

Compensation for Wrongful Conviction and Imprisonment; Contact with Jurors in Civil Cases; HB 2579

HB 2579 creates and amends law regarding compensation for wrongful conviction and imprisonment and creates law regarding contact with jurors in civil cases.

Compensation for Wrongful Conviction and Imprisonment

The bill creates a civil cause of action allowing claimants to seek damages from the State for wrongful conviction.

Establishing Eligibility for Damages

A claimant is entitled to damages if he or she establishes by a preponderance of evidence:

- The claimant was convicted of a felony crime and subsequently imprisoned;
- 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;
- 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
- The claimant did not commit or suborn perjury, fabricate evidence, or by the claimant's own conduct cause or bring about the conviction.

For these purposes, neither a confession nor admission later found to be false or a guilty plea constitute committing or suborning perjury, fabricating evidence, or causing or bringing about the conviction. Additionally, the bill allows the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this section, in the interest of justice, to 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 person or those acting on such person's behalf.

The bill requires the suit, accompanied by a statement of the facts concerning the claim for damages and verified by the claimant, to be brought by the claimant within a period of two years after the dismissal of the criminal charges against the claimant, finding of not guilty on retrial, or grant of a pardon to the claimant. 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.

The bill specifies the caption form for pleadings and requires any claim filed under the bill be served on the Attorney General in accordance with the Code of Civil Procedure. The

claim shall be tried by the court and no request for jury trial is permitted. The decision of the district court may be appealed directly to the Supreme Court pursuant to the Code of Civil Procedure.

Monetary Damages

A claimant entitled to damages shall receive \$65,000 for each year of imprisonment, as well as 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 shall not receive compensation for any period of incarceration during which the claimant was concurrently serving a sentence for a conviction of another crime for which such claimant was lawfully incarcerated. The bill requires the court to order the award be paid as a combination of an initial payment not to exceed \$100,000 or 25 percent of the award, whichever is greater, and the remainder as an annuity not to exceed \$80,000 per year. The bill allows the claimant to designate a beneficiary or beneficiaries for the annuity by filing such designation with the court. Alternatively, the bill allows the court to order one lump-sum payment if it finds it is in the best interests of the claimant.

If, at the time the judgment for the award is entered, the claimant has won a monetary award against or has entered into a settlement with the State or any political subdivision thereof in a civil action related to the same subject, the amount of the award in the action or received in the settlement agreement, minus any sums paid to attorneys or for costs in litigating the other civil action or obtaining the settlement agreement, will be deducted from the sum of money to which the claimant is entitled pursuant to the bill. The court must include in the judgment entry an award to the State of any amount deducted.

If, after the judgment is entered, the claimant wins a monetary award against or enters into a settlement with the State or any political subdivision thereof in a civil action related to the same subject, the claimant must reimburse the State for the sum of money paid pursuant to the claim under the bill, minus any sums paid to attorneys or for costs in litigating the other civil action or obtaining the settlement agreement. The amount of the reimbursement shall not exceed the amount of the monetary award the claimant wins for damages in the other civil action or receives in the settlement agreement.

Fees, Costs, and Other Relief

In addition to monetary damages, the bill allows the court to award other non-monetary relief as sought in the complaint, including, but not limited to, counseling, housing assistance, and personal financial literacy assistance as appropriate. Further, the bill states claimants are entitled to receive reasonable attorney fees and costs incurred in the action brought pursuant to the bill, not to exceed a total of \$25,000, unless a greater reasonable total is authorized by the court upon a showing of good cause; receive tuition assistance; and participate in the state health care benefits program (Program).

Tuition assistance. Claimants awarded tuition assistance shall receive a waiver of tuition and required fees for attendance at a “postsecondary educational institution” (defined in the bill) for up to 130 credit hours and could attend either full time or part time. The Kansas Board of Regents (KBOR) is authorized to make expenditures to reimburse each individual

awarded tuition assistance for additional fees, including, but not limited to, fees for room and board, technical equipment, and course-required books. Further, the bill prohibits delayed enrollment of an individual who is awarded tuition assistance because appropriations are not available for any additional fees provided to such individual. To remain eligible for a tuition and fees waiver, the individual must remain in good standing at the institution where the individual is enrolled and provide a written electronic copy of the court order awarding relief in the form of tuition assistance to the institution or KBOR. KBOR is required to adopt rules and regulations to administer this tuition assistance.

