

<b>LFC Requester:</b>	<b>Chavez, Felix</b>
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**AGENCY BILL ANALYSIS - 2025 REGULAR SESSION**

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**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

**Date Prepared:** 2/17/25 *Check all that apply:*  
**Bill Number:** SB 407 Original  Correction   
 Amendment  Substitute

**Sponsor:** Sen. Linda M. Lopez **Agency Name and Code** AOC  
**Short Title:** Wrongful Conviction Compensation & Services **Number:** 218  
**Person Writing** Kathleen Sabo  
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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		
None	\$9,000	Rec.	General

(Parenthesis ( ) indicate expenditure decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		
Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) indicate revenue decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	Unknown	Unknown	Unknown	Unknown	Rec.	General

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: None.

Duplicates/Relates to Appropriation in the General Appropriation Act: None.

### **SECTION III: NARRATIVE**

#### **BILL SUMMARY**

Synopsis: SB 407 enacts the “Wrongful Conviction Compensation and Services Act,” (WCCSA), permitting the filing of petition for relief in the district court pursuant to the WCCSA by a released person who establishes by a preponderance of the evidence that:

- (1) the person was convicted and sentenced based on the conviction;
- (2) the person served all or part of the sentence;
- (3) the person did not commit the crime that resulted in the conviction or the crime that resulted in the conviction was not committed; and
- (4) the person was pardoned or the person's conviction was overturned, reversed or vacated on direct or collateral review, and if the person's conviction was overturned, reversed or vacated:
  - (a) after the conviction was overturned, reversed or vacated, the person was not convicted of any lesser included felony that arose from the same facts as the crime that resulted in the person's conviction, except for a conviction of a lesser included felony that resulted from an Alford plea or a plea of no contest while maintaining a claim of innocence; and
  - (b) one of the following: 1) the charge at issue in the conviction was dismissed or the person was acquitted of the charge upon retrial; or 2) if the person would otherwise have been entitled to a new trial, the person entered an Alford plea or a plea of no contest while maintaining a claim of innocence.

SB 407, Section 3, requires a petitioner to file a petition in district court within the time limitations provided in Section 9 of the WCCSA. SB 407 requires a district court to: (1) set a hearing on the petition no more than 180 days from the date the petition is filed, unless good cause exists to set the hearing at a later date; and (2) provide notice of the hearing to the petitioner and to the state department of justice no fewer than 90 days before the hearing date. The Act permits the State Department of Justice to offer evidence and arguments in opposition to a petition.

SB 407, Section 4(A), specifies the criteria that if a petitioner establishes, a petition is required to be granted:

- the person was convicted and sentenced based on the conviction;
- the person served all or part of the sentence;
- the person did not commit the crime that resulted in the conviction or the crime that resulted in the conviction was not committed; and
- the person was pardoned or the person's conviction was overturned, reversed or vacated on direct or collateral review, and if the person's conviction was overturned, reversed or vacated:
  - (a) after the conviction was overturned, reversed or vacated, the person was not convicted of any lesser included felony that arose from the same facts as the crime that resulted in the person's conviction, except for a conviction of a lesser included felony that resulted from an Alford plea or a plea of no contest while maintaining a claim of innocence; and

- (b) one of the following: 1) the charge at issue in the conviction was dismissed or the person was acquitted of the charge upon retrial; or 2) if the person would otherwise have been entitled to a new trial, the person entered an Alford plea or a plea of no contest while maintaining a claim of innocence.

SB 407, Section 4(B), provides that the petitioner may establish the eligibility requirements in Subsection A(3) and (4), above, by establishing by a preponderance of the evidence, that, prior to the filing of the petition, a court found that the released person did not commit the crime that resulted in the conviction or that the crime was not committed; or granted a habeas corpus petition based on a finding that the released person established by clear and convincing evidence that, in light of new evidence, no reasonable juror would have convicted the released person.

