

ASSEMBLY BILL NO. 104—ASSEMBLYMAN YEAGER

FEBRUARY 8, 2021

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to wrongful convictions.
(BDR 3-586)

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; exempting certain records concerning a civil action for wrongful conviction from the requirement to be sealed; exempting the State from provisions governing offers of judgment in an action for wrongful conviction; exempting a judgment for wrongful conviction from interest on certain judgments; clarifying the period of time used to calculate the amount of a judgment for wrongful conviction; establishing certain limitations applicable to awards for certain items; limiting the amount of monetary compensation which may be awarded to a person who has previously obtained an award of monetary compensation or a settlement from this State or other governmental entity; requiring a person who previously received compensation for a wrongful conviction, and who subsequently obtains an award of monetary compensation or a settlement from this State for the wrongful conviction, to notify and reimburse the State for the amount previously obtained; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law requires a court to seal all records of a conviction upon entry of a
- 2 certificate of innocence, if a person is successful in a wrongful conviction action.
- 3 (NRS 41.910) **Section 1** of this bill exempts records of a conviction maintained by
- 4 the parties concerning a civil action for wrongful conviction from this requirement.
- 5 **Section 1** also specifies that such records maintained by the parties must remain
- 6 confidential.



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Under existing law, the State waives its immunity from liability in civil actions brought for a wrongful conviction and consents to have its liability determined in accordance with the rules of law governing civil actions against natural persons and corporations. (NRS 41.920) Existing law authorizes a party in a civil action to serve an offer of judgment upon another party prior to trial and subjects the offeree to certain penalties if the offeree rejects the offer and fails to obtain a more favorable judgment at trial. (NRS 17.117) Existing law also provides that a judgment draws interest from the time of service of the summons and complaint until the judgment is satisfied. (NRS 17.130) **Section 2** of this bill exempts the State from the requirements of the provisions governing offers of judgment in civil actions brought for a wrongful conviction. **Section 2** also exempts a judgment for a wrongful conviction from provisions governing interest on judgments.

Existing law requires a court to award a person who has obtained a certificate of innocence in a wrongful conviction action a certain amount of monetary compensation for each year of imprisonment. (NRS 41.950) **Section 3** of this bill establishes that the period of time used to calculate an award of monetary compensation begins on the date the person was wrongfully convicted and imprisoned and ends on the date the wrongful conviction was reversed or the person was released from prison, whichever is earlier. Existing law authorizes a court to award such a person payment for certain items, including, without limitation, payment for tuition, health care and counseling services. (NRS 41.950) **Section 3** prohibits a court from awarding payment for such items: (1) in an amount greater than \$100,000 per calendar year; and (2) for a length of time that exceeds the period of time the person was imprisoned or on parole. **Section 3** also establishes certain additional limitations applicable to such items.

Existing law limits an award of monetary compensation for a person who has obtained a certificate of innocence in an action for wrongful conviction and who has previously obtained an award or settlement from the State for the wrongful conviction to the amount provided in NRS 41.950, less the amount previously obtained. (NRS 41.960) **Section 4** of this bill expands the applicability of this limitation to awards and settlements for the wrongful conviction obtained from this State or any other governmental entity. Existing law requires a person who was successful in his or her action against the State for a wrongful conviction pursuant to NRS 41.900, and who subsequently obtains an award or settlement for the wrongful conviction that exceeds the amount previously obtained, to reimburse the State for the amount previously obtained. (NRS 41.960) **Section 4** additionally: (1) expands the application of this requirement to compensation received from the State whether through an award of damages or a settlement; (2) requires such a person to notify the State Board of Examiners of the subsequent award of damages or settlement not later than 4 months after the date of the subsequent award of damages or settlement; (3) requires such a person to reimburse the State not later than 6 months after the date of the subsequent award of damages or settlement; and (4) authorizes a court to order the termination of any future payment for certain items, including, without limitation, payment for tuition, health care and counseling services, if such a person does not so notify the State Board of Examiners or reimburse the State. **Section 4** also exempts awards for certain items including, without limitation, payment for tuition, health care and counseling services from the calculation of the amount of an award or settlement for the purposes of limiting an award or requiring an award to be reimbursed.

