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SENATE BILL 407

**57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025**

INTRODUCED BY

Linda M. López and Antoinette Sedillo Lopez

AN ACT

RELATING TO CIVIL ACTIONS; ENACTING THE WRONGFUL CONVICTION  
COMPENSATION AND SERVICES ACT; PROVIDING FOR DAMAGES AND OTHER  
RELIEF FOR A WRONGFULLY CONVICTED PERSON; REQUIRING NOTICE OF  
THE RIGHT TO FILE A PETITION FOR RELIEF; REQUIRING RULEMAKING;  
CREATING THE WRONGFUL CONVICTION COMPENSATION FUND; MAKING AN  
APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Wrongful Conviction Compensation and Services  
Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Wrongful Conviction Compensation and Services Act:

A. "conviction" means, under the laws of New  
Mexico, conviction of a crime or adjudication of delinquency

1 for a crime by a children's court;

2 B. "correctional facility" means a:

3 (1) state correctional facility;

4 (2) privately operated correctional facility;

5 (3) county jail;

6 (4) privately operated jail;

7 (5) detention facility operated under the  
8 authority of the children, youth and families department that  
9 holds a person pending a court hearing; or

10 (6) facility operated under the authority of  
11 the children, youth and families department that provides for  
12 the care and rehabilitation of a person who is younger than  
13 eighteen years of age and who has committed an act that would  
14 be designated a crime under the law if committed by a person  
15 who is eighteen years of age or older;

16 C. "incarceration" means a released person's:

17 (1) confinement in a correctional facility; or

18 (2) involuntary confinement in the New Mexico  
19 behavioral health institute at Las Vegas or another behavioral  
20 health facility;

21 D. "petition" means a petition for relief filed  
22 pursuant to the Wrongful Conviction Compensation and Services  
23 Act;

24 E. "petitioner" means:

25 (1) a released person who files a petition; or

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1 (2) if a released person is deceased, the  
2 executor or administrator of the person's estate or the  
3 person's personal representative who files a petition;

4 F. "released person" means a person who:

5 (1) under the laws of New Mexico, was  
6 convicted of and sentenced for a crime or adjudicated as a  
7 delinquent child for a crime by a children's court; and

8 (2) is the subject of a petition; and

9 G. "sentenced" means, in connection with a  
10 conviction, a released person was sentenced to a period of  
11 incarceration, parole, probation or registration on the  
12 registry for sex offenders.

13 SECTION 3. [NEW MATERIAL] PETITION--REQUIREMENTS--  
14 PARTIES.--

15 A. A petitioner shall file a petition in district  
16 court within the time limitations provided in Section 9 of the  
17 Wrongful Conviction Compensation and Services Act.

18 B. A district court in which a petition is filed  
19 shall:

20 (1) set a hearing on the petition no more than  
21 one hundred eighty days from the date the petition is filed,  
22 unless good cause exists to set the hearing at a later date;  
23 and

24 (2) provide notice of the hearing to the  
25 petitioner and to the state department of justice no fewer than

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1 ninety days before the hearing date.

2 C. The state department of justice may offer  
3 evidence and arguments in opposition to a petition.

4 SECTION 4. [NEW MATERIAL] ELIGIBILITY FOR RELIEF--  
5 STANDARDS OF PROOF.--

6 A. Unless one or more of the standards provided in  
7 Subsection C of this section are met, a petition shall be  
8 granted if a petitioner establishes each of the following, with  
9 respect to the released person to whom the petition relates, by  
10 a preponderance of the evidence that:

11 (1) the person was convicted and sentenced  
12 based on the conviction;

13 (2) the person served all or part of the  
14 sentence;

15 (3) the person did not commit the crime that  
16 resulted in the conviction or the crime that resulted in the  
17 conviction was not committed; and

18 (4) the person was pardoned or the person's  
19 conviction was overturned, reversed or vacated on direct or  
20 collateral review, and if the person's conviction was  
21 overturned, reversed or vacated:

