

S-3-31-97 *Judiciary*
S-4/3/97 *Do Pass*
S-4/10/97 *Unlimited Business Calendar*

MAR 18 1997
Place On Calendar

HOUSE FILE 674
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 272)

Passed House, ^(P.912) Date 3-31-97 Passed Senate, ^(P.1397) Date 4/23/97
Vote: Ayes 98 Nays 0 Vote: Ayes 47 Nays 0
Re-passed Approved May 29, 1997
98-0
4/24/97 (p.1537)

A BILL FOR

1 An Act providing a cause of action against the state for wrongful
2 imprisonment.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 674

1 Section 1. NEW SECTION. 663A.1 WRONGFUL IMPRISONMENT --
2 CAUSE OF ACTION.

3 1. As used in this section, a "wrongfully imprisoned
4 person" means an individual who meets all of the following
5 criteria:

6 a. The individual was charged, by indictment or
7 information, with the commission of a public offense
8 classified as an aggravated misdemeanor or felony.

9 b. The individual did not plead guilty to the public
10 offense charged, or to any lesser included offense, but was
11 convicted by the court or by a jury of an offense classified
12 as an aggravated misdemeanor or felony.

13 c. The individual was sentenced to incarceration for a
14 term of imprisonment not to exceed two years if the offense
15 was an aggravated misdemeanor or to an indeterminate term of
16 years under chapter 902 if the offense was a felony, as a
17 result of the conviction.

18 d. The individual's conviction was vacated or dismissed,
19 or was reversed, and no further proceedings can be or will be
20 held against the individual on any facts and circumstances
21 alleged in the proceedings which had resulted in the
22 conviction.

23 e. As part of the order vacating, dismissing, or reversing
24 the conviction and sentence, the court made either of the
25 following findings:

26 (1) That the offense for which the individual was
27 convicted and sentenced, including any lesser-included
28 offenses, was not committed by the individual.

29 (2) That the offense for which the individual was
30 convicted and sentenced was not committed by any person,
31 including the individual.

32 2. Upon receipt of an order vacating, dismissing, or
33 reversing a conviction and sentence which includes either of
34 the findings specified in subsection 1, paragraph "e", the
35 district court shall do all of the following:

1 a. Enter an order finding that the individual is a
2 wrongfully imprisoned person.

3 b. Orally inform the person and the person's attorney that
4 the person has a right to commence a civil action against the
5 state under chapter 669 on the basis of wrongful imprisonment.

6 3. Within seven days of entry of the order finding that an
7 individual is a wrongfully imprisoned person, the clerk of
8 court shall forward a copy of the order, together with a copy
9 of this section, to the individual named in the order. The
10 clerk of court shall also forward a copy of the order to the
11 state appeal board. The state appeal board shall notify the
12 clerk of court if an action is filed.

13 4. A claim for wrongful imprisonment under this section is
14 a "claim" for purposes of chapter 669, notwithstanding
15 anything in section 669.14 to the contrary. Notwithstanding
16 section 669.8, however, an action brought under this section
17 shall not preclude or otherwise limit any action or claim for
18 relief based on any negligent or wrongful acts or omissions
19 which arose during the period of the wrongful imprisonment,
20 but which are not related to the facts and circumstances
21 underlying the conviction or proceedings to obtain relief from
22 the conviction.

23 5. Damages recoverable from the state by a wrongfully
24 imprisoned person under this section include any of the
25 following:

26 a. The amount of restitution for any fine, surcharge,
27 other penalty, or court costs imposed and paid and any
28 reasonable attorney's fees and expenses incurred in connection
29 with all criminal proceedings and appeals regarding the
30 wrongfully imposed judgment and sentence and such fees and
31 expenses incurred in connection with any civil actions and
32 proceedings for postconviction relief which are related to the
33 wrongfully imposed judgment and sentence.

34 b. For each full year of imprisonment, the amount of
35 twenty-five thousand dollars. For each remaining part or

1 parts of a year of imprisonment, an amount which is
2 represented by the proportion represented by the number of
3 days served divided by three hundred and sixty-five.