Existing law requires a person who was successful in his or her action for a wrongful conviction to submit a claim to the State Board of Examiners. (NRS 41.900, 41.970) **Section 4.5** of this bill specifies that payment does not become effective without the prior approval of the State Board of Examiners.



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

Section 1. NRS 41.910 is hereby amended to read as follows:

41.910 1. If a court finds that a person is entitled to a judgment pursuant to NRS 41.900, the court shall enter a certificate of innocence finding that the person was innocent of the felony for which the person was wrongfully convicted.

2. If a court does not find that a person is entitled to a judgment pursuant to NRS 41.900, the action must be dismissed and the court shall not enter a certificate of innocence.

3. Upon an entry of a certificate of innocence pursuant to subsection 1, the court shall order sealed all records of the conviction , *except such records maintained by the parties concerning a civil action for wrongful conviction brought pursuant to NRS 41.900*, which are in the custody of any agency of criminal justice or any public or private agency, company, official or other custodian of records in the State of Nevada and shall order all such records of the person returned to the file of the court where the underlying criminal action was commenced from, including, without limitation, the Federal Bureau of Investigation and all other agencies of criminal justice which maintain such records and which are reasonably known by either the person or the court to have possession of such records. Such records must be sealed regardless of whether the person has any prior criminal convictions in this State.

4. The records maintained by the parties concerning a civil action for wrongful conviction pursuant to subsection 3 must remain confidential.

Sec. 2. NRS 41.920 is hereby amended to read as follows:

41.920 1. The State of Nevada waives its immunity from liability in any action brought pursuant to NRS 41.900 and consents to have its liability determined in accordance with the same rules of law as are applied to civil actions against natural persons and corporations **H**, *except that:*

(a) The State shall be exempt from the requirements of NRS 17.117; and

(b) A person who has obtained a certificate of innocence pursuant to NRS 41.910 shall not be entitled to prejudgment or postjudgment interest.

2. An action brought pursuant to NRS 41.900 is not subject to any requirement of an action brought pursuant to NRS 41.031, including, without limitation, the limitations on an award of damages described in NRS 41.035.



3. 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 NRS 41.900.

Sec. 3. NRS 41.950 is hereby amended to read as follows:

41.950 1. In an action brought pursuant to NRS 41.900 which results in the court entering a certificate of innocence pursuant to NRS 41.910, the court shall award the person:

(a) If the person was imprisoned for:

(1) One to 10 years, \$50,000 for each year ~~of imprisonment;~~ *from the date the person was imprisoned after his or her wrongful conviction until the date the wrongful conviction was reversed or the person was released from prison, whichever is earlier;*

(2) Eleven to 20 years, \$75,000 for each year ~~of imprisonment;~~ *from the date the person was imprisoned after his or her wrongful conviction until the date the wrongful conviction was reversed or the person was released from prison, whichever is earlier;* or

(3) Twenty-one years or more, \$100,000 for each year ~~of imprisonment;~~ *from the date the person was imprisoned after his or her wrongful conviction until the date the wrongful conviction was reversed or the person was released from prison, whichever is earlier;* and

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

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

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

(b) ~~{Payment}~~ *Subject to the limitations in subsection 6, payment* for the cost of:

(1) Tuition, books and fees for the person to ~~{attend}~~ *enroll in any course or academic program at* an institution operated by the Nevada System of Higher Education ~~{;}~~ *commenced not later than 3 years and completed not later than 10 years after the date the award of damages is issued pursuant to subsection 1.*

(2) Participation by the person in ~~{a health care program of this State;}~~ *Medicare or Medicaid, if the person is eligible for Medicare or Medicaid, or a qualified health plan offered on the health insurance exchange administered by the Silver State Health Insurance Exchange which has been designated by the Exchange as a Bronze or Silver plan, if the person is not eligible for*



Medicare or Medicaid. The court shall not award payment pursuant to this subparagraph for any period in which the person is enrolled in an employer-based health insurance plan.

