

Legislative Analysis



WRONGFUL IMPRISONMENT COMPENSATION ACT; REENTRY SERVICES FOR CERTAIN EX-PRISONERS

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**House Bill 5815 (reported from committee w/o amendment)
Sponsor: Rep. Stephanie Chang**

Analysis available at
<http://www.legislature.mi.gov>

**Senate Bill 291 (reported from House committee without amendment)
Sponsor: Sen. Steven Bieda**

**House Committee: Criminal Justice
Senate Committee: Judiciary (SB 291)
Complete to 11-16-16**

BRIEF SUMMARY: House Bill 5815 will require the Department of Corrections (DOC) to provide certain services, for a limited time, to a person who is released from prison because a conviction or sentence is reversed, vacated, or overturned. These services will be similar to those provided to persons released on parole.

Senate Bill 291 will create the Wrongful Imprisonment Compensation Act to allow individuals who had been convicted under a state law and subsequently imprisoned in a state correctional facility for one or more crimes that they did not commit to bring an action against the state in the Court of Claims to seek compensation for that wrongful imprisonment. Compensation would be paid from the newly created Wrongful Imprisonment Compensation Fund and not from any state department's or agency's annual budget or current funding.

Both bills take effect 90 days after enactment.

FISCAL IMPACT: The bills will have fiscal implications for state and local units of government.

THE APPARENT PROBLEM:

Thirty states, the District of Columbia, and the federal government have enacted some form of statutory compensation for people who were wrongfully incarcerated. The compensation enables these innocents to begin to rebuild their lives. Some feel that Michigan should also compensate those who have had their lives disrupted by a wrongful conviction and incarceration.

In a related matter, if these persons really had been guilty and were newly released on parole, they would be eligible for a wide array of services as part of the Michigan Prisoner Reentry Initiative (MPRI). (The MPRI, with its goal of reducing crime by helping parolees obtain employment and self-sufficiency, facilitates reintegration into the community by implementing a seamless plan of services through collaboration between state agencies and regional entities.) Parolees can receive job skills training, assistance with transportation, help with obtaining personal identification necessary to get a driver's license or state

identification card, housing expense assistance, and help getting a job. An exoneree receives none of this assistance. Often, they find themselves alone and without resources to rebuild their lives. Some believe that the law should be changed to allow exonerees to receive services similar to those offered to parolees to help them jumpstart their reintegration into their communities.

THE CONTENT OF THE BILLS:

Senate Bill 291

The bill creates the Wrongful Imprisonment Compensation Act.

To whom the bill applies:

Under the Wrongful Imprisonment Compensation Act, a person who had been convicted under a state 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 against the state in the Court of Claims to seek compensation for that wrongful imprisonment. Only the person who had been convicted and imprisoned may bring the action, as the bill defines the term "plaintiff" to mean the individual making a claim for compensation under the act and specifically excludes from the definition the estate of that individual, the personal representative of the estate, or any heir, devisee, beneficiary, or other person entitled under other laws to pursue a claim for damages, injury, or death suffered by the individual.

If enacted, the new act will apply both to persons who were wrongfully convicted *before* the act becomes law as well as to persons who are found to be wrongfully convicted *after* the act becomes law.

Time period in which to file claims:

The window in which to file a claim under the bill will depend on the person's status at the time the bill is enacted into law.

An individual who had been convicted, imprisoned, and released from custody *before* the bill became law must commence an action within 18 months of the bill's effective date.

After the bill takes effect, an action for compensation must be commenced within three years after entry of a verdict, order, or judgment that reverses or vacates the conviction with the charges being dismissed or the person being found not guilty on retrial. If the state challenges or appeals the verdict, order, or judgment, the three-year period will be tolled (meaning the time it takes to resolve the challenge or appeal is not counted towards the three years).

Documentation for complaint/entitlement to receive compensation:

To be entitled to receive compensation under the act, the person filing the action (hereinafter "plaintiff") must attach certain documentation to a verified complaint that establishes all of the following, and also must prove all of the following by clear and convincing evidence:

- ❖ The plaintiff was convicted of one or more state crimes and was sentenced to and served at least part of that sentence in a state correctional facility.
- ❖ The conviction was reversed or vacated and either the charges dismissed or upon retrial the plaintiff was determined to be not guilty.

