WEST VIRGINIA CODE: §14-2-13a

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

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

(b) *Notice of claim.* — The claimants notice of claim shall state facts in sufficient detail to permit the court to find that a claimant is likely to succeed at a trial on the merits. If the court finds in its discretion after reviewing a claim that the claimant has failed to allege sufficient facts upon which relief can be granted, the court may dismiss the claim, either on its own motion or by a motion of the state. Any claimant filing a claim under this article shall file his or her claim within two years of the date of the final order vacating the claimant's conviction, a pardon was granted, or the dismissal of the accusatory instrument.

(c) *Burden of proof.* — A claimant shall demonstrate by clear and convincing evidence that they were unjustly arrested and imprisoned or unjustly convicted and imprisoned, and the court shall, in the interest of justice, 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 such persons or those acting on their behalf. Specifically, the following shall be proven by clear and convincing evidence:

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

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

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

(B) The claimant's judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either the claimant was found not guilty

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at the new trial or the claimant was not retried and the accusatory instrument dismissed.

(d) *Type of relief granted and the claimant's burden to prove damages.* — If the court finds that the claimant is entitled to a judgment, the court shall award damages in a sum of money as the court determines will fairly and reasonably compensate the claimant based upon the sufficiency of the claimant's proof at trial. The damages shall depend upon the unique facts and circumstances of each claim. The claimant shall bear the ultimate burden of proving all damages associated with the claimant's claim.

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