Subsection C provides that a petition shall be denied if the attorney general, in opposition to the petition, establishes by a preponderance of the evidence that:

- (1) the released person was an accomplice in the commission of the crime for which the person was convicted; or
- (2) the released person intentionally and voluntarily caused the person's own conviction by committing perjury or fabricating evidence at trial to prevent the actual perpetrator of the crime from being convicted.

SB 407, Section 5, requires a district court, in exercising its discretion regarding the weight given to and admissibility of evidence of a petitioner, to give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence and other difficulties of proof not caused by the petitioner or the State Department of Justice. Section 5 also provides that the fact that a petition is granted or denied shall not be admissible evidence in any other proceeding.

SB 407, Section 6, provides the following relief for a petitioner whose petition is granted:

- (1) noneconomic damages that arise from the conviction, according to proof by the petitioner, and including damages for loss of liberty and pain and suffering, in an amount not less than:
  - (a) one hundred thousand dollars (\$100,000) for each year of the released person's incarceration while awaiting a sentence of death based on the conviction, prorated by the day for any partial years;
  - (b) seventy-five thousand dollars (\$75,000) for each year of the released person's incarceration, other than while awaiting a sentence of death, based on the conviction, prorated by the day for any partial years; and
  - (c) fifty thousand dollars (\$50,000) for each year the released person spent on parole or probation or subject to a requirement to register on the registry for sex offenders based on the conviction, prorated by the day for any partial years;
- (2) economic damages that arise from the conviction, according to proof by the petitioner;
- (3) compensation to persons entitled to child support payments owed by the released person that became due, and interest on child support arrearage that accrued, but were not paid during the released person's incarceration;
- (4) reasonable attorney fees and costs incurred by the petitioner in getting the conviction overturned, reversed or vacated or in obtaining a pardon for the conviction;
- (5) reasonable attorney fees and costs incurred by the petitioner in obtaining relief under the Wrongful Conviction Compensation and Services Act; provided, however, that

a petitioner's attorneys shall not collect any fees or costs in excess of any amount awarded under this paragraph;

(6) reimbursement for any costs, fines, fees or other charges imposed on a released person as a result of the conviction that were paid by or on behalf of the released person or petitioner and were not already otherwise reimbursed;

(7) reimbursement for any restitution amounts paid by or on behalf of the released person or petitioner as a result of the conviction that were not already otherwise reimbursed; and

(8) reimbursement for any reasonable reintegration services and mental and physical health care costs incurred by the released person for the period between the released person's release from incarceration and the date of an award of relief pursuant to the Wrongful Conviction Compensation and Services Act.

In addition to other conditions placed upon relief, SB 407 addresses situations where a petitioner receives a monetary award or enters into a settlement agreement that provides for monetary damages in a civil action for wrongful conviction or wrongful incarceration in connection with the conviction that is the subject of the petitioner's petition, prior to an award of relief pursuant to Section 6, as well as subsequent to receipt of relief.

Section 6(I) requires a district court to, when a petition is granted:

(1) enter an order of expungement pursuant to Section 29-3A-4 NMSA 1978 or an order sealing records and files pursuant to Section 32A-2-26 NMSA 1978, as applicable to the petition. The expungement or sealing order shall provide that the petitioner is entitled, upon request to the department of public safety, to copies of the arrest and other criminal records related to the conviction at issue in the petition; and

(2) provide notice of the granted petition to the state department of justice and include a description of each conviction at issue in the petition, the fact and date of the district court's finding of innocence on each conviction and the time periods of the released person's incarceration with respect to which the petitioner was awarded relief pursuant to the Wrongful Conviction Compensation and Services Act.

SB 407, Section 7, provides the services for which a released person is eligible and the state required to provide.

SB 407, Section 8, requires a court, if a released person's conviction is overturned, vacated or reversed, upon entry of a dismissal, judgment of acquittal or judgment on an Alford plea or a plea of no contest while maintaining innocence, to:

(1) provide the person with a copy of the Wrongful Conviction Compensation and Services Act;

(2) on a form approved by the New Mexico supreme court, obtain the person's written acknowledgment of receipt of the copy; and

(3) enter the person's written acknowledgment on the case docket.

Section 8 also details the steps to be taken by the governor's office upon the issuance of a pardon to a released person.