There would be no entitlement to compensation if the plaintiff had been convicted of another criminal offense arising from the same transaction and either that offense was not dismissed or the plaintiff was convicted of that offense on retrial.

- ❖ New evidence demonstrates the plaintiff did not perpetrate the crime and was not an accomplice or accessory to the acts that were the basis of the conviction; the new evidence results in the reversal or vacation of the charges in the judgment of conviction or a gubernatorial pardon; and the new evidence results in either dismissal of the charges or a finding of not guilty on retrial.

The term "new evidence" is defined to mean any evidence not presented in the proceedings leading to the plaintiff's conviction, including new testimony, expert interpretation, results of DNA testing, or other test results relating to evidence that had been presented in the proceedings leading to the plaintiff's conviction.

New evidence *would not include* a recantation by a witness *unless* there was other evidence to support the recantation *or unless* the prosecuting attorney for the county in which the plaintiff had been convicted or the Department of Attorney General (if the attorney general had prosecuted the case) agrees that the recantation constitutes new evidence without other evidence to support it.

A copy of a complaint for compensation under the bill must be served on the attorney general and on the prosecuting attorney for the county in which the plaintiff had been convicted; both would have an opportunity to answer and contest the complaint.

If the conviction had been for an assaultive crime or a serious misdemeanor, the victim would have to be notified in the same manner as is required for an application to have a conviction set aside in accordance with provisions of the William Van Regenmorter Crime Victim's Rights Act. The victim or victim's representative would have the right to appear at any proceeding concerning the complaint for compensation and to make a written or oral statement.

Further, discovery could be conducted in an action filed under the act by the plaintiff, attorney general, or prosecuting attorney for the county in which the plaintiff had been convicted.

Compensation:

If a court finds that a plaintiff was wrongfully convicted and imprisoned, the court must award compensation as follows:

- ❖ \$50,000 for each year of imprisonment (calculated from the date imprisoned until the date released from prison), regardless of whether the plaintiff had been released on parole or had served the maximum sentence. For a period of incarceration that was less than one year, the amount would be prorated to 1/365 of \$50,000 for every day of incarceration.
- ❖ Reimbursement of any amount awarded and collected by the state under the State Correctional Facility Reimbursement Act.
- ❖ Reasonable attorney fees incurred in an action to obtain compensation under the bill. All of the following apply to attorney fees under the act:
 - The court could not award attorney fees unless the plaintiff actually paid the amount awarded to the attorney.
 - Payment of attorney fees by the plaintiff would not be necessary before an initial award under the act. The court could award attorney fees on a motion brought after the initial award.
 - The attorney fees would be capped at 10 percent of the total amount awarded for the period of imprisonment and reimbursement under the State Correctional Facility Reimbursement Act, whichever is less, plus expenses.
 - The attorney fees could not be deducted from the compensation awarded to the plaintiff, and the plaintiff's attorney will not be entitled to receive additional fees from the plaintiff.

The compensation awarded above would not be subject to a limit on the amount of damages except as provided in the act, could not be awarded for any time during which the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction, or for any injuries sustained while imprisoned (though a separate action for compensation because of injuries sustained during the imprisonment could be filed).

A court will have discretion to order the total amount awarded for the period of imprisonment and reimbursement under the State Correctional Facility Reimbursement Act to be paid to the plaintiff in a single payment or in multiple payments. If multiple payments, the initial payment must be at least 20 percent of the total amount awarded, with the remainder of the payments being made over time but not to exceed 10 years.

An award of compensation is not a finding of wrongdoing against anyone and is not admissible in evidence in a civil action related to the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.

Acceptance of an award under the act, or of a compromise or settlement of the claim, must be in writing and—unless procured by fraud—is final and conclusive on the plaintiff, constitutes a complete release of all claims against the state, and is a complete bar to any action against the state based on the same subject matter.

