

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 13-0022.01 Richard Sweetman x4333

HOUSE BILL 13-1230

HOUSE SPONSORSHIP

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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.**

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

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.

- 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
12 tort remedies to seek compensation for damages.

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

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

6 **ARTICLE 65**

7 **Compensation for Certain Exonerated Persons**

8 **13-65-101. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE
9 CONTEXT OTHERWISE REQUIRES:

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

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

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

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

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

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

1 (VI) HE OR SHE DID NOT ACT AS AN ACCESSORY, PURSUANT TO
2 18-8-105, C.R.S., IN THE COMMISSION OF THE CRIME AT ISSUE OR ANY
3 CRIME FACTUALLY RELATED TO THE CRIME AT ISSUE; AND

4 (VII) HE OR SHE DID NOT ATTEMPT TO COMMIT, PURSUANT TO
5 18-2-101, C.R.S., THE CRIME AT ISSUE OR ANY CRIME FACTUALLY
6 RELATED TO THE CRIME AT ISSUE.

7 (b) A COURT MAY NOT REACH A FINDING OF ACTUAL INNOCENCE
8 PURSUANT TO THIS SECTION MERELY:

9 (I) BECAUSE THE COURT FINDS THE EVIDENCE LEGALLY
10 INSUFFICIENT TO SUPPORT THE PETITIONER'S CONVICTION;

11 (II) BECAUSE THE COURT REVERSED OR VACATED THE
12 PETITIONER'S CONVICTION BECAUSE OF A LEGAL ERROR UNRELATED TO
13 THE PETITIONER'S ACTUAL INNOCENCE OR BECAUSE OF UNCORROBORATED
14 WITNESS RECANTATION ALONE; OR

15 (III) ON THE BASIS OF UNCORROBORATED WITNESS RECANTATION
16 ALONE.

17 (c) AS USED IN THIS SUBSECTION (1), "RELIABLE EVIDENCE" MAY
18 INCLUDE BUT IS NOT LIMITED TO EXCULPATORY SCIENTIFIC EVIDENCE,
19 TRUSTWORTHY EYEWITNESS ACCOUNTS, AND CRITICAL PHYSICAL
20 EVIDENCE.

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

22 (a) WHO WAS CONCEIVED OR ADOPTED PRIOR TO THE DATE UPON
23 WHICH THE EXONERATED PERSON WAS INCARCERATED FOR THE ACT OR
24 OFFENSE THAT SERVED AS THE BASIS FOR HIS OR HER CONVICTION, WHICH
25 CONVICTION AND INCARCERATION IS THE SUBJECT OF HIS OR HER PETITION;

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

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

3 (d) WHO IS EITHER:

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

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

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

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

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

27 (6) "ORDER OF COMPENSATION" MEANS AN ORDER OF

1 COMPENSATION ISSUED TO THE STATE CONTROLLER ON BEHALF OF AN
2 EXONERATED PERSON BY A DISTRICT COURT PURSUANT TO SECTION
3 13-65-103.

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

8 (8) "PETITION" MEANS A PETITION FOR COMPENSATION BASED ON
9 ACTUAL INNOCENCE FILED PURSUANT TO THE PROVISIONS OF SECTION
10 13-65-102.

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

16 (10) "QUALIFIED HEALTH PLAN" MEANS A HEALTH PLAN THAT
17 SATISFIES THE DEFINITION OF A QUALIFIED HEALTH PLAN SET FORTH IN THE
18 FEDERAL "PATIENT PROTECTION AND AFFORDABLE CARE ACT", P.L.
19 111-148, 42 U.S.C. 18021(a)(1).

20 (11) "STATE'S DUTY OF MONETARY COMPENSATION" MEANS THE
21 TOTAL AMOUNT OF MONETARY COMPENSATION OWED BY THE STATE TO AN
22 EXONERATED PERSON PURSUANT TO AN ORDER OF COMPENSATION ISSUED
23 BY A DISTRICT COURT PURSUANT TO SECTION 13-65-103.

24 **13-65-102. Process for petitioning for compensation -**
25 **eligibility to petition - actual innocence required - jurisdiction.**

26 (1) (a) NOTWITHSTANDING THE PROVISIONS OF ARTICLE 10 OF TITLE 24,
27 C.R.S., A PERSON WHO HAS BEEN CONVICTED OF A FELONY IN THIS STATE

1 AND SENTENCED TO A TERM OF INCARCERATION AS A RESULT OF THAT
2 CONVICTION AND HAS SERVED ALL OR PART OF SUCH SENTENCE, OR AN
3 IMMEDIATE FAMILY MEMBER OF SUCH PERSON, MAY BE ELIGIBLE FOR
4 COMPENSATION AS SET FORTH IN THIS ARTICLE UPON A FINDING THAT THE
5 PERSON WAS ACTUALLY INNOCENT OF THE CRIME FOR WHICH HE OR SHE
6 WAS CONVICTED.

