

**ACKNOWLEDGMENT OF RECEIPT
OF A COPY OF G.L. C. 258D**

Docket No(s)

**TRIAL COURT OF MASSACHUSETTS
JUVENILE COURT DEPARTMENT**



Commonwealth vs. _____
NAME OF DEFENDANT

DIVISION

(When required by G.L. c. 258D, §9[A], obtain the defendant's signature acknowledging receipt of this form. Docket the original and retain it with the case papers, and give the attached copy to the defendant as required by § 9[A]).

By my signature below, I acknowledge that I have been given by this court a copy of the text of M.G.L. c. 258D.

Defendant

Date

**Massachusetts General Laws chapter 258D
COMPENSATION FOR CERTAIN ERRONEOUS FELONY CONVICTIONS**

Section 1. (A) A claim may be brought against the commonwealth for an erroneous felony conviction resulting in incarceration as provided in this chapter.

(B) The class of persons eligible to obtain relief under this chapter shall be limited to the following: -

(i) those that have been granted a full pardon pursuant to section 152 of chapter 127, if the governor expressly states in writing his belief in the individual's innocence, or

(ii) those who have been granted judicial relief by a state court of competent jurisdiction, on grounds which tend to establish the innocence of the individual as set forth in clause (vi) of subsection (C), and if (a) the judicial relief vacates or reverses the judgment of a felony conviction, and the felony indictment or complaint used to charge the individual with such felony has been dismissed, or if a new trial was ordered, the individual was not retried and the felony indictment or complaint was dismissed or a nolle prosequi was entered, or if a new trial was ordered the individual was found not guilty at the new trial; and (b) at the time of the filing of an action under this chapter no criminal proceeding is pending or can be brought against the individual by a district attorney or the attorney general for any act associated with such felony conviction.

(C) In order for an individual to prevail and recover damages against the commonwealth in a cause of action brought under this chapter, the individual must establish, by clear and convincing evidence, that: -

(i) he is a member of the class of persons defined in subsection (B);

(ii) he was convicted of an offense classified as a felony;

(iii) he did not plead guilty to the offense charged, or to any lesser included offense, unless such guilty plea was withdrawn, vacated or nullified by operation of law on a basis other than a claimed deficiency in the plea warnings required by section 29D of chapter 278;

(iv) he was sentenced to incarceration for not less than 1 year in state prison or a house of correction as a result of the conviction and has served all or any part of such sentence;

(v) he was incarcerated solely on the basis of the conviction for the offense that is the subject of the claim;

(vi) he did not commit the crimes or crime charged in the indictment or complaint or any other felony arising out of or reasonably connected to the facts supporting the indictment or complaint, or any lesser included felony; and

(vii) to the extent that he is guilty of conduct that would have justified a conviction of any lesser included misdemeanor arising out of or reasonably connected to facts supporting the indictment or complaint, that he has served the maximum sentence he would have received for such lesser included misdemeanor and not less than one additional year in a prison.

(D) The claimant shall attach to his claim certified copies of: the mittimus that shows the claimant's sentence to incarceration and; the warrants necessary to grant a pardon pursuant to section 152 of chapter 127 or; criminal case docket entries or documents related thereto in the case of judicial relief.

(E) For the purposes of this chapter "conviction" or "convicted" shall include an adjudication as a youthful offender, if such adjudication resulted in the youthful offender's incarceration in a house of correction or state prison.

(F) The commonwealth and any individual filing an action for compensation under this chapter shall have the right to a jury trial on any action so filed. In the interest of doing substantial justice, with regard to weight and admissibility of evidence submitted by the claimant or the commonwealth, the court presiding at a jury-waived trial shall exercise its discretion by giving due consideration to any difficulties of proof caused by the passage of time, the death or unavailability of witnesses, or other factors not caused by the claimant, or those acting on the claimant's or the commonwealth's behalf. At a jury trial, the court shall consider these same factors as part of the exercise of its discretion when determining the admissibility and weight of evidence, and the court shall instruct the jury that it may consider the same factors when it weighs the evidence presented at trial. No evidence proffered by any party shall be excluded on grounds that it was seized or obtained in violation of the Fourth, Fifth or Sixth amendments to the Constitution of the United States, or in violation of Articles 12 or 14 of Part the First of the Constitution of Massachusetts.

Section 2. A claimant shall not be entitled to compensation from the commonwealth for any incarceration or portion thereof, which was or will be credited toward a sentence for, or during which the claimant was also serving a concurrent sentence for the conviction of another crime. In those cases in which only a pardon from the governor is used to support a pending action against the commonwealth brought under this chapter, the subsequent exercise of the governor's authority to revoke such pardon pursuant to section 152 of chapter 127 shall immediately negate the validity of any such pending action and the superior court shall immediately issue a summary judgment in favor of the commonwealth on such grounds.

