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BILL



ANALYSIS

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Senate Bill 291 (as introduced 4-23-15)
Sponsor: Senator Steven Bieda
Committee: Judiciary

Date Completed: 9-24-15

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:

- Establish procedures for such an action.
- Require a copy of the complaint to be served on the Attorney General and the office of the prosecuting attorney who prosecuted the crime.
- Require the prosecuting attorney to notify the victim of the crime that an application for compensation had been filed, if the plaintiff's conviction were for an assaultive crime or a serious misdemeanor.
- Specify that the victim, or his or her representative, would have the right to appear at a proceeding under the Act and to make a statement.
- Require the court to award compensation if it found that a plaintiff was wrongfully convicted and imprisoned.
- Require compensation to include \$60,000 per year for the period of incarceration; economic damages, including lost wages and other expenses; reasonable attorney fees; and reimbursement of any amount collected from the plaintiff by the State under the State Correctional Facility Reimbursement Act.
- 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 during imprisonment.
- 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 bar any further action by the plaintiff against the State based on the same matter.
- Provide that a plaintiff would remain liable for any child support payments or arrearages, except those erroneously accrued while he or she was imprisoned.
- Require child support to be deducted from an award before the plaintiff received any of the money from it.
- Specify that the Act would not impair or limit the right of a State or local government to collect a debt from the plaintiff's award.
- Specify that an award under the Act would be subject to setoff or reimbursement for damages obtained for wrongful conviction or imprisonment from any other person.
- Require a court that determined a plaintiff had been wrongfully convicted and imprisoned to expunge records from the person's criminal history.

- **Require a reimbursement of amounts collected under the State Correctional Facility Reimbursement Act to be paid from the General Fund.**
- **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 three years after that date.**

Action for Compensation

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.

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.
- New evidence demonstrated that the plaintiff was not the perpetrator of the crime and was not an accessory or accomplice to the acts that were the basis of the conviction, and resulted in a reversal or vacation of the conviction, dismissal of the charges, finding of not guilty, or gubernatorial pardon.

The plaintiff would have to verify the complaint.

A copy of the complaint would have to be served on the Attorney General and on the office of the prosecuting attorney who prosecuted the crime. The court would have to give the Attorney General and the prosecuting attorney an opportunity to contest the complaint.

If the plaintiff's conviction were for an assaultive crime or a serious misdemeanor, the prosecuting attorney would have to notify the victim of the application pursuant to the Crime Victim's Rights Act. The prosecuting attorney would have to notify the victim by first-class mail, sent to the victim's last known address. The victim or victim's representative would have the right to appear at any proceeding under the Act concerning the complaint and to make a written or oral statement.

The plaintiff would be entitled to judgment in his or her favor if he or she proved by a preponderance of the evidence all of the conditions that would have to be documented in the complaint. Regarding the third condition, new evidence would have to result in dismissal of all of the charges or a finding of not guilty on all charges on retrial.

The plaintiff would not be entitled to compensation if he or she 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.

The bill would define "new evidence" as any evidence that was not presented in the proceedings leading to plaintiff's conviction, including new testimony, expert interpretation, the results of DNA testing, or other test results relating to evidence that was presented in the proceedings leading to plaintiff's conviction.

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 \$60,000 for each year from the date the plaintiff was imprisoned until the date he or she was released from prison, regardless of whether he or she was released on parole or because the maximum sentence was served.

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

- Economic damages, including lost wages; actual costs, including attorney fees, paid by the plaintiff associated with his or her criminal defense or actual costs paid to prove his or her innocence; and actual medical expenses that were related to the imprisonment required after release.
- Reasonable attorney fees incurred in an action under the Act.
- Reimbursement of any amount awarded and collected by the State under the State Correctional Facility Reimbursement Act.

(That Act prescribes procedures for securing reimbursement to the State of the expenses it incurs for the cost of care of prisoners in State correctional facilities.)

An 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.

A compensation award would not be subject to a limit on the amount of damages, except as stated in the proposed 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, and 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, including expenses required to be collected under the State Correctional Facility Reimbursement Act.
- The value of any services awarded to the plaintiff under the proposed Act.
- The value of any reduction in fees for services awarded to the plaintiff.

An award of compensation would be subject to setoff or reimbursement, however, for damages obtained for wrongful conviction or imprisonment from any other person.

A compensation award under the Act also would be subject to the payment of child support owed by the plaintiff, including child support arrearages. The plaintiff would remain liable for any child support arrearage under the Office of Child Support Act, and the Support and Parenting Time Enforcement Act, except for any child support or arrearage that erroneously accrued while the plaintiff was imprisoned. Child support would have to be deducted from an award under the proposed Act before the plaintiff received any of the money from the award. This provision would not affect a plaintiff's ongoing child support obligations.

The Act would not impair or limit the right of a state or local government to collect a debt of the plaintiff from his or her award of compensation.

Any reimbursement provided under the Act for an amount awarded and collected by the State under the State Correctional Facility Reimbursement Act would have to be paid from the State's General Fund and not reimbursed out of any State department's or agency's annual budget or current funding.

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 three years after that date.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on local government and a significant but indeterminate cost to State government. According to the National Registry of Exonerations (NRE) maintained by the University of Michigan Law School, 60 exonerations have occurred in Michigan to date. Of those 60 documented exonerations, according to the University of Michigan Law School's Innocence Project, 26 individuals would be eligible for the compensation. At a minimum, assuming all 26 individuals would meet the eligibility criteria and receive only the yearly compensation amount, the first year of payments would total \$1.6 million, paid from the General Fund. According to the Innocence Project's dataset, the average number of years of wrongful imprisonment per exoneration is 10.1 for the 26 documented cases. If all payments were made under the conditions in the Innocence Project's dataset, the total minimum costs would be approximately \$15.8 million General Fund/General Purpose. That figure is based on the fixed amounts taken from the bill; however, there are other variables that could increase the figure on a per-case basis given that the compensation could include economic damages, attorney's fees, and other reimbursable amounts. The economic damages portion includes lost wages, which could position the State to make payments for confirmed permanently lost wages for the length of the exoneree's life. Additionally, this bill would allow future claims to be made for exonerations. Since the facts of those cases are currently unknowable, a fiscal

impact cannot be determined. As this bill relates exclusively to wrongful imprisonment in a State correctional facility and claims against the State, there would be no fiscal impact on local government.

Fiscal Analyst: John Maxwell