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

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

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

15 (I) A COURT VACATING OR REVERSING ALL CONVICTIONS IN THE
16 CASE BASED ON REASONS OTHER THAN LEGAL INSUFFICIENCY OF EVIDENCE
17 OR LEGAL ERROR UNRELATED TO THE PETITIONER'S ACTUAL INNOCENCE
18 AND FOLLOWING AN ORDER OF DISMISSAL OF ALL CHARGES; OR

19 (II) A COURT VACATING OR REVERSING ALL CONVICTIONS IN THE
20 CASE BASED ON REASONS OTHER THAN LEGAL INSUFFICIENCY OF EVIDENCE
21 OR LEGAL ERROR UNRELATED TO THE PETITIONER'S ACTUAL INNOCENCE
22 AND FOLLOWING AN ACQUITTAL OF ALL CHARGES AFTER RETRIAL; AND

23 (b) EITHER:

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

27 OR

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

4 (3) THE DISTRICT COURT SHALL NOT ISSUE AN ORDER OF
5 COMPENSATION TO A PETITIONER UNLESS, BASED ON EVIDENCE
6 SUPPORTING THE PETITIONER'S ALLEGATION OF INNOCENCE, INCLUDING
7 BUT NOT LIMITED TO AN ANALYSIS OF THE PERSON'S DNA PROFILE, THE
8 COURT DETERMINES THAT THE PERSON IS ACTUALLY INNOCENT BECAUSE:

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

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

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

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

19 (II) HE OR SHE COMMITTED OR SUBORNED PERJURY DURING ANY
20 PROCEEDINGS RELATED TO THE CASE THAT IS THE SUBJECT OF THE CLAIM;
21 OR

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

26 (b) NOTWITHSTANDING SUBPARAGRAPHS (I) TO (III) OF
27 PARAGRAPH (a) OF THIS SUBSECTION (4), CONDUCT DESCRIBED IN SAID

1 SUBPARAGRAPHS SHALL NOT INCLUDE A CONFESSION OR AN ADMISSION
2 THAT WAS LATER DETERMINED BY A COURT OF COMPETENT JURISDICTION,
3 OR BY STIPULATION OF THE PARTIES, TO BE FALSE OR COERCED BY ANY
4 GOVERNMENTAL AGENT.

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

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

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

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

26 (II) ANY DOCUMENTATION SUPPORTING THE RECITATION OF FACTS
27 IN THE CLAIM; ■

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

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

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

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

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

27 (e) IF THE RESPONDING PARTY CONTESTS THE ACTUAL INNOCENCE

1 OF THE PETITIONER, THE DISTRICT COURT MAY ORDER THAT THE
2 RESPONDING PARTY BE ALLOWED TO RETEST ANY EVIDENCE AT ISSUE IN
3 THE CLAIM IF SUCH EVIDENCE REMAINS TO BE TESTED AND TESTING SUCH
4 EVIDENCE WILL NOT CONSUME THE REMAINDER OF THE SAMPLE.

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

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

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

1 OF THE HEARING IF THE CLAIM IS UNCONTESTED OR THE TRIAL IF THE
2 CLAIM IS CONTESTED.

3 (6) AS SOON AS PRACTICABLE GIVEN THE UNIQUE CIRCUMSTANCES
4 OF CLAIMS FILED PURSUANT TO THIS SECTION, THE DISTRICT COURT SHALL
5 ACT AS FOLLOWS:

6 (a) UPON RECEIPT OF AN UNCONTESTED RESPONSE TO A PETITION,
7 THE DISTRICT COURT SHALL ISSUE A FINAL ORDER ON THE PETITION,
8 FINDING THAT THE PETITIONER IS ACTUALLY INNOCENT AND ELIGIBLE FOR
9 AN ORDER OF COMPENSATION. A FINAL ORDER ISSUED PURSUANT TO THIS
10 PARAGRAPH (a) SHALL BE ACCOMPANIED BY AN ORDER OF COMPENSATION,
11 TO BE ISSUED TO THE STATE CONTROLLER ON THE PETITIONER'S BEHALF
12 PURSUANT TO SECTION 13-65-103.

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

1 PETITIONER IS ELIGIBLE FOR COMPENSATION UNDER THIS ARTICLE. IF THE
2 COURT FINDS THAT THE PETITIONER IS ACTUALLY INNOCENT AND ELIGIBLE
3 FOR COMPENSATION PURSUANT TO THIS ARTICLE, THE DISTRICT COURT
4 SHALL ISSUE A FINAL ORDER ON THE PETITION WHICH ORDER SHALL STATE
5 SUCH FINDINGS AND BE ACCOMPANIED BY AN ORDER OF COMPENSATION,
6 TO BE ISSUED TO THE STATE CONTROLLER ON THE PETITIONER'S BEHALF
7 PURSUANT TO SECTION 13-65-103. UPON A FINDING BY A JURY OF ACTUAL
8 INNOCENCE, THE DISTRICT COURT SHALL ISSUE AN ORDER AWARDING THE
9 PETITIONER COMPENSATION PURSUANT TO SECTION 13-65-103.

