

First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 13-0022.01 Richard Sweetman x4333

HOUSE BILL 13-1230

HOUSE SPONSORSHIP

Williams and Pabon, Buckner, Court, Hullinghorst, Melton, Pettersen, Salazar

SENATE SPONSORSHIP

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House Committees

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A BILL FOR AN ACT

101 **CONCERNING COMPENSATION FOR PERSONS WHO ARE EXONERATED OF**
102 **THEIR CRIMES AFTER A PERIOD OF INCARCERATION, AND, IN**
103 **CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

With certain limitations, the state shall compensate a person, or the immediate family members of a person, who has been:

! Wrongly convicted of a felony, or wrongly adjudicated a juvenile delinquent for the commission of an offense that

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
3rd Reading Unamended
April 9, 2013

HOUSE
Amended 2nd Reading
April 8, 2013

would be a felony if committed by a person 18 years of age or older;

- ! Incarcerated; and
- ! Exonerated and found to be actually innocent (an exonerated person).

The bill sets forth a judicial procedure whereby a person who is eligible to seek compensation from the state as an exonerated person, or the immediate family members of such a person, may petition a district court for an order declaring the person to be actually innocent and eligible to receive an order of compensation. Upon receipt of a petition, the attorney general and the district attorney shall each have 60 days to file a response in the district court. The response shall contain a statement that either:

- ! The petitioner is eligible to seek compensation; or
- ! The responding party contests the nature, significance, or effect of the evidence of actual innocence, the facts related to the petitioner's alleged wrongful conviction, or whether the petitioner is eligible to seek compensation.

If the responding party contests the actual innocence of the petitioner, the district court shall set the matter for a trial, at which trial the burden shall be on the petitioner to show by a preponderance of the evidence that he or she is actually innocent of all crimes that are the subject of the petition and that he or she is eligible to receive compensation.

An exonerated person shall be compensated by the state in the form of:

- ! Monetary compensation;
- ! Tuition waivers at state institutions of higher education;
- ! Compensation for child support payments owed by the exonerated person that became due during his or her incarceration, and interest on child support arrearages that accrued during his or her incarceration but which have not been paid;
- ! Reasonable attorneys' fees; and
- ! The amount of any fine, penalty, court costs, or restitution imposed upon and paid by the exonerated person as a result of his or her wrongful conviction or adjudication.

An exonerated person shall receive monetary compensation in an amount of \$70,000 for each year that he or she was incarcerated for the crime of which he or she has been exonerated. In addition to this amount, an exonerated person shall receive compensation in an amount of:

- ! \$50,000 for each year that he or she was incarcerated and awaiting execution; and
- ! \$25,000 for each year that he or she served on parole, on probation, or as a registered sex offender as a result of the

criminal offense of which he or she has been exonerated.

For a partial year of incarceration, an exonerated person shall receive a prorated amount that is based on the length of time that he or she was incarcerated.

The district court shall not issue to any person an order of compensation that includes any compensation for any period of incarceration during which the person was concurrently serving a sentence for an offense of which he or she has not been exonerated.

The district court shall reduce an exonerated person's award of monetary compensation if, prior to the issuance of such award:

- ! The exonerated person prevails in or settles a civil action against the state or against any other government body;
- ! The judgment rendered in the civil action or the settlement of the civil action includes an award of monetary damages to the exonerated person; and
- ! The award of monetary damages is intended to compensate the person for a period of incarceration that resulted from the person's wrongful conviction or adjudication of a crime.

Under such circumstances, the district court shall reduce the award by an amount that is equal to the amount of monetary damages that the person is awarded and collects in the civil action; except that, a district court shall not offset any amount exceeding the total amount of monetary compensation awarded to the exonerated person.

The state controller or his or her designee shall issue an annual payment to an exonerated person within 14 days after receiving an order of compensation from a district court and annually thereafter until the state's obligation is satisfied. An annual payment shall be \$100,000; except that, if the remaining amount owed to the exonerated person is less than \$100,000, then the annual payment shall be the remaining amount. The state controller shall issue annual payments from the compensation for exonerated persons fund, which fund is created in the bill.

After the state controller issues an initial annual payment to an exonerated person, the exonerated person must complete a personal financial management instruction course before the state controller may issue to the person another annual payment.

A district court that issues an order of compensation to the state controller on behalf of a person, or on behalf of the immediate family members of a person, shall order that all records relating to the person's wrongful conviction or adjudication shall be expunged as if such events had never taken place and such records had never existed. The district court shall direct such an expungement order to every person or agency that may have custody of any part of any records relating to the person's wrongful conviction or adjudication.

If a district court issues an expungement order, a court, law enforcement agency, or other state agency that maintains records relating

to the person's wrongful conviction or adjudication shall physically seal such records and thereafter treat the records as confidential. Records that have been sealed shall be made available to a court or a law enforcement agency, including but not limited to a district attorney's office or the attorney general, upon a showing of good cause.

On or before September 1, 2013, the Colorado commission on higher education shall implement a policy whereby each institution of higher education in the state shall waive tuition costs for an exonerated person, and for any child or custodial child of an exonerated person who was conceived or legally adopted before the exonerated person was incarcerated, who satisfies the admission requirements of the institution and who remains in satisfactory academic standing in accordance with the academic policies of the institution. To receive a tuition waiver, an exonerated person or child or custodial child of an exonerated person must apply to the institution and request such waiver in writing not later than 2 years after the later of the following dates:

- ! The date upon which a district court issued an order of compensation on behalf of the exonerated person; or
- ! In the case of a child or custodial child of an exonerated person, the date upon which the child or custodial child graduated from high school.

Neither an exonerated person nor a child or custodial child of an exonerated person shall be eligible for a tuition waiver unless the exonerated person was wrongfully incarcerated for at least 3 years.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds that an innocent person who has been wrongly convicted of
4 a felony, or wrongly adjudicated a juvenile delinquent for the commission
5 of an offense that would be a felony if committed by a person eighteen
6 years of age or older, and subsequently incarcerated:

- 7 (a) Has been uniquely victimized;
- 8 (b) Has distinct problems reentering society;
- 9 (c) Has difficulty achieving legal redress due to a variety of
10 substantive and technical obstacles in the law; and
- 11 (d) Should have an available means of redress beyond the existing

1 tort remedies to seek compensation for damages.

2 (2) Therefore, the general assembly declares that such a person
3 shall receive certain compensation, including but not limited to monetary
4 compensation, from the state as described in this act.

5 **SECTION 2.** In Colorado Revised Statutes, **add** article 65 to title
6 13 as follows:

7 **ARTICLE 65**

8 **Compensation for Certain Exonerated Persons**

9 **13-65-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
10 CONTEXT OTHERWISE REQUIRES:

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

15 (I) HIS OR HER CONVICTION WAS THE RESULT OF A MISCARRIAGE
16 OF JUSTICE;

17 (II) HE OR SHE PRESENTED RELIABLE EVIDENCE THAT HE OR SHE
18 WAS FACTUALLY INNOCENT OF ANY PARTICIPATION IN THE CRIME AT
19 ISSUE;

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

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

26 (V) HE OR SHE DID NOT ACT AS A COMPLICITOR, PURSUANT TO
27 18-1-603, C.R.S., IN THE COMMISSION OF THE CRIME AT ISSUE OR ANY