22 (a) after the conviction was overturned,  
23 reversed or vacated, the person was not convicted of any lesser  
24 included felony that arose from the same facts as the crime  
25 that resulted in the person's conviction, except for a

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1 conviction of a lesser included felony that resulted from an  
2 Alford plea or a plea of no contest while maintaining a claim  
3 of innocence; and

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

10 B. A petitioner may establish the eligibility  
11 requirements in Paragraphs (3) and (4) of Subsection A of this  
12 section by establishing by a preponderance of the evidence  
13 that, prior to the filing of the petition, a court:

14 (1) found that the released person did not  
15 commit the crime that resulted in the conviction or that the  
16 crime was not committed; or

17 (2) granted a habeas corpus petition based on  
18 a finding that the released person established by clear and  
19 convincing evidence that, in light of new evidence, no  
20 reasonable juror would have convicted the released person.

21 C. A petition shall be denied if the attorney  
22 general, in opposition to the petition, establishes by a  
23 preponderance of the evidence that:

24 (1) the released person was an accomplice in  
25 the commission of the crime for which the person was convicted;

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1 or

2 (2) the released person intentionally and  
3 voluntarily caused the person's own conviction by committing  
4 perjury or fabricating evidence at trial to prevent the actual  
5 perpetrator of the crime from being convicted.

6 SECTION 5. [NEW MATERIAL] JUDICIAL DISCRETION--  
7 ADMISSIBILITY.--

8 A. In exercising its discretion regarding the  
9 weight given to and admissibility of evidence presented by a  
10 petitioner, a district court shall give due consideration to  
11 difficulties of proof caused by the passage of time, the death  
12 or unavailability of witnesses, the destruction of evidence and  
13 other difficulties of proof not caused by the petitioner or the  
14 state department of justice.

15 B. The fact that a petition is granted or denied  
16 shall not be admissible evidence in any other proceeding.

17 SECTION 6. [NEW MATERIAL] RELIEF.--

18 A. A petitioner whose petition is granted shall be  
19 awarded the following relief in connection with the released  
20 person's conviction:

21 (1) noneconomic damages that arise from the  
22 conviction, according to proof by the petitioner, and including  
23 damages for loss of liberty and pain and suffering, in an  
24 amount not less than:

25 (a) one hundred thousand dollars

1 (\$100,000) for each year of the released person's incarceration  
2 while awaiting a sentence of death based on the conviction,  
3 prorated by the day for any partial years;

4 (b) seventy-five thousand dollars  
5 (\$75,000) for each year of the released person's incarceration,  
6 other than while awaiting a sentence of death, based on the  
7 conviction, prorated by the day for any partial years; and

8 (c) fifty thousand dollars (\$50,000) for  
9 each year the released person spent on parole or probation or  
10 subject to a requirement to register on the registry for sex  
11 offenders based on the conviction, prorated by the day for any  
12 partial years;

13 (2) economic damages that arise from the  
14 conviction, according to proof by the petitioner;

15 (3) compensation to persons entitled to child  
16 support payments owed by the released person that became due,  
17 and interest on child support arrearage that accrued, but were  
18 not paid during the released person's incarceration;

19 (4) reasonable attorney fees and costs  
20 incurred by the petitioner in getting the conviction  
21 overturned, reversed or vacated or in obtaining a pardon for  
22 the conviction;

23 (5) reasonable attorney fees and costs  
24 incurred by the petitioner in obtaining relief under the  
25 Wrongful Conviction Compensation and Services Act; provided,

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1 however, that a petitioner's attorneys shall not collect any  
2 fees or costs in excess of any amount awarded under this  
3 paragraph;

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

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

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

18 B. Unless one or more of the standards provided in  
19 Subsection C of this section are met, a petitioner is not  
20 entitled to relief provided for in Subparagraph (a) or (b) of  
21 Paragraph (1) of Subsection A of this section for any period of  
22 time during which the released person was serving a concurrent  
23 sentence for a separate crime for which:

24 (1) the released person's conviction was not  
25 overturned, reversed or vacated; or

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1 (2) the released person was not pardoned.

