

78B-9-405 Judgment and assistance payment.

- (1)
 - (a) If a court finds a petitioner factually innocent under Part 3, Postconviction Testing of DNA, or under this part, and if the petitioner has served a period of incarceration, the court shall order that, as provided in Subsection (2), the petitioner shall receive for each year or portion of a year the petitioner was incarcerated, up to a maximum of 15 years, the monetary equivalent of the average annual nonagricultural payroll wage in Utah, as determined by the data most recently published by the Department of Workforce Services at the time of the petitioner's release from prison.
 - (b) As used in this Subsection (1), "petitioner" means a United States citizen or an individual who was otherwise lawfully present in this country at the time of the incident that gave rise to the underlying conviction.
- (2) Payments pursuant to this section shall be made as follows:
 - (a) The Utah Office for Victims of Crime shall pay from the Crime Victim Reparations Fund to the petitioner within 45 days of the court order under Subsection (1) an initial sum equal to either 20% of the total financial assistance payment as determined under Subsection (1) or an amount equal to two years of incarceration, whichever is greater, but not to exceed the total amount owed.
 - (b) The Legislature shall appropriate as nonlapsing funds from the General Fund, and no later than the next general session following the issuance of the court order under Subsection (1):
 - (i) to the Crime Victim Reparations Fund, the amount that was paid out of the fund under Subsection (2)(a); and
 - (ii) to the Commission on Criminal and Juvenile Justice, as a separate line item, the amount ordered by the court for payments under Subsection (1), minus the amount reimbursed to the Crime Victim Reparations Fund under Subsection (2)(b)(i).
 - (c) Payments to the petitioner under this section, other than the payment under Subsection (2)(a), shall be made by the Commission on Criminal and Juvenile Justice quarterly on or before the last day of the month next succeeding each calendar quarterly period.
 - (d) Payments under Subsection (2)(c) shall:
 - (i) commence no later than one year after the effective date of the appropriation for the payments;
 - (ii) be made to the petitioner for the balance of the amount ordered by the court after the initial payment under Subsection (2)(a); and
 - (iii) be allocated so that the entire amount due to the petitioner under this section has been paid no later than 10 years after the effective date of the appropriation made under Subsection (2)(b).
- (3)
 - (a) Payments pursuant to this section shall be reduced to the extent that the period of incarceration for which the petitioner seeks payment was attributable to a separate and lawful conviction.
 - (b)
 - (i) Payments pursuant to this section shall be tolled upon the commencement of any period of incarceration due to the petitioner's subsequent conviction of a felony and shall resume upon the conclusion of that period of incarceration.
 - (ii) As used in this section, "felony" means a criminal offense classified as a felony under Title 76, Chapter 3, Punishments, or conduct that would constitute a felony if committed in Utah.

- (c) The reduction of payments pursuant to Subsection (3)(a) or the tolling of payments pursuant to Subsection (3)(b) shall be determined by the same court that finds a petitioner to be factually innocent under Part 3, Postconviction Testing of DNA, or this part.
- (4)
 - (a) A person is ineligible for any payments under this part if the person was already serving a prison sentence in another jurisdiction at the time of the conviction of the crime for which that person has been found factually innocent pursuant to Part 3, Postconviction Testing of DNA, or this part, and that person is to be returned to that other jurisdiction upon release for further incarceration on the prior conviction.
 - (b) Ineligibility for any payments pursuant to this Subsection (4) shall be determined by the same court that finds a person to be factually innocent under Part 3, Postconviction Testing of DNA, or this part.
- (5) Payments pursuant to this section:
 - (a) are not subject to any Utah state taxes; and
 - (b) may not be offset by any expenses incurred by the state or any political subdivision of the state, including expenses incurred to secure the petitioner's custody, or to feed, clothe, or provide medical services for the petitioner.
- (6) If a court finds a petitioner to be factually innocent under Part 3, Postconviction Testing of DNA, or this part, the court shall also:
 - (a) issue an order of expungement of the petitioner's criminal record for all acts in the charging document upon which the payment under this part is based; and
 - (b) provide a letter to the petitioner explaining that the petitioner's conviction has been vacated on the grounds of factual innocence and indicating that the petitioner did not commit the crime or crimes for which the petitioner was convicted and was later found to be factually innocent under Part 3, Postconviction Testing of DNA, or this part.
- (7) A petitioner found to be factually innocent under Part 3, Postconviction Testing of DNA, or this part shall have access to the same services and programs available to Utah citizens generally as though the conviction for which the petitioner was found to be factually innocent had never occurred.
- (8) Payments pursuant to this part constitute a full and conclusive resolution of the petitioner's claims on the specific issue of factual innocence. Pre-judgment interest may not be awarded in addition to the payments provided under this part.

Amended by Chapter 220, 2012 General Session