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

11 (b) IF THE PETITIONER APPEALS THE AMOUNT OF COMPENSATION
12 AWARDED, THE STATE CONTROLLER SHALL NOT DELAY IN PAYING THE
13 PETITIONER PURSUANT TO THE ORDER OF COMPENSATION WHILE THE
14 APPEAL IS PENDING.

15 (c) IF THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY APPEALS
16 THE OUTCOME OF THE TRIAL DESCRIBED IN SUBSECTION (6) OF THIS
17 SECTION, THE STATE CONTROLLER SHALL NOT DELAY IN PAYING THE
18 PETITIONER PURSUANT TO THE ORDER OF COMPENSATION WHILE THE
19 APPEAL IS PENDING.

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

24 **13-65-103. Orders of compensation for certain exonerated**
25 **persons - monetary compensation - financial literacy training -**
26 **penalty for lack of a qualified health plan - expungement of records**
27 **- damages awarded in civil actions. (1) EXCEPT AS OTHERWISE**

1 PROVIDED IN THIS ARTICLE, A DISTRICT COURT SHALL ISSUE AN ORDER OF
2 COMPENSATION TO THE STATE CONTROLLER ON BEHALF OF AN
3 EXONERATED PERSON, OR ON BEHALF OF AN IMMEDIATE FAMILY MEMBER
4 OF AN EXONERATED PERSON, WHO IS DETERMINED BY A DISTRICT COURT
5 PURSUANT TO SECTION 13-65-102 TO BE ACTUALLY INNOCENT AND
6 ELIGIBLE TO RECEIVE COMPENSATION PURSUANT TO THIS ARTICLE.

7 (2) A DISTRICT COURT THAT ISSUES AN ORDER OF COMPENSATION
8 TO THE STATE CONTROLLER ON BEHALF OF AN EXONERATED PERSON, OR
9 ON BEHALF OF ONE OR MORE IMMEDIATE FAMILY MEMBERS OF AN
10 EXONERATED PERSON, PURSUANT TO THIS SECTION SHALL REDUCE THE
11 ORDER TO WRITING AND INCLUDE WITHIN THE ORDER:

12 (a) THE EXONERATED PERSON'S NAME;

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

14 (c) THE FELONY OR FELONIES, IF ANY, OF WHICH THE EXONERATED
15 PERSON HAS BEEN EXONERATED AND EACH CONVICTION OR ADJUDICATION
16 OF THE EXONERATED PERSON, IF ANY, THAT HAS BEEN VACATED OR
17 REVERSED;

18 (d) THE DATE UPON WHICH THE EXONERATED PERSON WAS
19 CONVICTED OR ADJUDICATED AND THE DATES DURING WHICH THE
20 EXONERATED PERSON WAS INCARCERATED AS A RESULT OF SUCH
21 CONVICTION OR ADJUDICATION;

22 (e) A STATEMENT THAT THE EXONERATED PERSON, OR THE
23 IMMEDIATE FAMILY MEMBER OF THE EXONERATED PERSON, IS ENTITLED
24 TO COMPENSATION FROM THE STATE, WHICH COMPENSATION SHALL
25 INCLUDE:

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

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

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

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

15 (III) COMPENSATION FOR CHILD SUPPORT PAYMENTS OWED BY THE
16 EXONERATED PERSON THAT BECAME DUE DURING HIS OR HER
17 INCARCERATION OR PLACEMENT IN STATE CUSTODY, AND INTEREST ON
18 CHILD SUPPORT ARREARAGES THAT ACCRUED DURING HIS OR HER
19 INCARCERATION OR PLACEMENT IN STATE CUSTODY BUT WHICH HAVE NOT
20 BEEN PAID;

21 (IV) REASONABLE ATTORNEY FEES FOR BRINGING A CLAIM UNDER
22 THIS SECTION; AND

23 (V) THE AMOUNT OF ANY FINE, PENALTY, COURT COSTS, OR
24 RESTITUTION IMPOSED UPON AND PAID BY THE EXONERATED PERSON AS A
25 RESULT OF HIS OR HER WRONGFUL CONVICTION OR ADJUDICATION. THIS
26 SUBPARAGRAPH (V) SHALL NOT BE INTERPRETED TO REQUIRE THE
27 REIMBURSEMENT OF RESTITUTION PAYMENTS BY ANY PARTY TO WHOM

1 THE EXONERATED PERSON MADE RESTITUTION PAYMENTS AS A RESULT OF
2 HIS OR HER WRONGFUL CONVICTION OR ADJUDICATION.

3 (f) A STATEMENT NOTIFYING THE PERSON AND THE STATE
4 CONTROLLER THAT, PURSUANT TO SECTION 24-30-209 (4), C.R.S., THE
5 EXONERATED PERSON IS REQUIRED TO COMPLETE A PERSONAL FINANCIAL
6 MANAGEMENT INSTRUCTION COURSE BEFORE THE STATE CONTROLLER
7 MAY ISSUE TO THE EXONERATED PERSON MORE THAN ONE ANNUAL
8 PAYMENT OF MONETARY COMPENSATION.

