

SUBSTITUTE FOR
HOUSE BILL NO. 5431

A bill to amend 2016 PA 343, entitled
"Wrongful imprisonment compensation act,"
by amending sections 2, 4, 5, and 7 (MCL 691.1752, 691.1754,
691.1755, and 691.1757), section 7 as amended by 2020 PA 43.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (a) "Charges" means the criminal complaint filed against the
3 plaintiff by a county prosecutor or the attorney general on behalf
4 of the people of this state that resulted in the conviction and
5 imprisonment of the plaintiff that are the subject of the claim for
6 compensation under this act.

7 (b) "New evidence" means any evidence that was not presented
8 ~~in the proceedings leading to plaintiff's conviction, to a trier of~~

1 **fact during a proceeding that determined guilt**, including new
 2 testimony, expert interpretation, the results of DNA testing, or
 3 other test results relating to evidence that was presented ~~in the~~
 4 ~~proceedings leading to plaintiff's conviction. to a trier of fact~~
 5 **when guilt was decided.** New evidence does not include a recantation
 6 by a witness unless there is other evidence to support the
 7 recantation or unless the prosecuting attorney for the county in
 8 which the plaintiff was convicted or, if the department of attorney
 9 general prosecuted the case, the attorney general agrees that the
 10 recantation constitutes new evidence without other evidence to
 11 support the recantation.

12 (c) "Plaintiff" means the individual making a claim for
 13 compensation under this act. **Plaintiff includes a trustee or**
 14 **conservator for that individual if the individual is not competent**
 15 **to act as plaintiff.** Plaintiff does not include the estate of ~~an a~~
 16 **deceased** individual entitled to make a claim for compensation under
 17 this act, the personal representative of the estate, or any heir,
 18 devisee, beneficiary, or other person who is entitled under other
 19 law to pursue a claim for damages, injury, or death suffered by the
 20 individual.

21 (d) "State correctional facility" means a correctional
 22 facility maintained and operated by the department of corrections.

23 (e) ~~"This"~~ **For the purpose of state court actions related to**
 24 **this act, "this state"** means the state of Michigan and its
 25 political subdivisions, and the agencies, departments, commissions,
 26 and courts of this state and its political subdivisions.

27 Sec. 4. (1) In an action under this act, the plaintiff shall
 28 attach to his or her verified complaint documentation that
 29 establishes ~~all of the following:~~

1 ~~(a) The plaintiff was convicted of 1 or more crimes under the~~
2 ~~law of this state, was sentenced to a term of imprisonment in a~~
3 ~~state correctional facility for the crime or crimes, and served at~~
4 ~~least part of the sentence.~~

5 ~~(b) The plaintiff's judgment of conviction was reversed or~~
6 ~~vacated and either the charges were dismissed or on retrial the~~
7 ~~plaintiff was found to be not guilty.~~

8 ~~(c) New evidence demonstrates that the plaintiff was not the~~
9 ~~perpetrator of the crime or crimes and was not an accessory or~~
10 ~~accomplice to the acts that were the basis of the conviction and~~
11 ~~resulted in a reversal or vacation of the judgment of conviction,~~
12 ~~dismissal of the charges, finding of not guilty, or gubernatorial~~
13 ~~pardon.~~ **the facts that the plaintiff alleges entitle the plaintiff**
14 **to judgment under section 5.**

15 (2) A complaint filed under this section must be verified by
16 the plaintiff.

17 (3) A copy of a complaint filed under this section must be
18 served on the attorney general and on the prosecuting attorney for
19 the county in which the plaintiff was convicted. The attorney
20 general and the prosecuting attorney may answer and contest the
21 complaint. **The prosecuting attorney shall file an appearance within**
22 **60 days if the prosecuting attorney wishes to participate further**
23 **in the action.**

24 (4) **An answer to a complaint filed under this section may be**
25 **served and filed not later than 60 days after service of the**
26 **complaint, with the opportunity to request additional time**
27 **extensions if there is a showing of good cause, in order for the**
28 **attorney general to determine whether compensation under this act**
29 **is appropriate before formal discovery begins.**

(5) ~~(4)~~—If the plaintiff's conviction was for an assaultive crime or a serious misdemeanor, the prosecuting attorney shall notify the victim of the assaultive crime or serious misdemeanor of the application in the same manner as is required for an application to have a conviction set aside under section 22a or 77a of the William Van Regenmorter crime victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a. The prosecuting attorney shall give the victim notice under this subsection by first-class mail sent to the victim's last known address. The victim or victim's representative has the right to appear at any proceeding under this act concerning the complaint and to make a written or oral statement.