An award under the act is not subject to income taxes.

An award is subject to setoff or reimbursement for damages obtained for the wrongful conviction or imprisonment from any other person. However, a compensation award cannot be offset by any of the following:

- ❖ Expenses incurred by the state or a local government, which include, but are not limited to, securing the plaintiff's custody or to feed, clothe, or provide medical services while the plaintiff was imprisoned (this includes expenses required to be collected under the State Correctional Facility Reimbursement Act; under the bill, the attorney general is specifically excused from complying with that Act).
- ❖ The value of any services awarded to the plaintiff under Section 5 of the act.
- ❖ The value of any reduction in fees for services awarded to the plaintiff under the act.

A compensation award is subject to the payment of child support, including child support arrearages. The plaintiff remains liable for child support or arrearages except for that erroneously accrued while the plaintiff was imprisoned. Child support must be deducted from an award before the plaintiff receives any money from it. The plaintiff's ongoing child support obligations, if any, will not be affected by this provision.

The act does not impair or limit the right of a state or local government to collect a debt of the plaintiff from any award of compensation.

Wrongful Imprisonment Compensation Fund:

The act creates the Wrongful Imprisonment Compensation Fund within the Michigan Department of Treasury, which will be the administrator of the Fund for auditing purposes. The act authorizes the state treasurer to receive money or other assets from any source for deposit into the Fund and also designates the treasurer to direct the investment of the fund. Interest and earnings from fund investments must be credited to the Fund.

Any compensation under the act must be paid from the Fund and not from any state department's or agency's annual budget or current funding.

Expenditures from the Fund will be restricted to paying claims authorized under the act and costs of administration; the treasurer will pay money from the Fund in amounts and at the times as ordered by the courts under the act.

Money in the Fund at the close of a fiscal year must remain in the Fund and not lapse to the state general fund.

Should there be insufficient money in the Fund to pay court-ordered claims, the treasurer must pay claims that have been ordered but not paid if money becomes available, and pay those claims before claims that were ordered later. The treasurer must also develop and implement a process to notify the Legislature that money in the Fund may be insufficient to cover future claims when he or she reasonably believes that within 60 days the money in the Fund will be insufficient to pay claims.

At a minimum, the process must identify a specific date by which the money in the Fund will become insufficient to pay claims as well as outline a clear process indicating the order in which pending claims will be paid and indicating the order in which claims that were pending when the money became insufficient will be paid should money subsequently become available.

Miscellaneous:

If the plaintiff is determined to have been wrongfully convicted and imprisoned, the court must enter an order providing that any record of the arrest, fingerprints, conviction, and sentence related to the wrongful conviction be expunged from the criminal record history; a document that is the subject of an order entered under this provision is exempt from disclosure under the Freedom of Information Act.

House Bill 5815

House Bill 5815 amends a section of the Corrections Code that previously repealed Act No. 4 of the Public Acts of the Second Extra Session of 1947 (MCL 791.283). That language will be deleted and instead new language added to require the DOC to provide all of the following to a prisoner who is discharged from custody prior to the maximum discharge date without being granted parole because a conviction or sentence has been reversed, vacated, or overturned:

- Reentry services consistent with the services received by parolees for up to two years following the date of discharge.
- Reentry housing consistent with the traditional housing provided to parolees for up to one year following the date of discharge.
- Vital documents, including, but not limited to, the prisoner's birth certificate.

Staff must be assigned by the DOC to ensure that a prisoner eligible for the services and documents described above would be provided them in a timely manner.

If a prisoner received the reentry services, and his or her conviction was subsequently reinstated, or he or she was resentenced and returned to the custody of the DOC for the same conviction that had been previously reversed, vacated, or overturned (and that had entitled him or her to the reentry services), the prisoner must repay the DOC for all reentry services received. The DOC will determine the amount owed.

BACKGROUND INFORMATION:

Senate Bill 291 is similar to House Bill 4536, which is pending on the House Floor. Beginning in 2005, legislation has been introduced in each two-year legislative session to provide compensation to individuals who were imprisoned for crimes for which they did not commit.

