

HOUSE BILL No. 2780

By Committee on Judiciary

Requested by Danedri Herbert on behalf of the Office of Attorney General

2-8

1 AN ACT concerning civil actions; relating to compensation for certain
2 persons convicted and subsequently imprisoned for one or more crimes
3 that such person did not commit; amending K.S.A. 2023 Supp. 60-5004
4 and repealing the existing section.
5

6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2023 Supp. 60-5004 is hereby amended to read as
8 follows: 60-5004. (a) As used in this section, "claimant" means a person
9 convicted and subsequently imprisoned for one or more crimes that such
10 person did not commit.

11 (b) (1) Notwithstanding the provisions of any other law, a claimant
12 may bring an action in the district court seeking damages from the state
13 pursuant to this section.

14 (2) *A person shall not bring an action pursuant to this section if such*
15 *person's conviction was reversed or vacated based on ineffective*
16 *assistance of counsel.*

17 (c) (1) The claimant shall establish the following by a preponderance
18 of evidence:

19 (A) The claimant was convicted of a felony crime and subsequently
20 imprisoned;

21 (B) the claimant's judgment of conviction was reversed or vacated,
22 and:

23 (i) Either the charges were dismissed or on retrial the claimant was
24 found to be not guilty;

25 ~~(C)(ii)~~ the claimant did not commit the crime or crimes for which the
26 claimant was convicted ~~and, causing the conviction to be reversed or~~
27 ~~vacated or the charges to be dismissed; and~~

28 (iii) ~~the claimant was not an accessory or accomplice to the acts that~~
29 ~~were the basis of the conviction and resulted in a reversal or vacation of~~
30 ~~the judgment of conviction, dismissal of the charges or finding of not~~
31 ~~guilty on retrial; and;~~

32 ~~(D)(C)~~ the claimant did not commit or suborn perjury; *or fabricate*
33 *evidence, or by the claimant's own conduct cause or bring about the*
34 *conviction.* Neither a confession nor admission later found to be false or a
35 guilty plea shall constitute committing or suborning perjury; *or fabricating*

1 evidence ~~or causing or bringing about the conviction~~ under this
2 subsection; *and*

3 (D) *the claimant's own conduct, including any action taken by the*
4 *claimant before, during or after the commission of the acts that served as*
5 *the basis for the claimant's conviction, did not contribute to, cause or*
6 *bring about the conviction.*

7 (2) The court, in exercising its discretion as permitted by law
8 regarding the weight and admissibility of evidence submitted pursuant to
9 this section, may, in the interest of justice, give due consideration to
10 difficulties of proof caused by the passage of time, the death or
11 unavailability of witnesses, the destruction of evidence or other factors not
12 caused by such persons or those acting on their behalf.

13 (d) (1) The suit, accompanied by a statement of the facts concerning
14 the claim for damages, verified in the manner provided for the verification
15 of complaints in the rules of civil procedure, shall be brought by the
16 claimant within a period of two years after the: (A) Dismissal of the
17 criminal charges against the claimant or finding of not guilty on retrial; or
18 (B) grant of a pardon to the claimant.

19 (2) A claimant convicted, imprisoned and released from custody
20 before July 1, 2018, must commence an action under this section no later
21 than July 1, 2020.

22 (3) All pleadings shall be captioned, "In the matter of the wrongful
23 conviction of _____."

24 (4) Any claim filed pursuant to this section shall be served on the
25 attorney general in accordance with the code of civil procedure.

26 (5) The suit for a claim filed pursuant to this section shall be tried by
27 the court, and no request for a jury trial may be made pursuant to K.S.A.
28 60-238, and amendments thereto.

29 (e) (1) Damages awarded under this section shall be:

30 (A) ~~\$65,000~~ \$180 for each ~~year~~ *day* of imprisonment, except as
31 provided in subsection (e)(2); ~~and~~

32 (B) ~~not less than \$25,000~~ \$70 for each additional ~~year~~ *day* served on
33 parole or postrelease supervision or each additional ~~year~~ *day* the claimant
34 was required to register as an offender under the Kansas offender
35 registration act, whichever is greater; *and*

36 (C) \$110 for each day spent under a house arrest program pursuant
37 to K.S.A. 21-6609, and amendments thereto, except as provided in
38 subsection (e)(2).

39 (2) A claimant shall not receive compensation for any period of
40 ~~incarceration~~ *imprisonment or house arrest* during which the claimant was
41 concurrently serving a sentence for a conviction of another crime for
42 which such claimant was lawfully incarcerated.

43 (3) *Compensation for days of imprisonment shall only be awarded*

1 *for days spent in the custody of the secretary of corrections and any time*
2 *served in jail awaiting post-trial transfer to the department of corrections.*

3 ~~(3)~~(4) (A) Except as provided in subparagraph (B), the court shall
4 order that the award be paid as a combination of an initial payment not to
5 exceed \$100,000 or 25% of the award, whichever is greater, and the
6 remainder as an annuity not to exceed \$80,000 per year. The claimant shall
7 designate a beneficiary or beneficiaries for the annuity by filing such
8 designation with the court.

9 (B) The court may order that the award be paid in one lump sum if
10 the court finds that it is in the best interests of the claimant.

11 ~~(4)~~(5) In addition to the damages awarded pursuant to subsection (e)
12 (1), the claimant:

13 (A) Shall be entitled to receive reasonable attorney fees and costs
14 incurred in the action brought pursuant to this section not to exceed a total
15 of ~~\$25,000, unless a greater reasonable total is authorized by the court~~
16 ~~upon a finding of good cause shown \$100,000;~~

17 (B) may also be awarded other non-monetary relief as sought in the
18 complaint including, but not limited to, counseling, housing assistance *for*
19 *a period of time not to exceed five years* and personal financial literacy
20 assistance, as appropriate;

21 (C) shall be entitled to receive tuition assistance pursuant to K.S.A.
22 74-32,195, and amendments thereto; and

23 (D) shall be entitled to participate in the state health care benefits
24 program pursuant to K.S.A. 75-6501, and amendments thereto.

