

3/25/96 Referred to Judiciary

MAR 6 1996  
Place On Calendar

HOUSE FILE 2471  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2286)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to compensation for certain miscarriages of  
2 justice.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 2471

1 Section 1. NEW SECTION. 669A.1 MISCARRIAGE OF JUSTICE --  
2 CLAIM AUTHORIZED.

3 Notwithstanding any provision of chapter 669 to the  
4 contrary, a claim to compensate a person for certain losses  
5 incurred as a result of the miscarriage of justice shall be  
6 permitted against the state. A miscarriage of justice is an  
7 erroneous conviction of a person for a criminal offense.  
8 Miscarriage of justice includes situations where the person's  
9 conviction is reversed by an appellate court on the ground  
10 that the evidence was not sufficient to sustain the conviction  
11 or vacated on the state's motion following discovery of new  
12 evidence demonstrating the person's innocence. Miscarriage of  
13 justice does not include situations of law enforcement or  
14 prosecutorial misconduct or negligence or ineffective  
15 assistance on the part of the attorney representing the person  
16 in the criminal action.

17 Sec. 2. NEW SECTION. 669A.2 COMPENSATION FOR MISCARRIAGE  
18 OF JUSTICE -- VENUE -- LIMITATIONS.

19 1. A claim requesting compensation for a miscarriage of  
20 justice may be filed in the district court in the county in  
21 which the plaintiff resides or in which the erroneous  
22 conviction occurred. Compensation for miscarriage of justice  
23 shall include only the following:

24 a. A reasonable amount for income lost and other economic  
25 losses actually incurred as a result of the person's  
26 incarceration following conviction.

27 b. Attorney's fees and court costs incurred defending the  
28 criminal action.

29 c. Victim restitution paid by the person subsequent to  
30 conviction.

31 d. The amount of any fine and criminal penalty surcharge  
32 paid by the person following conviction.

33 Compensation shall not include loss of future earning  
34 capacity as a result of the miscarriage of justice.

35 2. To obtain compensation for a miscarriage of justice,

1 the person shall prove by clear and convincing evidence only  
2 that the person did not commit the offense for which the  
3 person was convicted. Negligence or misconduct on the part of  
4 either the government or the defense attorney in the criminal  
5 action are not elements which must be proved by the person to  
6 recover compensation.

7 However, if the state demonstrates that negligence,  
8 ineffective assistance of counsel, or misconduct on the part  
9 of the attorney representing the person in the criminal action  
10 was the cause of the miscarriage of justice, the claim shall  
11 be dismissed.

12 3. A claim must be filed within two years from the date  
13 procedendo issues, the person's conviction is reversed by an  
14 appellate court, or the state's motion to vacate is granted.

15 4. A claim shall be dismissed if any of the following  
16 exist:

17 a. The person is still incarcerated.

18 b. The person is on work release or has not been released  
19 from probation or parole.

20 c. The person has not affirmatively maintained the  
21 person's innocence at all steps of the criminal proceeding.

22 Sec. 3. NEW SECTION. 669A.3 PAYMENT OF AWARD.

23 Any award to a person under this chapter, and any judgment  
24 in favor of any person under this chapter, shall be paid  
25 promptly out of appropriations which have been made for the  
26 purpose, if any. However, any amount or part thereof which  
27 cannot be paid promptly from the appropriations shall be paid  
28 promptly out of any money in the state treasury not otherwise  
29 appropriated. Payment shall be made only upon receipt of a  
30 written release by the person in a form approved by the  
31 attorney general.

32 EXPLANATION

33 This bill waives state tort immunity in situations where a  
34 person is the victim of a miscarriage of justice. A  
35 miscarriage of justice is an erroneous conviction of a

1 criminal offense on grounds including insufficient evidence or  
2 new evidence demonstrating the person's innocence. A person  
3 who is erroneously convicted may recover lost income and other  
4 economic damages incurred as a result of imprisonment  
5 following the conviction, attorney's fees and court costs  
6 incurred defending the criminal action, victim restitution,  
7 and fines and surcharges paid.

8 The bill provides that a person who claims to have been  
9 erroneously convicted may file the action in the district  
10 court for the county in which the person resides or the county  
11 in which the conviction occurred after the person is released  
12 from incarceration and probation or parole. The person must  
13 prove by clear and convincing evidence that the person did not  
14 commit the offense for which the person was incarcerated.

15 A claim for compensation shall be brought within two years  
16 from the date the person's conviction is reversed. A claim is  
17 to be dismissed if the person is still incarcerated, on  
18 probation or parole or work release, or if the state  
19 demonstrates that negligence, ineffective assistance of  
20 counsel, or misconduct on the part of the defense attorney  
21 caused the miscarriage of justice.

22 Payment of compensation for a miscarriage of justice is to  
23 be made from funds specifically appropriated for that purpose  
24 or from moneys in the state treasury not otherwise  
25 appropriated for a specific purpose.

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## HOUSE FILE 2471

H-5310

- 1 Amend House File 2471 as follows:
- 2 1. Page 1, line 7, by inserting after the word  
3 "offense" the following: "which is a felony and for  
4 which the person was incarcerated".
- 5 2. Page 1, line 8, by striking the word  
6 "includes" and inserting the following: "is limited  
7 to those".
- 8 3. Page 1, line 26, by inserting after the word  
9 "conviction" the following: "not to exceed fifty  
10 thousand dollars".
- 11 4. Page 1, line 33, by inserting after the word  
12 "future" the following: "earnings or".
- 13 5. Page 1, by inserting after line 34 the  
14 following:  
15 "The state shall have a right of subrogation  
16 against any person who facilitated the miscarriage of  
17 justice through false testimony or otherwise."
- 18 6. Page 2, by striking lines 2 and 3 and  
19 inserting the following: "the following:  
20 a. That the person did not commit the offense for  
21 which the person was convicted.  
22 b. That the criminal offense for which the person  
23 was convicted is a felony and that the person was  
24 incarcerated following conviction.  
25 c. That the conviction was reversed or vacated on  
26 the grounds set out in section 669A.1.  
27 Negligence or misconduct on the part of".
- 28 7. Page 2, lines 13 and 14, by striking the words  
29 ", the person's conviction is reversed by an appellate  
30 court,".
- 31 8. Page 2, line 17, by inserting after the word  
32 "incarcerated" the following: "for any criminal  
33 offense".
- 34 9. Page 2, line 19, by inserting after the word  
35 "parole" the following: "for any criminal offense".
- 36 10. Page 2, line 21, by inserting after the word  
37 "proceeding" the following: "for which the  
38 miscarriage of justice is claimed".
- 39 11. Page 2, by inserting after line 21 the  
40 following:  
41 "d. The conviction for which the miscarriage of  
42 justice is claimed was not a felony for which the  
43 person was incarcerated.  
44 e. The conviction was not reversed or vacated as  
45 required in section 669A.1."
- 46 12. Title page, line 2, by inserting after the  
47 word "justice" the following: "and providing an  
48 appropriation".

By DINKLA of Guthrie  
BERNAU of STORY

H-5310 FILED MARCH 12, 1996