

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 594**

4 (By Senator Kessler (Mr. President))

5 _____
6 [Originating in the Committee on the Judiciary;
7 reported March 29, 2013.]
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11 A BILL to amend and reenact §14-2-13a and §14-2-16 of the Code of
12 West Virginia, 1931, as amended, all relating to procedures
13 for certain claims against the state; detailing the process
14 for claims for unjust arrest and imprisonment or conviction
15 and imprisonment; stating legislative intent; requiring
16 certain notice of claims; establishing the burden of proof
17 necessary; permitting the court of claims to determine the
18 amount of relief granted; stating the burden of proving
19 damages; and permitting the court to call expert witnesses in
20 certain situations.

21 *Be it enacted by the Legislature of West Virginia:*

22 That §14-2-13a and §14-2-16 of the Code of West Virginia,
23 1931, as amended, be amended and reenacted, all to read as follows:

24 **ARTICLE 2. CLAIMS AGAINST THE STATE.**

1 **§14-2-13a. Claims for unjust arrest and imprisonment or**
2 **conviction and imprisonment.**

3 (a) *Legislative Intent.* - The Legislature finds and declares
4 that innocent persons who have been wrongly convicted of crimes and
5 subsequently imprisoned, and innocent persons who have been wrongly
6 arrested, charged with a crime or imprisoned due to a wrongful
7 arrest or improperly charged with a crime, have been frustrated in
8 seeking legal redress due to a variety of substantive and technical
9 obstacles in the law and that such persons should have an available
10 avenue of redress over and above the existing tort remedies.
11 Therefore, the Legislature intends by enactment of the provisions
12 of this section that those innocent persons who can demonstrate
13 that they were wrongly arrested and imprisoned or unjustly
14 convicted and imprisoned shall be able to recover damages against
15 the state for loss of liberty.

16 (b) *Notice of Claim.* - The claimant's notice of claim shall
17 state facts in sufficient detail to permit the court to find that
18 a claimant is likely to succeed at a trial on the merits. If the
19 court finds in its discretion after reviewing a claim that the
20 claimant has failed to allege sufficient facts upon which relief
21 can be granted, the court may dismiss the claim, either on its own
22 motion or by a motion of the state.

23 (c) *Burden of Proof.* - A claimant shall demonstrate by clear
24 and convincing evidence that they were unjustly arrested and

1 imprisoned or unjustly convicted and imprisoned, and the court
2 shall, in the interest of justice, give due consideration to
3 difficulties of proof caused by the passage of time, the death or
4 unavailability of witnesses, the destruction of evidence or other
5 factors not caused by such persons or those acting on their behalf.
6 Specifically, the following shall be proven by clear and convincing
7 evidence:

8 (1) (A) The claimant has been convicted of one or more
9 felonies or misdemeanors against the state and subsequently
10 sentenced to a term of confinement, and has served all or any part
11 of the sentence; or

12 (B) The claimant has been arrested and confined, and charged
13 by warrant, information, indictment or any other accusatory
14 instrument for one or more felonies or misdemeanors, and that the
15 charges were dismissed against the claimant;

16 (2) (A) Another person was subsequently charged, arrested and
17 convicted of the same felony or felonies or misdemeanors;

18 (B) The claimant has been pardoned upon the ground of
19 innocence of the crime or crimes for which the claimant was
20 sentenced and which are the grounds for the complaint; or

21 (C) The claimant's judgment of conviction was reversed or
22 vacated, and the accusatory instrument dismissed or, if a new trial
23 was ordered, either the claimant was found not guilty at the new
24 trial or the claimant was not retried and the accusatory instrument

1 dismissed; and

2 (3) The claimant did not by his or her own conduct cause or
3 bring about his or her conviction.

4 (d) *Type of Relief Granted and the Claimant's Burden to Prove*
5 *Damages.* - If the court finds that the claimant is entitled to a
6 judgment, the court shall award damages in such sum of money as the
7 court determines will fairly and reasonably compensate the claimant
8 based upon the sufficiency of the claimant's proof at trial.
9 Whether the damages fairly and reasonably compensate the claimant
10 will depend upon the unique facts and circumstances of each claim.
11 The claimant shall bear the ultimate burden of proving all damages
12 associated with the claimant's claim.

13 **§14-2-16. Regular procedure.**

14 The regular procedure for the consideration of claims shall be
15 substantially as follows:

16 (1) The claimant shall give notice to the clerk that he or she
17 desires to maintain a claim. Notice shall be in writing and shall
18 be in sufficient detail to identify the claimant, the circumstances
19 giving rise to the claim, and the state agency concerned, if any.
20 The claimant shall not otherwise be held to any formal requirement
21 of notice.

22 (2) The clerk shall transmit a copy of the notice to the state
23 agency concerned. The state agency may deny the claim, or may
24 request a postponement of proceedings to permit negotiations with

1 the claimant. If the court finds that a claim is prima facie
2 within its jurisdiction, it shall order the claim to be placed upon
3 its regular docket for hearing.

4 (3) During the period of negotiations and pending hearing, the
5 state agency, represented by the Attorney General, shall, if
6 possible, reach an agreement with the claimant regarding the facts
7 upon which the claim is based so as to avoid the necessity for the
8 introduction of evidence at the hearing. If the parties are unable
9 to agree upon the facts an attempt shall be made to stipulate the
10 questions of fact in issue.

11 (4) The court shall so conduct the hearing as to disclose all
12 material facts and issues of liability and may examine or cross-
13 examine witnesses. The court may call witnesses or require
14 evidence not produced by the parties; the court may call expert
15 witnesses and compensate said expert(s) for such services in a
16 reasonable amount as determined by the court; the court may
17 stipulate the questions to be argued by the parties; and the court
18 may continue the hearing until some subsequent time to permit a
19 more complete presentation of the claim.

20 (5) After the close of the hearing the court shall consider
21 the claim and shall conclude its determination, if possible, within
22 thirty days.

(NOTE: The purpose of this bill is to establish the procedure for claims for unjust arrest and imprisonment or conviction and imprisonment before the Court of Claims. The bill further provides that the Court of Claims may call an expert witness and compensate said witness.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§14-2-13a has been completely rewritten, therefore, strike-throughs and underscoring have been omitted.)