

2019 Regular Session

HOUSE BILL NO. 492

BY REPRESENTATIVES LARVADAIN AND JAMES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/PROCEDURE: Provides relative to the compensation of persons wrongfully convicted

1 AN ACT

2 To amend and reenact R.S. 15:572.8(H) and (N)(1) and (3) and to repeal Code of Civil

3 Procedure Article 87, relative to compensation for wrongful conviction and

4 imprisonment; to provide relative to the compensation received by the petitioner for

5 the loss of life opportunities resulting from the time spent incarcerated; to provide

6 relative to the purposes for which a person who is wrongfully convicted may receive

7 compensation for loss of life opportunities; to provide relative to the Innocence

8 Compensation Fund; to provide relative to the authority of the Louisiana

9 Commission of Law Enforcement and Administration of Criminal Justice in this

10 regard; to provide relative to the venue in which an application for compensation

11 based upon wrongful conviction and imprisonment may be filed; to provide relative

12 to changes made to R.S. 15:572.8(H)(1) and (2)(introductory paragraph) in Section

13 4 of Act No. 612 of the 2018 Regular Session of the Legislature and the repeal of

14 R.S. 15:572.8(N) and (S) in Section 22 of Act No. 612 of the 2018 Regular Session

15 of the Legislature; and to provide for related matters.

16 Be it enacted by the Legislature of Louisiana:

17 Section 1. R.S. 15:572.8(H) and (N)(1) and (3) are hereby amended and reenacted

18 to read as follows:

1 §572.8. Compensation for wrongful conviction and imprisonment; petition process;
2 compensation; proof; assignment of powers and duties

3 * * *

4 H.(1) After a contradictory hearing with the attorney general, the court shall
5 render a decision as soon as practical. If, from its findings of fact, the court
6 determines that the petitioner is entitled to compensation because he is found to be
7 factually innocent of the crime of which he was convicted, it shall determine the
8 amount of compensation due in accordance with the provisions of this Section, and
9 it shall order payment to the petitioner from the Innocence Compensation Fund
10 which shall be created specifically for the administration of awards under this
11 Section.

12 (2) Compensation for the physical harm and injury suffered by the petitioner
13 shall be calculated at a rate of twenty-five thousand dollars per year incarcerated, not
14 to exceed a maximum total amount of two hundred fifty thousand dollars, ~~for the~~
15 ~~physical harm and injury suffered by the petitioner~~ to be paid at a rate of twenty-five
16 thousand dollars annually. ~~As~~

17 (3) In addition to the compensation provided in Paragraph (2) of this
18 Subsection, the court shall order that the petitioner receive eighty thousand dollars
19 total in compensation for the loss of life opportunities resulting from the time spent
20 ~~incarcerated, the court shall also review requests for payment and order payment, not~~
21 ~~to exceed eighty thousand dollars, which the court finds reasonable and appropriate~~
22 and to cover expenses relating to job skills training, education, housing, and any
23 other services such wrongfully convicted person may need. Such compensation shall
24 be paid from the Innocence Compensation Fund ~~to:~~

25 (a) ~~Pay the costs of job-skills training for three years.~~

26 (b) ~~Pay for appropriate medically necessary medical and counseling services~~
27 ~~for six years to the petitioner at a mutually agreed upon location at no charge to the~~
28 ~~petitioner, but only if such services are not available from a state or other public~~
29 ~~facility, clinic, or office that is reasonably accessible to the petitioner.~~

1 available for the purposes of the fund. Any judgment rendered pursuant to this
2 Section shall be payable only from the fund established herein. No state agency,
3 political subdivision, constitutional office, nor employee thereof shall be liable for
4 any payment ordered pursuant to this Section.

5 * * *

6 (3) Monies appropriated from the fund shall be used exclusively ~~by the court~~
7 to compensate petitioners who are found to be factually innocent of the crime of
8 which they were convicted; as provided in ~~Subsection A~~ of this Section.