9 (g) A STATEMENT NOTIFYING THE EXONERATED PERSON AND THE
10 STATE CONTROLLER THAT, PURSUANT TO SECTION 24-30-209 (5), C.R.S.,
11 IN EACH YEAR IN WHICH AN EXONERATED PERSON RECEIVES ANY ANNUAL
12 PAYMENT FROM THE STATE CONTROLLER, THE EXONERATED PERSON'S
13 ANNUAL PAYMENT SHALL BE REDUCED BY TEN THOUSAND DOLLARS IF THE
14 EXONERATED PERSON FAILS TO PRESENT TO THE STATE CONTROLLER A
15 POLICY OR CERTIFICATE SHOWING THAT THE EXONERATED PERSON HAS
16 PURCHASED OR OTHERWISE ACQUIRED A QUALIFIED HEALTH PLAN FOR
17 HIMSELF OR HERSELF AND HIS OR HER DEPENDENTS THAT IS VALID FOR AT
18 LEAST SIX MONTHS.

19 (3) (a) EXCEPT AS LIMITED BY THE PROVISIONS OF THIS ARTICLE,
20 AN EXONERATED PERSON SHALL RECEIVE MONETARY COMPENSATION IN
21 AN AMOUNT OF SEVENTY THOUSAND DOLLARS FOR EACH YEAR THAT HE OR
22 SHE WAS INCARCERATED FOR THE FELONY OF WHICH HE OR SHE HAS BEEN
23 EXONERATED. IN ADDITION TO THIS AMOUNT, AN EXONERATED PERSON
24 SHALL RECEIVE COMPENSATION IN AN AMOUNT OF:

25 (I) FIFTY THOUSAND DOLLARS FOR EACH YEAR THAT HE OR SHE
26 WAS INCARCERATED AND SENTENCED TO EXECUTION PURSUANT TO PART
27 12 OF ARTICLE 1.3 OF TITLE 18, C.R.S.; AND

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

6 (b) EXCEPT AS LIMITED BY THE PROVISIONS OF THIS ARTICLE, IN
7 ADDITION TO THE AMOUNT DESCRIBED IN PARAGRAPH (a) OF THIS
8 SUBSECTION (3), AN EXONERATED PERSON SHALL RECEIVE COMPENSATION
9 IN A PRORATED AMOUNT THAT IS PROPORTIONATE TO THE LENGTH OF:

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

12 (II) EACH PARTIAL YEAR THAT HE OR SHE WAS INCARCERATED AND
13 SENTENCED TO EXECUTION PURSUANT TO PART 12 OF ARTICLE 1.3 OF TITLE
14 18, C.R.S.; AND

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

19 (4) A COURT THAT ISSUES AN ORDER OF COMPENSATION TO THE
20 STATE CONTROLLER ON BEHALF OF AN EXONERATED PERSON, OR ON
21 BEHALF OF AN IMMEDIATE FAMILY MEMBER OF AN EXONERATED PERSON,
22 SHALL SUBMIT COPIES OF THE ORDER TO:

23 (a) THE EXONERATED PERSON;

24 (b) THE STATE CONTROLLER;

25 (c) THE ATTORNEY GENERAL;

26 (d) THE DISTRICT ATTORNEY OF THE JUDICIAL DISTRICT IN WHICH
27 THE CASE ORIGINATED;

- 1 (e) THE STATE DEPARTMENT OF CORRECTIONS;
- 2 (f) THE STATE DEPARTMENT OF LABOR AND EMPLOYMENT;
- 3 (g) THE STATE DEPARTMENT OF REVENUE; AND
- 4 (h) THE COLORADO COMMISSION ON HIGHER EDUCATION.

5 (5) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE
6 CONTRARY, A COURT SHALL NOT ISSUE TO ANY PERSON AN ORDER OF
7 COMPENSATION THAT INCLUDES ANY COMPENSATION FOR ANY PERIOD OF
8 INCARCERATION DURING WHICH THE PERSON WAS CONCURRENTLY
9 SERVING A SENTENCE FOR AN OFFENSE OF WHICH HE OR SHE HAS NOT BEEN
10 EXONERATED.

