

**SUBSTITUTE FOR
SENATE BILL NO. 291**

A bill to provide compensation and other relief for individuals wrongfully imprisoned for crimes; to prescribe the powers and duties of certain state and local 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) "New evidence" means any evidence that was not presented

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1 in the proceedings leading to plaintiff's conviction, 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. New evidence does
5 not include a recantation by a witness unless there is other
6 evidence to support the recantation or unless the prosecuting
7 attorney for the county in which the plaintiff was convicted or, if
8 the department of attorney general prosecuted the case, the
9 attorney general agrees that the recantation constitutes new
10 evidence without other evidence to support the recantation.

11 (c) "Plaintiff" means the individual making a claim for
12 compensation under this act. Plaintiff does not include the estate
13 of an individual entitled to make a claim for compensation under
14 this act, the personal representative of the estate, or any heir,
15 devisee, beneficiary, or other person who is entitled under other
16 law to pursue a claim for damages, injury, or death suffered by the
17 individual.

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

20 (e) "This state" means the state of Michigan and its [political
subdivisions, and the] agencies,
21 departments, commissions, and courts [of this state and its political
22 subdivisions.

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24 Sec. 3. An individual convicted under the law of this state
25 and subsequently imprisoned in a state correctional facility for 1
26 or more crimes that he or she did not commit may bring an action
27 for compensation against this state in the court of claims as

1 allowed by this act.

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

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

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

12 (c) New evidence demonstrates that the plaintiff was not the
13 perpetrator of the crime or crimes and was not an accessory or
14 accomplice to the acts that were the basis of the conviction and
15 resulted in a reversal or vacation of the judgment of conviction,
16 dismissal of the charges, finding of not guilty, or gubernatorial
17 pardon.

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

20 (3) A copy of a complaint filed under this section must be
21 served on the attorney general and on the prosecuting attorney for
22 the county in which the plaintiff was convicted. The attorney
23 general and the prosecuting attorney may answer and contest the
24 complaint.

25 (4) If the plaintiff's conviction was for an assaultive crime
26 or a serious misdemeanor, the prosecuting attorney shall notify the
27 victim of the assaultive crime or serious misdemeanor of the

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

9 (5) The plaintiff, the attorney general, and the prosecuting
10 attorney for the county in which the plaintiff was convicted may
11 conduct discovery in an action under this act.

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

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

19 (b) The plaintiff's judgment of conviction was reversed or
20 vacated and either the charges were dismissed or the plaintiff was
21 determined on retrial to be not guilty. However, the plaintiff is
22 not entitled to compensation under this act if the plaintiff was
23 convicted of another criminal offense arising from the same
24 transaction and either that offense was not dismissed or the
25 plaintiff was convicted of that offense on retrial.

26 (c) New evidence demonstrates that the plaintiff did not
27 perpetrate the crime and was not an accomplice or accessory to the

1 acts that were the basis of the conviction, results in the reversal
2 or vacation of the charges in the judgment of conviction or a
3 gubernatorial pardon, and results in either dismissal of all of the
4 charges or a finding of not guilty on all of the charges on
5 retrial.

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

9 (a) Fifty thousand dollars for each year from the date the
10 plaintiff was imprisoned until the date the plaintiff was released
11 from prison, regardless of whether the plaintiff was released from
12 imprisonment on parole or because the maximum sentence was served.
13 For incarceration of less than a year in prison, this amount is
14 prorated to $1/365$ of \$50,000.00 for every day the plaintiff was
15 incarcerated in prison.

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

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

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

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

26 (iii) The attorney fees must not exceed 10% of the total
27 amount awarded under subdivisions (a) and (b) or \$50,000.00,

1 whichever is less, plus expenses.

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

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

8 (4) Compensation may not be awarded under subsection (2) for
9 any time during which the plaintiff was imprisoned under a
10 concurrent or consecutive sentence for another conviction.

11 (5) Compensation may not be awarded under subsection (2) for
12 any injuries sustained by the plaintiff while imprisoned. The
13 making of a claim or receipt of compensation under this act does
14 not preclude a claim or action for compensation because of injuries
15 sustained by the plaintiff while imprisoned.

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

22 (7) An award of compensation under this act is not a finding
23 of wrongdoing against anyone. An award of compensation under this
24 act is not admissible in evidence in a civil action that is related
25 to the investigation, prosecution, or conviction that gave rise to
26 the wrongful conviction or imprisonment.

