Defender must effectuate a lien on a defendant's property in cases where the defendant may have means to meet part of the cost of Public Defender services; however, the bill's provision requiring discharge of such lien with respect to wrongful imprisonment awards prevents enforcement of such lien against a successful claimant.

Finally, the bill, in addition to damages awarded, requires the court to award reasonable attorney fees and reimbursement of litigation costs, and permits the court, at its discretion, to order appropriate services for the claimant that are sought in the complaint. Services that may be ordered by the court may include, but are not limited to, vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

This bill will apply to any claimant released from imprisonment or granted a pardon on or after the effective date, the date of enactment.

As reported by the committee, Senate Bill No. 1219 (1R) is identical to Assembly Bill No. 3066 which was also reported by the committee on this date.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1219

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2013

The Assembly Appropriations Committee reports favorably Senate Bill No. 1219 (1R).

This bill increases the statutory damage amounts awarded in lawsuits that may be brought by a person convicted and imprisoned for a crime which the person did not commit. That person may bring a suit for damages in Superior Court against the Department of the Treasury pursuant to P.L.1997, c.227 (C.52:4C-1 et seq.). The bill also allows those claimants wrongfully imprisoned to seek and be awarded in those lawsuits the provision of additional services including but not limited to vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

The bill first clarifies who may be eligible to bring such a claim. Under the current law, the claimant must establish that “he did not by his own conduct cause or bring about his conviction” as one element of establishing wrongful imprisonment. This is expanded upon under the bill, so that the eligible claimant must also establish that “he did not commit or suborn perjury, [or] fabricate evidence,” or otherwise by the claimant’s own conduct cause or bring about the conviction being challenged. The bill further specifies that neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit, would constitute committing or suborning perjury, fabricating evidence, or causing or bringing about a conviction by the claimant’s own conduct.

As to damages for eligible claimants, under current law damages cannot exceed twice the amount of the claimant’s income in the year prior to the claimant’s incarceration or \$20,000 for each year of incarceration, whichever is greater. The bill does not alter this measurement between the greater of income in the year prior to the claimant’s incarceration or the total per year amount for each year of incarceration, but this latter amount will be calculated at \$50,000 per year instead of the current \$20,000 per year. Additionally, the bill provides for adjustments to this per-year amount once every five years in accordance with changes in the Consumer Price Index as reported by the United States Department of Labor.

The bill provides that in any successful suit in which a claimant's damages exceed \$1 million, the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years. The court must consider the best interests of the claimant in making such determination.

Also the bill provides with respect to damages: (1) any damages awarded will not be subject to treatment as gross income to the claimant under the New Jersey gross income tax; and (2) any damages awarded in an additional suit, if any, filed by the claimant against the State, a political subdivision of the State, or any employee thereof, with respect to the same subject matter as a wrongful imprisonment suit will be offset by the damages awarded under P.L.1997, c.227 (C.52:4C-1 et seq.) for wrongful imprisonment.

The bill further provides that any lien for Public Defender services will be discharged in cases where the claimant is awarded damages for wrongful imprisonment. Current law, set out in sections 17 and 18 of P.L.1967, c.43 (C.2A:158A-17 and 18), requires the Public Defender to effectuate a lien on a defendant's property in cases where the defendant may have means to meet part of the cost of Public Defender services; however, the bill's provision requiring discharge of such lien with respect to wrongful imprisonment awards prevents enforcement of such lien against a successful claimant.

Finally, the bill, in addition to damages awarded, requires the court to award reasonable attorney fees and reimbursement of litigation costs, and permits the court, at its discretion, to order appropriate services for the claimant that are sought in the complaint. Services that may be ordered by the court may include, but are not limited to, vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

This bill will apply to any claimant released from imprisonment or granted a pardon on or after its date of enactment.

As reported by the committee, this bill is identical to the Assembly Committee Substitute for Assembly Bill Nos. 1640 and 3066, as substituted and also reported by the committee.

FISCAL IMPACT:

The Administrative Office of the Courts (AOC) has stated that the Judiciary does not maintain statistics on the number of people who were wrongly convicted of a crime. Therefore, the Judiciary lacked historical data or basis from which to derive statistics of how many people would be affected by this bill. The noted that the amount of damages could vary widely from case to case. As such, the Judiciary was unable to accurately determine the fiscal impact of this legislation.

The bill increases the statutory damage amounts awarded in lawsuits that may be brought by any person convicted and imprisoned for a crime which the person did not commit. In addition, the bill also

may result in additional suits and potential recoveries, which also may have an unknown fiscal impact.

The Office of Legislative Services (OLS) notes that the substitute will allow the court to order additional services such as vocational training, tuition assistance, counseling, housing assistance and health insurance coverage, if appropriate. The OLS notes there are no data available with which to estimate that additional cost. The OLS also notes that the substitute will provide for automatic annual increases in the payment, to reflect changes in the Consumer Price Index (CPI) for all urban consumers for the nation, as reported by the United States Department of Labor beginning five years after the substitute's enactment. The amount of these future increases cannot be estimated.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1219 STATE OF NEW JERSEY 215th LEGISLATURE

DATED: MARCH 20, 2013

SUMMARY

Synopsis: Increases compensation for wrongful imprisonment.

Type of Impact: General Fund expenditure.

Agencies Affected: Judiciary, Tort Claims Liability Fund (Interdepartmental Accounts)

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate Increase - See comments below.		

- The Office of Legislative Services (OLS) concludes that this bill will result in an indeterminate increase in State costs. Insufficient information is available upon which to base a precise estimate.
- The bill would increase the minimum amount of damages awarded to persons mistakenly convicted and imprisoned from \$20,000 per year amount to \$50,000 per year and would provide for adjustments to this amount every five years in accordance with changes in the Consumer Price Index.
- Information informally obtained from the Office of the Attorney General (OAG) indicates that from October 2007 through September 2012 there were 20 wrongful imprisonment cases closed which settled for a total amount of \$2,186,396.97. Insufficient detail on those cases is available to the OLS upon which to base an estimate of increased damages that would be payable under this bill if those results were to be replicated. Further, the number of pending cases that would be affected by this bill is unknown.
- The bill would allow the court to order additional services, such as vocational training, tuition assistance, counseling, housing assistance and health insurance coverage, for such persons. The extent to which the exercise of this authority would increase state costs is unknown, since there is no prior information upon which to base an estimate.

- The OLS also notes that in providing that acceptance of damages constitutes a complete release of any claim and complete bar to any action against the State or any political subdivision with respect to the same subject matter, the bill may limit the total liability of the State or its political subdivisions.
- The Administrative Office of the Courts (AOC) had previously informed the OLS that the Judiciary does not maintain statistics on the number of people who were wrongly convicted of a crime, and thus it lacks historical data upon which to base an estimate the number of people who would be affected by this bill, the increase in damages to be paid, or the resources necessary to fund expanded services.

BILL DESCRIPTION

Senate Bill No. 1219 (1R) of 2012 increases the statutory damage amounts awarded in lawsuits that may be brought by a person convicted and imprisoned for a crime which the person did not commit. That person may bring a suit for damages in Superior Court against the Department of the Treasury pursuant to P.L.1997, c.227 (C.52:4C-1 et seq.). The substitute also allows those claimants wrongfully imprisoned to seek and be awarded in those lawsuits the provision of additional services including but not limited to vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

The bill first clarifies who may be eligible to bring such a claim. Under the current law, the claimant must establish that “he did not by his own conduct cause or bring about his conviction” as one element of establishing wrongful imprisonment. This is expanded upon under the substitute, so that the eligible claimant must also establish that “he did not commit or suborn perjury, [or] fabricate evidence,” or otherwise by the claimant’s own conduct cause or bring about the conviction being challenged. The bill further specifies that neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit, would constitute committing or suborning perjury, fabricating evidence, or causing or bringing about a conviction by the claimant’s own conduct.

