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CUYAHOGA COUNTY PROSECUTOR

Testimony of Brian R. Gutkoski, Asst. County Prosecutor
House Government, Accountability and Oversight Committee
Opposition Testimony, House Bill 411 --- February 7, 2018

Chairman Blessing, Vice Chair Reineke, ranking member Clyde and members of the Committee:

My name is Brian Gutkoski and I have been with the Cuyahoga County Prosecutor's Office since 2011. Over three years ago, our office argued and won two cases in the Ohio Supreme Court which House Bill 411 seeks to legislatively repeal. Repeal of these cases would cause confusion and cost Ohio taxpayers significant money paid to those unable to show their innocence by a preponderance of evidence. If enacted, H.B. 411 would broaden and expand Ohio's wrongful imprisonment statute's eligibility requirements to make it the most liberal and all-encompassing in the United States. On behalf of both the Cuyahoga and Lucas County Prosecutors, we oppose these extensive changes to the state's wrongful imprisonment statute, O.R.C. 2743.48.

The two Ohio Supreme Court decisions prevent payouts to those who do not meet the wrongful imprisonment statute's requirements. These decisions are [Mansaray v. State](#), 138 Ohio St. 3d 277 (2014) and [C.K. v. State](#), 145 Ohio St.3d 322 (2015).

In *Mansaray*, a jury convicted Yanko Mansaray of drug possession and weapons violations in 2008. Prior to trial, he filed a motion to suppress the large quantities of Ecstasy pills found in his Cleveland home, claiming that police violated his Fourth Amendment rights.

Federal agents had an arrest warrant for someone known to live with Mansaray, but who was not there that day. U.S. Marshals called police to investigate the drugs and weapons they saw in plain view in Mansaray's home. Police obtained a search warrant from a Common Pleas judge based on what federal agents saw (lots of drugs and a gun). The judge denied Mansaray's pretrial motion to suppress all evidence. The jury convicted, resulting in an 11-year prison sentence.

In 2010, the state appeals court ruled that the trial judge made the wrong decision. According to the Court of Appeals, the trial court should have thrown out the evidence and dismissed the

charges. Upon his release, Mansaray wanted compensation for the roughly two years he spent in prison waiting for the reversal of his conviction.

The Ohio Supreme Court unanimously held that the 2003 “error in procedure” amendment¹ to Ohio’s wrongful imprisonment statute did not grant Mansaray the right to compensation because the way the statute read, the procedural error had to occur “during or subsequent to imprisonment.” Mansaray’s claimed “error” happened prior to trial when the court denied his motion to suppress. One of H.B. 411’s changes would open the door to many individuals presently barred from recovery under Ohio’s current statutory text. H.B. 411 would allow recovery for *Brady* reversals (i.e. “errors in procedure”) for which compensation will no longer be barred under *Mansaray*.

In addition to changing the fifth prong of R.C. 2743.48, H.B. 411 also edits the fourth prong to legislatively repeal *C.K. v. State*, 145 Ohio St.3d 322 (2015). In *C.K.*, Andre Coleman broke into C.K.’s home looking for his girlfriend, Valerie McNaughten (who was C.K.’s tenant). C.K. ordered Coleman to leave, but the boyfriend brushed by him and began beating Valerie. C.K. told him to stop, and when he saw Coleman move his arm behind his back, C.K. believed Coleman was drawing for a gun. C.K. took his handgun and shot Coleman multiple times. C.K. then stood over Coleman and emptied his handgun into him, even though he was already shot. Coleman died; C.K. was charged with murder.

At trial, C.K. admitted to the killing, but relied on Ohio’s Castle Doctrine, asserting that he acted in self-defense. The jury found C.K. guilty and the trial court sentenced him to 18 years in prison.

The 8th District Court of Appeals reversed C.K.’s conviction under a manifest weight review, remanding for a new trial. On remand, the prosecutor’s office dismissed the case without prejudice. After his release from prison, C.K. filed a wrongful imprisonment case. The Ohio Supreme Court held that he was disqualified from compensation because murder has no statute of limitations and “[t]he decision to defer prosecution pending the discovery of stronger evidence of guilt is insufficient to establish that no criminal proceeding can be brought or will be brought against C.K. for any act associated with Coleman’s murder.” *C.K. v. State*, 145 Ohio St.3d 322, 2015-Ohio-3421, ¶ 21.

H.B. 411, if enacted, would also negate the C.K. Supreme Court decision such that former murder convicts who obtain a reversal and new trial would now qualify, even though the prosecutor dismissed without prejudice on remand. The proposed change gives prosecutors a one-year deadline to reinstitute charges, even though a murder charge has no statute of limitations. H.B. 411, p. 3 – Lines 48-60.

¹ 124th G.A., S.B. 149.

http://archives.legislature.state.oh.us/synopses.cfm?ID=124_SB_149&ACT=As%20Enrolled

All told, if O.R.C. 2743.48(A)(4) and (A)(5) are changed in the manner contemplated in H.B. 411, the State of Ohio can anticipate total liabilities somewhere **between \$15M and \$20M**, as the bill purportedly reinstates “error in procedure” liability premised upon alleged “Brady violations”. See H.B. 411, p. 3-4 at Lines 72-82. As a result, it is recommended that this Committee table these changes because they are extremely costly and no other state has comparable strict liability anytime a claimant alleges a “Brady violation” was committed.

This office’s objections to expanding the (A)(5) eligibility requirement to permit strict liability recovery for *Brady* claims, are shared by a number of prosecutors, state-wide. “In *Brady v. Maryland*, 373 U. S. 83 (1963), [the U.S. Supreme] Court held that the government violates the Constitution’s Due Process Clause ‘if it withholds evidence that is favorable to the defense and material to the defendant’s guilt or punishment.’” *Turner v. United States*, __ U.S. __, 198 L.Ed.2d 443 (2017) (holding that despite Brady violations “there is not a ‘reasonable probability’ that the withheld evidence would have changed the outcome of petitioners’ trial”). *Id.* at 454. H.B. 411 attempts to circumvent qualified and/or prosecutorial immunity under federal law. No other state appears to have such a “strict liability” Brady violation means of qualifying as “wrongfully imprisoned” and receive payment under state law. Since Ohio shifted to open discovery and amended Criminal Rule 16 in 2010, these changes are a costly solution looking for a problem. Going forward, if a *Brady* violation is committed by any state actor, then existing federal law (42 U.S.C. § 1983) serves to address that highly unlikely scenario.

