

1 AN ACT relating to wrongful conviction compensation.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
4 READ AS FOLLOWS:

5 *(1) As used in this section, "claimant" means a person convicted and subsequently*
6 *imprisoned for one (1) or more crimes that the person did not commit.*

7 *(2) Notwithstanding any other provision of law, a claimant may bring an action in*
8 *the Circuit Court of the county in which the conviction occurred seeking*
9 *damages from the Commonwealth pursuant to this section.*

10 *(3) (a) In an action under this section, the claimant shall establish the following by*
11 *a preponderance of the evidence:*

12 *1. The claimant was convicted of a felony crime and subsequently*
13 *imprisoned;*

14 *2. a. The claimant's conviction was reversed or vacated and either the*
15 *charges were dismissed or, on retrial, the claimant was found to*
16 *be not guilty; or*

17 *b. The claimant was granted a full pardon by the Governor;*

18 *3. The claimant did not commit the crime or crimes for which the*
19 *claimant was convicted and was not an accessory or accomplice to the*
20 *acts that were the basis of the conviction; and*

21 *4. a. The claimant did not commit or suborn perjury, fabricate*
22 *evidence, or by the claimant's own conduct cause or bring about*
23 *the conviction.*

24 *b. Neither a confession or admission later found to be false or a*
25 *guilty plea shall constitute committing or suborning perjury,*
26 *fabricating evidence, or causing or bringing about the conviction*
27 *under this subparagraph.*

1 (b) The court may give due consideration to difficulties of proof caused by the
2 passage of time, the death or unavailability of witnesses, the destruction of
3 evidence, or other factors not caused by the claimant or those acting on his
4 or her behalf.

5 (4) (a) An action filed pursuant to this section shall be brought in accordance with
6 the Rules of Civil Procedure and within a period of two (2) years after the:

7 1. Dismissal of the criminal charges against the claimant or finding of
8 not guilty on retrial; or

9 2. Grant of a pardon to the claimant.

10 (b) A claimant convicted, imprisoned, and released from custody before the
11 effective date of this Act shall commence an action under this section not
12 later than two (2) years after the effective date of this Act.

13 (c) Any claim filed pursuant to this section shall be served on the Attorney
14 General in accordance with the Rules of Civil Procedure.

15 (5) (a) Damages awarded under this section shall be:

16 1. a. Sixty-five thousand dollars (\$65,000) for each year of
17 imprisonment, except as provided in paragraph (b) of this
18 subsection; or

19 b. Seventy-five thousand dollars (\$75,000) for each year of
20 imprisonment if the claimant was imprisoned on death row,
21 except as provided in paragraph (b) of this subsection; and

22 2. Twenty-five thousand dollars (\$25,000) for each additional year served
23 on parole or postincarceration supervision or each additional year the
24 claimant was required to register as a sex offender under KRS 17.510,
25 whichever is greater.

26 (b) A claimant shall not receive compensation for any period of incarceration
27 that the claimant was concurrently serving a sentence for a conviction of

- 1 another crime that the claimant was lawfully incarcerated.
- 2 (c) Damages awarded under this subsection shall be awarded to a surviving
3 spouse, parent, or child of the claimant if the claimant is deceased.
- 4 (d) In addition to the damages awarded pursuant to paragraph (a) of this
5 subsection, the claimant:
- 6 1. Shall be entitled to receive reasonable attorney fees and costs incurred
7 in the action brought under this section not to exceed a total of twenty-
8 five thousand dollars (\$25,000), unless a greater reasonable total is
9 authorized by the court upon a finding of good cause shown;
- 10 2. May also be awarded other nonmonetary relief as sought in the
11 complaint, including but not limited to counseling, housing assistance,
12 and personal financial literacy assistance, as appropriate;
- 13 3. Shall be entitled to receive tuition for up to one hundred twenty (120)
14 credit hours at any public postsecondary educational institution and
15 any mandatory fees associated with attendance at a public
16 postsecondary educational institution;
- 17 4. a. Shall be entitled to participate in, and be covered under, the
18 Public Employee Health Insurance Program, as provided under
19 KRS 18A.225 to 18A.2287 or any successor statutes;
- 20 b. The secretary of the Personnel Cabinet may promulgate
21 regulations pursuant to KRS Chapter 13A that are necessary to
22 implement this subparagraph;
- 23 5. Shall be entitled to reimbursement for all restitution, assessments,
24 fees, court costs, and all other sums paid by the claimant as required
25 by pretrial orders, judgment of conviction, or sentence in any
26 proceeding that gave rise to the conviction, reversal, vacation of the
27 conviction, or from retrial following a reversal;

1 6. Shall be entitled to compensation for any reasonable reintegrative
2 services and mental and physical health care costs incurred by the
3 claimant for the time period in between his or her release from
4 incarceration and the entry of judgment; and

5 7. Shall be relieved of child support payments owed by the claimant that
6 became due, and interest on child support arrearages that accrued,
7 during the time the petitioner was incarcerated. The amount owed
8 shall be awarded to the other parent or guardian of the child.