1 CRIME FACTUALLY RELATED TO THE CRIME AT ISSUE;

2 (VI) HE OR SHE DID NOT ACT AS AN ACCESSORY, PURSUANT TO

3 18-8-105, C.R.S., IN THE COMMISSION OF THE CRIME AT ISSUE OR ANY

4 CRIME FACTUALLY RELATED TO THE CRIME AT ISSUE; AND

5 (VII) HE OR SHE DID NOT ATTEMPT TO COMMIT, PURSUANT TO

6 18-2-101, C.R.S., THE CRIME AT ISSUE OR ANY CRIME FACTUALLY

7 RELATED TO THE CRIME AT ISSUE.

8 (b) A COURT MAY NOT REACH A FINDING OF ACTUAL INNOCENCE

9 PURSUANT TO THIS SECTION MERELY:

10 (I) BECAUSE THE COURT FINDS THE EVIDENCE LEGALLY

11 INSUFFICIENT TO SUPPORT THE PETITIONER'S CONVICTION;

12 (II) BECAUSE THE COURT REVERSED OR VACATED THE

13 PETITIONER'S CONVICTION BECAUSE OF A LEGAL ERROR UNRELATED TO

14 THE PETITIONER'S ACTUAL INNOCENCE OR BECAUSE OF UNCORROBORATED

15 WITNESS RECANTATION ALONE; OR

16 (III) ON THE BASIS OF UNCORROBORATED WITNESS RECANTATION

17 ALONE.

18 (c) AS USED IN THIS SUBSECTION (1), "RELIABLE EVIDENCE" MAY

19 INCLUDE BUT IS NOT LIMITED TO EXCULPATORY SCIENTIFIC EVIDENCE,

20 TRUSTWORTHY EYEWITNESS ACCOUNTS, AND CRITICAL PHYSICAL

21 EVIDENCE.

22 (2) "CUSTODIAL CHILD" MEANS ANY INDIVIDUAL:

23 (a) WHO WAS CONCEIVED OR ADOPTED PRIOR TO THE DATE UPON

24 WHICH THE EXONERATED PERSON WAS INCARCERATED FOR THE ACT OR

25 OFFENSE THAT SERVED AS THE BASIS FOR HIS OR HER CONVICTION, WHICH

26 CONVICTION AND INCARCERATION IS THE SUBJECT OF HIS OR HER PETITION;

27 (b) WHOSE PRINCIPAL RESIDENCE IS THE HOME OF AN EXONERATED

1 PERSON;

2 (c) WHO RECEIVES MORE THAN HALF OF HIS OR HER FINANCIAL
3 SUPPORT FROM THE EXONERATED PERSON EACH YEAR; AND

4 (d) WHO IS EITHER:

5 (I) LESS THAN NINETEEN YEARS OF AGE AT THE END OF THE
6 CURRENT YEAR; OR

7 (II) LESS THAN TWENTY-FOUR YEARS OF AGE AT THE END OF THE
8 CURRENT YEAR AND A FULL-TIME STUDENT.

9 (3) "EXONERATED PERSON" MEANS A PERSON WHO HAS BEEN
10 DETERMINED BY A DISTRICT COURT PURSUANT TO SECTION 13-65-102 TO
11 BE ACTUALLY INNOCENT.

12 (4) "IMMEDIATE FAMILY MEMBER" MEANS A SPOUSE, A PARENT, A
13 CHILD, A GRANDPARENT, OR A SIBLING OF A DECEASED PERSON WHO
14 WOULD BE ELIGIBLE FOR RELIEF PURSUANT TO SECTION 13-65-102 IF HE OR
15 SHE WERE ALIVE. THE PROVISIONS OF ARTICLE 11 OF TITLE 15, C.R.S.,
16 SHALL GOVERN WHICH IMMEDIATE FAMILY MEMBER OR MEMBERS HAVE
17 PROPER STANDING TO ACT AS A PETITIONER.

18 (5) "INCARCERATION" MEANS A PERSON'S CUSTODY IN A COUNTY
19 JAIL OR A CORRECTIONAL FACILITY WHILE HE OR SHE SERVES A SENTENCE
20 ISSUED PURSUANT TO A FELONY CONVICTION IN THIS STATE OR PURSUANT
21 TO THE PERSON'S ADJUDICATION AS A JUVENILE DELINQUENT FOR THE
22 COMMISSION OF ONE OR MORE OFFENSES THAT WOULD BE FELONIES IF
23 COMMITTED BY A PERSON EIGHTEEN YEARS OF AGE OR OLDER. FOR THE
24 PURPOSES OF THIS SECTION, "INCARCERATION" INCLUDES PLACEMENT AS
25 A JUVENILE TO THE CUSTODY OF THE STATE DEPARTMENT OF HUMAN
26 SERVICES OR A COUNTY DEPARTMENT OF SOCIAL SERVICES PURSUANT TO
27 SUCH AN ADJUDICATION.

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(6) "PERSONAL FINANCIAL MANAGEMENT INSTRUCTION COURSE" MEANS A PERSONAL FINANCIAL MANAGEMENT INSTRUCTION COURSE THAT HAS BEEN APPROVED BY THE UNITED STATES TRUSTEE'S OFFICE PURSUANT TO 11 U.S.C. SEC. 111.

(7) "PETITION" MEANS A PETITION FOR COMPENSATION BASED ON ACTUAL INNOCENCE FILED PURSUANT TO THE PROVISIONS OF SECTION 13-65-102.

(8) "PETITIONER" MEANS A PERSON WHO PETITIONS FOR RELIEF PURSUANT TO SECTION 13-65-102. "PETITIONER" INCLUDES THE IMMEDIATE FAMILY MEMBERS OF A DECEASED PERSON WHO WOULD BE ELIGIBLE FOR RELIEF PURSUANT TO SECTION 13-65-102 IF HE OR SHE WERE ALIVE.

(9) "QUALIFIED HEALTH PLAN" MEANS A HEALTH PLAN THAT SATISFIES THE DEFINITION OF A QUALIFIED HEALTH PLAN SET FORTH IN THE FEDERAL "PATIENT PROTECTION AND AFFORDABLE CARE ACT", P.L. 111-148, 42 U.S.C. 18021(a)(1).

(10) "STATE'S DUTY OF MONETARY COMPENSATION" MEANS THE TOTAL AMOUNT OF MONETARY COMPENSATION OWED BY THE STATE TO AN EXONERATED PERSON.

13-65-102. Process for petitioning for compensation - eligibility to petition - actual innocence required - jurisdiction.

(1) (a) NOTWITHSTANDING THE PROVISIONS OF ARTICLE 10 OF TITLE 24, C.R.S., A PERSON WHO HAS BEEN CONVICTED OF A FELONY IN THIS STATE AND SENTENCED TO A TERM OF INCARCERATION AS A RESULT OF THAT CONVICTION AND HAS SERVED ALL OR PART OF SUCH SENTENCE, OR AN IMMEDIATE FAMILY MEMBER OF SUCH PERSON, MAY BE ELIGIBLE FOR

1 COMPENSATION AS SET FORTH IN THIS ARTICLE UPON A FINDING THAT THE
2 PERSON WAS ACTUALLY INNOCENT OF THE CRIME FOR WHICH HE OR SHE
3 WAS CONVICTED.

4 (b) A PETITION FOR COMPENSATION BASED ON ACTUAL INNOCENCE
5 FILED PURSUANT TO THIS SECTION IS A CIVIL CLAIM FOR RELIEF.

6 (2) A PETITION MAY BE FILED PURSUANT TO THIS SECTION ONLY:

7 (a) WHEN NO FURTHER CRIMINAL PROSECUTION OF THE PETITIONER
8 FOR THE CRIMES CHARGED, OR FOR CRIMES ARISING FROM THE SAME
9 CRIMINAL EPISODE IN THE CASE THAT IS THE SUBJECT OF THE PETITION,
10 HAS BEEN INITIATED BY THE DISTRICT ATTORNEY OR THE ATTORNEY
11 GENERAL AND SUBSEQUENT TO ONE OF THE FOLLOWING:

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 (b) EITHER:

21 (I) IF THE CONDITIONS DESCRIBED IN PARAGRAPH (a) OF THIS
22 SUBSECTION (2) ARE MET ON OR AFTER THE EFFECTIVE DATE OF THIS
23 SECTION, NOT MORE THAN TWO YEARS AFTER SAID CONDITIONS ARE MET;

24 OR

25 (II) IF THE CONDITIONS DESCRIBED IN PARAGRAPH (a) OF THIS
26 SUBSECTION (2) ARE MET BEFORE THE EFFECTIVE DATE OF THIS SECTION,
27 NOT MORE THAN TWO YEARS AFTER THE EFFECTIVE DATE OF THIS SECTION.