H.B. 411 takes Ohio’s statute and make it a clear outlier on the eligibility spectrum relative to other states’ similar laws. Current circumstances may present an opportunity to take a step back and consider a full re-write of O.R.C. 2743.48(A), which has been the subject of numerous edits since originally enacted in 1986.² A few things that may be on the Ohio’s wish list in this regard: A two year statute of limitations (instead of six)³, clear and convincing evidence, deletion of the “error in procedure” prong-- thus restoring only actual innocence claims,⁴ an overall cap on total

² Ohio has already amended R.C. 2743.48 on six (6) separate occasions, adding significant length, (and arguably, a lack of clarity). “I am not enamored with the draftsmanship of R.C. 2743.48 [and] I do not believe it is appropriate for this court to amend the statute by judicial fiat.” *Gover v. State*, 67 Ohio St. 3d 93 (1993). (Wright, J., dissenting). H.B. 411’s latest changes, if enacted, would bring Ohio’s statute to roughly 12 pages. Kansas’ 2017 actual innocence version, which was not enacted, was only three pages in length.

³ *Murray v. State*, 8th Dist. No. 78374, 2002-Ohio-664, ¶ 24. (“[T]he statute of limitations for filing a claim for wrongful imprisonment is six years.”).

⁴ It should be noted that no other state in our nation has an “error in procedure” prong. The 2003 amendment’s provenance is also interesting. The eligibility change was quietly attached to a bill that, originally, only increased the annual compensation amount (and make the statute gender neutral). [S.B. 149 \(124th G.A.\)](#) did not originally expand eligibility criteria of Ohio wrongful imprisonment law -- the

compensation, a cap on the number of hours (and lawyers) working for fees, and an offset of any federal compensation awarded for the same conduct, i.e. successful § 1983 claim(s). Although H.B. 411 includes the “§ 1983 claim, setoff” language, it is flawed. See Lines 268-271. Claimants almost never receive a 1983 judgment “against the state or any of its political subdivisions[.]” Rather, the judgments are against individual persons who are not included in this “setoff” language. In order to properly draft what this set-off provision is attempting to accomplish (thereby avoiding a double-recovery) it should read, “If ... the wrongfully imprisoned individual has won a monetary award ~~against the state or any of its political subdivisions~~ under section 1983 of Title 42 ... the court of claims ... shall deduct *any amounts indemnified by the state or any of its political subdivisions under R.C. 2744.07...*”

All items in the preceding paragraph, would be proposals to “tighten” eligibility under Ohio’s wrongful imprisonment statute. It would be helpful to compare other state’s comparable laws with Ohio. Other states that have recently enacted, or considered, wrongful imprisonment bills are able to communicate eligibility requirements in two or three pages. For instance, Michigan’s statute was just enacted in 2017. Michigan requires claimants there to prove ALL of the following by clear and convincing evidence, “... (b) judgment of conviction was reversed or vacated and either the charges were dismissed or the plaintiff was determined on retrial to be not guilty...(c) [n]ew evidence demonstrates that the plaintiff did not perpetrate the crime and was not an accomplice or accessory ...” MCL Stat. 691.1755, Added by Pub Acts 2016, No. 343, effective March 29, 2017.

Recently, Kansas considered but failed to pass similar legislation and is presently without a wrongful imprisonment statute. In 2016, a bill was introduced in its House setting annual compensation at \$15,000 per year, but the standalone bill died. In 2017, SB 125 was introduced in its Senate setting annual compensation at \$80,000 per year, but SB 125 was not enacted either. Both the 2016 and 2017 versions only provided relief for claimants showing actual innocence by clear and convincing evidence. Kansas is approaching these issues in a thoughtful manner, bringing both sides together with legislative hearings⁵ in open session. If O.R.C. 2743.48(A) is to be changed, Ohio should take this opportunity to completely redraft its statute in similar fashion. The Cuyahoga County and Lucas County Prosecutors’ Offices urge you to oppose House Bill 411. I would welcome any questions.

"error in procedure" provision was tacked on in the House's Commercial and Civil law committee. There was no opposition to S.B. 149 (eff. 3/2003) and it was signed into law by Gov. Bob Taft.

⁵ KS, SB 125 Hearing Testimony available at:

http://www.kslegislature.org/li/b2017_18/measures/SB125/testimony “[T]he Senate Committee decided a more in-depth consideration of this issue would be helpful before the Committee takes further action given the different approaches presented in these bills and in other states’ laws.” Mar. 16, 2017 Letter from Senate Chair Wilborn.
http://www.kslegislature.org/li/b2017_18/committees/ctte_s_jud_1/documents/testimony/20170323_07.pdf

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NATIONWIDE COMPARISON OF STATES THAT HAVE ENACTED WRONGFUL IMPRISONMENT STATUTES

The following summary demonstrates that Ohio has relatively liberal eligibility requirements to receive wrongful imprisonment compensation. Additionally, Ohio's annual presumed damages award is relatively high. Ohio has no caps on total relief once a claimant is determined eligible. Ohio permits claimants to add on lost wages if they can be proven, in addition to the presumed, statutory amount. Ohio does not limit the number of attorneys that may assist a claimant in proving he was wrongfully imprisoned. The only limit on total fees that are paid out is that they must be "reasonable." Ohio's present statute does not require any 42 USC § 1983 damages which may be paid to a claimant to be offset from any damages payable under state law. H.B. 411 addresses "set-off," but its language is flawed.

32 states + the federal government + Washington, D.C. have laws to compensate the wrongfully convicted: AL, CA, CO, CT, DC, FL, HI, IA, IL, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, NE, NH, NJ, NY, OH, OK, TN, TX, UT, VA, VT, WA, WI, WV.

Annual Compensation Amounts

7 states provide > \$50,000 per year of wrongful incarceration

- CA: \$51,100
- CO: \$75,000
- CT: \$50,250-\$134,000
- IL: \$85,350-\$199,150
- OH: \$52,625
- TX: \$80,000
- VT: \$30,000-\$60,000

9 states + the federal statute provide \$50,000 per year of wrongful incarceration:
AL, FL, HI, MI, MN, MS, NJ, NC, WA + U.S. Code

2 states provide \$40,000-\$50,000 per year of wrongful incarceration: UT, VA

4 states provide <\$30,000 per year

- LA: \$25,000 * IA: \$18,250
- MO: \$18,250 * WI: \$5,000 per year; capped at \$25,000 (including atty. fees)

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9 states + Washington, D.C. provide unspecified amounts of compensation per year, most with a cap:

MA (max \$500k), ME (max \$300k), NE (max \$500k), NH (max \$20k), NY (no max), OK (max \$175k), TN (max \$1m), MD (no max), WV (no max), DC (no punitive damages, but no max)

1 state provides educational aid only: MT (if exonerated through post-conviction DNA)

Additional Compensation for Years on Death Row and/or Post-Release Supervision

- **Federal:** Additional \$100,000 per year on death row.
- **CO:** \$50,000 additional compensation per year on death row; \$25,000 per year on parole, probation or sex offender registry.
- **MN:** \$25,000 per year on parole, probation or sex offender registry.
- **WA:** \$50,000 additional per year on death row, \$25,000 per year on parole, probation, sex offender registry.

