

SENATE BILL No. 98

January 29, 2013, Introduced by Senators BIEDA, JONES, YOUNG, WARREN, ANDERSON, HOPGOOD, KOWALL and CASPERSON and referred to the Committee on Judiciary.

A bill to provide compensation and other relief for individuals wrongfully imprisoned for crimes; to prescribe the powers and duties of certain state governmental officers and agencies; and to provide remedies.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "wrongful imprisonment compensation act".

3 Sec. 2. As used in this act:

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

9 (b) "Plaintiff" means the individual making a claim for

1 compensation under this act. Plaintiff does not include the estate
2 of an individual entitled to make a claim for compensation under
3 this act, the personal representative of the estate, or any heir,
4 devisee, beneficiary, or other person who is entitled under other
5 law to pursue a claim for damages, injury, or death suffered by the
6 individual.

7 (c) "State correctional facility" means a correctional
8 facility maintained and operated by the department of corrections.

9 (d) "This state" means the state of Michigan and its agencies,
10 departments, commissions, and courts. This state does not include a
11 county, township, city, village, school district, district, state
12 authority, or a combination of 2 or more of these entities.

13 Sec. 3. (1) An individual convicted under the law of this
14 state and subsequently imprisoned in a state correctional facility
15 for 1 or more crimes that he or she did not commit may bring an
16 action for compensation against this state in the court of claims
17 as allowed by this act.

18 (2) For purposes of this act, a conviction does not include
19 the acceptance by the court of a guilty plea or a plea of nolo
20 contendere.

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

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

1 (b) The plaintiff's judgment of conviction was reversed or
2 vacated and either the charges were dismissed or on retrial the
3 plaintiff was found to be not guilty. This act does not apply if
4 the plaintiff was convicted of another criminal offense arising
5 from the same transaction and either that offense was not dismissed
6 or the plaintiff was convicted of that offense on retrial.

7 (c) DNA or equally reliable scientific or physical evidence
8 from which the plaintiff's judgment of conviction was entered
9 demonstrates that the plaintiff was not the perpetrator of the
10 crime and was not an accessory to the acts that were the basis of
11 the conviction and results in the reversal or vacation of the
12 judgment of conviction, dismissal of the charges, or finding of not
13 guilty.

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

16 Sec. 5. (1) In an action under this act, the plaintiff is
17 entitled to judgment in the plaintiff's favor if the plaintiff
18 provides clear and convincing evidence to prove all of the
19 following:

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

24 (b) The plaintiff's judgment of conviction was vacated and
25 either the charges were dismissed or the plaintiff was determined
26 upon retrial to be not guilty. This act does not apply if the
27 plaintiff was convicted of another criminal offense arising from

1 the same transaction and either that offense was not dismissed or
2 the plaintiff was convicted of that offense on retrial.

3 (c) DNA or equally reliable scientific or physical evidence
4 from which the plaintiff's judgment of conviction was entered
5 demonstrates that the plaintiff did not perpetrate the crime and
6 was not an accessory to the acts that were the basis of the
7 conviction and results in the reversal or vacation of the charges
8 in the judgment of conviction, dismissal of all of the charges, or
9 a finding of not guilty on all of the charges on retrial.

10 (2) Subject to subsections (4) and (5), if a court finds that
11 a plaintiff was wrongfully convicted and imprisoned, the court
12 shall award compensation as follows:

13 (a) Up to \$60,000.00 for each year from the date the plaintiff
14 was imprisoned until the date the plaintiff was released from
15 prison, regardless of whether the plaintiff was released from
16 imprisonment on parole or because the maximum sentence was served.

17 (b) Economic damages, including, but not limited to, lost
18 wages, costs paid by the plaintiff associated with the plaintiff's
19 criminal defense and efforts to prove his or her innocence, and
20 medical expenses related to the imprisonment required after
21 release.

22 (c) Reasonable attorney fees. The award under this subdivision
23 shall not include any attorney fees or expenses incurred in
24 bringing a previous action that was dismissed. The award under this
25 subdivision shall not be deducted from the compensation awarded the
26 plaintiff, and the plaintiff's attorney is not entitled to receive
27 additional fees from the plaintiff.

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

3 (4) Compensation shall not be awarded under subsection (2) for
4 any time during which the plaintiff was imprisoned under a
5 concurrent or consecutive sentence for another conviction.