Section 3. A civil action brought against the commonwealth under this chapter shall be brought in the county where the claimant was convicted or in Suffolk county. The superior court shall have exclusive jurisdiction of all such actions. All civil actions brought pursuant to this chapter shall in all manner proceed by and be governed by the rules of civil procedure except as otherwise expressly provided in this chapter.

Section 4. Service of process for a civil action brought pursuant to this chapter shall be made upon the attorney general for the commonwealth who shall defend the commonwealth against all such claims. The attorney general shall immediately notify the district attorney for the county that prosecuted the felony that forms the basis for the claim. Any district attorney so notified by the attorney general shall immediately notify any individual meeting the definition of "victim", as set forth in section 1 or chapter 258B, of the felony conviction that forms the basis of the claim. Any such victim shall be allowed, but may not be compelled, to testify or furnish other evidence. If such victim is unavailable to testify or decides not to testify, his prior recorded testimony, given under oath at a relevant proceeding, shall only be admissible after judicial review and determination that such testimony, or portion thereof, may be helpful to the factfinder. The attorney general shall consult with the appropriate district attorney relative to the merits of such action and, following consultation, shall have discretion to determine whether to proffer as evidence any documents, records, testimony or other information brought forward to the attorney general by such district attorney in defense of the commonwealth at a time deemed appropriate by the attorney general. The attorney general may arbitrate or settle any claim for damages filed under this chapter, but any award or settlement in excess of \$80,000 shall be made only with the prior approval of the secretary of administration and finance.

The acceptance by the claimant of any such award or settlement shall be in writing and shall, except when procured by fraud, be final and conclusive on the claimant, and shall constitute a complete release of any claim by the claimant against the commonwealth and a complete bar to any action by the claimant against the commonwealth by reason of the same subject matter.

Section 5. (A) Upon a finding or verdict that the claimant has met the requirements of section 1 by the requisite standard of proof and is not barred from compensation by section 2, the court or the jury shall determine the damages that shall be payable to the claimant. In making such determination, the court or jury shall consider, but not be limited to, the consideration of: the income the claimant would have earned, but for his incarceration; the particular circumstances of the claimant's trial and other proceedings; the length and conditions under which the claimant was incarcerated and; any other factors deemed appropriate under the circumstances in order to fairly and reasonably compensate the claimant. The court, in its discretion, may admit expert testimony on these or any factors. The court may include, as part of its judgment against the commonwealth, an order requiring the commonwealth to provide the claimant with services that are reasonable and necessary to address any deficiencies in the individual's physical and emotional condition that are shown to be directly related to the individual's erroneous felony conviction and resulting incarceration through documentary or oral evidence presented to the court or jury by the claimant as part of the claim if the claimant provided in his original claim for compensation under this chapter: (i) the nature of the services that he seeks; and (ii) the agencies, departments or commissions of the commonwealth from which he seeks to receive such services. Any such agency, department or commission so named in the claim shall be entitled to reasonable notice of the court proceedings pertaining to the possible ordering of such services and shall be given an opportunity to be heard on whether such agency is the appropriate entity to provide such services if so ordered. The court may also include in its judgment an order that entitles any claimant who wishes to apply for and receive educational services from any state or community college of the commonwealth including, but not limited to, the University of Massachusetts at Amherst and its satellite campuses, a 50 per cent reduction of the tuition and fees applicable to such services at said institutions. Once the damages have been determined, the court shall enter a judgment against the commonwealth for the claimant in an amount certain, payable in either a lump sum or in annuity installment payments set by the court; provided, however, that any such annuity installment payments shall have fixed limits on their annual amount and on the time period which they shall be paid to the claimant. A judgment against the commonwealth may not include punitive or exemplary damages. The total liability of the commonwealth for any judgment entered under this chapter shall not exceed \$500,000. Notwithstanding any general or special law to the contrary, the clerk of court shall not add to the judgment and the commonwealth shall not be liable for paying, any prejudgment or post judgment interest on damages. Subject to section 4, relative to award or settlements, the rights and remedies afforded to certain individuals by this chapter are not intended to limit in any way any rights or remedies that such individuals or other individuals may be entitled to exercise and pursue under chapter 258.

(B) In awarding damages under this section, the court or jury shall not offset the award by any expenses incurred by the commonwealth or any political subdivision of the commonwealth including, but not limited to, expenses incurred to secure the claimant's custody, or to feed, clothe or provide medical services for the claimant nor shall the court offset against the award the value of any reduction in tuition or fees for educational services or the value of services to be provided to the claimant that may be awarded to the claimant pursuant to this section.