(6) ~~(5)~~—The plaintiff, the attorney general, and the prosecuting attorney for the county in which the plaintiff was convicted may conduct discovery in an action under this act.
Discovery must not be conducted before the attorney general files an answer.

Sec. 5. (1) In an action under this act, the plaintiff is entitled to judgment in the plaintiff's favor if the plaintiff proves all of the following by ~~clear and convincing~~ **a preponderance of the** evidence:

(a) The plaintiff was convicted of 1 or more crimes under the law of this state, was sentenced to a term of imprisonment in a state correctional facility for the crime or crimes, and served at least part of the sentence, **or was committed to a residential mental health facility in relation to the conviction.**

(b) **One of the following:**

(i) The plaintiff's judgment of conviction was reversed or vacated and either the charges were dismissed or the plaintiff was

1 determined on retrial to be not guilty. However, the plaintiff is
2 not entitled to compensation under this act if the plaintiff was
3 convicted of another criminal offense arising from the same
4 transaction and either that offense was not dismissed or the
5 plaintiff was convicted of that offense on retrial.

6 **(ii) The plaintiff received a gubernatorial pardon for the**
7 **crime for which the plaintiff was incarcerated.**

8 (c) One of the following:

9 **(i) New evidence demonstrates that the plaintiff did not**
10 **perpetrate the crime and was not an accomplice or accessory to the**
11 **acts that were the basis of the conviction, ~~results and the new~~**
12 **evidence either resulted** in the reversal or vacation of the charges
13 in the judgment of conviction or **resulted in** a gubernatorial pardon
14 ~~, and results in either dismissal of all of the charges or a~~
15 ~~finding of not guilty on all of the charges on retrial.~~ **for the**
16 **crime for which the plaintiff was incarcerated.**

17 **(ii) The reversal or vacation of the judgment of conviction was**
18 **on the basis of insufficient evidence supporting the conviction,**
19 **and the plaintiff did not perpetrate the crime and was not an**
20 **accomplice or accessory to the acts that were the basis of the**
21 **conviction.**

22 **(iii) New evidence was presented to the court that reversed or**
23 **vacated the plaintiff's conviction, but relief was granted on**
24 **another basis, and the new evidence demonstrates that the plaintiff**
25 **did not perpetrate the crime and was not an accomplice or accessory**
26 **to the acts that were the basis of the conviction.**

27 **(2) In determining whether the plaintiff has met his or her**
28 **burden under subsection (1) at any stage of the proceedings,**
29 **including at trial, the court may consider the following:**

1 (a) The entire record of the plaintiff's criminal case, which
2 includes the lower court records, the plea or trial transcripts,
3 the appellate record, and the record of any postconviction
4 proceedings.

5 (b) Evidence that was seized or obtained in violation of the
6 Fourth Amendment of the United States Constitution or section 11 of
7 article I of the state constitution of 1963.

8 (3) In exercising its discretion regarding the weight and
9 credibility of the evidence presented by the parties, the court
10 shall give due consideration to the difficulties of proof caused by
11 the passage of time, the loss or destruction of evidence, the death
12 or unavailability of witnesses, and other factors not caused by the
13 parties. The court shall not find a witness incredible who
14 testified at the plaintiff's criminal trial or in post-trial
15 proceedings based solely on the fact that the witness is not
16 testifying at the trial held on the plaintiff's claim under this
17 act.

