

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

SENATE FILE NO. \_\_\_\_\_

Compensation for persons exonerated based on DNA.

Sponsored by: Joint Judiciary Interim Committee

A BILL

for

1 AN ACT relating to criminal procedure; authorizing  
2 compensation and services for persons exonerated based on  
3 DNA testing; specifying conditions, requirements and  
4 limitations on authorized compensation and services;  
5 conforming provisions; and providing for an effective date.

6

7 *Be It Enacted by the Legislature of the State of Wyoming:*

8

9 **Section 1.** W.S. 7-12-316 is created to read:

10

11 **7-12-316. Compensation.**

12

13 (a) A movant is eligible for compensation and  
14 services as provided in this section if:

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2 (i) The court entered an order of actual  
3 innocence and exoneration pursuant to W.S. 7-12-310(c) or  
4 (d);

5

6 (ii) The movant has served in whole or in part a  
7 sentence of imprisonment for the conviction for which the  
8 order of actual innocence and exoneration was entered; and

9

10 (iii) At the time of entry of the order of  
11 actual innocence and exoneration, the movant was not  
12 serving and had not been ordered to serve a concurrent or  
13 consecutive sentence of imprisonment for a separate  
14 conviction.

15

16 (b) Subject to the appropriation of funds by the  
17 legislature and other limitations of this section, a movant  
18 who meets the eligibility criteria in subsection (a) of  
19 this section shall be provided:

20

21 (i) Compensation in the amount of fifty-five  
22 dollars (\$55.00) per day incarcerated not to exceed three  
23 hundred thousand dollars (\$300,000.00);

1

2 (ii) Job skills training for one (1) year. The  
3 training shall be provided by the department of workforce  
4 services under the program determined by the department to  
5 be most appropriate;

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7 (iii) Actual housing costs for one (1) year, not  
8 to exceed twelve thousand dollars (\$12,000.00);

9

10 (iv) Appropriate medical treatment and  
11 counseling services for three (3) years;

12

13 (v) Free tuition and mandatory fees for up to a  
14 total of eight (8) semesters of study at the University of  
15 Wyoming or any Wyoming community college. The University  
16 of Wyoming and all Wyoming community colleges shall  
17 cooperate to ensure that a total of not more than eight (8)  
18 semesters is provided under this section. The movant shall  
19 not be eligible for the benefits provided under this  
20 paragraph for any semester commencing more than ten (10)  
21 years after entry of the order of actual innocence and  
22 exoneration; and

23

1 (vi) Compensation for child support payments  
2 that became due during imprisonment and were not paid. The  
3 compensation for child support shall be paid on the  
4 movant's behalf to the department of family services for  
5 distribution to the obligee under a child support order.

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\*\*\* STAFF COMMENTS \*\*\*

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Compensation

10 The \$55 per day compensation is equivalent to \$20,075 per  
11 year. A daily amount was included to avoid prorating for  
12 partial years of imprisonment. The \$300,000 cap is  
13 equivalent to \$20,000 per year for 15 years.

14

15 Possible questions which the Committee may wish to consider  
16 include:

17 1. A major question to be resolved is the administration  
18 of the program. The draft places this with the department  
19 of administration and information. Even so, there are  
20 issues of actually getting services authorized to the  
21 movant, such as how "appropriate medical treatment and  
22 counseling services" are provided, i.e., exactly who  
23 provides the services and what is "appropriate".

24 2. Is the purpose of the bill to fulfill a moral  
25 obligation, to compensate for lost wages, to compensate for  
26 wrongful conduct by a state or county employee, to protect  
27 the state from liability, or some other purpose?

28 3. Should each exonerated person be treated the same?  
29 Should the amount of compensation vary depending on the  
30 existence of improper state conduct, the ability to re-  
31 integrate into society, or the assets of the exonerated  
32 person? If compensation should be based on a variety of  
33 factors, the bill could set forth the factors and require  
34 the court entering an order of exoneration to determine the  
35 amount and manner of compensation.

36 4. If the purpose of the bill is to fulfill a moral  
37 obligation alone, a short bill could be drafted which  
38 merely allows compensation to exonerated persons, but  
39 requires a later bill appropriating funds to compensate a  
40 particular individual.

1 5. This draft requires the exonerated person to waive any  
2 legal claim against the state in return for receiving  
3 assistance and compensation. Should an exonerated person  
4 be required to waive his claims (even if a court  
5 specifically found improper conduct led to the conviction)?  
6

7 Services

8 If the cost and administration of medical and other  
9 services are a concern, this subsection could provide that  
10 the compensation paid to an exonerated person shall not be  
11 considered an asset in calculating eligibility for public  
12 assistance and social services. Access to existing public  
13 programs could then eliminate the expense of paying for and  
14 administering these services for the limited number of  
15 people that may be exonerated based on DNA. Additionally,  
16 if services are required in return for a release of claims  
17 against the state, a person entitled to payment may argue  
18 that the state breached the contract by failing to provide  
19 adequate services.  
20

21 Paragraph (v) is patterned after W.S. 19-14-106 which  
22 provides free tuition and fees to veterans.  
23  
24

25 (c) The department of administration and information  
26 shall administer the provision of compensation and services  
27 provided for in this section.  
28

29 (d) A movant who meets the eligibility criteria  
30 established in subsection (a) of this section may present  
31 an application not more than two (2) years from entry of  
32 the order of actual innocence and exoneration to the  
33 general services division of the department of  
34 administration and information. If the department  
35 determines the movant is eligible for compensation under

