

HB1230_L.002

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.

HB13-1230 be amended as follows:

1 Amend printed bill, page 5, strike lines 10 through 14 and substitute:

2 "(1) (a) "ACTUAL INNOCENCE" MEANS A FINDING BY CLEAR AND
3 CONVINCING EVIDENCE BY A DISTRICT COURT PURSUANT TO SECTION 13-
4 65-102 THAT A PERSON IS ACTUALLY INNOCENT OF A CRIME SUCH THAT:

5 (I) HIS OR HER CONVICTION WAS THE RESULT OF A MISCARRIAGE
6 OF JUSTICE;

7 (II) HE OR SHE PRESENTED RELIABLE EVIDENCE THAT HE OR SHE
8 WAS FACTUALLY INNOCENT OF ANY PARTICIPATION IN THE CRIME AT
9 ISSUE;

10 (III) HE OR SHE DID NOT SOLICIT, PURSUANT TO 18-2-301, C.R.S.,
11 THE COMMISSION OF THE CRIME AT ISSUE OR ANY CRIME FACTUALLY
12 RELATED TO THE CRIME AT ISSUE;

13 (IV) HE OR SHE DID NOT CONSPIRE, PURSUANT TO 18-2-202,
14 C.R.S., TO COMMIT THE CRIME AT ISSUE OR ANY CRIME FACTUALLY
15 RELATED TO THE CRIME AT ISSUE;

16 (V) HE OR SHE DID NOT ACT AS A COMPLICITOR, PURSUANT TO 18-
17 1-603, C.R.S., IN THE COMMISSION OF THE CRIME AT ISSUE OR ANY CRIME
18 FACTUALLY RELATED TO THE CRIME AT ISSUE;

19 (VI) HE OR SHE DID NOT ACT AS AN ACCESSORY, PURSUANT TO 18-
20 8-105, C.R.S., IN THE COMMISSION OF THE CRIME AT ISSUE OR ANY CRIME
21 FACTUALLY RELATED TO THE CRIME AT ISSUE; AND

22 (VII) HE OR SHE DID NOT ATTEMPT TO COMMIT, PURSUANT TO 18-
23 2-101, C.R.S., THE CRIME AT ISSUE OR ANY CRIME FACTUALLY RELATED
24 TO THE CRIME AT ISSUE.

25 (b) A COURT MAY NOT REACH A FINDING OF ACTUAL INNOCENCE
26 PURSUANT TO THIS SECTION MERELY:

27 (I) BECAUSE THE COURT FINDS THE EVIDENCE LEGALLY
28 INSUFFICIENT TO SUPPORT THE PETITIONER'S CONVICTION;

29 (II) BECAUSE THE COURT REVERSED OR VACATED THE
30 PETITIONER'S CONVICTION BECAUSE OF A LEGAL ERROR UNRELATED TO
31 THE PETITIONER'S ACTUAL INNOCENCE OR BECAUSE OF UNCORROBORATED
32 WITNESS RECANTATION ALONE; OR

33 (III) ON THE BASIS OF UNCORROBORATED WITNESS RECANTATION
34 ALONE.

35 (c) AS USED IN THIS SUBSECTION (1), "RELIABLE EVIDENCE" MAY
36 INCLUDE BUT IS NOT LIMITED TO EXCULPATORY SCIENTIFIC EVIDENCE,
37 TRUSTWORTHY EYEWITNESS ACCOUNTS, AND CRITICAL PHYSICAL



1 EVIDENCE."

2 Page 6, strike lines 6 and 7 and substitute "CHILD, A GRANDPARENT, OR A
3 SIBLING OF A DECEASED PERSON WHO WOULD BE ELIGIBLE FOR RELIEF
4 PURSUANT TO SECTION 13-65-102 IF HE OR SHE WERE ALIVE. THE
5 PROVISIONS OF ARTICLE 11 OF TITLE 15, C.R.S., SHALL GOVERN WHICH
6 IMMEDIATE FAMILY MEMBER OR MEMBERS HAVE PROPER STANDING TO
7 ACT AS A PETITIONER."

8 Page 7, strike lines 4 and 5 and substitute "IMMEDIATE FAMILY MEMBERS
9 OF A DECEASED PERSON WHO WOULD BE ELIGIBLE FOR RELIEF PURSUANT
10 TO SECTION 13-65-102 IF HE OR SHE WERE ALIVE."

11 Page 8, strike lines 5 through 12 and substitute:

12 "(I) A COURT VACATING OR REVERSING ALL CONVICTIONS IN THE
13 CASE BASED ON REASONS OTHER THAN LEGAL INSUFFICIENCY OF EVIDENCE
14 OR LEGAL ERROR UNRELATED TO THE PETITIONER'S ACTUAL INNOCENCE
15 AND FOLLOWING AN ORDER OF DISMISSAL OF ALL CHARGES; OR

16 (II) A COURT VACATING OR REVERSING ALL CONVICTIONS IN THE
17 CASE BASED ON REASONS OTHER THAN LEGAL INSUFFICIENCY OF EVIDENCE
18 OR LEGAL ERROR UNRELATED TO THE PETITIONER'S ACTUAL INNOCENCE
19 AND FOLLOWING AN ACQUITTAL OF ALL CHARGES AFTER RETRIAL; AND".