Guilty Plea Bar: 10 states + Washington, D.C. disqualify claimants who plead guilty or otherwise cause the conviction: OH, NJ, NE (unless coerced), NY, IN, IA, OK, VA, WI, WV, DC

11 states offer additional benefits

- **Tuition assistance:** 9 states (CO, FL, LA, MA, MN, MT, NC, TX, VT)
- **Medical expenses:** 4 states (LA, MN, TX, VT)
- **Job search assistance:** 3 states (LA, IL, NC)
- **Medical expenses:** 4 states (LA, MN, TX, VT)

Specified Cap on Attorneys' fees

- **Fees not to exceed \$10k:** (HI)
- **Fees not to exceed \$75k:** (WA)

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COMPENSATION STATUTES

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS
AL	Ala.Code 1975 § 29-2-150, et seq.	2001	Conviction vacated or reversed and the charges dismissed on grounds consistent with innocence	Not specified	State Division of Risk Management and the Committee on Compensation for Wrongful Incarceration	2 years after exoneration or dismissal	Minimum of \$50,000 for each year of incarceration, Committee on Compensation for Wrongful Incarceration can recommend discretionary amount in addition to base, but legislature must appropriate any funds	Not specified	A new felony conviction will end a claimant's right to compensation
CA	Cal Penal Code §§ 4900 to 4906; §	Amended 2000; 2006; 2009; 2013; 2015	Pardon for innocence or being "innocent"; declaration of factual innocence	Not specified	California Victim Compensation and Government Claims Board makes a recommendation to the legislature	2 years after judgment of acquittal or discharge given, or after pardon granted, after release from imprisonment, from release from custody	\$140 per day of incarceration	Not specified	Requires the board to deny a claim if the board finds by a preponderance of the evidence that a claimant pled guilty with the specific intent to protect another from prosecution for the underlying conviction for which the claimant is seeking compensation.

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS
CO	C.R.S.A. § 13-65-101, et seq;	2013	Requires the state compensate a person, or the immediate family members of a person, who has been: 1) wrongly convicted of a felony, or wrongly adjudicated as juvenile delinquent for the commission of an offense that would be a felony if committed by a person 18 years of age or older; 2) incarcerated; and 3) exonerated and found to be actually innocent. A person who is eligible to seek compensation from the state as an exonerated person, or the immediate family members of such a person, may petition a district court for an order declaring the person to be actually innocent and eligible to receive an order of compensation.	Clear and convincing	District Court in the county in which the case originated.	2 years after exoneration or dismissal	Colorado inmates will receive \$70,000 for each year wrongfully incarcerated, an additional \$50,000 for each year on death row, and other assistance in the form of tuition waivers and healthcare from the state of Colorado. An additional \$25,000 for each year that he or she served on parole, on probation, or as a registered sex offender after a period of incarceration.	On or before September 1, 2013, the commission shall implement a policy whereby, except as limited in this section, each institution of higher education in the states shall waive all tuition costs, including any mandatory fees associated with attendance at the institution, for an exonerated persons and for children of an exonerated person or custodial child of an exonerated person, as defined in section	A claimant cannot be compensated for those years when he or she was concurrently serving a sentence for an unrelated offense. In each year in which an exonerated person receives any annual payment from the state court administrator, the exonerated person's annual payment shall be reduced by ten thousand dollars if the exonerated person fails to present to the state court administrator a policy or certificate showing that the exonerated person has purchased or otherwise acquired a qualified health plan for himself or herself and his or her dependents that is valid for at least six months.

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS
CT	CT ST 54-102uu	2008; 2016	Pardon, or conviction vacated, or reversed, and the charges dismissed on grounds consistent with innocence	Preponderance of the evidence	Claims Commissioner	2 years from date of pardon or dismissal	Amount per year is calculated based on anywhere between 75-200% of the median CT household income.	Commissioner may order payment for job training, counseling, tuition at state school, and any other services such person may need to facilitate such person's reintegration into the community	Not specified
DC	DC ST § 2-421, et seq.	1981	Pardon for innocence or conviction reversed or set aside on the ground that claimant is not guilty.	Clear and convincing	Civil Court	Not specified	No maximum No punitive damages	Not specified	Claimant must show that he did not, by his misconduct, bring about the prosecution, and he must not have pled guilty
FL	FL ST 961.01, et seq.	2008; many amendments, last in 2013, and 2014 (HB 227)	Certification by prosecuting authority that petitioner is innocent, that no further criminal proceeding will be initiated, no questions of fact remain, and petitioner is eligible for compensation	If prosecuting authority does not certify, admin. law judge must find innocence by clear and convincing	Trial court – can consider claim even if prosecuting authority does not certify innocence. Claim would then be sent to admin. law judge for factual determination of innocence, and trial judge could adapt findings or not	Initially, petitioner must file for a declaration of wrongful conviction. After July, 2008, petitioner must file w/in 90 days after order vacating conviction. Prior to July 08, by July 1, 2010. Then must file for compensation w/in 2 years from declaration.	\$50,000 per year, adjusted for COL increases (cap of \$2 million) court costs and reasonable attorneys' fees	120 hours of tuition at a career center, community college or state university; and any fines or costs imposed at sentence;	Must not have been convicted of a felony before or during the wrongful incarceration

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS
IL	Ill Rev Stat ch. 705 § 505/1, et. Seq.	1945; many amendments, last in 2009, and 2011 (SB 389)	Pardon for innocence or certificate of innocence	Preponderance of the evidence	Court of Claims	2 years after the person asserting such claim is either issued a certificate of innocence as provided in Section 2-702 of the Code of Civil Procedure, or is granted a pardon by the Governor, whichever occurs later	≤5 yrs., \$85,350 max, ≤14 yrs., \$170,000 max, >14 yrs., \$199,150 max, with COLA increase	IL ST CH 20 § 1015/2 provides that the wrongfully accused receive job search and placement services, including assessment, resume assistance, interview preparation, occupational and labor market information, referral to employers with job openings *NOTE SB 389 (enacted 2011) requires the Department of Human Services to establish a re-entry services program to assist for the wrongfully convicted in obtaining mental health services	Not specified

