

# SENATE BILL No. 1456

September 9, 2008, Introduced by Senators SCOTT and CLARK-COLEMAN and referred to the Committee on Judiciary.

A bill to provide compensation to individuals who are wrongfully incarcerated for crimes; to make appropriations for the compensation of wrongfully incarcerated individuals; to provide for the powers and duties of certain state and local governmental officers and entities; 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 "victims of wrongful incarceration compensation act".

3           Sec. 2. As used in this act:

4           (a) "Board" means the state administrative board created by  
5 section 1 of 1921 PA 2, MCL 17.1.

6           (b) "Felony", except as defined otherwise in this act, means

1 an offense under the laws of this state that is punishable by  
2 imprisonment for more than 1 year.

3 (c) "Governmental agencies of this state" means this state and  
4 political subdivisions of this state, as "state" and "political  
5 subdivision" are defined in section 1 of 1964 PA 170, MCL 691.1401.

6 (d) "Petitioner" means the individual who files an action  
7 under section 3.

8 (e) "Prosecuting attorney" means that term as defined in  
9 section 1 of chapter VIIA of the code of criminal procedure, 1927  
10 PA 175, MCL 767A.1.

11 (f) "Sentencing court" means the court that sentenced the  
12 petitioner for the felony conviction.

13 (g) "SOAHR" means the state office of administrative hearings  
14 and rules created by Executive Reorganization Order No. 2005-1, MCL  
15 445.2021.

16 Sec. 3. (1) Subject to subsection (2), an individual is  
17 eligible for compensation under this act if the individual was  
18 convicted of and incarcerated for a felony and both of the  
19 following are applicable:

20 (a) The conviction is vacated by a court.

21 (b) The individual did not commit the felony or aid, abet, or  
22 act as an accomplice or accessory to a person who committed the  
23 felony.

24 (2) An individual is not eligible for compensation under this  
25 act if any of the following are true:

26 (a) Before the individual's incarceration, the individual was  
27 convicted of or, regardless of adjudication, pled guilty or nolo

1    contendere to another felony.

2           (b) During the individual's incarceration, the individual was  
3 convicted of or, regardless of adjudication, pled guilty or nolo  
4 contendere to another felony.

5           (c) During the individual's incarceration, the individual was  
6 serving a concurrent sentence for another felony for which the  
7 individual was not wrongfully convicted.

8           (3) As used in subsection (2), "felony" includes a crime  
9 committed in another state, the elements of which would constitute  
10 a felony in this state, or a crime designated as a felony under the  
11 laws of the United States. As used in subsection (2), felony does  
12 not include an offense committed by a juvenile over which a court  
13 has jurisdiction under section 2 of chapter XIIIA of the probate  
14 code of 1939, 1939 PA 288, MCL 712A.2, or a similar law of another  
15 state or the United States.

16           Sec. 5. (1) An individual may bring an action claiming that he  
17 or she is eligible for compensation under this act by filing a  
18 complaint with the sentencing court. The petitioner shall make the  
19 complaint under oath and state all of the following in the  
20 complaint:

21           (a) That there is verifiable and substantial evidence that the  
22 individual is entitled to compensation under section 3(1).

23           (b) With particularity, the nature and significance of the  
24 evidence on which the individual relies in making the statement  
25 under subdivision (a).

26           (c) That the individual is not disqualified under section  
27 3(2).

1           (2) The petitioner shall file a complaint under this section  
2 within 1 of the following time periods:

3           (a) If the conviction is vacated by an order that became final  
4 on or after the effective date of this act, within 90 days after  
5 the order vacating the conviction becomes final.

6           (b) If the conviction is vacated by an order that became final  
7 before the effective date of this act, within 2 years after the  
8 effective date of this act.

9           Sec. 7. A petitioner shall promptly serve a copy of the  
10 complaint on the prosecuting attorney who prosecuted the felony  
11 case. The prosecuting attorney shall respond to the complaint  
12 within 30 days after the prosecuting attorney receives the  
13 complaint. The prosecuting attorney shall do 1 of the following in  
14 the response:

15           (a) Certify to the sentencing court that, based on the  
16 complaint and verifiable and substantial evidence of actual  
17 innocence, no further criminal proceedings in the case can or will  
18 be initiated by the prosecuting attorney, that no questions of fact  
19 remain as to the petitioner's wrongful incarceration, and that the  
20 petitioner is eligible to seek compensation under section 3(2).

21           (b) Contest the nature, significance, or effect of the  
22 evidence of the petitioner's innocence, the facts related to the  
23 petitioner's incarceration, or the petitioner's eligibility to seek  
24 compensation under section 3(2).

25           Sec. 9. (1) If the prosecuting attorney makes a certification  
26 under section 7(a) and if the sentencing court determines, based on  
27 the complaint and the prosecuting attorney's certification, that

1 the petitioner has presented clear and convincing evidence that the  
2 petitioner is eligible for compensation under section 3(1), the  
3 court shall enter its order certifying to the board that the  
4 petitioner is eligible for compensation under section 3(1) and that  
5 the prosecuting attorney certifies that the petitioner is eligible  
6 for compensation under section 3(2).

