

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

HOUSE BILL 3511

By: Munson

AS INTRODUCED

An Act relating to wrongful incarcerations; amending 22 O.S. 2021, Section 19, which relates to procedures for filing petitions for expungement; providing for expedited hearings under certain circumstances; amending 51 O.S. Section 154, which relates to The Governmental Tort Claims Act; modifying scope of certain definition; increasing liability amount for claims of wrongful incarceration; providing for supplemental compensation under certain circumstances; authorizing standard annuity payments; providing guidelines and limitations for standard annuity payments; allowing claimants to obtain group health benefit plan coverage through the Department of Corrections; providing limitations; requiring payment of monthly contribution for coverage; modifying effective dates for certain claims; directing the Department of Corrections to provide certain notice to wrongfully imprisoned persons; providing for the waiver of resident and nonresident tuition, room and board, and mandatory fees for wrongfully incarcerated persons and their children; providing limitation for credit hours; defining term; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 22 O.S. 2021, Section 19, is amended to read as follows:

1       Section 19. A. Any person qualified under Section 18 of this  
2 title may petition the district court of the district in which the  
3 arrest information pertaining to the person is located for the  
4 sealing of all or any part of the record, except basic  
5 identification information.

6       B. Upon the filing of a petition or entering of a court order,  
7 the court shall set a date for a hearing and shall provide thirty  
8 (30) days of notice of the hearing to the prosecuting agency, the  
9 arresting agency, the Oklahoma State Bureau of Investigation, and  
10 any other person or agency whom the court has reason to believe may  
11 have relevant information related to the sealing of such record.

12       C. Upon a finding that the harm to privacy of the person in  
13 interest or dangers of unwarranted adverse consequences outweigh the  
14 public interest in retaining the records, the court may order such  
15 records, or any part thereof except basic identification  
16 information, to be sealed. If the court finds that neither sealing  
17 of the records nor maintaining of the records unsealed by the agency  
18 would serve the ends of justice, the court may enter an appropriate  
19 order limiting access to such records.

20       Any order entered under this subsection shall specify those  
21 agencies to which such order shall apply. Any order entered  
22 pursuant to this subsection may be appealed by the petitioner, the  
23 prosecuting agency, the arresting agency, or the Oklahoma State  
24 Bureau of Investigation to the Oklahoma Supreme Court in accordance

1 with the rules of the Oklahoma Supreme Court. In all such appeals,  
2 the Oklahoma State Bureau of Investigation is a necessary party and  
3 must be given notice of the appellate proceedings.

4 D. Upon the entry of an order to seal the records, or any part  
5 thereof, the subject official actions shall be deemed never to have  
6 occurred, and the person in interest and all criminal justice  
7 agencies may properly reply, upon any inquiry in the matter, that no  
8 such action ever occurred and that no such record exists with  
9 respect to such person.

10 E. Inspection of the records included in the order may  
11 thereafter be permitted by the court only upon petition by the  
12 person in interest who is the subject of such records, the Attorney  
13 General, or by the prosecuting agency and only to those persons and  
14 for such purposes named in such petition.

15 F. Employers, educational institutions, state and local  
16 government agencies, officials, and employees shall not, in any  
17 application or interview or otherwise, require an applicant to  
18 disclose any information contained in sealed records. An applicant  
19 need not, in answer to any question concerning arrest and criminal  
20 records, provide information that has been sealed, including any  
21 reference to or information concerning such sealed information and  
22 may state that no such action has ever occurred. Such an  
23 application may not be denied solely because of the refusal of the  
24

1 applicant to disclose arrest and criminal records information that  
2 has been sealed.

3 G. All arrest and criminal records information existing prior  
4 to the effective date of this section, except basic identification  
5 information, is also subject to sealing in accordance with  
6 subsection C of this section.

7 H. Nothing in this section shall be construed to authorize the  
8 physical destruction of any criminal justice records.

9 I. For the purposes of this section, sealed materials which are  
10 recorded in the same document as unsealed material may be recorded  
11 in a separate document, and sealed, then obliterated in the original  
12 document.

13 J. For the purposes of this section, district court index  
14 reference of sealed material shall be destroyed, removed or  
15 obliterated.

16 K. Any record ordered to be sealed pursuant to this section, if  
17 not unsealed within ten (10) years of the expungement order, may be  
18 obliterated or destroyed at the end of the ten-year period.

