

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

FIRST REGULAR SESSION-2019

Legislative Document

No. 1061

H.P. 784

House of Representatives, March 5, 2019

**An Act To Establish a Fund To Compensate Unjustly Incarcerated
Persons**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative EVANGELOS of Friendship.
Cosponsored by Senator DESCHAMBAULT of York and
Representatives: CARDONE of Bangor, COLLINGS of Portland, HICKMAN of Winthrop,
PLUECKER of Warren, RISEMAN of Harrison, TALBOT ROSS of Portland, WARREN of
Hallowell, Senator: LIBBY of Androscoggin.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRS §1524** is enacted to read:

3 **§1524. Unjustly Incarcerated Persons Compensation Fund established**

4 The Unjustly Incarcerated Persons Compensation Fund, referred to in this section as
5 "the compensation fund," is established as a nonlapsing fund. The compensation fund
6 receives funds allocated or transferred by the Legislature from the unappropriated surplus
7 of the General Fund. The State Controller shall disburse funds in accordance with the
8 provisions established under chapter 603. The State Controller shall provide quarterly
9 financial reports regarding the compensation fund to the joint standing committee of the
10 Legislature having jurisdiction over appropriations and financial affairs.

11 **Sec. 2. 5 MRS c. 603** is enacted to read:

12 **CHAPTER 603**

13 **UNJUSTLY INCARCERATED PERSONS COMPENSATION FUND**

14 **§22101. Compensation payments**

15 The State Controller shall make compensation payments in the amounts directed by
16 this chapter to persons entitled to compensation from the Unjustly Incarcerated Persons
17 Compensation Fund established in section 1524.

18 **§22102. Persons entitled to compensation**

19 **1. Requirements.** A person is entitled to compensation if:

20 A. The person has served in whole or in part a sentence of imprisonment under the
21 laws of this State; and

22 B. The person:

23 (1) Has received a full and free pardon on the basis of innocence for the crime
24 for which the person was sentenced;

25 (2) Has been granted relief in accordance with a writ of habeas corpus that is
26 based on a court finding or determination that the person is actually innocent of
27 the crime for which the person was sentenced; or

28 (3) Has been granted relief in accordance with a writ of habeas corpus and:

29 (a) The court in which the person was convicted has entered an order
30 dismissing the charge; and

31 (b) The court's dismissal order is based on a motion to dismiss in which the
32 district attorney or the Attorney General states that no credible evidence
33 exists that inculpates the defendant and, either in the motion or in an
34 affidavit, the district attorney or the Attorney General states that the district
35 attorney or Attorney General believes that the defendant is actually innocent
36 of the crime for which the person was sentenced.

1 2. Concurrent sentence. A person is not entitled to compensation under subsection
2 1 for any part of a sentence of imprisonment during which the person was also serving a
3 concurrent sentence for another crime to which subsection 1 does not apply.

4 3. Deceased person. If a deceased person would be entitled to compensation under
5 subsection 1 if living, including a person who received a posthumous pardon, the person's
6 heirs, legal representatives and estate are entitled to lump-sum compensation under
7 section 22106.

8 **§22103. Notice to person entitled to compensation**

9 1. Information. The Department of Corrections shall provide to each person
10 entitled to compensation under section 22102, subsection 1 information, both orally and
11 in writing, that includes:

12 A. Guidance on how to obtain compensation under this chapter; and

13 B. A list of and contact information for nonprofit advocacy groups, identified by the
14 Department of Corrections, that assist persons in filing claims for compensation
15 under this chapter.

16 2. Timing. The Department of Corrections shall provide the information required
17 under subsection 1:

18 A. At the time of the release of the person from imprisonment; or

19 B. As soon as practicable after the Department of Corrections has reason to believe
20 that the person is entitled to compensation under section 22102, subsection 1.

21 **§22104. Limitation on time to file**

22 A person seeking compensation under this chapter must file an application with the
23 State Controller for compensation under this chapter not later than the 3rd year after the
24 date:

25 1. Pardon. The person on whose imprisonment the claim is based received a full
26 and free pardon as provided by section 22102, subsection 1, paragraph B, subparagraph
27 (1);

28 2. Writ of habeas corpus. The application for a writ of habeas corpus of the person
29 on whose imprisonment the claim is based was granted as provided by section 22102,
30 subsection 1, paragraph B, subparagraph (2); or

31 3. Order of dismissal. An order of dismissal was granted as provided by section
32 22102, subsection 1, paragraph B, subparagraph (3).

33 **§22105. Application procedure**

34 1. Application for compensation. To apply for compensation under this chapter, a
35 claimant must file with the State Controller:

1 A. An application for compensation provided for that purpose by the State
2 Controller;

3 B. A verified copy of the pardon, court order, motion to dismiss and affidavit as
4 described in section 22102, subsection 1, paragraph B, as applicable, justifying the
5 application for compensation;

6 C. A statement provided by the Department of Corrections and any county or
7 municipality that incarcerated the person on whose imprisonment the claim is based
8 in connection with the relevant sentence verifying the length of imprisonment; and

9 D. If applicable, a statement from the Department of Public Safety, State Bureau of
10 Identification verifying the registration as a sex offender of the person on whose
11 imprisonment the claim is based and length of registration.

