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BILL



ANALYSIS

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Senate Bill 61 (Substitute S-1 as reported)
Sponsor: Senator Steven Bieda
Committee: Judiciary

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 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 following:

- He or she was convicted under State law, was sentenced to a State correctional facility, and served at least part of that sentence.
- The conviction was vacated and either the charges were dismissed or the plaintiff was determined upon retrial to be not guilty.
- DNA or other equally reliable scientific or physical evidence from which the plaintiff's conviction was entered demonstrated that he or she did not perpetrate the crime and was not an accessory to the acts that were the basis of the conviction.

Compensation would have to include up to \$60,000 per year for the period of incarceration; 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 imprisonment-related medical expenses required after release; and reasonable attorney fees.

The bill also would do the following:

- 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.

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".

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.

Date Completed: 7-30-12

Fiscal Analyst: Dan O'Connor

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