(C) The commonwealth shall not be liable to levy of execution on any real or personal property to satisfy a judgment ordered pursuant to this chapter. Any judgments ordered by the court pursuant to this chapter shall be paid from funds appropriated by the general court for such purpose. Payments by the commonwealth under this chapter are made to remedy the claimant's injury of unjust incarceration. Only those portions of a judgment that are paid or retained as compensation for services in bringing a claim under this chapter by an attorney representing the claimant pursuant to a signed agreement with the claimant or otherwise shall be subject to taxation by the commonwealth.

(D) The court shall give due consideration to the possible bifurcation of court proceedings to separate the consideration of issues to be resolved by the court, as required by sections 1 and 2, from the determination of reasonable damages and other relief as required by this section.

Section 6. Any party to an action filed under this chapter is entitled to make a motion seeking costs, expenses and interest for wholly insubstantial, frivolous or bad faith claims or defenses advanced by the opposing party during proceedings under this chapter as set forth in section 6F of chapter 231 and is also entitled to the rights of appeal afforded parties in a civil action following a decision on such motions as set forth in section 6G of said chapter 231.

Section 7. (A) Upon the entry of a judgment in favor of a claimant under this chapter and following a separate hearing on the matter, the court shall enter an order either directing the expungement or sealing of those records of the claimant maintained by the criminal history systems board, the probation department, and the sex offender registry that directly pertain to the claimant's erroneous felony conviction case, including documents and other materials and any samples obtained from the claimant. The commonwealth, as well as any other law enforcement agency that may be directly affected by such expungement or sealing of such records including, but not limited to, the district attorney that prosecuted the felony case against the claimant, shall be given reasonable notice and an opportunity to be heard on the issue of whether such records, documents and materials shall be so expunged or sealed. In making its determination as to whether such records, documents and materials shall be so expunged or sealed, the court shall consider the interests of privacy and justice pertaining to the claimant's erroneous felony conviction as well as the probable effect of such expungement or sealing on relevant law enforcement entities and their ability to appropriately investigate and prosecute other persons for the felony which forms the basis of the claim or other crimes that may relate to the information contained in such records, documents and materials.

(B) Following a separate hearing conducted by the court, the court may also order the expungement or sealing of those records that directly pertain to the claimant's erroneous felony conviction case that are currently in the care, custody and control of other state, municipal or local departments, agencies, commissions or committees, including law enforcement entities. Any such agency, commission, committee or entity shall be given reasonable notice and an opportunity to be heard on the issue of whether such records, documents and materials shall be expunged or sealed pursuant to this section. In making its determination as to whether such records, documents and materials shall be expunged or sealed, the court shall consider those factors required for consideration by the court in paragraph (A).

(C) Any order to expunge or seal entered by the court shall provide that, in any employment application, the claimant may answer "no record" as to any charges expunged or sealed pursuant to this section in response to an inquiry regarding prior felony arrests, court appearances or criminal convictions.

(D) The charges and convictions expunged or sealed shall not operate to disqualify the claimant in any examination, appointment or application for public employment in the service of the commonwealth or any other political subdivision thereof, nor shall such charges and convictions be used against the claimant in any way in any court proceedings or hearings before any court, board or commission to which the claimant is a party to the proceedings.

Section 8. A claim for compensation brought under this chapter shall be commenced within 2 years after either the grant of a pardon or the grant of judicial relief and satisfaction of other conditions described in subsection (B) of section 1. Any action by the commonwealth challenging or appealing the grant of such judicial relief shall toll the 2 year period. Every action brought pursuant to this chapter that is not commenced within the time required by this section is forever barred from consideration by the courts of the commonwealth.

Section 9. (A) A court granting judicial relief consistent with the criteria set forth in subclause (a) of clause (ii) of subsection (B) of section 1 shall provide a copy of this chapter to an individual seeking such relief at the time the criteria of said subclause (a) of said clause (ii) of said subsection (B) of said section 1 are satisfied. Such individual shall be required to acknowledge receipt of a copy of this chapter in writing on a form established by the chief justice for administration and management of the trial court. This acknowledgment shall be entered on the docket by the court and shall be admissible in any proceeding filed by a claimant under this chapter.

(B) The parole board, upon the issuance of a full pardon under section 152 of chapter 127, shall provide a copy of this chapter to an individual granted clemency at the time warrants necessary to grant the pardon are issued. Such individual shall be required to acknowledge receipt of a copy of this chapter in writing on a form established by the parole board, which shall be retained on file by the parole board as part of its official records and shall be admissible in any proceeding filed by a claimant under this chapter. (C) If a claimant granted judicial relief or a full pardon shows he did not properly receive a copy of the information required by this section, he shall receive a 1 year extension on the 2 year time limit provided in section 8.