



Senator Steve Glazer, 7<sup>th</sup> Senate District, and Senator Josh Becker, 13<sup>th</sup> Senate District

Senate Bill - Criminal Procedure: Factual Innocence

SUMMARY

Senate Bill newly enacted SB 446 by ensuring the two processes by which the wrongfully convicted are compensated are aligned. Specifically, this legislation ensures that the process for obtaining compensation is consistent and not unduly burdensome on the state litigators responding to these claims.

BACKGROUND

In order to receive compensation, exonerated persons must prove either to a court or to the Victim's Compensation Board (VCB) that a crime was either not committed or, if committed, that they were not the perpetrator of the crime.

The claims process typically takes 2.5 years to complete and involves lengthy litigation. In these proceedings, claimants are not entitled to legal counsel and given the loss of financial opportunity caused by a period of incarceration, many of these individuals cannot afford private counsel. The state, on the other hand, has access to numerous resources to present their case.

legislation that was passed making a more fair and equitable compensation process by shifting the burden of proof from the wrongfully convicted person to the Attorney General in compensation proceedings that proceed in front of the Victim's Compensation Board. SB 446 received incredible bipartisan and bicameral support!

However, while SB 446 fairly shifted the burden to the Attorney General's office, the party of interest for the state, in compensation proceedings in front of the VCB, the law did not shift that burden to the District Attorney's

office, the party of interest for the state, if a wrongfully convicted person instead chose to pursue the existing process through the court. This omission has inadvertently tipped the scales to a more fair and efficient process in the VCB rather than having the same fair and efficient process in the court. This oversight has the potential for incentivizing wrongfully convicted persons to go through the VCB rather than the courts, likely placing an unbalanced burden on the Attorney General's office to handle these cases rather than them being fairly distributed through either process.

SOLUTION

This bill ensures that the changes created in SB 446, apply to Superior Court proceedings as well. Instead of placing the burden of proof on the claimant to prove to the court that they are factually innocent, the burden shifts to the district attorney to object to only those cases in which they believe the person should not be compensated. The district attorney's office must then prove by clear and convincing evidence that the claimant is not entitled to compensation.

SUPPORT

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FOR MORE INFORMATION

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