6 (5) Compensation shall not be awarded under subsection (2) for
7 any injuries sustained by the plaintiff while imprisoned. The
8 making of a claim or receipt of compensation under this act does
9 not preclude a claim or action for compensation because of injuries
10 sustained by the plaintiff while imprisoned.

11 (6) An award of compensation under this act is not a finding
12 of wrongdoing against anyone. An award of compensation under this
13 act is not admissible in evidence in a civil action that is related
14 to the investigation, prosecution, or conviction that gave rise to
15 the wrongful conviction or imprisonment.

16 (7) The acceptance by the plaintiff of an award under this
17 section, or of a compromise or settlement of the claim, shall be in
18 writing and, unless it is procured by fraud, is final and
19 conclusive on the plaintiff, constitutes a complete release of all
20 claims against this state, and is a complete bar to any action by
21 the plaintiff against this state based on the same subject matter.

22 (8) A compensation award under this section shall not be
23 offset by any of the following:

24 (a) Expenses incurred by this state or any political
25 subdivision of this state, including, but not limited to, expenses
26 incurred to secure the plaintiff's custody or to feed, clothe, or
27 provide medical services for the plaintiff while imprisoned.

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

3 (c) The value of any reduction in fees for services awarded to
4 the plaintiff under this section.

5 (9) If a plaintiff who is awarded compensation under this
6 section recovers damages for the wrongful conviction or
7 imprisonment from any other person, the plaintiff shall reimburse
8 this state for compensation paid under this section to the extent
9 of damages recovered from the other person.

10 (10) If a court determines that a plaintiff was wrongfully
11 convicted and imprisoned, the court shall enter an order that
12 provides that any record of the arrest, fingerprints, conviction,
13 and sentence of the plaintiff related to the wrongful conviction
14 shall be expunged from the criminal history record. A document that
15 is the subject of an order entered under this subsection is exempt
16 from disclosure under the freedom of information act, 1976 PA 442,
17 MCL 15.231 to 15.246.

18 Sec. 7. An action for compensation under this act shall be
19 commenced within 3 years after entry of a verdict, order, or
20 judgment as the result of an event described in section 4(1)(b).
21 Any action by this state challenging or appealing a verdict, order,
22 or judgment entered as the result of an event described in section
23 4(1)(b) tolls the 3-year period. An individual convicted,
24 imprisoned, and released from custody before the effective date of
25 this act shall commence an action under this act within 5 years
26 after the effective date of this act.



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



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

Senate Bill 98 (as introduced 1-29-13)
Sponsor: Senator Steven Bieda
Committee: Judiciary

Date Completed: 12-10-13

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:

- **Require the court to award compensation if it found that a plaintiff was wrongfully convicted and imprisoned.**
- **Require compensation to include up to \$60,000 per year for the period of incarceration; economic damages, including lost wages and other expenses; and reasonable attorney fees.**
- **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 while imprisoned.**
- **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 be final and conclusive and would bar any further action by the plaintiff against the State based on the same matter.**
- **Require a plaintiff who recovered damages for wrongful conviction or imprisonment from any other person to reimburse the State for compensation paid under the Act.**
- **Require a court that determined a plaintiff had been wrongfully convicted and imprisoned to expunge records from the person's criminal history.**
- **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 five years after that date.**

Action for Compensation

Under the proposed Act, 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. For purposes of the Act, a conviction would not include the acceptance by the court of a guilty plea or a plea of nolo contendere (no contest).

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.
- DNA or equally reliable scientific or physical evidence from which the plaintiff's judgment of conviction was entered demonstrated that he or she was not the perpetrator of the crime and was not an accessory to it, and resulted in the reversal or vacation of the conviction, dismissal of the charges, or a finding of not guilty.

The plaintiff would have to verify the complaint.

The plaintiff would be entitled to judgment in his or her favor if he or she provided clear and convincing evidence to prove all of the conditions listed above. Regarding the third condition, a finding of not guilty would have to be on all charges on retrial.

The Act would not apply if the plaintiff 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.

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 up to \$60,000 for each year from the date the plaintiff was imprisoned until the date he or she was released from prison. The plaintiff would be entitled to compensation for that period regardless of whether he or she was released from imprisonment on parole or because the maximum sentence was served.

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

- Economic damages, including lost wages, costs paid by the plaintiff associated with his or her criminal defense and efforts to prove his or her innocence, and medical expenses required after release that were related to the imprisonment.
- Reasonable attorney fees.