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS
HI	HB1046 HD2 SD2 CDI	2016	Conviction reversed or vacated on actual innocence grounds or Pardoned on actual innocence grounds	Preponderance of the evidence	Circuit court where petitioner lives or the circuit court for the first circuit (if petitioner lives out of state).	2 years	\$50,000 per year, with a maximum of an additional \$100,000 for special circumstances and \$10,000 for attorney's fees.		A claimant cannot be compensated for those years when he or she was concurrently serving a sentence for an unrelated offense, or if the state proves by a preponderance of the evidence that the petitioner conspired, attempted, solicited, or assisted in the commission of the crime.
IA	Iowa Code Ann. § 663A.1	1997	Conviction vacated or reversed and charges dismissed	Clear and Convincing	District Court for liability; State Appeal Board or Civil Ct. for Damages	2 years	\$50 per day and attorneys' fees	lost wages up to \$25,000 per year	Claimant must not have pled guilty
LA	R.S.15:572.8 and Code Civ. Pro. Art. 87 (amended by HB 285)	2005; amd. 2011	Conviction reversed or vacated, and petitioner "has proven" factual innocence	Clear and Convincing	19 th Judicial District Court - trial by judge alone.	2 years from vacatur of conviction or for cases pending when statute was passed (i.e. by September 2007)	\$25,000 per year; with a maximum award of \$250,000	Court may award costs of job/skills training for three years, and medically necessary medical and counseling services for six years; as well as tuition expenses at a community college or unit of the state university system –at a cost of not more than \$80,000	Not specified

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS
MA	Ann L. MA. Gen'l Laws, Chapter 258D § 1-9	2004	Pardon or conviction reversed and charges dismissed on grounds consistent with innocence or case tried to acquittal	Clear and convincing	Superior Court in the county where the claimant was convicted or in Suffolk County	2 years	A maximum of \$500,000 may be awarded No punitive or exemplary damages	Court may order services – physical and/or emotional, educational services at any state of community college (50 % reduction of the tuition and fees applicable to such services at said institutions), and expungement of the record of conviction	Claimant cannot have pled guilty, unless such plea was withdrawn, vacated or nullified by operation of law
ME	14 Me Rev Stat Ann § 8241-8244	1993	Pardon for innocence	Clear and convincing	Superior Court	2 years from pardon	\$300,000 no punitive or exemplary damages	Not specified	Not specified
MD	Md State Fin & Proc § 10-501	1999; amd. 2003	Pardon stating that the individual's conviction has been shown conclusively to be in error	Not specified	Board of Public Works	Not specified	Actual damages	Not specified	Not specified
MI	SB 291 (waiting for final statute cite)	2016	Judgment of conviction was reversed or vacated and charges were dismissed or found not guilty on retrial.	Clear and convincing	Court of Claims	Within 3 years of the entry of a verdict, order, or judgment. Or, if the individual was exonerated prior to the effective date, then within 18 months after the effective date.	\$50,000 per year	Reimbursement of any amount collected by the state, reasonable attorneys fees; records expunged.	Not specified

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS
MN	M.S.A. § 590.11 & § 611.362, et seq.	2014	Court vacated or reversed conviction on grounds consistent with innocence and charges dismissed; claimant found not guilty or had charges dismissed at new trial; or the time for appeal of the order resulting in exoneration has expired or the order has been affirmed and is final.	Preponderance of the evidence	Compensation Panel	Within 2 years, but no less than 60 days after the petitioner is exonerated. Persons exonerated before the effective date of this act must commence an action within two years of its effective date.	Minimum of \$50,000 (\$100,000 max.) per year, and minimum of \$25,000 (\$50,000 max.) per year served on parole, probation, or as a registered sex offender as compensation. Compensation also includes reasonable attorney fees.	Award may also include reimbursement for: (1) economic damages, associated with the claimant's criminal defense; (2) reimbursement for medical and dental expenses; (3) noneconomic damages; (4) tuition and fees associate with education at public four year college; (5) paid or unpaid child support payments; (6) costs of immediate services upon exoneration and release.	Not specified
MS	MS ST § 11-44-1, et seq.	2009	Pardon based on the innocence or conviction was vacated and/or reversed	Preponderance of the evidence	Circuit court of the county in which the claimant was convicted	3 years	\$50,000 per year; \$500,000 cap; reasonable attorney's fees	Not specified	Not specified
MO	V.A.M.S. 650.058	2006	Person must be determined to be 'actually innocent' only by DNA evidence	DNA evidence must demonstrate innocence	Sentencing court	1 year from release from confinement – after August 28, 2003	\$50 per day of post-conviction confinement	Not specified	Not specified
MT	Mont. Code Ann. § 53-1-214	2003	Judgment of conviction was overturned by a court based on the results of post-conviction forensic DNA testing that exonerates the person of the crime for which the person was convicted	Not specified (reliant upon eligibility finding)	Funds to be appropriated by the legislature	The privilege of receiving aid under this section remains active for 10 years after the release of a person	Provides educational aid (expenses for tuition, fees, books, board, and room at any MT community college, unit of the MT university system, or accredited MT tribally controlled community college)	Not specified	Not specified

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS
NE	NE ST 29-4601, et seq.	2009	Board of Pardons has pardoned the claimant, a court has vacated the conviction of the claimant, or that the conviction was reversed and remanded for a new trial and no subsequent conviction was obtained	Clear and convincing	Not specified	Not specified	\$500,000 cap	Not specified	That he or she did not commit or suborn perjury, fabricate evidence, or otherwise make a false statement to cause or bring about such conviction or the conviction of another, with respect to the crime or crimes under subdivision (1) of this section, except that a guilty plea, a confession, or an admission, coerced by law enforcement and later found to be false, does not constitute bringing about his or her own conviction of such crime or crimes
NH	NH Stat § 541-B:14	1977, amd. most recently 2007	“Found innocent”	Board must find by majority vote that claim is “justified”	Board of Claims	3 years	\$20,000 cap	Not specified	Not specified
NJ	NJ Stat Ann §§ 52:4C-1 to 4C-7	1997; amd, 2013	Notwithstanding the provisions of any other law, any person convicted and subsequently imprisoned for one or more crimes which he did not commit.	Clear and convincing	Superior Court	2 years from release or pardon	Twice the amount of claimant’s income in the year prior to incarceration or 50K per year of incarceration, whichever is greater, (if damages exceed \$1 million the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years), reasonable attorney fees, costs related to the litigation. Not be subject to treatment as gross income	Non-monetary relief (as sought in the complaint)	Claimant did not, commit or suborn perjury, fabricate evidence, by his own conduct cause or bring about his conviction, or plead guilty. Neither a confession or admission later found to be false constitutes committing or suborning perjury, fabricating evidence, or causing or bringing about his conviction under this subsection; and he did not do the crime for which he was convicted.
NY	NY Ct. of Claims Act § 8-b	1984, amd. 2007	Pardon or conviction reversed and charges dismissed on grounds consistent with innocence or case tried to acquittal	Clear and convincing	Court of Claims	2 years	No limit	Not specified	Claimant did not by his own conduct cause or bring about the conviction

