

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. Any petitioner who has  
24          been awarded compensation pursuant to the provisions of this Paragraph and who  
25          has received a portion of such compensation prior to August 1, 2019, may file a  
26          petition prior to August 1, 2020, seeking the remainder of such compensation, not  
27          to exceed eighty thousand dollars total, authorized by the provisions of this  
28          Paragraph or be forever barred from filing such petition. Compensation ordered

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1        pursuant to the provisions of this Paragraph shall be paid from the Innocence  
2        Compensation Fund ~~to:~~

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

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

8                ~~(c)(i) Provide expenses for tuition and fees at any community college or unit~~  
9        ~~of the public university system of the state of Louisiana.~~

10               ~~(ii) State aid in accordance with this Subparagraph shall include assistance~~  
11        ~~in meeting any admission standards or criteria required at any of the applicable~~  
12        ~~institutions, including but not limited to assistance in satisfying requirements for a~~  
13        ~~certificate of equivalency of completion of secondary education and assistance in~~  
14        ~~completing any adult education program or courses.~~

15               ~~(iii) The right to receive aid in accordance with this Subparagraph shall be~~  
16        ~~for ten years after the release of a petitioner who qualifies for aid. State education~~  
17        ~~aid shall continue for up to a total of five years of aid when initiated within the ten-~~  
18        ~~year period or until the degree or program for which the petitioner is authorized is~~  
19        ~~completed, whichever is less, as long as the petitioner makes satisfactory progress~~  
20        ~~in the courses or program in which he is enrolled. Aid shall be available for~~  
21        ~~completion of any degree or program which the petitioner chooses and which is~~  
22        ~~available from the applicable institutions.~~

23               ~~(3)(4)~~ In determining the compensation owed to the petitioner, the court may  
24        not deduct any expenses incurred by the state or any of its political subdivisions in  
25        connection with the arrest, prosecution, conviction, and imprisonment of the  
26        petitioner for a crime of which the board finds he was factually innocent, including  
27        expense for food, clothing, shelter, and medical services.

1           ~~(4)~~(5) A petitioner shall not be entitled to compensation for any portion of  
2 a sentence in prison during which he was also serving a concurrent sentence for the  
3 conviction of another crime.

4   \*       \*       \*

5           N.(1) There is hereby established ~~a special fund~~ in the state treasury a special  
6 fund to be known as the Innocence Compensation Fund, hereinafter referred to as the  
7 "fund". The fund shall be administered by the Louisiana Commission on Law  
8 Enforcement and Administration of Criminal Justice. The source of monies for the  
9 fund shall be appropriations, donations, grants, and other monies which may become  
10 available for the purposes of the fund. Any judgment rendered pursuant to this  
11 Section shall be payable only from the fund established herein. No state agency,  
12 political subdivision, constitutional office, nor employee thereof shall be liable for  
13 any payment ordered pursuant to this Section.

14   \*       \*       \*

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

18   \*       \*       \*

19           Section 2. Code of Civil Procedure Article 87 is hereby repealed in its entirety.  
20           Section 3. It is the intent of the legislature that the changes made to R.S.  
21 15:572.8(H)(1) and (2)(introductory paragraph) in Section 4 of Act No. 612 of the 2018  
22 Regular Session of the Legislature and the repeal of R.S. 15:572.8(N) and (S) in Section 22  
23 of Act No. 612 of the 2018 Regular Session of the Legislature shall never go into effect and  
24 that the provisions of this Act shall control. Therefore, notwithstanding the provisions of  
25 Section 25 of Act No. 612 of the 2018 Regular Session of the Legislature, the provisions of  
26 Section 4 of Act No. 612 of the 2018 Regular Session that amended and reenacted R.S.  
27 15:572.8(H)(1) and (2)(introductory paragraph) and the provisions of Section 22 of Act No.  
28 612 of the 2018 Regular Session that repealed R.S. 15:572.8(N) and (S) shall not become  
29 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 Engrossed

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.

Proposed law further provides that any petitioner who has been awarded compensation and who has received a portion of such compensation prior to Aug. 1, 2019, may petition the court by Aug. 1, 2020, to seek the remainder of the compensation, not to exceed \$80,000, or be forever barred from filing such petition.

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)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Add that any petitioner who has been awarded compensation and who has received a portion of such compensation prior to Aug. 1, 2019, may petition the court by Aug. 1, 2020, to seek the remainder of the compensation, not to exceed \$80,000, or be forever barred from filing such petition.