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Senate Bill 98 (as introduced 1-29-13)  
Sponsor: Senator Steven Bieda  
Committee: Judiciary

Date Completed: 12-10-13

### **CONTENT**

**The bill would create the "Wrongful Imprisonment Compensation Act" to allow a person to bring an action for compensation against the State if he or she had been wrongfully convicted under Michigan law and imprisoned in a State correctional facility for a crime he or she did not commit. The bill would do the following:**

- Require the court to award compensation if it found that a plaintiff was wrongfully convicted and imprisoned.**
- Require compensation to include up to \$60,000 per year for the period of incarceration; economic damages, including lost wages and other expenses; and reasonable attorney fees.**
- Prohibit compensation from being awarded for any time during which the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction, or for any injury sustained while imprisoned.**
- Specify that an award under the proposed Act would not be a finding of wrongdoing against anyone and would not be admissible in evidence in a civil action related to the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.**
- Provide that a plaintiff's acceptance of an award or settlement would be final and conclusive and would bar any further action by the plaintiff against the State based on the same matter.**
- Require a plaintiff who recovered damages for wrongful conviction or imprisonment from any other person to reimburse the State for compensation paid under the Act.**
- Require a court that determined a plaintiff had been wrongfully convicted and imprisoned to expunge records from the person's criminal history.**
- Require an action for compensation to begin within three years after entry of a verdict, order, or judgment reversing or vacating a wrongful conviction.**
- Specify that an individual convicted, imprisoned, and released from custody before the Act's effective date would have to commence an action within five years after that date.**

#### Action for Compensation

Under the proposed Act, an individual convicted under Michigan law and subsequently imprisoned in a State correctional facility for one or more crimes that he or she did not commit could bring an action for compensation against the State in the Court of Claims. For purposes of the Act, a conviction would not include the acceptance by the court of a guilty plea or a plea of nolo contendere (no contest).

The plaintiff would have to attach to his or her complaint documentation that established all of the following:

- He or she was convicted of one or more crimes under State law, was sentenced to a term of imprisonment in a State correctional facility, and served at least part of that sentence.
- The plaintiff's judgment of conviction was reversed or vacated and either the charges were dismissed or, on retrial, the plaintiff was found to be not guilty.
- DNA or equally reliable scientific or physical evidence from which the plaintiff's judgment of conviction was entered demonstrated that he or she was not the perpetrator of the crime and was not an accessory to it, and resulted in the reversal or vacation of the conviction, dismissal of the charges, or a finding of not guilty.

The plaintiff would have to verify the complaint.

The plaintiff would be entitled to judgment in his or her favor if he or she provided clear and convincing evidence to prove all of the conditions listed above. Regarding the third condition, a finding of not guilty would have to be on all charges on retrial.

The Act would not apply if the plaintiff were convicted of another crime arising from the same transaction and either that offense were not dismissed or the plaintiff were convicted of that offense on retrial.

### Compensation

If a court found that a plaintiff was wrongfully convicted and imprisoned, it would have to award compensation. The compensation would have to include up to \$60,000 for each year from the date the plaintiff was imprisoned until the date he or she was released from prison. The plaintiff would be entitled to compensation for that period regardless of whether he or she was released from imprisonment on parole or because the maximum sentence was served.

The compensation also would have to include both of the following:

- Economic damages, including lost wages, costs paid by the plaintiff associated with his or her criminal defense and efforts to prove his or her innocence, and medical expenses required after release that were related to the imprisonment.
- Reasonable attorney fees.

The award for reasonable attorney fees could not include any attorney fees or expenses incurred in bringing a previous action that was dismissed. An award for attorney fees also could not be deducted from the compensation awarded the plaintiff, and the plaintiff's attorney would not be entitled to receive additional fees from the plaintiff.

The award would not be subject to a limit on the amount of damages, except as stated in the Act.

Compensation could not be awarded for any time the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction. Compensation also could not be awarded for injuries sustained by the plaintiff while imprisoned. Making a claim or receiving compensation under the Act, however, would not preclude a claim or action for compensation because of such an injury.

An award of compensation under the Act would not be a finding of wrongdoing against anyone. An award of compensation would not be admissible in evidence in a civil action

that was related to the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.

A plaintiff's acceptance of an award under the Act, or of a compromise or settlement of the claim, would have to be in writing. Unless it were procured by fraud, the acceptance of an award, compromise, or settlement would be final and conclusive on the plaintiff, would constitute a complete release of all claims against the State, and would be a complete bar to any action by the plaintiff against the State based on the same subject matter.

A compensation award under the Act could not be offset by any of the following:

- Expenses incurred by the State or any political subdivision of the State, including expenses incurred to secure the plaintiff's custody or to feed, clothe, or provide medical services for the plaintiff while imprisoned.
- The value of any services awarded to the plaintiff under the Act.
- The value of any reduction in fees for services awarded to the plaintiff.

If a plaintiff who was awarded compensation under the Act recovered damages for the wrongful conviction or imprisonment from any other person, the plaintiff would have to reimburse the State for compensation paid under the Act to the extent of those damages.

#### Records & Filing Deadlines

If a court determined that a plaintiff was wrongfully convicted and imprisoned, the court would have to enter an order that required any record of the arrest, fingerprints, conviction, and sentence of the plaintiff related to the wrongful conviction to be expunged from the criminal history record. A document that was the subject of such an order would be exempt from disclosure under the Freedom of Information Act.

An action for compensation under the proposed Act would have to be commenced within three years after entry of a verdict, order, or judgment as the result of the reversal or vacation of a conviction. Any action by the State challenging or appealing such a verdict, order, or judgment would toll the three-year period.

An individual convicted, imprisoned, and released from custody before the Act's effective date would have to commence an action under the Act within five years after that date.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State government. In at least one previous wrongful imprisonment case, action was brought against the State and the State settled for \$600,000. Therefore, this bill would not necessarily create a new potential liability for the State, but would formalize the structure under which these compensation lawsuits can proceed. The impact the bill would have on the magnitude of a potential payout relative to the status quo is ambiguous. The formalization could, however, help expedite the proceedings.

The frequency of wrongful convictions that are vacated in the manner detailed in the bill is quite low. Since 2001 when a DNA postconviction testing statute went into effect, three individuals have been exonerated by DNA, according to The Innocence Project at Cooley Law School. In addition to the DNA exonerations, there have been 31 exonerations in Michigan since 1989, according to a data set compiled by University of Michigan Law School and Northwestern Law School faculty members. However, this bill would not apply to all exonerations for various reasons, such as if an individual served probation only, or if a

conviction was vacated based on evidence that was not "DNA or equally reliable scientific or physical evidence". The bill also would not apply in cases in which the plaintiff was convicted of another criminal offense arising from the same transaction and that conviction was not dismissed or the plaintiff was convicted on retrial.

Despite the low frequency, the compensation awarded in such cases can be several million dollars. Therefore, the budgetary impact could be nontrivial, but it would be highly variable based on whether a case occurred in a given year.

The bill would not have an impact on local government. This does not mean that local government does not have liability in wrongful imprisonment cases; it just means that the status quo would be maintained. In fact, in two DNA-based cases in which compensation was awarded, the local entities, the City of Detroit and Clinton Township, paid out \$3.25 million and \$3.7 million, respectively.

Fiscal Analyst: Dan O'Connor