

**SUBSTITUTE FOR
SENATE BILL NO. 98**

A bill to provide compensation and other relief for individuals wrongfully imprisoned for crimes; to prescribe the powers and duties of certain state governmental officers and agencies; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "wrongful imprisonment compensation act".

3 Sec. 2. As used in this act:

4 (a) "Charges" means the criminal complaint filed against the
5 plaintiff by a county prosecutor or the attorney general on behalf
6 of the people of this state that resulted in the conviction and
7 imprisonment of the plaintiff that are the subject of the claim for
8 compensation under this act.

9 (b) "Plaintiff" means the individual making a claim for

1 compensation under this act. Plaintiff does not include the estate
2 of an individual entitled to make a claim for compensation under
3 this act, the personal representative of the estate, or any heir,
4 devisee, beneficiary, or other person who is entitled under other
5 law to pursue a claim for damages, injury, or death suffered by the
6 individual.

7 (c) "Similarly reliable evidence" means scientific evidence,
8 physical evidence, or other evidence that bears the same indicia of
9 reliability as scientific or physical evidence, which may include
10 corroborated new eyewitness testimony. Similarly reliable evidence
11 does not include the recantation of testimony or a statement by a
12 victim or eyewitness.

13 (d) "State correctional facility" means a correctional
14 facility maintained and operated by the department of corrections.

15 (e) "This state" means the state of Michigan and its agencies,
16 departments, commissions, and courts. This state does not include a
17 county, township, city, village, school district, district, state
18 authority, or a combination of 2 or more of these entities.

19 Sec. 3. (1) An individual convicted under the law of this
20 state and subsequently imprisoned in a state correctional facility
21 for 1 or more crimes that he or she did not commit may bring an
22 action for compensation against this state in the court of claims
23 as allowed by this act.

24 (2) For purposes of this act, a conviction does not include
25 the acceptance by the court of a guilty plea or a plea of nolo
26 contendere.

27 Sec. 4. (1) In an action under this act, the plaintiff shall

1 attach to his or her verified complaint documentation that
2 establishes all of the following:

3 (a) The plaintiff was convicted of 1 or more crimes under the
4 law of this state, was sentenced to a term of imprisonment in a
5 state correctional facility for the crime or crimes, and served at
6 least part of the sentence.

7 (b) The plaintiff's judgment of conviction was reversed or
8 vacated and either the charges were dismissed or on retrial the
9 plaintiff was found to be not guilty.

10 (c) Either of the following:

11 (i) DNA or similarly reliable evidence demonstrates that the
12 plaintiff was not the perpetrator of the crime and was not an
13 accomplice or accessory to the acts that were the basis of the
14 conviction, results in the reversal or vacation of the judgment of
15 conviction, and results in either the dismissal of the charges or a
16 finding of not guilty on all of the charges on retrial.

17 (ii) The governor has expressly granted the plaintiff a full
18 pardon on the basis of actual innocence for the crime for which the
19 plaintiff was sentenced.

20 (2) A complaint filed under this section shall be verified by
21 the plaintiff.

22 (3) A copy of a complaint filed under this section shall be
23 served on the attorney general and on the office of the prosecuting
24 attorney who prosecuted the crime. The court shall give the
25 attorney general and the prosecuting attorney an opportunity to
26 contest the complaint.

27 (4) If the plaintiff's conviction was for an assaultive crime

1 or a serious misdemeanor, the prosecuting attorney shall notify the
2 victim of the assaultive crime or serious misdemeanor of the
3 application under section 22a or 77a of the William Van Regenmorter
4 crime victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a.
5 The prosecuting attorney shall give the victim notice under this
6 subsection by first-class mail sent to the victim's last known
7 address. The victim or victim's representative has the right to
8 appear at any proceeding under this act concerning the complaint
9 and to make a written or oral statement.

10 Sec. 5. (1) In an action under this act, the plaintiff is
11 entitled to judgment in the plaintiff's favor if the plaintiff
12 provides clear and convincing evidence to prove all of the
13 following:

14 (a) The plaintiff was convicted of 1 or more crimes under the
15 law of this state, was sentenced to a term of imprisonment in a
16 state correctional facility for the crime or crimes, and served at
17 least part of the sentence.

18 (b) The plaintiff's judgment of conviction was vacated and
19 either the charges were dismissed or the plaintiff was determined
20 upon retrial to be not guilty. However, the plaintiff is not
21 entitled to compensation under the act if either of the following
22 applies:

23 (i) The plaintiff was convicted of another criminal offense
24 arising from the same transaction and either that offense was not
25 dismissed or the plaintiff was convicted of that offense on
26 retrial.

27 (ii) The plaintiff's affirmative misconduct caused or brought

1 about his or her own prosecution.

2 (c) Either of the following:

3 (i) DNA or similarly reliable evidence demonstrates that the
4 plaintiff did not perpetrate the crime and was not an accomplice or
5 accessory to the acts that were the basis of the conviction,
6 results in the reversal or vacation of the charges in the judgment
7 of conviction, and results in either dismissal of all of the
8 charges or a finding of not guilty on all of the charges on
9 retrial.

10 (ii) The governor has expressly granted the plaintiff a full
11 pardon on the basis of actual innocence for the crime for which the
12 plaintiff was sentenced.

13 (2) Subject to subsections (4) and (5), if a court finds that
14 a plaintiff was wrongfully convicted and imprisoned, the court
15 shall award compensation as follows:

16 (a) Sixty thousand dollars for each year from the date the
17 plaintiff was imprisoned until the date the plaintiff was released
18 from prison, regardless of whether the plaintiff was released from
19 imprisonment on parole or because the maximum sentence was served.