The 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.

The award would not be subject to a limit on the amount of damages, except as stated in the 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. An award of compensation 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.
- The value of any services awarded to the plaintiff under the Act.
- The value of any reduction in fees for services awarded to the plaintiff.

If a plaintiff who was awarded compensation under the Act recovered damages for the wrongful conviction or imprisonment from any other person, the plaintiff would have to reimburse the State for compensation paid under the Act to the extent of those damages.

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 (postpone) 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 five years after that date.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State government. In at least one previous wrongful imprisonment case, action was brought against the State and the State settled for \$600,000. Therefore, this bill would not necessarily create a new potential liability for the State, but would formalize the structure under which these compensation lawsuits can proceed. The impact the bill would have on the magnitude of a potential payout relative to the status quo is ambiguous. The formalization could, however, help expedite the proceedings.

The frequency of wrongful convictions that are vacated in the manner detailed in the bill is quite low. Since 2001 when a DNA postconviction testing statute went into effect, three individuals have been exonerated by DNA, according to The Innocence Project at Cooley Law School. In addition to the DNA exonerations, there have been 31 exonerations in Michigan since 1989, according to a data set compiled by University of Michigan Law School and Northwestern Law School faculty members. However, this bill would not apply to all exonerations for various reasons, such as if an individual served probation only, or if a

conviction was vacated based on evidence that was not "DNA or equally reliable scientific or physical evidence". The bill also would not apply in cases in which the plaintiff was convicted of another criminal offense arising from the same transaction and that conviction was not dismissed or the plaintiff was convicted on retrial.

Despite the low frequency, the compensation awarded in such cases can be several million dollars. Therefore, the budgetary impact could be nontrivial, but it would be highly variable based on whether a case occurred in a given year.

The bill would not have an impact on local government. This does not mean that local government does not have liability in wrongful imprisonment cases; it just means that the status quo would be maintained. In fact, in two DNA-based cases in which compensation was awarded, the local entities, the City of Detroit and Clinton Township, paid out \$3.25 million and \$3.7 million, respectively.

Fiscal Analyst: Dan O'Connor

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, 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 it, 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. 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 its 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.

S1314\98sa

This analysis was compiled from several sources each prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

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 exonerees' 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.

Opposing Argument

The current iteration of legislation to create the Wrongful Imprisonment Compensation Act only applies to exonerations based on DNA or "equally reliable scientific or physical evidence" and thus excludes erroneous convictions not based on faulty DNA testing. The following story from committee testimony shows why application of the bill should be broadened:

Quentin Carter's wrongful conviction and imprisonment was due to a lie told by the victim. Mr. Carter was convicted at the age of 16 of the rape of a 10-year-old based entirely on her testimony. He served over 17 years of a 6-20-year sentence before being released on parole. He was cleared in 2015 when the victim, now an adult, felt safe to tell the truth (though records show she had on two occasions told prosecutors Mr. Carter was innocent but was not believed). The man who had raped her was her mother's boyfriend at the time. Under ongoing threats of violence against her, her mother, and her siblings, the victim had been forced to implicate Mr. Carter against her will and to keep silent until the true perpetrator was eventually arrested and imprisoned for murder in a separate case.

Opposing Argument

While this bill does not apply to convictions determined by a guilty plea or a plea of nolo contendere, and rightly so, many states who provide compensation for wrongful convictions also exclude cases in which a person otherwise contributed to his or her conviction. For instance, tampering with evidence or an eye witness, deliberately misleading the police, or otherwise implicating themselves should be barriers to obtaining compensation under the act. There is also no mention for those who pled guilty because they were coerced, tricked, or misled into confessing when innocent, or subjected to police or prosecutorial misconduct. These people should still be eligible to apply for compensation if they can prove they were innocent of the charge.

Opposing Argument

While this bill may be well intentioned, there are too many areas of ambiguity or elements that should be added. These include:

- A provision allowing the wrongfully convicted plaintiff access to the reentry services convicts on parole receive.
- The requirement that if the plaintiff was convicted of an assaultive crime or misdemeanor, the victim of the crime should be notified of the plaintiff's request for compensation.
- How much should be awarded for only serving a portion of a year.
- Whether the compensation is subject to taxes or child support.
- How the state should budget the funds intended for compensation or what should happen if there is not enough money budgeted.