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Testimony of Brian R. Gutkoski, Asst. County Prosecutor
Senate Judiciary Committee
Opposition Testimony, House Bill 411 --- November 29, 2018

Chairman Bacon, Vice Chair Dolan, ranking member Thomas and members of the Committee: My name is Brian Gutkoski and I have been with the Cuyahoga County Prosecutor's Office since 2011. Over four 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 will 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 of any state in the United States. As you know, the Ohio Prosecuting Attorney's Association, and this Office strongly oppose these extensive changes to Ohio's wrongful imprisonment statute.

All told, if R.C. 2743.48(A)(4) and (A)(5) are changed in the manner contemplated in H.B. 411, the State of Ohio will undoubtedly incur total liabilities somewhere **between \$15m and \$20m**, as the bill reinstates "error in procedure" liability but purports to limit liability to only when premised upon alleged "Brady violations". See H.B. 411, p. 3-4 at Lines 72-82. This liability estimate is based on known cases in existence at this time, and those civil cases that H.B. 411 would ostensibly authorize to be re-filed.

What H.B. 411 authorizes is a strict liability recovery anytime a conviction is vacated for a *Brady* issue and the case is not re-tried to conviction. H.B. 411 seeks to tie a prosecutor's hands and force a retrial (decades after the original conviction) even though that prosecutor thinks retrial is unwise for a host of reasons. "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.___, 137 S.Ct. 1885 (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 method to qualify as “wrongfully imprisoned.” In 2010, Ohio shifted to open discovery and amended Criminal Rule 16. Thus, this proposed bill is, at best, a costly solution looking for a problem on a going-forward basis. There is already an avenue to address *Brady* violations, that being via existing federal law, 42 U.S.C. § 1983.

H.B. 411 takes Ohio’s statute and make it a clear outlier on the eligibility spectrum relative to other states’ comparable laws. Current circumstances may present an opportunity to take a step back and consider a full re-write of R.C. 2743.48(A), which has been the subject of numerous edits since originally enacted in 1986.¹ A few things that may be on the Ohio’s wish list in this regard: A two year statute of limitations (instead of six),² an overall cap on total compensation, a cap on the number of hours (and lawyers) working for fees³ and deleting misdemeanor convicts from being eligible for compensation. The OPAA has submitted three amendments which would accomplish these things.

All items in the preceding paragraph, would be proposals to better delineate eligibility under Ohio’s wrongful imprisonment statute. Beyond these amendments, Ohio should

¹ Ohio has already amended R.C. 2743.48 on 6 prior 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** of double- spaced text. Kansas’ version was only three pages in length.

² *Murray v. State*, 8th Dist. No. 78374, 2002-Ohio-664, ¶ 25. (“[T]he statute of limitations for filing a claim for wrongful imprisonment is six years.”). It makes no sense for someone to have six (6) years after his release from prison to file a claim under R.C 2743.48(A). Thus, OPAA has offered an amendment to reduce this timeframe to 2 years.

³ 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.” R.C. 2743.48(F)(2). This “no attorney left behind” loophole is frequently abused. As you know, there is a pending case where the claimant failed to prove his innocence but is litigating whether a *Brady* violation occurred. That claimant is represented by a squad of no less than seven lawyers who have billed a combined total of \$801,895.50 as of October 15, 2018. The average hourly rate for his team of lawyers is \$357. Four of this claimant’s attorneys sign every single motion and response.

also address witness recantations which might happen years after a conviction. Ohio could also require clear and convincing evidence, instead of just a preponderance, as a number of other states, including Michigan, have done.

Other states that have recently enacted, or considered, wrongful imprisonment bills were 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 ..." (Emphasis added). Michigan's 2017 statute did not have language authorizing strict liability anytime a court finds a *Brady* violation was committed.

Earlier this year Kansas enacted new legislation on wrongful imprisonment. It took them over two years of debate. Kansas' statute did not have language authorizing strict liability anytime a court finds a *Brady* violation was committed. Michigan and Kansas approached these issues in a thoughtful manner, bringing both sides together with legislative hearings⁴ in open session. If you recall, H.B. 411's legislative repeal was deleted from the budget bill, H.B. 49. Past is prologue. Yet again, this extensive eligibility expansion is being rushed in the lame duck session. **This is a recipe for disaster.** There are certainly more pressing ways to spend over \$15 million dollars of Ohio taxpayers' money. Not every person who has a conviction overturned based upon a reviewing court scouring the record and declaring certain evidence should have, but *may* not have been disclosed, should be automatically entitled to taxpayer money. Reversal of convictions for these reasons is not synonymous with innocence.