As to damages for eligible claimants, under current law damages cannot exceed twice the amount of the claimant’s income in the year prior to the claimant’s incarceration or \$20,000 for each year of incarceration, whichever is greater. The bill does not alter this measurement between the greater of income in the year prior to the claimant’s incarceration or the total per year amount for each year of incarceration, but this latter amount will be calculated at \$50,000 per year instead of the current \$20,000 per year. Additionally, the bill provides for adjustments to this per-year amount once every five years in accordance with changes in the Consumer Price Index as reported by the United States Department of Labor.

The bill provides that in any successful suit in which a claimant’s damages exceed \$1 million, the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years. The court must consider the best interests of the claimant in making such determination.

Also the bill provides with respect to damages: (1) any damages awarded will not be subject to treatment as gross income to the claimant under the New Jersey gross income tax; and (2) any damages awarded in an additional suit, if any, filed by the claimant against the State, a political subdivision of the State, or any employee thereof, with respect to the same subject matter as a wrongful imprisonment suit will be offset by the damages awarded under P.L.1997, c.227 (C.52:4C-1 et seq.) for wrongful imprisonment.

This bill further provides that any lien for Public Defender services will be discharged in cases where the claimant is awarded damages for wrongful imprisonment. Current law, set out in sections 17 and 18 of P.L.1967, c.43 (C.2A:158A-17 and 18), requires the Public Defender to effectuate a lien on a defendant's property in cases where the defendant may have means to meet part of the cost of Public Defender services; however, the bill's provision requiring discharge of such lien with respect to wrongful imprisonment awards prevents enforcement of such lien against a successful claimant.

Finally, the bill, in addition to damages awarded, requires the court to award reasonable attorney fees and reimbursement of litigation costs, and permits the court, at its discretion, to order appropriate services for the claimant that are sought in the complaint. Services that may be ordered by the court may include, but are not limited to, vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

This bill will apply to any claimant released from imprisonment or granted a pardon on or after its date of enactment.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received; however, relevant information was received on prior versions of the bill, and informally, as follows:

Judiciary

In a fiscal note for this bill in a prior legislative session (Senate Bill No. 2205 (1R) and Assembly Bill No. 4018 of 2008-2009 legislative session) the AOC stated that the Judiciary does not maintain statistics on the number of people who were wrongly convicted of a crime in either the Judiciary's automated Civil case management system, ACMS, or the automated Criminal case management system, PROMIS GAVEL. Therefore, the Judiciary lacks historical data or basis from which to derive the number of people who would be affected by this bill.

The AOC further noted that the amount of damages could vary widely from case to case. As such, the Judiciary was unable to accurately determine the fiscal impact of this bill. The AOC stated that it could identify areas that may be potentially impacted by the changes envisioned by the legislation. These include judge time and court staff resources. Specifically, the bill requires the court to make additional determinations as to: 1) how damages are to be meted out where a damage award exceeds \$1 million dollars; 2) whether "other appropriate services" are necessary for an individual claimant; 3) to what extent damage amounts in suits filed against the State or political subdivision, or its actors, for false imprisonment, must be offset by damage amounts received pursuant to a suit filed under the authority vested by this bill and; 4) the extinguishment of liens for Public Defender services.

Department of Law and Public Safety

Information informally obtained from the OAG indicates that from October 1, 2007 to September 30, 2012 there were 20 wrongful imprisonment cases closed which settled for a total amount of \$2,186,396.97. No information on the number of pending cases was provided. The OAG notes that because the bill may permit persons who plead guilty or confess could bring an action under the statute, it may allow or encourage persons who could not recover under current law to bring suit. As a result, in addition to an increase in the annual amount and the CPI provisions of the bill, the bill also may result in additional suits and potential recoveries, which also may have an unknown fiscal impact.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that insufficient information is available upon which to base an estimate of the increased costs that would result from this bill. The OLS has no detailed information on any recently settled cases or on any pending cases to which this bill could apply, and therefore cannot estimate the bill's fiscal impact.

Section: Judiciary

*Analyst: Anne Raughley
 Principal Fiscal Analyst*

*Approved: David J. Rosen
 Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

SENATE BILL NO. 1219
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning Senate Bill No. 1219 (First Reprint) with my recommendations for reconsideration.

This bill proposes to increase the statutory damage amounts awarded in lawsuits for wrongful imprisonment. Specifically, under the bill, compensation would increase from twice the amount of the claimant's income in the year prior to the claimant's incarceration or \$20,000 for each year of incarceration, whichever is greater, to twice the claimant's income or \$50,000 for each year of incarceration, whichever is greater. In addition, the bill would require compensation caps to further increase based upon the Consumer Price Index and would also require the court to award reasonable attorney fees and reimbursement of litigation costs, as well as non-monetary relief such as vocational training and counseling.

I strongly support the sponsors' goal of providing proper redress for those who are wrongfully convicted and imprisoned. Our criminal justice system must be vigilant, fair, and just. Where errors have led to undeserved criminal punishments, it is the duty of the State to provide redress. To that end, New Jersey has already worked to correct some of the underlying causes of unlawfully coerced confessions and faulty witness identifications. By requiring that all confessions are recorded and making stringent recordkeeping a prerequisite of witness identifications, New Jersey has been recognized as a leader in efforts to ensure that all criminal defendants are afforded fair trials. The changes provided in this bill, particularly the increased compensation, will continue that progress.

It is nevertheless important to recognize that some defendants, through their own free will and accord, contributed to their convictions by pleading guilty in a court of law. In contrast, this bill specifies that a guilty plea to a crime the claimant did not commit would not bar compensation for wrongful imprisonment. As a result, a person's own decision to enter a false plea, under oath and in a court, could lead to payment for the imprisonment that flowed from the defendant's own misstatement. In that particular situation, providing payment for "wrongful imprisonment" is not justified. Accordingly, I recommend that this bill be narrowly revised to remove compensation in cases where a person has brought about their own conviction through a false guilty plea.

Finally, I also recommend removing the automatic increase in compensation to leave additional changes to our wrongful imprisonment laws to subsequent legislation based on a review of the newly implemented changes, and any other necessary improvements.

Accordingly, I herewith return Senate Bill No. 1219 (First Reprint) and recommend that it be amended as follows:

- | | |
|--|--|
| <u>Page 3, Section 3, Lines 11-12:</u> | Delete " <u>, nor a guilty plea to a crime the claimant did not commit,</u> " |
| <u>Page 3, Section 3, Line 14:</u> | After "subsection" insert "; and
d. He did not plead guilty to the crime for which he was convicted" |
| <u>Page 3, Section 4, Lines 19-20:</u> | Delete " <u>[Damages] Except as otherwise provided in paragraph (2) of this subsection, damages</u> " and insert "Damages" |
| <u>Page 3, Section 4, Lines 26-35:</u> | Delete in their entirety |
| <u>Page 3, Section 4, Line 36:</u> | Delete "(3)" and insert "(2)" |

Respectfully,
/s/ Chris Christie
Governor

[seal]

Attest:

/s/ Charles B. McKenna
Chief Counsel to the Governor

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 1219

STATE OF NEW JERSEY 215th LEGISLATURE

DATED: DECEMBER 27, 2013

SUMMARY

- Synopsis:** Increases compensation for wrongful imprisonment.
- Type of Impact:** General Fund expenditure.
- Agencies Affected:** Judiciary, Tort Claims Liability Fund (Interdepartmental Accounts)

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate Increase - See comments below		

- The Office of Legislative Services (OLS) concludes that this bill will result in an indeterminate increase in State costs. Insufficient information is available upon which to base a precise estimate.
- The OLS also notes that in providing that acceptance of damages constitutes a complete release of any claim and complete bar to any action against the State or any political subdivision with respect to the same subject matter, the bill may limit the total liability of the State or its political subdivisions.
- The bill would increase the minimum amount of damages awarded to persons mistakenly convicted and imprisoned from \$20,000 per year amount to \$50,000 per year.
- Information informally obtained from the Office of the Attorney General (OAG) indicates that from October 2007 through September 2012 there were 20 wrongful imprisonment cases closed which settled for a total amount of \$2,186,396.97. Insufficient detail on those cases is available to the OLS upon which to base an estimate of increased damages that would be payable under this bill if those results were to be replicated. Further, the number of pending cases that would be affected by this bill is unknown.

