

SENATE, No. 391

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator DECLAN J. O'SCANLON, JR.

District 13 (Monmouth)

Co-Sponsored by:

Senators Bateman and Gopal

SYNOPSIS

Expands categories of individuals who may bring a claim under wrongful imprisonment statute.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning wrongful imprisonment and amending
2 P.L.1997, c.227, P.L.2013, c.171 and P.L.1967.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 1 of P.L.1997, c.227 (C.52:4C-1) is amended to read
8 as follows:

9 1. The Legislature finds and declares that innocent persons who
10 have been convicted of crimes and subsequently imprisoned or
11 convicted of a crime and subsequently committed as a "sexually
12 violent predator" in accordance with the provisions of P.L.1998,
13 c.71 (C.30:4-27.24 et al.) have been frustrated in seeking legal
14 redress and that such persons should have an available avenue of
15 redress to seek compensation for damages. The Legislature intends
16 by enactment of the provisions of this act that those innocent
17 persons who can demonstrate by clear and convincing evidence that
18 they were mistakenly convicted and imprisoned or mistakenly
19 convicted of a crime and subsequently committed as a "sexually
20 violent predator" in accordance with the provisions of P.L.1998,
21 c.71 (C.30:4-27.24 et al.) be able to recover damages against the
22 State.

23 2. In light of the substantial burden of proof that must be
24 carried by such persons, it is the intent of the Legislature that the
25 court, in exercising its discretion as permitted by law regarding the
26 weight and admissibility of evidence submitted pursuant to this
27 section, may, in the interest of justice, give due consideration to
28 difficulties of proof caused by the passage of time, the death or
29 unavailability of witnesses, the destruction of evidence or other
30 factors not caused by such persons or those acting on their behalf.
31 (cf: P.L.2013, c.171, s.1)

32

33 2. Section 2 of P.L.1997, c.227 (C.52-4C-2) is amended to read
34 as follows:

35 2. a. Notwithstanding the provisions of any other law, any
36 person convicted and subsequently imprisoned or convicted of a
37 crime and subsequently civilly committed as a "sexually violent
38 predator" in accordance with the provisions of P.L.1998, c.71
39 (C.30:4-27.24 et al.) for one or more crimes which he did not
40 commit may, under the conditions hereinafter provided, bring a suit
41 for damages in Superior Court against the Department of the
42 Treasury.

43 b. Any award of damages to such person in an action against
44 the State or any political subdivision thereof or against any
45 employee of the State or any political subdivision thereof with

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 respect to the same subject matter shall be offset by any award of
2 damages awarded under this act.

3 (cf: P.L.2013, c.171, s.2)

4
5 3. Section 3 of P.L.1997, c.227 (C.52:4C-3) is amended to read
6 as follows:

7 3. The person (hereinafter titled, "the claimant") shall establish
8 the following by clear and convincing evidence:

9 a. That he was convicted of a crime and subsequently
10 sentenced to a term of imprisonment or convicted of a crime and
11 subsequently civilly committed as a "sexually violent predator" in
12 accordance with the provisions of P.L.1998, c.71 (C.30:4-
13 27.24 et al.), served all or any part of his sentence; and

14 b. He did not commit the crime for which he was convicted;
15 and

16 c. He did not commit or suborn perjury, fabricate evidence, or
17 by his own conduct cause or bring about his conviction. Neither a
18 confession or admission later found to be false nor a guilty plea
19 shall constitute committing or suborning perjury, fabricating
20 evidence, or causing or bringing about his conviction under this
21 subsection];and

22 d. He did not plead guilty to the crime for which he was
23 convicted

24 (cf: P.L.2013, c.171, s.3)

25
26 4. Section 4 of P.L.1997, c.227 (C.52:4C-4) is amended to read
27 as follows:

28 4. The suit, accompanied by a statement of the facts concerning
29 the claim for damages, verified in the manner provided for the
30 verification of complaints in civil actions, shall be brought by the
31 claimant within a period of two years after his conviction is vacated
32 or dismissed, his release from imprisonment, his release from State
33 supervision including parole, probation, civil commitment as a
34 "sexually violent predator" in accordance with the provisions of
35 P.L.1998, c.71 (C.30:4-27.24 et al.), sex offender registration or
36 after the grant of a pardon to him whichever is later; [provided,
37 however, that any eligible claimant released or pardoned during the
38 five-year period prior to May 2, 1996 shall have two years from the
39 effective date of this act to file a suit] provided, however, that any
40 eligible claimant whose conviction is vacated or dismissed, is
41 released from imprisonment, State supervision including parole,
42 probation, civil commitment as a "sexually violent predator" in
43 accordance with the provisions of P.L.1998, c.71 (C.30:4-
44 27.24 et al.), sex offender registration or pardoned on or after
45 December 27, 2013 and who has not previously been awarded
46 damages under section 3 of P.L.1997, c.227 (C.52:4C-3) or section

