

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 each of the
11 following by a preponderance of the evidence:

12 1. The claimant was convicted of a felony crime by the Commonwealth
13 and subsequently incarcerated;

14 2. a. The claimant's conviction was reversed or vacated, and either
15 the charges were dismissed or on retrial the court entered a
16 judgment of not guilty; or

17 b. The claimant was granted a full and unconditional pardon by
18 the Governor on grounds consistent with innocence; and

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

22 (b) The court may give due consideration to difficulties of proof caused by
23 circumstances outside the control of the claimant, including but not limited
24 to the passage of time, the death or unavailability of witnesses, or the
25 destruction of evidence.

26 (4) (a) An action filed under this section shall be brought in accordance with the
27 Kentucky Rules of Civil Procedure and within two (2) years after:

- 1 1. a. The claimant's conviction was reversed or vacated and the
2 criminal charges against the claimant were dismissed;
3 b. The court entered a judgment of not guilty on retrial; or
4 c. The appeals process has been exhausted;
5 whichever is later; or
6 2. The grant of a pardon to the claimant.
7 **(b) An action filed under this section by a claimant who has been convicted,**
8 imprisoned, and released from the custody of the Department of Corrections
9 before the effective date of this Act shall be brought no later than two (2)
10 years after the effective date of this Act.
11 **(c) An action filed under this section shall be served on the Attorney General**
12 and the Commonwealth's attorney in the county where the conviction
13 occurred in accordance with the Kentucky Rules of Civil Procedure.
14 **(5) (a) Subject to any adjustment made under paragraph (e) of this subsection,**
15 damages awarded under this section shall be equal to:
16 1. Except as provided in paragraph (c) of this subsection:
17 a. Sixty-five thousand dollars (\$65,000) for each year of
18 imprisonment; or
19 b. Seventy-five thousand dollars (\$75,000) for each year of
20 imprisonment if the claimant was imprisoned with a death
21 sentence; and
22 2. Thirty-two thousand five hundred dollars (\$32,500) for each
23 additional year:
24 a. Served on parole or postincarceration supervision; or
25 b. The claimant registered as a sex offender under KRS 17.510;
26 whichever is greater.
27 **(b) Amounts awarded under paragraph (a) of this subsection shall be:**

- 1 1. Determined on a pro rata basis to the number of days the claimant
2 spent imprisoned or under supervision, or registered as a sex offender
3 under KRS 17.510; and
- 4 2. Issued as twenty-four (24) payments per year, to be made twice a
5 month, over a period of three (3) years.
- 6 (c) A claimant shall not receive compensation for any:
 - 7 1. Period of incarceration that the claimant was concurrently serving
8 under a sentence; and
 - 9 2. Period of time that the claimant was concurrently registered as a sex
10 offender under KRS 17.510;
11 for a conviction of another felony crime that the claimant committed.
- 12 (d) In addition to damages awarded pursuant to paragraph (a) of this
13 subsection, the claimant shall be entitled to:
 - 14 1. Receive reasonable attorney's fees and costs incurred in the action
15 brought under this section not to exceed a total of twenty-five
16 thousand dollars (\$25,000), unless a greater award is authorized by
17 the court upon a finding of good cause shown, not to exceed the
18 maximum hourly rate provided in the Legal Services Duties and
19 Maximum Rate Schedule promulgated by the Government Contract
20 Review Committee established pursuant to KRS 45A.705;
 - 21 2. Receive a tuition waiver for up to one hundred twenty (120) credit
22 hours, and waiver of any mandatory fees associated with attendance,
23 at any public postsecondary educational institution in Kentucky;
 - 24 3. Reimbursement for all restitution, assessments, fees, court costs, and
25 all other sums paid by the claimant, whether arising from the charge
26 that is the subject of an action under this section, as required by
27 pretrial orders, judgment of conviction, or sentence in any proceeding

1 that gave rise to the conviction, or arising from proceedings related to
2 the reversal or vacation of the conviction, or retrial following a
3 reversal;

4 4. Reimbursement for any reasonable reintegrative services and mental
5 and physical health care costs incurred by the claimant for the time
6 period between his or her release from incarceration and the entry of
7 judgment under this section not to exceed twenty-five thousand dollars
8 (\$25,000), unless a greater award is authorized by the court upon a
9 finding of good cause shown; and

10 5. a. Satisfaction of:

11 i. Child support payments owed by the claimant that became
12 due, and the legal rate of interest on child support
13 arrears that accrued, during the time the claimant was
14 incarcerated; and

15 ii. Any payments owed by the claimant under any order issued
16 under KRS 403.211.

17 b. The amounts owed under subdivision a. of this subparagraph
18 shall:

19 i. Notwithstanding the provisions of KRS 413.090, be
20 awarded to the party designated in the applicable order to
21 receive payments; and

22 ii. Not include any amounts accrued by the claimant prior to
23 his or her incarceration, which shall remain the obligation
24 of the claimant.

25 (e) 1. Beginning July 1, 2027, and every year thereafter, the Finance and
26 Administration Cabinet shall determine the percentage change in the
27 cost of living, based on the percent increase in the nonseasonally

1 adjusted annual average Consumer Price Index for All Urban
2 Consumers, (CPI-U) U.S. City Average, All Items, between the two (2)
3 most recent calendar years available, as published by the United States
4 Bureau of Labor Statistics.

