

Senate Bill 244

By: Senators Beach of the 21st, Albers of the 56th, Summers of the 13th, Robertson of the 29th, Tillery of the 19th and others

AS PASSED

A BILL TO BE ENTITLED

AN ACT

1 To amend Titles 17 and 28 of the Official Code of Georgia Annotated, relating to criminal
2 procedure and General Assembly, respectively, so as to enact provisions relating to certain
3 criminal prosecutions; to provide for the award of reasonable attorney's fees and costs in a
4 criminal case to the defendant upon the disqualification of the prosecuting attorney for
5 misconduct in connection with the case and the subsequent dismissal of the case by the court
6 or a subsequent prosecutor; to provide for procedures for assessing and paying such fees and
7 costs; to allow for wrongful conviction and incarceration compensation claims; to provide
8 for a short title; to establish eligibility criteria; to provide for notice of claims; to require
9 administrative law judges within the Office of State Administrative Hearings to hear and
10 evaluate such claims; to provide for the burden of proof and evidence to be considered by an
11 administrative law judge; to establish amounts of compensation that may be awarded; to
12 require the release of claims prior to receiving an award of compensation; to establish the
13 Wrongful Conviction and Incarceration Compensation Trust Fund; to provide for the
14 payment of compensation awards from such trust fund; to provide for the waiver of sovereign
15 immunity; to provide for rules and regulations; to require the Supreme Court of Georgia and
16 the State Board of Pardons and Paroles to provide certain individuals with a copy of this Act;
17 to provide for definitions; to exclude wrongful conviction and incarceration compensation
18 claims from the purview of the Claims Advisory Board; to provide for related matters; to

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19 provide for effective dates; to provide for applicability; to repeal conflicting laws; and for
20 other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **PART I**
23 **SECTION 1-1.**

24 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
25 amended in Chapter 11, relating to assessment and payment of costs of criminal proceedings,
26 by adding a new Code section to read as follows:

27 "17-11-6.

28 (a) In the event that:

29 (1) The prosecuting attorney in a felony or misdemeanor criminal case is disqualified due
30 to improper conduct on the part of such prosecuting attorney; and

31 (2) Such criminal case is dismissed by the court or a subsequent prosecutor tasked with
32 prosecuting such case following such disqualification;

33 any defendant against whom such charges are dismissed shall be entitled to an award of all
34 reasonable attorney's fees and costs incurred by the defendant in defending the case.

35 (b) A defendant entitled to fees and expenses as provided in this Code section shall file a
36 motion for reasonable attorney's fees and costs within 45 days of the final termination of
37 the underlying criminal case. The judge to whom the criminal case was assigned shall
38 consider and determine such motion for reasonable attorney's fees and costs without a jury
39 and shall award such reasonable attorney's fees and costs as provided for under this Code
40 section to such defendant.

(c) Attorney's fees and costs awarded under this Code section shall be paid from the funds of the office of the prosecuting attorney as budgeted by the county or counties comprising the judicial circuit of such prosecuting attorney."

PART II
SECTION 2-1.

Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is amended by adding a new chapter to read as follows:

"CHAPTER 22

17-22-1.

This chapter shall be known and may be cited as the 'Wrongful Conviction and Incarceration Compensation Act.'

17-22-2.

As used in this chapter, the term:

(1) 'Alford plea' means a plea of guilty entered by a defendant while maintaining his or her innocence, as recognized by the United States Supreme Court in the case of North Carolina v. Alford, 400 U.S. 25 (1970).

(2) 'Claimant' means an individual seeking compensation under this chapter for his or her wrongful conviction and incarceration.

(3) 'Prosecuting district attorney' means the district attorney whose office prosecuted the claimant for the crime or crimes that resulted in the wrongful conviction and incarceration for which the claimant is seeking compensation under the provisions of this chapter.

(4) 'State governmental entity' means any office, authority, agency, department, unit, division, instrumentality, institution, commission, board, branch, or other entity of state government.