11 (6) THE AMOUNT OF MONETARY COMPENSATION AWARDED TO AN
12 EXONERATED PERSON PURSUANT TO THIS SECTION SHALL NOT BE SUBJECT
13 TO:

14 (a) ANY CAP APPLICABLE TO PRIVATE PARTIES IN CIVIL LAWSUITS;
15 OR

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

19 (7) (a) A COURT THAT ISSUES AN ORDER OF COMPENSATION TO THE
20 STATE CONTROLLER ON BEHALF OF AN EXONERATED PERSON OR ON
21 BEHALF OF AN IMMEDIATE FAMILY MEMBER OF AN EXONERATED PERSON,
22 SHALL ORDER ALL RECORDS RELATING TO THE EXONERATED PERSON'S
23 WRONGFUL CONVICTION OR ADJUDICATION TO BE EXPUNGED AS IF SUCH
24 EVENTS HAD NEVER TAKEN PLACE AND SUCH RECORDS HAD NEVER
25 EXISTED. THE COURT SHALL DIRECT SUCH AN EXPUNGEMENT ORDER TO
26 EVERY PERSON OR AGENCY THAT MAY HAVE CUSTODY OF ANY PART OF
27 ANY RECORDS RELATING TO THE EXONERATED PERSON'S WRONGFUL

1 CONVICTION OR ADJUDICATION.

2 (b) IF A COURT ISSUES AN EXPUNGEMENT ORDER PURSUANT TO
3 PARAGRAPH (a) OF THIS SUBSECTION (7), A COURT, LAW ENFORCEMENT
4 AGENCY, OR OTHER STATE AGENCY THAT MAINTAINS RECORDS RELATING
5 TO THE EXONERATED PERSON'S WRONGFUL CONVICTION OR ADJUDICATION
6 SHALL PHYSICALLY SEAL SUCH RECORDS AND THEREAFTER TREAT THE
7 RECORDS AS CONFIDENTIAL. RECORDS THAT HAVE BEEN SEALED
8 PURSUANT TO THIS SUBSECTION (7) SHALL BE MADE AVAILABLE TO A
9 COURT OR A LAW ENFORCEMENT AGENCY, INCLUDING BUT NOT LIMITED TO
10 A DISTRICT ATTORNEY'S OFFICE OR THE ATTORNEY GENERAL, UPON A
11 SHOWING OF GOOD CAUSE.

12 (8) (a) A COURT THAT ISSUES AN ORDER OF COMPENSATION TO THE
13 STATE CONTROLLER ON BEHALF OF AN EXONERATED PERSON OR ON
14 BEHALF OF AN IMMEDIATE FAMILY MEMBER OF AN EXONERATED PERSON,
15 SHALL REDUCE THE EXONERATED PERSON'S AWARD OF MONETARY
16 COMPENSATION, AS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION
17 (8), IF, PRIOR TO THE ISSUANCE OF THE AWARD:

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

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

25

26 (b) UNDER THE CIRCUMSTANCES DESCRIBED IN PARAGRAPH (a) OF
27 THIS SUBSECTION (8), THE COURT SHALL REDUCE AN EXONERATED

1 PERSON'S AWARD OF MONETARY COMPENSATION BY AN AMOUNT THAT IS
2 EQUAL TO THE AMOUNT OF MONETARY DAMAGES THAT THE EXONERATED
3 PERSON IS AWARDED AND COLLECTS IN THE CIVIL ACTION; EXCEPT THAT
4 A COURT SHALL NOT OFFSET ANY AMOUNT EXCEEDING THE TOTAL
5 AMOUNT OF MONETARY COMPENSATION AWARDED TO THE EXONERATED
6 PERSON PURSUANT TO THIS SECTION.

7 (9) (a) EXCEPT WHEN PROCURED BY FRAUD, AN ORDER OF
8 COMPENSATION ISSUED BY A COURT TO THE STATE CONTROLLER ON
9 BEHALF OF A EXONERATED PERSON OR ON BEHALF OF AN IMMEDIATE
10 FAMILY MEMBER OF AN EXONERATED PERSON, PURSUANT TO THIS
11 SECTION, SHALL BE DEEMED A FINAL AND CONCLUSIVE DISPOSITION OF THE
12 MATTER OF THE EXONERATED PERSON'S WRONGFUL INCARCERATION OR
13 PLACEMENT IN STATE CUSTODY.

14 (b) AN ORDER OF COMPENSATION ISSUED BY A COURT TO THE
15 STATE CONTROLLER ON BEHALF OF AN EXONERATED PERSON OR ON
16 BEHALF OF AN IMMEDIATE FAMILY MEMBER OF AN EXONERATED PERSON,
17 PURSUANT TO THIS SECTION, SHALL NOT BE INTERPRETED TO LIMIT THE
18 PERSON'S ABILITY TO PURSUE AN ACTION FOR DAMAGES AGAINST AN
19 ENTITY THAT IS NOT AN EMPLOYEE, AGENT, OR AGENCY OF THE STATE
20 GOVERNMENT.

