

KANSAS OFFICE *of*  
**REVISOR *of* STATUTES**

LEGISLATURE *of* THE STATE *of* KANSAS  
*Legislative Attorneys transforming ideas into legislation.*

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**MEMORANDUM**

To: Senate Committee on Judiciary

From: Jason Thompson, Senior Assistant Revisor of Statutes

Date: March 12, 2018

Subject: Bill Brief for HB 2579, as amended by House Committee

HB 2579, as amended, seeks to provide compensation for a person who was wrongfully convicted and imprisoned by creating a civil cause of action.

| <b>SB 336, as amended by<br/>Senate Committee of the Whole</b>   | <b>HB 2579, as amended by<br/>House Committee</b> |
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| New Section 1  | New Section 1                                     |
| Subsection (a)<br>- A “claimant” is a person convicted and subsequently imprisoned for one or more crimes that such person did not commit  | Subsection (a)<br>Same                            |
| Subsection (b)<br>- Claimant may bring an action in district court seeking damages from the state  | Subsection (b)<br>Same                            |
| Subsection (c)<br>- Claimant is required to establish four facts by a preponderance of evidence: (1) The claimant was convicted of a felony crime and subsequently imprisoned; (2) 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; (3) 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 (4) the claimant did not commit or suborn perjury, fabricate evidence, or by the claimant's own conduct cause or bring about the conviction | Subsection (c)<br>Same                            |

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- A confession or an admission later found to be false or a guilty plea shall not constitute committing or suborning perjury, fabricating evidence or causing or bringing about the conviction

Subsection (d)

- Statute of limitations for actions is two years after the dismissal of the criminal charges against the claimant or a finding of not guilty on retrial, or two years after the grant of a pardon to the claimant

- For a claimant convicted, imprisoned and released from custody before July 1, 2018, the claimant must commence an action under this section no later than July 1, 2020

Subsection (e)

- Damages awarded to a claimant shall be:  
(1) \$50,000 for each year of imprisonment; and  
(2) 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

- Claimant cannot receive compensation for any period of incarceration during which the claimant was concurrently serving a sentence for another crime for which the claimant was lawfully incarcerated.

- The court shall order that the award be paid as a combination of an initial payment not to exceed \$100,000 and the remainder as an annuity not to exceed \$80,000 per year; claimant shall designate a beneficiary for the annuity with the court; the court may order the award be paid in one lump sum if the court finds it is in the best interests of the claimant

- Claimant is also entitled to reasonable attorney fees and costs incurred in the action brought pursuant to this section

Subsection (d)

Same, but added (d)(3), (4), and (5)

- All pleadings shall be captioned, "In the matter of the wrongful conviction of \_\_\_\_."

- Any claim shall be served on the attorney general in accordance with the code of civil procedure

- Any claim shall be tried by the court, and a jury trial cannot be requested

Subsection (e)

- Damages awarded to a claimant shall be:

(1) \$80,000 for each year of imprisonment; and  
(2) Same

- Same

- The court shall consider the best interests of the claimant in ordering that the award be paid either in one lump sum or as a combination of an initial payment with the remainder paid as an annuity

- Same

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| <p>- Court may award any other appropriate non-monetary relief the claimant might seek, such as <u>counseling, housing assistance, and personal financial literacy assistance</u></p> <p>- <u>Claimant shall be entitled to receive tuition assistance pursuant to new section 2</u></p> <p>- <u>Claimant shall be entitled to participate in the state health care benefits program pursuant to K.S.A. 75-6501 (section 4)</u></p> <p>- <u>Damages not subject to treatment as gross income to the claimant</u></p> <p>Subsection (f)</p> <p>- Setoff of recovery in other civil actions or settlements related to the same subject that have been awarded before the judgment entry</p> <p>- Reimbursement to the state for recovery in other civil actions or settlements related to the same subject that are awarded after the judgment entry</p> <p>- <u>Attorney general shall seek to recover damages for the state of Kansas, for the benefit of the state general fund, from any persons who knowingly contributed to claimant's wrongful conviction and imprisonment, to the extent evidence warrants action; shall also prosecute ouster and other criminal proceedings as the evidence warrants</u></p> <p>Subsection (g)</p> <p>- Requires the court to enter a certificate of innocence if the claimant is entitled to a judgment; clerk of the court is required to send a certified copy of the certificate of innocence to the attorney general for payment of the judgment under K.S.A. 75-6117 (section 3)</p> | <p>- Court may award any other appropriate non-monetary relief the claimant might seek, such as <u>vocational training, tuition assistance, counseling, housing assistance and health insurance coverage</u></p> <p>- N/A</p> <p>- N/A</p> <p>- <u>Removed gross income provision</u><br/>Note: payments not included in gross income at the federal level by 26 USC § 139F; Kansas uses federal adjusted gross income; removed to avoid confusion</p> <p>Subsection (f)</p> <p>- Same</p> <p>- Same</p> <p>- N/A</p> <p>Subsection (g)</p> <p>Same</p> |
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| <p>Subsection (h)<br/>- Court shall order associated convictions and arrest records expunged and purged from all applicable state and federal systems, regardless of whether the claimant has prior criminal convictions; <u>KBI shall provide confirmation of action to the court</u></p> <p>Subsection (i)<br/>- <u>Court shall order expungement and destruction of associated biological samples given pursuant to K.S.A. 21-2511 and DNA profile record; KBI shall provide confirmation of action to the court; KBI not required to destroy samples or profile records of the claimant related to any other offense</u></p> <p>Subsection (j)<br/>- No res judicata effect of other proceedings</p> <p>Subsection (k)<br/>- <u>Nothing shall preclude the department of corrections from providing reentry services to a claimant, such as financial assistance, housing assistance, mentoring, and counseling</u></p> <p>[House Subsection (j)]<br/>N/A</p> | <p>Subsection (h)<br/>Same, but <u>no requirement for KBI to provide confirmation to court</u></p> <p>[Senate Subsection (i)]<br/>N/A</p> <p>[Senate Subsection (j)] Subsection (i)<br/>Same</p> <p>[Senate Subsection (k)]<br/>N/A</p> <p>Subsection (j)<br/>- <u>District court decision may be appealed directly to the supreme court</u></p> |
| <p>New Section 2<br/><u>A claimant awarded tuition assistance shall receive a waiver of tuition and required fees for attendance at a postsecondary educational institution for up to 130 credit hours; may attend either full or part time; must remain in good standing at the institution</u></p>  | <p>N/A</p>   |
| <p>Sec. 3. K.S.A. 75-6117<br/>Authorizes payments from the tort claims fund</p>   | <p>Sec. 2. K.S.A. 75-6117<br/>Same</p>   |
| <p>Sec. 4. K.S.A. 75-6501<br/>New subsection (g)<br/><u>Designates claimants as qualified to participate in state health care benefits program; remainder of plan year when judgment is entered, plus next ensuing plan year; premiums paid from tort claims fund; claimant responsible for all other costs</u></p>   | <p>N/A</p>   |