1 this section and the amount of the compensation under  
2 paragraph (b)(i) of this section is equal to or less than  
3 twenty thousand dollars (\$20,000.00), payment to the movant  
4 shall be made in a lump sum. If the movant is determined  
5 eligible for compensation under paragraph (b)(i) of this  
6 section in excess of twenty thousand dollars (\$20,000.00),  
7 the movant shall receive an initial payment of twenty  
8 thousand dollars (\$20,000.00) and the remaining amount  
9 shall be provided by distributing funds appropriated for  
10 purposes of this section to the State Treasurer to purchase  
11 an annuity. The annuity shall provide equal payments to  
12 the movant of not more than twenty thousand dollars  
13 (\$20,000.00) annually over the life of the annuity. The  
14 annuity shall provide that it shall not be sold,  
15 discounted, or used as securitization for loans or  
16 mortgages. The annuity shall include a beneficiary  
17 designated by the movant and shall provide for the  
18 annuity's continued disbursement to the beneficiary in the  
19 event of the movant's death.

20

21 (i) In the event the movant dies before the  
22 expiration of the two (2) year period for presenting an  
23 application, the movant's estate may present an application

1 for the compensation which is authorized to be provided  
2 under paragraphs (b)(i) and (vi) of this section provided  
3 the application is presented within the time specified in  
4 subsection (d) of this section.

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6 **\*\*\* STAFF COMMENTS \*\*\***

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8 **At the direction of the Committee, staff contacted the**  
9 **State Treasurer's Office and was advised that the Office**  
10 **could purchase an annuity as set out in the above**  
11 **provision. Another option would be to provide that upon**  
12 **appropriation by the Legislature, the State Treasurer would**  
13 **make amortized payments to the exonerated person from the**  
14 **principal and earnings of the appropriation.**

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18 (e) The number of days for which compensation is  
19 provided under paragraph (b)(i) of this section shall be  
20 reduced proportionately for the number of days the movant's  
21 sentence of imprisonment was served concurrently with a  
22 sentence of imprisonment for a separate conviction.

23

24 (f) A movant may not receive compensation or services  
25 if he has any action pending against a governmental entity  
26 or an employee of any governmental entity involving the  
27 conviction for which the order of actual innocence and  
28 exoneration was entered.

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2 (g) Compensation to a movant may not be offset by any  
3 expenses incurred by a governmental entity, including  
4 expenses to secure custody of the movant and expenses to  
5 feed, clothe, house and provide medical care for the  
6 movant.

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8 (h) A movant who receives compensation or services  
9 may not bring any action against any governmental entity or  
10 an employee of any governmental entity involving the  
11 conviction for which the order of actual innocence and  
12 exoneration was entered.

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14 (i) A movant shall not receive compensation or  
15 services unless the movant signs a release and waiver on  
16 behalf of himself and his heirs, successors and assigns,  
17 forever releasing all governmental entities and their  
18 employees in the employees' official and individual  
19 capacity from all present and future claims involving the  
20 conviction for which the order of actual innocence and  
21 exoneration was entered. The release shall provide that any  
22 payment or provision of services to the movant does not  
23 constitute a waiver of sovereign immunity.



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2 (j) The provisions of the Wyoming Administrative  
3 Procedure Act are not applicable to the grant or denial of  
4 compensation or services under this section.

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6 (k) The payment of compensation or the provision of  
7 services under this section does not constitute a waiver of  
8 sovereign immunity.

9

10 (l) A movant is not entitled to compensation or  
11 services unless funds have been appropriated to the  
12 department of administration and information to provide  
13 compensation and services authorized under this section.

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15 **Section 2.** W.S. 7-12-303(a) by creating a new  
16 paragraph (iii) and by amending and renumbering (iii) as  
17 (iv), 1-39-104 and by creating 1-39-120(b) are amended to  
18 read:

19

20 **7-12-303. New trial; motion for post-conviction**  
21 **testing of DNA; motion contents; sufficiency of**  
22 **allegations, consent to DNA sample; definitions,**  
23 **compensation.**

1

2 (a) As used in this act:

3

4 (iii) "Governmental entity" means a governmental  
5 entity as defined by W.S. 1-39-103.

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7 ~~(iii)~~(iv) "This act" means W.S. 7-12-302 through  
8 ~~7-12-315~~7-12-316.

9

10 **1-39-104. Granting immunity from tort liability;**  
11 **liability on contracts; exceptions.**

12

13 (a) A governmental entity and its public employees  
14 while acting within the scope of duties are granted  
15 immunity from liability for any tort except as provided by  
16 W.S. 1-39-105 through 1-39-112 and limited by W.S. 1-39-  
17 121. Any immunity in actions based on a contract entered  
18 into by a governmental entity is waived except to the  
19 extent provided by the contract if the contract was within  
20 the powers granted to the entity and was properly executed  
21 and except as provided in W.S. 1-39-120(b) and 1-39-121.  
22 The claims procedures of W.S. 1-39-113 apply to contractual  
23 claims against governmental entities.

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2           **1-39-120. Exclusions from waiver of immunity.**

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4           (b) Notwithstanding the waiver of immunity for tort  
5 liability provided by W.S. 1-39-105 through 1-39-112 or the  
6 waiver of immunity in actions based on contract provided by  
7 W.S. 1-39-104, a governmental entity and its public  
8 employees while acting within the scope of duties are  
9 immune from a civil action in tort, contract or otherwise  
10 alleging, in whole or in part, improper denial of  
11 compensation or services provided for in W.S. 7-12-316.

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13           **Section 3.** This act is effective July 1, 2011.

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(END)