

Amendment No. 1063

Senate Amendment to Assembly Bill No. 267 Second Reprint (BDR 3-657)

Proposed by: Senate Committee on Judiciary

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

KMN/NCA



Date: 5/31/2019

A.B. No. 267—Provides compensation to certain persons who were wrongfully convicted. (BDR 3-657)





ASSEMBLY BILL NO. 267—ASSEMBLYMEN YEAGER, FUMO, MCCURDY, FLORES;  
BACKUS, COHEN, DALY, HANSEN, KRASNER, MILLER, NGUYEN, PETERS,  
TORRES AND WATTS

MARCH 14, 2019

JOINT SPONSOR: SENATORS BROOKS; HANSEN  
AND OHRENSCHALL

Referred to Committee on Judiciary

SUMMARY—Provides compensation to certain persons who were wrongfully convicted. (BDR 3-657)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.  
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to actions concerning persons; providing for the compensation of certain persons who were wrongfully convicted; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Section 2 of this bill authorizes a person who *is not currently incarcerated for any offense and who* was wrongfully convicted in this State to bring an action for damages and other relief. Pursuant to **section 2**, a person may prevail in an action for wrongful conviction if ~~[(1)]~~ the person ~~[did not commit perjury or fabricate evidence on the underlying criminal proceeding; (2)]~~ *meets the following five requirements. First, section 2 requires that the person was convicted of a felony in this State and subsequently imprisoned, for sentenced to a condition of parole or probation; (3)]* **Second, section 2 requires that** the person did not commit the crime for which he or she was convicted and the person ~~[(1)]~~ *(2) did not commit the acts that were the basis of the conviction; and (3) did not aid, abet or act as an accomplice or accessory to a person who committed the acts that were the basis of the conviction. Third, section 2 requires that the person was not convicted of an offense necessarily included in the offense charged. Fourth, section 2 requires that any of the following occurred: (1) the person's conviction was reversed or vacated and his or her charges were dismissed; (2) the basis for reversing or vacating the conviction was not legal error that was unrelated to his or her innocence, and if a new trial was ordered, the person was found not guilty at the new trial or the person was not retried and his or her charges were dismissed; or (3) the person was pardoned by the State Board of Pardons Commissioners on the grounds that the person was innocent. Finally, section 2 requires that the person did not commit perjury or fabricate evidence in the underlying criminal proceeding.*

**Section 4** of this bill ~~[(1)]~~ *(1)* waives the State's immunity from liability in actions brought for such wrongful conviction ~~and~~ *(2)* provides that any action brought pursuant to **section 2** is not subject to a limitation on the amount of an award of damages under certain

circumstances, ~~4~~ ; and (3) provides that all provisions of existing law relating to the absolute or qualified immunity of any judicial officer, prosecutor or law enforcement officer, including all applicable provisions of federal and state law, apply to an action brought pursuant to section 2.

Section 3 of this bill requires a court to enter a certificate of innocence if the person was successful in his or her wrongful conviction action. Section 3 also requires a court to seal all records relating to the underlying wrongful conviction at the time the court enters a certificate of innocence.

Section 5 of this bill sets forth certain filing requirements and appellate rights relating to a wrongful conviction action. Section 6 of this bill sets forth a 2-year statute of limitations under certain circumstances for the filing of an action for wrongful conviction.

Section 7 of this bill requires a court in a wrongful conviction action to award: (1) if the person was wrongfully imprisoned for 1 to 10 years, \$50,000 for each year of imprisonment; (2) if the person was wrongfully imprisoned for 11 to 20 years, \$75,000 for each year of imprisonment; or (3) if the person was wrongfully imprisoned for 21 years or more, \$100,000 for each year of imprisonment. Section 7 also requires a court to award not less than \$25,000 for each year the person was ~~sentenced to a condition of~~ on parole or ~~probation or~~ was required to register as a sex offender, whichever period of time was greater. Section 7 also authorizes the court to order certain other relief, such as payment for the cost of tuition assistance and health care.

Section 8 of this bill sets forth certain limitations on the award amount a person can receive in his or her wrongful conviction action if the person has previously received a monetary award of damages against this State or entered into a settlement agreement with this State relating to his or her wrongful conviction. Section 8 also requires a person to reimburse this State for an award received as a result of an action brought pursuant to section 2 if the person subsequently ~~files another civil action~~ receives a civil settlement or an award that exceeds the amount awarded by this State relating to the same wrongful conviction.

To recover damages or other monetary relief awarded in a wrongful conviction action, section 8.5 of this bill requires the person who successfully brought the action to submit a claim to the State Board of Examiners for payment from the Reserve for Statutory Contingency Account, upon approval of the State Board of Examiners. Section 10 of this bill makes conforming changes.

