

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 529

BY SENATOR TRUMP

[Introduced January 17, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §14-2-13a of the Code of West Virginia, 1931, as amended; and to
2 amend said code by adding thereto a new section, designated §14-2A-14a, all relating to
3 establishing limitations on claims and benefits; establishing a two-year time limit for a
4 claimant to file a claim for unjust arrest, conviction, or imprisonment; providing that
5 damages may be reduced upon clear evidence the claimant's actions contributed to unjust
6 arrest, conviction, or imprisonment; and establishing a 10-year limitation on eligibility to
7 receive benefits under certain conditions.

Be it enacted by the Legislature of West Virginia:

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 declares that innocent persons who have
2 been wrongly convicted of crimes and subsequently imprisoned and innocent persons wrongly
3 arrested, charged with a crime or imprisoned, who have subsequently been released when
4 another person was arrested, prosecuted and convicted of the same criminal offense have been
5 frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the
6 law and that affected persons should have an available avenue of redress over and above the
7 existing tort remedies. Therefore, the Legislature intends by enactment of the provisions of this
8 section that those innocent persons who can demonstrate that they were wrongly arrested and
9 imprisoned or unjustly convicted and imprisoned are able to seek damages against the state for
10 loss of liberty.

11 (b) *Notice of Claim* – The claimants notice of claim shall state facts in sufficient detail to
12 permit the court to find that a claimant is likely to succeed at a trial on the merits. If the court finds
13 in its discretion after reviewing a claim that the claimant has failed to allege sufficient facts upon
14 which relief can be granted, the court may dismiss the claim, either on its own motion or by a
15 motion of the state. Any claimant filing a claim under this article shall file his or her claim within
16 two years of the date of exoneration was granted, a pardon was granted, or the dismissal of the

17 accusatory instrument.

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

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

27 (B) The claimant has been arrested and confined, and charged by warrant, information,
28 or any other accusatory instrument for one or more felonies or misdemeanors, and that the
29 charges were dismissed against the claimant and; ~~when another person was subsequently~~
30 ~~charged, arrested, and convicted of the same felony or felonies, or misdemeanors, or;~~

31 ~~(2)(A) Another person was subsequently charged, arrested and convicted of the same~~
32 ~~felony or felonies or misdemeanors~~

33 ~~(B)~~(2)(A) The claimant has been pardoned upon the ground of innocence of the crime or
34 crimes for which the claimant was sentenced and which are the grounds for the complaint; or

35 ~~(C)~~(B) The claimant's judgment of conviction was reversed or vacated, and the accusatory
36 instrument dismissed or, if a new trial was ordered, either the claimant was found not guilty at the
37 new trial or the claimant was not retried and the accusatory instrument dismissed; and

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

40 (d) *Type of Relief Granted and the Claimant's Burden to Prove Damages* – If the court
41 finds that the claimant is entitled to a judgment, the court shall award damages in a sum of money
42 as the court determines will fairly and reasonably compensate the claimant based upon the

43 sufficiency of the claimant’s proof at trial. Whether the damages fairly and reasonably compensate
 44 the claimant will depend upon the unique facts and circumstances of each claim; but may be
 45 reduced upon clear evidence that the claimant’s conduct contributed to his or her conviction or
 46 incarceration. The claimant shall bear the ultimate burden of proving all damages associated with
 47 the claimant’s claim.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-14a. Establishing a limitation on benefits.

1 All claims shall be considered closed and no longer eligible for benefits at the expiration
 2 of available benefits or 10 years after filing the claim, whichever occurs first: *Provided*, That this
 3 provision shall not apply to claimants or victims receiving benefits under §14-2A-14(g)(2) of this
 4 code.

NOTE: The purpose of this bill is to establish a time limit for claimants to file claims against the state for unjust arrest, wrongful convictions, and wrongful incarceration and to limit damages under certain conditions. The bill also establishes a 10-year limit on claims benefits.

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