

SENATE BILL No. 187

By Senator Haley

2-7

1 AN ACT concerning civil actions; relating to actions for wrongful
2 conviction and imprisonment; providing for payment of interest;
3 directing the attorney general to file certain collateral actions;
4 amending K.S.A. 2022 Supp. 60-5004 and repealing the existing
5 section.
6

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

8 Section 1. K.S.A. 2022 Supp. 60-5004 is hereby amended to read as
9 follows: 60-5004. (a) As used in this section, "claimant" means a person
10 convicted and subsequently imprisoned for one or more crimes that such
11 person did not commit.

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

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

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

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

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

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

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

1 caused by such persons or those acting on their behalf.

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

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

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

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

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

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

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

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

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

29 (3) (A) Except as provided in subparagraph (B), the court shall order
30 that the award be paid as a combination of an initial payment not to exceed
31 \$100,000 or 25% of the award, whichever is greater, and the remainder as
32 an annuity not to exceed \$80,000 per year. The claimant shall designate a
33 beneficiary or beneficiaries for the annuity by filing such designation with
34 the court.

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

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

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

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

1 *under this section from the date the suit for the claim was filed pursuant to*
2 *this section at the rate provided for interest on judgments in K.S.A. 16-*
3 *204, and amendments thereto;*

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

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

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

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

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

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

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

1 of the court shall send a certified copy of the certificate of innocence and
2 the judgment entry to the attorney general for payment pursuant to K.S.A.
3 75-6117, and amendments thereto.

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

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

10 (A) Claimant's full name;

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

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

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

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

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

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

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

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

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

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

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

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

13 Sec. 2. K.S.A. 2022 Supp. 60-5004 is hereby repealed.

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