1 (3) THE DISTRICT COURT SHALL NOT DECLARE A PERSON TO BE
2 ACTUALLY INNOCENT UNLESS, BASED ON EVIDENCE SUPPORTING THE
3 PETITIONER'S ALLEGATION OF INNOCENCE, INCLUDING BUT NOT LIMITED
4 TO AN ANALYSIS OF THE PERSON'S DNA PROFILE, THE COURT DETERMINES
5 THAT:

6 (a) THE PERSON COMMITTED NEITHER THE ACT OR OFFENSE THAT
7 SERVED AS THE BASIS FOR THE CONVICTION AND INCARCERATION THAT IS
8 THE SUBJECT OF THE PETITION, NOR ANY LESSER INCLUDED OFFENSE
9 THEREOF; AND

10 (b) THE PERSON MEETS THE DEFINITION OF ACTUAL INNOCENCE IN
11 SECTION 13-65-101 (1).

12 (4) (a) A PETITIONER IS NOT ELIGIBLE FOR COMPENSATION
13 PURSUANT TO THIS ARTICLE IF:

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

16 (II) HE OR SHE COMMITTED OR SUBORNED PERJURY DURING ANY
17 PROCEEDINGS RELATED TO THE CASE THAT IS THE SUBJECT OF THE CLAIM;
18 OR

19 (III) TO AVOID PROSECUTION IN ANOTHER CASE FOR WHICH THE
20 PETITIONER HAS NOT BEEN DETERMINED TO BE ACTUALLY INNOCENT, HE
21 OR SHE PLED GUILTY IN THE CASE THAT SERVED AS THE BASIS FOR THE
22 CONVICTION AND INCARCERATION THAT IS THE SUBJECT OF THE PETITION.

23 (b) NOTWITHSTANDING SUBPARAGRAPHS (I) TO (III) OF
24 PARAGRAPH (a) OF THIS SUBSECTION (4), CONDUCT DESCRIBED IN SAID
25 SUBPARAGRAPHS SHALL NOT INCLUDE A CONFESSION OR AN ADMISSION
26 THAT WAS LATER DETERMINED BY A COURT OF COMPETENT JURISDICTION,
27 OR BY STIPULATION OF THE PARTIES, TO BE FALSE OR COERCED BY ANY

1 GOVERNMENTAL AGENT.

2 (5) (a) A PETITIONER SHALL FILE HIS OR HER PETITION IN THE
3 DISTRICT COURT IN THE COUNTY IN WHICH THE CASE ORIGINATED, TO THE
4 DISTRICT COURT JUDGE WHO PRESIDED OVER THE ORIGINAL PROCEEDING
5 IF SUCH JUDGE IS AVAILABLE; EXCEPT THAT, IF EITHER PARTY OBJECTS TO
6 SUCH JUDGE PRESIDING OVER THIS CIVIL CLAIM FOR RELIEF, THEN
7 ANOTHER DISTRICT JUDGE OF THE DISTRICT COURT SHALL PRESIDE OVER
8 THE MATTER.

9 (b) THE PETITION SHALL NAME THE STATE OF COLORADO AS THE
10 RESPONDENT. THE ATTORNEY GENERAL AND THE DISTRICT ATTORNEY OF
11 THE JUDICIAL DISTRICT IN WHICH THE CASE ORIGINATED SHALL EACH HAVE
12 A SEPARATE AND CONCURRENT AUTHORITY TO INTERVENE AS PARTIES TO
13 A PETITION, AND A COPY OF THE PETITION SHALL BE SERVED ON THE
14 ATTORNEY GENERAL AND THE DISTRICT ATTORNEY.

15 (c) A PETITION SHALL CONTAIN A RECITATION OF FACTS
16 NECESSARY TO AN UNDERSTANDING OF THE PETITIONER'S CLAIM OF
17 ACTUAL INNOCENCE. THE PETITION MAY BE SUPPORTED BY DNA
18 EVIDENCE, IF APPLICABLE, EXPERT OPINION, PREVIOUSLY UNKNOWN OR
19 UNAVAILABLE EVIDENCE, AND THE EXISTING COURT RECORD. THE
20 PETITIONER SHALL ATTACH TO THE PETITION:

21 (I) A COPY OF ANY EXPERT REPORT RELIED UPON BY THE
22 PETITIONER TO SUPPORT HIS OR HER CLAIM OF ACTUAL INNOCENCE;

23 (II) ANY DOCUMENTATION SUPPORTING THE RECITATION OF FACTS
24 IN THE CLAIM; ■

25 (III) A RECORD FROM THE COUNTY JAIL, STATE CORRECTIONAL
26 FACILITY, OR OTHER STATE FACILITY DOCUMENTING THE AMOUNT OF TIME
27 THAT THE PETITIONER WAS INCARCERATED; AND

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

3 (d) UPON RECEIPT OF A PETITION, THE ATTORNEY GENERAL AND
4 THE DISTRICT ATTORNEY SHALL EACH HAVE SIXTY DAYS TO FILE A
5 RESPONSE IN THE DISTRICT COURT. A JOINT RESPONSE MAY BE FILED. THE
6 COURT MAY GRANT THE RESPONDING PARTY, FOR GOOD CAUSE SHOWN, NO
7 MORE THAN ONE EXTENSION OF TIME, NOT EXCEEDING FORTY-FIVE DAYS,
8 IN WHICH TO FILE A RESPONSE. THE RESPONSE SHALL CONTAIN A
9 STATEMENT THAT:

10 (I) BASED UPON THE PETITION AND VERIFIABLE AND SUBSTANTIAL
11 EVIDENCE OF ACTUAL INNOCENCE, NO FURTHER CRIMINAL PROSECUTION
12 OF THE PETITIONER FOR THE CRIMES CHARGED CAN OR WILL BE INITIATED
13 BY THE DISTRICT ATTORNEY OR THE ATTORNEY GENERAL, THAT NO
14 QUESTIONS OF FACT REMAIN AS TO THE PETITIONER'S ACTUAL INNOCENCE,
15 AND THAT THE PETITIONER IS ELIGIBLE TO SEEK COMPENSATION UNDER
16 THE PROVISIONS OF THIS SECTION; OR

17 (II) THE RESPONDING PARTY CONTESTS THE NATURE,
18 SIGNIFICANCE, OR EFFECT OF THE EVIDENCE OF ACTUAL INNOCENCE, THE
19 FACTS RELATED TO THE PETITIONER'S ALLEGED WRONGFUL CONVICTION,
20 OR WHETHER THE PETITIONER IS ELIGIBLE TO SEEK COMPENSATION UNDER
21 THE PROVISIONS OF THIS SECTION. THE RESPONSE SHALL INCLUDE A
22 RECITATION OF FACTS NECESSARY TO AN UNDERSTANDING AS TO WHY THE
23 PETITION IS BEING CONTESTED.

24 (e) IF THE RESPONDING PARTY CONTESTS THE ACTUAL INNOCENCE
25 OF THE PETITIONER, THE DISTRICT COURT MAY ORDER THAT THE
26 RESPONDING PARTY BE ALLOWED TO RETEST ANY EVIDENCE AT ISSUE IN
27 THE CLAIM IF SUCH EVIDENCE REMAINS TO BE TESTED AND TESTING SUCH

1 EVIDENCE WILL NOT CONSUME THE REMAINDER OF THE SAMPLE.

2 (f) (I) IF A PETITION IS CONTESTED, THE PETITIONER SHALL ENSURE
3 THAT THE DISTRICT COURT HAS, OR HAS AVAILABLE, THE TRANSCRIPT
4 FROM THE ORIGINAL TRIAL IF THE PETITIONER WAS CONVICTED AT TRIAL,
5 THE POST-CONVICTION MOTION OR APPEAL THAT RESULTED IN A DISMISSAL
6 OF THE CASE THAT IS THE SUBJECT OF THE PETITION AND THE TRANSCRIPT
7 OF ANY HEARINGS ASSOCIATED WITH SUCH MOTION OR APPEAL; AND ANY
8 OTHER PLEADINGS OR TRANSCRIPTS FROM PROCEEDINGS THAT THE
9 PETITIONER SEEKS THE DISTRICT COURT TO CONSIDER.