17-22-3.

(a) The Office of State Administrative Hearings, established pursuant to Code Section 50-13-40, shall have the sole and exclusive authority to consider claims of wrongful conviction and incarceration in accordance with the provisions of this chapter.

(b) For purposes of considering claims of wrongful conviction and incarceration and awarding compensation pursuant to this chapter, an administrative law judge appointed pursuant to Code Section 50-13-40 shall be designated by the Office of State Administrative Hearings for each claim filed under this chapter.

(c) Any such administrative law judge shall be authorized to determine:

(1) Whether a claimant qualifies for compensation under this chapter; and

(2) The amount of compensation, if any, to be awarded under this chapter.

17-22-4.

(a) A claim for compensation under this chapter shall:

(1) Be filed directly with the Office of State Administrative Hearings;

(2) Except as provided in subsections (b) and (c) of this Code section, be filed within three years after the date of the acknowledgment obtained pursuant to Code Section 17-22-12, or within three years of July 1, 2025, whichever occurs later;

(3) Be captioned 'In the Matter of the Wrongful Conviction of [Claimant];' and

(4) Be served on the Attorney General and the prosecuting district attorney.

(b) If, during the two years before the limitations period under paragraph (2) of subsection (a) of this Code section would otherwise expire, the claimant obtains new evidence of innocence that the claimant could not previously have obtained with reasonable

diligence, the claimant may file a claim under this chapter within two years of the date on which the claimant obtains such new evidence.

(c) If, after the limitations period under paragraph (2) of subsection (a) of this Code section has expired, the claimant obtains new evidence of innocence that the claimant could not previously have obtained with reasonable diligence, the claimant may file a claim under this chapter within two years of the date on which the claimant obtains such new evidence.

(d) A claim for compensation may be brought under this chapter by the heirs at law or the legal representative of a deceased individual.

17-22-5.

(a) To be eligible to receive compensation under this chapter, a claimant must establish by a preponderance of evidence to the administrative law judge that:

(1) The claimant was convicted of a felony by a court of this state and served all or part of the sentence for such felony;

(2) The claimant did not commit the crime for which the claimant was convicted and did not commit any lesser included offense; and

(3) One of the following apply to the claimant:

(A) The claimant's conviction was reversed or vacated and the charges against the claimant were dismissed after the conviction was reversed or vacated;

(B) The claimant's conviction was reversed or vacated and the claimant was thereafter acquitted of the charges;

(C) The claimant's conviction was reversed or vacated and the claimant thereafter entered an Alford plea or a plea of nolo contendere when the claimant would otherwise have been entitled to a new trial; or

(D) The claimant received a pardon for the conviction based on the claimant's innocence.

(b) In evaluating whether a claimant has met the requirements of subsection (a) of this Code section, an administrative law judge may, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, and other factors not caused by the claimant or those acting on the claimant's behalf.

(c) Upon determining that a claimant meets the requirements of subsection (a) of this Code section, an administrative law judge shall award compensation to the claimant for wrongful conviction and incarceration in accordance with the provisions of this chapter; provided, however, that no compensation shall be awarded if the administrative law judge determines by a preponderance of the evidence that:

(1) The claimant was an accomplice in the commission of the crime for which the claimant was convicted; or

(2) For the purpose of protecting the true perpetrator from conviction, the claimant intentionally and voluntarily caused the conviction by entering a guilty plea, by committing perjury at trial, or by fabricating evidence at trial.

17-22-6.

(a) Upon receiving a claim under this chapter filed and served in accordance with Code Section 17-22-4, the Office of State Administrative Hearings shall, within 15 days, designate an administrative law judge to adjudicate the claim and notify the claimant, the Attorney General, and the prosecuting district attorney of such designation.

(b) Any such administrative law judge shall, within 180 days of being designated to adjudicate the claim, hold a hearing to determine if the claimant is eligible for compensation under this chapter, and if so, the amount of compensation to be awarded. The Attorney General and the prosecuting district attorney shall be entitled to file, within 30 days of such administrative law judge being designated to adjudicate the claim, a

response in opposition to the claim and appear at the hearing for the purpose of contesting the claim.

