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MEMORANDUM

To: Assemblyman Steve Yeager

From: Christine Brady, Second Assistant Attorney General

Date: February 17, 2021

Subject: AB104 – Existing and possible wrongful conviction compensation cases under AB267 (2019), codified as NRS 41.900 et seq.

Below is an update on the status of the wrongful conviction compensation cases (NRS 41.900 *et seq.*) settled and pending in the state district courts and litigated on behalf of the State by the Nevada Attorney General's Office.

Settled matters:

- Berry, Demarlo, Eighth Judicial District Court. Wrongfully incarcerated for 21 years, 11 months. Certificate of innocence issued by the court on July 6, 2020. Joint motion for settlement provided for \$2.25 million for the length of the wrongful conviction, plus \$25,000 in attorney's fees. The Board of Examiners (BOE) approved the initial payment of \$2,275,000 in August 2020 from the Reserve for Statutory Contingency Account (Reserve). Final orders regarding amounts for additional benefits permitted by the statute and to be paid from the Reserve (i.e. medical insurance, housing assistance, NSHE courses, counseling, etc.) approved or otherwise pending and will continue indefinitely. Mr. Berry is in the processes of negotiating his federal 42 U.S.C. §1983 action against Clark County and Las Vegas Metropolitan Police Department. Counsel in that action have requested waiver of the offset provision of NRS 41.960.
- Mason, Reginald (aka Hayes, Reginald), Eighth Judicial District Court. Wrongfully incarcerated for 13 years, 10 months. Certificate of innocence issued by the court on December 9, 2020. Joint motion for settlement provided \$975,000 for the length of the wrongful conviction, plus \$15,000 in attorney's fees. The BOE approved the initial settlement of \$990,000 in December 2020. Additional reimbursement for benefits permitted under the statute (i.e. medical insurance, NSHE courses, and financial literacy assistance) will continue indefinitely.

- Steese, Frederick, Eighth Judicial District Court. Wrongfully incarcerated for 18 years. Certificate of innocence and joint motion for settlement pending for \$1.35 million plus \$25,000 attorney's fees before the district court, with a hearing scheduled for February 24, 2021. Additional reimbursement for benefits permitted under the statute (i.e. medical insurance, NSHE courses, and financial literacy assistance) will continue indefinitely.
- Woods, Cathy, Second Judicial District Court. Wrongfully incarcerated for 33 years, 8 months. Following global mediation and settlement with City of Reno and City of Shreveport, Louisiana in §1983 action resulted in the State's portion of \$2,850,000, which included all attorney's fees and additional benefits. The state court issued the Certificate of Innocence and joint motion for settlement for \$2,850,000. The BOE approved the settlement in November 2020. Due to the global settlement, Ms. Woods will not receive any additional benefits or payments.

Matters still pending:

- Dealba Jr., Ignacio, Eighth Judicial District Court. Petitioner filed a complaint in August 2020. He alleges he was wrongfully incarcerated for 5 years, or \$250,000 under NRS 41.950. He may also be eligible for up to \$25,000 attorney's fees and additional benefits. Discovery has not yet begun and no settlement discussions to date.
- LaPena, Frank, Eighth Judicial District Court. Petitioner filed a complaint in March 2020. He alleges he was wrongfully incarcerated for 31 years, or \$3.1 million under NRS 41.950. He may also be eligible for up to \$25,000 attorney's fees and additional benefits. Discovery has not yet begun and no settlement discussions to date.
- Lobato, Kirstin, Eighth Judicial District Court. Petitioner filed a complaint in November 2019. She alleges she was wrongfully incarcerated for 15 years, or \$1,125,000 under NRS 41.950. She may also be eligible for up to \$25,000 attorney's fees and additional benefits. Discovery is ongoing and no settlement discussions to date. There is a tentative trial date scheduled for August 2021.

To summarize, seven individuals have filed wrongful conviction compensation complaints pursuant to NRS 41.900 *et seq.* since AB267 (2019) went into effect on October 1, 2019. Of those, all but two (Dealba and LaPena) were among the thirteen potential complainants identified when the Legislature passed AB267 in 2019. To date, the State has settled four – Ms. Woods, Mr. Berry, Mr. Hayes/Mason and Mr. Steese for a combined total cost thus far of \$7,688,000 (including anticipated court-approval of the settlement with Mr. Steese and ultimate approval by the BOE) with additional reimbursement of unknown future costs for Mr. Berry, Mr. Hayes/Mason and Mr. Steese. The remaining three matters are pending in the Eighth Judicial District Court. Total potential liability for the remaining three cases is \$3,190,000 plus unknown future costs. Under the language of AB267, claimants who

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were released from alleged wrongful conviction prior to October 1, 2019, have until September 30, 2021, to file an action under NRS 41.900 *et seq.*