5 2. The Finance and Administration Cabinet shall adjust the amounts
6 under paragraph (a) of this subsection for the following calendar year
7 by multiplying the amounts applicable to the calendar year that the
8 adjustment is made by the percentage amount determined under this
9 paragraph. The adjustment shall not exceed three percent (3%) for
10 any year. The Finance and Administration Cabinet shall round the
11 adjusted limitation amount to the nearest one hundred dollars (\$100),
12 but the unrounded amount shall be used to calculate the adjustments
13 to the amounts in subsequent calendar years.

14 3. The Finance and Administration Cabinet shall inform the
15 Administrative Office of the Courts of any adjustment made under this
16 paragraph as soon as practicable.

17 4. The adjusted amounts shall become effective on July 1 of the year in
18 which the adjustment is made, and apply to all claims filed under this
19 section on or after that date and before July 1 of the subsequent year.

20 (6) (a) If, at the time of entry of a judgment awarding damages under subsection
21 (5) of this section, the claimant has previously received a monetary award
22 against the Commonwealth or any political subdivision of the
23 Commonwealth in another civil action related to the wrongful conviction, or
24 has entered into a settlement agreement with the Commonwealth or any
25 political subdivision of the Commonwealth related to the wrongful
26 conviction, the amount of the award in the previous civil action or the
27 amount received in settlement, less any sums paid to attorneys or for costs

1 in litigating the previous civil action or in obtaining the settlement, shall be
2 deducted from the sum of money that the claimant is entitled to receive
3 under this section. The court shall include in the judgment an offset to the
4 Commonwealth of any amount deducted pursuant to this subsection.

5 (b) If there has been no previous award or settlement under paragraph (a) of
6 this subsection and if, after the time of the entry of a judgment awarding
7 damages under subsection (5) of this section, the claimant receives a
8 monetary award against the Commonwealth or any political subdivision of
9 the Commonwealth in a civil action related to the wrongful conviction, or
10 enters into a settlement agreement with the Commonwealth or any political
11 subdivision of the Commonwealth related to the wrongful conviction, the
12 claimant shall reimburse the Commonwealth for the sum of money paid
13 under subsection (5) of this section, less any sums paid to attorneys or for
14 costs in litigating the subsequent civil action or obtaining the settlement.
15 Any reimbursement required under this subsection shall not exceed the
16 amount of the monetary award the claimant receives for damages in the
17 civil action or the amount received in the settlement.

18 (7) If the court finds that the claimant is entitled to a judgment under subsection (5)
19 of this section, the court shall issue a certificate of innocence stating that the
20 claimant was innocent of all crimes of which the claimant was wrongfully
21 convicted. The court shall send a certified copy of the certificate of innocence and
22 the entry of judgment to the secretary of the Finance and Administration Cabinet
23 for payment in accordance with subsection (5) of this section.

24 (8) Upon entry of judgment and motion by the claimant, the court shall order the:

25 (a) Associated convictions and arrest records sealed and expunged from all
26 applicable state and federal systems regardless of whether the claimant has
27 prior criminal convictions; and

1 **(b) Expungement and destruction of the associated biological samples**
2 **authorized by and given to the Department of Kentucky State Police in**
3 **accordance with KRS 17.175. Nothing in this paragraph shall require the**
4 **Department of Kentucky State Police to expunge and destroy any samples or**
5 **profile records associated with the claimant that are related to any offense**
6 **other than the offense for which the court has issued a certificate of**
7 **innocence.**

8 **(9) Upon request by the claimant, the Department of Corrections shall provide**
9 **reentry services to a claimant that are provided to other persons, including but**
10 **not limited to financial assistance, housing assistance, mentoring, and**
11 **counseling. Services shall be provided while an action under this section is**
12 **pending and after any judgment is entered, as appropriate for the claimant.**

13 **(10) Upon entry of any final judgment in the Circuit Court in an action under this**
14 **section, the judgment may be appealed directly to the Kentucky Supreme Court.**

15 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 411 IS CREATED TO
16 READ AS FOLLOWS:

17 **(1) There is hereby established in the State Treasury a trust and agency account to be**
18 **known as the wrongful conviction compensation fund. The fund shall consist of**
19 **moneys received from state appropriations, gifts, grants, and federal funds.**

20 **(2) The fund shall be administered by the Finance and Administration Cabinet.**

21 **(3) Amounts deposited in the fund shall be used to compensate individuals who have**
22 **been wrongfully convicted and are entitled to compensation under Section 1 of**
23 **this Act and for no other purpose.**

24 **(4) Notwithstanding KRS 45.229, fund amounts not expended at the close of a fiscal**
25 **year shall not lapse but shall be carried forward into the next fiscal year.**

26 **(5) In the event the amount in the wrongful conviction compensation fund is**
27 **insufficient to compensate eligible individuals who have been wrongfully**

1 convicted and are entitled to compensation under Section 1 of this Act, the
2 unpaid claims shall be deemed a necessary government expense and shall be paid
3 from the general fund surplus account under KRS 48.700 or the budget reserve
4 trust fund account under KRS 48.705.