(c) At a hearing held pursuant to subsection (b) of this Code section on a claim filed under this chapter, the claimant, the Attorney General, or the prosecuting district attorney may present evidence in support of or in opposition to the claimant's eligibility for compensation under this chapter or regarding the amount of compensation that the claimant is entitled to pursuant to Code Section 17-22-7. The rules of evidence established in Code Section 50-13-15 shall apply in any such hearing held.

(d) Within 30 days of holding a hearing under subsection (b) of this Code section, the administrative law judge shall issue a decision on the claimant's eligibility for compensation under this chapter and the amount of compensation to be awarded under Code Section 17-22-7, if any, which shall include a statement of the administrative law judge's findings and an explanation of the administrative law judge's calculation of any such compensation to be awarded. Within 30 days after the administrative law judge has issued such decision, the claimant, the Attorney General, or the prosecuting district attorney may appeal such decision by filing, in accordance with the provisions of Chapter 3 of Title 5, a petition for review in the Superior Court of Fulton County or in the superior court of the county in which the claimant was prosecuted for the crime or crimes leading to the wrongful conviction and incarceration, provided that such appeal shall be without a jury, shall be confined to the record, and nothing in this chapter shall preclude the appeal of any decision or order issued by such superior court during or upon the completion of its review of the decision issued by the administrative law judge. If no such appeal of the administrative law judge's decision is timely filed, such decision shall become final and the administrative law judge shall, subject to the limitation provided in subsection (e) of this Code section, issue a judgment either awarding compensation to the claimant or denying the claim. If such an appeal of the administrative law judge's decision is filed, the administrative law judge shall only issue a judgment when such appeal process is

completed in accordance with any orders of the reviewing court. The issuance of a judgment after completion of such appeal process shall be subject to the limitation provided in subsection (e) of this Code section.

(e) No claimant shall be entitled to compensation under this chapter, and no judgment awarding compensation to a claimant under this chapter shall be issued by an administrative law judge under subsection (d) of this Code section, unless and until the claimant has executed and filed with the Office of State Administrative Hearings a release and waiver, in a form and manner as the Office of State Administrative Hearings shall prescribe in consultation with the Department of Administrative Services, that releases, satisfies, acquits, and forever discharges any and all claims, demands, actions, causes of action, and damages, of every kind and nature whatsoever, past, present, or future, whether known or unknown, asserted or unasserted, that the claimant has or may claim to have against the state, any state governmental entity, or any current or former members, officers, employees, or agents of the state or any state governmental entity that arise out of or relate to any and all facts in connection with the claimant's wrongful conviction and incarceration. Nothing in this subsection shall be construed to require a claimant to release any claims, demands, actions, causes of action, or damages that the claimant may have or claim to have against any political subdivision of this state or any current or former members, officers, employees, or agents of any political subdivision of this state.

17-22-7.

(a) A claimant that satisfies the requirements of and is entitled to compensation under Code Section 17-22-5 shall be awarded:

(1) For each year of incarceration, \$75,000.00, provided that a prorated amount shall be allocated to any partial year of incarceration;

189 (2) An additional \$25,000.00 for each year of incarceration while awaiting a sentence of
190 death based on the conviction at issue, provided that a prorated amount shall be allocated
191 to any partial year of incarceration;

192 (3) The reasonable and necessary attorney's fees, costs, and expenses incurred by the
193 claimant or on the claimant's behalf in reversing or vacating the claimant's conviction,
194 obtaining a pardon, and filing a claim for compensation under this chapter; and

195 (4) Reimbursement for restitution, costs, fines, fees, or surcharges paid by or on behalf
196 of the claimant as a result of the wrongful conviction at issue.