SB 407, Section 9, provides a 6-year window for filing a petition, dating from the receipt of notice of the right to file a petition pursuant to Section 8 of the WCCSA.

SB 407, Section 10, prohibits the state from asserting sovereign immunity or immunity pursuant to the Tort Claims Act as a defense or bar to a petition filed in accordance with the

WCCSA.

SB 407 creates the “Wrongful Conviction Compensation Fund” for the purposes of paying petitioners awarded relief under the WCCSA.

SB 407 appropriates \$9 million from the general fund to the Wrongful Conviction Compensation Fund for expenditure in FY 26 and subsequent fiscal years to carry out the purposes of the Act.

The effective date of the Act is July 1, 2025.

## **FISCAL IMPLICATIONS**

There will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to the enforcement of this law and petitions filed and hearings held, as well as appeals from the granting of petitions and the awarding of relief, pursuant to the WCCSA. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

## **SIGNIFICANT ISSUES**

1) The Innocence Project reports that 35 states and the federal government and the District of Columbia have laws to compensate the wrongfully convicted, and that the following are key provisions in wrongful conviction compensation laws:

1. Provide at least \$50,000 per year of wrongful incarceration. Federal compensation law provides \$50,000 per year of wrongful incarceration. The majority of the 35 states with wrongful conviction compensation laws provide \$50,000 or more (TX, CO, KS, OH, CA, CT, VT, AL, FL, HI, IN, MI, MN, MS, NJ, NV, NC, WA).

2. Reasonable standard of proof for eligibility. Claimant should have to establish by preponderance of evidence that he or she did not commit the crime or related acts. “The claimant did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial.”

3. Straightforward process through courts to adjudicate claims: Nationally, 22 of the 35 states with compensation laws adjudicate claims through courts: the state high court, circuit courts, district courts, trial courts or state civil court. While some states designate state claims boards or commissioners, or other state commissions to adjudicate claims these entities do not have the same experience in weighing evidence and assess claims as the courts. The courts are the appropriate entities to handle these claims.

4. Offset provision with federal civil awards/settlements: To protect taxpayers, several states require exonerees who receive state compensation and later win federal civil rights lawsuits/settlements, to reimburse the state. Conversely, exonerees who first win federal civil rights lawsuits and then file for state compensation would only be entitled to an amount of state compensation that is subtracted from the civil awards.

*See Key Provisions in Wrongful Conviction Compensation Laws, Innocence Project,*

<https://www.law.umich.edu/special/exoneration/Documents/Key-Provisions-in-Wrongful-Conviction-Compensation-Laws.pdf> .

- 2) The New Mexico Civil Rights Act, Section 41-4A-1 NMSA 1978 et. seq, allows an individual to bring a civil suit against a public body, including law enforcement, for constitutional rights violations. An individual may recover actual damages, equitable relief, and/or injunctive relief, up to \$2 million. The Act specifically prohibits the defense of qualified immunity, and defendants sued in their personal capacity must be indemnified by the public body that employs them. There is a statute of limitations of three years for when a claim can be brought if the alleged civil rights violation occurred after July 1, 2021, and for any claim against law enforcement notice of the claim must be provided within one year of the alleged civil rights violation's occurrence. All judgments, settlements, and complaints arising out of the Act are public record.

See also *New Mexico Restoration of Rights & Record Relief, Restoration of Rights Project*, 2024, <https://ccresourcecenter.org/state-restoration-profiles/new-mexico-restoration-of-rights-pardon-expungement-sealing/#:~:text=Those%20who%20have%20completed%20their,granting%20a%20pardon.%E2%80%9D%20Id.>

#### **PERFORMANCE IMPLICATIONS**

The courts are participating in performance-based budgeting. This bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type

#### **ADMINISTRATIVE IMPLICATIONS**

See “Fiscal Implications,” above.

#### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

None.

#### **TECHNICAL ISSUES**

#### **OTHER SUBSTANTIVE ISSUES**

#### **ALTERNATIVES**

#### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

#### **AMENDMENTS**