2 C. The provisions of Subsection B of this section  
3 shall not apply to the extent that:

4 (1) the term of a concurrent sentence for a  
5 separate crime not at issue in a petition was longer than it  
6 would have been absent the conviction at issue in the petition;  
7 or

8 (2) the separate conviction not at issue in a  
9 petition, for which the released person was serving a  
10 concurrent sentence, was based on an Alford plea or a plea of  
11 no contest while maintaining a claim of innocence, which plea  
12 was entered by the released person to resolve the case in  
13 connection with the other crime after the crime at issue in the  
14 petition was overturned, reversed or vacated on direct or  
15 collateral review; and the released person proves by a  
16 preponderance of the evidence that:

17 (a) the released person did not commit  
18 the crime that resulted in the Alford plea or no contest plea;  
19 or

20 (b) there was no crime committed.

21 D. Upon granting a petition, the monetary amounts  
22 provided in Subparagraphs (a) through (c) of Paragraph (1) of  
23 Subsection A of this section shall be adjusted by the  
24 percentage increase or decrease in the consumer price index for  
25 all urban consumers, west region, from the effective date of

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1 the Wrongful Conviction Compensation and Services Act to the  
2 date a petition is granted.

3 E. Damages awarded to a petitioner shall be paid in  
4 a lump sum.

5 F. The amount of damages awarded to a petitioner is  
6 not subject to offset for:

7 (1) costs or expenses incurred by the state or  
8 any subdivision of the state to secure the petitioner's  
9 incarceration or to feed, clothe or provide medical or any  
10 other services to the released person during the person's  
11 incarceration;

12 (2) the value of any goods or services  
13 provided to the released person pursuant to the Wrongful  
14 Conviction Compensation and Services Act; or

15 (3) costs for or associated with provision of  
16 a defense for an indigent released person pursuant to the  
17 Indigent Defense Act.

18 G. If, prior to an award of relief pursuant to this  
19 section, a petitioner receives a monetary award or enters into  
20 a settlement agreement that provides for monetary damages in a  
21 civil action for wrongful conviction or wrongful incarceration  
22 in connection with the conviction that is the subject of the  
23 petitioner's petition, excluding any attorney fees, expenses  
24 and other costs paid by the petitioner in seeking and obtaining  
25 the award or settlement in the civil action:

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1 (1) any award of noneconomic relief pursuant  
2 to this section shall be reduced by an amount equal to any  
3 noneconomic damages received in the related civil action; and

4 (2) any award of economic relief pursuant to  
5 this section shall be reduced by an amount equal to any  
6 economic damages received in the related civil action.

7 H. If, subsequent to receipt of relief pursuant to  
8 the Wrongful Conviction Compensation and Services Act, a  
9 petitioner receives an award of monetary damages or enters into  
10 a settlement agreement that provides for monetary damages in a  
11 civil action for wrongful conviction or incarceration that is  
12 based on the same conviction as the conviction that is the  
13 subject of the petitioner's petition, the petitioner shall:

14 (1) deduct from the amount of damages received  
15 in the civil action any amounts paid by the petitioner in that  
16 civil action for attorney fees, expenses and other costs; and

17 (2) from the remainder, reimburse the state  
18 for any noneconomic and economic relief received pursuant to  
19 the Wrongful Conviction Compensation and Services Act.