197 (b) In calculating time of incarceration, an administrative law judge shall only include time
198 served for the charge for which the claimant is making a claim under this chapter,
199 consistent with the requirements of Code Section 17-10-11; provided, however, that a
200 claimant shall not be entitled to compensation under this chapter for any portion of a
201 sentence spent incarcerated during which the claimant was also serving a concurrent
202 sentence of incarceration for another crime for which the claimant's conviction was not
203 overturned and for which the claimant was not pardoned based on innocence, except to the
204 extent that:

205 (1) The sentence for that crime was longer than it would have been without consideration
206 by the sentencing court of one or more of the crimes at issue; or

207 (2) The intact conviction was based on an Alford plea or a plea of nolo contendere
208 maintaining a claim of innocence that the claimant accepted to resolve the underlying
209 case after the original conviction was overturned, and the claimant proves by a
210 preponderance of the evidence that the claimant did not commit the crime that resulted
211 in the Alford plea or the plea of nolo contendere.

212 (c) If a claimant has received a monetary award or settlement in a civil action against the
213 state, any state governmental entity, or any member, officer, employee, or agent of the state
214 or a state governmental agency arising from or relating to the claimant's wrongful
215 conviction and incarceration, such amount received by the claimant, less any attorney's

fees, costs, and expenses paid by the claimant in obtaining the civil action award or settlement, shall be deducted from the amount of the compensation award to which the claimant is entitled under subsection (a) of this Code section.

(d) Beginning on January 1, 2026, and each year thereafter, the Office of State Administrative Hearings, by rules and regulations, shall adjust the dollar amounts specified in subsection (a) of this Code section to reflect the effect of annual inflation or deflation on the cost of living that citizens of this state experienced in the prior calendar year. In making such adjustments, the Office of State Administrative Hearings may use the Consumer Price Index, or its successor or appropriate replacement index, if any, published by the Bureau of Labor Statistics of the United States Department of Labor.

17-22-8.

(a) Any award of compensation made pursuant to this chapter shall not be:

(1) Subject to any monetary limitation of damages awarded in civil actions;

(2) Subject to any state income taxes; or

(3) Reduced by any expense related to the claimant's wrongful incarceration incurred by the state or any political subdivision thereof.

(b) No attorney shall collect any fees, costs, or expenses from a claimant in connection with obtaining relief under this chapter, including any fees, costs, or expenses calculated on a contingency basis, except for the amounts awarded under paragraph (3) of subsection (a) of Code Section 17-22-7.

17-22-9.

(a) There is created the Wrongful Conviction and Incarceration Compensation Trust Fund as a separate fund in the state treasury. The state treasurer shall credit to the trust fund all moneys appropriated by the General Assembly for the purpose of providing claimants with compensation under this chapter and shall invest the moneys held in the trust fund in the

same manner in which state funds are invested as authorized by the State Depository Board pursuant to Article 3 of Chapter 17 of Title 50.

(b) No award of compensation issued under this chapter shall be payable except from the Wrongful Conviction and Incarceration Compensation Trust Fund. Nothing in this chapter shall be construed to authorize any execution or levy against any state property or state funds, and such execution or levy against any state property or state funds for purposes of paying compensation awards issued under this chapter is expressly prohibited. The liability of the state under this chapter shall never exceed the amount of funds available in the Wrongful Conviction and Incarceration Compensation Trust Fund and no award of compensation issued under this chapter shall be payable unless and until the General Assembly appropriates moneys for the payment thereof.

(c) Subject to the availability of funds, any award of compensation issued under this chapter shall be paid out of the Wrongful Conviction and Incarceration Compensation Trust Fund as follows:

(1)(A) If the judgment awarding such compensation is issued by the administrative law judge pursuant to subsection (d) of Code Section 17-22-6 before September 1 of a given calendar year, the state treasurer shall pay to the claimant an initial sum of \$6,000.00 within 60 days of such judgment being issued and such judgment being presented to the state treasurer for payment, and such initial sum shall be deducted from the total award amount.

