

WRONGFUL IMPRISONMENT COMPENSATION ACT

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Senate Bill 291 (S-3) as passed by the Senate

Sponsor: Sen. Steven Bieda

House Committee: Criminal Justice

Senate Committee: Judiciary

Complete to 9-19-16

Analysis available at
<http://www.legislature.mi.gov>

REVISED SUMMARY:

The bill would create the Wrongful Imprisonment Compensation Act to allow individuals who had been convicted under a state law and subsequently imprisoned in a state correctional facility for one or more crimes that they did not commit to bring an action against the state in the Court of Claims to seek compensation for that wrongful imprisonment. Compensation would be paid from the newly created Wrongful Imprisonment Compensation Fund and not from any state department's or agency's annual budget or current funding.

To whom the bill applies:

Under the Wrongful Imprisonment Compensation Act, a person who had been convicted under a state 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 against the state in the Court of Claims to seek compensation for that wrongful imprisonment. Only the person who had been convicted and imprisoned may bring the action, as the bill defines the term "plaintiff" to mean the individual making a claim for compensation under the act and specifically excludes from the definition the estate of that individual, the personal representative of the estate, or any heir, devisee, beneficiary, or other person entitled under other laws to pursue a claim for damages, injury, or death suffered by the individual.

If enacted, the new act will apply both to persons who were wrongfully convicted *before* the act becomes law as well as to persons who are found to be wrongfully convicted *after* the act becomes law.

Time period in which to file claims:

The window in which to file a claim under the bill will depend on the person's status at the time the bill is enacted into law.

An individual who had been convicted, imprisoned, and released from custody *before* the bill became law must commence an action within 18 months of the bill's effective date.

After the bill takes effect, an action for compensation must be commenced within three years after entry of a verdict, order, or judgment that reverses or vacates the conviction with the charges being dismissed or the person being found not guilty on retrial. If the state challenges or appeals the verdict, order, or judgment, the three-year period will be tolled

(meaning the time it takes to resolve the challenge or appeal is not counted towards the three years).

Documentation for complaint/entitlement to receive compensation:

To be entitled to receive compensation under the act, the person filing the action (hereinafter "plaintiff") must attach certain documentation to a verified complaint that establishes all of the following, and also must prove all of the following by clear and convincing evidence:

- ❖ The plaintiff was convicted of one or more state crimes and was sentenced to and served at least part of that sentence in a state correctional facility.
- ❖ The conviction was reversed or vacated and either the charges dismissed or upon retrial the plaintiff was determined to be not guilty.

There would be no entitlement to compensation if the plaintiff had been convicted of another criminal offense arising from the same transaction and either that offense was not dismissed or the plaintiff was convicted of that offense on retrial.

- ❖ New evidence demonstrates the plaintiff did not perpetrate the crime and was not an accomplice or accessory to the acts that were the basis of the conviction; the new evidence results in the reversal or vacation of the charges in the judgment of conviction or a gubernatorial pardon; and the new evidence results in either dismissal of the charges or a finding of not guilty on retrial.

The term "new evidence" is defined to mean any evidence not presented in the proceedings leading to the plaintiff's conviction, including new testimony, expert interpretation, results of DNA testing, or other test results relating to evidence that had been presented in the proceedings leading to the plaintiff's conviction.

New evidence *would not include* a recantation by a witness *unless* there was other evidence to support the recantation *or unless* the prosecuting attorney for the county in which the plaintiff had been convicted or the Department of Attorney General (if the attorney general had prosecuted the case) agrees that the recantation constitutes new evidence without other evidence to support it.

A copy of a complaint for compensation under the bill must be served on the attorney general and on the prosecuting attorney for the county in which the plaintiff had been convicted; both would have an opportunity to answer and contest the complaint.

If the conviction had been for an assaultive crime or a serious misdemeanor, the victim would have to be notified in the same manner as is required for an application to have a conviction set aside in accordance with provisions of the William Van Regenmorter Crime Victim's Rights Act. The victim or victim's representative would have the right to appear at any proceeding concerning the complaint for compensation and to make a written or oral statement.

Further, discovery could be conducted in an action filed under the act by the plaintiff, attorney general, or prosecuting attorney for the county in which the plaintiff had been convicted.

Compensation:

If a court finds that a plaintiff was wrongfully convicted and imprisoned, the court must award compensation as follows:

- ❖ \$50,000 for each year of imprisonment (calculated from the date imprisoned until the date released from prison), regardless of whether the plaintiff had been released on parole or had served the maximum sentence. For a period of incarceration that was less than one year, the amount would be prorated to 1/365 of \$50,000 for every day of incarceration.
- ❖ Reimbursement of any amount awarded and collected by the state under the State Correctional Facility Reimbursement Act.
- ❖ Reasonable attorney fees incurred in an action to obtain compensation under the bill. All of the following apply to attorney fees under the act:
 - The court could not award attorney fees unless the plaintiff actually paid the amount awarded to the attorney.
 - Payment of attorney fees by the plaintiff would not be necessary before an initial award under the act. The court could award attorney fees on a motion brought after the initial award.
 - The attorney fees would be capped at 10 percent of the total amount awarded for the period of imprisonment and reimbursement under the State Correctional Facility Reimbursement Act, whichever is less, plus expenses.
 - The attorney fees could not be deducted from the compensation awarded to the plaintiff, and the plaintiff's attorney will not be entitled to receive additional fees from the plaintiff.