21 **SECTION 3.** In Colorado Revised Statutes, **add** 24-30-209 as
22 follows:

23 **24-30-209. Compensation for exonerated persons - definitions**
24 **- annual payments - child support payments - financial literacy**
25 **training - qualified health plan - fund - damages awarded in civil**
26 **actions - reimbursement to the state.** (1) AS USED IN THIS SECTION,
27 UNLESS THE CONTEXT OTHERWISE REQUIRES:

1 (a) "ANNUAL PAYMENT" MEANS A PAYMENT OF MONETARY
2 COMPENSATION MADE BY THE STATE CONTROLLER OR HIS OR HER
3 DESIGNEE TO AN EXONERATED PERSON PURSUANT TO THIS SECTION. AN
4 ANNUAL PAYMENT SHALL BE IN THE AMOUNT OF ONE HUNDRED THOUSAND
5 DOLLARS, WHICH AMOUNT SHALL BE ADJUSTED ANNUALLY BY THE STATE
6 AUDITOR TO ACCOUNT FOR INFLATION; EXCEPT THAT:

7 (I) IF THE REMAINING AMOUNT OF THE STATE'S DUTY OF
8 MONETARY COMPENSATION OWED TO THE EXONERATED PERSON IS LESS
9 THAN ONE HUNDRED THOUSAND DOLLARS, THE AMOUNT OF THE ANNUAL
10 PAYMENT SHALL BE EQUAL TO THE REMAINING AMOUNT; AND

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

13 (b) "EXONERATED PERSON" MEANS A PERSON ON BEHALF OF WHOM
14 A DISTRICT COURT HAS ISSUED TO THE STATE CONTROLLER AN ORDER OF
15 COMPENSATION PURSUANT TO SECTION 16-17.5-101, C.R.S.

16 (c) "FUND" MEANS THE RISK MANAGEMENT FUND CREATED IN
17 SECTION 24-30-1510.

18 (d) "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 THE PERSON'S CONVICTION OF A FELONY OR
21 PURSUANT TO THE PERSON'S ADJUDICATION AS A JUVENILE DELINQUENT
22 FOR THE COMMISSION OF ONE OR MORE OFFENSES THAT WOULD BE
23 FELONIES IF COMMITTED BY A PERSON EIGHTEEN YEARS OF AGE OR OLDER.
24 FOR THE PURPOSES OF THIS SECTION, "INCARCERATION" INCLUDES
25 PLACEMENT AS A JUVENILE TO THE CUSTODY OF THE STATE DEPARTMENT
26 OF HUMAN SERVICES OR A COUNTY DEPARTMENT OF SOCIAL SERVICES.

27 (e) "ORDER OF COMPENSATION" MEANS AN ORDER OF

1 COMPENSATION ISSUED TO THE STATE CONTROLLER ON BEHALF OF AN
2 EXONERATED PERSON BY A DISTRICT COURT PURSUANT TO SECTION
3 16-17.5-101, C.R.S.

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

8 (g) "STATE'S DUTY OF MONETARY COMPENSATION" MEANS THE
9 TOTAL AMOUNT OF MONETARY COMPENSATION OWED BY THE STATE TO AN
10 EXONERATED PERSON PURSUANT TO AN ORDER OF COMPENSATION ISSUED
11 BY A COURT PURSUANT TO SECTION 13-65-103, C.R.S., AND THE
12 PROVISIONS OF THIS SECTION.

13 (2) NOT MORE THAN FOURTEEN DAYS AFTER THE STATE
14 CONTROLLER RECEIVES AN ORDER OF COMPENSATION ON BEHALF OF AN
15 EXONERATED PERSON FROM A COURT PURSUANT TO SECTION 13-65-103,
16 C.R.S., THE STATE CONTROLLER OR HIS OR HER DESIGNEE SHALL:

17 (a) ISSUE AN ANNUAL PAYMENT FROM THE FUND TO THE
18 EXONERATED PERSON. ANNUALLY THEREAFTER, ON OR BEFORE THE DATE
19 THAT SUCH PAYMENT WAS MADE, UNTIL THE STATE'S DUTY OF MONETARY
20 COMPENSATION IS SATISFIED, THE STATE CONTROLLER OR HIS OR HER
21 DESIGNEE SHALL ISSUE AN ANNUAL PAYMENT FROM THE FUND TO THE
22 EXONERATED PERSON.

23 (b) PAY ON THE EXONERATED PERSON'S BEHALF FROM THE FUND
24 ANY AMOUNT OF COMPENSATION FOR CHILD SUPPORT PAYMENTS OWED BY
25 THE EXONERATED PERSON THAT BECAME DUE DURING HIS OR HER
26 INCARCERATION, OR ANY AMOUNT OF INTEREST ON CHILD SUPPORT
27 ARREARAGES THAT ACCRUED DURING HIS OR HER INCARCERATION BUT

1 WHICH HAVE NOT BEEN PAID, AS DESCRIBED IN SECTION 13-65-103 (2) (e)
2 (III), C.R.S. THE STATE CONTROLLER, OR HIS OR HER DESIGNEE, SHALL
3 MAKE SUCH PAYMENT IN A LUMP SUM TO THE APPROPRIATE COUNTY
4 DEPARTMENT OF SOCIAL SERVICES OR OTHER AGENCY RESPONSIBLE FOR
5 RECEIVING SUCH PAYMENTS NOT MORE THAN THIRTY DAYS AFTER THE
6 STATE CONTROLLER RECEIVES AN ORDER OF COMPENSATION ON BEHALF
7 OF THE EXONERATED PERSON FROM A COURT PURSUANT TO SECTION
8 13-65-103, C.R.S.