H.B. 411 seeks to expand Ohio's wrongful imprisonment statute to permit compensation to those who are unable to prove their innocence. I have read Rep. Seitz's September 25, 2018 written testimony. Notwithstanding certain legislators' recollections on why the General Assembly passed the 2003 amendment at issue, the words that were signed into law 15 years ago conveyed a clear meaning. That meaning was directly applied by the Ohio Supreme Court in *Mansaray*, 138 Ohio St. 3d 277 (2014). *Mansaray* was not some earth-shattering decision. The unanimous court held the [2003 amendment](#)'s unambiguous text⁵ required any error to occur after sentencing

⁴ SB 125 Hearing Testimony from 2017 available [here](#). In 2018, Kansas enacted [H.B. 2579](#) for "innocent persons" which appears at the end of this document.

⁵ The 2003 amendment's provenance is also interesting. The eligibility change was not in the Senate-passed version. [S.B. 149 \(124th G.A\)](#) did not originally expand eligibility criteria of Ohio wrongful imprisonment law -- the "error in procedure" provision was tacked on in the

to qualify. H.B. 411 is not “restoring the intent” of prior law. Rep. Seitz’s bill should rise or fall based on its own merit, not what he argues was legislative intent of the entire General Assembly fifteen years ago.⁶ Along these lines, there is simply no justification to attempt to “retroactively” pass these changes. See H.B. 411, as passed by the House, at Lines 72-82.

Ohio’s Legislative Service Commission was unable to predict potential liabilities associated with this bill.⁷ We have done our best to approximate liability based solely on potential cases known at this time. If H.B. 411 becomes law, more claimants will attempt to prove a *Brady* violation was associated with their convictions. The state is ill-equipped to prove that a piece of information was, in fact, given to the defense decades ago. In many of these cases, the original defense attorney’s files (where evidence about the prosecution’s disclosures might be located) often mysteriously disappear. Economics professors will often say, “when you incentivize something, you’ll get more of it.” This bill incentivizes convicts to claim they were imprisoned because of a *Brady* violation. Not only could they be released, but they could get paid! This bill is a true Pandora’s Box inviting untold liabilities falling on Ohio’s taxpayers.

If R.C. 2743.48(A) is to be amended yet again, Ohio should take this opportunity to completely redraft it using the Michigan and Kansas statutes as examples. Contrary to proponents’ claims, H.B. 411 involves a significant amount of taxpayers’ money. This is a significant expansion of eligibility. There are valid reasons that no other state has enacted similar language. The Cuyahoga County, Lucas County Prosecutors’ Offices and the Ohio Prosecuting Attorneys’ Association all urge you to oppose H.B. 411. I would welcome any questions.

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.

⁶ See, *supra*. fn. 5. Ironically, there is pending legislation on this issue currently before this committee. S.B. 307 seeks to repeal R.C. 1.49. Earlier this week, this committee just heard testimony from the [Buckeye Institute](#) regarding divining what the legislature “intended” in a bill. S.B. 307’s sponsors, and the Buckeye Institute, do not think these inquiries are worthwhile. “The only reliable indication of *that* [legislative] intent--the *only* thing we know for sure can be attributed to *all* of them--is the words of the bill that they voted to make law.” [Crosby v. National Foreign Trade Council](#), 530 U.S. 363, 390-91 (2000)(Scalia, J., concurring, italics in original); accord, [Chisom v. Roemer](#), 501 U.S. 380, 406 (1991). (Scalia, J, dissenting)(“We are here to apply the statute, not legislative history, and certainly not the absence of legislative history. Statutes are the law though sleeping dogs lie.”)

⁷ LSC’s June, [2018 Fiscal Note](#), p. 2. (stating, “As the number of additional individuals who may be judged wrongfully imprisoned is uncertain, the potential increase in the amount that the state disburses in wrongful imprisonment payments annually is uncertain as well.”)

Attachment to Cuyahoga County Prosecutor's Office Testimony
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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.

