

SENATE BILL No. 536

By Committee on Federal and State Affairs

2-22

1 AN ACT concerning wrongful conviction; requiring the attorney general
2 to investigate allegations of misconduct by a prosecuting attorney that
3 may have contributed to a wrongful conviction and, if the evidence
4 warrants, prosecute any appropriate criminal charges and commence
5 ouster proceedings against such prosecuting attorney; providing that
6 prosecuting attorneys shall not have immunity from such criminal
7 charges or ouster proceedings; amending K.S.A. 2021 Supp. 60-5004
8 and repealing the existing section.
9

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

11 Section 1. K.S.A. 2021 Supp. 60-5004 is hereby amended to read as
12 follows: 60-5004. (a) As used in this section, "claimant" means a person
13 convicted and subsequently imprisoned for one or more crimes that such
14 person did not commit.

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

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

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

22 (B) the claimant's judgment of conviction was reversed or vacated
23 and either the charges were dismissed or on retrial the claimant was found
24 to be not guilty;

25 (C) the claimant did not commit the crime or crimes for which the
26 claimant was convicted and was not an accessory or accomplice to the acts
27 that were the basis of the conviction and resulted in a reversal or vacation
28 of the judgment of conviction, dismissal of the charges or finding of not
29 guilty on retrial; and

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

35 (2) The court, in exercising its discretion as permitted by law
36 regarding the weight and admissibility of evidence submitted pursuant to

1 this section, may, in the interest of justice, give due consideration to
2 difficulties of proof caused by the passage of time, the death or
3 unavailability of witnesses, the destruction of evidence or other factors not
4 caused by such persons or those acting on their behalf.

5 (d) (1) The suit, accompanied by a statement of the facts concerning
6 the claim for damages, verified in the manner provided for the verification
7 of complaints in the rules of civil procedure, shall be brought by the
8 claimant within a period of two years after the:

9 (A) Dismissal of the criminal charges against the claimant or finding
10 of not guilty on retrial; or

11 (B) grant of a pardon to the claimant.

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

15 (3) All pleadings shall be captioned, "In the matter of the wrongful
16 conviction of _____."

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

19 (5) The suit for a claim filed pursuant to this section shall be tried by
20 the court, and no request for a jury trial may be made pursuant to K.S.A.
21 60-238, and amendments thereto.

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

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

25 (B) not less than \$25,000 for each additional year served on parole or
26 postrelease supervision or each additional year the claimant was required
27 to register as an offender under the Kansas offender registration act,
28 whichever is greater.

29 (2) A claimant shall not receive compensation for any period of
30 incarceration during which the claimant was concurrently serving a
31 sentence for a conviction of another crime for which such claimant was
32 lawfully incarcerated.

33 (3) (A) Except as provided in subparagraph (B), the court shall order
34 that the award be paid as a combination of an initial payment not to exceed
35 \$100,000 or 25% of the award, whichever is greater, and the remainder as
36 an annuity not to exceed \$80,000 per year. The claimant shall designate a
37 beneficiary or beneficiaries for the annuity by filing such designation with
38 the court.

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

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

43 (A) Shall be entitled to receive reasonable attorney fees and costs

1 incurred in the action brought pursuant to this section not to exceed a total
2 of \$25,000, unless a greater reasonable total is authorized by the court
3 upon a finding of good cause shown;

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

7 (C) shall be entitled to receive tuition assistance pursuant to K.S.A.
8 74-32,195, and amendments thereto; and

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

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

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

34 (g) If the court finds that the claimant is entitled to a judgment, it
35 shall enter a certificate of innocence finding that the claimant was innocent
36 of all crimes for which the claimant was mistakenly convicted. The clerk
37 of the court shall send a certified copy of the certificate of innocence and
38 the judgment entry to the attorney general for payment pursuant to K.S.A.
39 75-6117, and amendments thereto.

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

1 prior criminal convictions.

2 (2) The order of expungement shall state the:

3 (A) Claimant's full name;

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

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

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

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

9 and

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

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

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

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

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

41 (k) Nothing in this section shall preclude the department of
42 corrections from providing reentry services to a claimant that are provided
43 to other persons, including, but not limited to, financial assistance, housing

1 assistance, mentoring and counseling. Such services shall be provided
2 while an action under this section is pending and after any judgment is
3 entered, as appropriate for such claimant.

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

6 (m) *The attorney general shall investigate each allegation of*
7 *misconduct by a prosecuting attorney that may have contributed to the*
8 *wrongful conviction, including, but not limited to, withholding exculpatory*
9 *evidence, that is raised in an action pursuant to this section. If such*
10 *investigation results in evidence that supports such allegation of*
11 *misconduct, the attorney general shall, as the evidence in the case*
12 *warrants, prosecute any appropriate criminal charges against such*
13 *prosecuting attorney and commence ouster proceedings against such*
14 *prosecuting attorney in the manner provided in the code of civil*
15 *procedure. Notwithstanding any other provision of law, a prosecuting*
16 *attorney shall not have immunity from such criminal charges or ouster*
17 *proceedings.*

18 Sec. 2. K.S.A. 2021 Supp. 60-5004 is hereby repealed.

19 Sec. 3. This act shall take effect and be in force from and after its
20 publication in the Kansas register.