Session of 2025

SENATE BILL No. 91

By Senator Haley

1-28

AN ACT concerning civil actions; relating to actions for wrongful conviction and imprisonment; providing for payment of interest; directing the attorney general to file certain collateral actions; amending K.S.A. 2024 Supp. 60-5004 and repealing the existing section.

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

Section 1. K.S.A. 2024 Supp. 60-5004 is hereby amended to read as follows: 60-5004. (a) As used in this section, "claimant" means a person convicted and subsequently imprisoned for one or more crimes that such person did not commit.

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

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

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

(B) the claimant's judgment of conviction was reversed or vacated and either the charges were dismissed or on retrial the claimant was found to be not guilty;

(C) the claimant did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial; and

(D) the claimant did not commit or suborn perjury, fabricate evidence, or by the claimant's own conduct cause or bring about the conviction. Neither a confession nor admission later found to be false or a guilty plea shall constitute committing or suborning perjury, fabricating evidence or causing or bringing about the conviction under this subsection.

(2) The court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this section, may, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not

caused by such persons or those acting on their behalf.

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

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

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

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

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

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

(A) $65,000 for each year of imprisonment, except as provided in subsection (e)(2); and

(B) not less than $25,000 for each additional year served on parole or postrelease supervision or each additional year the claimant was required to register as an offender under the Kansas offender registration act, whichever is greater.

(2) A claimant shall not receive compensation for any period of incarceration during which the claimant was concurrently serving a sentence for a conviction of another crime for which such claimant was lawfully incarcerated.

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

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

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

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

(B) *shall be entitled to receive interest on the damages awarded*

under this section from the date the suit for the claim was filed pursuant to this section at the rate provided for interest on judgments in K.S.A. 16-204, and amendments thereto.

(C) may also be awarded other non-monetary relief as sought in the complaint including, but not limited to, counseling, housing assistance and personal financial literacy assistance, as appropriate;

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

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

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

(2) If subsection (f)(1) does not apply and if, after the time of the judgment entry referred to in subsection (e), the claimant wins a monetary award against the state or any political subdivision thereof in a civil action related to the same subject, or enters into a settlement agreement with the state or any political subdivision thereof related to the same subject, the claimant shall reimburse the state for the sum of money paid under the judgment entry referred to in subsection (e), less any sums paid to attorneys or for costs in litigating the other civil action or obtaining the settlement agreement. A reimbursement required under this subsection shall not exceed the amount of the monetary award the claimant wins for damages in the other civil action or the amount received in the settlement agreement.

(3) Whenever any judgment has been entered pursuant to this section, the attorney general shall seek to recover damages for the state of Kansas for the benefit of the state general fund from any person who knowingly contributed to the wrongful conviction and imprisonment of the claimant, to the extent the evidence in the case warrants such action. The attorney general shall prosecute ouster and criminal proceedings as the evidence in the case warrants.

(g) If the court finds that the claimant is entitled to a judgment, it shall enter a certificate of innocence finding that the claimant was innocent of all crimes for which the claimant was mistakenly convicted. The clerk

of the court shall send a certified copy of the certificate of innocence and the judgment entry to the attorney general for payment pursuant to K.S.A. 75-6117, and amendments thereto.

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

(2) The order of expungement shall state the:

(A) Claimant's full name;

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

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

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

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

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

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

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

(i) Upon entry of a certificate of innocence, the court shall order the expungement and destruction of the associated biological samples authorized by and given to the Kansas bureau of investigation in accordance with K.S.A. 21-2511, and amendments thereto. The order shall state the information required to be stated in a petition to expunge and destroy the samples and profile record pursuant to K.S.A. 21-2511, and amendments thereto, and shall direct the Kansas bureau of investigation to expunge and destroy such samples and profile record. The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation, which shall carry out the order and provide confirmation of such action to the court. Nothing in this subsection shall require the Kansas bureau of investigation to expunge and destroy any samples or profile record associated with the claimant that was submitted pursuant to

K.S.A. 21-2511(a), and amendments thereto, related to any offense other than the offense for which the court has entered a certificate of innocence.

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

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

(l) The decision of the district court may be appealed directly to the supreme court pursuant to the code of civil procedure.

Sec. 2. K.S.A. 2024 Supp. 60-5004 is hereby repealed.

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