

**Senate Bill No. 594**

(By Senator Kessler (Mr. President))

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4 [Introduced March 21, 2013; referred to the Committee on the  
5 Judiciary.]

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10 A BILL to amend and reenact §14-2-13a and §14-2-16 of the Code of  
11 West Virginia, 1931, as amended, all relating to claims  
12 against the state; claims for unjust arrest and imprisonment  
13 or conviction and imprisonment; legislative intent; notice of  
14 claim by a claimant; burden of proof; amount of relief granted  
15 to be determined by the court; burden of proving damages;  
16 providing a savings provision; and relating to the calling of  
17 expert witnesses.

18 Be it enacted by the Legislature of West Virginia:

19           That §14-2-13a and §14-2-16 of the Code of West Virginia,  
20 1931, as amended, be amended and reenacted, all to read as follows:

## 21 ARTICLE 2. CLAIMS AGAINST THE STATE.

22 §14-2-13a. Claims for unjust arrest and imprisonment or  
23 conviction and imprisonment

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

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

21       (c) *Burden of Proof.* -- A claimant shall demonstrate by clear  
22 and convincing evidence that they were unjustly arrested and  
23 imprisoned or unjustly convicted and imprisoned, and the court  
24 shall, in the interest of justice, give due consideration to

1 difficulties of proof caused by the passage of time, the death or  
2 unavailability of witnesses, the destruction of evidence, or other  
3 factors not caused by such persons or those acting on their behalf.  
4 Specifically, the following shall be proven by clear and convincing  
5 evidence:

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

10          (2) The claimant has been arrested and imprisoned, or both  
11 arrested and imprisoned, and charged by warrant, information,  
12 indictment, or any other accusatory instrument for one or more  
13 felonies or misdemeanors, and that the charges were dismissed  
14 against the claimant when another person was subsequently charged,  
15 arrested, and convicted of the same felony or felonies, or  
16 misdemeanors; or

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

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

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

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

12       (e) *Savings Provision.* -- In the event that any of the  
13 provisions of this section are declared invalid, unenforceable or  
14 unconstitutional by any court of competent jurisdiction, the  
15 remaining provisions that are not affected thereby shall remain in  
16 full force and effect.

17 **§14-2-16. Regular procedure.**

18       The regular procedure for the consideration of claims shall be  
19 substantially as follows:

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

1 of notice.

2       (2) The clerk shall transmit a copy of the notice to the state  
3 agency concerned. The state agency may deny the claim, or may  
4 request a postponement of proceedings to permit negotiations with  
5 the claimant. If the court finds that a claim is *prima facie*  
6 within its jurisdiction, it shall order the claim to be placed upon  
7 its regular docket for hearing.

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

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

24       (5) After the close of the hearing the court shall consider

1 the claim and shall conclude its determination, if possible, within  
2 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.