



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 291 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Steven Bieda
Committee: Judiciary

Date Completed: 8-2-16

RATIONALE

According to the National Registry of Exonerations, a project of the University of Michigan Law School, more than 1,800 people who have been convicted of crimes nationwide were exonerated between 1989 and July 2016. Sixty-four of those exonerations occurred in Michigan. These are cases of people who were convicted but later cleared of charges based on new evidence of innocence. In addition to losing their liberty, they lost out on career opportunities and, in many cases, their friendships and family relationships suffered. Some people believe that the State has a duty to make up for wrongs done on its behalf and should provide financial compensation to a person who is convicted of a crime, serves a term of imprisonment, and later is determined to have been innocent of the charges.

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 prosecuting attorney for the county in which the plaintiff was convicted.**
- **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 \$50,000 per year for the period of incarceration prorated daily for incarceration of less than one year; 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, in the court's discretion, an award could be paid in a single payment or multiple payments, with the initial payment being at least 20% of the award and the remainder paid over not more than 10 years.**
- **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 an award under the Act would not be subject to income taxes.**
- **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.**
- **Create the "Wrongful Imprisonment Compensation Fund" and require the State Treasurer to spend money from the Fund to pay claims under the Act.**
- **Require the Treasurer, if there were insufficient money in the Fund to pay ordered claims, to pay those claims if money became available in the Fund before paying new claims.**
- **Require the Treasurer to notify the Legislature that money in the Fund could be insufficient to cover future claims.**
- **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 18 months after that date.**

The bill would take effect 90 days after its enactment.

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 prosecuting attorney for the county in which the plaintiff was convicted. The Attorney General and the prosecuting attorney could answer and 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 victim or victim's representative would have the right to appear at any proceeding under the proposed Act concerning the complaint and to make a written or oral statement.

The plaintiff, the Attorney General, and the prosecuting attorney for the county in which the plaintiff was convicted could conduct discovery in an action under the proposed Act.

The plaintiff would be entitled to judgment in his or her favor if he or she proved by clear and convincing evidence all of the conditions that would have to be documented in the complaint.

The plaintiff would not be entitled to compensation if both of the following applied: 1) he or she was convicted of another crime arising from the same transaction, and 2) either that offense was not dismissed or the plaintiff was 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. The term 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 was convicted or the Attorney General, if the Attorney General had prosecuted the case, agreed that the recantation constituted new evidence without other evidence to support it.

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 \$50,000 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. For incarceration of less than a year in prison, the amount would be prorated to 1/365 of \$50,000 for every day the plaintiff was incarcerated in prison.

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

- Reasonable attorney fees incurred in an action under the proposed 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.)

All of the following would apply to attorney fees under the proposed Act:

- The court could not award attorney fees unless the plaintiff had actually paid the amount awarded to the attorney.
- It would not be necessary that the plaintiff pay the attorney fees before an initial award under the Act, and the court could award attorney fees on a motion brought after the initial award.
- The attorney fees could not exceed either \$50,000 or 10% of the total amount awarded for compensation for time incarcerated and reimbursement of amounts collected under the State Correctional Facility Reimbursement Act, whichever was less, plus expenses.
- An award of attorney fees 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 the plaintiff sustained 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.

In the discretion of the court, the total amount awarded for compensation for time incarcerated and reimbursement of amounts collected under the State Correctional Facility Reimbursement Act could be paid to the plaintiff in a single payment or in multiple payments. If the court ordered it to be paid in multiple payments, the initial payment would have to be at least 20% of the total

amount awarded and the remainder of the payments would have to be made over not more than 10 years.

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 under the proposed Act would not be subject to income taxes.

An award of compensation would be subject to setoff or reimbursement 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. These provisions 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.

Wrongful Imprisonment Compensation Fund

The bill would create the Wrongful Imprisonment Compensation Fund as a separate fund in the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund, and would have to direct its investment. The Treasurer also would have to credit to the Fund any interest and earnings from Fund investments. The Department of Treasury would be the administrator of the Fund for auditing purposes. Money in the Fund at the close of the fiscal year would have to remain in it and could not lapse to the General Fund.

The State Treasurer could spend money from the proposed Fund only for the purpose of paying claims authorized under the proposed Act and the costs of administering the Fund. The Treasurer would have to pay money from the Fund in amounts and at the times as ordered by courts under the Act. If there were insufficient money in the Fund to pay claims as ordered, the Treasurer would have to pay claims that were ordered, but not yet paid, if money became available in the Fund, and would have to pay those claims before paying subsequently ordered claims.

The Treasurer would have to develop and implement a process to notify the Legislature that money in the Fund could be insufficient to cover future claims when the Treasurer reasonably believed that, within 60 days, the money in the Fund would be insufficient. The process, at a minimum, would have to do both of the following:

- Identify a specific date by which the money in the Fund would become insufficient to pay claims.
- Outline a clear process indicating the order in which claims pending with the Fund would be paid, and the order in which claims that were pending when money became insufficient would be paid.