19 L. Subsequent to records being sealed as provided herein, the  
20 prosecuting agency, the arresting agency, the Oklahoma State Bureau  
21 of Investigation, or other interested person or agency may petition  
22 the court for an order unsealing said records. Upon filing of a  
23 petition the court shall set a date for hearing, which hearing may  
24 be closed at the discretion of the court, and shall provide thirty

1 (30) days of notice to all interested parties. If, upon hearing,  
2 the court determines there has been a change of conditions or that  
3 there is a compelling reason to unseal the records, the court may  
4 order all or a portion of the records unsealed.

5 M. Nothing herein shall prohibit the introduction of evidence  
6 regarding actions sealed pursuant to the provisions of this section  
7 at any hearing or trial for purposes of impeaching the credibility  
8 of a witness or as evidence of character testimony pursuant to  
9 Section 2608 of Title 12 of the Oklahoma Statutes.

10 N. If a person qualifies for an expungement under the  
11 provisions of paragraph 3 of subsection A of Section 18 of this  
12 title and said petition for expungement is granted by the court, the  
13 court shall order the reimbursement of all filing fees and court  
14 costs incurred by the petitioner as a result of filing the  
15 expungement request.

16 O. If a person qualifies for an expungement under the  
17 provisions of paragraph 3 or 4 of subsection A of Section 18 of this  
18 title, the person may request an expedited hearing upon filing a  
19 petition for expungement. The court may grant the request to  
20 expedite the hearing and shall provide a notice of ten (10) days for  
21 said hearing to the prosecuting agency, the arresting agency, the  
22 Oklahoma State Bureau of Investigation, and any other person or  
23 agency whom the court has reason to believe may have relevant  
24 information related to the sealing of such record. Any order

1 entered pursuant to the provisions of this subsection shall be  
2 subject to the provisions of subsections C through M of this  
3 section.

4 SECTION 2. AMENDATORY 51 O.S. 2021, Section 154, is  
5 amended to read as follows:

6 Section 154. A. The total liability of the state and its  
7 political subdivisions on claims within the scope of The  
8 Governmental Tort Claims Act, arising out of an accident or  
9 occurrence happening after October 1, 1985, Section 151 et seq. of  
10 this title, shall not exceed:

11 1. Twenty-five Thousand Dollars (\$25,000.00) for any claim or  
12 to any claimant who has more than one claim for loss of property  
13 arising out of a single act, accident, or occurrence;

14 2. Except as otherwise provided in this paragraph, One Hundred  
15 Twenty-five Thousand Dollars (\$125,000.00) to any claimant for a  
16 claim for any other loss arising out of a single act, accident, or  
17 occurrence. The limit of liability for the state or any city or  
18 county with a population of three hundred thousand (300,000) or more  
19 according to the latest Federal Decennial Census, or a political  
20 subdivision as defined in subparagraph s of paragraph 11 of Section  
21 152 of this title, shall not exceed One Hundred Seventy-five  
22 Thousand Dollars (\$175,000.00). Except however, the limits of the  
23 liability for the University Hospitals and State Mental Health  
24 Hospitals operated by the Department of Mental Health and Substance

1 Abuse Services for claims arising from medical negligence shall be  
2 Two Hundred Thousand Dollars (\$200,000.00). For claims arising from  
3 medical negligence by any licensed physician, osteopathic physician  
4 or certified nurse-midwife rendering prenatal, delivery or infant  
5 care services from September 1, 1991, through June 30, 1996,  
6 pursuant to a contract authorized by subsection B of Section 1-106  
7 of Title 63 of the Oklahoma Statutes and in conformity with the  
8 requirements of Section 1-233 of Title 63 of the Oklahoma Statutes,  
9 the limits of the liability shall be Two Hundred Thousand Dollars  
10 (\$200,000.00); or

11 3. One Million Dollars (\$1,000,000.00) for any number of claims  
12 arising out of a single occurrence or accident.

13 B. 1. Beginning on ~~May 28, 2003~~ July 1, 2022, claims shall be  
14 allowed for wrongful criminal felony conviction resulting in  
15 imprisonment if the claimant has received a full pardon on the basis  
16 of a written finding by the Governor of actual innocence for the  
17 crime for which the claimant was sentenced or has been granted  
18 judicial relief absolving the claimant of guilt on the basis of  
19 actual innocence of the crime for which the claimant was sentenced.  
20 The Governor or the court shall specifically state, in the pardon or  
21 order, the evidence or basis on which the finding of actual  
22 innocence is based.

