

SESSION OF 2024

**SUPPLEMENTAL NOTE ON HOUSE SUBSTITUTE FOR
SENATE BILL NO. 190**

As Recommended by House Committee on
Judiciary

Brief*

House Sub. for SB 190 would amend law regarding civil actions for wrongful conviction and imprisonment and related compensation that may be awarded pursuant to the Wrongful Conviction Act (Act).

Eligibility for Damages

The bill would amend the facts that must be proved by the claimant to be entitled to damages in an action for wrongful conviction. Current law provides that the claimant must establish certain facts by a preponderance of the evidence, including:

- 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 the claimant was found to be not guilty upon retrial;
- 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

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

the charges, or finding of not guilty upon 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.

The bill would modify this list to instead require the claimant prove, by a preponderance of the 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, upon retrial, the claimant was found to be not guilty;
 - The claimant did not commit the crime or crimes for which the claimant was convicted, causing the conviction to be reversed, vacated, or the charges to be dismissed; and
 - The claimant was not an accessory or accomplice to the acts that were the basis of the conviction;
- The claimant did not commit or suborn perjury or fabricate evidence [*Note: Continuing law would provide a confession or admission later found to be false or a guilty plea would not constitute perjury*]; and
- The claimant's own conduct, including any action taken by the claimant before, during, or after the commission of the acts that served as the basis for the claimant's conviction, did not contribute to, cause, or bring about the conviction.

Monetary Damages

Current law awards monetary damages to claimants on a yearly basis at a rate of \$65,000 per year of imprisonment, and at least \$25,000 for each additional year served on parole or postrelease supervision, or each additional year registered as an offender under the Kansas Offender Registry Act, whichever is greater. Under the bill, damages would be awarded on a daily basis at a rate of \$180 per day of imprisonment, and \$70 for each additional day served on parole or postrelease supervision or each additional day registered as an offender.

The bill would also allow damages awarded at a rate of \$110 per day for each day spent under house arrest, and would specify a claimant would not be entitled to compensation for any period of lawful imprisonment or house arrest served concurrently by the claimant for another crime.

The bill would specify compensation for days of imprisonment would only include days spent in the custody of the Secretary of Corrections and any time served in jail awaiting post-trial transfer to the Department of Corrections (KDOC).

Fees, Costs, and Other Non-Monetary Relief

Current law allows the court to award reasonable attorney fees and costs and other non-monetary relief, such as counseling, housing assistance, financial literacy assistance, tuition assistance, and State health care benefits. The bill would make clarifying changes to these awards, as follows.

Attorney Fees and Costs

If compensation is awarded to a claimant, current law provides the claimant is also entitled to reasonable attorney fees and costs not to exceed a total of \$25,000, unless a

greater reasonable total is authorized by the court upon a finding of good cause. The bill would remove the good cause exception and increase the limitation on attorneys fees and costs that may be awarded to \$100,000.

Housing Assistance

The bill would clarify any housing assistance awarded pursuant to the Act would be in the form of monthly payments to a rental facility or financial institution in an amount not to exceed \$2,000, and for a period of time not to exceed five years. The bill would specify this five-year limitation would also apply to any housing assistance offered to the claimant by way of reentry services through KDOC.

Counseling

The bill would define “counseling” to mean services for mental health, career placement, substance abuse, disability rehabilitation, and family renunciation.

Appeals

Current law provides that a district court’s decision in a wrongful conviction action may be appealed directly to the Kansas Supreme Court. The bill would remove this provision. [Note: Removing this provision would make appeals in these actions consistent with standard appellate procedure, which provides that decisions of a district court are appealed to the Kansas Court of Appeals.]

Background

The House Committee on Judiciary recommended a substitute bill incorporating amended provisions of HB 2780, pertaining to wrongful conviction compensation.

SB 190, as amended by the Senate Committee of the Whole, would have amended law to require persons charged with a felony to execute a waiver of extradition as a condition of bond. [*Note:* These provisions were not retained in the substitute bill.]

HB 2780 – Wrongful Conviction Compensation

The bill was introduced by the House Committee on Judiciary at the request of a representative of the Office of the Attorney General (OAG).

House Committee on Judiciary

In the House Committee hearing, a representative of the OAG provided **proponent** testimony, stating the bill would address conflicting interpretations of the Act that have arisen in district courts and improve the administration of compensation under the Act.

Written-only opponent testimony was provided by a representative of the Midwest Innocence Project.

No other testimony was provided.

The House Committee amended the bill to remove the contents of SB 190 and insert contents of the HB 2780, with the following amendments:

- Removing language excluding actions pursuant to the Act on the basis of ineffective assistance of counsel;
- Making technical changes to the structure of non-monetary relief provisions; and
- Removing the definition of “housing assistance.” [*Note:* A portion of this definition was added to the

non-monetary relief provisions to clarify what constitutes housing assistance.]

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on HB 2780, as introduced, the OAG indicates enactment of the bill would reduce State General Fund (SGF) expenditures from the agency's Tort Claims Fund by an unknown amount due to the additional restrictions that would be placed on claim eligibility.

The Judicial Branch indicates enactment of HB 2780 has the potential to decrease the number of cases filed in district courts. This may decrease agency operating expenditures due to the reduction of time spent by district court judicial and nonjudicial personnel in processing, researching, and hearing cases. However, the Judicial Branch is unable to calculate an exact estimate of this effect. The bill has the potential to decrease the collection of docket fees, fines, and supervision fees, which are deposited in the SGF; however, the size of this reduction is unknown.

KDOC indicates that enactment of the bill would have no fiscal effect on its operations. Any fiscal effect associated with enactment of HB 2780 is not reflected in *The FY 2025 Governor's Budget Report*.

Crimes; criminal procedure; bond; extradition