Any compensation under the Act would have to be paid from the Wrongful Imprisonment Compensation Fund and not from 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 18 months after that date.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The American system of criminal justice is designed to ensure that the innocent are not found guilty, with safeguards such as the presumption of innocence and the prosecutorial burden of proof beyond a reasonable doubt. Nevertheless, as evidenced by the cases compiled by the National Registry of Exonerations, innocent people sometimes are convicted of crimes they did not commit. While those who are exonerated are released from prison, their lost liberty and foregone opportunities during their time of incarceration can never be returned to them. To achieve fairness and equity, when the justice system makes such an egregious error as convicting and incarcerating a person who is later shown to be innocent, the State should make amends to the aggrieved person. Indeed, at least 30 states and Washington, D.C., have some sort of compensation system for people who are exonerated after serving time for a crime they did not commit.

By establishing a procedure for an exonerated person to file an action for compensation, and requiring the court to award \$50,000 for each year of incarceration plus reasonable attorney fees, the bill would recognize the State's responsibility to pay individuals who had been improperly convicted of crimes and wrongfully imprisoned. The bill also would bring the State in line with a majority of states that have enacted laws compensating exonerated prisoners. Compensation would not automatically be available under the bill, however, as the individual's conviction would have to have been reversed or vacated and there would have to be new evidence showing that the person was not the perpetrator or an accessory or accomplice. These criteria would set a very high threshold for a person seeking compensation. In addition, a person would not be entitled to compensation if he or she were convicted of another crime arising from the same transaction. The bill also would prohibit an award for any time the person was imprisoned under a concurrent or consecutive sentence for another conviction.

Supporting Argument

The State's law enforcement and judicial systems should strive to achieve justice for those who are drawn into those systems. When a person is wrongfully convicted, justice is not served. Those

who are erroneously convicted and sentenced to prison suffer a trauma that is unimaginable to most other people. This is illustrated by Senate Judiciary Committee testimony of two people who were exonerated after a wrongful conviction and time served in prison.

According to the testimony of Ken Wyniemko, he was convicted in 1994 of criminal sexual conduct, breaking and entering, and armed robbery. Nine years later, he was cleared of those charges by analysis of DNA evidence that showed someone else had committed the crimes. Wyniemko said that he continues to suffer from the effects of being wrongfully imprisoned and compared exonerates' suffering to that of military veterans who suffer from post-traumatic stress disorder.

According to the testimony of Julie Baumer, she was convicted of first-degree child abuse in 2005. She had been pursuing adoption of her sister's baby, who was born prematurely and spent time in neonatal intensive care. Six weeks after the baby's birth, he became very ill while under Baumer's care. A doctor diagnosed the child with shaken baby syndrome and Baumer was convicted of abusing him. Four and a half years later, the baby was correctly diagnosed with a form of childhood stroke, and Baumer was exonerated. While in prison, Baumer missed out on career advancement opportunities and her personal relationships with family members were harmed.

Although providing a measure of compensation to people like Mr. Wyniemko and Ms. Baumer would not erase the damage done to them in the name of the State, it would give them financial resources to which they otherwise would not have access. This would put them in a better position to recover from the physical and emotional trauma of wrongful conviction and imprisonment and help them to regain some of the lost opportunities caused by the injustice done to them.

Supporting Argument

Exonerated prisoners can face tremendous difficulty in reintegrating into society. Typically, they have some of the same challenges as people who are released from prison on parole, such as finding housing and employment, but they are not entitled to the services that other released prisoners receive. Like parolees, exonerated prisoners return to their communities with little or no resources to reconnect with potential employers or housing providers. Through its prisoner reentry program, however, the Department of Corrections (DOC) helps guide parolees in their transition back into the community. According to the DOC's prisoner reentry model, "The community and discharge phase begins when the prisoner is paroled from prison and continues until discharge from community supervision. During this phase, the parolee, the parole officer, human services providers and the offender's personal support network must collaborate to optimize the parolee's chances for a successful adjustment to community living." Exonerated prisoners do not receive any of those services. Providing compensation to individuals who have been wrongfully convicted and imprisoned, after they are exonerated, would help them make the transition from prison to their communities and reestablish themselves as productive members of society.

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, 64 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. 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 \$13.1 million paid from the Wrongful Imprisonment Compensation Fund either in a single payment or multiple payments over not more than 10 years. If the compensation were made over multiple payments, the initial payments would have to be at least 20% of the total amount awarded.

The figure of approximately \$13.1 million in total minimum costs 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 attorney's fees and other reimbursable amounts. Attorney's fees would be capped at 10% of the total amount awarded or \$50,000, whichever was less, plus expenses. Additionally, the 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 except to the extent that judicial resources were required.

Fiscal Analyst: John Maxwell