



130th MAINE LEGISLATURE

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Legislative Document

No. 478

H.P. 352

House of Representatives, February 16, 2021

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

Received by the Clerk of the House on February 11, 2021. Referred to the Committee on
Judiciary pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

A handwritten signature in black ink that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative EVANGELOS of Friendship.

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

2 **Sec. 1. 5 MRSA §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 MRSA 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 has established by a preponderance of the evidence that:

23 (1) The person was convicted of murder or a Class A, B or C crime and
24 subsequently imprisoned;

25 (2) The conviction was reversed or vacated and either the charges were dismissed
26 or on retrial the person was found not guilty;

27 (3) The person did not commit the crime for which the person was convicted and
28 was not an accessory or accomplice to the acts that were the basis of the conviction
29 and resulted in a reversal or vacation of the judgment of conviction, dismissal of
30 the charges or finding of not guilty on retrial; and

31 (4) The person did not commit or suborn perjury, fabricate evidence or by the
32 person's own conduct bring about the conviction. Neither a confession or
33 admission later found to be false nor a guilty plea constitutes committing or
34 suborning perjury, fabricating evidence or bringing about the conviction under this
35 subsection.

36 **2. Concurrent sentence.** A person is not entitled to compensation under subsection
37 1 for any part of a sentence of imprisonment during which the person was also serving a
38 concurrent sentence for another crime to which subsection 1 does not apply.

1 **3. Deceased person.** If a deceased person would be entitled to compensation under
2 subsection 1 if living, including a person who received a posthumous pardon, the person's
3 estate is entitled to lump-sum compensation under section 22106.

4 **§22103. Notice to person entitled to compensation**

5 **1. Information.** The Department of Corrections shall provide to each person
6 potentially entitled to compensation under section 22102, subsection 1 information, both
7 orally and in writing, that includes:

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

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

12 **2. Timing.** The Department of Corrections shall provide the information required
13 under subsection 1:

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

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

17 **§22104. Limitation on time to file**

18 A person seeking compensation under this chapter must file a claim in District Court,
19 verified in the manner provided for the verification of complaints in the Maine Rules of
20 Civil Procedure. The claim must be brought by the person within a period of 2 years after
21 the dismissal of the criminal charges against the person or a finding of not guilty on retrial.
22 If the person had the criminal charges dismissed or obtained a finding of not guilty on
23 retrial prior to the effective date of this chapter, the person has 2 years from the effective
24 date of this chapter to file a claim.

25 **§22105. Determination of eligibility**

26 **1. Determination.** The District Court shall determine:

27 A. The eligibility of the claimant pursuant to section 22102; and

28 B. The amount of compensation owed to an eligible claimant pursuant to section
29 22106.

30 **2. Attorney General.** The person filing a claim pursuant to this chapter must serve
31 the claim on the Attorney General in accordance with the Maine Rules of Civil Procedure.

32 **3. Jury trial.** The claimant may request a jury trial, otherwise the claim filed pursuant
33 to this chapter is tried by the court. If a jury trial is requested, the claim must be transferred
34 to the Superior Court.

35 **4. Appeal.** The claimant may appeal a claim that is denied to the Supreme Judicial
36 Court sitting as the Law Court.

37 **§22106. Amount of compensation**

38 **1. Compensation; time served.** A person who meets the requirements of section
39 22102 is entitled to compensation in an amount equal to \$50,000 multiplied by the number
40 of years served in imprisonment, expressed as a fraction to reflect partial years.

1 **2. Compensation; registration as sex offender.** A person who, after serving a
2 sentence of imprisonment in this State for which the person is entitled to compensation
3 under subsection 1, was required to register as a sex offender is entitled to additional
4 compensation in an amount equal to \$10,000 multiplied by the number of years served as
5 a registered sex offender, expressed as a fraction to reflect partial years.

6 **3. Offset.** This subsection applies to compensation under this chapter if the claimant
7 previously received a qualifying monetary award or subsequently receives a qualifying
8 monetary award.

9 A. If at the time of the judgment the claimant has won a monetary award against the
10 State or any political subdivision of the State in a civil action related to the same subject
11 or has entered into a settlement agreement with the State or any political subdivision
12 of the State related to the same subject, the amount of the award in the action or the
13 amount received in the settlement agreement, less any sums paid to attorneys or for
14 costs in litigating the other civil action or obtaining the settlement agreement, must be
15 deducted from the sum of money to which the claimant is entitled under this section.
16 The court shall include in the judgment an award to the State of any amount deducted
17 pursuant to this paragraph.

18 B. If paragraph A does not apply and if, after the time of the judgment, the claimant
19 wins a monetary award against the State or any political subdivision of the State in a
20 civil action related to the same subject, or enters into a settlement agreement with the
21 State or any political subdivision of the State related to the same subject, the claimant
22 shall reimburse the State for the sum of money paid under the judgment, less any sums
23 paid to attorneys for costs in litigating the other civil action or obtaining the settlement
24 agreement. A reimbursement required under this paragraph may not exceed the amount
25 of the monetary award the claimant wins for damages in the other civil action or the
26 amount received in the settlement agreement.

27 **§22107. Payment of compensation**

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

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

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

40 **§22108. Exceptions to immunity**

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

44 **§22109. Certificate of innocence and expungement**