- The bill would allow the court to order additional services, such as vocational training, tuition assistance, counseling, housing assistance and health insurance coverage, for such persons. The extent to which the exercise of this authority would increase state costs is unknown, since there is no prior information upon which to base an estimate.
- The Administrative Office of the Courts (AOC) had previously informed the OLS that the Judiciary does not maintain statistics on the number of people who were wrongly convicted of a crime, and thus it lacks historical data upon which to base an estimate the number of people who would be affected by this bill, the increase in damages to be paid, or the resources necessary to fund expanded services.

BILL DESCRIPTION

Senate Bill No. 1219 (2R) of 2012 increases the statutory damage amounts awarded in lawsuits that may be brought by a person convicted and imprisoned for a crime which the person did not commit. That person may bring a suit for damages in Superior Court against the Department of the Treasury pursuant to P.L.1997, c.227 (C.52:4C-1 et seq.). The bill also allows those claimants wrongfully imprisoned to seek and be awarded in those lawsuits the provision of additional services including but not limited to vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

The bill first clarifies who may be eligible to bring such a claim. Under the current law, the claimant must establish that “he did not by his own conduct cause or bring about his conviction” as one element of establishing wrongful imprisonment. This is expanded upon, so that the eligible claimant must also establish that “he did not commit or suborn perjury, [or] fabricate evidence,” or otherwise by the claimant’s own conduct cause or bring about the conviction being challenged. The bill further specifies a confession or admission later found to be false, would not constitute committing or suborning perjury, fabricating evidence, or causing or bringing about a conviction by the claimant’s own conduct. The bill also requires that the claimant did not plead guilty to the crime for which he was convicted.

As to damages for eligible claimants, under current law damages cannot exceed twice the amount of the claimant’s income in the year prior to the claimant’s incarceration or \$20,000 for each year of incarceration, whichever is greater. The bill does not alter this measurement between the greater of income in the year prior to the claimant’s incarceration or the total per year amount for each year of incarceration, but this latter amount will be calculated at \$50,000 per year instead of the current \$20,000 per year. The bill provides that in any successful suit in which a claimant’s damages exceed \$1 million, the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years. The court must consider the best interests of the claimant in making such determination.

Also the bill provides with respect to damages: (1) any damages awarded will not be subject to treatment as gross income to the claimant under the New Jersey gross income tax; and (2) any damages awarded in an additional suit, if any, filed by the claimant against the State, a political subdivision of the State, or any employee thereof, with respect to the same subject matter as a wrongful imprisonment suit will be offset by the damages awarded under P.L.1997, c.227 (C.52:4C-1 et seq.) for wrongful imprisonment.

This bill further provides that any lien for Public Defender services will be discharged in cases where the claimant is awarded damages for wrongful imprisonment. Current law, set out in sections 17 and 18 of P.L.1967, c.43 (C.2A:158A-17 and 18), requires the Public Defender to

effectuate a lien on a defendant's property in cases where the defendant may have means to meet part of the cost of Public Defender services; however, the bill's provision requiring discharge of such lien with respect to wrongful imprisonment awards prevents enforcement of such lien against a successful claimant.

Finally, the bill, in addition to damages awarded, requires the court to award reasonable attorney fees and reimbursement of litigation costs, and permits the court, at its discretion, to order appropriate services for the claimant that are sought in the complaint. Services that may be ordered by the court may include, but are not limited to, vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

This bill will apply to any claimant released from imprisonment or granted a pardon on or after its date of enactment.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received; however, relevant information was received on prior versions of the bill, and informally, as follows:

Judiciary

In a fiscal note for this bill in a prior legislative session (Senate Bill No. 2205 (1R) and Assembly Bill No. 4018 of 2008-2009 legislative session) the AOC stated that the Judiciary does not maintain statistics on the number of people who were wrongly convicted of a crime in either the Judiciary's automated Civil Case management system, ACMS, or the automated Criminal case management system, PROMIS GAVEL. Therefore, the Judiciary lacks historical data or basis from which to derive the number of people who would be affected by this bill.

The AOC further noted that the amount of damages could vary widely from case to case. As such, the Judiciary was unable to accurately determine the fiscal impact of this bill. The AOC stated that it could identify areas that may be potentially impacted by the changes envisioned by the legislation. These include judge time and court staff resources. Specifically, the bill requires the court to make additional determinations as to: 1) how damages are to be meted out where a damage award exceeds \$1 million dollars; 2) whether "other appropriate services" are necessary for an individual claimant; 3) to what extent damage amounts in suits filed against the State or political subdivision, or its actors, for false imprisonment, must be offset by damage amounts received pursuant to a suit filed under the authority vested by this bill and; 4) the extinguishment of liens for Public Defender services.

Department of Law and Public Safety

Information informally obtained from the OAG indicates that from October 1, 2007 to September 30, 2012 there were 20 wrongful imprisonment cases closed which settled for a total amount of \$2,186,396.97. No information on the number of pending cases was provided. The OAG notes that because the bill may permit persons who confess could bring an action under the statute, it may allow or encourage persons who could not recover under current law to bring suit. As a result, the bill also may result in additional suits and potential recoveries, which also may have an unknown fiscal impact.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that insufficient information is available upon which to base an estimate of the increased costs that would result from this bill. The OLS has no detailed information on any recently settled cases or on any pending cases to which this bill could apply, and therefore cannot estimate the bill's fiscal impact.

Section: Judiciary

*Analyst: Anne Raughley
 Principal Fiscal Analyst*

*Approved: David J. Rosen
 Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 1640

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Assemblyman ALBERT COUTINHO

District 29 (Essex)

Co-Sponsored by:

Assemblyman O'Scanlon

SYNOPSIS

Increases compensation for persons wrongfully imprisoned.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



1 AN ACT concerning compensation for wrongful imprisonment,
2 amending and supplementing P.L.1997, c.227 and amending
3 P.L.1967, c.43.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 1 of P.L.1997, c.227 (C.52:4C-1) is amended to read
9 as follows:

10 1. The Legislature finds and declares that innocent persons who
11 have been convicted of crimes and subsequently imprisoned have
12 been frustrated in seeking legal redress and that such persons should
13 have an available avenue of redress **[over and above the existing**
14 **tort remedies]** to seek compensation for damages. The Legislature
15 intends by enactment of the provisions of this act that those
16 innocent persons who can demonstrate by clear and convincing
17 evidence that they were mistakenly convicted and imprisoned be
18 able to recover damages against the State.

