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MEMORANDUM

To: Senate Committee on Judiciary
From: Jason Thompson, Senior Assistant Revisor of Statutes
Date: February 14, 2018
Subject: Bill Brief for SB 336

SB 336 seeks to provide compensation for a person who was wrongfully convicted and imprisoned by creating a civil cause of action.

Section 1 authorizes a claimant to bring an action in the district court seeking damages from the state. Subsection (a) provides that a “claimant” is a person convicted and subsequently imprisoned for one or more crimes that such person did not commit.

Subsection (c) requires the claimant to establish four facts by a preponderance of evidence: (1) The claimant was convicted of a felony crime and subsequently imprisoned; (2) the claimant’s judgment of conviction was reversed or vacated and either the charges were dismissed or on retrial the claimant was found to be not guilty; (3) the claimant did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction; and (4) the claimant did not commit or suborn perjury, fabricate evidence, or by the claimant's own conduct cause or bring about the conviction. A confession or an admission later found to be false or a guilty plea shall not constitute committing or suborning perjury, fabricating evidence or causing or bringing about the conviction.

Subsection (d) provides that the statute of limitations for actions is two years after the dismissal of the criminal charges against the claimant or a finding of not guilty on retrial, or two years after the grant of a pardon to the claimant. For a claimant convicted, imprisoned and released from custody before July 1, 2018, the claimant must commence an action under this section no later than July 1, 2020.

Subsection (e) provides that damages awarded to a claimant shall be: (1) \$80,000 for each year of imprisonment; and (2) not less than \$25,000 for each additional year served on parole or postrelease supervision or each additional year the claimant was required to register as an offender

under the Kansas offender registration act, whichever is greater. A claimant cannot receive compensation for any period of incarceration during which the claimant was concurrently serving a sentence for another crime for which the claimant was lawfully incarcerated. The court shall consider the best interests of the claimant in ordering that the award be paid either in one lump sum or as a combination of an initial payment with the remainder paid as an annuity. The claimant is also entitled to reasonable attorney fees and costs, and the court may award any other appropriate non-monetary relief the claimant might seek, such as vocational training, tuition assistance, counseling, housing assistance and health insurance coverage.

Subsection (f) provides for setoff of recovery in other civil actions related to the same subject that have been awarded before the judgment entry and provides for reimbursement to the state for recovery in other civil actions related to the same subject that are awarded after the judgment entry.

Subsection (g) requires the court to enter a certificate of innocence if the claimant is entitled to a judgment. The clerk of the court is required to send a certified copy of the certificate of innocence to the attorney general for payment of the judgment under K.S.A. 75-6117 (Section 2).

Subsection (h) requires the court, upon entry of a certificate of innocence, to order the associated convictions and arrest records expunged and purged from all applicable state and federal systems, regardless of whether the claimant has prior criminal convictions. After entry of the certificate of innocence and an order of expungement, the claimant shall be treated as not having been arrested or convicted of the crime.

Finally, subsection (i) provides that the decision to grant or deny a certificate of innocence shall not have a res judicata effect on any other proceedings.

Section 2 amends K.S.A. 75-6117, concerning the tort claims fund in the state treasury. Current law provides that moneys in the tort claims fund shall be used only for the purposes of paying: (1) 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) costs of defending the state or an employee of the state in any actions or proceedings on those claims. The bill adds judgments arising under section 1 to this list. The attorney general administers the fund and submits vouchers for payment. Under subsection (c), if 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.