7 (2) If the prosecuting attorney contests the petitioner's  
8 claim under section 7(b), the sentencing court shall determine,  
9 based on the complaint, the prosecuting attorney's response, and  
10 any supporting documentation, whether, by a preponderance of the  
11 evidence, the petitioner is eligible for compensation under section  
12 3(2), regardless of eligibility under section 3(1). If the court  
13 determines that the petitioner is ineligible under section 3(2), it  
14 shall dismiss the complaint.

15 (3) If the sentencing court determines under subsection (2)  
16 that the petitioner is eligible for compensation under section  
17 3(2), the court shall state its determination in writing and  
18 transfer the complaint to SOAHR for findings of fact and a  
19 recommendation under section 11.

20 Sec. 11. (1) An action transferred under section 9 shall be  
21 determined by a hearings officer appointed by SOAHR to make a  
22 determination of the petitioner's eligibility for compensation  
23 under section 3(1). The transferred action shall be conducted under  
24 procedures applicable in a contested case under chapter 4 of the  
25 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to  
26 24.287, to the extent that the procedures under that chapter do not  
27 conflict with this act.

1           (2) A hearing shall be held in a case under this section  
2 within 120 days after the transfer. The prosecuting attorney may  
3 appear at the hearing to contest the evidence presented by the  
4 petitioner or the significance or effect of the evidence.

5           (3) In a case under this section, the petitioner has the  
6 burden of establishing his or her eligibility for compensation  
7 under section 3(1) by clear and convincing evidence.

8           (4) Within 45 days after the hearing under this section, the  
9 hearings officer shall issue an opinion containing findings and a  
10 recommendation and shall file the opinion with the sentencing  
11 court.

12           (5) The sentencing court shall review the findings and  
13 recommendation contained in the opinion issued under subsection (4)  
14 and, within 60 days after the opinion is issued, shall enter its  
15 order adopting or declining to adopt the findings and  
16 recommendation of the hearing officer.

17           (6) If, after making its review under subsection (5), the  
18 sentencing court concludes that the petitioner is eligible for  
19 compensation under section 3(1), the court shall certify all of the  
20 following to the board in its order:

21           (a) Either of the following:

22           (i) That the opinion of the hearings officer finds that the  
23 petitioner has met the burden of establishing by clear and  
24 convincing evidence that the petitioner is entitled to compensation  
25 under section 3(1).

26           (ii) That the court declines to adopt the findings and  
27 recommendation of the hearings officer and finds that the

1 petitioner has met the burden of establishing by clear and  
2 convincing evidence that the petitioner is entitled to compensation  
3 under section 3(1).

4 (b) That the court has determined that the findings and  
5 recommendations on which its order is based are supported by  
6 competent, substantial evidence.

7 Sec. 13. (1) An individual who a sentencing court determines  
8 under section 9 or 11 to be eligible for compensation under this  
9 act may file an application for compensation with the board as  
10 required in this section. A personal representative of the estate  
11 of a decedent is not entitled to apply on behalf of the decedent  
12 for compensation under this section.

13 (2) An individual shall apply to the board under this section  
14 within 2 years after the sentencing court enters its order under  
15 section 9 or 11 determining that the individual is eligible for  
16 compensation under this act.

17 (3) The board may adopt rules regarding the forms and  
18 procedures related to applications for compensation under this  
19 section.

20 (4) An application under this section shall include all of the  
21 following:

22 (a) A certified copy of the order vacating the conviction.

23 (b) A certified copy of the sentencing court's order under  
24 section 9 or 11 determining the applicant to be eligible for  
25 compensation.

26 (c) Certified copies of the original judgment and sentence.

27 (d) Documentation demonstrating the length of the sentence

1 served, including documentation from the department of corrections  
2 regarding the applicant's admission into and release from the  
3 custody of the department of corrections.

4 (e) Positive proof of identification, including 2 full sets of  
5 fingerprints administered by a law enforcement agency and a current  
6 form of photo identification, demonstrating that the applicant is  
7 the individual who was wrongfully incarcerated.

8 (f) Documentation of any fine, penalty, or court costs that  
9 were imposed on and paid by the individual.

10 (g) Documentation of any reasonable attorney fees and expenses  
11 described in section 15.

12 (h) Any other documentation, evidence, or information required  
13 by rules adopted by the board.

14 (5) The board shall forward the fingerprints of the applicant  
15 to the department of state police. The department shall conduct a  
16 check of the criminal records of this state and shall forward the  
17 second set of fingerprints to the federal bureau of investigation  
18 for national criminal records checks. The department of state  
19 police shall submit results of the state and national criminal  
20 records checks to the board.