25 (f) (1) If, at the time of the judgment entry referred to in subsection
26 (e), the claimant has won a monetary award against the state or any
27 political subdivision thereof in a civil action related to the same subject, or
28 has entered into a settlement agreement with the state or any political
29 subdivision thereof related to the same subject, the amount of the award in
30 the action or the amount received in the settlement agreement, less any
31 sums paid to attorneys or for costs in litigating the other civil action or
32 obtaining the settlement agreement, shall be deducted from the sum of
33 money to which the claimant is entitled under this section. The court shall
34 include in the judgment entry an award to the state of any amount
35 deducted pursuant to this subsection.

36 (2) If subsection (f)(1) does not apply and if, after the time of the
37 judgment entry referred to in subsection (e), the claimant wins a monetary
38 award against the state or any political subdivision thereof in a civil action
39 related to the same subject, or enters into a settlement agreement with the
40 state or any political subdivision thereof related to the same subject, the
41 claimant shall reimburse the state for the sum of money paid under the
42 judgment entry referred to in subsection (e), less any sums paid to
43 attorneys or for costs in litigating the other civil action or obtaining the

1 settlement agreement. A reimbursement required under this subsection
2 shall not exceed the amount of the monetary award the claimant wins for
3 damages in the other civil action or the amount received in the settlement
4 agreement.

5 (g) If the court finds that the claimant is entitled to a judgment, it
6 shall enter a certificate of innocence finding that the claimant was innocent
7 of all crimes for which the claimant was mistakenly convicted. The clerk
8 of the court shall send a certified copy of the certificate of innocence and
9 the judgment entry to the attorney general for payment pursuant to K.S.A.
10 75-6117, and amendments thereto.

11 (h) (1) Upon entry of a certificate of innocence, the court shall order
12 the associated convictions and arrest records expunged and purged from all
13 applicable state and federal systems pursuant to this subsection. The court
14 shall enter the expungement order regardless of whether the claimant has
15 prior criminal convictions.

16 (2) The order of expungement shall state the:

17 (A) Claimant's full name;

18 (B) claimant's full name at the time of arrest and conviction, if
19 different than the claimant's current name;

20 (C) claimant's sex, race and date of birth;

21 (D) crime for which the claimant was arrested and convicted;

22 (E) date of the claimant's arrest and date of the claimant's conviction;
23 and

24 (F) identity of the arresting law enforcement authority and identity of
25 the convicting court.

26 (3) The order of expungement shall also direct the Kansas bureau of
27 investigation to purge the conviction and arrest information from the
28 criminal justice information system central repository and all applicable
29 state and federal databases. The clerk of the court shall send a certified
30 copy of the order to the Kansas bureau of investigation, which shall carry
31 out the order and shall notify the federal bureau of investigation, the
32 secretary of corrections and any other criminal justice agency that may
33 have a record of the conviction and arrest. The Kansas bureau of
34 investigation shall provide confirmation of such action to the court.

35 (4) If a certificate of innocence and an order of expungement are
36 entered pursuant to this section, the claimant shall be treated as not having
37 been arrested or convicted of the crime.

38 (i) Upon entry of a certificate of innocence, the court shall order the
39 expungement and destruction of the associated biological samples
40 authorized by and given to the Kansas bureau of investigation in
41 accordance with K.S.A. 21-2511, and amendments thereto. The order shall
42 state the information required to be stated in a petition to expunge and
43 destroy the samples and profile record pursuant to K.S.A. 21-2511, and

1 amendments thereto, and shall direct the Kansas bureau of investigation to
2 expunge and destroy such samples and profile record. The clerk of the
3 court shall send a certified copy of the order to the Kansas bureau of
4 investigation, which shall carry out the order and provide confirmation of
5 such action to the court. Nothing in this subsection shall require the
6 Kansas bureau of investigation to expunge and destroy any samples or
7 profile record associated with the claimant that was submitted pursuant to
8 K.S.A. 21-2511(a), and amendments thereto, related to any offense other
9 than the offense for which the court has entered a certificate of innocence.

10 (j) The decision to grant or deny a certificate of innocence shall not
11 have a res judicata effect on any other proceedings.

12 (k) Nothing in this section shall preclude the department of
13 corrections from providing reentry services to a claimant that are provided
14 to other persons, including, but not limited to, financial assistance, housing
15 assistance *for a period of time not to exceed five years*, mentoring and
16 counseling. Such services shall be provided while an action under this
17 section is pending and after any judgment is entered, as appropriate for
18 such claimant.

19 ~~(l) The decision of the district court may be appealed directly to the~~
20 ~~supreme court pursuant to the code of civil procedure. As used in this~~
21 ~~section:~~

22 (1) *"Housing assistance" means monthly payments to a rental facility*
23 *or financial institution in an amount not to exceed \$2,000. On July 1,*
24 *2025, and on July 1 every five years thereafter, such amount shall be*
25 *increased in an amount equal to the average percentage increase in the*
26 *consumer price index for all urban consumers in the midwest region as*
27 *published by the bureau of labor statistics of the United States department*
28 *of labor.*

29 (2) *"Counseling" means services for mental health, career placement,*
30 *substance abuse, disability rehabilitation and family reunification.*

31 Sec. 2. K.S.A. 2023 Supp. 60-5004 is hereby repealed.

32 Sec. 3. This act shall take effect and be in force from and after its
33 publication in the statute book.