10 (II) THE DISTRICT COURT SHALL USE ANY TRANSCRIPTS THAT ARE
11 WITHIN THE COURT RECORDS FOR THE JUDICIAL DISTRICT OF ANY
12 PROCEEDING INVOLVING THE CASE THAT IS THE SUBJECT OF THE PETITION
13 THAT THE PETITIONER OR THE RESPONDENT WANTS THE DISTRICT COURT
14 TO CONSIDER.

15 (g) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE
16 COLORADO RULES OF CIVIL PROCEDURE SHALL APPLY TO PETITIONS FILED
17 PURSUANT TO THIS SECTION. THE DISTRICT COURT MAY CONSIDER ANY
18 RELEVANT EVIDENCE REGARDLESS OF WHETHER IT WAS ADMISSIBLE IN, OR
19 EXCLUDED FROM, THE CRIMINAL TRIAL IN WHICH THE PETITIONER WAS
20 CONVICTED. NO EVIDENCE SHALL BE EXCLUDED ON GROUNDS THAT IT WAS
21 SEIZED OR OBTAINED IN VIOLATION OF THE UNITED STATES CONSTITUTION
22 OR THE STATE CONSTITUTION. THE DISTRICT COURT MAY CONSIDER THE
23 ONGOING INVESTIGATION AND PROSECUTION OF ANY OTHER INDIVIDUAL
24 FOR THE CRIMES COMMITTED WHEN DETERMINING THE TIMING AND SCOPE
25 OF THE HEARING IF THE CLAIM IS UNCONTESTED OR THE TRIAL IF THE
26 CLAIM IS CONTESTED.

27 (6) AS SOON AS PRACTICABLE GIVEN THE UNIQUE CIRCUMSTANCES

1 OF CLAIMS FILED PURSUANT TO THIS SECTION, THE DISTRICT COURT SHALL
2 ACT AS FOLLOWS:

3 (a) UPON RECEIPT OF AN UNCONTESTED RESPONSE TO A PETITION,
4 THE DISTRICT COURT SHALL ISSUE A FINAL ORDER ON THE PETITION,
5 FINDING THAT THE PETITIONER IS ACTUALLY INNOCENT. IF THE DISTRICT
6 COURT ISSUES A FINAL ORDER PURSUANT TO THIS PARAGRAPH (a), THE
7 DISTRICT COURT SHALL INCLUDE DIRECTIONS TO THE STATE COURT
8 ADMINISTRATOR TO ACT AS DESCRIBED IN SECTION 13-3-114, C.R.S.

9 (b) UPON RECEIPT OF A RESPONSE CONTESTING THE PETITIONER'S
10 DECLARATION OF ACTUAL INNOCENCE OR HIS OR HER ELIGIBILITY FOR
11 COMPENSATION REGARDLESS OF PETITIONER'S CLAIM OF ACTUAL
12 INNOCENCE, OR BOTH, THE DISTRICT COURT SHALL SET THE MATTER FOR
13 A TRIAL TO THE DISTRICT COURT OR, AT THE WRITTEN ELECTION OF EITHER
14 PARTY, TO A TRIAL TO A JURY OF SIX, AT WHICH TRIAL THE BURDEN SHALL
15 BE ON THE PETITIONER TO SHOW BY CLEAR AND CONVINCING EVIDENCE
16 THAT HE OR SHE IS ACTUALLY INNOCENT OF ALL CRIMES THAT ARE THE
17 SUBJECT OF THE PETITION, AND THAT HE OR SHE IS ELIGIBLE TO RECEIVE
18 COMPENSATION PURSUANT TO THIS ARTICLE. A TRIAL TO A JURY OF SIX
19 MUST RESULT IN A UNANIMOUS VERDICT. FOLLOWING A TRIAL TO THE
20 DISTRICT COURT, THE COURT SHALL ISSUE A FINAL ORDER ON THE
21 PETITION, WHICH ORDER SHALL INCLUDE FINDINGS OF FACT AS TO
22 WHETHER THE PETITIONER HAS ESTABLISHED BY CLEAR AND CONVINCING
23 EVIDENCE THAT HE OR SHE IS ACTUALLY INNOCENT AND WHETHER THE
24 PETITIONER IS ELIGIBLE FOR COMPENSATION UNDER THIS ARTICLE. IF THE
25 COURT FINDS THAT THE PETITIONER IS ACTUALLY INNOCENT AND ELIGIBLE
26 FOR COMPENSATION PURSUANT TO THIS ARTICLE, THE DISTRICT COURT
27 SHALL ISSUE A FINAL ORDER AWARDING THE PETITIONER COMPENSATION

1 PURSUANT TO SECTION 13-65-103. UPON A FINDING BY A JURY OF ACTUAL
2 INNOCENCE, THE DISTRICT COURT SHALL ALSO ISSUE AN ORDER AWARDING
3 THE PETITIONER COMPENSATION PURSUANT TO SECTION 13-65-103.

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

5 (b) IF THE PETITIONER APPEALS THE AMOUNT OF COMPENSATION
6 AWARDED, THE STATE COURT ADMINISTRATOR SHALL NOT DELAY IN
7 PAYING THE PETITIONER PURSUANT TO THE DIRECTIONS OF THE DISTRICT
8 COURT WHILE THE APPEAL IS PENDING.

9 (c) IF THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY APPEALS
10 THE OUTCOME OF THE TRIAL DESCRIBED IN SUBSECTION (6) OF THIS
11 SECTION, THE STATE COURT ADMINISTRATOR SHALL NOT DELAY IN PAYING
12 THE PETITIONER PURSUANT TO THE DIRECTIONS OF THE DISTRICT COURT
13 WHILE THE APPEAL IS PENDING.

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

18 **13-65-103. Compensation for certain exonerated persons -**
19 **monetary compensation - financial literacy training - penalty for lack**
20 **of a qualified health plan - expungement of records - damages**
21 **awarded in civil actions.** (1) EXCEPT AS OTHERWISE PROVIDED IN THIS
22 ARTICLE, A DISTRICT COURT SHALL DIRECT THE STATE COURT
23 ADMINISTRATOR TO COMPENSATE AN EXONERATED PERSON, OR AN
24 IMMEDIATE FAMILY MEMBER OF AN EXONERATED PERSON, WHO IS
25 DETERMINED BY A DISTRICT COURT PURSUANT TO SECTION 13-65-102 TO
26 BE ACTUALLY INNOCENT AND ELIGIBLE TO RECEIVE COMPENSATION
27 PURSUANT TO THIS ARTICLE.