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS
NC	NC Gen Stat §§ 148-82 to 148-84	1947; amd.2008	Pardon for innocence	Not specified	Industrial Commission makes a recommendation to Governor	5 years	\$50,000 each year Max. of \$750,000	Award may also include job skills training for at least one year and tuition reimbursement at any NC community college or constitution institution of the University of NC (claimants are also entitled to assistance in meeting any admissions standards, including satisfying requirements for completion of secondary education)	Not specified

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS	
OH	Ohio Rev Code Ann § 2305.02 & § 2743.48	1986; amd. 2002, 2010	Conviction vacated or reversed and charges dismissed	Preponderance of evidence; <i>Walden v. State</i> , 547 N.E.2d 962	Court of Common Pleas for liability; Court of Claims for damages	2 years	\$40,330 per year, (or amt. determined by state auditor) in addition to lost wages, costs, and attorney's fees	Within sixty days after the date of the entry of a court of common plea's determination that a person is a wrongfully imprisoned individual, the clerk of the court of claims shall forward a preliminary judgment to the president of the controlling board requesting the payment of fifty per cent of the amount described in division (E)(2)(b) of this section to the wrongfully imprisoned individual. The board shall take all actions necessary to cause the payment of that amount out of the emergency purposes special purpose account of the board	Not specified	Claimant must not have pled guilty
OK	51 Okl. St. § 154	1978, amd. 2003	Pardoned or conviction vacated and charges dismissed	Clear and convincing	State Civil Court	No time limit	\$175,000 cap no punitive damages	Not specified	Not specified	Claimant must not have pled guilty
TN	Tenn Code Ann §9-8-108	1984, amd. 2004; 2010; 2012; 2013	granted exoneration pursuant to § 40-27-109	Not specified	Board of Claims	1 year	\$1,000,000 cap	Not specified	Not specified	Not specified

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS
TX	Tex Code Ann §§ 103.001;103.051; 052, 103.1041.	2001; amd. 2011	full pardon on the basis of innocence; writ of habeas corpus based on a court finding or determination that the person is actually innocent or writ of habeas corpus and: (i) district court entered an order dismissing the charge; and (ii) district court's dismissal order based on motion to dismiss in which the state's attorney states that no credible evidence exists that inculpates the defendant and, either in the motion or in an affidavit, the state's attorney states that the state's attorney believes that the defendant is actually innocent	Preponderance of evidence	Comptroller's Judiciary Section	Not later than the third anniversary of the date the person on whose imprisonment the claim is based received the pardon or was granted relief	\$80,000 per year, plus an annuity; reintegration financial assistance that does not exceed \$10,000 Attorney fees, lost wages	Counseling expenses for up to one year, child support arrears, tuition for up to 120 credit hours, including tuition and any mandatory fees associated with attendance at the institution 501.091: Development of a comprehensive plan to ensure the successful reentry and reintegration of wrongfully imprisoned person into community, including life-skills, job, and vocational training, provision of necessary documents SB1686: Eligibility to obtain group health benefit coverage through the TX Department of Criminal Justice as if the person were an employee of the Department	Bars (though see <i>State v. Oakley</i> , 227 S.W.3d 58 (Tex. 2007) (clarifying that claimant may first bring 1983 claim and then file claim under statute, but not vice versa)) Provides for both a lump sum and an annuity payment. Claimants don't receive lump sum compensation for years where time was served on other, unrelated charges, and annuity payments will terminate if the claimant is <i>subsequently</i> convicted of a crime punishable as a felony.

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS	
UT	78-35a-405	2008; amd. 2011, 2012	factual innocence under Utah 78-35a-402	Not specified (reliant upon eligibility finding)	District court where conviction was rendered	Petitioner must file for post-conviction relief (e.g. declaration of innocence) w/in 1 year of final judgment, or date on which petitioner should have known of new facts upon which petition is based - no separate limit for filing claim for compensation	For 15 years, petitioner may receive the monetary value of average annual nonagricultural payroll.	Office of Crime Victim' Reparation to make initial payment w/in 45 days of court finding of innocence	May permit against municipalities	Payments may be suspended if petitioner is convicted of a subsequent felony

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS	
VA	8.01-195.10, et seq.	2004; amd. 2010, 2012, 2014	Conviction vacated pursuant to VA Chapter 19.2 or 19.3 or absolute pardon	Not specified	General Assembly	Not Specified	90% of the VA per capita personal income– for each year of incarceration	Reimbursement up to \$10,000 for tuition for career and technical training in the VA Comm. College system; transition assistance grant worth \$15,000, which would be deducted from any award received pursuant to the statute	<p style="text-align: center;">Bars</p> <p>Claimant may not have pled guilty – unless he or she was charged with a capital offense or convicted of a Class 1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life. the person incarcerated did not by any act or omission on his part intentionally contribute to his conviction for the felony for which he was incarcerated. If the claimant is subsequently convicted of a felony, he or she becomes ineligible to receive further payments</p>	

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS	
VT	13 V.S.A Chptr. 182	2007; amd. 2014	The conviction was reversed or vacated and the charges dismissed, or tried to an acquittal, or a pardon was granted.	Clear and convincing evidence	Washington County Supreme Court	3 years from exoneration, unless claimant was not provided with notice of the right to bring an action, in which case claimant shall be granted an additional year in which to file	Minimum of 30K per year - maximum of 60K per year of incarceration, adjusted proportionally for partial years served; Awards may include in addition: lost wages, costs, and attorneys fees	Claimant entitled to up to 10 years of eligibility for Vermont State Health Plan; Award is not taxable by state and no offset for cost of incarceration is allowed	Likely permit against municipalities	Claimant did not suborn perjury or fabricate evidence during any of the proceedings related to the crime with which he or she was charged
WA	RCWA §4.100.010, et seq.	2013	Any person convicted in superior court and subsequently imprisoned for one or more felonies of which he or she is actually innocent may file a claim for compensation against the state.	Clear and convincing evidence	Superior Court	An action for compensation under this chapter must be commenced within three years after the grant of a pardon, the grant of judicial relief and satisfaction of other conditions, or release from custody, whichever is later.	\$50,000 for each year of imprisonment and time spent waiting for trial; an additional \$50,000 for each year on death row; and \$25,000 for each year spent on parole, community custody or on a sex offender registry	Child support and attorney fees up to \$75,000.	Compensation shall be exclusive to all other remedies at law and in equity against the state or any political subdivision of the state. As a requirement to making a request for relief under this chapter, the claimant waives any and all other remedies, causes of action, and other forms of relief or compensation against the state, any political subdivision of the state, and their officers, employees, agents, and volunteers related to the claimant's wrongful conviction and imprisonment.	A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection. Claimant will not receive compensation for the period of time that he or she was serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that were the basis for the claim.