12 **2. Determination.** The State Controller shall determine:

13 A. The eligibility of the claimant pursuant to subsection 3; and

14 B. The amount of compensation owed to an eligible claimant pursuant to section
15 22106.

16 **3. Basis of determination.** In determining the eligibility of a claimant, the State
17 Controller shall consider only the verified copies of documents filed under subsection 1,
18 paragraph B. If the filed documents do not clearly indicate that the person is entitled to
19 compensation under section 22102, subsection 1, paragraph B, the State Controller shall
20 deny the claim. The State Controller's duty to determine the eligibility of a claimant
21 under this section is purely ministerial.

22 **4. Determination within 45 days.** The State Controller must make a determination
23 of eligibility and the amount owed as required by subsection 2 not later than the 45th day
24 after the date an application is received.

25 **5. Denial of claim.** If the State Controller denies the claim, the State Controller shall
26 state the reason for the denial. Not later than the 30th day after the date the denial is
27 received, the claimant shall submit an application to resolve any problem identified. Not
28 later than the 45th day after the date an application is received under this subsection, the
29 State Controller shall determine the claimant's eligibility and the amount owed.

30 **6. Action for mandamus.** If the State Controller denies a claim after the claimant
31 submits an application under subsection 5, the claimant may bring an action for
32 mandamus.

33 **§22106. Amount of compensation**

34 **1. Compensation; time served.** A person who meets the requirements of section
35 22102 is entitled to compensation in an amount equal to \$25,000 multiplied by the
36 number of years served in imprisonment, expressed as a fraction to reflect partial years.

37 **2. Compensation; registration as sex offender.** A person who, after serving a
38 sentence of imprisonment in this State for which the person is entitled to compensation
39 under subsection 1, was required to register as a sex offender is entitled to additional

1 compensation in an amount equal to \$10,000 multiplied by the number of years served as
2 a registered sex offender, expressed as a fraction to reflect partial years.

3 **§22107. Payment of compensation**

4 **1. Choice of compensation.** A person entitled to compensation under section
5 22102, subsection 1 may choose a lump-sum payment or annuity payments as provided in
6 subsection 2.

7 **2. Annuity payments.** Annuity payments under this subsection are based on a
8 present value sum equal to the amount to which the person is entitled under section
9 22106, subsections 1 and 2 and are payable in equal monthly installments actuarially
10 estimated for the life of the claimant until paid in full.

11 Annuity payments under this subsection must be based on a 5% per annum interest rate
12 and other actuarial factors within the discretion of the State Controller. Annuity
13 payments under this subsection may not be accelerated, deferred, increased or decreased.
14 A person entitled to annuity payments under this subsection may not sell, mortgage or
15 otherwise encumber, or anticipate the payments, wholly or partly, by assignment or
16 otherwise.

17 **§22108. Exceptions to immunity**

18 Notwithstanding any immunity of the State from suit or liability, including the Maine
19 Tort Claims Act, the State is liable for the unjust incarceration of a person as provided in
20 this chapter.

21 **Sec. 3. 14 MRSA c. 747**, as amended, is repealed.

22 **SUMMARY**

23 This bill creates the Unjustly Incarcerated Persons Compensation Fund and
24 establishes compensation amounts and a process for the application for and determination
25 of compensation. The bill establishes compensation of \$25,000 per year of unjust
26 incarceration and \$10,000 for each year that the person eligible for compensation was
27 required to register as a sex offender.

28 The bill provides for compensation payments to be made in a lump sum, and only in a
29 lump sum in the case of a deceased person, or as an annuity.

30 A person is eligible to seek compensation if the person has served in whole or in part
31 a sentence of imprisonment under the laws of this State and the person has:

32 1. Received a full and free pardon on the basis of innocence for the crime for which
33 the person was sentenced;

34 2. Has been granted relief in accordance with a writ of habeas corpus that is based on
35 a court finding or determination that the person is actually innocent of the crime for
36 which the person was sentenced; or

1 3. Has been granted relief in accordance with a writ of habeas corpus and the court in
2 which the person was convicted has entered an order dismissing the charge. The court's
3 dismissal order must be based on a motion to dismiss in which the district attorney or the
4 Attorney General states that no credible evidence exists that inculpates the defendant and,
5 either in the motion or in an affidavit, the district attorney or the Attorney General states
6 that the district attorney or Attorney General believes that the defendant is actually
7 innocent of the crime for which the person was sentenced.

8 The bill repeals the existing law providing a maximum payment of \$300,000 for
9 wrongful imprisonment that is based on a pardon granted on the basis of innocence.