1 (2) A DISTRICT COURT THAT DIRECTS THE STATE COURT
2 ADMINISTRATOR TO COMPENSATE AN EXONERATED PERSON OR AN
3 IMMEDIATE FAMILY MEMBER OF AN EXONERATED PERSON PURSUANT TO
4 THIS SECTION SHALL REDUCE THE DIRECTIONS TO WRITING AND INCLUDE
5 WITHIN THE DIRECTIONS:

6 (a) THE EXONERATED PERSON'S NAME;

7 (b) THE DATE UPON WHICH THE ORDER IS ISSUED;

8 (c) THE FELONY OR FELONIES, IF ANY, OF WHICH THE EXONERATED
9 PERSON HAS BEEN EXONERATED AND EACH CONVICTION OR ADJUDICATION
10 OF THE EXONERATED PERSON, IF ANY, THAT HAS BEEN VACATED OR
11 REVERSED;

12 (d) THE DATE UPON WHICH THE EXONERATED PERSON WAS
13 CONVICTED OR ADJUDICATED AND THE DATES DURING WHICH THE
14 EXONERATED PERSON WAS INCARCERATED AS A RESULT OF SUCH
15 CONVICTION OR ADJUDICATION;

16 (e) A STATEMENT THAT THE EXONERATED PERSON, OR THE
17 IMMEDIATE FAMILY MEMBER OF THE EXONERATED PERSON, IS ENTITLED
18 TO COMPENSATION FROM THE STATE, WHICH COMPENSATION SHALL
19 INCLUDE:

20 (I) AN AWARD OF MONETARY COMPENSATION, AS DESCRIBED IN
21 SUBSECTION (3) OF THIS SECTION;

22 (II) TUITION WAIVERS AT STATE INSTITUTIONS OF HIGHER
23 EDUCATION FOR THE EXONERATED PERSON AND FOR ANY CHILDREN AND
24 CUSTODIAL CHILDREN OF HIS OR HERS WHO WERE CONCEIVED OR LEGALLY
25 ADOPTED BEFORE THE EXONERATED PERSON WAS INCARCERATED OR
26 PLACED IN STATE CUSTODY FOR THE OFFENSE OF WHICH HE OR SHE HAS
27 BEEN EXONERATED, AS DESCRIBED IN SECTION 23-1-132, C.R.S.; EXCEPT

1 THAT:

2 (A) NO OTHER IMMEDIATE FAMILY MEMBERS OF THE EXONERATED
3 PERSON SHALL BE ELIGIBLE FOR SUCH TUITION WAIVERS; AND

4 (B) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,
5 NEITHER AN EXONERATED PERSON NOR A CHILD OR CUSTODIAL CHILD OF
6 AN EXONERATED PERSON SHALL BE ELIGIBLE FOR A TUITION WAIVER
7 PURSUANT TO THIS SUBPARAGRAPH (II) UNLESS THE EXONERATED PERSON
8 WAS WRONGFULLY INCARCERATED FOR AT LEAST THREE YEARS.

9 (III) COMPENSATION FOR CHILD SUPPORT PAYMENTS OWED BY THE
10 EXONERATED PERSON THAT BECAME DUE DURING HIS OR HER
11 INCARCERATION OR PLACEMENT IN STATE CUSTODY, AND INTEREST ON
12 CHILD SUPPORT ARREARAGES THAT ACCRUED DURING HIS OR HER
13 INCARCERATION OR PLACEMENT IN STATE CUSTODY BUT WHICH HAVE NOT
14 BEEN PAID;

15 (IV) REASONABLE ATTORNEY FEES FOR BRINGING A CLAIM UNDER
16 THIS SECTION; AND

17 (V) THE AMOUNT OF ANY FINE, PENALTY, COURT COSTS, OR
18 RESTITUTION IMPOSED UPON AND PAID BY THE EXONERATED PERSON AS A
19 RESULT OF HIS OR HER WRONGFUL CONVICTION OR ADJUDICATION. THIS
20 SUBPARAGRAPH (V) SHALL NOT BE INTERPRETED TO REQUIRE THE
21 REIMBURSEMENT OF RESTITUTION PAYMENTS BY ANY PARTY TO WHOM
22 THE EXONERATED PERSON MADE RESTITUTION PAYMENTS AS A RESULT OF
23 HIS OR HER WRONGFUL CONVICTION OR ADJUDICATION.

24 (f) A STATEMENT NOTIFYING THE PERSON AND THE STATE COURT
25 ADMINISTRATOR THAT, PURSUANT TO SECTION 24-30-209 (4), C.R.S., THE
26 EXONERATED PERSON IS REQUIRED TO COMPLETE A PERSONAL FINANCIAL
27 MANAGEMENT INSTRUCTION COURSE BEFORE THE STATE COURT

1 ADMINISTRATOR MAY ISSUE TO THE EXONERATED PERSON MORE THAN ONE
2 ANNUAL PAYMENT OF MONETARY COMPENSATION.

3 (g) A STATEMENT NOTIFYING THE EXONERATED PERSON AND THE
4 STATE COURT ADMINISTRATOR THAT, PURSUANT TO SECTION 13-3-114, IN
5 EACH YEAR IN WHICH AN EXONERATED PERSON RECEIVES ANY ANNUAL
6 PAYMENT FROM THE STATE COURT ADMINISTRATOR, THE EXONERATED
7 PERSON'S ANNUAL PAYMENT SHALL BE REDUCED BY TEN THOUSAND
8 DOLLARS IF THE EXONERATED PERSON FAILS TO PRESENT TO THE STATE
9 COURT ADMINISTRATOR A POLICY OR CERTIFICATE SHOWING THAT THE
10 EXONERATED PERSON HAS PURCHASED OR OTHERWISE ACQUIRED A
11 QUALIFIED HEALTH PLAN FOR HIMSELF OR HERSELF AND HIS OR HER
12 DEPENDENTS THAT IS VALID FOR AT LEAST SIX MONTHS.

13 (3) (a) EXCEPT AS LIMITED BY THE PROVISIONS OF THIS ARTICLE,
14 AN EXONERATED PERSON SHALL RECEIVE MONETARY COMPENSATION IN
15 AN AMOUNT OF SEVENTY THOUSAND DOLLARS FOR EACH YEAR THAT HE OR
16 SHE WAS INCARCERATED FOR THE FELONY OF WHICH HE OR SHE HAS BEEN
17 EXONERATED. IN ADDITION TO THIS AMOUNT, AN EXONERATED PERSON
18 SHALL RECEIVE COMPENSATION IN AN AMOUNT OF:

19 (I) FIFTY THOUSAND DOLLARS FOR EACH YEAR THAT HE OR SHE
20 WAS INCARCERATED AND SENTENCED TO EXECUTION PURSUANT TO PART
21 12 OF ARTICLE 1.3 OF TITLE 18, C.R.S.; AND

22 (II) TWENTY-FIVE THOUSAND DOLLARS FOR EACH YEAR THAT HE
23 OR SHE SERVED ON PAROLE, ON PROBATION, OR AS A REGISTERED SEX
24 OFFENDER AFTER A PERIOD OF INCARCERATION AS A RESULT OF THE
25 FELONY OF WHICH HE OR SHE HAS BEEN EXONERATED AND NOT FOR ANY
26 OTHER CRIMINAL OFFENSE.

27 (b) EXCEPT AS LIMITED BY THE PROVISIONS OF THIS ARTICLE, IN

1 ADDITION TO THE AMOUNT DESCRIBED IN PARAGRAPH (a) OF THIS
2 SUBSECTION (3), AN EXONERATED PERSON SHALL RECEIVE COMPENSATION
3 IN A PRORATED AMOUNT THAT IS PROPORTIONATE TO THE LENGTH OF:

4 (I) EACH PARTIAL YEAR THAT HE OR SHE WAS INCARCERATED OR
5 PLACED IN STATE CUSTODY;

6 (II) EACH PARTIAL YEAR THAT HE OR SHE WAS INCARCERATED AND
7 SENTENCED TO EXECUTION PURSUANT TO PART 12 OF ARTICLE 1.3 OF TITLE
8 18, C.R.S.; AND

9 (III) EACH PARTIAL YEAR THAT HE OR SHE SERVED ON PAROLE, ON
10 PROBATION, OR AS A REGISTERED SEX OFFENDER AFTER A PERIOD OF
11 INCARCERATION AS A RESULT OF THE FELONY OF WHICH HE OR SHE HAS
12 BEEN EXONERATED AND NOT FOR ANY OTHER CRIMINAL OFFENSE.

13 (4) A COURT THAT DIRECTS THE STATE COURT ADMINISTRATOR TO
14 COMPENSATE AN EXONERATED PERSON OR AN IMMEDIATE FAMILY
15 MEMBER OF AN EXONERATED PERSON SHALL SUBMIT COPIES OF THE
16 DIRECTIONS TO:

17 (a) THE EXONERATED PERSON OR IMMEDIATE FAMILY MEMBER OF
18 THE EXONERATED PERSON;

19 (b) THE STATE COURT ADMINISTRATOR;

20 (c) THE ATTORNEY GENERAL;

21 (d) THE DISTRICT ATTORNEY OF THE JUDICIAL DISTRICT IN WHICH
22 THE CASE ORIGINATED;

23 (e) THE STATE DEPARTMENT OF CORRECTIONS;

24 (f) THE STATE DEPARTMENT OF LABOR AND EMPLOYMENT;

25 (g) THE STATE DEPARTMENT OF REVENUE; AND

26 (h) THE COLORADO COMMISSION ON HIGHER EDUCATION.