Indemnification for Unjust Conviction

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	OTHER AWARDS	CONTRIBUTORY PROVISIONS	
WV	W Va Code § 14-2-13(a)	1987, amd. 2014	Pardon for innocence, or conviction reversed and either charges dismissed or acquittal on retrial	Clear and convincing	Court of Claims	Not specified	Fair and reasonable damages	Not specified	Not specified	Claimant did not contribute to or bring about conviction
WI	Wis Stat § 775.05	1913, amd. 1987	None specified	Clear and convincing	Claims Board	Not specified	5K/yr, max 25K but Board may petition legislature for additional funds	Not specified	Not specified	Claimant did not contribute to or bring about conviction
US (Fed)	28 USC § 1495 & § 2513	1948; amd. 2004	Pardon for innocence, or conviction reversed or set aside on ground that claimant is not guilty and found not guilty at new trial or rehearing	Not specified	U.S. Court of Federal Claims	Not specified	Up to \$50,000 per year; (\$100,000 per year for each year on death row)	Not specified	Not specified	Claimant did not commit acts charged and did not by misconduct or neglect cause prosecution

WRONGFUL IMPRISONMENT COMPENSATION ACT
Act 343 of 2016

AN ACT to provide compensation and other relief for individuals wrongfully imprisoned for crimes; to prescribe the powers and duties of certain state and local governmental officers and agencies; and to provide remedies.

History: 2016, Act 343, Eff. Mar. 29, 2017.

The People of the State of Michigan enact:

691.1751 Short title.

Sec. 1. This act shall be known and may be cited as the "wrongful imprisonment compensation act".

History: 2016, Act 343, Eff. Mar. 29, 2017.

691.1752 Definitions.

Sec. 2. As used in this act:

(a) "Charges" means the criminal complaint filed against the plaintiff by a county prosecutor or the attorney general on behalf of the people of this state that resulted in the conviction and imprisonment of the plaintiff that are the subject of the claim for compensation under this act.

(b) "New evidence" means any evidence that was not presented in the proceedings leading to plaintiff's conviction, including new testimony, expert interpretation, the results of DNA testing, or other test results relating to evidence that was presented in the proceedings leading to plaintiff's conviction. New evidence does not include a recantation by a witness unless there is other evidence to support the recantation or unless the prosecuting attorney for the county in which the plaintiff was convicted or, if the department of attorney general prosecuted the case, the attorney general agrees that the recantation constitutes new evidence without other evidence to support the recantation.

(c) "Plaintiff" means the individual making a claim for compensation under this act. Plaintiff does not include the estate of an individual entitled to make a claim for compensation under this act, the personal representative of the estate, or any heir, devisee, beneficiary, or other person who is entitled under other law to pursue a claim for damages, injury, or death suffered by the individual.

(d) "State correctional facility" means a correctional facility maintained and operated by the department of corrections.

(e) "This state" means the state of Michigan and its political subdivisions, and the agencies, departments, commissions, and courts of this state and its political subdivisions.

History: 2016, Act 343, Eff. Mar. 29, 2017.

691.1753 Wrongful conviction and imprisonment; action for compensation against state.

Sec. 3. An individual convicted under the law of this state and subsequently imprisoned in a state correctional facility for 1 or more crimes that he or she did not commit may bring an action for compensation against this state in the court of claims as allowed by this act.

History: 2016, Act 343, Eff. Mar. 29, 2017.

691.1754 Complaint; documentation; verification by plaintiff; service; notice to victim of assaultive crime or serious misdemeanor; discovery.

Sec. 4. (1) In an action under this act, the plaintiff shall attach to his or her verified complaint documentation that establishes all of the following:

(a) The plaintiff was convicted of 1 or more crimes under the law of this state, was sentenced to a term of imprisonment in a state correctional facility for the crime or crimes, and served at least part of the sentence.

(b) The plaintiff's judgment of conviction was reversed or vacated and either the charges were dismissed or on retrial the plaintiff was found to be not guilty.

(c) New evidence demonstrates that the plaintiff was not the perpetrator of the crime or crimes 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, finding of not guilty, or gubernatorial pardon.

(2) A complaint filed under this section must be verified by the plaintiff.

(3) A copy of a complaint filed under this section must be served on the attorney general and on the prosecuting attorney for the county in which the plaintiff was convicted. The attorney general and the prosecuting attorney may answer and contest the complaint.

(4) If the plaintiff's conviction was for an assaultive crime or a serious misdemeanor, the prosecuting attorney shall notify the victim of the assaultive crime or serious misdemeanor of the application in the same manner as is required for an application to have a conviction set aside under section 22a or 77a of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The prosecuting attorney shall give the victim notice under this subsection by first-class mail sent to the victim's last known address. The victim or victim's representative has the right to appear at any proceeding under this act concerning the complaint and to make a written or oral statement.

(5) The plaintiff, the attorney general, and the prosecuting attorney for the county in which the plaintiff was convicted may conduct discovery in an action under this act.

History: 2016, Act 343, Eff. Mar. 29, 2017.

691.1755 Judgment in plaintiff's favor; findings; award of compensation; payments; evidence in civil action; acceptance; compromise or settlement of claim; writing; offset; award as subject to income taxes; payment of child support owed by plaintiff; collection of debt by state or local government; setoff or reimbursement for damages; order.

Sec. 5. (1) In an action under this act, the plaintiff is entitled to judgment in the plaintiff's favor if the plaintiff proves all of the following by clear and convincing evidence:

(a) The plaintiff was convicted of 1 or more crimes under the law of this state, was sentenced to a term of imprisonment in a state correctional facility for the crime or crimes, and served at least part of the sentence.

(b) The plaintiff's judgment of conviction was reversed or vacated and either the charges were dismissed or the plaintiff was determined on retrial to be not guilty. However, the plaintiff is not entitled to compensation under this act if the plaintiff was convicted of another criminal offense arising from the same transaction and either that offense was not dismissed or the plaintiff was convicted of that offense on retrial.

(c) New evidence demonstrates that the plaintiff did not perpetrate the crime and was not an accomplice or accessory to the acts that were the basis of the conviction, results in the reversal or vacation of the charges in the judgment of conviction or a gubernatorial pardon, and results in either dismissal of all of the charges or a finding of not guilty on all of the charges on retrial.