1 6 of P.L.2013, c.171 (C.52:4C-7) shall have two years from the
2 effective date of P.L. , c. (C.) (pending before the
3 Legislature as this bill) to bring an action for damages.
4 (cf: P.L.1997, c.227, s.4)

5
6 5. Section 5 of P.L.1997, c.227 (C. 52:4C-5) is amended to
7 read as follows:

8 5. a. (1) Damages awarded under **【this act】** P.L.1997, c.227
9 (C.52:4C-1 et al.) and section 6 of P.L.2013, c.171 (C.52:4C-7)
10 shall **【not exceed the greater of】** include :

11 (a) twice the amount of the claimant's income in the year prior
12 to his incarceration or civil commitment as a "sexually violent
13 predator" in accordance with the provisions of P.L.1998, c.71
14 (C.30:4-27.24 et al.); or

15 (b) \$50,000 for each year of incarceration or civil commitment,
16 whichever is greater, and

17 (c) \$25,000 for each year served under State supervision,
18 including parole, probation, or as a registered sex offender after a
19 period of incarceration.

20 (2) In the event that damages exceed \$1 million, the court may
21 order that the award be paid as an annuity with a payout over a
22 maximum period of 20 years. The court shall consider the best
23 interests of the claimant in making such determination.

24 b. In addition to the damages awarded pursuant to subsection
25 a., the claimant shall be entitled to receive reasonable attorney fees
26 and costs related to the litigation. A claimant may also be awarded
27 other non-monetary relief as sought in the complaint including, but
28 not limited to vocational training, tuition assistance, counseling,
29 housing assistance, and health insurance coverage as appropriate.

30 c. Damages awarded under this act shall not be subject to
31 treatment as gross income to the claimant under the provisions of
32 the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq.
33 (cf: P.L.2013, c.171, s.4)

34
35 6. Section 6 of P.L.2013, c.171 (C.52:4C-7) is amended to read
36 as follows:

37 6. a. The provisions of **【this amendatory and supplementary**
38 **act (P.L.2013, c.171)】** P.L.1997, c.227 (C.52:4C-1 et al.) and
39 P.L.2013, c.171 shall apply to any claimant released from
40 imprisonment, or granted a pardon on or after the effective date of
41 **【this act】** P.L.2013, c.171.

42 b. The provisions of P.L. , c. (C.) (pending before the
43 Legislature as this bill) shall apply to any claimant whose
44 conviction was vacated or dismissed or who was released from
45 imprisonment, parole, probation, civil commitment as a "sexually
46 violent predator" in accordance with the provisions of

1 P.L.1998, c.71 (C.30:4-27.24 et al.) or removed from the sex
2 offender registry, or granted a pardon on or after December 27,
3 2013 and who has not previously been awarded damages under
4 section 3 of P.L.1997, c.227 (C.52:4C-3) or section 6 of P.L.2013,
5 c.171 (C.52:4C-7). Such claimant shall have two years from the
6 effective date of P.L. c. (C.) (pending before the
7 Legislature as this bill) to bring an action for damages.

8 c. Notwithstanding the provisions of any other law to the
9 contrary, a person who was previously ineligible to bring a civil
10 action for damages under section 3 of P.L.1997, c.227 (C.52:4C-3)
11 or P.L.2013, c.171 on grounds that the person pled guilty to the
12 crime for which he was convicted shall have two years from the
13 effective date of P.L. , c. (C.) (pending before the
14 Legislature as this bill) to bring a civil action for damages.

15 (cf: P.L. 2013, c.171, s.6)

16
17 7. Section 17 of P.L.1967, c.43 (C.2A:158A-17) is amended to
18 read as follows:

19 17. a. The reasonable value of the services rendered to a
20 defendant pursuant to P.L.1967, c.43 (C.2A:158A-1 et seq.) may in
21 all cases be a lien on any and all property to which the defendant
22 shall have or acquire an interest. The Public Defender shall
23 effectuate such lien whenever the reasonable value of the services
24 rendered to a defendant appears to exceed \$150.00 and may
25 effectuate such lien where the reasonable value of those services
26 appears to be less than \$150.00.

27 To effectuate such a lien, the Public Defender shall file a notice
28 setting forth the services rendered to the defendant and the
29 reasonable value thereof with the Clerk of the Superior Court. The
30 filing of said notice with the Clerk of the Superior Court shall from
31 the date thereof constitute a lien on said property for a period of 10
32 years, unless sooner discharged and except for such time limitations
33 shall have the force and effect of a Judgment at Law. Within 10
34 days of the filing of the Notice of Lien, the Public Defender shall
35 send by certified mail, or serve personally, a copy of such notice
36 with a statement of the date of the filing thereof to or upon the
37 defendant at his last known address. If the Public Defender shall fail
38 to give notice, the lien shall be void.