19 In light of the substantial burden of proof that must be carried by
20 such persons, it is the intent of the Legislature that the court, in
21 exercising its discretion as permitted by law regarding the weight
22 and admissibility of evidence submitted pursuant to this section,
23 may, in the interest of justice, give due consideration to difficulties
24 of proof caused by the passage of time, the death or unavailability
25 of witnesses, the destruction of evidence or other factors not caused
26 by such persons or those acting on their behalf.

27 (cf: P.L.1997, c.227, s.1)
28

29 2. Section 2 of P.L.1997, c.227 (C.52:4C-2) is amended to read
30 as follows:

31 2. a. Notwithstanding the provisions of any other law, any
32 person convicted and subsequently imprisoned for one or more
33 crimes which he did not commit may, under the conditions
34 hereinafter provided, bring a suit for damages in Superior Court
35 against the Department of the Treasury.

36 b. The acceptance of an award of damages pursuant to any such
37 suit shall constitute a complete release of any claim and a complete
38 bar to any action against the State or any political subdivision
39 thereof or against any employee of the State or any political
40 subdivision thereof with respect to the same subject matter.

41 (cf: P.L.1997, c.227, s.2)
42

43 3. Section 3 of P.L.1997, c.227 (C.52:4C-3) is amended to read
44 as follows:

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 3. The person (hereinafter titled, "the claimant") shall establish
2 the following by clear and convincing evidence:

3 a. That he was convicted of a crime and subsequently
4 sentenced to a term of imprisonment, served all or any part of his
5 sentence; and

6 b. He did not commit the crime for which he was convicted;
7 and

8 c. He did not by his own conduct cause or bring about his
9 conviction. Notwithstanding the provisions of this subsection, the
10 court may find that a confession or admission later found to be
11 false, or a plea of guilty to a crime that the claimant did not commit,
12 does not constitute "causing or bringing about his conviction"
13 pursuant to this subsection.

14 (cf: P.L.1997, c.227, s.3)

15

16 4. Section 5 of P.L.1997, c.227 (C.52:4C-5) is amended to read
17 as follows:

18 5. a. (1) [Damages] Except as otherwise provided in paragraph
19 (2) of this subsection, damages awarded under this act shall not
20 exceed the greater of:

21 (a) twice the amount of the claimant's income in the year prior to
22 his incarceration; or [\$20,000.00]

23 (b) \$50,000 for each year of incarceration[, whichever is
24 greater].

25 (2) Beginning on the first day of the fifth July following
26 enactment, and on the first day of each fifth July thereafter, the
27 amount set forth in subparagraph (b) of paragraph (1) of subsection
28 a. of this section shall be increased to reflect changes in the
29 Consumer Price Index (CPI) for all urban consumers for the nation,
30 as reported by the United States Department of Labor. The State
31 Treasurer shall be responsible for calculating the amount of the
32 increases required by this section, and shall make that information
33 available through publication on the Department of Treasury
34 website.

35 (3) In the event that damages exceed \$1 million, the court may
36 order that the award be paid as an annuity with a payout over a
37 maximum period of 20 years. The court shall consider the best
38 interests of the claimant in making such determination.

39 b. In addition to the damages awarded pursuant to subsection
40 a., the claimant shall be entitled to receive:

41 (1) reasonable attorney fees; and

42 (2) other services as may be ordered by the court. The court
43 shall order any such services following an evaluation by the
44 probation department of the claimant's family situation, educational
45 history, vocational training, employment history, and financial
46 resources, including whether or not the claimant is eligible to be an
47 enrollee or covered person under a health insurance contract, policy

1 or plan. Services may also include vocational training, tuition
2 assistance, counseling, housing assistance and health insurance
3 coverage as appropriate.

4 c. Damages awarded under this act shall not be subject to
5 treatment as gross income to the claimant under the provisions of
6 the State tax code.

7 (cf: P.L.1997, c.227, s.5)

8

9 5. Section 17 of P.L.1967, c.43 (C.2A:158A-17) is amended to
10 read as follows:

11 17. a. The reasonable value of the services rendered to a
12 defendant pursuant to **[this act]** P.L.1967, c.43 (C.2A:158A-1 et
13 seq.) may in all cases be a lien on any and all property to which the
14 defendant shall have or acquire an interest. The Public Defender
15 shall effectuate such lien whenever the reasonable value of the
16 services rendered to a defendant appears to exceed \$150.00 and
17 may effectuate such lien where the reasonable value of those
18 services appears to be less than \$150.00.

19 To effectuate such a lien, the Public Defender shall file a notice
20 setting forth the services rendered to the defendant and the
21 reasonable value thereof with the Clerk of the Superior Court. The
22 filing of said notice with the Clerk of the Superior Court shall from
23 the date thereof constitute a lien on said property for a period of 10
24 years, unless sooner discharged and except for such time limitations
25 shall have the force and effect of a Judgment at Law. Within 10
26 days of the filing of the Notice of Lien, the Public Defender shall
27 send by certified mail, or serve personally, a copy of such notice
28 with a statement of the date of the filing thereof to or upon the
29 defendant at his last known address. If the Public Defender shall
30 fail to give notice, the lien shall be void.

31 b. In any case where the defendant is awarded damages
32 pursuant to P.L.1997, c.227 (C.52:4C-1 et seq.) on grounds that the
33 defendant did not commit the crime for which he was convicted and
34 imprisoned, the Public Defender shall discharge any lien for
35 services rendered concerning that crime.

36 (cf: P.L.1969, c.29, s.1)

37

38 6. (New section) The provisions of this amendatory and
39 supplementary act (P.L. , c.) (pending before the Legislature
40 as this bill) shall apply to any claimant released from imprisonment
41 or granted a pardon on or after the effective date and to:

42 a. any claimant released from imprisonment or granted a
43 pardon in the five-year period prior to the effective date; and

44 b. any claimant who has a pending claim as of the effective
45 date.

46

47 7. This act shall take effect immediately.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47

This bill would increase the amount of compensation awarded under current law to persons mistakenly convicted and imprisoned and would provide for additional services for such persons.

Under current law, set out in N.J.S.A.52:4C-1 et seq., any person convicted and imprisoned for a crime which he did not commit may bring a suit for damages in Superior Court against the Department of the Treasury. Damages under the statute may be awarded in an amount up to twice the amount of the claimant's income in the year prior to his incarceration or \$20,000 for each year of incarceration, whichever is greater.

This bill would increase the \$20,000 per year amount to \$50,000 per year and would provide for adjustments to this amount every five years in accordance with changes in the Consumer Price Index.

In addition, the bill authorizes the court to order other appropriate services for the claimant, at the discretion of the court. Any such services would be ordered after the probation department conducts an evaluation of the claimant's family situation, educational history, vocational training, employment history, and financial resources, including whether or not the claimant is an enrollee or covered person under a health insurance contract, policy or plan. Services ordered by the court could include, but would not be limited to, vocational training, tuition assistance, counseling, housing assistance and health insurance coverage as appropriate.

Under the bill, damages would not be subject to State income tax.

The bill provides that the acceptance of an award of damages would constitute a complete release of any claim and a complete bar to any action against the State, any political subdivision, or any employee thereof with respect to the same subject matter

The bill also provides that if damages exceed \$1 million, the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years. The court would consider the best interests of the claimant in making such determination.

In addition, the bill adds new language clarifying eligibility for damages. Under current law, the claimant must establish that he did not by his own conduct cause or bring about his conviction. The bill provides that the court may find that a confession or admission later found to be false, or a plea of guilty to a crime that the claimant did not commit, would not constitute "causing or bringing about his conviction" pursuant to the statute.

