

# HOUSE BILL No. 4171

February 1, 2011, Introduced by Reps. Switalski, Liss, Lindberg, Tlaib, Oakes, Stanley, Meadows and Womack 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

1 imprisonment of the plaintiff that are the subject of the claim for  
2 compensation under this act.

3 (b) "Plaintiff" means the individual making a claim for  
4 compensation under this act. Plaintiff does not include the estate  
5 of an individual entitled to make a claim for compensation under  
6 this act, the personal representative of the estate, or any heir,  
7 devisee, beneficiary, or other person who is entitled under other  
8 law to pursue a claim for damages, injury, or death suffered by the  
9 individual.

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

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

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

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

24 Sec. 4. (1) The plaintiff in an action under this act shall  
25 attach to the complaint documentation that establishes all of the  
26 following:

27 (a) The plaintiff was convicted of 1 or more crimes under the

1 law of this state, was sentenced to a term of imprisonment in a  
2 state correctional facility for the crime or crimes, and served at  
3 least part of the sentence.

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

7 (c) DNA or other evidence of similar importance showing that  
8 the plaintiff was not the perpetrator of the crime supports the  
9 reversal or vacation of the judgment of conviction, dismissal of  
10 the charges, or finding of not guilty on retrial.

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

13 Sec. 5. (1) A plaintiff under this act is entitled to judgment  
14 in the plaintiff's favor if the plaintiff provides evidence to  
15 prove all of the following:

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

20 (b) The plaintiff's judgment of conviction was vacated and  
21 either the charges were dismissed or the plaintiff was determined  
22 upon retrial to be not guilty.

23 (c) DNA or other evidence of similar importance supports a  
24 finding that the plaintiff did not perpetrate and was not an  
25 accessory to the acts that were the basis of the conviction.

26 (2) Subject to subsections (4) and (5), if a court finds that  
27 a plaintiff was wrongfully convicted and imprisoned, the court

1 shall award compensation as follows:

2 (a) Up to \$40,000.00 for each year from the date the plaintiff  
3 was imprisoned until the date the plaintiff was released from the  
4 custody of the department of corrections, the judgment of  
5 conviction was vacated, the charges were dismissed, or the  
6 plaintiff was found not guilty, whichever is later. The plaintiff  
7 is entitled to compensation for the period described in this  
8 subdivision regardless of whether the plaintiff was released from  
9 imprisonment on parole or because the maximum sentence was served.

10 (b) Economic damages, including, but not limited to, lost  
11 wages, costs associated with the plaintiff's criminal defense and  
12 efforts to prove his or her innocence, and medical expenses related  
13 to the imprisonment required after release.

14 (c) Reasonable attorney fees. The award under this subdivision  
15 shall not include any attorney fees or expenses incurred in  
16 bringing a previous action that was dismissed. The award under this  
17 subdivision shall not be deducted from the compensation awarded the  
18 plaintiff, and the plaintiff's attorney is not entitled to receive  
19 additional fees from the plaintiff.

20 (3) An award under subsection (2) is not subject to either of  
21 the following:

22 (a) A limit on the amount of damages except as stated in this  
23 act.

24 (b) Income taxes.

25 (4) Compensation shall not be awarded under subsection (2) for  
26 any time during which the plaintiff was imprisoned under a  
27 concurrent sentence for another conviction.

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

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

12           (7) A compensation award under this section shall not be  
13 offset by any of the following:

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

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

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

22           (8) If a plaintiff who is awarded compensation under this  
23 section recovers damages for the wrongful conviction or  
24 imprisonment from any other person, the plaintiff shall reimburse  
25 this state for compensation paid under this section to the extent  
26 of damages recovered from the other person.

27           (9) If a court determines that a plaintiff was wrongfully

1 convicted and imprisoned, the court shall enter an order that  
2 provides that any record of the arrest, fingerprints, conviction,  
3 and sentence of the plaintiff related to the wrongful conviction  
4 shall be expunged from the criminal history record. A document that  
5 is the subject of an order entered under this subsection is exempt  
6 from disclosure under the freedom of information act, 1976 PA 442,  
7 MCL 15.231 to 15.246.

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

17       Enacting section 1. This act does not take effect unless  
18 Senate Bill No. \_\_\_ or House Bill No. 4170(request no. 00775'11 a)  
19 of the 96th Legislature is enacted into law.