21 (6) On receipt of an application under this section, the board  
22 shall examine the application and notify the applicant within 30  
23 days of any error or omission and request any additional  
24 information relevant to the review of the application. The  
25 applicant may supplement the application within 15 days after  
26 notification under this subsection. The board shall not deny an  
27 application because the applicant failed to correct an error or

1 omission or supply additional information unless the board timely  
2 notified the applicant of the error or omission or requested  
3 additional information under this subsection.

4 (7) The board shall process and review each completed  
5 application within 90 days. Within 5 business days after the board  
6 determines whether the claim for compensation meets the  
7 requirements of this act, the board shall notify the applicant of  
8 its determination.

9 (8) Within 15 days after issuing notice to an applicant under  
10 subsection (6), the board shall determine the compensation to which  
11 an applicant is entitled under section 15 and shall notify the  
12 state treasurer to satisfy the claim of the applicant from  
13 appropriations as provided in section 17.

14 Sec. 15. (1) Except as otherwise provided in this act and  
15 subject to the limitations and procedures prescribed in this  
16 section, an individual who the board finds to be entitled to  
17 compensation under section 13 is entitled to all of the following:

18 (a) \$50,000.00 for each year of wrongful incarceration,  
19 prorated as necessary to account for a portion of a year. Beginning  
20 as soon as practicable after January 1, 2009 and January 1 of each  
21 subsequent year, the state treasurer shall adjust the amount  
22 applicable for the preceding year by an amount determined by the  
23 state treasurer to reflect the cumulative annual percentage change  
24 in the consumer price index. As used in this subsection, "consumer  
25 price index" means the most comprehensive index of consumer prices  
26 available for this state from the bureau of labor statistics of the  
27 United States department of labor.

1 (b) A waiver of tuition and fees for up to 120 hours of  
2 instruction at a community college or state institution of higher  
3 education, if the individual meets and maintains the regular  
4 admission requirements of the community college or institution,  
5 remains registered at the community college or institution, and  
6 makes satisfactory academic progress as defined by the community  
7 college or institution.

8 (c) The amount of any fine, penalty, or court costs imposed on  
9 and paid by the individual.

10 (d) The amount of any reasonable attorney fees and expenses  
11 incurred and paid by the individual in connection with all criminal  
12 proceedings and appeals related to the wrongful conviction.

13 (2) The total compensation awarded under subsection (1)(a),  
14 (c), and (d) shall not exceed \$2,000,000.00. This state shall not  
15 award an additional amount for attorney fees, lobbying fees, costs,  
16 or other similar expenses.

17 (3) In calculating compensation under subsection (1)(a), if  
18 the individual was paroled or transferred to a community  
19 residential program or electronic monitoring program while serving  
20 the sentence for the wrongful conviction and committed an offense  
21 that resulted in revocation of the parole or transfer from the  
22 community residential program or electronic monitoring program to a  
23 state correctional facility, if the offense was not a felony, the  
24 individual shall be compensated for the total number of years  
25 incarcerated. If the offense was a felony, the individual is  
26 ineligible for any compensation under subsection (1).

27 Sec. 17. (1) After receiving notice from the board under

1 section 13, the state treasurer shall draw a warrant on the general  
2 fund or another source designated by the legislature in law for the  
3 purchase of an annuity for the applicant based on the total amount  
4 determined by the board under section 15.

5 (2) The state treasurer shall purchase an annuity under this  
6 section that provides all of the following:

7 (a) A 10-year term.

8 (b) A prohibition on the sale, discounting, or use of the  
9 annuity as security for a loan or mortgage by the applicant.

10 (c) Continued disbursement of the annuity to beneficiaries if  
11 the applicant dies during the term of the annuity.

12 (3) Before the state treasurer draws a warrant for the  
13 purchase of an annuity under this section, the applicant shall sign  
14 a release and waiver on behalf of the applicant and his or her  
15 heirs, successors, and assigns forever releasing all governmental  
16 agencies of this state from all present or future claims that the  
17 applicant or his or her heirs, successors, or assigns may have  
18 against any governmental agencies of this state arising out of the  
19 conviction for which compensation is being sought under this act.  
20 The state treasurer shall not issue a warrant under this section  
21 until the release and waiver are provided to the treasurer.

22 Sec. 17. An amount sufficient to pay compensation awarded  
23 under this act during the fiscal year ending September 30, 2009 is  
24 appropriated from the general fund for the fiscal year ending  
25 September 30, 2009.

26 Sec. 19. (1) An individual shall not file a complaint or  
27 submit an application for compensation under this act if the

1 individual has an action pending against any governmental agencies  
2 of this state in state or federal court that requests compensation  
3 in relation to the individual's conviction or incarceration.

4 (2) An individual who files a complaint or application under  
5 this act is not entitled to an appeal or other determination of  
6 issues decided under this act except as provided in this act.

7 (3) Payment under this act is not a waiver of a defense of  
8 governmental or sovereign immunity and does not increase the  
9 liability of this state or any person under 1964 PA 170, MCL  
10 691.1401 to 691.1419.