9 * * *

10 Section 2. Code of Civil Procedure Article 87 is hereby repealed in its entirety.

11 Section 3. It is the intent of the legislature that the changes made to R.S.
12 15:572.8(H)(1) and (2)(introductory paragraph) in Section 4 of Act No. 612 of the 2018
13 Regular Session of the Legislature and the repeal of R.S. 15:572.8(N) and (S) in Section 22
14 of Act No. 612 of the 2018 Regular Session of the Legislature shall never go into effect and
15 that the provisions of this Act shall control. Therefore, notwithstanding the provisions of
16 Section 25 of Act No. 612 of the 2018 Regular Session of the Legislature, the provisions of
17 Section 4 of Act No. 612 of the 2018 Regular Session that amended and reenacted R.S.
18 15:572.8(H)(1) and (2)(introductory paragraph) and the provisions of Section 22 of Act No.
19 612 of the 2018 Regular Session that repealed R.S. 15:572.8(N) and (S) shall not become
20 effective and are hereby repealed.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 492 Original

2019 Regular Session

Larvadain

Abstract: Provides relative to compensation of persons who are wrongfully convicted for loss of life opportunities and other expenses, and provides relative to the Innocence Compensation Fund.

Present law provides that any person who has served, in whole or in part, a sentence of imprisonment under the laws of this state for a crime for which he was convicted is entitled to receive compensation if the conviction has been reversed or vacated and the person has proved by clear and convincing evidence that he is factually innocent of the crime for which he was convicted.

In this regard, present law provides that if, after a contradictory hearing with the attorney general, the court determines that the petitioner is entitled to compensation because he is found to be factually innocent of the crime for which he was convicted, the court shall order that the petitioner receive the following:

- (1) Compensation for the physical harm and injury suffered by the petitioner in an amount equal to \$25,000 per year incarcerated, not to exceed a maximum total amount of \$250,000. Such compensation is payable from the Innocence Compensation Fund at a rate of \$25,000 annually.
- (2) Compensation for the loss of life opportunities resulting from the time spent incarcerated. In this regard, the court shall review requests for payment and order payment, not to exceed \$80,000, which the court finds reasonable and appropriate. Such compensation shall be paid from the Innocence Compensation Fund and only for the following purposes:
 - (a) The costs of job-skills training for three years.
 - (b) Appropriate medically necessary medical and counseling services for six years.
 - (c) Tuition, fees, and certain other expenses associated with attendance at any community college or unit of the public university system of the state of Louisiana for ten years after the release of the petitioner.

Proposed law amends present law to require the court, upon determining that the petitioner is factually innocent of the crime for which he was convicted, to order compensation for the physical harm and injury suffered by the petitioner at the rate set forth in present law, and shall also order that the petitioner receive \$80,000 in compensation for the loss of life opportunities and to cover expenses relating to job skills training, education, housing, and any other services such wrongfully convicted person may need. Proposed law removes from present law the criteria for each category of compensation and the limitations placed on the number of years for which the petitioner may receive compensation for loss of life opportunities.

Present law establishes in the state treasury a special fund, to be known as the Innocence Compensation Fund, administered by the La. Commission on Law Enforcement and Administration of Criminal Justice (LCLE). Present law provides that the fund shall be used exclusively to compensate petitioners who are found to be factually innocent of the crime for which they were convicted. Present law further authorizes LCLE to adopt rules for the purpose of administering the fund and implementing the provisions of present law.

Act No. 612 of the 2018 R.S., eliminates the present law Innocence Compensation Fund and LCLE's rulemaking authority with regard to the fund effective July 1, 2020, and upon elimination of the fund, provides for the payment of compensation awarded pursuant to present law from the state general fund.

Proposed law provides that Act No. 612 of the 2018 R.S., that eliminates the present law Innocence Compensation Fund and the authority of LCLE to administer the fund effective July 1, 2020, shall not go into effect and that the provisions of proposed law shall control.

Proposed law further repeals a provision of present law (C.C.P. Art. 87) that conflicts with the present law (R.S. 15:572.8(C)) requirement that petitions for wrongful conviction be filed in the district court in which the original conviction was obtained.

(Amends R.S. 15:572.8(H) and (N)(1) and (3); Repeals C.C.P. Art. 87)