(2) Subject to subsections (4) and (5), if a court finds that a plaintiff was wrongfully convicted and imprisoned, the court shall award compensation as follows:

(a) Fifty thousand dollars for each year from the date the plaintiff was imprisoned until the date the plaintiff was released from prison, regardless of whether the plaintiff was released from imprisonment on parole or because the maximum sentence was served. For incarceration of less than a year in prison, this amount is prorated to 1/365 of \$50,000.00 for every day the plaintiff was incarcerated in prison.

(b) Reimbursement of any amount awarded and collected by this state under the state correctional facility reimbursement act, 1935 PA 253, MCL 800.401 to 800.406.

(c) Reasonable attorney fees incurred in an action under this act. All of the following apply to attorney fees under this act:

(i) The court shall not award attorney fees unless the plaintiff has actually paid the amount awarded to the attorney.

(ii) It is not necessary that the plaintiff pay the attorney fees before an initial award under this act. The court may award attorney fees on a motion brought after the initial award.

(iii) The attorney fees must not exceed 10% of the total amount awarded under subdivisions (a) and (b) or \$50,000.00, whichever is less, plus expenses.

(iv) An award of attorney fees under this act may not be deducted from the compensation awarded the plaintiff, and the plaintiff's attorney is not entitled to receive additional fees from the plaintiff.

(3) An award under subsection (2) is not subject to a limit on the amount of damages except as stated in this act.

(4) Compensation may not be awarded under subsection (2) for any time during which the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction.

(5) Compensation may not be awarded under subsection (2) for any injuries sustained by the plaintiff while imprisoned. The making of a claim or receipt of compensation under this act does not preclude a claim or action for compensation because of injuries sustained by the plaintiff while imprisoned.

(6) In the discretion of the court, the total amount awarded under subsection (2)(a) and (b) may be paid to the plaintiff in a single payment or in multiple payments. If the court orders the compensation to be paid in multiple payments, the initial payment must be 20% of the total amount awarded or more and the remainder of the payments must be made over not more than 10 years.

(7) An award of compensation under this act is not a finding of wrongdoing against anyone. An award of compensation under this act is not admissible in evidence in a civil action that is related to the investigation,

prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.

(8) The acceptance by the plaintiff of an award under this act, or of a compromise or settlement of the claim, must be in writing and, unless it is procured by fraud, is final and conclusive on the plaintiff, constitutes a complete release of all claims against this state, and is a complete bar to any action in state court by the plaintiff against this state based on the same subject matter. However, the acceptance by the plaintiff of an award under this act, or of a compromise or settlement of the plaintiff's claim, does not operate as a waiver of, or bar to, any action in federal court against an individual alleged to have been involved in the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.

(9) A compensation award under subsection (2) may not be offset by any of the following:

(a) Expenses incurred by this state or any political subdivision of this state, including, but not limited to, expenses incurred to secure the plaintiff's custody or to feed, clothe, or provide medical services for the plaintiff while imprisoned, including expenses required to be collected under the state correctional facility reimbursement act, 1935 PA 253, MCL 800.401 to 800.406. The attorney general is specifically excused from complying with the state correctional facility reimbursement act, 1935 PA 253, MCL 800.401 to 800.406.

(b) The value of any services awarded to the plaintiff under this section.

(c) The value of any reduction in fees for services awarded to the plaintiff under this act.

(10) An award under subsection (2) is not subject to income taxes.

(11) A compensation award under this act is subject to the payment of child support, including child support arrearages, owed by the plaintiff. The plaintiff remains liable for any child support or arrearage under the office of child support act, 1971 PA 174, MCL 400.231 to 400.240, and the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650, except for any child support or arrearage that erroneously accrued while the plaintiff was imprisoned. Child support must be deducted from an award under this act before the plaintiff receives any of the money from the award. This subsection does not affect any ongoing child support obligation of the plaintiff.

(12) This act does not impair or limit the right of a state or local government to collect a debt of a plaintiff from the plaintiff's award of compensation under this act.

(13) An award of compensation under this act is subject to setoff or reimbursement for damages obtained for the wrongful conviction or imprisonment from any other person.

(14) If a court determines that a plaintiff was wrongfully convicted and imprisoned, the court shall enter an order that provides that any record of the arrest, fingerprints, conviction, and sentence of the plaintiff related to the wrongful conviction be expunged from the criminal history record. A document that is the subject of an order entered under this subsection is exempt from disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 2016, Act 343, Eff. Mar. 29, 2017.

691.1756 Wrongful imprisonment compensation fund.

Sec. 6. (1) The wrongful imprisonment compensation fund is created as a separate fund in the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the wrongful imprisonment compensation fund.

(3) The state treasurer shall direct the investment of the wrongful imprisonment compensation fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

(4) The department of treasury is the administrator of the wrongful imprisonment compensation fund for auditing purposes.

(5) The state treasurer shall expend money from the wrongful imprisonment compensation fund only for the purpose of paying claims authorized under this act and costs of administration. The state treasurer shall pay money from the fund in amounts and at the times as ordered by the courts under this act.

(6) Money in the wrongful imprisonment compensation fund at the close of the fiscal year must remain in the fund and not lapse to the general fund.

(7) If there is insufficient money in the wrongful imprisonment compensation fund to pay claims as ordered under this act, the state treasurer shall pay claims that are ordered but not paid if money becomes available in the fund, and pay those claims before subsequently ordered claims. The state treasurer shall develop and implement a process to notify the legislature that money in the fund may be insufficient to cover future claims when the state treasurer reasonably believes that within 60 days the money in the fund will be insufficient to pay claims. The process shall, at a minimum, do all of the following:

(a) Identify a specific date by which the money in the fund will become insufficient to pay claims.

(b) Outline a clear process indicating the order in which claims pending with the fund will be paid.

(c) Outline a clear process indicating the order in which claims that were pending with the fund when

money became insufficient will be paid, if money subsequently becomes available.

(8) Any compensation under this act must be paid from the wrongful imprisonment compensation fund and not from any state department's or agency's annual budget or current funding.

History: 2016, Act 343, Eff. Mar. 29, 2017.

691.1757 Action for compensation; commencement.

Sec. 7. An action for compensation under this act must be commenced within 3 years after entry of a verdict, order, or judgment as the result of an event described in section 4(1)(b). Any action by this state challenging or appealing a verdict, order, or judgment entered as the result of an event described in section 4(1)(b) tolls the 3-year period. An individual convicted, imprisoned, and released from custody before the effective date of this act must commence an action under this act within 18 months after the effective date of this act.

History: 2016, Act 343, Eff. Mar. 29, 2017.

