

WRONGFUL IMPRISONMENT COMPENSATION ACT

Phone: (517) 373-8080
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House Bill 5431 (H-1) as reported from committee

Sponsor: Rep. Joey Andrews

Committee: Criminal Justice

Complete to 12-10-24

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

SUMMARY:

House Bill 5431 would amend the Wrongful Imprisonment Compensation Act, which allows individuals who were convicted under a state law and imprisoned in a state correctional facility for a crime they did not commit to sue the state in the Court of Claims for compensation for their wrongful imprisonment. Among other things, the bill would change procedures for an action brought under the act, the evidence that merits a favorable judgment and the criteria for considering it, and the time frame in which certain actions may be brought.

Plaintiff

The act uses the term *plaintiff*, which it defines as the individual making a claim for compensation under the act. The bill would add that *plaintiff* includes a trustee or conservator for that individual if the individual is not competent to act as plaintiff.

Answer to complaint, discovery

Under the act, a copy of the complaint the plaintiff has filed to initiate the lawsuit must be served on the attorney general and on the prosecuting attorney for the county where the plaintiff was convicted. The attorney general and prosecuting attorney may answer and contest the complaint.

The bill would require the prosecuting attorney to file an appearance within 60 days if they wish to participate further in the action. An answer to a complaint would have to be served and filed no later than 60 days after service of the complaint, but time extensions could be requested if there is a showing of good cause, to allow the attorney general to determine whether compensation under the act is appropriate before formal discovery begins. The bill would prohibit discovery from being conducted before the attorney general files an answer.

Proof entitling judgment in plaintiff's favor

Currently, in an action under the act, the plaintiff is entitled to judgment in their favor if they prove all of the following¹ by *clear and convincing evidence*:²

- That they were convicted of one or more crimes under state law for which they were sentenced to a term of imprisonment in a state correctional facility and served at least part of the sentence.
- That their judgment of conviction was reversed or vacated and the charges were dismissed or they were determined upon retrial to be not guilty. (However, the plaintiff is not entitled to compensation under the act if they were convicted of another criminal offense arising from the same transaction and that offense was not dismissed or they were convicted of that offense on retrial.)

¹ Under both the act and the bill, the plaintiff also must attach to their verified complaint documentation that establishes these facts.

² In this context, something is proven by *clear and convincing evidence* if it is shown to be highly probable to be true.

- That ***new evidence*** demonstrates that they did not perpetrate the crime and were not an accomplice or accessory to the acts that were the basis of the conviction, results in the reversal or vacation of the charges in the judgment of conviction or a pardon from the governor, and results in either dismissal of all the charges or a finding of not guilty on all the charges upon retrial.

New evidence means 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*. New evidence does not include a recantation by a witness unless there is 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 Department of the Attorney General prosecuted the case) agrees that the recantation constitutes new evidence without other evidence to support the recantation. [The bill would change the italicized phrase to, in the first instance, *presented to a trier of fact during a proceeding that determined guilt* and, in the second instance, *presented to a trier of fact when guilt was decided*.]

The bill would instead provide that, in an action under the act, the plaintiff is entitled to judgment in their favor if they prove all of the following by *a preponderance of the evidence*:³

- That they were convicted of one or more crimes under state law for which they were sentenced to a term of imprisonment in a state correctional facility, and served at least part of the sentence, or in relation to which they were committed to a residential mental health facility.⁴
- Either of the following:
 - That their judgment of conviction was reversed or vacated and the charges were dismissed or they were determined upon retrial to be not guilty. (However, they are not entitled to compensation under the act if they were convicted of another criminal offense arising from the same transaction and that offense was not dismissed or they were convicted of that offense on retrial.)
 - That they received a pardon from the governor for the crime they were incarcerated for.
- One of the following:
 - That ***new evidence*** demonstrates that they did not perpetrate the crime and were not an accomplice or accessory to the acts that were the basis of the conviction, and the new evidence either resulted in the reversal or vacation of the charges in the judgment of conviction or resulted in a pardon from the governor.
 - That the reversal or vacation of the judgment of conviction was on the basis of insufficient evidence supporting the conviction, and they did not perpetrate the crime and were not an accomplice or accessory to the acts that were the basis of the conviction. (See also “Window for insufficient evidence claim,” below.)

³ In this context, something is proven by *a preponderance of the evidence* if it is shown that it is more probable to be true than to be not true.

⁴ It seems unclear whether an individual committed to a residential mental health facility could claim compensation under the bill. Section 3 of the act limits the individuals who can bring an action under the act to only those who were wrongfully “convicted under the law of this state and subsequently *imprisoned in a state correctional facility*” (emphasis added). Much of the rest of the act relates to individuals who have, specifically, been *imprisoned*.

- That *new evidence* was presented to the court that reversed or vacated their conviction, but relief was granted on another basis, and the new evidence demonstrates that they did not perpetrate the crime and were not an accomplice or accessory to the acts that were the basis of the conviction.

Consideration by the court

Under the bill, in determining whether the plaintiff has met their burden of proof at any stage of the proceedings (including at trial), the court could consider the following:

- The entire record of the plaintiff's criminal case, which includes the lower court records, the plea or trial transcripts, the appellate record, and the record of any postconviction proceedings.
- Evidence that was seized or obtained in violation of the Fourth Amendment to the United States Constitution or in violation of section 11 of Article I of the state constitution.