(B) If the judgment awarding such compensation is issued by the administrative law judge pursuant to subsection (d) of Code Section 17-22-6 on or after September 1 of a given calendar year, the state treasurer shall pay to the claimant an initial sum of \$18,000.00 within 60 days of such judgment being issued and such judgment being presented to the state treasurer for payment, and such initial sum shall be deducted from the total award amount.

(2) Thereafter, the General Assembly shall, through an amended appropriations Act for the current fiscal year for a judgment issued before September 1 of a given calendar year or through the general appropriations Act for the next fiscal year for a judgment issued on or after September 1 of a given calendar year, appropriate a sum sufficient to pay the remainder of the award of compensation; provided, however, that, for any award of compensation that exceeds \$1.5 million, the General Assembly shall appropriate such sum in equal amounts over three separate fiscal years. Within 60 days of such appropriation being made and such funds being credited to the Wrongful Conviction and Incarceration Compensation Trust Fund, the state treasurer shall pay to the claimant the remainder of the award of compensation; provided, however, that, if such award exceeds \$1.5 million, the state treasurer shall pay to the claimant the remainder of the award in three equal payments, each within 60 days of such amounts being appropriated by the General Assembly and credited to the Wrongful Conviction and Incarceration Compensation Trust Fund.

(d) Any payment of an award of compensation pursuant to subsection (c) of this Code section may be made to or for the benefit of the claimant, or, in the case of the death of the claimant, to or for the benefit of one or more heirs at law or designated beneficiaries of the claimant.

17-22-10.

Subject to the provisions and limitations of this chapter, the sovereign immunity of this state is waived for the purpose of authorizing claimants to file claims for and seek compensation awards under this chapter and for authorizing payment of any judgment awarding such compensation from the Wrongful Conviction and Incarceration Compensation Trust Fund.

291 17-22-11.

292 The Office of State Administrative Hearings, through the chief state administrative law
293 judge, shall have the power to promulgate any rules and regulations and establish any
294 procedures that are necessary to carry out, and are not inconsistent with, the provisions of
295 this chapter.

296 17-22-12.

297 (a) A court entering a dismissal or judgment of acquittal after a defendant's criminal
298 conviction has been overturned, vacated, or reversed shall provide a copy of this chapter
299 to the defendant at the time of entry of the dismissal or acquittal and obtain from the
300 defendant a written acknowledgment of receipt of a copy of this chapter on a form
301 established by the Supreme Court of Georgia. Such acknowledgment shall be transmitted
302 by the court to the Supreme Court of Georgia and shall be entered on the docket by the
303 Supreme Court of Georgia. The acknowledgment shall be admissible in any proceeding
304 subsequently filed by the defendant under this chapter.

305 (b) Upon the issuance and acceptance of a pardon of innocence or a commutation of
306 sentence resulting in release because of a finding of innocence, the State Board of Pardons
307 and Paroles shall provide a copy of this chapter to the individual receiving the pardon or
308 commutation and obtain from the individual a written acknowledgment of receipt of a copy
309 of this chapter on a form established by the State Board of Pardons and Paroles. The
310 acknowledgment shall be retained on file by the State Board of Pardons and Paroles as part
311 of its official records and shall be admissible in any proceeding subsequently filed by the
312 individual under this chapter."

SECTION 2-2.

Title 28 of the Official Code of Georgia Annotated, relating to General Assembly, is amended in Part 2 of Article 4 of Chapter 5, relating to claims against state, departments, or agencies, by adding a new Code section to read as follows:

"28-5-87.

The Claims Advisory Board shall not consider and no compensation shall be paid under this article concerning any claim against the state for any wrongful conviction and incarceration."

PART III**SECTION 3-1.**

(a) Except as provided in subsection (b) of this Section, this Act shall become effective on July 1, 2025.

(b) Part I of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval and shall apply to all criminal cases pending on and after such effective date.

SECTION 3-2.

All laws and parts of laws in conflict with this Act are repealed.