Finally, the bill provides that any lien for Public Defender services would be eliminated in cases where the defendant is awarded damages under the statute. Current law, set out in sections 17 and 18 of P.L.1967, c.43 (C.2A:158A-17 and -18), provides that the Public Defender must effectuate a lien on a defendant's property

A1640 COUTINHO

6

- 1 in cases where the defendant may have means to meet part of the
- 2 cost of Public Defender services.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 1640 and 3066

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2013

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 1640 and 3066.

This Assembly Committee Substitute increases the statutory damage amounts awarded in lawsuits that may be brought by a person convicted and imprisoned for a crime which the person did not commit. That person may bring a suit for damages in Superior Court against the Department of the Treasury pursuant to P.L.1997, c.227 (C.52:4C-1 et seq.). The substitute also allows those claimants wrongfully imprisoned to seek and be awarded in those lawsuits the provision of additional services including but not limited to vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

The substitute first clarifies who may be eligible to bring such a claim. Under the current law, the claimant must establish that “he did not by his own conduct cause or bring about his conviction” as one element of establishing wrongful imprisonment. This is expanded upon under the substitute, so that the eligible claimant must also establish that “he did not commit or suborn perjury, [or] fabricate evidence,” or otherwise by the claimant’s own conduct cause or bring about the conviction being challenged. The substitute further specifies that neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit, would constitute committing or suborning perjury, fabricating evidence, or causing or bringing about a conviction by the claimant’s own conduct.

As to damages for eligible claimants, under current law damages cannot exceed twice the amount of the claimant’s income in the year prior to the claimant’s incarceration or \$20,000 for each year of incarceration, whichever is greater. The substitute does not alter this measurement between the greater of income in the year prior to the claimant’s incarceration or the total per year amount for each year of incarceration, but this latter amount will be calculated at \$50,000 per year instead of the current \$20,000 per year. Additionally, the substitute provides for adjustments to this per-year amount once every

five years in accordance with changes in the Consumer Price Index as reported by the United States Department of Labor.

The substitute provides that in any successful suit in which a claimant's damages exceed \$1 million, the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years. The court must consider the best interests of the claimant in making such determination.

Also the substitute provides with respect to damages: (1) any damages awarded will not be subject to treatment as gross income to the claimant under the New Jersey gross income tax; and (2) any damages awarded in an additional suit, if any, filed by the claimant against the State, a political subdivision of the State, or any employee thereof, with respect to the same subject matter as a wrongful imprisonment suit will be offset by the damages awarded under P.L.1997, c.227 (C.52:4C-1 et seq.) for wrongful imprisonment.

The substitute further provides that any lien for Public Defender services will be discharged in cases where the claimant is awarded damages for wrongful imprisonment. Current law, set out in sections 17 and 18 of P.L.1967, c.43 (C.2A:158A-17 and 18), requires the Public Defender to effectuate a lien on a defendant's property in cases where the defendant may have means to meet part of the cost of Public Defender services; however, the substitute's provision requiring discharge of such lien with respect to wrongful imprisonment awards prevents enforcement of such lien against a successful claimant.

Finally, the substitute, in addition to damages awarded, requires the court to award reasonable attorney fees and reimbursement of litigation costs, and permits the court, at its discretion, to order appropriate services for the claimant that are sought in the complaint. Services that may be ordered by the court may include, but are not limited to, vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

This substitute will apply to any claimant released from imprisonment or granted a pardon on or after its date of enactment.

As substituted and reported, this substitute bill is identical to Senate Bill No. 1219(1R), as also reported by the committee.

FISCAL IMPACT:

The Administrative Office of the Courts (AOC) has stated that the Judiciary does not maintain statistics on the number of people who were wrongly convicted of a crime. Therefore, the Judiciary lacked historical data or basis from which to derive statistics of how many people would be affected by this bill. The noted that the amount of damages could vary widely from case to case. As such, the Judiciary was unable to accurately determine the fiscal impact of this legislation.

The bill increases the statutory damage amounts awarded in lawsuits that may be brought by any person convicted and imprisoned for a crime which the person did not commit. In addition, the bill also

may result in additional suits and potential recoveries, which also may have an unknown fiscal impact.

The Office of Legislative Services (OLS) notes that the substitute will allow the court to order additional services such as vocational training, tuition assistance, counseling, housing assistance and health insurance coverage, if appropriate. The OLS notes there are no data available with which to estimate that additional cost. The OLS also notes that the substitute will provide for automatic annual increases in the payment, to reflect changes in the Consumer Price Index (CPI) for all urban consumers for the nation, as reported by the United States Department of Labor beginning five years after the substitute's enactment. The amount of these future increases cannot be estimated.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 1640 and 3066
STATE OF NEW JERSEY
215th LEGISLATURE

DATED: MARCH 25, 2013

SUMMARY

Synopsis: Increases compensation for wrongful imprisonment.

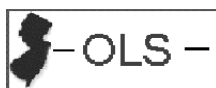
Type of Impact: General Fund expenditure.

Agencies Affected: Judiciary, Tort Claims Liability Fund (Interdepartmental Accounts)

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate Increase - See comments below.		

- The Office of Legislative Services (OLS) concludes that this bill will result in an indeterminate increase in State costs. Insufficient information is available upon which to base a precise estimate.
- The bill would increase the minimum amount of damages awarded to persons mistakenly convicted and imprisoned from \$20,000 per year amount to \$50,000 per year and would provide for adjustments to this amount every five years in accordance with changes in the Consumer Price Index.
- Information informally obtained from the Office of the Attorney General (OAG) indicates that from October 2007 through September 2012 there were 20 wrongful imprisonment cases closed which settled for a total amount of \$2,186,396.97. Insufficient detail on those cases is available to the OLS upon which to base an estimate of increased damages that would be payable under this bill if those results were to be replicated. Further, the number of pending cases that would be affected by this bill is unknown.
- The bill would allow the court to order additional services, such as vocational training, tuition assistance, counseling, housing assistance and health insurance coverage, for such persons. The extent to which the exercise of this authority would increase state costs is unknown, since there is no prior information upon which to base an estimate.



- The OLS also notes that in providing that acceptance of damages constitutes a complete release of any claim and complete bar to any action against the State or any political subdivision with respect to the same subject matter, the bill may limit the total liability of the State or its political subdivisions.
- The Administrative Office of the Courts (AOC) had previously informed the OLS that the Judiciary does not maintain statistics on the number of people who were wrongly convicted of a crime, and thus it lacks historical data upon which to base an estimate the number of people who would be affected by this bill, the increase in damages to be paid, or the resources necessary to fund expanded services.

BILL DESCRIPTION

The Assembly Committee Substitute for Assembly Bill Nos. 1640 and 3066 of 2012 increases the statutory damage amounts awarded in lawsuits that may be brought by a person convicted and imprisoned for a crime which the person did not commit. That person may bring a suit for damages in Superior Court against the Department of the Treasury pursuant to P.L.1997, c.227 (C.52:4C-1 et seq.). The substitute also allows those claimants wrongfully imprisoned to seek and be awarded in those lawsuits the provision of additional services including but not limited to vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

The substitute first clarifies who may be eligible to bring such a claim. Under the current law, the claimant must establish that “he did not by his own conduct cause or bring about his conviction” as one element of establishing wrongful imprisonment. This is expanded upon under the substitute, so that the eligible claimant must also establish that “he did not commit or suborn perjury, [or] fabricate evidence,” or otherwise by the claimant’s own conduct cause or bring about the conviction being challenged. The substitute further specifies that neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit, would constitute committing or suborning perjury, fabricating evidence, or causing or bringing about a conviction by the claimant’s own conduct.