4 c. The value of any lost wages, salary, or other earned
5 income which directly resulted from the individual's arrest,
6 prosecution, conviction, and imprisonment, up to twenty-five
7 thousand dollars per year.

8 d. The value of reasonable attorney's fees for services
9 provided in connection with an action under this section.

10 6. In awarding damages under this section, the state
11 appeal board or the court shall not offset the award by any
12 expenses incurred by the state or any political subdivision of
13 the state in connection with the arrest, prosecution, and
14 imprisonment of the individual, including, but not limited to,
15 expenses for food, clothing, shelter, and medical care.

16 7. Actions under this section shall be commenced within
17 two years of entry of the district court order adjudging the
18 individual to be a wrongfully imprisoned person.

19 EXPLANATION

20 This bill permits a person who has been found to have been
21 wrongfully imprisoned to file a claim for damages against the
22 state under the state tort claims act. A wrongfully
23 imprisoned person is a person who was charged with, convicted
24 of, and sentenced to serve a term of incarceration for an
25 aggravated misdemeanor or felony and whose conviction was
26 vacated, dismissed, or reversed either because the offense was
27 committed by another person or the offense was a fabrication.
28 Under the new provision, upon receipt of an order reversing,
29 vacating, or dismissing a conviction in which there is a
30 finding that the offense was committed by another person or is
31 a fabrication, the district court is to enter an order finding
32 that the person is a wrongfully imprisoned person and orally
33 inform the person and that person's attorney that they have a
34 right to commence an action under the state tort claims act.

35 Once the order is entered by the court, the clerk is to

1 forward a copy of the order to the person who was wrongfully
2 imprisoned and the state appeal board. The person must file a
3 claim within two years of entry of the order. The state
4 appeal board is to notify the clerk if the person files an
5 action.

6 The damages recoverable by a person for wrongful
7 imprisonment include the amount of any restitution imposed and
8 paid for any fines, penalties, surcharges, court costs, as
9 well as any reasonable attorney's fees and expenses incurred
10 in connection with the proceedings surrounding the conviction
11 and any appeals or collateral postconviction actions. Damages
12 recoverable also include \$25,000 for each full year of
13 imprisonment and the proportional equivalent of the amount for
14 each portion of a year served; the value of any lost wages,
15 salary, or other earned income which directly resulted from
16 the imprisonment, up to \$25,000 per year; and the value of
17 reasonable attorney's fees for services provided in connection
18 with bringing an action to recover damages for wrongful
19 imprisonment. In awarding damages, the state appeal board may
20 not offset any expenses incurred by the state or political
21 subdivision in connection with the arrest, prosecution, and
22 imprisonment of the individual. Claims for damages brought
23 under the new provision do not preclude or limit claims for
24 relief based on negligent or wrongful actions or omissions
25 which arose during the period of wrongful imprisonment, but
26 which are not related to the facts or circumstances underlying
27 the conviction.

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**HOUSE FILE 674
FISCAL NOTE**

A fiscal note for **House File 674** is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note is available from the Legislative Fiscal Bureau to members of the Legislature upon request.

House File 674 permits a person who has been found to have been wrongfully imprisoned to file a tort claim for damages against the State. A wrongfully convicted person is one who is incarcerated for an aggravated misdemeanor or felony and has the case vacated, dismissed, or reversed because the offense was committed by another person or the offense was a fabrication.

Recoverable damages include: restitution, fines, penalties, surcharges, and court costs which have been paid; attorney fees and expenses incurred in connection with the conviction, appeals, and postconviction actions; \$25,000 for each year confined; lost income (up to \$25,000 per year); and attorney's fees for the wrongful imprisonment lawsuit.

ASSUMPTIONS

Approximately one case per year is reversed because of insufficient evidence. It is assumed that cases meeting the requirements of this Bill would occur less frequently.

FISCAL IMPACT

Few cases are expected but the cost of any one case can be significant.