39 b. In any case where the defendant is awarded damages
40 pursuant to P.L.1997, c.227 (C.52:4C-1 et seq.) or section 6 of
41 P.L.2013, c.171 (C.52:4C-7) on grounds that the defendant did not
42 commit the crime for which he was convicted and imprisoned, the
43 Public Defender shall discharge any lien for services rendered
44 concerning that crime.

45 (cf: P.L.2013, c.171, s.5)

46
47 8. This act shall take effect immediately.

STATEMENT

This bill expands the categories of individuals who may bring a claim under the wrongful imprisonment statute, P.L.1997, c.227 (C.52:4C-1 et. seq.). The bill also provides a two-year window during which persons who were ineligible to bring a civil action for wrongful imprisonment may bring an action for damages.

Currently, any person who has been convicted and subsequently imprisoned for a crime which he did not commit and for which he did not plead guilty may bring a civil action for damages against the Department of Treasury. This bill would allow a person who was wrongfully convicted of a crime and subsequently wrongfully civilly committed as a "sexually violent predator" in accordance with the provisions of P.L.1998, c.71 (C.30:4-27.24 et al.) to also bring an action for wrongful imprisonment. In addition, any person who entered a guilty plea and was subsequently imprisoned could also bring an action.

STATUTE OF LIMITATIONS

The bill also clarifies the time frame within which an action may be brought. The bill provides that a person may bring a civil action within two years after his conviction is vacated or dismissed, or his release from prison, State supervision including parole, probation, civil commitment, sexual offender registration, or after he has been pardoned, whichever is later. In addition, it provides that any person who has had his conviction vacated, dismissed, or is released from imprisonment, State supervision including parole, probation, civil commitment as a "sexually violent predator" in accordance with the provisions of P.L.1998, c.71 (C.30:4-27.24 et al.), sex offender registration or pardoned on or after December 27, 2013 would have two years from the effective date of this bill to file a suit.

DAMAGES

In 2013 the Legislature increased the statutory damages amounts awarded in wrongful imprisonment civil actions pursuant to P.L.2013, c.171. Currently, damages cannot exceed twice the amount of the claimant's income in the year prior to the claimant's incarceration or \$50,000 for each year of incarceration, whichever is greater. (The 2013 amendment increased the amount from \$20,000 to \$50,000).

The bill does not change this measurement between the greater of income in the year prior to the claimant's incarceration or the total per year amount for each year of incarceration. Instead it adds time spent in civil commitment as a "sexually violent predator." The bill also expands the provisions of the statute to allow for an additional recovery of \$25,000 for each year served on State supervision, including parole, probation or as a registered sex offender.

1 Therefore, under the bill damages include (1) twice the amount
2 of the claimant's income in the year prior to his incarceration or
3 civil commitment as a "sexually violent predator"; or (2) \$50,000
4 for each year of incarceration or civil commitment, whichever is
5 greater, and (3) \$25,000 for each year served on parole, on
6 probation, or as a registered sex offender after a period of
7 incarceration. In the event that damages exceed \$1 million the
8 court could order that the award be paid in an annuity with a payout
9 over a maximum period of 20 years.

10 APPLICABILITY PROVISION

11 Since the amount of recovery was increased in 2013 by section 6
12 of P.L.2013, c.171 and applied to a claimant released from
13 imprisonment or granted a pardon on or after the effective date of
14 the 2013 enactment, the bill provides a tiered applicability provision
15 to clarify the damages provision.

16 The provisions of P.L.1997, c.227 (C.52:4C-1 et al.) and
17 P.L.2013, c.171 would apply to any claimant released from
18 imprisonment, or granted a pardon on or after the effective date of
19 P.L.2013, c.171 which is December 27, 2013.

20 The provisions of this bill would apply to any claimant whose
21 conviction was vacated or dismissed, or who was released from
22 imprisonment, parole, probation, civil commitment as a "sexually
23 violent predator" or removed from the sex offender registry, or
24 granted a pardon on or after December 27, 2013, the effective date
25 of P.L.2013, c.171, and who has not previously been awarded
26 damages. Such a claimant would have two years from the effective
27 date of this bill to bring an action for damages.

28 And finally, a person who was previously ineligible to bring a
29 civil action for damages under section 3 of P.L.1997, c.227
30 (C.52:4C-3) or section 6 of P.L.2013, c.171 on grounds that the
31 person pled guilty to the crime for which he was convicted would
32 have two years from the effective date of the bill to bring a civil
33 action for damages.

34 PUBLIC DEFENDER- LIEN ON PROPERTY OF DEFENDANT

35 The bill would also amend section 17 of P.L.1967, c.43
36 (C.2A:158A-17) to add the cross reference to section 6 of P.L.2013,
37 c.171 (C.52:4C-7). This section was amended by the 2013
38 enactment to clarify that the public defender would discharge any
39 lien for services rendered concerning a crime where the defendant is
40 awarded damages pursuant to the wrong imprisonment statute.