FISCAL INFORMATION:

Senate Bill 291 would have an indeterminate, but potentially significant, fiscal impact on the state. However, the impact would occur more immediately, as individuals exonerated prior to the effective date of the bill would be required to commence action for reimbursement within 18 months after the effective date of the bill. After that period, costs to the state would most likely stabilize, assuming fewer individuals would be eligible to apply in any given year.

According to the National Registry of Exonerations, which is maintained by the University of Michigan Law School, there have been 66 exonerations in the state since 1991. The total years lost between the 66 cases was 511. Therefore, the average number of years of wrongful imprisonment per exoneration was roughly 7.74 years. According to University of Michigan Law School, as of July 2016, 33 of 65 of those individuals would be eligible to file for reimbursement compensation. If all 33 of the cases are granted full reimbursement, and assuming 7.74 years of reimbursement payments of \$50,000 per year, the minimum cost to the state would be \$12.8 million under the bill. That amount does not include reimbursement payments for amounts collected from individuals by the state under the State Correctional Facility Reimbursement Act, or reimbursement payments to individuals for attorney fees that were actually paid.

House Bill 5815 could have an impact on the state Department of Corrections, depending on the number of individuals released from prison because their convictions or sentences are reversed, vacated, or overturned. In the last five years, there have been 25 individuals released under these conditions. If the number of individuals released continues to average about five per year, costs resulting from the bill could be covered by existing appropriations. Housing costs vary by region, but average between \$25 and \$35 per day. Costs for other reentry services would vary because the specific types of reentry services required by the individuals who are released would vary. It is current practice for the Department of Corrections to get birth certificates and other vital documents for prisoners before they are released, so this would not result in new costs for the department. In the FY 2015-16 budget for the Department of Corrections, there is roughly \$39.0 million appropriated for prisoner reentry services.

ARGUMENTS:

For:

Sometimes, the criminal justice fails in its mission to protect the innocent, find justice for victims, and prosecute the guilty. Whether it is because of faulty science, misidentification, witnesses who lie, or misconduct on the part of law enforcement officers or prosecutors, sometimes the system doesn't work and an innocent person is found guilty of a crime he or she did not commit. In cases where a person is able to prove innocence and be released from prison, life afterwards is not easy.

According to advocates for the wrongfully convicted, many lose all assets while incarcerated, including homes, cars, bank accounts, personal belongings, and custody of

children. A person who is exonerated may have nothing with which to begin a new life. With outdated job skills and possible health or emotional needs, exonerees need resources to access the services that will enable them to rebuild their lives, say knowledgeable observers. Senate Bill 291 will provide a reasonable amount of financial compensation needed by an innocent person whose life was disrupted when wrongfully convicted and imprisoned, and House Bill 5815 will help any prisoner released after a conviction is reversed, vacated, or overturned to receive reentry services consistent with services provided to persons released on parole. Services typically provided in reentry programs include housing assistance, job training and placement, and assistance with getting needed health care and medications.

No one can give an innocent person the years back that were erroneously taken away. The bills, however, are a reasonable response to assist these persons to get their lives back on track as quickly and seamlessly as possible.

For:

Senate Bill 291 establishes the statutory framework for reasonable compensation and House Bill 5815 provides for services to help exonerees and others eligible under the legislation get reestablished after release. Neither bill is expected to be exceedingly expensive to implement. Since 1990, only 66 individuals in Michigan have been exonerated and compensation under Senate Bill 291 is not automatic. Several hurdles must be overcome, such as proving innocence, as compared to a finding of not guilty. In addition, only the exoneree is eligible to apply for compensation; family members of a deceased exoneree may not apply, or be awarded, compensation under the bill's provisions. By some estimates, only about half of Michigan's exonerees would be eligible to apply for compensation, and then they must meet all the conditions specified in the bill before compensation could be awarded. Going forward, improved investigative techniques and DNA evidence results in few people who are newly convicted being later proven to be innocent. However, for those few who are able to prove their innocence, the bill represents hope for the future and fair compensation for what was wrongly taken away.