Section 9 of this bill authorizes a court to give preference in setting the date of a trial in an action brought pursuant to section 2.

WHEREAS, Nationally there are more than 2,395 persons listed on the National Registry of Exonerations, including 13 persons who were convicted in Nevada; and

WHEREAS, Convictions of innocent persons may be the result of many causes, including, without limitation, eyewitness misidentification, false confessions, improper forensic science and governmental misconduct; and

WHEREAS, Innocent persons who have been wrongfully convicted of crimes and subsequently imprisoned have been uniquely victimized, have distinct challenges reentering society and have difficulty achieving legal redress due to a variety of substantive and technical obstacles in the law; and

WHEREAS, Innocent persons who have been wrongfully convicted of crimes and subsequently imprisoned deserve an avenue of redress over and above existing tort remedies to seek compensation for damages; and

WHEREAS, Those innocent persons who can demonstrate by a preponderance of the evidence that they were wrongfully convicted of crimes and subsequently imprisoned should be able to recover damages against this State; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN  
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

**Section 1.** Chapter 41 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 8.5, inclusive, of this act.

**Sec. 2. 1.** *A person who is not currently incarcerated for any offense may bring a civil action for his or her wrongful conviction against this State in a district court seeking damages or other relief provided by section 7 of this act.*

*2. The court shall award damages for wrongful conviction in accordance with section 7 of this act if the person proves by a preponderance of the evidence that:*

*(a) He or she was convicted of a felony in this State and was subsequently imprisoned ~~for sentenced to a condition of parole or probation~~ for the conviction;*

*(b) He or she did not commit the felony for which he or she was convicted and the person ~~was~~:*

*(1) Was not an accessory or accomplice to the acts that were the basis of the conviction;*

*(2) Did not commit the acts that were the basis of the conviction; and*

*(3) Did not aid, abet or act as an accomplice or accessory to a person who committed the acts that were the basis of the conviction;*

*(c) He or she was not convicted of an offense necessarily included in the offense charged;*

*(d) Any of the following occurred:*

*(1) The judgment of conviction was reversed or vacated and the charging document was dismissed;*

*(2) ~~##~~ The basis for reversing or vacating the judgment of conviction was not legal error that was unrelated to his or her innocence, and if a court ordered a new trial, the person was found not guilty at the new trial or the person was not retried and the charging document was dismissed; or*

*(3) The person was pardoned by the State Board of Pardons Commissioners on the grounds that he or she was innocent; and*

*~~##~~ (e) The person did not commit perjury or fabricate evidence at the criminal proceeding that brought about his or her felony conviction and the person did not by his or her own conduct cause or bring about his or her felony conviction.*

*3. The court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence, may, in the interest of justice, give due consideration to:*

*(a) The difficulty of providing evidence caused by the passage of time;*

*(b) The death or unavailability of a witness;*

*(c) The destruction of evidence; or*

*(d) Any other factor not caused by the person or any other person acting on his or her behalf.*

*4. The court may appoint an attorney to aid a person in an action brought pursuant to this section.*

*5. For the purposes of subsection 2, the following do not constitute committing perjury, fabricating evidence or causing or bringing about the conviction of the person:*

*(a) A confession or an admission later found to be false; or*

*(b) If the judgment of conviction was reversed or vacated and the charging document dismissed, a guilty plea for a felony.*

1 6. As used in this section, "innocence" means that a person did not engage  
2 in:

3 (a) The conduct for which he or she was convicted; and

4 (b) Any conduct constituting a lesser included or inchoate offense of the  
5 crime for which he or she was convicted.

6 **Sec. 3.** 1. *If a court finds that a person is entitled to a judgment pursuant*  
7 *to section 2 of this act, the court shall enter a certificate of innocence finding that*  
8 *the person was innocent of the felony for which the person was wrongfully*  
9 *convicted.*

10 2. *If a court does not find that a person is entitled to a judgment pursuant to*  
11 *section 2 of this act, the action must be dismissed and the court shall not enter a*  
12 *certificate of innocence.*

13 3. *Upon an entry of a certificate of innocence pursuant to subsection 1, the*  
14 *court shall order sealed all records of the conviction which are in the custody of*  
15 *any agency of criminal justice or any public or private agency, company, official*  
16 *or other custodian of records in the State of Nevada and shall order all such*  
17 *records of the person returned to the file of the court where the underlying*  
18 *criminal action was commenced from, including, without limitation, the Federal*  
19 *Bureau of Investigation and all other agencies of criminal justice which maintain*  
20 *such records and which are reasonably known by either the person or the court to*  
21 *have possession of such records. Such records must be sealed regardless of*  
22 *whether the person has any prior criminal convictions in this State.*

23 **Sec. 4.** 1. *The State of Nevada waives its immunity from liability in any*  
24 *action brought pursuant to section 2 of this act and consents to have its liability*  
25 *determined in accordance with the same rules of law as are applied to civil*  
26 *actions against natural persons and corporations.*

27 2. *An action brought pursuant to section 2 of this act is not subject to any*  
28 *requirement of an action brought pursuant to NRS 41.031, including, without*  
29 *limitation, the limitations on an award of damages described in NRS 41.035.*

30 3. All provisions of existing law relating to the absolute or qualified  
31 immunity of any judicial officer, prosecutor or law enforcement officer, including  
32 all applicable provisions of federal and state law, apply to an action brought  
33 pursuant to section 2 of this act.