27 (5) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE

1 CONTRARY, A COURT SHALL NOT DIRECT THE STATE COURT
2 ADMINISTRATOR TO COMPENSATE ANY EXONERATED PERSON OR
3 IMMEDIATE FAMILY MEMBER OF AN EXONERATED PERSON FOR ANY PERIOD
4 OF INCARCERATION DURING WHICH THE PERSON WAS CONCURRENTLY
5 SERVING A SENTENCE FOR AN OFFENSE OF WHICH HE OR SHE HAS NOT BEEN
6 EXONERATED.

7 (6) THE AMOUNT OF MONETARY COMPENSATION AWARDED TO AN
8 EXONERATED PERSON PURSUANT TO THIS SECTION SHALL NOT BE SUBJECT
9 TO:

10 (a) ANY CAP APPLICABLE TO PRIVATE PARTIES IN CIVIL LAWSUITS;

11 OR

12 (b) ANY STATE INCOME TAX, EXCEPT AS TO THOSE PORTIONS OF
13 THE JUDGMENT AWARDED AS ATTORNEYS' FEES FOR BRINGING A CLAIM
14 UNDER THIS SECTION AS DESCRIBED IN SECTION 39-22-104 (4) (p), C.R.S.

15 (7) (a) A COURT THAT DIRECTS THE STATE COURT ADMINISTRATOR
16 TO COMPENSATE AN EXONERATED PERSON OR AN IMMEDIATE FAMILY
17 MEMBER OF AN EXONERATED PERSON SHALL ORDER ALL RECORDS
18 RELATING TO THE EXONERATED PERSON'S WRONGFUL CONVICTION OR
19 ADJUDICATION TO BE EXPUNGED AS IF SUCH EVENTS HAD NEVER TAKEN
20 PLACE AND SUCH RECORDS HAD NEVER EXISTED. THE COURT SHALL
21 DIRECT SUCH AN EXPUNGEMENT ORDER TO EVERY PERSON OR AGENCY
22 THAT MAY HAVE CUSTODY OF ANY PART OF ANY RECORDS RELATING TO
23 THE EXONERATED PERSON'S WRONGFUL CONVICTION OR ADJUDICATION.

24 (b) IF A COURT ISSUES AN EXPUNGEMENT ORDER PURSUANT TO
25 PARAGRAPH (a) OF THIS SUBSECTION (7), A COURT, LAW ENFORCEMENT
26 AGENCY, OR OTHER STATE AGENCY THAT MAINTAINS RECORDS RELATING
27 TO THE EXONERATED PERSON'S WRONGFUL CONVICTION OR ADJUDICATION

1 SHALL PHYSICALLY SEAL SUCH RECORDS AND THEREAFTER TREAT THE
2 RECORDS AS CONFIDENTIAL. RECORDS THAT HAVE BEEN SEALED
3 PURSUANT TO THIS SUBSECTION (7) SHALL BE MADE AVAILABLE TO A
4 COURT OR A LAW ENFORCEMENT AGENCY, INCLUDING BUT NOT LIMITED TO
5 A DISTRICT ATTORNEY'S OFFICE OR THE ATTORNEY GENERAL, UPON A
6 SHOWING OF GOOD CAUSE.

7 (8) (a) A COURT THAT DIRECTS THE STATE COURT ADMINISTRATOR
8 TO COMPENSATE AN EXONERATED PERSON OR AN IMMEDIATE FAMILY
9 MEMBER OF AN EXONERATED PERSON SHALL REDUCE THE EXONERATED
10 PERSON'S AWARD OF MONETARY COMPENSATION, AS DESCRIBED IN
11 PARAGRAPH (b) OF THIS SUBSECTION (8), IF, PRIOR TO THE ISSUANCE OF
12 THE AWARD:

13 (I) THE EXONERATED PERSON PREVAILS IN OR SETTLES A CIVIL
14 ACTION AGAINST THE STATE OR AGAINST ANY OTHER GOVERNMENT BODY
15 IN A CIVIL ACTION CONCERNING THE SAME ACTS THAT ARE THE BASES FOR
16 THE PETITION FOR COMPENSATION; AND

17 (II) THE JUDGMENT RENDERED IN THE CIVIL ACTION OR THE
18 SETTLEMENT OF THE CIVIL ACTION INCLUDES AN AWARD OF MONETARY
19 DAMAGES TO THE EXONERATED PERSON.

20
21 (b) UNDER THE CIRCUMSTANCES DESCRIBED IN PARAGRAPH (a) OF
22 THIS SUBSECTION (8), THE COURT SHALL REDUCE AN EXONERATED
23 PERSON'S AWARD OF MONETARY COMPENSATION BY AN AMOUNT THAT IS
24 EQUAL TO THE AMOUNT OF MONETARY DAMAGES THAT THE EXONERATED
25 PERSON IS AWARDED AND COLLECTS IN THE CIVIL ACTION; EXCEPT THAT
26 A COURT SHALL NOT OFFSET ANY AMOUNT EXCEEDING THE TOTAL
27 AMOUNT OF MONETARY COMPENSATION AWARDED TO THE EXONERATED

1 PERSON PURSUANT TO THIS SECTION.

2 (9) (a) EXCEPT WHEN PROCURED BY FRAUD, A COURT'S FINDING
3 THAT A PERSON IS ACTUALLY INNOCENT AND ELIGIBLE FOR COMPENSATION
4 PURSUANT TO THIS ARTICLE SHALL BE DEEMED A FINAL AND CONCLUSIVE
5 DISPOSITION OF THE MATTER OF THE EXONERATED PERSON'S WRONGFUL
6 INCARCERATION OR PLACEMENT IN STATE CUSTODY.

7 (b) A COURT'S FINDING THAT A PERSON IS ACTUALLY INNOCENT
8 AND ELIGIBLE FOR COMPENSATION PURSUANT TO THIS ARTICLE SHALL NOT
9 BE INTERPRETED TO LIMIT THE PERSON'S ABILITY TO PURSUE AN ACTION
10 FOR DAMAGES AGAINST AN ENTITY THAT IS NOT AN EMPLOYEE, AGENT, OR
11 AGENCY OF THE STATE GOVERNMENT.

12 **SECTION 3.** In Colorado Revised Statutes, add 13-3-114 as
13 follows:

14 **13-3-114. State court administrator - compensation for**
15 **exonerated persons - definitions - annual payments - child support**
16 **payments - financial literacy training - qualified health plan -**
17 **damages awarded in civil actions - reimbursement to the state.** (1) AS
18 USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

19 (a) "ANNUAL PAYMENT" MEANS A PAYMENT OF MONETARY
20 COMPENSATION MADE BY THE STATE COURT ADMINISTRATOR OR HIS OR
21 HER DESIGNEE TO AN EXONERATED PERSON PURSUANT TO THIS SECTION.
22 AN ANNUAL PAYMENT SHALL BE IN THE AMOUNT OF ONE HUNDRED
23 THOUSAND DOLLARS, WHICH AMOUNT SHALL BE ADJUSTED ANNUALLY BY
24 THE STATE AUDITOR TO ACCOUNT FOR INFLATION; EXCEPT THAT:

25 (I) IF THE REMAINING AMOUNT OF THE STATE'S DUTY OF
26 MONETARY COMPENSATION OWED TO THE EXONERATED PERSON IS LESS
27 THAN ONE HUNDRED THOUSAND DOLLARS, THE AMOUNT OF THE ANNUAL

1 PAYMENT SHALL BE EQUAL TO THE REMAINING AMOUNT; AND

2 (II) THE AMOUNT OF AN ANNUAL PAYMENT MAY BE REDUCED AS
3 DESCRIBED IN SUBSECTION (5) OF THIS SECTION.