Regarding providing reentry services under House Bill 5815, such services are already provided for prisoners released on parole. As noted in the fiscal analysis, only 25 individuals have been released in the past five years for having a case overturned or a sentence reversed or vacated. At an average of only five additional persons qualifying for reentry services each year, current appropriations to reentry programs should be able to absorb them. Something as simple as helping these people to find housing quickly if they do not have a family home to go to, to provide counseling or therapy for any mental health needs or to address the trauma of being erroneously imprisoned, to help with job training or to find jobs appropriate for their current skill levels can be instrumental to helping these people integrate successfully and quickly into the community.

For:

Some supporters of Senate Bill 291 believe that compensating exonerees may decrease the number of lawsuits initiated against state and local law enforcement agencies and county prosecutors as the compensation could be awarded sooner than a person could collect under

a lawsuit and an exoneree could be spared absorbent legal fees. Exonerees could not "double dip," or receive a judgment or settlement from a lawsuit on top of compensation provided under the bill, as any money from a judgment or settlement awarded by such a lawsuit would reduce the compensation an exoneree could obtain from the state under this legislation. Coupled with the fact that compensation under the bill should be less than what is awarded and expended in litigation or settlements, the bill may serve to reduce the overall impact on taxpayers. Regardless, enacting a statute to fairly compensate the wrongfully incarcerated, as 30 states and the federal government have done, is simply the right thing to do.

For:

The current iteration of legislation to create the Wrongful Imprisonment Compensation Act, Senate Bill 291, is superior to earlier versions. For example, some earlier versions only applied to exonerations based on DNA or "equally reliable scientific or physical evidence" and thus excluded erroneous convictions not based on faulty DNA testing. Here are three stories from committee testimony supporting 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.

David Gavitt was convicted of arson and murder when his wife and two young children died in a house fire. Though he also had been severely injured, had no criminal history, and despite any motive to burn down his uninsured house or kill his family, Mr. Gavitt was convicted based on "signs" the fire had been set intentionally set and on an "expert's" testimony that tests proved gasoline was present in the living room carpet. He was released after serving 27 years in prison and exonerated after fire investigators working with the Michigan Innocence Clinic and the Ionia County Prosecutor's Office agreed that the test results on the carpet had been misread (there was no evidence of gasoline or other accelerant) and that other signs of arson used to support a conviction had since been discredited by the fire investigation community and were no longer being used.

Julie Baumer was wrongfully convicted when medical "experts" misinterpreted diagnostic tests and concluded that her infant nephew, who she had been in the process of adopting, was a victim of "shaken baby syndrome." She was convicted and imprisoned for more than four years for child abuse. Ms. Baumer was exonerated after an advocate contacted a new lawyer, who sent the baby's brain scans to pediatric neuroradiologists. The specialists found evidence that the baby had suffered a stroke unrelated to abuse. According to her testimony, Ms. Baumer not only lost the years she was wrongfully incarcerated, she also

lost her fiancé, her career, and many relationships. The effects of the wrongful incarceration still affect her negatively, as she has only been able to find employment with menial jobs.

The bill appropriately applies the ability to seek compensation to such cases.

Against:

Many states who provide compensation for wrongful convictions and imprisonments exclude cases in which a person contributed to his or her conviction. For instance, making a false confession to cover for another person, tampering with evidence or an eye witness, deliberately misleading the police, or otherwise implicating oneself should be barriers to obtaining compensation under the act. (Of course, those who were coerced, tricked, or misled into confessing when innocent, or subjected to police or prosecutorial misconduct, should still be eligible to apply for compensation if they can prove they were innocent of the charge.)

POSITIONS:

A representative of the Michigan Innocence Clinic testified in support of SB 291 (9-20-16)

A representative of the Western Michigan University Cooley Innocence Project testified in support of SB 291 and HB 5815. (9-20-16)

ACLU of Michigan indicated support for SB 291. (9-20-16)

The Michigan Catholic Conference indicated support for HB 5815. (9-20-16)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.