In addition, in exercising its discretion regarding the weight and credibility of evidence, the court would have to give due consideration to the difficulties of proof caused by the passage of time, the loss or destruction of evidence, the death or unavailability of witnesses, and other factors not caused by the parties. The court could not find that a witness who testified at the plaintiff's criminal trial or in post-trial proceedings is not credible solely because the witness is not testifying at the trial held on the plaintiff's claim under this act.

Compensation

Currently, a court that finds that a plaintiff was wrongfully convicted and imprisoned must award the plaintiff \$50,000 for each year they were imprisoned (with a prorated amount for partial years), reimbursement for any money collected by the state from the plaintiff for a share of their cost of care as provided under the State Correctional Facility Reimbursement Act, and reasonable attorney fees incurred in bringing an action under the act.

The bill would provide that, for purposes of calculating compensation, the time a plaintiff was imprisoned must include time they served in pretrial detention. The bill also would remove a provision that now prohibits a court from awarding attorney fees unless the plaintiff has actually paid the amount awarded to the attorney

In addition, the act now provides that compensation cannot be awarded for any time during which the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction. The bill would add that this applies regardless of whether the sentence for that other conviction was running before or after the sentence for the conviction the claim is based on. However, these provisions would *not* apply to any concurrent or consecutive sentence relating to any prior offense that the plaintiff was on parole for at the time of the wrongful conviction, if that parole was revoked solely on the basis of the wrongful conviction.

Release of claims against the state

The act now provides that the acceptance by the plaintiff of an award under the act, or of a compromise or settlement of the claim, 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 in state court by the plaintiff against the state based on the same subject matter.

The bill would delete the language italicized above.

Action in federal court

The act now provides that the acceptance by the plaintiff of an award under the act, or of a compromise or settlement of the claim, does not operate as a waiver of, or bar to, any action in federal court against an individual alleged to have been involved in the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.

The bill would amend the above to change “action in federal court” to “action and recovery in federal court,” and to provide that the action and recovery in federal court could be against a political subdivision as well as an individual.

Setoff

The act now provides that an award of compensation under the act is subject to setoff or reimbursement for damages obtained for the wrongful conviction or imprisonment from any other person.

The bill would modify this language to account for attorney fees and recovery from political subdivisions. Under the bill, an award of compensation, or compensation under a compromise or settlement of a claim, under the act would be subject to setoff or reimbursement for damages received directly by the plaintiff that were obtained for the wrongful conviction or imprisonment from any other person or political subdivision, after the damage award is reduced for attorney fees.

Expungement

Under the act, if a court determines that a plaintiff was wrongfully convicted and imprisoned, the court must enter an order requiring that any record of the arrest, fingerprints, conviction, and sentence of the plaintiff related to the wrongful conviction be expunged from the criminal history record.

The bill would add that the parties could stipulate to the entry of such an order without an award of compensation under the act.

Window for insufficient evidence claim

Generally under the act, an action for compensation must be commenced within three years after the entry of a verdict, order, judgment, or pardon exonerating the plaintiff. (This three-year period is tolled if the state challenges or appeals the verdict, order, judgment, or pardon.)

The bill would provide an exception from the general three-year rule to allow an individual to bring a claim within 18 months after the bill takes effect if the individual can show that they qualify for an award because, as provided above, the reversal or vacation of the judgment of conviction was on the basis of insufficient evidence supporting the conviction, and that they did not perpetrate the crime and were not an accomplice or accessory to the acts that were the basis of the conviction.

Compensation under a compromise or settlement of a claim

Finally, in several places where the act now refers only to an award of compensation under the act (for example, to provide that it is not a finding of wrongdoing, or that it is not subject to income taxes), the bill would add “or compensation under a compromise or settlement of a claim” under the act. Note that the phrase is already included in some provisions of the act.

MCL 691.1752 et seq.

FISCAL IMPACT:

The bill would result in an indeterminate, but likely marginal, annual increase in claims and awards for compensation from the Wrongful Imprisonment Compensation Fund (WICF). The current balance in the fund would be expected to cover an anticipated increase of claims and payments in the short term. However, an ongoing increase would likely require a corresponding increase to the average annual appropriated deposit into the WICF. In FY 2023-24, \$10.0 million was deposited into the WICF, and the executive recommended budget includes \$10.0 million for deposit in FY 2024-25. Average yearly compensation amounts over the last four fiscal years have been approximately \$9.8 million.

As of the end of December 2023, there were 11 claims seeking a total of nearly \$10.0 million in compensation in FY 2023-24, including attorney fees. Additional claims will likely later be identified and paid within the fiscal year. The balance of the WICF at the end of December was \$19.8 million. If annual average claims exceed \$10.0 million in future years, an increase in the annually appropriated deposit would be needed to support it.

The bill also would have an indeterminate fiscal impact on local court funding units. To the extent that there is an increase in the number of petitions filed in courts and a corresponding increase in the number of petitions granted by courts, costs would be incurred as a result of increased court caseloads and related administrative costs.

POSITIONS:

Representatives of the following entities testified in support of the bill (3-5-24):

- Department of the Attorney General
- State Appellate Defender Office
- Cooley Law Innocence Project
- The Innocence Project
- Criminal Defense Attorneys of Michigan
- Safe and Just Michigan
- Organization of Exonerees
- After Innocence

The following entities indicated support for the bill (3-5-24):

- Humanity for Prisoners
- University of Michigan Law Innocence Clinic
- Michigan Association for Justice

Legislative Analyst: Rick Yuille
Fiscal Analysts: Michael Cnossen
Robin Risko

■ 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.