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Before the House Committee on the Judiciary
HB 2780 Proponent Testimony
Office of the Kansas Attorney General
March 5, 2024

Representative Susan Humphries
Kansas House Judiciary Committee Chair
Topeka, KS 66612

Dear Representative Humphries and Members of the Committee:

This correspondence is to support the passage of House Bill (HB) 2780. HB 2780 is an attempt to clarify portions of K.S.A. 60-5004, commonly known as the wrongful conviction act (“the Act”).

HB 2780 will restore the wrongful conviction act to the policy the legislature originally intended and ensure only those who are actually innocent receive compensation. Our tax dollars should not be going to criminals who got off on a technicality. It also expands and updates the compensation available for actually innocent people who are wrongfully convicted.

In 2018, the Kansas Legislature considered proposed legislation (HB 2579 and SB 336) that became the Act to compensate those who had been wrongfully convicted of a felony crime or crimes and subsequently imprisoned. The Senate Judiciary Committee held a hearing on the bills, hearing testimony from witnesses who had convictions overturned or vacated because they were actually innocent of the crimes of conviction. Floyd Bledsoe, Lamont McIntyre, and Richard Jones provided written and in-person testimony. Mr. Bledsoe testified that updated DNA testing excluded him from being a suspect in the rape and murder of his sister-in-law, and it led to the vacation of his conviction. Mr. McIntyre and Mr. Jones testified that their criminal convictions resulted from mistaken eyewitness testimony regarding their identities and both had their convictions vacated. The Act passed in the House 119-0, in the Senate 40-0, and was signed into law by Governor Jeffrey Colyer.

Generally, the Act compensates those who were wrongfully convicted with \$65,000 for each year of conviction and \$25,000 for each additional year served on parole or post-release supervision. The Act also provides for reasonable attorney fees and costs, other relief such as

counseling, housing assistance, tuition assistance to any state educational institution, and participation in the state health care plan for up to two years.

Since the passage of the Act, approximately 25 wrongful conviction cases have been filed. Eight claimants have had Certificates of Innocence issued and received compensation under the Act. The total amount of compensation that has been paid to those eight claimants is just over \$4.3 million. There have been five wrongful conviction trials. The State prevailed in three of those cases, with two of those currently on appeal. A claimant prevailed at trial in one case, and that is currently on appeal. The fifth trial occurred on January 29-30, 2024, and a decision is pending in that case.

The Kansas Supreme Court has issued four opinions in wrongful conviction cases: *In the Matter of the Wrongful Conviction of M.M.*, 312 Kan. 872 (2021); *In the Matter of the Wrongful Conviction of Dameon Baumgardner*, 537 P.3d 92 (2023); *In the Matter of the Wrongful Conviction of Eric L. Bell*, 317 Kan. 334 (2023); and *In the Matter of the Wrongful Conviction of Michael Sims*, 2024 WL 294236 (opinion filed January 26, 2024). In *M.M.*, *Bell*, and *Sims*, the Court affirmed dismissals as a matter of law. The Court reversed the dismissal of Mr. Baumgardner's case, remanded it back to Sumner County District Court, and it is currently pending. Four cases are currently pending before the Kansas Supreme Court.

When the legislature originally considered passing the wrongful conviction act, 32 states, the District of Columbia, and the federal government had statutes in some form to compensate the wrongfully convicted. The number has since risen to 35 states and the federal government, but the core requirement in nearly all of these laws is that a claimant must not have committed the crime of conviction, related acts, or actions of an accessory or accomplice to the crime of conviction.

HB 2780 would amend the Act in a number of important ways, clarifying the Legislature's intent underlying the original Act in vital areas where district courts have reached conflicting interpretations. Further, the proposed changes improve the administration of compensation and the net compensation to eligible recipients. The most critical of the proposed changes are as follows:

1. Most of the cases that the State has contested were brought by individuals whose convictions were reversed or vacated because of ineffective assistance of counsel, not because the claimant was found to be actually innocent of the crime. District courts have disagreed on the underlying legislative intent. The proposed amendment to Section (b) clarifies that a claim for compensation cannot be based on ineffective assistance of counsel, making explicit the Legislature's intent to provide compensation for the innocent whose convictions were the result of matters within the State's control and not those with convictions overturned on non-innocence technical grounds.
2. The bill clarifies that the fact that the claimant did not commit the crime must be the reason for the reversal or vacation of the conviction or dismissal of the charges upon remand.

3. HB 2780 includes language that clarifies “own conduct” as any actions taken before, during, and after the acts that led to criminal charges. Several claimants and the State have different interpretations of the Act’s requirement that the claimant’s “own conduct” caused or brought about the conviction. Claimants argue that “own conduct” refers to conduct that occurred after criminal charges were filed or during the underlying criminal trial. The State has argued that “own conduct” also includes conduct that occurred before, during, and after the acts that led to the original criminal charges. This issue is currently pending in a case before the Kansas Supreme Court.
4. Further, HB 2780 clarifies that a claimant should be compensated for each day of imprisonment, parole, or post-release supervision rather than by the year. This change is intended to ease the administration of compensation. The amended provisions also increase the yearly compensation for incarceration to \$65,700, increase the yearly compensation for parole or post-release supervision to \$25,500, and provides \$110 per day (\$40,150 annually) in compensation for time spent on house arrest, which is usually more restrictive than parole or post-release supervision.
5. The proposed changes also raise the cap on attorney fees and costs from \$25,000 to \$100,000. The exception to the cap for “good cause shown” is eliminated.
6. The new Section (l) eliminates the right to appeal a district court decision directly to the Kansas Supreme Court, instead allowing these matters to follow the same appellate course as other cases through the Court of Appeals.
7. HB 2780 also defines the housing assistance benefit as monthly payments for rent or mortgage not to exceed \$2,000 for a period not to exceed five years. This provides both a clear indication of the nature of the benefit and a defined period for its provision.

In order to further strengthen the bill, our office would support an amendment clarifying that the proposed language in K.S.A. 60-5004(b)(2) would allow a person to receive compensation if the basis for their conviction was reversed or vacated based on ineffective assistance of counsel, so long as the person is found to be innocent by the court.

I urge your support of HB 2780, as it both resolves issues that have arisen in the interpretation and application of the Act since its passage and improves compensation for eligible claimants. I appreciate your time and attention, and I am happy to answer any questions.

Sincerely,

Robert C. Hutchison
Deputy Attorney General
Civil Division