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JUDICIARY

WITHDRAWN HOUSE FILE  
3-31-97 BY BERNAU  
(p. 913)

272

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

**A BILL FOR**

1 An Act providing a cause of action against the state for wrongful  
2 imprisonment.

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

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WITHDRAWN

HF 272

1 Section 1. NEW SECTION. 663A.1 WRONGFUL IMPRISONMENT --  
2 CAUSE OF ACTION.

3 1. As used in this section, a "wrongfully imprisoned  
4 person" means an individual who meets all of the following  
5 criteria:

6 a. The individual was charged, by indictment or  
7 information, with the commission of a public offense  
8 classified as an aggravated misdemeanor or felony.

9 b. The individual did not plead guilty to the public  
10 offense charged, or to any lesser included offense, but was  
11 convicted by the court or by a jury of an offense classified  
12 as an aggravated misdemeanor or felony.

13 c. The individual was sentenced to incarceration for a  
14 term of imprisonment not to exceed two years if the offense  
15 was an aggravated misdemeanor or to an indeterminate term of  
16 years under chapter 902 if the offense was a felony, as a  
17 result of the conviction.

18 d. The individual's conviction was vacated or dismissed,  
19 or was reversed, and no further proceedings can be or will be  
20 held against the individual on any facts and circumstances  
21 alleged in the proceedings which had resulted in the  
22 conviction.

23 e. As part of the order vacating, dismissing, or reversing  
24 the conviction and sentence, the court made either of the  
25 following findings:

26 (1) That the offense for which the individual was  
27 convicted and sentenced, including any lesser-included  
28 offenses, was not committed by the individual.

29 (2) That the offense for which the individual was  
30 convicted and sentenced was not committed by any person,  
31 including the individual.

32 2. Upon receipt of an order vacating, dismissing, or  
33 reversing a conviction and sentence which includes either of  
34 the findings specified in subsection 1, paragraph "e", the  
35 district court shall do all of the following:

1 a. Enter an order finding that the individual is a  
2 wrongfully imprisoned person.

3 b. Orally inform the person and the person's attorney that  
4 the person has a right to commence a civil action against the  
5 state under chapter 669 on the basis of wrongful imprisonment.

6 c. Orally inform the person of the person's right to be  
7 represented by counsel at public expense if the person is  
8 indigent.

9 3. Within seven days of entry of the order finding that an  
10 individual is a wrongfully imprisoned person, the clerk of  
11 court shall forward a copy of the order, together with a copy  
12 of this section, to the individual named in the order. The  
13 clerk of court shall also forward a copy of the order to the  
14 state appeal board. The state appeal board shall notify the  
15 clerk of court if an action is filed. If an action is not  
16 filed within six months after entry of the order, the clerk of  
17 court shall send a notice reminding the individual of the  
18 right to commence an action against the state and to be  
19 represented by counsel at public expense. The clerk of court  
20 shall send additional notices at least once every three months  
21 after the first notice, if the individual fails to commence an  
22 action as provided under this section or fails to request that  
23 no further notice be given.

24 4. A claim for wrongful imprisonment under this section is  
25 a "claim" for purposes of chapter 669, notwithstanding  
26 anything in section 669.14 to the contrary. Notwithstanding  
27 section 669.8, however, an action brought under this section  
28 shall not preclude or otherwise limit any action or claim for  
29 relief based on any negligent or wrongful acts or omissions  
30 which arose during the period of the wrongful imprisonment,  
31 but which are not related to the facts and circumstances  
32 underlying the conviction or proceedings to obtain relief from  
33 the conviction.

34 5. Damages recoverable from the state by a wrongfully  
35 imprisoned person under this section include any of the

1 following:

2 a. The amount of restitution for any fine, surcharge,  
3 other penalty, or court costs imposed and paid and any  
4 reasonable attorney's fees and expenses incurred in connection  
5 with all criminal proceedings and appeals regarding the  
6 wrongfully imposed judgment and sentence and such fees and  
7 expenses incurred in connection with any civil actions and  
8 proceedings for postconviction relief which are related to the  
9 wrongfully imposed judgment and sentence.

10 b. For each full year of imprisonment, the amount of  
11 twenty-five thousand dollars. For each remaining part or  
12 parts of a year of imprisonment, an amount which is  
13 represented by the proportion represented by the number of  
14 days served divided by three hundred and sixty-five.

15 c. The value of any lost wages, salary, or other earned  
16 income which directly resulted from the individual's arrest,  
17 prosecution, conviction, and imprisonment.

18 d. The value of reasonable attorney's fees for services  
19 provided in connection with an action under this section.

20 6. In awarding damages under this section, the state  
21 appeal board or the court shall not offset the award by any  
22 expenses incurred by the state or any political subdivision of  
23 the state in connection with the arrest, prosecution, and  
24 imprisonment of the individual, including, but not limited to,  
25 expenses for food, clothing, shelter, and medical care.

26 7. Actions under this section shall be commenced within  
27 two years of entry of the district court order adjudging the  
28 individual to be a wrongfully imprisoned person.

29

#### EXPLANATION

30 This bill permits a person who has been found to have been  
31 wrongfully imprisoned to file a claim for damages against the  
32 state under the state tort claims act. A wrongfully  
33 imprisoned person is a person who was charged with, convicted  
34 of, and sentenced to serve a term of incarceration for an  
35 aggravated misdemeanor or felony and whose conviction was

1 vacated, dismissed, or reversed either because the offense was  
2 committed by another person or the offense was a fabrication.  
3 Under the new provision, upon receipt of an order reversing,  
4 vacating, or dismissing a conviction in which there is a  
5 finding that the offense was committed by another person or is  
6 a fabrication, the district court is to enter an order finding  
7 that the person is a wrongfully imprisoned person, orally  
8 inform the person and that person's attorney that they have a  
9 right to commence an action under the state tort claims act,  
10 and orally inform the person of the person's right to be  
11 represented by counsel at public expense if the person is  
12 indigent.

13       Once the order is entered by the court, the clerk is to  
14 forward a copy of the order to the person who was wrongfully  
15 imprisoned and the state appeal board. The person must file a  
16 claim within two years of entry of the order. The state  
17 appeal board is to notify the clerk if the person files an  
18 action. If an action is not filed within six months of entry  
19 of the order, the clerk is to send a reminder notice and  
20 additional notices every three months, if the person either  
21 does not file an action or fails to request that no further  
22 notice be given.

23       The damages recoverable by a person for wrongful  
24 imprisonment include the amount of any restitution imposed and  
25 paid for any fines, penalties, surcharges, court costs, as  
26 well as any reasonable attorney's fees and expenses incurred  
27 in connection with the proceedings surrounding the conviction  
28 and any appeals or collateral postconviction actions. Damages  
29 recoverable also include \$25,000 for each full year of  
30 imprisonment and the proportional equivalent of the amount for  
31 each portion of a year served; the value of any lost wages,  
32 salary, or other earned income which directly resulted from  
33 the arrest, prosecution, conviction, and imprisonment; and the  
34 value of reasonable attorney's fees for services provided in  
35 connection with bringing an action to recover damages for

1 wrongful imprisonment. In awarding damages, the state appeal  
2 board may not offset any expenses incurred by the state or  
3 political subdivision in connection with the arrest,  
4 prosecution, and imprisonment of the individual. Claims for  
5 damages brought under the new provision do not preclude or  
6 limit claims for relief based on negligent or wrongful actions  
7 or omissions which arose during the period of wrongful  
8 imprisonment, but which are not related to the facts or  
9 circumstances underlying the conviction.

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