

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 7, 2013
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB13-1230 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

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.

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

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

5 (II) BECAUSE THE COURT REVERSED OR VACATED THE
6 PETITIONER'S CONVICTION BECAUSE OF A LEGAL ERROR UNRELATED TO
7 THE PETITIONER'S ACTUAL INNOCENCE OR BECAUSE OF UNCORROBORATED
8 WITNESS RECANTATION ALONE; OR

9 (III) ON THE BASIS OF UNCORROBORATED WITNESS RECANTATION
10 ALONE.

11 (c) AS USED IN THIS SUBSECTION (1), "RELIABLE EVIDENCE" MAY
12 INCLUDE BUT IS NOT LIMITED TO EXCULPATORY SCIENTIFIC EVIDENCE,
13 TRUSTWORTHY EYEWITNESS ACCOUNTS, AND CRITICAL PHYSICAL
14 EVIDENCE."

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

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

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

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

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

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

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

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

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

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

5 Page 10, line 24, strike "INCARCERATED." and substitute "INCARCERATED;
6 AND"

7 Page 10, after line 24 insert:

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

10 Page 13, strike lines 9 through 27 and substitute "A TRIAL TO THE
11 DISTRICT COURT OR, AT THE WRITTEN ELECTION OF EITHER PARTY, TO A
12 TRIAL TO A JURY OF SIX, AT WHICH TRIAL THE BURDEN SHALL BE ON THE
13 PETITIONER TO SHOW BY CLEAR AND CONVINCING EVIDENCE THAT HE OR
14 SHE IS ACTUALLY INNOCENT OF ALL CRIMES THAT ARE THE SUBJECT OF THE
15 PETITION, AND THAT HE OR SHE IS ELIGIBLE TO RECEIVE COMPENSATION
16 PURSUANT TO THIS ARTICLE. A TRIAL TO A JURY OF SIX MUST RESULT IN A
17 UNANIMOUS VERDICT. FOLLOWING A TRIAL TO THE DISTRICT COURT, THE
18 COURT SHALL ISSUE A FINAL ORDER ON THE PETITION, WHICH ORDER SHALL
19 INCLUDE FINDINGS OF FACT AS TO WHETHER THE PETITIONER HAS
20 ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT HE OR SHE IS
21 ACTUALLY INNOCENT AND WHETHER THE PETITIONER IS ELIGIBLE FOR
22 COMPENSATION UNDER THIS ARTICLE. IF THE COURT FINDS THAT THE
23 PETITIONER IS ACTUALLY INNOCENT AND ELIGIBLE FOR COMPENSATION
24 PURSUANT TO THIS ARTICLE, THE DISTRICT COURT SHALL ISSUE A FINAL
25 ORDER ON THE PETITION WHICH ORDER SHALL STATE SUCH FINDINGS AND
26 BE ACCOMPANIED BY AN ORDER OF COMPENSATION, TO BE ISSUED TO THE
27 STATE CONTROLLER ON THE PETITIONER'S BEHALF PURSUANT TO SECTION
28 13-65-103. UPON A FINDING BY A JURY OF ACTUAL INNOCENCE, THE
29 DISTRICT COURT SHALL ISSUE AN ORDER AWARDING THE PETITIONER
30 COMPENSATION PURSUANT TO SECTION 13-65-103.

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

32 (b) IF THE PETITIONER APPEALS THE AMOUNT OF COMPENSATION
33 AWARDED, THE STATE CONTROLLER SHALL NOT DELAY IN PAYING THE
34 PETITIONER PURSUANT TO THE ORDER OF COMPENSATION WHILE THE
35 APPEAL IS PENDING.

1 (c) IF THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY APPEALS
2 THE OUTCOME OF THE TRIAL DESCRIBED IN SUBSECTION (6) OF THIS
3 SECTION, THE STATE CONTROLLER SHALL NOT DELAY IN PAYING THE
4 PETITIONER PURSUANT TO THE ORDER OF COMPENSATION WHILE THE
5 APPEAL IS PENDING.

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

10 Page 14, strike lines 1 through 6.

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

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

15 Page 20, strike lines 6 through 10.

16 Page 20, strike lines 25 and 26 and substitute "PLACEMENT IN STATE
17 CUSTODY.".

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

19 Page 24, strike line 1.

20 Page 24, line 27, strike "BODY;" and substitute "BODY IN A CIVIL ACTION
21 CONCERNING THE SAME ACTS THAT ARE THE BASES FOR THE PETITION FOR
22 COMPENSATION; AND".

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

24 Page 25, strike lines 4 through 10.

25 Page 25, strike lines 20 through 27.

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