20 I. When a petition is granted, the district court  
21 shall:

22 (1) enter an order of expungement pursuant to  
23 Section 29-3A-4 NMSA 1978 or an order sealing records and files  
24 pursuant to Section 32A-2-26 NMSA 1978, as applicable to the  
25 petition. The expungement or sealing order shall provide that

1 the petitioner is entitled, upon request to the department of  
2 public safety, to copies of the arrest and other criminal  
3 records related to the conviction at issue in the petition; and

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

12 J. Within sixty days of receipt of the notice  
13 provided pursuant to Subsection I of this section, the state  
14 department of justice shall provide to the petitioner a letter  
15 no longer than one page in length, on state department of  
16 justice letterhead and signed by or on behalf of the attorney  
17 general that:

18 (1) states that the released person was found  
19 to be innocent of the crimes at issue in the petition; and

20 (2) lists, as applicable, the time periods  
21 during which the released person was wrongfully incarcerated,  
22 wrongfully on parole or probation or wrongfully required to  
23 register on the registry for sex offenders.

24 K. A petitioner's acceptance of relief pursuant to  
25 the Wrongful Conviction Compensation and Services Act does not

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1 preclude the petitioner from seeking or obtaining other damages  
2 or relief available under the law.

3 SECTION 7. [NEW MATERIAL] ELIGIBILITY FOR SERVICES.--

4 A. A released person released from incarceration  
5 after the person's conviction is reversed, overturned or  
6 vacated, or the person is pardoned, shall be eligible for and  
7 the state shall provide:

8 (1) a stipend of two thousand dollars (\$2,000)  
9 to assist with the person's transition from incarceration, to  
10 be provided upon release or as soon thereafter as possible; and

11 (2) for a period of two years from the date  
12 the person is released, at no cost to the person:

13 (a) services, programs and housing in  
14 community corrections outpatient programs and community  
15 corrections residential programs;

16 (b) public assistance grants pursuant to  
17 the Public Assistance Act; provided, however, that the person  
18 shall not be required to meet the applicable standard of need  
19 pursuant to Section 27-2-3 NMSA 1978 or the maximum permissible  
20 resources established by the health care authority;

21 (c) health, vision and dental insurance  
22 coverage at no cost to the person, whether provided through  
23 medicaid pursuant to the Public Assistance Act, the New Mexico  
24 health insurance exchange under 42 U.S.C. Section 18001 et seq.  
25 or another comparable health insurance program;

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1 (d) food benefits in the maximum benefit  
2 amount for the supplemental nutrition assistance program for a  
3 household size of one; provided, however, that the person shall  
4 not be required to meet the applicable eligibility requirements  
5 set forth in Title 8, Chapter 139 of the New Mexico  
6 Administrative Code;

7 (e) a medicaid personal spending  
8 allowance pursuant to Section 27-2-12.9 NMSA 1978; provided,  
9 however, that the person shall not be required to meet the  
10 applicable eligibility requirements set forth in that section;  
11 and

12 (f) utility assistance pursuant to the  
13 Low Income Utility Assistance Act; provided, however, that the  
14 person shall not be required to meet the applicable eligibility  
15 requirements set forth in that act.

16 B. Within one hundred twenty days of the effective  
17 date of the Wrongful Conviction Compensation and Services Act,  
18 the health care authority shall:

19 (1) promulgate rules to implement the  
20 provisions of this section;

21 (2) create an application form for use in  
22 applying for the benefits described in this section;

23 (3) designate the person or division within  
24 the health care authority to process applications;

25 (4) document and implement procedures to

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1 ensure a determination on each application is made and  
2 communicated to the applicant within fourteen days of  
3 submission of the application; and

4 (5) commence provision of benefits provided  
5 for in this section within seven days of approval of an  
6 application.

7 C. Identifying information for each released person  
8 released from incarceration because the person's conviction is  
9 overturned, vacated or reversed, or because the person was  
10 pardoned, shall be provided to the health care authority on or  
11 before the date of the person's release by the corrections  
12 department, the children, youth and families department or the  
13 other state or local government agency responsible for the  
14 correctional facility or program from which the person was  
15 released. Within one hundred twenty days of the effective date  
16 of the Wrongful Conviction Compensation and Services Act, the  
17 corrections department, the children, youth and families  
18 department and all other state and local government departments  
19 and agencies responsible for a correctional facility or program  
20 in which persons are incarcerated shall promulgate rules to  
21 ensure that upon a person's release as provided in this  
22 subsection, the person is provided:

23 (1) an application form for benefits provided  
24 for in this section; and

25 (2) the transition assistance stipend provided

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1 for in this section.