18 (4) ~~(2)~~ Subject to subsections ~~(4) and (5)~~, **(6) and (7)**, if a
19 court finds that a plaintiff was wrongfully convicted and
20 imprisoned, the court shall award compensation as follows:

21 (a) Fifty thousand dollars for each year, ~~from the date~~
22 **prorated as provided in this subdivision as appropriate**, the
23 plaintiff was imprisoned, ~~until the date the plaintiff was released~~
24 ~~from prison, including time served in pretrial detention~~,
25 regardless of whether the plaintiff was released from imprisonment
26 on parole or because the maximum sentence was served. For
27 incarceration of less than a year in prison, this amount is
28 prorated to 1/365 of \$50,000.00 for every day the plaintiff was
29 incarcerated. ~~in prison.~~

(b) Reimbursement of any amount awarded and collected by this state under the state correctional facility reimbursement act, 1935 PA 253, MCL 800.401 to 800.406.

(c) Reasonable attorney fees incurred in an action under this act. ~~All~~ **Both** of the following apply to attorney fees under this act:

~~(i) The court shall not award attorney fees unless the plaintiff has actually paid the amount awarded to the attorney.~~

~~(ii) It is not necessary that the plaintiff pay the attorney fees before an initial award under this act. The court may award attorney fees on a motion brought after the initial award.~~

(i) ~~(iii)~~ The attorney fees must not exceed 10% of the total amount awarded under subdivisions (a) and (b) or \$50,000.00, whichever is less, plus expenses.

(ii) ~~(iv)~~ An award of attorney fees under this act may not be deducted from the compensation awarded the plaintiff, and the plaintiff's attorney is not entitled to receive additional fees from the plaintiff.

(5) ~~(3)~~ An award under subsection ~~(2)~~ **(4)** is not subject to a limit on the amount of damages except as stated in this act.

(6) ~~(4)~~ Compensation may not be awarded under subsection ~~(2)~~ **(4)** for any time during which the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction, **whether running before or after the sentence on the conviction that is the basis of the claim. If the plaintiff was on parole for a prior offense at the time of the wrongful conviction and parole was revoked solely on the basis of the wrongful conviction, any concurrent or consecutive sentence relating to the prior offense is not covered by this subsection.**

(7) ~~(5)~~—Compensation may not be awarded under subsection ~~(2)~~
 (4) for any injuries sustained by the plaintiff while imprisoned.
 The making of a claim or receipt of compensation under this act
 does not preclude a claim or action for compensation because of
 injuries sustained by the plaintiff while imprisoned.

(8) ~~(6)~~—In the discretion of the court, the total amount
 awarded under subsection ~~(2)(a)~~ **(4) (a)** and (b) may be paid to the
 plaintiff in a single payment or in multiple payments. If the court
 orders the compensation to be paid in multiple payments, the
 initial payment must be 20% of the total amount awarded or more and
 the remainder of the payments must be made over not more than 10
 years.

(9) ~~(7)~~—An award of compensation, **or a compromise or
 settlement of a claim**, under this act is not a finding of
 wrongdoing against anyone. ~~An~~ **The granting or denial of a claim for
 an award of compensation, or a compromise or settlement of a claim**,
 under this act is not admissible in evidence in a civil action that
 is related to the investigation, prosecution, or conviction that
 gave rise to the wrongful conviction or imprisonment.

(10) ~~(8)~~—The acceptance by the plaintiff of an award under
 this act, or of a compromise or settlement of the claim, must be in
 writing and, unless it is procured by fraud, is final and
 conclusive on the plaintiff ~~, constitutes a complete release of all
 claims against this state,~~ and is a complete bar to any action in
 state court by the plaintiff against this state based on the same
 subject matter. However, the acceptance by the plaintiff of an
 award under this act, or of a compromise or settlement of the
 plaintiff's claim, does not operate as a waiver of, or bar to, any
 action **and recovery** in federal court against ~~an~~ **a political**

1 **subdivision or** individual alleged to have been involved in the
 2 investigation, prosecution, or conviction that gave rise to the
 3 wrongful conviction or imprisonment.

