

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 594**

(By Senator Kessler (Mr. President))

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[Originating in the Committee on the Judiciary;  
reported March 29, 2013.]

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A BILL to amend and reenact §14-2-13a and §14-2-16 of the Code of West Virginia, 1931, as amended, all relating to procedures for certain claims against the state; detailing the process for claims for unjust arrest and imprisonment or conviction and imprisonment; stating legislative intent; requiring certain notice of claims; establishing the burden of proof necessary; permitting the court of claims to determine the amount of relief granted; stating the burden of proving damages; and permitting the court to call expert witnesses in certain situations.

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

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

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

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

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

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

22 (c) *Burden of Proof.* – A claimant shall demonstrate by  
23 clear and convincing evidence that they were unjustly  
24 arrested and imprisoned or unjustly convicted and  
25 imprisoned, and the court shall, in the interest of justice, give  
26 due consideration to difficulties of proof caused by the  
27 passage of time, the death or unavailability of witnesses, the  
28 destruction of evidence or other factors not caused by such  
29 persons or those acting on their behalf. Specifically, the  
30 following shall be proven by clear and convincing evidence:

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

35 (B) The claimant has been arrested and confined, and  
36 charged by warrant, information, indictment or any other  
37 accusatory instrument for one or more felonies or  
38 misdemeanors, and that the charges were dismissed against  
39 the claimant;

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

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

46 (C) The claimant's judgment of conviction was reversed  
47 or vacated, and the accusatory instrument dismissed or, if a  
48 new trial was ordered, either the claimant was found not  
49 guilty at the new trial or the claimant was not retried and the  
50 accusatory instrument dismissed; and

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

53 (d) *Type of Relief Granted and the Claimant's Burden to*  
54 *Prove Damages.* – If the court finds that the claimant is  
55 entitled to a judgment, the court shall award damages in such  
56 sum of money as the court determines will fairly and  
57 reasonably compensate the claimant based upon the  
58 sufficiency of the claimant's proof at trial. Whether the  
59 damages fairly and reasonably compensate the claimant will  
60 depend upon the unique facts and circumstances of each  
61 claim. The claimant shall bear the ultimate burden of  
62 proving all damages associated with the claimant's claim.

**§14-2-16. Regular procedure.**

1 The regular procedure for the consideration of claims  
2 shall be substantially as follows:

3 (1) The claimant shall give notice to the clerk that he or  
4 she desires to maintain a claim. Notice shall be in writing  
5 and shall be in sufficient detail to identify the claimant, the  
6 circumstances giving rise to the claim, and the state agency  
7 concerned, if any. The claimant shall not otherwise be held  
8 to any formal requirement of notice.

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

15 (3) During the period of negotiations and pending  
16 hearing, the state agency, represented by the Attorney  
17 General, shall, if possible, reach an agreement with the  
18 claimant regarding the facts upon which the claim is based so  
19 as to avoid the necessity for the introduction of evidence at  
20 the hearing. If the parties are unable to agree upon the facts  
21 an attempt shall be made to stipulate the questions of fact in  
22 issue.

23 (4) The court shall so conduct the hearing as to disclose  
24 all material facts and issues of liability and may examine or  
25 cross-examine witnesses. The court may call witnesses or  
26 require evidence not produced by the parties; the court may  
27 call expert witnesses and compensate said expert(s) for such

28 services in a reasonable amount as determined by the court;  
29 the court may stipulate the questions to be argued by the  
30 parties; and the court may continue the hearing until some  
31 subsequent time to permit a more complete presentation of  
32 the claim.

33 (5) After the close of the hearing the court shall consider  
34 the claim and shall conclude its determination, if possible,  
35 within thirty days.

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(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.)