

As Amended by House Committee

Session of 2018

HOUSE BILL No. 2579

By Committee on Judiciary

1-30

1 AN ACT concerning civil actions; relating to wrongful conviction and
2 imprisonment; compensation; amending K.S.A. 2017 Supp. 75-6117
3 and repealing the existing section.
4

5 WHEREAS, The Legislature intends by enactment of the provisions of
6 this act that those innocent persons who can demonstrate by a
7 preponderance of evidence that they were mistakenly convicted and
8 imprisoned be able to recover damages against the State; and

9 WHEREAS, The Legislature finds and declares that innocent persons
10 who have been convicted of crimes and subsequently imprisoned have
11 been frustrated in seeking legal redress and that such persons should have
12 an available avenue of redress to seek compensation for damages.

13 Now, therefore:

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

15 New Section 1. (a) As used in this section, "claimant" means a person
16 convicted and subsequently imprisoned for one or more crimes that such
17 person did not commit.

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

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

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

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

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

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

1 evidence or causing or bringing about the conviction under this subsection.

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

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

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

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

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

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

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

25 (A) \$80,000 for each year of imprisonment, except as provided in
26 subsection ~~(d)~~(e)(2); and

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

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

35 (3) The court shall order that the award be paid either in one lump
36 sum or as a combination of an initial payment determined by the court
37 with the remainder paid as an annuity. The court shall consider the best
38 interests of the claimant in making such determination.

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

41 (A) Shall be entitled to receive reasonable attorney fees and costs
42 ~~related to the litigation~~ **incurred in the action brought pursuant to this**
43 **section;** and

1 (B) may also be awarded other non-monetary relief as sought in the
2 complaint including, but not limited to, vocational training, tuition
3 assistance, counseling, housing assistance and health insurance coverage,
4 as appropriate.

5 ~~(5) Damages awarded under this section shall not be subject to~~
6 ~~treatment as gross income to the claimant.~~

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

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

30 (g) If the court finds that the claimant is entitled to a judgment, it
31 shall enter a certificate of innocence finding that the claimant was innocent
32 of all crimes for which the claimant was mistakenly convicted. The clerk
33 of the court shall send a certified copy of the certificate of innocence and
34 the judgment entry to the attorney general for payment pursuant to K.S.A.
35 75-6117, and amendments thereto.

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

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

42 (A) Claimant's full name;

43 (B) claimant's full name at the time of arrest and conviction, if

1 different than the claimant's current name;

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

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

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

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

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

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

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

21 **(j) The decision of the district court may be appealed directly to**
22 **the supreme court pursuant to the code of civil procedure.**

23 Sec. 2. K.S.A. 2017 Supp. 75-6117 is hereby amended to read as
24 follows: 75-6117. (a) There is hereby established in the state treasury the
25 tort claims fund which shall be administered by the attorney general. All
26 expenditures from such fund shall be made upon warrants of the director
27 of accounts and reports pursuant to vouchers approved by the attorney
28 general or by a designee of the attorney general.

29 (b) *(1) Moneys in the tort claims fund shall be used only for the*
30 *purpose of paying—(1): (A) Compromises, settlements and final judgments*
31 *arising from claims against the state or an employee of the state under the*
32 *Kansas tort claims act or under the civil rights laws of the United States or*
33 *of the state of Kansas—and—(2); (B) costs of defending the state or an*
34 *employee of the state in any actions or proceedings on those claims; and*
35 *(C) judgments arising from claims pursuant to section 1, and amendments*
36 *thereto.*

37 (2) Payment of a compromise or settlement shall be subject to
38 approval by the state finance council as provided in K.S.A. 75-6106, and
39 amendments thereto. Payment of a final judgment shall be made from the
40 fund if there has been a determination of any appeal taken from the
41 judgment or, if no appeal is taken, if the time for appeal has expired. No
42 payment shall be made from the fund to satisfy a compromise, settlement
43 or final judgment when there exists insurance coverage obtained therefor,

1 except that payment shall be made from the fund to satisfy a compromise
2 settlement or final judgment for claims against the state or an employee of
3 the state in any actions or proceedings arising from rendering or failure to
4 render professional services by: (A) A charitable health care provider as
5 defined by K.S.A. 75-6102, and amendments thereto;; (B) a local health
6 department as defined by K.S.A. 65-241, and amendments thereto, or an
7 employee thereof;; or (C) an indigent health care clinic as defined by
8 K.S.A. 75-6115, and amendments thereto, or an employee thereof, even if
9 there exists insurance coverage obtained therefor.

10 (c) Upon certification by the attorney general to the director of
11 accounts and reports that the unencumbered balance in the tort claims fund
12 is insufficient to pay an amount for which the fund is liable, the director of
13 accounts and reports shall transfer an amount equal to the insufficiency
14 from the state general fund to the tort claims fund.

15 (d) When payment is made from the Kansas tort claims fund on
16 behalf of the university of Kansas hospital authority, the authority shall
17 transfer to the tort claims fund an amount equal to the payment made by
18 the tort claims fund on behalf of the authority.

19 (e) This section shall be part of and supplemental to the Kansas tort
20 claims act.

21 Sec. 3. K.S.A. 2017 Supp. 75-6117 is hereby repealed.

22 Sec. 4. This act shall take effect and be in force from and after its
23 publication in the statute book.