SENATE BILL No. 125

By Committee on Judiciary

2-1

1 AN ACT concerning civil actions; relating to wrongful conviction;
2 wrongful execution; compensation.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. (a) A claimant, other than a claimant as defined in section
6 2, and amendments thereto, may bring an action in an appropriate state
7 court seeking damages from the state pursuant to this section and shall be
8 entitled to recover such damages if the claimant establishes the following
9 by clear and convincing evidence:

10 (1) The claimant was convicted of a felony under the Kansas criminal
11 code and served all or any part of their sentence in a state correctional
12 facility;

13 (2) the claimant did not commit the crime which resulted in such
14 conviction; and

15 (3) the claimant did not plead guilty or no contest to the crime which
16 resulted in such conviction.

17 (b) The suit, accompanied by a statement of the facts concerning the
18 claim for damages, verified in the manner provided for in the rules of civil
19 procedure, shall be brought by the claimant within two years after such
20 claimant's release from imprisonment.

21 (c) (1) A claimant entitled to damages pursuant to subsection (a) shall
22 be awarded damages in an amount equal to \$80,000 multiplied by the
23 number of years the claimant was incarcerated, expressed as a fraction to
24 reflect partial years.

25 (2) In addition to such damages, the claimant shall be entitled to
26 receive the costs of the suit, including reasonable attorney fees.

27 (3) Damages, costs and fees awarded pursuant to this section shall be
28 paid from the state general fund.

29 (d) Any award of damages to the claimant in an action against the
30 state or any political subdivision thereof, or against any employee of the
31 state or of any political subdivision thereof, with respect to the same
32 subject matter shall be offset by any award of damages awarded pursuant
33 to this section.

34 Sec. 2. (a) As used in this section, "claimant" means a person
35 convicted of capital murder, as defined in K.S.A. 21-3439, prior to its
36 repeal, or K.S.A. 2016 Supp. 21-5401, and amendments thereto, and

1 sentenced to death, who was wrongfully convicted of such crime.

2 (b) A claimant may bring an action in an appropriate state court
3 seeking damages from the state pursuant to this section and shall be
4 entitled to recover such damages if the claimant establishes the following
5 by clear and convincing evidence:

6 (1) The claimant was convicted of capital murder as defined in
7 K.S.A. 21-3439, prior to its repeal, or K.S.A. 2016 Supp. 21-5401, and
8 amendments thereto, sentenced to death and served all or any part of their
9 sentence;

10 (2) the claimant did not commit the crime which resulted in such
11 conviction;

12 (3) the claimant did not commit or suborn perjury, fabricate evidence
13 or by their own conduct cause or bring about their conviction. Neither a
14 confession or admission later found to be false shall constitute committing
15 or suborning perjury, fabricating evidence or causing or bringing about
16 such conviction under this subsection; and

17 (4) the claimant did not plead guilty to the crime which resulted in
18 such conviction.

19 (c) The suit, accompanied by a statement of the facts concerning the
20 claim for damages, verified in the manner provided for the verification of
21 complaints in civil actions, shall be brought by the claimant within a
22 period of two years after such claimant's release from imprisonment or
23 after the grant of a pardon.

24 (d) (1) A claimant entitled to damages pursuant to subsection (b) shall
25 be awarded damages in the amount of \$1,000,000.

26 (2) The court may order that the award be paid as an annuity with a
27 payout over a maximum period of 20 years. The court shall consider the
28 best interests of the claimant in making such determination.

29 (3) Damages awarded pursuant to this section shall be paid from the
30 state general fund.

31 (e) In addition to the damages awarded pursuant to subsection (d), the
32 claimant shall be entitled to receive reasonable attorney fees and costs
33 related to the litigation. Such fees and costs shall be paid from the state
34 general fund.

35 (f) A person serving a term of imprisonment for a crime other than
36 capital murder as defined in K.S.A. 21-3439, prior to its repeal, or K.S.A.
37 2016 Supp. 21-5401, and amendments thereto, shall not be eligible to file a
38 claim for damages pursuant to this section.

39 (g) Any award of damages to such person in an action against the
40 state or any political subdivision thereof or against any employee of the
41 state or any political subdivision thereof with respect to the same subject
42 matter shall be offset by any award of damages awarded under this section.

43 (h) The provisions of this section shall apply to any claimant released

1 from imprisonment or granted a pardon on or after July 1, 2017.

2 Sec. 3. (a) As used in this section, "claimant" means the heirs, legal
3 representatives or estate of a person convicted of capital murder, as
4 defined in K.S.A. 21-3439, prior to its repeal, or K.S.A. 2016 Supp. 21-
5 5401, and amendments thereto, and executed pursuant to the provisions of
6 article 40 of chapter 22 of the Kansas Statutes Annotated, and amendments
7 thereto, who was wrongfully convicted of such crime.

8 (b) A claimant may bring an action in an appropriate state court
9 seeking damages from the state pursuant to this section and shall be
10 entitled to recover such damages if the claimant establishes the following
11 by clear and convincing evidence:

12 (1) The person convicted and executed did not commit the crime
13 which resulted in such conviction and execution;

14 (2) the person convicted and executed did not commit or suborn
15 perjury, fabricate evidence or by their own conduct cause or bring about
16 their conviction and execution. Neither a confession or admission later
17 found to be false shall constitute committing or suborning perjury,
18 fabricating evidence or causing or bringing about such conviction and
19 execution under this subsection; and

20 (3) the person convicted and executed did not plead guilty to the
21 crime which resulted in such conviction and execution.

22 (c) The suit, accompanied by a statement of the facts concerning the
23 claim for damages, verified in the manner provided for the verification of
24 complaints in civil actions, shall be brought by the claimant within a
25 period of two years after execution of the person convicted of capital
26 murder.

27 (d) (1) A claimant entitled to damages pursuant to subsection (b) shall
28 be awarded damages in the amount of \$5,000,000.

29 (2) The court may order that the award be paid as an annuity with a
30 payout over a maximum period of 20 years. The court shall consider the
31 best interests of the claimant in making such determination.

32 (3) Damages awarded pursuant to this section shall be paid from the
33 state general fund.

34 (e) In addition to the damages awarded pursuant to subsection (d), the
35 claimant shall be entitled to receive reasonable attorney fees and costs
36 related to the litigation. Such fees and costs shall be paid from the state
37 general fund.

38 (f) Any award of damages to such claimant in an action against the
39 state or any political subdivision thereof or against any employee of the
40 state or any political subdivision thereof with respect to the same subject
41 matter shall be offset by any award of damages awarded under this section.

42 (g) The provisions of this section shall apply to any claimant seeking
43 damages related to an execution occurring on or after July 1, 2017.

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