

1 AN ACT relating to wrongful conviction compensation and making an
2 appropriation therefor.

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

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

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

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

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

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

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

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

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

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

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

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subparagraph.

(b) The court may 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 the claimant or those acting on his or her behalf.

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

- 1. Dismissal of the criminal charges against the claimant or finding of not guilty on retrial; or
- 2. Grant of a pardon to the claimant.

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

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

(5) (a) Subject to any adjustment made under paragraph (d) of this subsection, damages awarded under this section shall be:

- 1. a. Sixty-five thousand dollars (\$65,000) for each year of imprisonment, except as provided in paragraph (b) of this subsection; or
- b. Seventy-five thousand dollars (\$75,000) for each year of imprisonment if the claimant was imprisoned on death row, except as provided in paragraph (b) of this subsection; and
- 2. Twenty-five thousand dollars (\$25,000) for each additional year served on parole or postincarceration supervision or each additional year the claimant was required to register as a sex offender under KRS 17.510,

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whichever is greater.

(b) A claimant shall not receive compensation for any period of incarceration that the claimant was concurrently serving under a sentence for a conviction of another crime that the claimant committed.

(c) In addition to the damages awarded pursuant to paragraph (a) of this subsection, the claimant:

1. Shall be entitled to receive reasonable attorney fees and costs incurred in the action brought under this section not to exceed a total of twenty-five thousand dollars (\$25,000), unless a greater award is authorized by the court upon a finding of good cause shown;

2. Shall be entitled to receive a tuition waiver for up to one hundred twenty (120) credit hours at any public postsecondary educational institution in Kentucky and any mandatory fees associated with attendance at a public postsecondary educational institution in Kentucky;

3. Shall be entitled to participate in, and be covered under, the Public Employee Health Insurance Program, as provided by KRS 18A.225 to 18A.2287 or any successor statutes, as follows:

a. Coverage under the program shall commence upon the submission by the claimant of an election of coverage to the Personnel Cabinet;

b. The claimant may submit an election of coverage under this subparagraph at any time during the plan year;

c. The election of coverage under subdivision a. of this subparagraph may be on form established through an administrative regulation promulgated in accordance with KRS Chapter 13A by the secretary of the Personnel Cabinet;

- 1 d. Any election of coverage form established under subdivision c. of
2 this subparagraph shall be made available to the claimant upon
3 request and on the cabinet's website; and
- 4 e. The secretary of the Personnel Cabinet shall promulgate any
5 administrative regulations in accordance with KRS Chapter 13A
6 necessary to implement this subparagraph;
- 7 4. Shall be entitled to reimbursement for all restitution, assessments,
8 fees, court costs, and all other sums paid by the claimant as required
9 by pretrial orders, judgment of conviction, or sentence in any
10 proceeding that gave rise to the conviction, reversal, vacation of the
11 conviction, or from retrial following a reversal;
- 12 5. Shall be entitled to compensation for any reasonable reintegrative
13 services and mental and physical health care costs incurred by the
14 claimant for the time period between his or her release from
15 incarceration and the entry of judgment;
- 16 6. Shall be relieved of child support payments owed by the claimant that
17 became due, and interest on child support arrearages that accrued,
18 during the time the claimant was incarcerated. Notwithstanding the
19 provisions of KRS 413.090, the amount owed shall be awarded to the
20 party designated in the child support order to receive payments; and
- 21 7. May be awarded other nonmonetary relief as sought in the complaint,
22 including but not limited to counseling, housing assistance, and
23 personal financial literacy assistance, as appropriate.
- 24 (d) 1. Beginning on July 1, 2025, and every year thereafter, the
25 Administrative Office of the Courts shall determine the percentage
26 change in the cost of living, based on the percentage change in the
27 nonseasonally adjusted annual average Consumer Price Index for All

1 Urban Consumers, U.S. City Average, All Items, between the two (2)
2 most recent calendar years available, as published by the Bureau of
3 Labor Statistics of the United States Department of Labor.

4 2. The Administrative Office of the Courts shall adjust the amounts
5 under paragraph (a) of this subsection for the following calendar year
6 by multiplying the amounts applicable to the calendar year that the
7 adjustment is made by the percentage amount determined under this
8 subsection. The adjustment may not exceed three percent (3%) for any
9 year. The Administrative Office of the Courts shall round the adjusted
10 limitation amount to the nearest one hundred dollars (\$100), but the
11 unrounded amount shall be used to calculate the adjustments to the
12 amounts in subsequent calendar years. The adjusted amounts become
13 effective on July 1 of the year in which the adjustment is made, and
14 apply to all claims filed under this section on or after July 1 of that
15 year and before July 1 of the subsequent year.

16 (6) (a) If, at the time of entry of judgment under subsection (5) of this section, the
17 claimant has previously received a monetary award against the
18 Commonwealth or any political subdivision of the Commonwealth in a civil
19 action related to the wrongful conviction, or has entered into a settlement
20 agreement with the Commonwealth or any political subdivision of the
21 Commonwealth related to the wrongful conviction, the amount of the award
22 in the action or the amount received in settlement, less any sums paid to
23 attorneys or for costs in litigating the previous civil action or in obtaining
24 the settlement, shall be deducted from the sum of money that the claimant is
25 entitled to receive under this section. The court shall include in the
26 judgment an offset to the Commonwealth of any amount deducted pursuant
27 to this subsection.

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

14 (7) If the court finds that the claimant is entitled to a judgment under this section,
15 the court shall issue a certificate of innocence stating that the claimant was
16 innocent of all crimes of which the claimant was convicted. The court shall send
17 a certified copy of the certificate of innocence and the entry of judgment to the
18 secretary of the Finance and Administration Cabinet for payment pursuant to
19 subsection (5) of this section.

20 (8) Upon issuance of a certificate of innocence, the court shall order the:

21 (a) Associated convictions and arrest records sealed and expunged from all
22 applicable state and federal systems. The court shall order the records be
23 sealed regardless of whether the claimant has prior criminal convictions;
24 and

25 (b) Expungement and destruction of the associated biological samples
26 authorized by and given to the Kentucky State Police in accordance with
27 KRS 17.175. Nothing in this subsection shall require the Kentucky State

1 Police to expunge and destroy any samples or profile records associated
2 with the claimant that are related to any offense other than the offense that
3 the court has issued a certificate of innocence.

4 (9) The decision of the court in subsection (7) of this section shall not have a res
5 judicata effect on any other proceedings.

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

11 (11) Upon entry of any final judgment in the Circuit Court, the decision may be
12 appealed directly to the Supreme Court.

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

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

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

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

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

24 (5) Any interest earnings of the fund shall become a part of the fund and shall not
25 lapse.

26 (6) Moneys deposited in the fund are hereby appropriated for the purposes set forth
27 in this section and shall not be appropriated or transferred by the General

1 Assembly for any other purposes.
2 (7) In the event the amount in the wrongful conviction compensation fund is
3 insufficient to compensate eligible individuals who have been wrongfully
4 convicted, the unpaid claims shall be deemed a necessary government expense
5 and shall be paid from the general fund surplus account under KRS 48.700 or the
6 budget reserve trust fund under KRS 48.705.