



# 129th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2019

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Legislative Document

No. 1061

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H.P. 784

House of Representatives, March 5, 2019

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

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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 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:

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 inculcates 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.