9 (e) 1. Beginning on July 1, 2024, and every year thereafter, the
10 Administrative Office of the Courts shall determine the percentage
11 increase or decrease in the cost of living for the previous calendar
12 year, based on the percentage increase in the nonseasonally adjusted
13 annual average Consumer Price Index for All Urban Consumers, U.S.
14 City Average, All Items, as published by the Bureau of Labor Statistics
15 of the United States Department of Labor.

16 2. The Administrative Office of the Courts shall adjust the amounts
17 under this subsection for the following calendar year by multiplying
18 the amounts applicable to the calendar year that the adjustment is
19 made by the percentage amount determined under this subsection. The
20 adjustment may not exceed three percent (3%) for any year. The
21 Administrative Office of the Courts shall round the adjusted limitation
22 amount to the nearest on hundred dollars (\$100), but the unrounded
23 amount shall be used to calculate the adjustments to the amounts in
24 subsequent calendar years. The adjusted amounts become effective on
25 July 1 of the year in which the adjustment is made, and apply to all
26 claims filed under this section on or after July 1 of that year and
27 before July 1 of the subsequent year.

1 (6) (a) If, at the time of entry of judgment referred to in subsection (5) of this
2 section, the claimant has won a monetary award against the Commonwealth
3 or any political subdivision thereof in a civil action related to the wrongful
4 conviction, or has entered into a settlement agreement with the
5 Commonwealth or any political subdivision thereof related to the wrongful
6 conviction, the amount of the award in the action or the amount received in
7 the settlement agreement, less any sums paid to attorneys or for costs in
8 litigating the other civil action or obtaining the settlement agreement, shall
9 be deducted from the sum of money that the claimant is entitled under this
10 section. The court shall include in the judgment an award to the
11 Commonwealth of any amount deducted pursuant to this subsection.

12 (b) If paragraph (a) of this subsection does not apply and if, after the time of
13 the entry of judgment referred to in subsection (5) of this section, the
14 claimant wins a monetary award against the Commonwealth or any
15 political subdivision thereof in a civil action related to the wrongful
16 conviction, or enters into a settlement agreement with the Commonwealth
17 or any political subdivision thereof related to the wrongful conviction, the
18 claimant shall reimburse the Commonwealth for the sum of money paid
19 under the judgment referred to in subsection (5) of this section, less any
20 sums paid to attorneys or for costs in litigating the other civil action or
21 obtaining the settlement agreement. A reimbursement required under this
22 subsection shall not exceed the amount of the monetary award the claimant
23 wins for damages in the other civil action or the amount received in the
24 settlement agreement.

25 (7) If the court finds that the claimant is entitled to a judgment, the court shall enter
26 a certificate of innocence finding that the claimant was innocent of all crimes of
27 which the claimant was convicted. The court shall send a certified copy of the

1 certificate of innocence and the judgment of entry to the Attorney General for
2 payment pursuant to subsection (5) of this section.

3 (8) Upon entry of a certificate of innocence, the court shall order the associated
4 convictions and arrest records sealed and expunged from all applicable state and
5 federal systems. The court shall seal the records regardless of whether the
6 claimant has prior criminal convictions.

7 (9) Upon entry of a certificate of innocence, the court shall order the expungement
8 and destruction of the associated biological samples authorized by and given to
9 the Kentucky State Police in accordance with KRS 17.175. Nothing in this
10 subsection shall require the Kentucky State Police to expunge and destroy any
11 samples or profile record associated with the claimant that is related to any
12 offense other than the offense that the court has entered a certificate of
13 innocence.

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

16 (11) Nothing in this section shall prohibit the Department of Corrections from
17 providing reentry services to a claimant that are provided to other persons,
18 including but not limited to financial assistance, housing assistance, mentoring,
19 and counseling. Services shall be provided while an action under this section is
20 pending and after any judgment is entered, as appropriate for the claimant.

21 (12) Upon the judgment becoming final in the Circuit Court, the decision may be
22 appealed to the Supreme Court.