As to damages for eligible claimants, under current law damages cannot exceed twice the amount of the claimant’s income in the year prior to the claimant’s incarceration or \$20,000 for each year of incarceration, whichever is greater. The substitute does not alter this measurement between the greater of income in the year prior to the claimant’s incarceration or the total per year amount for each year of incarceration, but this latter amount will be calculated at \$50,000 per year instead of the current \$20,000 per year. Additionally, the substitute provides for adjustments to this per-year amount once every five years in accordance with changes in the Consumer Price Index as reported by the United States Department of Labor.

The substitute provides that in any successful suit in which a claimant’s damages exceed \$1 million, the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years. The court must consider the best interests of the claimant in making such determination.

Also the substitute provides with respect to damages: (1) any damages awarded will not be subject to treatment as gross income to the claimant under the New Jersey gross income tax; and (2) any damages awarded in an additional suit, if any, filed by the claimant against the State, a political subdivision of the State, or any employee thereof, with respect to the same subject

matter as a wrongful imprisonment suit will be offset by the damages awarded under P.L.1997, c.227 (C.52:4C-1 et seq.) for wrongful imprisonment.

The substitute further provides that any lien for Public Defender services will be discharged in cases where the claimant is awarded damages for wrongful imprisonment. Current law, set out in sections 17 and 18 of P.L.1967, c.43 (C.2A:158A-17 and 18), requires the Public Defender to effectuate a lien on a defendant's property in cases where the defendant may have means to meet part of the cost of Public Defender services; however, the substitute's provision requiring discharge of such lien with respect to wrongful imprisonment awards prevents enforcement of such lien against a successful claimant.

Finally, the substitute, in addition to damages awarded, requires the court to award reasonable attorney fees and reimbursement of litigation costs, and permits the court, at its discretion, to order appropriate services for the claimant that are sought in the complaint. Services that may be ordered by the court may include, but are not limited to, vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

This substitute will apply to any claimant released from imprisonment or granted a pardon on or after its date of enactment.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received; however, relevant information was received on prior versions of the bill, and informally, as follows:

Judiciary

In a fiscal note for this bill in a prior legislative session (Senate Bill No. 2205 (1R) and Assembly Bill No. 4018 of 2008-2009 legislative session) the AOC stated that the Judiciary does not maintain statistics on the number of people who were wrongly convicted of a crime in either the Judiciary's automated Civil case management system, ACMS, or the automated Criminal case management system, PROMIS GAVEL. Therefore, the Judiciary lacks historical data or basis from which to derive the number of people who would be affected by this bill.

The AOC further noted that the amount of damages could vary widely from case to case. As such, the Judiciary was unable to accurately determine the fiscal impact of this bill. The AOC stated that it could identify areas that may be potentially impacted by the changes envisioned by the legislation. These include judge time and court staff resources. Specifically, the bill requires the court to make additional determinations as to: 1) how damages are to be meted out where a damage award exceeds \$1 million dollars; 2) whether "other appropriate services" are necessary for an individual claimant; 3) to what extent damage amounts in suits filed against the State or political subdivision, or its actors, for false imprisonment, must be offset by damage amounts received pursuant to a suit filed under the authority vested by this bill and; 4) the extinguishment of liens for Public Defender services.

Department of Law and Public Safety

Information informally obtained from the OAG indicates that from October 1, 2007 to September 30, 2012 there were 20 wrongful imprisonment cases closed which settled for a total amount of \$2,186,396.97. No information on the number of pending cases was provided. The OAG notes that because the bill may permit persons who plead guilty or confess could bring an action under the statute, it may allow or encourage persons who could not recover under current law to bring suit. As a result, in addition to an increase in the annual amount and the CPI

provisions of the bill, the bill also may result in additional suits and potential recoveries, which also may have an unknown fiscal impact.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that insufficient information is available upon which to base an estimate of the increased costs that would result from this bill. The OLS has no detailed information on any recently settled cases or on any pending cases to which this bill could apply, and therefore cannot estimate the bill's fiscal impact.

Section: Judiciary

*Analyst: Anne Raughley
 Principal Fiscal Analyst*

*Approved: David J. Rosen
 Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

ASSEMBLY, No. 3066

STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED DECEMBER 6, 2012

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Hunterdon and Mercer)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

SYNOPSIS

Increases compensation for wrongful imprisonment.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/11/2012)

1 AN ACT concerning compensation for wrongful imprisonment,
2 amending and supplementing P.L.1997, c.227 and amending
3 P.L.1967, c.43.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. Section 1 of P.L.1997, c.227 (C.52:4C-1) is amended to read
9 as follows:

10 1. The Legislature finds and declares that innocent persons who
11 have been convicted of crimes and subsequently imprisoned have
12 been frustrated in seeking legal redress and that such persons should
13 have an available avenue of redress **[over and above the existing**
14 **tort remedies]** to seek compensation for damages. The Legislature
15 intends by enactment of the provisions of this act that those
16 innocent persons who can demonstrate by clear and convincing
17 evidence that they were mistakenly convicted and imprisoned be
18 able to recover damages against the State.

19 In light of the substantial burden of proof that must be carried by
20 such persons, it is the intent of the Legislature that the court, in
21 exercising its discretion as permitted by law regarding the weight
22 and admissibility of evidence submitted pursuant to this section,
23 may, in the interest of justice, give due consideration to difficulties
24 of proof caused by the passage of time, the death or unavailability
25 of witnesses, the destruction of evidence or other factors not caused
26 by such persons or those acting on their behalf.
27 (cf: P.L.1997, c.227, s.1)

28
29 2. Section 2 of P.L.1997, c.227 (C.52:4C-2) is amended to read
30 as follows:

31 2. a. Notwithstanding the provisions of any other law, any
32 person convicted and subsequently imprisoned for one or more
33 crimes which he did not commit may, under the conditions
34 hereinafter provided, bring a suit for damages in Superior Court
35 against the Department of the Treasury.

36 b. Any award of damages to such person in an action against
37 the State or any political subdivision thereof or against any
38 employee of the State or any political subdivision thereof with
39 respect to the same subject matter shall be offset by any award of
40 damages awarded under this act.

41 (cf: P.L.1997, c.227, s.2)

42
43 3. Section 3 of P.L.1997, c.227 (C.52:4C-3) is amended to read
44 as follows:

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 3. The person (hereinafter titled, "the claimant") shall establish
2 the following by clear and convincing evidence:

3 a. That he was convicted of a crime and subsequently
4 sentenced to a term of imprisonment, served all or any part of his
5 sentence; and

6 b. He did not commit the crime for which he was convicted;
7 and

8 c. He did not **[**by his own conduct cause or bring about his
9 conviction**]** commit or suborn perjury, fabricate evidence, or by his
10 own conduct cause or bring about his conviction. Neither a
11 confession or admission later found to be false, nor a guilty plea to
12 a crime the claimant did not commit, shall constitute committing or
13 suborning perjury, fabricating evidence, or causing or bringing
14 about his conviction under this subsection.

15 (cf: P.L.1997, c.227, s.3)

16

17 4. Section 5 of P.L.1997, c.227 (C.52:4C-5) is amended to read
18 as follows:

19 5. a. (1) **[**Damages**]** Except as otherwise provided in paragraph
20 (2) of this subsection, damages awarded under this act shall not
21 exceed the greater of:

22 (a) twice the amount of the claimant's income in the year prior
23 to his incarceration; or **[\$20,000.00]**

24 (b) **[\$50,000]** for each year of incarceration**[**, whichever is
25 greater**]**.