9 (c) PAY ON THE EXONERATED PERSON'S BEHALF FROM THE FUND
10 THE AMOUNT OF REASONABLE ATTORNEY FEES AWARDED TO THE
11 EXONERATED PERSON PURSUANT TO SECTION 13-65-103 (2) (e) (IV),
12 C.R.S. █

13 (3) THE AMOUNT OF ANY PAYMENT MADE TO, OR ON BEHALF OF,
14 AN EXONERATED PERSON PURSUANT TO THIS SECTION SHALL BE DEDUCTED
15 FROM THE STATE'S DUTY OF MONETARY COMPENSATION TO THE
16 EXONERATED PERSON.

17 (4) NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH (a) OF
18 SUBSECTION (2) OF THIS SECTION, AFTER THE STATE CONTROLLER HAS
19 ISSUED ONE ANNUAL PAYMENT TO AN EXONERATED PERSON, THE STATE
20 CONTROLLER SHALL NOT ISSUE ANOTHER ANNUAL PAYMENT TO THE
21 EXONERATED PERSON UNTIL THE EXONERATED PERSON HAS COMPLETED
22 A PERSONAL FINANCIAL MANAGEMENT INSTRUCTION COURSE.

23 (5) IN EACH YEAR IN WHICH THE STATE CONTROLLER ISSUES AN
24 ANNUAL PAYMENT TO AN EXONERATED PERSON, THE PERSON'S ANNUAL
25 PAYMENT SHALL BE REDUCED BY TEN THOUSAND DOLLARS IF THE PERSON
26 FAILS TO PRESENT TO THE STATE CONTROLLER A POLICY OR CERTIFICATE
27 SHOWING THAT THE PERSON HAS PURCHASED OR OTHERWISE ACQUIRED A

1 QUALIFIED HEALTH PLAN FOR HIMSELF OR HERSELF AND HIS OR HER
2 DEPENDENTS THAT IS VALID FOR AT LEAST SIX MONTHS. SUCH AMOUNT
3 SHALL BE DEDUCTED FROM THE STATE'S DUTY OF MONETARY
4 COMPENSATION TO THE EXONERATED PERSON AS IF SUCH AMOUNT HAD
5 BEEN ISSUED TO THE EXONERATED PERSON.

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

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

14 (II) THE JUDGMENT RENDERED IN THE CIVIL ACTION OR THE
15 SETTLEMENT OF THE CIVIL ACTION INCLUDES AN AWARD OF MONETARY
16 DAMAGES TO THE EXONERATED PERSON.

17 [REDACTED]

18 (b) FOR THE PURPOSES OF PARAGRAPH (a) OF THIS SUBSECTION (6),
19 IN ANY PROCEEDING THAT SATISFIES THE DESCRIPTION SET FORTH IN SAID
20 PARAGRAPH (a), UPON A SATISFACTORY SHOWING BY THE STATE THAT THE
21 EXONERATED PERSON HAS RECEIVED MONETARY COMPENSATION
22 PURSUANT TO THIS SECTION, THE COURT SHALL OFFSET A SUFFICIENT
23 AMOUNT OF MONEYS FROM THE EXONERATED PERSON'S AWARD OF
24 MONETARY DAMAGES TO REIMBURSE THE STATE FOR SUCH MONETARY
25 COMPENSATION. THE COURT SHALL TRANSFER SUCH MONEYS TO THE
26 STATE CONTROLLER, WHO SHALL CREDIT THE MONEYS TO THE FUND.

27 [REDACTED]

1 (7) NOTWITHSTANDING ANY PROVISION OF THIS SECTION, THE
2 STATE CONTROLLER SHALL NOT ISSUE AN ANNUAL PAYMENT TO AN
3 EXONERATED PERSON IF:

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

7 (II) THE AMOUNT OF THE MONETARY DAMAGES AWARDED BY THE
8 COURT IN THE CIVIL ACTION, OR STIPULATED IN THE SETTLEMENT OF THE
9 ACTION, AND COLLECTED BY THE EXONERATED PERSON EQUALS OR
10 EXCEEDS THE REMAINING AMOUNT OF THE STATE'S DUTY OF MONETARY
11 COMPENSATION TO THE EXONERATED PERSON;

12 (b) THE EXONERATED PERSON IS CONVICTED OF A CLASS 1 OR
13 CLASS 2 FELONY, OR OF AN OFFENSE THAT WOULD BE CONSIDERED A CLASS
14 1 OR CLASS 2 FELONY IN COLORADO, AFTER THE DATE UPON WHICH A
15 COURT ISSUES AN ORDER OF COMPENSATION ON THE PERSON'S BEHALF; OR

16 (c) THE PERSON HAS NOT YET COMPLETED A PERSONAL FINANCIAL
17 MANAGEMENT INSTRUCTION COURSE, AS REQUIRED BY SUBSECTION (4) OF
18 THIS SECTION.

