

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 877

Short Title: Fair Compensation for Exonerees. (Public)

Sponsors: Representatives Hardister, Rogers, Harrison, and Szoka (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 2, if favorable, Rules, Calendar, and Operations of the House

May 5, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW INDIVIDUALS ERRONEOUSLY CONVICTED OF A FELONY TO
3 SEEK MONETARY COMPENSATION FROM THE STATE.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 89 of Chapter 15A of the General Statutes is amended by
6 adding a new section to read:

7 "**§ 15A-1423. Review of compensation claims by individuals asserting an erroneous**
8 **conviction and imprisonment after a vacated conviction.**

9 (a) Any person who, having been convicted of a felony and having been imprisoned
10 therefor in a State prison of this State, and whose conviction is later vacated by an order of a
11 State or federal court may file a petition in superior court to determine whether the petitioner's
12 conviction was erroneous. If a conviction is vacated by the superior court, the judge that vacated
13 the conviction subsequently may determine upon motion of the defendant whether the conviction
14 was erroneous, but only if, (i) in addition to vacating the conviction, the court also dismissed all
15 charges against the defendant or, (ii) after the motion is filed, the State dismisses or informs the
16 court that it intends to dismiss the charges against the defendant. If the charges are still pending
17 and the State does not dismiss or declare its intention to dismiss the charges, the court shall
18 dismiss the motion without prejudice. A conviction was erroneous if no reasonable juror could
19 find beyond a reasonable doubt that the petitioner committed the crime or crimes for which the
20 petitioner was convicted, that the petitioner was an accessory or accomplice to the acts that were
21 the basis of the conviction, or that the petitioner had any criminal culpability for any act that was
22 the basis for the petitioner's conviction. A petitioner must demonstrate that the petitioner's
23 conviction was erroneous by a preponderance of the evidence.

24 (b) A hearing under subsection (a) of this section shall be based solely on the record relied
25 upon by the State or federal court that vacated the petitioner's conviction, including all evidence,
26 old and new, relevant to the culpability of the petitioner with respect to the crime or crimes for
27 which the petitioner was convicted without regard to admissibility. The court, in its discretion,
28 may expand the record upon a showing of good cause to consider new evidence that was not
29 presented in prior proceedings or, if presented, its credibility was never determined because the
30 evidence was not relied upon by the vacating court.

31 (c) The petitioner's counsel may present arguments to the court in support of the petition
32 based on the existing record. Counsel for the State may oppose the petition, but the facts on which
33 the State or federal court relied in vacating the conviction are presumed correct and the State is
34 estopped from challenging whether any of those facts are true.



1 (d) After hearing arguments, the court shall enter an order determining whether the
2 petitioner's conviction was erroneous.

3 (e) The decision of the trial court under subsection (d) of this section shall be reviewable
4 by an appeal of right to the appellate division as provided by G.S. 7A-27 and G.S. 7A-30."

5 **SECTION 2.** G.S. 148-82 is amended by adding a new subsection to read:

6 "(c) Any person who, having been convicted of a felony and having been imprisoned
7 therefor in a State prison of this State, and whose conviction is later vacated by an order of a
8 State or federal court may as hereinafter provided present by petition a claim against the State
9 for the pecuniary loss sustained by the person as a result of the person's erroneous conviction,
10 provided that the criteria established by G.S. 15A-1423 have been met."

11 **SECTION 3.** G.S. 148-84(a) reads as rewritten:

12 "(a) At the hearing the claimant may introduce evidence in the form of affidavits or
13 testimony to support the claim, and the Attorney General may introduce counter affidavits or
14 testimony in refutation. If the Industrial Commission finds from the evidence that the claimant
15 received a pardon of innocence for the reason that the crime was not committed at all, received
16 a pardon of innocence for the reason that the crime was not committed by the claimant, received
17 a court order under G.S. 15A-1423(d) finding that the claimant was convicted erroneously, or
18 that the claimant was determined to be innocent of all charges by a three-judge panel under
19 G.S. 15A-1469 and also finds that the claimant was imprisoned and has been vindicated in
20 connection with the alleged offense for which he or she was imprisoned, the Industrial
21 Commission shall award to the claimant an amount equal to fifty thousand dollars (\$50,000) for
22 each year or the pro rata amount for the portion of each year of the imprisonment actually served,
23 including any time spent awaiting trial. However, (i) in no event shall the compensation,
24 including the compensation provided in subsection (c) of this section, exceed a total amount of
25 seven hundred fifty thousand dollars (\$750,000), and (ii) a claimant is not entitled to
26 compensation for any portion of a prison sentence during which the claimant was also serving a
27 concurrent sentence for conviction of a crime other than the one for which the pardon of
28 innocence was granted.

29 The Director of the Budget shall pay the amount of the award to the claimant out of the
30 Contingency and Emergency Fund, or out of any other available State funds. The Industrial
31 Commission shall give written notice of its decision to all parties concerned. The determination
32 of the Industrial Commission shall be subject to judicial review upon appeal of the claimant or
33 the State according to the provisions and procedures set forth in Article 31 of Chapter 143 of the
34 General Statutes."

35 **SECTION 4.** This act is effective when it becomes law.