26 (2) Beginning on the first day of the fifth July following
27 enactment, and on the first day of each fifth July thereafter, the
28 amount set forth in subparagraph (b) of paragraph (1) of subsection
29 a. of this section shall be increased to reflect changes in the
30 Consumer Price Index (CPI) for all urban consumers for the nation,
31 as reported by the United States Department of Labor. The State
32 Treasurer shall be responsible for calculating the amount of the
33 increases required by this section, and shall make that information
34 available through publication on the Department of Treasury
35 website.

36 (3) In the event that damages exceed \$1 million, the court may
37 order that the award be paid as an annuity with a payout over a
38 maximum period of 20 years. The court shall consider the best
39 interests of the claimant in making such determination.

40 b. In addition to the damages awarded pursuant to subsection
41 a., the claimant shall be entitled to receive reasonable attorney fees
42 and costs related to the litigation. A claimant may also be awarded
43 other non-monetary relief as sought in the complaint including, but
44 not limited to vocational training, tuition assistance, counseling,
45 housing assistance, and health insurance coverage as appropriate.

1 Department of the Treasury pursuant to P.L.1997, c.227 (C.52:4C-1
2 et seq.). The bill also allows such claimants wrongfully imprisoned
3 to seek and be awarded in such lawsuits the provision of additional
4 services including but not limited to vocational training, tuition
5 assistance, counseling, housing assistance, and health insurance
6 coverage as appropriate.

7 The bill first clarifies who may be eligible to bring such a claim.
8 Under the current law, the claimant must establish that “he did not
9 by his own conduct cause or bring about his conviction” as one
10 element of establishing wrongful imprisonment. This is expanded
11 upon under the bill, so that the eligible claimant must also establish
12 that “he did not commit or suborn perjury, [or] fabricate evidence,”
13 or otherwise by the claimant’s own conduct cause or bring about the
14 conviction being challenged. The bill further specifies that neither
15 a confession or admission later found to be false, nor a guilty plea
16 to a crime the claimant did not commit, would constitute
17 committing or suborning perjury, fabricating evidence, or causing
18 or bringing about a conviction by the claimant’s own conduct.

19 As to damages for eligible claimants, under current law, damages
20 cannot exceed twice the amount of the claimant’s income in the
21 year prior to the claimant’s incarceration or \$20,000 for each year
22 of incarceration, whichever is greater. The bill does not alter this
23 measurement between the greater of income in the year prior to the
24 claimant’s incarceration or the total per year amount for each year
25 of incarceration, but this latter amount will be calculated at \$50,000
26 per year instead of the current \$20,000 per year. Additionally, the
27 bill provides for adjustments to this per year amount once every
28 five years in accordance with changes in the Consumer Price Index
29 as reported by the United States Department of Labor.

30 In any successful suit in which a claimant’s damages exceed \$1
31 million, the court may order that the award be paid as an annuity
32 with a payout over a maximum period of 20 years. The court would
33 consider the best interests of the claimant in making such
34 determination.

35 Also with respect to damages: (1) any damages awarded would
36 not be subject to treatment as gross income to the claimant under
37 the New Jersey gross income tax; and (2) any damages awarded in
38 an additional suit, if any, filed by the claimant against the State, a
39 political subdivision of the State, or any employee thereof, with
40 respect to the same subject matter as a wrongful imprisonment suit
41 would be offset by the damages awarded under P.L.1997, c.227
42 (C.52:4C-1 et seq.) for wrongful imprisonment.

43 The bill further provides that any lien for Public Defender
44 services would be discharged in cases where the claimant is
45 awarded damages for wrongful imprisonment. Current law, set out
46 in sections 17 and 18 of P.L.1967, c.43 (C.2A:58A-17 and -18),
47 provides that the Public Defender must effectuate a lien on a
48 defendant’s property in cases where the defendant may have means

A3066 WATSON COLEMAN, JOHNSON

6

1 to meet part of the cost of Public Defender services; however, the
2 bill's provision requiring discharge of such lien with respect to
3 wrongful imprisonment awards prevents enforcement of such lien
4 against a successful claimant.

5 Finally, the bill, in addition to damages awarded, requires the
6 court to award reasonable attorney fees and reimbursement of
7 litigation costs, and permits the court, at its discretion, to order
8 appropriate services for the claimant that are sought in the
9 complaint. Services that may be ordered by the court may include,
10 but are not limited to, vocational training, tuition assistance,
11 counseling, housing assistance, and health insurance coverage as
12 appropriate.

13 This bill will apply to any claimant released from imprisonment
14 or granted a pardon on or after the effective date, the date of
15 enactment.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3066

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2012

The Assembly Judiciary Committee reports favorably Assembly Bill No. 3066.

This bill increases the statutory damage amounts awarded in lawsuits that may be brought by any person convicted and imprisoned for a crime which the person did not commit. Such person may bring a suit for damages in Superior Court against the Department of the Treasury pursuant to P.L.1997, c.227 (C.52:4C-1 et seq.). The bill also allows such claimants wrongfully imprisoned to seek and be awarded in such lawsuits the provision of additional services including but not limited to vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

The bill first clarifies who may be eligible to bring such a claim. Under the current law, the claimant must establish that “he did not by his own conduct cause or bring about his conviction” as one element of establishing wrongful imprisonment. This is expanded upon under the bill, so that the eligible claimant must also establish that “he did not commit or suborn perjury, [or] fabricate evidence,” or otherwise by the claimant’s own conduct cause or bring about the conviction being challenged. The bill further specifies that neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit, would constitute committing or suborning perjury, fabricating evidence, or causing or bringing about a conviction by the claimant’s own conduct.

As to damages for eligible claimants, under current law, damages cannot exceed twice the amount of the claimant’s income in the year prior to the claimant’s incarceration or \$20,000 for each year of incarceration, whichever is greater. The bill does not alter this measurement between the greater of income in the year prior to the claimant’s incarceration or the total per year amount for each year of incarceration, but this latter amount will be calculated at \$50,000 per year instead of the current \$20,000 per year. Additionally, the bill provides for adjustments to this per year amount once every five years in accordance with changes in the Consumer Price Index as reported by the United States Department of Labor.

In any successful suit in which a claimant’s damages exceed \$1 million, the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years. The court would

consider the best interests of the claimant in making such determination.

Also with respect to damages: (1) any damages awarded would not be subject to treatment as gross income to the claimant under the New Jersey gross income tax; and (2) any damages awarded in an additional suit, if any, filed by the claimant against the State, a political subdivision of the State, or any employee thereof, with respect to the same subject matter as a wrongful imprisonment suit would be offset by the damages awarded under P.L.1997, c.227 (C.52:4C-1 et seq.) for wrongful imprisonment.

The bill further provides that any lien for Public Defender services would be discharged in cases where the claimant is awarded damages for wrongful imprisonment. Current law, set out in sections 17 and 18 of P.L.1967, c.43 (C.2A:58A-17 and -18), provides that the Public Defender must effectuate a lien on a defendant's property in cases where the defendant may have means to meet part of the cost of Public Defender services; however, the bill's provision requiring discharge of such lien with respect to wrongful imprisonment awards prevents enforcement of such lien against a successful claimant.

Finally, the bill, in addition to damages awarded, requires the court to award reasonable attorney fees and reimbursement of litigation costs, and permits the court, at its discretion, to order appropriate services for the claimant that are sought in the complaint. Services that may be ordered by the court may include, but are not limited to, vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

This bill will apply to any claimant released from imprisonment or granted a pardon on or after the effective date, the date of enactment.

As reported by the committee, Assembly Bill No. 3066 is identical to Senate Bill No. 1219 (1R) which was also reported by the committee on this date.