State health care benefits. On and after July 1, 2018, a claimant has 31 calendar days from the date of judgment entered to complete or decline enrollment in the Program for the remainder of the plan year and for the next ensuing plan year. A claimant is qualified to participate in the Program for the remainder of the claim year and the next ensuing plan year. A claimant is not qualified to elect a high-deductible health plan and health savings account under the Program. The cost of premiums shall be paid from the Tort Claims Fund and shall not be charged to the claimant. The claimant must pay any applicable copayments, deductibles, and other related costs, however, and may elect to include the claimant's dependents, in which case the claimant shall be responsible for the costs of premiums, copayments, deductibles, and other costs for covered dependents. The bill requires the Secretary of Health and Environment, or the Secretary's designee, to provide assistance to obtain and maintain coverage including enrollment, maintenance of records, and other assistance.

Certificate of Innocence; Expungement Orders

If the court finds the claimant is entitled to a judgment, the bill requires the court to enter a certificate of innocence finding the claimant was innocent of all crimes for which the claimant was mistakenly convicted and order the associated convictions and arrest records expunged and purged from all applicable state and federal systems. The court is required to enter the expungement order regardless of whether the claimant has prior criminal convictions. The bill outlines the required contents of the order of expungement, which includes a direction to the Kansas Bureau of Investigation (KBI) 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 must send a certified copy of the order to the KBI, which is required to carry out the order and 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 KBI is required to provide confirmation of such action to the court. If a certificate of innocence and an order of expungement are entered, the bill states the claimant shall be treated as not having been arrested or convicted of the crime.

Upon entry of a certificate of innocence, the bill requires the court to order the expungement and destruction of the associated biological samples authorized by and given to the KBI in accordance with state law requiring collection of such samples in certain circumstances. The order shall direct the KBI to expunge and destroy such samples and profile record. The clerk of the court must send a certified copy of the order to the KBI, which shall be required to carry out the order and provide confirmation of such action to the court. The bill states the KBI shall not be required to expunge and destroy any samples or profile record associated with the claimant related to any offense other than the offense for which the court has entered a certificate of innocence.

The bill states the decision to grant or deny a certificate of innocence shall not have a *res judicata* effect on any other proceedings.

Kansas Department of Corrections Reentry Services

The bill states nothing in the bill precludes the Kansas 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 may be provided while an action under this section is pending and after any judgment is entered, as appropriate for such claimant.

Additional Responsibilities of the Attorney General

Upon receiving a certified copy of the certificate of innocence and the judgment entry from the clerk of the court, the bill requires the Attorney General to pay any judgment through the procedure established in the Tort Claims Act.

The bill amends the statute governing the Tort Claims Fund administered by the Attorney General to provide that moneys in that fund may be used to pay judgments arising under the bill. The bill states payment of a judgment arising from a claim under the bill shall be subject to review by the State Finance Council, and the Attorney General is required to notify the State Finance Council of the need for such review and ensure that payment of the judgment occurs without unnecessary delay.

Contact With Jurors in Civil Cases

The bill adds provisions to the Code of Civil Procedure concerning contact with jurors following civil actions. Immediately following discharge of the jury, the bill allows the defendant, the defendant's attorney or representative, the plaintiff, or the plaintiff's attorney or representative (the parties) to discuss the jury deliberations or verdict with a member of the jury only if the juror consents to the discussion.

If a discussion 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 contacting party must 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.

The bill requires any unreasonable contact with a juror by the parties without the juror's consent to be immediately reported to the trial court. Any violation shall be considered a violation of a lawful court order, which may be punished as contempt of court.

The bill requires the judge, on completion of a jury trial and before the jury is discharged, to inform the jurors they have an absolute right to discuss or not to discuss the deliberations or verdict with anyone. Further, before the jury is discharged, the bill requires the judge to inform jurors of the consent required for a discussion with the parties, the obligation to report unreasonable contact, and that violation of the court order can be punished as contempt of court.

The bill states nothing in the section prohibits a law enforcement officer from discussing the deliberations or verdict with a juror for the purpose of investigating an allegation of criminal conduct or the court from discussing the deliberations or verdict with a juror for any lawful purpose.