20 (b) Economic damages, including, but not limited to, lost
21 wages, actual costs including attorney fees paid by the plaintiff
22 associated with the plaintiff's criminal defense or to actual costs
23 paid to prove his or her innocence, and actual medical expenses
24 related to the imprisonment required after release.

25 (c) Reasonable attorney fees incurred in an action under this
26 act. An award under this act must not include any attorney fees or
27 expenses incurred in bringing a previous action that was dismissed.

1 An award of attorney fees under this act shall not be deducted from
2 the compensation awarded the plaintiff, and the plaintiff's
3 attorney is not entitled to receive additional fees from the
4 plaintiff.

5 (d) Reimbursement of any amount awarded and collected by this
6 state under the state correctional facility reimbursement act, 1935
7 PA 253, MCL 800.401 to 800.406.

8 (3) An award under subsection (2) is not subject to a limit on
9 the amount of damages except as stated in this act.

10 (4) Compensation shall not be awarded under subsection (2) for
11 any time during which the plaintiff was imprisoned under a
12 concurrent or consecutive sentence for another conviction.

13 (5) Compensation shall not be awarded under subsection (2) for
14 any injuries sustained by the plaintiff while imprisoned. The
15 making of a claim or receipt of compensation under this act does
16 not preclude a claim or action for compensation because of injuries
17 sustained by the plaintiff while imprisoned.

18 (6) An award of compensation under this act is not a finding
19 of wrongdoing against anyone. An award of compensation under this
20 act is not admissible in evidence in a civil action that is related
21 to the investigation, prosecution, or conviction that gave rise to
22 the wrongful conviction or imprisonment.

23 (7) The acceptance by the plaintiff of an award under this
24 section, or of a compromise or settlement of the claim, shall be in
25 writing and, unless it is procured by fraud, is final and
26 conclusive on the plaintiff, constitutes a complete release of all
27 claims against this state, and is a complete bar to any action by

1 the plaintiff against this state based on the same subject matter.

2 (8) A compensation award under this section shall not be
3 offset by any of the following:

4 (a) Expenses incurred by this state or any political
5 subdivision of this state, including, but not limited to, expenses
6 incurred to secure the plaintiff's custody or to feed, clothe, or
7 provide medical services for the plaintiff while imprisoned,
8 including expenses required to be collected under the state
9 correctional facility reimbursement act, 1935 PA 253, MCL 800.401
10 to 800.406. The attorney general is specifically excused from
11 complying with the state correctional facility reimbursement act,
12 1935 PA 253, MCL 800.401 to 800.406.

13 (b) The value of any services awarded to the plaintiff under
14 this section.

15 (c) The value of any reduction in fees for services awarded to
16 the plaintiff under this act.

17 (9) A compensation award under this act is subject to the
18 payment of child support, including child support arrearages, owed
19 by the plaintiff. The plaintiff remains liable for any child
20 support or arrearage under the office of child support act, 1971 PA
21 174, MCL 400.231 to 400.240, and the support and parenting time
22 enforcement act, 1982 PA 295, MCL 552.601 to 552.650, except for
23 any child support or arrearage that erroneously accrued while the
24 plaintiff was imprisoned. Child support shall be deducted from an
25 award under this act before the plaintiff receives any of the money
26 from the award. This subsection does not affect any ongoing child
27 support obligation of the plaintiff.

1 (10) This act does not impair or limit the right of a state or
2 local government to collect a debt of a plaintiff from the
3 plaintiff's award of compensation under this act.

4 (11) An award of compensation under this act is subject to
5 setoff or reimbursement for damages obtained for the wrongful
6 conviction or imprisonment from any other person.

7 (12) If a court determines that a plaintiff was wrongfully
8 convicted and imprisoned, the court shall enter an order that
9 provides that any record of the arrest, fingerprints, conviction,
10 and sentence of the plaintiff related to the wrongful conviction
11 shall be expunged from the criminal history record. A document that
12 is the subject of an order entered under this subsection is exempt
13 from disclosure under the freedom of information act, 1976 PA 442,
14 MCL 15.231 to 15.246.

15 Sec. 7. (1) The wrongful imprisonment compensation fund is
16 created in the state treasury.

17 (2) The state treasurer may receive money or other assets from
18 any source for deposit into the wrongful imprisonment compensation
19 fund. The state treasurer shall direct the investment of the fund.
20 The state treasurer shall credit to the fund interest and earnings
21 from fund investments.

22 (3) Money in the wrongful imprisonment compensation fund at
23 the close of the fiscal year shall remain in the fund and shall not
24 lapse to the general fund.

25 (4) The department of treasury is the administrator of the
26 wrongful imprisonment compensation fund for auditing purposes.

27 (5) All payments for compensation awards, including court

1 judgments or settlements, attorney fees and expenses, and all
2 litigation costs of this state shall be paid to the department of
3 attorney general from the wrongful imprisonment compensation fund.

4 (6) Any reimbursement as provided for under section 5(2)(d)
5 shall be paid from the general fund of this state and not
6 reimbursed out of any state department's or agency's annual budget
7 or current funding.

8 Sec. 9. An action for compensation under this act shall be
9 commenced within 3 years after entry of a verdict, order, or
10 judgment as the result of an event described in section 4(1)(b).
11 Any action by this state challenging or appealing a verdict, order,
12 or judgment entered as the result of an event described in section
13 4(1)(b) tolls the 3-year period. An individual convicted,
14 imprisoned, and released from custody before the effective date of
15 this act shall commence an action under this act within 3 years
16 after the effective date of this act.