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 3066
STATE OF NEW JERSEY
215th LEGISLATURE

DATED: FEBRUARY 11, 2013

SUMMARY

Synopsis: Increases compensation for persons wrongfully imprisoned.

Type of Impact: General Fund expenditure.

Agencies Affected: Judiciary, Tort Claims Liability Fund (Interdepartmental Accounts)

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	Indeterminate - See comments below		

- The Office of Legislative Services (OLS) **concurs** with the Executive estimate and adds that the bill would allow the court to order additional services such as vocational training, tuition assistance, counseling, housing assistance and health insurance coverage. The OLS notes there is no data available with which to estimate that additional cost.
- The OLS also notes that the bill would provide for automatic annual increases in the payment to reflect changes in the Consumer Price Index (CPI) for all urban consumers for the nation, as reported by the United States Department of Labor, beginning five years after the bill's enactment. The amount of these future increases cannot be estimated.
- The bill increases the statutory damage amounts awarded in lawsuits that may be brought by any person convicted and imprisoned for a crime which the person did not commit and allows claimants wrongfully imprisoned to seek and be awarded in such lawsuits the provision of additional services including but not limited to vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.
- In a fiscal note to a similar bill in a previous legislative session, (A4018/S2205 - 1R of the 2008/2009 legislative session), the Administrative Office of the Courts (AOC) stated that the Judiciary does not maintain statistics on the number of people who were wrongly convicted of a crime in either the Judiciary's automated civil case management system, ACMS, or the automated criminal case management system, PROMIS/GAVEL. Therefore, the Judiciary lacked historical data or basis from which to derive the number of people who would be

affected by this bill, the amount of damages to be paid, or the resources necessary to effectuate the purposes of this bill.

- Information informally obtained from the Office of the Attorney General (OAG) indicates that from 1/01/07 to 9/30/12 there were 20 wrongful imprisonment cases closed which settled for a total amount of \$2,186,396.97. This amount does not include pending cases which cannot be determined at this time. In addition, the bill also may result in additional suits and potential recoveries, which also may have an unknown fiscal impact.

BILL DESCRIPTION

Assembly Bill No. 3066 of 2012 increases the statutory damage amounts awarded in lawsuits that may be brought by any person convicted and imprisoned for a crime which the person did not commit. Such person may bring a suit for damages in Superior Court against the Department of the Treasury pursuant to P.L.1997, c.227 (C.52:4C-1 et seq.). The bill also allows such claimants wrongfully imprisoned to seek and be awarded in such lawsuits the provision of additional services including but not limited to vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

The bill first clarifies who may be eligible to bring such a claim. Under the current law, the claimant must establish that “he did not by his own conduct cause or bring about his conviction” as one element of establishing wrongful imprisonment. This is expanded upon under the bill, so that the eligible claimant must also establish that “he did not commit or suborn perjury, [or] fabricate evidence,” or otherwise by the claimant’s own conduct cause or bring about the conviction being challenged. The bill further specifies that neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit, would constitute committing or suborning perjury, fabricating evidence, or causing or bringing about a conviction by the claimant’s own conduct.

As to damages for eligible claimants, under current law, damages cannot exceed twice the amount of the claimant’s income in the year prior to the claimant’s incarceration or \$20,000 for each year of incarceration, whichever is greater. The bill does not alter this measurement between the greater of income in the year prior to the claimant’s incarceration or the total per year amount for each year of incarceration, but this latter amount will be calculated at \$50,000 per year instead of the current \$20,000 per year. Additionally, the bill provides for adjustments to this per year amount once every five years in accordance with changes in the CPI as reported by the United States Department of Labor.

In any successful suit in which a claimant’s damages exceed \$1 million, the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years. The court would consider the best interests of the claimant in making such determination.

Also with respect to damages: (1) any damages awarded would not be subject to treatment as gross income to the claimant under the New Jersey gross income tax; and (2) any damages awarded in an additional suit, if any, filed by the claimant against the State, a political subdivision of the State, or any employee thereof, with respect to the same subject matter as a wrongful imprisonment suit would be offset by the damages awarded under P.L.1997, c.227 (C.52:4C-1 et seq.) for wrongful imprisonment.

The bill further provides that any lien for Public Defender services would be discharged in cases where the claimant is awarded damages for wrongful imprisonment. Current law, set out in sections 17 and 18 of P.L.1967, c.43 (C.2A:58A-17 and -18), provides that the Public Defender must effectuate a lien on a defendant’s property in cases where the defendant may have

means to meet part of the cost of Public Defender services; however, the bill's provision requiring discharge of such lien with respect to wrongful imprisonment awards prevents enforcement of such lien against a successful claimant.

Finally, in addition to damages awarded, the bill requires the court to award reasonable attorney fees and reimbursement of litigation costs, and permits the court, at its discretion, to order appropriate services for the claimant that are sought in the complaint. Services that may be ordered by the court may include, but are not limited to, vocational training, tuition assistance, counseling, housing assistance, and health insurance coverage as appropriate.

This bill will apply to any claimant released from imprisonment or granted a pardon on or after the effective date.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Judiciary

In a fiscal note to a similar bill in a previous legislative session (A4018/S2205-1R of the 2008/2009 legislative session), the AOC stated that the legislation would not generate any revenue for the Judiciary.

The AOC also stated that the Judiciary does not maintain statistics on the number of people who were wrongly convicted of a crime in either the Judiciary's automated civil case management system, ACMS, or the automated criminal case management system, PROMIS/GAVEL. Therefore, the Judiciary lacked historical data or basis from which to derive the how many people would be affected by this bill.

The AOC noted that the amount of damages could vary widely from case to case. As such, the Judiciary was unable to accurately determine the fiscal impact of this legislation. The AOC stated that it could identify areas that may be potentially impacted by the changes envisioned by the legislation. These include judge time and court staff resources. Specifically, the bill requires the court to make additional determinations as to: 1) how damages are to be meted out where a damage award exceeds \$1 million dollars; 2) whether "other appropriate services" are necessary for an individual claimant; 3) to what extent damage amounts in suits filed against the State or political subdivision, or its actors, for false imprisonment, must be offset by damage amounts received pursuant to a suit filed under the authority vested by this bill and; 4) the extinguishment of liens for Public Defender services. Additionally, with regard to the award of "other appropriate services," the legislation requires an evaluation be conducted by the Probation Department as to the claimant's family situation, educational history, vocational training, employment history, and financial resources, including whether or not the claimant is an enrollee or covered person under a health insurance contract, policy or plan.

Department of Law and Public Safety

Information informally obtained from the OAG indicates that from 1/01/07 to 9/30/12 there were 20 wrongful imprisonment cases closed which settled for a total amount of \$2,186,396.97. This amount does not include pending cases which cannot be determined at this time. The OAG notes that because the bill may permit persons who plead guilty or confess could bring an action under the statute, it may allow or encourage persons who could not recover under current law to bring suit. As a result, in addition to an increase in the annual amount and the CPI provisions of the bill, the bill also may result in additional suits and potential recoveries, which also may have an unknown fiscal impact.

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Executive estimate and adds that the bill would allow the court to order additional services such as vocational training, tuition assistance, counseling, housing assistance and health insurance coverage, if appropriate. The OLS notes there is no data available with which to estimate that additional cost. The OLS also notes that the bill would provide for automatic annual increases in the payment to reflect changes in the CPI for all urban consumers for the nation, as reported by the United States Department of Labor, beginning five years after the bill's enactment. The amount of these future increases cannot be estimated.

Section: Judiciary

*Analyst: Anne Raughley
 Principal Fiscal Analyst*

*Approved: David J. Rosen
 Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).