33 states + the federal government + Washington, D.C. have laws to compensate the wrongfully convicted: AL, CA, CO, CT, DC, FL, HI, IA, IL, KS, 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
- KS: \$65,000
- 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:** 10 states (CO, FL, KS, LA, MA, MN, MT, NC, TX, VT)
- **Medical expenses:** 5 states (KS, 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 of "10% of the total amount awarded or \$50,000, whichever is less, plus expenses.":** (MI)
- **Fees not to exceed \$25k:** (KS)
- **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

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|-------|------------------------|--|---|---|---|--|---|--|--|
| 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 |

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|-------|--|--|--|-------------------------------|-----------------|---|--|--|-------------------------|
| 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 |

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|-------|---|-----------------|--|-------------------------------|---|--|--|---|--|
| 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 |

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|-----------|---|-----------------|---|----------------------|--|---|---|---|--|
| 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 |

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|-----------|--------------------------------------|-------------|---|--|---|---|--|--|-------------------------|
| 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 |

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|-------|--------------------------------|-------------------------------|--|--|-----------------|--------------------------------|---|--|--|
| 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

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|-------|---------------------------------|----------------|----------------------|-------------------|--|------------------------|---|---|-------------------------|
| 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 |

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| 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 | Bars 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 |

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 |

[MCLS § 691.1755](#)

This document is current through 2018 Public Act 348.

Michigan Compiled Laws Service > Chapter 691 Judiciary (§§ 691.2 — 691.1757) > Act 343 of 2016 Wrongful Imprisonment Compensation Act (§§ 691.1751 — 691.1757)

§ 691.1755. Judgment in plaintiff's favor; findings; compensation; payment options; evidence in civil action; acceptance; settlement of claim; writing; offset of expenses; 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.

MCLS § 691.1755

- (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.

MCLS § 691.1755

(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

[Pub Acts 2016, No. 343](#), effective March 29, 2017.

Michigan Compiled Laws Service
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HOUSE BILL No. 2579

AN ACT concerning civil actions and civil procedure; relating to wrongful conviction and imprisonment; compensation; tuition assistance; state health care benefits program; contact with jurors, procedures and limitations; code of civil procedure; amending K.S.A. 2017 Supp. 75-6117 and 75-6501 and repealing the existing sections.

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

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

Now, therefore:

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

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

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

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

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

(B) 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;

(C) 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 resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial; and

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

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

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

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

(3) All pleadings shall be captioned, “In the matter of the wrongful conviction of _____.”

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

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

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

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

(B) 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.

(2) A claimant shall not receive compensation for any period of in-

carceration during which the claimant was concurrently serving a sentence for a conviction of another crime for which such claimant was lawfully incarcerated.

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

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

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

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

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

(C) shall be entitled to receive tuition assistance pursuant to section 2, and amendments thereto; and

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

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

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

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

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

(2) The order of expungement shall state the:

(A) Claimant's full name;

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

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

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

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

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

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

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

(i) Upon entry of a certificate of innocence, the court shall order the expungement and destruction of the associated biological samples authorized by and given to the Kansas bureau of investigation in accordance with K.S.A. 21-2511, and amendments thereto. The order shall state the information required to be stated in a petition to expunge and destroy the samples and profile record pursuant to K.S.A. 21-2511, and amendments thereto, and shall direct the Kansas bureau of investigation to expunge and destroy such samples and profile record. The clerk of the court shall send a certified copy of the order to the Kansas bureau of investigation, which shall carry out the order and provide confirmation of such action to the court. Nothing in this subsection shall require the Kansas bureau of investigation to expunge and destroy any samples or profile record associated with the claimant that was submitted pursuant to K.S.A. 21-2511(a), and amendments thereto, related to any offense other than the offense for which the court has entered a certificate of innocence.

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

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

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

New Sec. 2. (a) Any individual awarded tuition assistance pursuant to section 1, and amendments thereto, shall receive a waiver of tuition and required fees for attendance at a postsecondary educational institution for up to 130 credit hours. Such individual may attend a postsecondary educational institution either full or part time.

(b) (1) Subject to appropriations, the state board of regents may make expenditures to reimburse each individual awarded tuition assistance pursuant to section 1, and amendments thereto, who is enrolled in a postsecondary educational institution for additional fees, including, but not limited to, fees for room and board, technical equipment and course-required books.

(2) No postsecondary educational institution shall delay enrollment of an individual who is awarded tuition assistance pursuant to section 1, and amendments thereto, because appropriations are not available for any additional fees provided to such individual.

(c) To remain eligible for the tuition and fees waiver under this section, an individual shall remain in good standing at the postsecondary educational institution where the individual is enrolled.

(d) Individuals shall provide a written or electronic copy of the court order awarding relief in the form of tuition assistance to the postsecondary educational institution or the state board of regents.

(e) The state board of regents shall adopt rules and regulations to administer the provisions of this section.

(f) As used in this section, “postsecondary educational institution” means any state educational institution as defined in K.S.A. 76-711, and amendments thereto, municipal university, community college, technical college or institute of technology in Kansas.