27 (8) The acceptance by the plaintiff of an award under this

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1 act, or of a compromise or settlement of the claim, must be in
2 writing and, unless it is procured by fraud, is final and
3 conclusive on the plaintiff, constitutes a complete release of all
4 claims against this state, and is a complete bar to any action [in state
court] by
5 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 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]

6 (9) A compensation award under subsection (2) may not be
7 offset by any of the following:

8 (a) Expenses incurred by this state or any political
9 subdivision of this state, including, but not limited to, expenses
10 incurred to secure the plaintiff's custody or to feed, clothe, or
11 provide medical services for the plaintiff while imprisoned,
12 including expenses required to be collected under the state
13 correctional facility reimbursement act, 1935 PA 253, MCL 800.401
14 to 800.406. The attorney general is specifically excused from
15 complying with the state correctional facility reimbursement act,
16 1935 PA 253, MCL 800.401 to 800.406.

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

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

21 (10) An award under subsection (2) is not subject to income
22 taxes.

23 (11) A compensation award under this act is subject to the
24 payment of child support, including child support arrearages, owed
25 by the plaintiff. The plaintiff remains liable for any child
26 support or arrearage under the office of child support act, 1971 PA
27 174, MCL 400.231 to 400.240, and the support and parenting time

1 enforcement act, 1982 PA 295, MCL 552.601 to 552.650, except for
2 any child support or arrearage that erroneously accrued while the
3 plaintiff was imprisoned. Child support must be deducted from an
4 award under this act before the plaintiff receives any of the money
5 from the award. This subsection does not affect any ongoing child
6 support obligation of the plaintiff.

7 (12) This act does not impair or limit the right of a state or
8 local government to collect a debt of a plaintiff from the
9 plaintiff's award of compensation under this act.

10 (13) An award of compensation under this act is subject to
11 setoff or reimbursement for damages obtained for the wrongful
12 conviction or imprisonment from any other person.

13 (14) If a court determines that a plaintiff was wrongfully
14 convicted and imprisoned, the court shall enter an order that
15 provides that any record of the arrest, fingerprints, conviction,
16 and sentence of the plaintiff related to the wrongful conviction be
17 expunged from the criminal history record. A document that is the
18 subject of an order entered under this subsection is exempt from
19 disclosure under the freedom of information act, 1976 PA 442, MCL
20 15.231 to 15.246.

21 Sec. 6. (1) The wrongful imprisonment compensation fund is
22 created as a separate fund in the state treasury.

23 (2) The state treasurer may receive money or other assets from
24 any source for deposit into the wrongful imprisonment compensation
25 fund.

26 (3) The state treasurer shall direct the investment of the
27 wrongful imprisonment compensation fund. The state treasurer shall

1 credit to the fund interest and earnings from fund investments.

2 (4) The department of treasury is the administrator of the
3 wrongful imprisonment compensation fund for auditing purposes.

4 (5) The state treasurer shall expend money from the wrongful
5 imprisonment compensation fund only for the purpose of paying
6 claims authorized under this act and costs of administration. The
7 state treasurer shall pay money from the fund in amounts and at the
8 times as ordered by the courts under this act.

9 (6) Money in the wrongful imprisonment compensation fund at
10 the close of the fiscal year must remain in the fund and not lapse
11 to the general fund.

12 (7) If there is insufficient money in the wrongful
13 imprisonment compensation fund to pay claims as ordered under this
14 act, the state treasurer shall pay claims that are ordered but not
15 paid if money becomes available in the fund, and pay those claims
16 before subsequently ordered claims. The state treasurer shall
17 develop and implement a process to notify the legislature that
18 money in the fund may be insufficient to cover future claims when
19 the state treasurer reasonably believes that within 60 days the
20 money in the fund will be insufficient to pay claims. The process
21 shall, at a minimum, do all of the following:

22 (a) Identify a specific date by which the money in the fund
23 will become insufficient to pay claims.

24 (b) Outline a clear process indicating the order in which
25 claims pending with the fund will be paid.

26 (c) Outline a clear process indicating the order in which
27 claims that were pending with the fund when money became

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1 insufficient will be paid, if money subsequently becomes available.

2 (8) Any compensation under this act must be paid from the
3 wrongful imprisonment compensation fund and not from any state
4 department's or agency's annual budget or current funding.

5 Sec. 7. An action for compensation under this act must be
6 commenced within 3 years after entry of a verdict, order, or
7 judgment as the result of an event described in section 4(1)(b).
8 Any action by this state challenging or appealing a verdict, order,
9 or judgment entered as the result of an event described in section
10 4(1)(b) tolls the 3-year period. An individual convicted,
11 imprisoned, and released from custody before the effective date of
12 this act must commence an action under this act within 18 months
13 after the effective date of this act.

14 Enacting section 1. This act takes effect 90 days after the
15 date it is enacted into law.

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