4 ~~(11) (9)~~—A compensation award under subsection ~~(2)~~ **(4)**, or
 5 **compensation under a compromise or settlement of a claim under this**
 6 **act**, may not be offset by any of the following:

7 (a) Expenses incurred by this state or any political
 8 subdivision of this state, including, but not limited to, expenses
 9 incurred to secure the plaintiff's custody or to feed, clothe, or
 10 provide medical services for the plaintiff while imprisoned,
 11 including expenses required to be collected under the state
 12 correctional facility reimbursement act, 1935 PA 253, MCL 800.401
 13 to 800.406. The attorney general is specifically excused from
 14 complying with the state correctional facility reimbursement act,
 15 1935 PA 253, MCL 800.401 to 800.406.

16 (b) The value of any services awarded to the plaintiff under
 17 this section.

18 (c) The value of any reduction in fees for services awarded to
 19 the plaintiff under this act.

20 ~~(12) (10)~~—An award under subsection ~~(2)~~ **(4)**, or **compensation**
 21 **under a compromise or settlement of a claim under this act**, is not
 22 subject to income taxes.

23 ~~(13) (11)~~—A compensation award, or **compensation under a**
 24 **compromise or settlement of a claim**, under this act is subject to
 25 the payment of child support, including child support arrearages,
 26 owed by the plaintiff. The plaintiff remains liable for any child
 27 support or arrearage under the office of child support act, 1971 PA
 28 174, MCL 400.231 to 400.240, and the support and parenting time
 29 enforcement act, 1982 PA 295, MCL 552.601 to 552.650, except for

1 any child support or arrearage that erroneously accrued while the
 2 plaintiff was imprisoned. Child support must be deducted from an
 3 award, **or compensation under a compromise or settlement of a claim,**
 4 under this act before the plaintiff receives any of the money from
 5 the award, **compromise, or settlement.** This subsection does not
 6 affect any ongoing child support obligation of the plaintiff.

7 **(14) ~~(12)~~**—This act does not impair or limit the right of a
 8 state or local government to collect a debt of a plaintiff from the
 9 plaintiff's award of compensation, **or compensation under a**
 10 **compromise or settlement of a claim,** under this act.

11 **(15) ~~(13)~~**—An award of compensation, **or compensation under a**
 12 **compromise or settlement of a claim,** under this act is subject to
 13 setoff or reimbursement for damages **received directly by the**
 14 **plaintiff that were** obtained for the wrongful conviction or
 15 imprisonment from any other person **or political subdivision, after**
 16 **the damage award is reduced for attorney fees.**

17 **(16) ~~(14)~~**—If a court determines that a plaintiff was
 18 wrongfully convicted and imprisoned, the court shall enter an order
 19 that provides that any record of the arrest, fingerprints,
 20 conviction, and sentence of the plaintiff related to the wrongful
 21 conviction be expunged from the criminal history record. **The**
 22 **parties may stipulate to the entry of an order under this**
 23 **subsection without an award of compensation under subsection**
 24 **(4) (a).** A document that is the subject of an order entered under
 25 this subsection is exempt from disclosure under the freedom of
 26 information act, 1976 PA 442, MCL 15.231 to 15.246.

27 Sec. 7. (1) An action for compensation under this act must be
 28 commenced within 3 years after **the** entry of a verdict, order, ~~or~~
 29 judgment, **or pardon** as the result of an event described in section

1 ~~4(1)(b).~~ **5(1)(b)** . Any action by this state challenging or appealing
2 a verdict, order, or judgment entered as the result of an event
3 described in section ~~4(1)(b)~~ **5(1)(b)** tolls the 3-year period.

4 (2) An individual convicted, imprisoned, and released from
5 custody before March 29, 2017 must commence an action under this
6 act ~~within 18 months after the effective date of the 2020~~
7 ~~amendatory act that amended this section.~~ **before September 3, 2021.**

8 (3) An individual may, irrespective of any other provision of
9 this act, bring a claim within 18 months after the effective date
10 of the amendatory act that added this subsection, if the individual
11 can show that he or she qualifies for an award as a result of
12 section 5(1)(c)(ii) .