The compensation awarded above would not be subject to a limit on the amount of damages except as provided in the act, could not be awarded for any time during which the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction, or for any injuries sustained while imprisoned (though a separate action for compensation because of injuries sustained during the imprisonment could be filed).

A court will have discretion to order the total amount awarded for the period of imprisonment and reimbursement under the State Correctional Facility Reimbursement Act to be paid to the plaintiff in a single payment or in multiple payments. If multiple payments, the initial payment must be at least 20 percent of the total amount awarded, with the remainder of the payments being made over time but not to exceed 10 years.

An award of compensation is not a finding of wrongdoing against anyone and is not admissible in evidence in a civil action related to the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.

Acceptance of an award under the act, or of a compromise or settlement of the claim, must be in writing and—unless procured by fraud—is final and conclusive on the plaintiff, constitutes a complete release of all claims against the state, and is a complete bar to any action against the state based on the same subject matter.

An award under the act is not subject to income taxes.

An award is subject to setoff or reimbursement for damages obtained for the wrongful conviction or imprisonment from any other person. However, a compensation award cannot be offset by any of the following:

- ❖ Expenses incurred by the state or a local government, which include, but are not limited to, securing the plaintiff's custody or to feed, clothe, or provide medical services while the plaintiff was imprisoned (this includes expenses required to be collected under the State Correctional Facility Reimbursement Act; under the bill, the attorney general is specifically excused from complying with that Act).
- ❖ The value of any services awarded to the plaintiff under Section 5 of the act.
- ❖ The value of any reduction in fees for services awarded to the plaintiff under the act.

A compensation award is subject to the payment of child support, including child support arrearages. The plaintiff remains liable for child support or arrearages except for that erroneously accrued while the plaintiff was imprisoned. Child support must be deducted from an award before the plaintiff receives any money from it. The plaintiff's ongoing child support obligations, if any, will not be affected by this provision.

The act does not impair or limit the right of a state or local government to collect a debt of the plaintiff from any award of compensation.

Wrongful Imprisonment Compensation Fund:

The act creates the Wrongful Imprisonment Compensation Fund within the Michigan Department of Treasury, which will be the administrator of the Fund for auditing purposes. The act authorizes the state treasurer to receive money or other assets from any source for deposit into the Fund and also designates the treasurer to direct the investment of the fund. Interest and earnings from fund investments must be credited to the Fund.

Any compensation under the act must be paid from the Fund and not from any state department's or agency's annual budget or current funding.

Expenditures from the Fund will be restricted to paying claims authorized under the act and costs of administration; the treasurer will pay money from the Fund in amounts and at the times as ordered by the courts under the act.

Money in the Fund at the close of a fiscal year must remain in the Fund and not lapse to the state general fund.

Should there be insufficient money in the Fund to pay court-ordered claims, the treasurer must pay claims that have been ordered but not paid if money becomes available, and pay those claims before claims that were ordered later. The treasurer must also develop and implement a process to notify the Legislature that money in the Fund may be insufficient to cover future claims when he or she reasonably believes that within 60 days the money in the Fund will be insufficient to pay claims.

At a minimum, the process must identify a specific date by which the money in the Fund will become insufficient to pay claims as well as outline a clear process indicating the order in which pending claims will be paid and indicating the order in which claims that were pending when the money became insufficient will be paid should money subsequently become available.

Miscellaneous:

If the plaintiff is determined to have been wrongfully convicted and imprisoned, the court must enter an order providing that any record of the arrest, fingerprints, conviction, and sentence related to the wrongful conviction be expunged from the criminal record history; a document that is the subject of an order entered under this provision is exempt from disclosure under the Freedom of Information Act.

BACKGROUND INFORMATION:

Senate Bill 291 is similar to House Bill 4536, which is pending on the House Floor. Beginning in 2005, legislation to provide compensation to individuals who were imprisoned for crimes for which they did not commit has been introduced in each two-year legislative session.

FISCAL IMPACT:

Senate Bill 291 would have an indeterminate, but potentially significant, fiscal impact on the state. However, the impact would occur more immediately, as individuals exonerated prior to the effective date of the bill would be required to commence action for reimbursement within 18 months after the effective date of the bill. After that period, costs to the state would most likely stabilize, assuming fewer individuals would be eligible to apply in any given year.

According to the National Registry of Exonerations, which is maintained by the University of Michigan Law School, there have been 66 exonerations in the state since 1991. The total years lost between the 66 cases was 511. Therefore, the average number of years of wrongful imprisonment per exoneration was roughly 7.74 years. According to University of Michigan Law School, as of July 2016, 33 of 65 of those individuals would be eligible to file for reimbursement compensation. If all 33 of the cases are granted full reimbursement, and assuming 7.74 years of reimbursement payments of \$50,000 per year, the minimum cost to the state would be \$12.8 million under the bill. That amount does not include reimbursement payments for amounts collected from individuals by the state under

the State Correctional Facility Reimbursement Act, or reimbursement payments to individuals for attorney fees that were actually paid.

The bill would have an indeterminate fiscal impact on local units of government, and would depend on further actions taken by individuals wrongfully imprisoned and on the outcomes of those actions, (i.e., lawsuits against witnesses, prosecutors, police officers, etc.).

The bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on the number of actions for damages and on how the provisions of the bill affected caseloads and related administrative costs.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.