Sec. 3. K.S.A. 2017 Supp. 75-6117 is hereby amended to read as follows: 75-6117. (a) There is hereby established in the state treasury the tort claims fund which shall be administered by the attorney general. All

expenditures from such fund shall be made upon warrants of the director of accounts and reports pursuant to vouchers approved by the attorney general or by a designee of the attorney general.

(b) (1) Moneys in the tort claims fund shall be used only for the purpose of paying ~~(1)~~: (A) Compromises, settlements and final judgments arising from claims against the state or an employee of the state under the Kansas tort claims act or under the civil rights laws of the United States or of the state of Kansas ~~and (2)~~; (B) costs of defending the state or an employee of the state in any actions or proceedings on those claims; and (C) judgments arising from claims pursuant to section 1, and amendments thereto, including, but not limited to, premiums under the state health care benefits program.

(2) Payment of a judgment arising from a claim pursuant to section 1, and amendments thereto, shall be subject to review by the state finance council. The attorney general shall notify the state finance council of the need for such review and ensure that payment of the judgment occurs without unnecessary delay.

(3) Payment of a compromise or settlement shall be subject to approval by the state finance council as provided in K.S.A. 75-6106, and amendments thereto.

(4) Payment of a final judgment shall be made from the fund if there has been a determination of any appeal taken from the judgment or, if no appeal is taken, if the time for appeal has expired.

(5) No payment shall be made from the fund to satisfy a compromise, settlement or final judgment when there exists insurance coverage obtained therefor, except that payment shall be made from the fund to satisfy a compromise settlement or final judgment for claims against the state or an employee of the state in any actions or proceedings arising from rendering or failure to render professional services by: (A) A charitable health care provider as defined by K.S.A. 75-6102, and amendments thereto; (B) a local health department as defined by K.S.A. 65-241, and amendments thereto, or an employee thereof; or (C) an indigent health care clinic as defined by K.S.A. 75-6115, and amendments thereto, or an employee thereof, even if there exists insurance coverage obtained therefor.

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

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

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

Sec. 4. K.S.A. 2017 Supp. 75-6501 is hereby amended to read as follows: 75-6501. (a) Within the limits of appropriations made or available therefor and subject to the provisions of appropriation acts relating thereto, the Kansas state employees health care commission shall develop and provide for the implementation and administration of a state health care benefits program.

(b) (1) Subject to the provisions of paragraph (2), the state health care benefits program may provide benefits for persons qualified to participate in the program for hospitalization, medical services, surgical services, nonmedical remedial care and treatment rendered in accordance with a religious method of healing and other health services. The program may include such provisions as are established by the Kansas state employees health care commission, including, but not limited to, qualifications for benefits, services covered, schedules and graduation of benefits, conversion privileges, deductible amounts, limitations on eligibility for benefits by reason of termination of employment or other change of status, leaves of absence, military service or other interruptions in service and other reasonable provisions as may be established by the commission.

(2) The state health care benefits program shall provide the benefits and services required by K.S.A. 2017 Supp. 75-6524, and amendments thereto.

(c) The Kansas state employees health care commission shall designate by rules and regulations those persons who are qualified to participate in the state health care benefits program, including active and retired public officers and employees and their dependents as defined by rules and regulations of the commission. Such rules and regulations shall not apply to students attending a state educational institution as defined in K.S.A. 76-711, and amendments thereto, who are covered by insurance contracts entered into by the board of regents pursuant to K.S.A. 75-4101, and amendments thereto. In designating persons qualified to participate in the state health care benefits program, the commission may establish such conditions, restrictions, limitations and exclusions as the commission deems reasonable. Such conditions, restrictions, limitations and exclusions shall include the conditions contained in ~~subsection (d) of~~ K.S.A. 75-6506(d), and amendments thereto. Each person who was formerly elected or appointed and qualified to an elective state office and who was covered immediately preceding the date such person ceased to hold such office by the provisions of group health insurance or a health maintenance organization plan under the law in effect prior to August 1, 1984, or the state health care benefits program in effect after that date, shall continue to be qualified to participate in the state health care benefits program and shall pay the cost of participation in the program as established and in accordance with the procedures prescribed by the commission if such person chooses to participate therein.

(d) (1) Commencing with the 2009 plan year that begins January 1, 2009, if a state employee elects the high deductible health plan and health savings account, the state's employer contribution shall equal the state's contribution to any other health benefit plan offered by the state. The cost savings to the state for the high deductible health plan shall be deposited monthly into the employee's health savings account up to the maximum annual amount allowed pursuant to ~~subsection (d) of~~ 26 U.S.C. § 223(d), as amended, for as long as the employee participates in the high deductible plan.