(3) Programs for reentry into the community for the person ~~[-]~~ ~~and]~~ *commenced not later than 3 years and completed not later than 5 years after the date the award of damages is issued pursuant to subsection 1.*

(4) Counseling services for the person ~~[-]~~ *commenced not later than 2 years after the date the award of damages is issued pursuant to subsection 1.*

(5) *Housing assistance in an amount not greater than \$15,000 per year.*

(6) *Programs for assistance for financial literacy for the person commenced not later than 2 years and completed not later than 3 years after the date the award of damages is issued pursuant to subsection 1.*

(c) Reimbursement for:

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

(2) Medical care paid for by the person while he or she was imprisoned for his or her wrongful conviction. ~~[-; and]~~

(d) Any other relief. ~~[-, including, without limitation, housing assistance or assistance for financial literacy for the person.]~~

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

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

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

6. A court shall not award payment pursuant to paragraph (b) of subsection 2:

(a) In an amount greater than \$100,000 in a calendar year.

(b) For a length of time that exceeds the period of time described in subsection 1 during which the person was imprisoned or on parole.

7. As used in this section, "qualified health plan" has the meaning ascribed to it in NRS 695I.080.



Sec. 4. NRS 41.960 is hereby amended to read as follows:

41.960 1. If a person in an action brought pursuant to NRS 41.900 has previously won a monetary award against this State *or against any other governmental entity* in a civil action related to his or her wrongful conviction, the person is only entitled to receive any amount described in NRS 41.950, less the award obtained in the previous civil action.

2. If a person in an action brought pursuant to NRS 41.900 has entered into a settlement agreement with this State *or with any other governmental entity* related to his or her wrongful conviction, the person is *only* entitled to receive any amount described in NRS 41.950, less the amount of the settlement agreement.

3. A person who ~~[was successful]~~ *received compensation from this State* in his or her action brought pursuant to NRS 41.900 , *whether through an award of damages or a settlement*, and who subsequently receives a civil settlement or award relating to his or her wrongful conviction ~~[that exceeds the amount awarded pursuant to NRS 41.950]~~ shall :

(a) Not later than 4 months after the date of the subsequent civil settlement or award, notify the State Board of Examiners of the subsequent civil settlement or award; and

(b) Not later than 6 months after the date of the subsequent civil settlement or award, reimburse this State for ~~[his or her award of damages issued pursuant to this act.]~~ the compensation previously received, not to exceed the amount of the monetary compensation which the person receives in the subsequent civil settlement or award.

4. *If a person who received compensation from this State in his or her action brought pursuant to NRS 41.900, whether through an award of damages or a settlement, and who subsequently receives a civil settlement or award relating to his or her wrongful conviction does not notify the State Board of Examiners or reimburse this State pursuant to subsection 3, a court may order the termination of any future payment awarded pursuant to subsection 2 of NRS 41.950.*

5. The calculation of an award of damages or a settlement amount pursuant to this section must not include *items listed in subsection 2 of NRS 41.950, including, without limitation,* attorney's fees and the costs for bringing the action.

6. *As used in this section, "governmental entity" has the meaning ascribed to it in NRS 363C.040.*

Sec. 4.5. NRS 41.970 is hereby amended to read as follows:

41.970 To recover damages or other monetary relief awarded by a court pursuant to NRS 41.950, less any adjustment pursuant to NRS 41.960, a person who was successful in his or her action



1 brought pursuant to NRS 41.900 must submit a claim to the State
2 Board of Examiners. The claim must be for payment of the damages
3 or other monetary relief from the Reserve for Statutory Contingency
4 Account, upon approval by the State Board of Examiners. *Payment*
5 *does not become effective without the prior approval of the State*
6 *Board of Examiners.*
7 **Sec. 5.** This act becomes effective on July 1, 2021.