23

24

1        2. As used in paragraph 1 of this subsection, for a claimant to  
2 recover based on "actual innocence", the individual must meet the  
3 following criteria:

4            a. the individual was charged, by indictment or  
5 information, with the commission of a public offense  
6 classified as a felony,

7            b. ~~the individual did not plead guilty to the offense~~  
8 ~~charged, or to any lesser included offense, but was~~  
9 ~~convicted of the offense,~~

10          ~~e.~~ the individual was sentenced to incarceration for a  
11 term of imprisonment as a result of the conviction,

12          ~~d.~~ c. the individual was imprisoned solely on the basis of  
13 the conviction for the offense, and

14          ~~e.~~ d. (1) in the case of a pardon, a determination was made  
15 by either the Pardon and Parole Board or the  
16 Governor that the offense for which the  
17 individual was convicted, sentenced and  
18 imprisoned, including any lesser offenses, was  
19 not committed by the individual, or

20            (2) in the case of judicial relief, a court of  
21 competent jurisdiction found by clear and  
22 convincing evidence that the offense for which  
23 the individual was convicted, sentenced and  
24 imprisoned, including any lesser included



1 offenses, was not committed by the individual and  
2 issued an order vacating, dismissing or reversing  
3 the conviction and sentence and providing that no  
4 further proceedings can be or will be held  
5 against the individual on any facts and  
6 circumstances alleged in the proceedings which  
7 had resulted in the conviction.

8 3. A claimant shall not be entitled to compensation for any  
9 part of a sentence in prison during which the claimant was also  
10 serving a concurrent sentence for a crime not covered by this  
11 subsection.

12 4. The total liability of the state and its political  
13 subdivisions on any claim within the scope of The Governmental Tort  
14 Claims Act arising out of wrongful criminal felony conviction  
15 resulting in imprisonment shall ~~not exceed One Hundred Seventy-five~~  
16 ~~Thousand Dollars (\$175,000.00)~~ be in an amount equal to Fifty  
17 Thousand Dollars (\$50,000.00) multiplied by the number of years  
18 served in prison, expressed as a fraction to reflect partial years.

19 5. In addition to the award of damages provided for in  
20 paragraph 4 of this subsection, a claimant who served his or her  
21 time on death row shall be entitled to receive supplemental  
22 compensation in the amount of Fifty Thousand Dollars (\$50,000.00)  
23 multiplied by the number of years the person served on death row,  
24 expressed as a fraction to reflect partial years.

1       6. In addition to the award of damages provided for in  
2 paragraph 4 of this subsection, a claimant who was released on  
3 parole or released under conditions of probation shall be entitled  
4 to receive supplemental compensation in the amount of Twenty-five  
5 Thousand Dollars (\$25,000.00) multiplied by the number of years the  
6 person was on parole or under probation, expressed as a fraction to  
7 reflect partial years.

8       7. A claimant entitled to compensation under the provisions of  
9 this subsection shall be entitled to standard annuity payments.  
10 Standard annuity payments shall be based on a present value sum  
11 equal to the amount to which the claimant is entitled under  
12 paragraphs 4, 5, or 6 of this subsection. Standard annuity payments  
13 shall be payable in equal monthly installments for the life of the  
14 claimant. Annuity payments shall be based on a five percent (5%)  
15 per annum interest rate and other actuarial factors within the  
16 discretion of the Director of the Office of Management and  
17 Enterprise Services. Annuity payments under the provisions of this  
18 paragraph shall not be accelerated, deferred, increased, or  
19 decreased. A claimant entitled to annuity payments under the  
20 provisions of this paragraph shall not sell, mortgage or otherwise  
21 encumber, or anticipate the payments, wholly or partly, by  
22 assignment or otherwise.

23       8. A claimant entitled to compensation under the provisions of  
24 this subsection shall be eligible to obtain group health benefit

1 plan coverage through the Department of Corrections as if the person  
2 were an employee of the Department. The provisions of this  
3 paragraph shall not entitle the spouse or other dependent or family  
4 member to group health benefit plan coverage. Coverage may be  
5 obtained under the provisions of this paragraph for a period of time  
6 equal to the total period the claimant served for the crime for  
7 which the claimant was wrongfully incarcerated, including any period  
8 during which the claimant was released on parole or released under  
9 conditions of probation. A claimant who elects to obtain coverage  
10 under the provisions of this paragraph shall pay a monthly  
11 contribution equal to the total amount of the monthly contributions  
12 for that coverage for an employee of the Department.