SOURCES

Criminal and Juvenile Justice Planning Division,
Department of Human Rights
Judicial Branch

(LSB 1101hv, MDF)

FILED MARCH 25, 1997

BY DENNIS PROUTY, FISCAL DIRECTOR

HOUSE FILE 674

S-3570

- 1 Amend House File 674, as passed by the House, as
2 follows:
- 3 1. Page 1, by inserting after line 22, the
4 following:
5 "___ . The individual was imprisoned solely on the
6 basis of the conviction that was vacated, dismissed,
7 or reversed and on which no further proceedings can be
8 or will be had."
- 9 2. Page 1, by striking lines 23 and 24 and
10 inserting the following:
11 "2. Upon receipt of an order vacating, dismissing,
12 or reversing the conviction and sentence in a case for
13 which no further proceedings can be or will be held
14 against an individual on any facts and circumstances
15 alleged in the proceedings which resulted in the
16 conviction, the district court shall make a
17 determination whether there is clear and convincing
18 evidence to establish either of the".
- 19 3. Page 1, line 27, by striking the words "and
20 sentenced" and inserting the following: ", sentenced,
21 and imprisoned".
- 22 4. Page 1, line 30, by striking the words "and
23 sentenced" and inserting the following: ", sentenced,
24 and imprisoned".
- 25 5. Page 1, by striking lines 32 and 33 and
26 inserting the following:
27 "3. If the district court finds that there is
28 clear and convincing evidence to support either of".
- 29 6. Page 1, line 34, by striking the words and
30 figure "1, paragraph "e"" and inserting the following:
31 "2".
- 32 7. Page 2, by striking lines 9 through 12, and
33 inserting the following: "of this section, to the
34 individual named in the order."
- 35 8. Page 2, line 24, by striking the words
36 "include any of" and inserting the following: "are
37 limited to".
- 38 9. By striking page 2, line 34, through page 3,
39 line 3, and inserting the following:
40 "___ . An amount of liquidated damages in an amount
41 equal to fifty dollars per day of wrongful
42 imprisonment."
- 43 10. Page 3, lines 5 and 6, by striking the words
44 "arrest, prosecution, conviction," and inserting the
45 following: "conviction".
- 46 11. By renumbering as necessary.

By JOHNIE HAMMOND

S-3570 FILED APRIL 17, 1997

Adopted 4/23/97
(P/397)

SENATE AMENDMENT TO HOUSE FILE 674

H-1913

- 1 Amend House File 674, as passed by the House, as
2 follows:
- 3 1. Page 1, by inserting after line 22, the
4 following:
5 "_____. The individual was imprisoned solely on the
6 basis of the conviction that was vacated, dismissed,
7 or reversed and on which no further proceedings can be
8 or will be had."
- 9 2. Page 1, by striking lines 23 and 24 and
10 inserting the following:
11 "2. Upon receipt of an order vacating, dismissing,
12 or reversing the conviction and sentence in a case for
13 which no further proceedings can be or will be held
14 against an individual on any facts and circumstances
15 alleged in the proceedings which resulted in the
16 conviction, the district court shall make a
17 determination whether there is clear and convincing
18 evidence to establish either of the".
- 19 3. Page 1, line 27, by striking the words "and
20 sentenced" and inserting the following: ", sentenced,
21 and imprisoned".
- 22 4. Page 1, line 30, by striking the words "and
23 sentenced" and inserting the following: ", sentenced,
24 and imprisoned".
- 25 5. Page 1, by striking lines 32 and 33 and
26 inserting the following:
27 "3. If the district court finds that there is
28 clear and convincing evidence to support either of".
- 29 6. Page 1, line 34, by striking the words and
30 figure "1, paragraph "e"" and inserting the following:
31 "2".
- 32 7. Page 2, by striking lines 9 through 12, and
33 inserting the following: "of this section, to the
34 individual named in the order."
- 35 8. Page 2, line 24, by striking the words
36 "include any of" and inserting the following: "are
37 limited to".
- 38 9. By striking page 2, line 34, through page 3,
39 line 3, and inserting the following:
40 "_____. An amount of liquidated damages in an amount
41 equal to fifty dollars per day of wrongful
42 imprisonment."
- 43 10. Page 3, lines 5 and 6, by striking the words
44 "arrest, prosecution, conviction," and inserting the
45 following: "conviction".
- 46 11. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-1913 FILED APRIL 24, 1997

House concurred 4/24/97 (p. 1536)

HOUSE FILE 674

AN ACT

PROVIDING A CAUSE OF ACTION AGAINST THE STATE FOR WRONGFUL
IMPRISONMENT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 663A.1 WRONGFUL IMPRISONMENT --
CAUSE OF ACTION.