4 (b) "EXONERATED PERSON" MEANS A PERSON WHO HAS BEEN
5 DETERMINED BY A DISTRICT COURT PURSUANT TO SECTION 13-65-102 TO
6 BE ACTUALLY INNOCENT, AS DEFINED IN SECTION 13-65-101 (1).

7 (c) "INCARCERATION" MEANS A PERSON'S CUSTODY IN A COUNTY
8 JAIL OR A CORRECTIONAL FACILITY WHILE HE OR SHE SERVES A SENTENCE
9 ISSUED PURSUANT TO THE PERSON'S CONVICTION OF A FELONY OR
10 PURSUANT TO THE PERSON'S ADJUDICATION AS A JUVENILE DELINQUENT
11 FOR THE COMMISSION OF ONE OR MORE OFFENSES THAT WOULD BE
12 FELONIES IF COMMITTED BY A PERSON EIGHTEEN YEARS OF AGE OR OLDER.
13 FOR THE PURPOSES OF THIS SECTION, "INCARCERATION" INCLUDES
14 PLACEMENT AS A JUVENILE TO THE CUSTODY OF THE STATE DEPARTMENT
15 OF HUMAN SERVICES OR A COUNTY DEPARTMENT OF SOCIAL SERVICES.

16
17 (d) "PERSONAL FINANCIAL MANAGEMENT INSTRUCTION COURSE"
18 MEANS A PERSONAL FINANCIAL MANAGEMENT INSTRUCTION COURSE THAT
19 HAS BEEN APPROVED BY THE UNITED STATES TRUSTEE'S OFFICE PURSUANT
20 TO 11 U.S.C. SEC. 111.

21 (e) "STATE'S DUTY OF MONETARY COMPENSATION" MEANS THE
22 TOTAL AMOUNT OF MONETARY COMPENSATION OWED BY THE STATE TO AN
23 EXONERATED PERSON.

24 (2) NOT MORE THAN FOURTEEN DAYS AFTER THE STATE COURT
25 ADMINISTRATOR RECEIVES DIRECTIONS FROM A DISTRICT COURT
26 PURSUANT TO SECTION 13-65-103 TO COMPENSATE AN EXONERATED
27 PERSON, THE STATE COURT ADMINISTRATOR SHALL:

1 (a) ISSUE AN ANNUAL PAYMENT █ TO THE EXONERATED PERSON.
2 ANNUALLY THEREAFTER, ON OR BEFORE THE DATE THAT SUCH PAYMENT
3 WAS MADE, UNTIL THE STATE'S DUTY OF MONETARY COMPENSATION IS
4 SATISFIED, THE STATE COURT ADMINISTRATOR OR HIS OR HER DESIGNEE
5 SHALL ISSUE AN ANNUAL PAYMENT █ TO THE EXONERATED PERSON.

6 (b) PAY ON THE EXONERATED PERSON'S BEHALF █ ANY AMOUNT
7 OF COMPENSATION FOR CHILD SUPPORT PAYMENTS OWED BY THE
8 EXONERATED PERSON THAT BECAME DUE DURING HIS OR HER
9 INCARCERATION, OR ANY AMOUNT OF INTEREST ON CHILD SUPPORT
10 ARREARAGES THAT ACCRUED DURING HIS OR HER INCARCERATION BUT
11 WHICH HAVE NOT BEEN PAID, AS DESCRIBED IN SECTION 13-65-103 (2) (e)
12 (III), C.R.S. THE STATE COURT ADMINISTRATOR, OR HIS OR HER DESIGNEE,
13 SHALL MAKE SUCH PAYMENT IN A LUMP SUM TO THE APPROPRIATE COUNTY
14 DEPARTMENT OF SOCIAL SERVICES OR OTHER AGENCY RESPONSIBLE FOR
15 RECEIVING SUCH PAYMENTS NOT MORE THAN THIRTY DAYS AFTER THE
16 STATE COURT ADMINISTRATOR RECEIVES DIRECTIONS FROM A DISTRICT
17 COURT TO COMPENSATE AN EXONERATED PERSON PURSUANT TO SECTION
18 13-65-103.

19 (c) PAY ON THE EXONERATED PERSON'S BEHALF █ THE AMOUNT
20 OF REASONABLE ATTORNEY FEES AWARDED TO THE EXONERATED PERSON
21 PURSUANT TO SECTION 13-65-103 (2) (e) (IV), C.R.S. █

22 (3) THE AMOUNT OF ANY PAYMENT MADE TO, OR ON BEHALF OF,
23 AN EXONERATED PERSON PURSUANT TO THIS SECTION SHALL BE DEDUCTED
24 FROM THE STATE'S DUTY OF MONETARY COMPENSATION TO THE
25 EXONERATED PERSON.

26 (4) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF
27 SUBSECTION (2) OF THIS SECTION, AFTER THE STATE COURT

1 ADMINISTRATOR HAS ISSUED ONE ANNUAL PAYMENT TO AN EXONERATED
2 PERSON, THE STATE COURT ADMINISTRATOR SHALL NOT ISSUE ANOTHER
3 ANNUAL PAYMENT TO THE EXONERATED PERSON UNTIL THE EXONERATED
4 PERSON HAS COMPLETED A PERSONAL FINANCIAL MANAGEMENT
5 INSTRUCTION COURSE.

6 (5) IN EACH YEAR IN WHICH THE STATE COURT ADMINISTRATOR
7 ISSUES AN ANNUAL PAYMENT TO AN EXONERATED PERSON, THE PERSON'S
8 ANNUAL PAYMENT SHALL BE REDUCED BY TEN THOUSAND DOLLARS IF THE
9 PERSON FAILS TO PRESENT TO THE STATE COURT ADMINISTRATOR A POLICY
10 OR CERTIFICATE SHOWING THAT THE PERSON HAS PURCHASED OR
11 OTHERWISE ACQUIRED A QUALIFIED HEALTH PLAN FOR HIMSELF OR
12 HERSELF AND HIS OR HER DEPENDENTS THAT IS VALID FOR AT LEAST SIX
13 MONTHS. SUCH AMOUNT SHALL BE DEDUCTED FROM THE STATE'S DUTY OF
14 MONETARY COMPENSATION TO THE EXONERATED PERSON AS IF SUCH
15 AMOUNT HAD BEEN ISSUED TO THE EXONERATED PERSON.

16 (6) (a) AN EXONERATED PERSON WHO RECEIVES MONETARY
17 COMPENSATION PURSUANT TO THIS SECTION SHALL REIMBURSE THE STATE
18 FOR THE TOTAL AMOUNT OF ANNUAL PAYMENTS MADE TO THE
19 EXONERATED PERSON PURSUANT TO THIS SECTION IF:

20 (I) THE EXONERATED PERSON PREVAILS IN OR SETTLES A CIVIL
21 ACTION AGAINST THE STATE OR AGAINST ANY OTHER GOVERNMENT BODY
22 IN A CIVIL ACTION CONCERNING THE SAME ACTS THAT ARE THE BASES FOR
23 THE PETITION FOR COMPENSATION; AND

24 (II) THE JUDGMENT RENDERED IN THE CIVIL ACTION OR THE
25 SETTLEMENT OF THE CIVIL ACTION INCLUDES AN AWARD OF MONETARY
26 DAMAGES TO THE EXONERATED PERSON.

27

1 (b) FOR THE PURPOSES OF PARAGRAPH (a) OF THIS SUBSECTION (6),
2 IN ANY PROCEEDING THAT SATISFIES THE DESCRIPTION SET FORTH IN SAID
3 PARAGRAPH (a), UPON A SATISFACTORY SHOWING BY THE STATE THAT THE
4 EXONERATED PERSON HAS RECEIVED MONETARY COMPENSATION
5 PURSUANT TO THIS SECTION, THE COURT SHALL OFFSET A SUFFICIENT
6 AMOUNT OF MONEYS FROM THE EXONERATED PERSON'S AWARD OF
7 MONETARY DAMAGES TO REIMBURSE THE STATE FOR SUCH MONETARY
8 COMPENSATION. THE COURT SHALL TRANSFER SUCH MONEYS TO THE
9 STATE TREASURER, WHO SHALL CREDIT THE MONEYS TO THE GENERAL
10 FUND.