13 9. The provisions of this subsection shall apply to convictions  
14 occurring on ~~or before May 28, 2003, as well as convictions~~  
15 ~~occurring and~~ after ~~May 28, 2003~~ July 1, 2022. ~~If a court of~~  
16 ~~competent jurisdiction finds that retroactive application of this~~  
17 ~~subsection is unconstitutional, the prospective application of this~~  
18 ~~subsection shall remain valid.~~

19 C. No award for damages in an action or any claim against the  
20 state or a political subdivision shall include punitive or exemplary  
21 damages.

22 D. When the amount awarded to or settled upon multiple  
23 claimants exceeds the limitations of this section, any party may  
24 apply to the district court which has jurisdiction of the cause to

1 apportion to each claimant the claimant's proper share of the total  
2 amount as limited herein. The share apportioned to each claimant  
3 shall be in the proportion that the ratio of the award or settlement  
4 made to him bears to the aggregate awards and settlements for all  
5 claims against the state or its political subdivisions arising out  
6 of the occurrence. When the amount of the aggregate losses  
7 presented by a single claimant exceeds the limits of paragraph 1 or  
8 2 of subsection A of this section, each person suffering a loss  
9 shall be entitled to that person's proportionate share.

10 E. The total liability of resident physicians and interns while  
11 participating in a graduate medical education program of the  
12 University of Oklahoma College of Medicine, its affiliated  
13 institutions and the Oklahoma College of Osteopathic Medicine and  
14 Surgery shall not exceed One Hundred Thousand Dollars (\$100,000.00).

15 F. The state or a political subdivision may petition the court  
16 that all parties and actions arising out of a single accident or  
17 occurrence shall be joined as provided by law, and upon order of the  
18 court the proceedings upon good cause shown shall be continued for a  
19 reasonable time or until such joinder has been completed. The state  
20 or political subdivision shall be allowed to interplead in any  
21 action which may impose on it any duty or liability pursuant to The  
22 Governmental Tort Claims Act.

23 G. The liability of the state or political subdivision under  
24 The Governmental Tort Claims Act shall be several from that of any

1 other person or entity, and the state or political subdivision shall  
2 only be liable for that percentage of total damages that corresponds  
3 to its percentage of total negligence. Nothing in this section  
4 shall be construed as increasing the liability limits imposed on the  
5 state or political subdivision under The Governmental Tort Claims  
6 Act.

7       SECTION 3.       NEW LAW       A new section of law to be codified  
8 in the Oklahoma Statutes as Section 360.2 of Title 57, unless there  
9 is created a duplication in numbering, reads as follows:

10       A. The Department of Corrections shall provide to each  
11 wrongfully imprisoned person information, both orally and in  
12 writing, that includes:

13       1. Guidance on how to obtain compensation pursuant to  
14 subsection B of Section 154 of Title 51 of the Oklahoma Statutes;  
15 and

16       2. A list of and contact information for nonprofit advocacy  
17 groups, identified by the Department, that assist wrongfully  
18 imprisoned persons in filing claims for compensation under The  
19 Governmental Tort Claims Act.

20       B. The Department shall provide the information:

21       1. At the time of the release of the wrongfully imprisoned  
22 person from a penal institution; or

23       2. As soon as practicable after the Department has reason to  
24 believe that the person is entitled to compensation.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3218.7-2 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Within The Oklahoma State System of Higher Education or the system of career technology districts, no resident tuition, nonresident tuition, room and board, and any mandatory fees associated with such attendance shall be charged to:

1. A person who was wrongfully incarcerated and awarded compensation pursuant to the provisions of subsection B of Section 2 of this act; and

2. Children of any person wrongfully incarcerated and the person was awarded compensation pursuant to the provisions of subsection B of Section 2 of this act.

B. Such waiver of resident tuition, nonresident tuition, room and board, and mandatory fees associated with such attendance shall be limited to one hundred twenty (120) credit hours.

C. As used in this section, the term "children" includes children by birth and by adoption.

SECTION 5. This act shall become effective July 1, 2022.

SECTION 6. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and  
2 be in full force from and after its passage and approval.

3

4 58-2-8798 GRS 01/16/22

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24