34 **Sec. 5.** 1. *All pleadings filed pursuant to section 2 of this act must be*  
35 *captioned, "In the matter of the wrongful conviction of [name of the person*  
36 *bringing the action]."*

37 2. *The initial complaint filed in an action brought pursuant to section 2 of*  
38 *this act must be accompanied by a statement of facts verified by the person and*  
39 *served upon the Attorney General pursuant to the Nevada Rules of Civil*  
40 *Procedure.*

41 3. *All proceedings held pursuant to section 2 of this act must be tried before*  
42 *a court without a jury.*

43 4. *A judgment issued pursuant to section 2 of this act may be appealed to an*  
44 *appellate court of competent jurisdiction.*

45 5. *The doctrines of res judicata and collateral estoppel do not apply to an*  
46 *action brought pursuant to section 2 of this act.*

47 **Sec. 6.** 1. *Except as otherwise provided in subsection 2, a person must*  
48 *bring an action pursuant to section 2 of this act within 2 years after:*

49 *(a) A judgment of conviction of the person was reversed or vacated and the*  
50 *charging document was dismissed;*

51 *(b) If a court ordered a new trial, the person was found not guilty at the new*  
52 *trial or the person was not retried and the charging document was dismissed; or*

1 (c) The person was pardoned by the State Board of Pardons Commissioners  
2 on the grounds that the person is innocent.

3 2. If any of the events described in subsection 1 occurred before October 1,  
4 2019, an action brought pursuant to section 2 of this act must be commenced not  
5 later than October 1, 2021.

6 **Sec. 7.** 1. In an action brought pursuant to section 2 of this act which  
7 results in the court entering a certificate of innocence pursuant to section 3 of  
8 this act, the court shall award the person:

9 (a) If the person was imprisoned for:

10 (1) One to 10 years, \$50,000 for each year of imprisonment;

11 (2) Eleven to 20 years, \$75,000 for each year of imprisonment; or

12 (3) Twenty-one years or more, \$100,000 for each year of imprisonment;

13 and

14 (b) Not less than \$25,000 for each year the person was ~~sentenced to a~~  
15 ~~condition of probation or~~ on parole ~~for~~ or not less than \$25,000 for each year the  
16 person was required to register as a sex offender, whichever period of time was  
17 greater.

18 2. In addition to any damages awarded pursuant to subsection 1, the court  
19 may award:

20 (a) Reasonable attorney's fees, not to exceed \$25,000, unless a greater  
21 amount is authorized by a court upon a finding of good cause shown.

22 (b) Payment for the cost of:

23 (1) Tuition, books and fees for the person to attend an institution  
24 operated by the Nevada System of Higher Education;

25 (2) Participation by the person in a health care program of this State;

26 (3) Programs for reentry into the community for the person; and

27 (4) Counseling services for the person;

28 (c) Reimbursement for:

29 (1) Restitution ordered to be paid by the person in the criminal  
30 proceeding for which he or she was wrongfully convicted; and

31 (2) Medical care paid for by the person while he or she was imprisoned  
32 for his or her wrongful conviction; and

33 (d) Any other relief, including, without limitation, housing assistance or  
34 assistance for financial literacy for the person.

35 3. Any award of damages issued pursuant to subsection 1 must be rounded  
36 up to the nearest half year.

37 4. A court shall not award and a person shall not receive compensation for  
38 any period of imprisonment during which the person was concurrently serving a  
39 sentence for a conviction of another offense for which the person was lawfully  
40 convicted and imprisoned.

41 5. If counseling services are awarded to the person pursuant to subsection  
42 2, the person may select a relative to receive counseling with the person. As used  
43 in this subsection, "relative" means a person who is related by blood, adoption,  
44 marriage or domestic partnership within the third degree of consanguinity or  
45 affinity.

46 **Sec. 8.** 1. If a person in an action brought pursuant to section 2 of this  
47 act has previously won a monetary award against this State in a civil action  
48 related to his or her wrongful conviction, the person is only entitled to receive any  
49 amount described in section 7 of this act, less the award obtained in the previous  
50 civil action.