20 Page 9, strike lines 3 through 6 and substitute:

21 "(b) THE PERSON MEETS THE DEFINITION OF ACTUAL INNOCENCE IN
22 SECTION 13-65-101 (1)."

23 Page 9, strike lines 9 through 12 and substitute:

24 "(I) HE OR SHE DOES NOT MEET THE DEFINITION OF ACTUAL
25 INNOCENCE IN SECTION 13-65-101 (1)."

26 Page 10, line 21, strike "AND".

27 Page 10, line 24, strike "INCARCERATED." and substitute "INCARCERATED;
28 AND"

29 Page 10, after line 24, insert:

1 "(IV) A SWORN AFFIDAVIT OF THE PETITIONER ASSERTING HIS OR
2 HER ACTUAL INNOCENCE AS DEFINED IN SECTION 13-65-101 (1).".

3 Page 13, strike lines 9 through 27 and substitute "A TRIAL TO THE
4 DISTRICT COURT OR, AT THE WRITTEN ELECTION OF EITHER PARTY, TO A
5 TRIAL TO A JURY OF SIX, AT WHICH TRIAL THE BURDEN SHALL BE ON THE
6 PETITIONER TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT HE OR
7 SHE IS ACTUALLY INNOCENT OF ALL CRIMES THAT ARE THE SUBJECT OF THE
8 PETITION, AND THAT HE OR SHE IS ELIGIBLE TO RECEIVE COMPENSATION
9 PURSUANT TO THIS ARTICLE. A TRIAL TO A JURY OF SIX MUST RESULT IN A
10 UNANIMOUS VERDICT. FOLLOWING A TRIAL TO THE DISTRICT COURT, THE
11 COURT SHALL ISSUE A FINAL ORDER ON THE PETITION, WHICH ORDER SHALL
12 INCLUDE FINDINGS OF FACT AS TO WHETHER THE PETITIONER HAS
13 ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT HE OR SHE IS
14 ACTUALLY INNOCENT AND WHETHER THE PETITIONER IS ELIGIBLE FOR
15 COMPENSATION UNDER THIS ARTICLE. IF THE COURT FINDS THAT THE
16 PETITIONER IS ACTUALLY INNOCENT AND ELIGIBLE FOR COMPENSATION
17 PURSUANT TO THIS ARTICLE, THE DISTRICT COURT SHALL ISSUE A FINAL
18 ORDER ON THE PETITION WHICH ORDER SHALL STATE SUCH FINDINGS AND
19 BE ACCOMPANIED BY AN ORDER OF COMPENSATION, TO BE ISSUED TO THE
20 STATE CONTROLLER ON THE PETITIONER'S BEHALF PURSUANT TO SECTION
21 13-65-103. UPON A FINDING BY A JURY OF ACTUAL INNOCENCE, THE
22 DISTRICT COURT SHALL ISSUE AN ORDER AWARDING THE PETITIONER
23 COMPENSATION PURSUANT TO SECTION 13-65-103.

24 (7) (a) EITHER PARTY HAS A RIGHT TO AN APPEAL.

25 (b) IF THE PETITIONER APPEALS THE AMOUNT OF COMPENSATION
26 AWARDED, THE STATE CONTROLLER SHALL NOT DELAY IN PAYING THE
27 PETITIONER PURSUANT TO THE ORDER OF COMPENSATION WHILE THE
28 APPEAL IS PENDING.

29 (c) IF THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY APPEALS
30 THE OUTCOME OF THE TRIAL DESCRIBED IN SUBSECTION (6) OF THIS
31 SECTION, THE STATE CONTROLLER SHALL NOT DELAY IN PAYING THE
32 PETITIONER PURSUANT TO THE ORDER OF COMPENSATION WHILE THE
33 APPEAL IS PENDING.

34 (d) IN THE EVENT THAT THE ATTORNEY GENERAL OR DISTRICT
35 ATTORNEY PREVAILS IN AN APPEAL, THE COURT MAY TAKE SUCH ACTION
36 AS IS NECESSARY TO RECOVER THE AMOUNT OF ANY COMPENSATION
37 AWARDED TO THE PETITIONER PURSUANT TO SECTION 13-65-103.".

38 Page 14, strike lines 1 through 6.



- 1 Page 20, line 2, strike "BODY;" and substitute "BODY IN A CIVIL ACTION
- 2 CONCERNING THE SAME ACTS THAT ARE THE BASES FOR THE PETITION FOR
- 3 COMPENSATION; AND".

- 4 Page 20, line 5, strike "PERSON; AND" and substitute "PERSON."

- 5 Page 20, strike lines 6 through 10.

- 6 Page 20, strike lines 25 and 26 and substitute "PLACEMENT IN STATE
- 7 CUSTODY."

- 8 Page 23, strike lines 25 through 27 and substitute "C.R.S."

- 9 Page 24, strike line 1.

- 10 Page 24, line 27, strike "BODY;" and substitute "BODY IN A CIVIL ACTION
- 11 CONCERNING THE SAME ACTS THAT ARE THE BASES FOR THE PETITION FOR
- 12 COMPENSATION; AND".

- 13 Page 25, line 3, strike "PERSON; AND" and substitute "PERSON."

- 14 Page 25, strike lines 4 through 10.

- 15 Page 25, strike lines 20 through 27.

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