1. As used in this section, a "wrongfully imprisoned
person" means an individual who meets all of the following
criteria:

a. The individual was charged, by indictment or
information, with the commission of a public offense
classified as an aggravated misdemeanor or felony.

b. The individual did not plead guilty to the public
offense charged, or to any lesser included offense, but was
convicted by the court or by a jury of an offense classified
as an aggravated misdemeanor or felony.

c. The individual was sentenced to incarceration for a
term of imprisonment not to exceed two years if the offense
was an aggravated misdemeanor or to an indeterminate term of
years under chapter 902 if the offense was a felony, as a
result of the conviction.

d. The individual's conviction was vacated or dismissed,
or was reversed, and no further proceedings can be or will be
held against the individual on any facts and circumstances
alleged in the proceedings which had resulted in the
conviction.

e. The individual was imprisoned solely on the basis of
the conviction that was vacated, dismissed, or reversed and on
which no further proceedings can be or will be had.

2. Upon receipt of an order vacating, dismissing, or
reversing the conviction and sentence in a case for which no
further proceedings can be or will be held against an
individual on any facts and circumstances alleged in the
proceedings which resulted in the conviction, the district
court shall make a determination whether there is clear and
convincing evidence to establish either of the following
findings:

(1) That the offense for which the individual was
convicted, sentenced, and imprisoned, including any lesser-
included offenses, was not committed by the individual.

(2) That the offense for which the individual was
convicted, sentenced, and imprisoned was not committed by any
person, including the individual.

3. If the district court finds that there is clear and
convincing evidence to support either of the findings
specified in subsection 2, the district court shall do all of
the following:

a. Enter an order finding that the individual is a
wrongfully imprisoned person.

b. Orally inform the person and the person's attorney that
the person has a right to commence a civil action against the
state under chapter 669 on the basis of wrongful imprisonment.

4. Within seven days of entry of the order finding that an
individual is a wrongfully imprisoned person, the clerk of
court shall forward a copy of the order, together with a copy
of this section, to the individual named in the order.

5. A claim for wrongful imprisonment under this section is a "claim" for purposes of chapter 669, notwithstanding anything in section 669.14 to the contrary. Notwithstanding section 669.8, however, an action brought under this section shall not preclude or otherwise limit any action or claim for relief based on any negligent or wrongful acts or omissions which arose during the period of the wrongful imprisonment, but which are not related to the facts and circumstances underlying the conviction or proceedings to obtain relief from the conviction.

6. Damages recoverable from the state by a wrongfully imprisoned person under this section are limited to the following:

a. The amount of restitution for any fine, surcharge, other penalty, or court costs imposed and paid and any reasonable attorney's fees and expenses incurred in connection with all criminal proceedings and appeals regarding the wrongfully imposed judgment and sentence and such fees and expenses incurred in connection with any civil actions and proceedings for postconviction relief which are related to the wrongfully imposed judgment and sentence.

b. An amount of liquidated damages in an amount equal to fifty dollars per day of wrongful imprisonment.

c. The value of any lost wages, salary, or other earned income which directly resulted from the individual's conviction and imprisonment, up to twenty-five thousand dollars per year.

d. The value of reasonable attorney's fees for services provided in connection with an action under this section.

7. In awarding damages under this section, the state appeal board or the court shall not offset the award by any expenses incurred by the state or any political subdivision of the state in connection with the arrest, prosecution, and imprisonment of the individual, including, but not limited to, expenses for food, clothing, shelter, and medical care.

8. Actions under this section shall be commenced within two years of entry of the district court order adjudging the individual to be a wrongfully imprisoned person.

RON J. CORBETT
Speaker of the House

MARY E. KRAMER
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 674, Seventy-seventh General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved *May 29*, 1997

TERRY E. BRANSTAD
Governor