19 **SECTION 4.** In Colorado Revised Statutes, 24-30-1510, **add** (3)
20 (j) as follows:

21 **24-30-1510. Risk management fund - creation - authorized**
22 **and unauthorized payments.** (3) Expenditures shall be made out of the
23 risk management fund in accordance with subsection (1) of this section
24 only for the following purposes:

25 (j) TO PROVIDE COMPENSATION FOR EXONERATED PERSONS, AS
26 DESCRIBED IN SECTION 24-30-209.

27 **SECTION 5.** In Colorado Revised Statutes, **add** 23-1-132 as

1 follows:

2 **23-1-132. Commission directive - tuition waivers for**

3 **exonerated persons.** (1) ON OR BEFORE SEPTEMBER 1, 2013, THE

4 COMMISSION SHALL IMPLEMENT A POLICY WHEREBY, EXCEPT AS LIMITED

5 IN THIS SECTION, EACH INSTITUTION OF HIGHER EDUCATION IN THE STATE

6 SHALL WAIVE ALL TUITION COSTS, INCLUDING ANY MANDATORY FEES

7 ASSOCIATED WITH ATTENDANCE AT THE INSTITUTION, FOR AN

8 EXONERATED PERSON, AS DEFINED IN SECTION 13-65-101 (3), C.R.S., AND

9 FOR ANY CHILD OF AN EXONERATED PERSON OR CUSTODIAL CHILD OF AN

10 EXONERATED PERSON, AS DEFINED IN SECTION 13-65-101 (2), C.R.S., IF:

11 (a) THE EXONERATED PERSON, OR THE CHILD OR CUSTODIAL CHILD

12 OF THE EXONERATED PERSON, SATISFIES THE CRITERIA DESCRIBED IN

13 SUBSECTION (2) OF THIS SECTION;

14 (b) THE EXONERATED PERSON, OR THE CHILD OR CUSTODIAL CHILD

15 OF THE EXONERATED PERSON, SATISFIES THE ADMISSION REQUIREMENTS

16 OF THE INSTITUTION; AND

17 (c) THE EXONERATED PERSON, OR THE CHILD OR CUSTODIAL CHILD

18 OF THE EXONERATED PERSON, REMAINS IN SATISFACTORY ACADEMIC

19 STANDING IN ACCORDANCE WITH THE ACADEMIC POLICIES OF THE

20 INSTITUTION.

21 (2) TO RECEIVE A TUITION WAIVER FROM AN INSTITUTION OF

22 HIGHER EDUCATION AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION, AN

23 EXONERATED PERSON OR CHILD OR CUSTODIAL CHILD OF AN EXONERATED

24 PERSON SHALL APPLY TO THE INSTITUTION AND REQUEST SUCH WAIVER IN

25 WRITING NOT LATER THAN TWO YEARS AFTER THE LATER OF THE

26 FOLLOWING DATES:

27 (a) THE DATE UPON WHICH A COURT ISSUED TO THE STATE

1 CONTROLLER AN ORDER OF COMPENSATION ON BEHALF OF THE
2 EXONERATED PERSON PURSUANT TO SECTION 13-65-103, C.R.S.; OR

3 (b) IN THE CASE OF A CHILD OR CUSTODIAL CHILD OF AN
4 EXONERATED PERSON, THE DATE UPON WHICH THE CHILD GRADUATED
5 FROM HIGH SCHOOL.

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

14 **SECTION 6.** In Colorado Revised Statutes, 39-22-104, **add** (4)
15 (p) as follows:

16 **39-22-104. Income tax imposed on individuals, estates, and**
17 **trusts - single rate - definitions - repeal.** (4) There shall be subtracted
18 from federal taxable income:

19 (p) FOR INCOME TAX YEARS COMMENCING ON OR AFTER JANUARY
20 1, 2013, AN AMOUNT EQUAL TO ANY AMOUNT RECEIVED PURSUANT TO AN
21 ORDER OF COMPENSATION ISSUED BY A COURT ON BEHALF OF AN
22 EXONERATED PERSON PURSUANT TO SECTION 13-65-103, C.R.S., ON OR
23 AFTER JANUARY 1, 2014, EXCEPT AS TO THOSE PORTIONS OF THE
24 JUDGMENT AWARDED AS ATTORNEY'S FEES FOR BRINGING A CLAIM UNDER
25 SUCH SECTION.

26 **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.