

MAINE STATE LEGISLATURE

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L.D. 205

(Filing No. H- 387)

STATE OF MAINE
HOUSE OF REPRESENTATIVES
112TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 171, L.D. 205,
Bill, "AN ACT to Create a Cause of Action Against the
State for Wrongful Imprisonment."

Amend the bill by striking out everything after
the enacting clause and inserting in its place the
following:

'Sec. 1 14 MRSA c. 743 is enacted to read:

CHAPTER 743

WRONGFUL IMPRISONMENT

§8201. Wrongful imprisonment

1. Exceptions to immunity. Notwithstanding any immunity of the State from suit, including the Maine Tort Claims Act, chapter 741, the State shall be liable for the wrongful imprisonment of a person.

2. Action. The State shall be liable for damages for wrongful imprisonment of a person, provided that the person alleges and proves the following by clear and convincing evidence:

A. That he was convicted of a criminal offense under the laws of this State;

B. As a result of that conviction, he was sentenced to a period of incarceration and was actually incarcerated;

C. Subsequent to the conviction and as a condition precedent to suit, the person received a full and free pardon pursuant to the Constitution of Maine, Article V, Part First, Section 11,

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1 which is accompanied by a written finding by the
2 Governor who grants the pardon that the person is
3 innocent of the crime for which he was convicted;
4 and

5 D. The court finds that he is innocent of the
6 crime for which he was convicted.

7 3. Scope of law. For purposes of this law, a
8 person is deemed to have committed a criminal offense
9 notwithstanding a finding by a state or federal court
10 that the law under which he was convicted is viola-
11 tive of the Constitution of Maine or the United
12 States Constitution.

13 4. Governor's denial of request. A Governor's
14 failure to issue a written finding that the person is
15 innocent of the crime for which he was convicted is
16 final and not subject to judicial review.

17 5. Settlement. After commencement of an action
18 under subsection 2, the Attorney General may compro-
19 mise or settle any claim under this chapter.

20 §8202. Limitation on damages

21 1. Damages; limitation. In any action for dam-
22 ages permitted by this chapter, the claim for and
23 award of damages, including costs, against the State
24 shall not exceed \$100,000 for all claims arising as a
25 result of a single conviction.

26 2. Costs. Court costs, interest and all other
27 costs which a court may assess shall be included
28 within the damage limit specified by this section.

29 3. Exclusion from judgment or award. A judgment
30 or award against the State pursuant to this chapter
31 shall not include punitive or exemplary damages.

32 4. Payable from General Fund. Any judgment or
33 award of damages permitted by this chapter shall be

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1 paid out of the General Fund.

2 §8203. Jurisdiction

3 The Superior Court shall have original jurisdic-
4 tion over all claims permitted under this chapter.

5 §8204. Limitation of action

6 Every claim for wrongful imprisonment permitted
7 under this chapter shall be forever barred from the
8 courts of this State, unless an action is begun in
9 the courts within 2 years after the date of the full
10 and free pardon of the conviction upon which the
11 claim is based.

12 Sec. 2. Application. Any claim which, pursuant
13 to this Act, would constitute a right of action, but
14 for the 2-year statute of limitations established in
15 this Act, shall be maintainable if brought within one
16 year of the effective date of this Act.

17 Application to the Governor for a hearing under
18 this Act by a person convicted of a criminal offense
19 prior to the effective date of this Act shall be made
20 to the Governor within 3 months of the effective date
21 of this Act.

22 Sec. 3. Sunset. This Act is repealed on November
23 1, 1988.'

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STATEMENT OF FACT

2 This amendment permits a court action for wrong-
3 ful imprisonment only for a person who has been in-
4 carcerated for a criminal offense, who obtains a par-
5 don stating that the Governor finds that the person
6 did not commit the offense for which he was convicted
7 and who proves by clear and convincing evidence that
8 he did not commit any of the acts charged.

9 For purposes of this amendment, a finding that
10 the law under which the person was convicted is un-
11 constitutional may not be used as the basis for a
12 claim that the person did not commit the offense.

13 The Governor's failure to issue a finding that
14 the person did not commit the offense is not review-
15 able.

16 A claimant under this amendment is limited to a
17 claim of not more than \$100,000 in damages.

18 A claimant is not entitled to court appointed
19 counsel.

20 Persons convicted prior to the effective date of
21 this Act must apply to the Governor within 3 months
22 of the effective date of this Act for a hearing seek-
23 ing the pardon and finding of innocence required pri-
24 or to suit.

25 A sunset provision is also added by this amend-
26 ment.

27

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Reported by the Majority of the Committee on Judiciary
Reproduced and distributed under the direction of the
Clerk of the House

6/12/85