51 2. If a person in an action brought pursuant to section 2 of this act has  
52 entered into a settlement agreement with this State related to his or her wrongful

conviction, the person is entitled to receive any amount described in section 7 of this act, less the amount of the settlement agreement.

3. A person who was successful in his or her action brought pursuant to section 2 of this act and who subsequently ~~filed another civil action~~ receives a civil settlement or award relating to his or her wrongful conviction that exceeds the amount awarded pursuant to section 7 of this act shall reimburse this State for his or her award of damages issued pursuant to ~~section 7 of~~ this act.

4. The calculation of an award of damages or a settlement amount pursuant to this section must not include attorney's fees and the costs for bringing the action.

**Sec. 8.5.** To recover damages or other monetary relief awarded by a court pursuant to section 7 of this act, less any adjustment pursuant to section 8 of this act, a person who was successful in his or her action brought pursuant to section 2 of this act must submit a claim to the State Board of Examiners. The claim must be for payment of the damages or other monetary relief from the Reserve for Statutory Contingency Account, upon approval by the State Board of Examiners.

**Sec. 9.** NRS 16.025 is hereby amended to read as follows:

16.025 1. Upon the motion of a party to an action who is 70 years of age or older, the court may give preference in setting a date for the trial of the action, unless the court finds that the party does not have a substantial interest in the case as a whole.

2. A court may grant a motion for preference in setting a date for the trial of an action if the court determines that based upon clear and convincing medical evidence, a party to the action suffers from an illness or condition which raises a substantial medical doubt that the party will survive for more than 6 months, and the court determines that the interests of justice would be served by granting the motion.

3. If a motion for preference is granted pursuant to subsection 1 or 2:

(a) The court shall set a date for the trial of the action that is not more than 120 days after the hearing on the motion; and

(b) The court shall not continue the date for the trial of the action beyond 120 days after the hearing on the motion, except for the physical disability of a party or attorney in the action, or for other good cause entered on the record.

4. If the plaintiff in an action seeks to recover damages allegedly caused by a defendant during the commission of acts for which the defendant is convicted of a crime punishable as a felony, the court may, upon the motion of the plaintiff, give preference in setting a date for the trial of the action. If the motion is granted, the trial of the action must, unless the court deems it infeasible, be held not more than 120 days after the hearing on the motion.

**5. A court may, upon the motion of a plaintiff in an action brought pursuant to section 2 of this act, give preference in setting a date for the trial of the action. If the motion is granted, the trial of the action must be held not more than 120 days after the hearing on the motion.**

**Sec. 10.** NRS 353.264 is hereby amended to read as follows:

353.264 1. The Reserve for Statutory Contingency Account is hereby created in the State General Fund.

2. The State Board of Examiners shall administer the Reserve for Statutory Contingency Account. The money in the Account must be expended only for:

(a) The payment of claims which are obligations of the State pursuant to NRS 41.03435, 41.0347, 62I.025, 176.485, 179.310, 212.040, 212.050, 212.070, 281.174, 282.290, 282.315, 288.203, 293.253, 293.405, 353.120, 353.262, 412.154 and 475.235;



1 (b) The payment of claims which are obligations of the State pursuant to:

2 (1) Chapter 472 of NRS arising from operations of the Division of Forestry  
3 of the State Department of Conservation and Natural Resources directly involving  
4 the protection of life and property; and

5 (2) NRS 7.155, 34.750, 176A.640, 179.225 and 213.153,  
6 ➔ except that claims may be approved for the respective purposes listed in this  
7 paragraph only when the money otherwise appropriated for those purposes has been  
8 exhausted;

9 (c) The payment of claims which are obligations of the State pursuant to NRS  
10 41.0349 and 41.037, but only to the extent that the money in the Fund for Insurance  
11 Premiums is insufficient to pay the claims; ~~and~~

12 (d) *The payment of claims which are obligations of the State pursuant to*  
13 *section 7 of this act; and*

14 (e) The payment of claims which are obligations of the State pursuant to NRS  
15 535.030 arising from remedial actions taken by the State Engineer when the  
16 condition of a dam becomes dangerous to the safety of life or property.

17 3. The State Board of Examiners may authorize its Clerk or a person  
18 designated by the Clerk, under such circumstances as it deems appropriate, to  
19 approve, on behalf of the Board, the payment of claims from the Reserve for  
20 Statutory Contingency Account. For the purpose of exercising any authority  
21 granted to the Clerk of the State Board of Examiners or to the person designated by  
22 the Clerk pursuant to this subsection, any statutory reference to the State Board of  
23 Examiners relating to such a claim shall be deemed to refer to the Clerk of the  
24 Board or the person designated by the Clerk.