11 [REDACTED]
12 (7) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, THE
13 STATE COURT ADMINISTRATOR SHALL NOT ISSUE AN ANNUAL PAYMENT TO
14 AN EXONERATED PERSON IF:

15 (a) (I) THE EXONERATED PERSON HAS PREVAILED IN OR SETTLED
16 A CIVIL ACTION FOR MONETARY DAMAGES AS DESCRIBED IN SUBSECTION
17 (6) OF THIS SECTION; AND

18 (II) THE AMOUNT OF THE MONETARY DAMAGES AWARDED BY THE
19 COURT IN THE CIVIL ACTION, OR STIPULATED IN THE SETTLEMENT OF THE
20 ACTION, AND COLLECTED BY THE EXONERATED PERSON EQUALS OR
21 EXCEEDS THE REMAINING AMOUNT OF THE STATE'S DUTY OF MONETARY
22 COMPENSATION TO THE EXONERATED PERSON;

23 (b) THE EXONERATED PERSON IS CONVICTED OF A CLASS 1 OR
24 CLASS 2 FELONY, OR OF AN OFFENSE THAT WOULD BE CONSIDERED A CLASS
25 1 OR CLASS 2 FELONY IN COLORADO, AFTER THE DATE UPON WHICH A
26 COURT ISSUES AN ORDER OF COMPENSATION ON THE PERSON'S BEHALF; OR

27 (c) THE PERSON HAS NOT YET COMPLETED A PERSONAL FINANCIAL

1 MANAGEMENT INSTRUCTION COURSE, AS REQUIRED BY SUBSECTION (4) OF
2 THIS SECTION.

3

4 **SECTION 4.** In Colorado Revised Statutes, **add** 23-1-132 as
5 follows:

6 **23-1-132. Commission directive - tuition waivers for**
7 **exonerated persons.** (1) ON OR BEFORE SEPTEMBER 1, 2013, THE
8 COMMISSION SHALL IMPLEMENT A POLICY WHEREBY, EXCEPT AS LIMITED
9 IN THIS SECTION, EACH INSTITUTION OF HIGHER EDUCATION IN THE STATE
10 SHALL WAIVE ALL TUITION COSTS, INCLUDING ANY MANDATORY FEES
11 ASSOCIATED WITH ATTENDANCE AT THE INSTITUTION, FOR AN
12 EXONERATED PERSON, AS DEFINED IN SECTION 13-65-101 (3), C.R.S., AND
13 FOR ANY CHILD OF AN EXONERATED PERSON OR CUSTODIAL CHILD OF AN
14 EXONERATED PERSON, AS DEFINED IN SECTION 13-65-101 (2), C.R.S., IF:

15 (a) THE EXONERATED PERSON, OR THE CHILD OR CUSTODIAL CHILD
16 OF THE EXONERATED PERSON, SATISFIES THE CRITERIA DESCRIBED IN
17 SUBSECTION (2) OF THIS SECTION;

18 (b) THE EXONERATED PERSON, OR THE CHILD OR CUSTODIAL CHILD
19 OF THE EXONERATED PERSON, SATISFIES THE ADMISSION REQUIREMENTS
20 OF THE INSTITUTION; AND

21 (c) THE EXONERATED PERSON, OR THE CHILD OR CUSTODIAL CHILD
22 OF THE EXONERATED PERSON, REMAINS IN SATISFACTORY ACADEMIC
23 STANDING IN ACCORDANCE WITH THE ACADEMIC POLICIES OF THE
24 INSTITUTION.

25 (2) TO RECEIVE A TUITION WAIVER FROM AN INSTITUTION OF
26 HIGHER EDUCATION AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION, AN
27 EXONERATED PERSON OR CHILD OR CUSTODIAL CHILD OF AN EXONERATED

1 PERSON SHALL APPLY TO THE INSTITUTION AND REQUEST SUCH WAIVER IN
2 WRITING NOT LATER THAN TWO YEARS AFTER THE LATER OF THE
3 FOLLOWING DATES:

4 (a) THE DATE UPON WHICH A COURT ISSUED TO THE STATE COURT
5 ADMINISTRATOR DIRECTIONS TO COMPENSATE AN EXONERATED PERSON
6 PURSUANT TO SECTION 13-65-103, C.R.S.; OR

7 (b) IN THE CASE OF A CHILD OR CUSTODIAL CHILD OF AN
8 EXONERATED PERSON, THE DATE UPON WHICH THE CHILD GRADUATED
9 FROM HIGH SCHOOL.

10 (3) THE POLICY DESCRIBED IN SUBSECTION (1) OF THIS SECTION
11 SHALL BE IMPLEMENTED BY ALL STATE-SUPPORTED INSTITUTIONS OF
12 HIGHER EDUCATION, INCLUDING BUT NOT LIMITED TO ALL
13 POSTSECONDARY INSTITUTIONS IN THE STATE SUPPORTED IN WHOLE OR IN
14 PART BY STATE FUNDS, INCLUDING JUNIOR COLLEGES AND COMMUNITY
15 COLLEGES, EXTENSION PROGRAMS OF THE STATE-SUPPORTED UNIVERSITIES
16 AND COLLEGES, LOCAL DISTRICT COLLEGES, AND AREA VOCATIONAL
17 SCHOOLS.

18 **SECTION 5.** In Colorado Revised Statutes, 39-22-104, **add** (4)
19 (p) as follows:

20 **39-22-104. Income tax imposed on individuals, estates, and**
21 **trusts - single rate - definitions - repeal.** (4) There shall be subtracted
22 from federal taxable income:

23 (p) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
24 1, 2013, AN AMOUNT EQUAL TO ANY AMOUNT RECEIVED AS
25 COMPENSATION FOR AN EXONERATED PERSON PURSUANT TO SECTION
26 13-65-103, C.R.S., ON OR AFTER JANUARY 1, 2014, EXCEPT AS TO THOSE
27 PORTIONS OF THE JUDGMENT AWARDED AS ATTORNEY'S FEES FOR

1 BRINGING A CLAIM UNDER SUCH SECTION.

2 **SECTION 6. Appropriation.** (1) In addition to any other
3 appropriation, there is hereby appropriated, out of any moneys in the
4 general fund not otherwise appropriated, to the department of higher
5 education, for the fiscal year beginning July 1, 2013, the sum of \$1,920,
6 or so much thereof as may be necessary, to be allocated to the college
7 opportunity fund program for stipends for students attending state
8 institutions. Said sum is further reappropriated to the state board for
9 community colleges and occupational education state system community
10 colleges for the implementation of this act.

11 (2) In addition to any other appropriation, there is hereby
12 appropriated, out of any moneys in the general fund not otherwise
13 appropriated, to the department of law, for the fiscal year beginning July
14 1, 2013, the sum of \$128,662 and 1.4 FTE, or so much thereof as may be
15 necessary, to be allocated to the special prosecutions unit for the
16 implementation of this act as follows:

- 17 (a) \$110,896 and 1.4 FTE for personal services;
- 18 (b) \$3,982 for travel and operating expenses; and
- 19 (c) \$13,784 for capital outlay expenses.

20 (3) In addition to any other appropriation, there is hereby
21 appropriated, out of any moneys in the general fund not otherwise
22 appropriated, to the judicial department, for the fiscal year beginning July
23 1, 2013, the sum of \$100,000, or so much thereof as may be necessary, to
24 be allocated to courts administration, centrally administered programs, for
25 the compensation for exonerated persons or immediate family members
26 of exonerated persons as required to implement this act.

27 **SECTION 7. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.