(2) If the employee had not previously participated in the state health benefits plan, the employer shall calculate the average savings to the employer of the high deductible plan compared to the other available plans and contribute that amount monthly to the employee's health savings account up to the maximum annual amount allowed pursuant to ~~subsection (d) of~~ 26 U.S.C. § 223(d), as amended.

(3) The employer shall allow additional voluntary contributions by the employee to their health savings account by payroll deduction up to the maximum annual amount allowed pursuant to ~~subsection (d) of~~ 26 U.S.C. § 223(d), as amended.

(e) The commission shall have no authority to assess charges for employer contributions under the student health care benefits component of the state health care benefits program for persons who are covered by insurance contracts entered into by the board of regents pursuant to K.S.A. 75-4101, and amendments thereto.

(f) Nothing in this act shall be construed to permit the Kansas state employees health care commission to discontinue the student health care benefits component of the state health care benefits program until the state board of regents has contracts in effect that provide student coverage pursuant to the authority granted therefor in K.S.A. 75-4101, and amendments thereto.

(g) (1) *On and after July 1, 2018, the commission shall designate claimants, as defined in section 1, and amendments thereto, as qualified to participate in the state health care benefits program. The commission shall implement this subsection in accordance with applicable federal law, including, but not limited to, the employee retirement income security act of 1974 and any regulations issued by the United States department of the treasury.*

(2) *A claimant shall have 31 calendar days from the date of judgment entered pursuant to section 1, and amendments thereto, to complete or decline enrollment in the state health care benefits program. A claimant shall be qualified to participate in the state health care benefits program for the remainder of the plan year when judgment is entered pursuant to section 1, and amendments thereto, and for the next ensuing plan year. A claimant shall not be qualified to elect a high-deductible health plan and health savings account under the state health care benefits program.*

(3) *Costs of premiums under the state health care benefits program for a claimant shall be paid from the tort claims fund established by K.S.A. 75-6117, and amendments thereto, and shall not be charged to the claimant. A claimant shall be responsible to pay any applicable copayments, deductibles and other related costs under the state health care benefits program.*

(4) *A claimant may elect to include the claimant's dependents under the state health care benefits program. For any covered dependents, the claimant shall be responsible to pay the costs of premiums, copayments, deductibles and other related costs under the state health care benefits program.*

(5) *The secretary of health and environment or the secretary's designee shall provide assistance to a claimant to obtain and maintain coverage under the state health care benefits program pursuant to this subsection, including: Enrollment; maintenance of related records; and other assistance as may be required or incidental to implement this subsection.*

New Sec. 5. (a) On completion of a jury trial in a civil action and before the jury is discharged, the judge shall inform the jurors that they have an absolute right to discuss or not to discuss the deliberations or verdict with anyone except as provided in subsections (f) and (g). The judge shall also inform the jurors of the provisions set forth in subsections (b), (c), (d) and (e).

(b) Immediately following the discharge of the jury in a civil action, the defendant, or the defendant's attorney or representative, or the plaintiff, or the plaintiff's attorney or representative, may discuss the jury deliberations or verdict with a member of the jury only if the juror consents to the discussion.

(c) If a discussion of the jury deliberations or verdict with a member of the jury occurs at any time other than immediately following the discharge of the jury, prior to discussing the jury deliberations or verdict with a member of a jury, the defendant, or the defendant's attorney or representative, or the plaintiff, or the plaintiff's attorney or representative, shall inform the juror of the identity of the case, the party in the case that the person represents, the subject of the interview, the absolute right of the juror to discuss or not discuss the deliberations or verdict in the case with the person and the juror's right to review and have a copy of any declaration filed with the court.

(d) Any unreasonable contact with a juror by the defendant, or the defendant's attorney or representative, or by the plaintiff, or the plaintiff's attorney or representative, without the juror's consent shall be immediately reported to the trial court.

(e) Any violation of this section shall be considered a violation of a lawful court order and may be punished as contempt of court.

(f) Nothing in this section shall prohibit a law enforcement officer from discussing the deliberations or verdict with a member of the jury for the purpose of investigating an allegation of criminal conduct.

(g) Nothing in this section shall prohibit the court or a judge from discussing the deliberations or verdict with a member of the jury for any lawful purpose.

(h) This section shall be part of and supplemental to the code of civil procedure.

Sec. 6. K.S.A. 2017 Supp. 75-6117 and 75-6501 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.