2 SECTION 8. [NEW MATERIAL] NOTICE OF RIGHT TO FILE A  
3 PETITION.--

4 A. If a released person's conviction is overturned,  
5 vacated or reversed, upon entry of a dismissal, judgment of  
6 acquittal or judgment on an Alford plea or a plea of no contest  
7 while maintaining innocence, the court shall:

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

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

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

15 B. Upon the issuance of a pardon to a released  
16 person, the office of the governor shall:

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

19 (2) obtain the pardoned person's written  
20 acknowledgment of receipt of the copy on a form provided by the  
21 office of the governor; and

22 (3) retain a copy of the acknowledgment in the  
23 office's official records.

24 C. The written acknowledgments provided for in  
25 Subsections A and B of this section shall be admissible in any



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1 proceeding subsequently filed by the person under the Wrongful  
2 Conviction Compensation and Services Act.

3 SECTION 9. [NEW MATERIAL] TIME TO FILE PETITION.--

4 A. A person who receives notice of the right to  
5 file a petition pursuant to Section 8 of the Wrongful  
6 Conviction Compensation and Services Act shall file a petition  
7 within six years of the date on which notice was provided.

8 B. A person who was sentenced to a period of  
9 incarceration, probation, parole or required registration on  
10 the registry for sex offenders based on a conviction prior to  
11 the effective date of the Wrongful Conviction Compensation and  
12 Services Act shall file a petition under that act within six  
13 years of the effective date of that act.

14 C. If, on or after a date two years before the date  
15 on which the right to file a petition will end, a released  
16 person obtains new evidence of the person's innocence that the  
17 person could not previously have obtained with reasonable  
18 diligence, the released person may file a petition under the  
19 Wrongful Conviction Compensation and Services Act within four  
20 years of the date on which the petitioner obtains the new  
21 evidence.

22 SECTION 10. [NEW MATERIAL] NO SOVEREIGN IMMUNITY  
23 DEFENSE.--The state shall not assert sovereign immunity or  
24 immunity pursuant to the Tort Claims Act as a defense or bar to  
25 a petition filed in accordance with the Wrongful Conviction

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1 Compensation and Services Act.

2 SECTION 11. [NEW MATERIAL] WRONGFUL CONVICTION

3 COMPENSATION FUND.--The "wrongful conviction compensation fund"  
4 is created in the state treasury and shall be administered by  
5 the state department of justice. The fund consists of  
6 appropriations, gifts, grants, donations and bequests made to  
7 the fund. Income from the fund shall be credited to the fund,  
8 and money in the fund shall not revert or be transferred to any  
9 other fund at the end of a fiscal year. Money in the fund is  
10 appropriated for the purposes of paying petitioners awarded  
11 relief under the Wrongful Conviction Compensation and Services  
12 Act. Disbursements from the fund shall be made by warrant of  
13 the secretary of finance and administration pursuant to  
14 vouchers signed by the attorney general or the attorney  
15 general's authorized representative.

16 SECTION 12. [NEW MATERIAL] LIBERAL CONSTRUCTION.--The  
17 Wrongful Conviction Compensation and Services Act shall be  
18 liberally construed to carry out its purposes.

19 SECTION 13. APPROPRIATION.--Nine million dollars  
20 (\$9,000,000) is appropriated from the general fund to the  
21 wrongful conviction compensation fund for expenditure in fiscal  
22 year 2026 and subsequent fiscal years to carry out the purposes  
23 of the Wrongful Conviction Compensation and Services Act. Any  
24 unexpended or unencumbered balance remaining at the end of a  
25 fiscal year shall not revert to the general fund.

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SECTION 14. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2025.

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