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## BILL ANALYSIS



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Senate Bill 997 (as introduced 9-11-24)  
Sponsor: Senator Stephanie Chang  
Committee: Civil Rights, Judiciary, and Public Safety

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**INTRODUCTION**

The bill would modify how a plaintiff files a complaint for a judgment of wrongful imprisonment and claim for compensation. It would require the plaintiff to establish that new evidence would prove that the plaintiff did not commit or assist in the crime or that the plaintiff's conviction was overturned due to insufficient evidence. It also would allow a plaintiff who received a gubernatorial pardon based on actual innocence to receive compensation under the Act upon establishing the information above.

In court considerations of complaints, the bill would allow a court to review a plaintiff's entire criminal case record, as well as evidence obtained unconstitutionally, in making its determination, and change a plaintiff's burden of proof from clear and convincing to a preponderance of evidence. The bill would allow for compensation for time spent in pretrial detention and provide for an award based on compromise or a settlement of a claim. Finally, the bill would allow an individual to file a claim for wrongful imprisonment within 18 months of its effective date, even if other deadlines had passed, provided that the individual qualified based on new evidence or a reversal of a conviction due to lack of evidence.

**FISCAL IMPACT**

The bill likely would result in nominal savings for the State and local governments. The bill's language would encourage efficiency in legal proceedings, with new deadlines for discovery and answers to plaintiff complaints. Delays, or extended court proceedings, are often expensive, so new efficiencies under the bill would likely create indeterminate savings. The bill also would allow for the settlement of claims under the Act, which also would likely expedite court proceedings and create additional, indeterminate savings for the State and reduced attorney fees to be paid by the State, as per the language under the Act.

The bill could result in more persons being compensated by the State for wrongful convictions. Currently, a wrongfully convicted and imprisoned person is entitled to compensation equal to \$50,000 per year of wrongful imprisonment. The actual cost to the State is indeterminate and dependent on the number of additional wrongful imprisonment claims for which the State would have to compensate the individual.

MCL 691.1752 et al.

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## **CONTENT**

**The bill would amend the Wrongful Imprisonment Compensation Act to do the following:**

- Modify the documentation a plaintiff must provide to bring an action for compensation for wrongful imprisonment.**
- Require the plaintiff to establish in a complaint that new evidence would demonstrate that the plaintiff did not commit or assist in a crime, that the conviction was reversed due to lack of evidence, or that new evidence overturned the conviction but relief was granted for another reason.**
- Allow the court to consider a plaintiff's entire criminal case record, including evidence unconstitutionally obtained, when determining if the plaintiff had been wrongfully convicted.**
- Require the court to consider the difficulties of proof caused by the passage of time, loss of evidence, and unavailability of witnesses in an action under the Act.**
- Allow an answer to a complaint to be served and filed within 60 days after service, with opportunity for additional time for the Attorney General to determine if compensation were appropriate before formal discovery began.**
- Lower a plaintiff's burden of proof from clear and convincing evidence to a preponderance of the evidence.**
- Require the amount awarded for compensation to include time served in pretrial detention.**
- Delete a provision allowing a court to award attorney fees only after the plaintiff paid the amount awarded to the attorney.**
- Delete a provision specifying that a plaintiff's acceptance of an award of compensation constitutes a complete release of claims against the State.**
- Apply provisions governing current awards of compensation to a compromise or settlement of a claim.**
- Allow an individual to bring a claim under the Act within 18 months of the bill's effective date, so long as the individual would qualify for an award as a result of the reversal or vacation of a judgement of conviction based on insufficient evidence supporting the conviction and the plaintiff did not perpetrate the crime and was not an accomplice or accessory to the acts that were on the basis of the conviction.**

### Complaint of Wrongful Imprisonment

Generally, the Act allows a plaintiff to bring an action for compensation against the State in the Court of Claims if the plaintiff has been wrongfully convicted of a crime under State law and imprisoned in a State correctional facility for a crime he or she did not commit.

The plaintiff must verify and attach to the plaintiff's complaint documentation that establishes all the following:

- The plaintiff was convicted of one or more crimes under State law, was sentenced to a term of imprisonment in a State correctional facility and served at least part of that sentence.
- The plaintiff's judgment of conviction was reversed or vacated and either the charges were dismissed, or, on retrial, the plaintiff was found to be not guilty.
- New evidence demonstrates that the plaintiff was not the perpetrator of the crime and was not an accessory or accomplice to the acts that were the basis of the conviction, and

results in a reversal or vacation of the conviction, dismissal of the charges, finding of not guilty, or gubernatorial pardon.

"New evidence" means any evidence that was not *presented in the proceeding leading to plaintiff's conviction*, including new testimony, expert interpretation, the results of DNA testing, or other test results relating to evidence that was presented *in the proceedings leading to the plaintiff's conviction*. Instead, under the bill, the term would mean any evidence that was not presented *to a trier of fact during a proceeding that determined guilt* including new testimony, expert interpretation, the results of DNA testing, or other test results relating to evidence that was presented *to a trier of fact during a proceeding that determined guilt*.

The bill would delete the documentation requirements described above and instead, the plaintiff would have to verify and attach to the complaint documentation that established the following facts that the plaintiff alleged to entitle the plaintiff to a favorable judgment:

- The plaintiff was convicted of at least one crime under State law, was sentenced to a term of imprisonment in a State correctional facility for the crime or crimes and served at least part of the sentence or was committed to a residential mental health facility in relation of the conviction.
- The plaintiff's judgment of conviction was reversed or vacated and either the charges were dismissed or on retrial the plaintiff was found to be not guilty or the plaintiff received a gubernatorial pardon on the basis of actual innocence for the crime for which the plaintiff was incarcerated.

Additionally, the verified complaint document would have to establish one of the following:

- New evidence demonstrated that the plaintiff did not perpetrate the crime and was not an accomplice or accessory to the acts that were the basis of the conviction and the new evidence either resulted in the revealed or vacation of the charges in the judgement of conviction or resulted in a gubernatorial pardon for the crime for which the plaintiff was incarcerated.
- The reversal or vacation of the judgement of conviction was based on insufficient evidence supporting the conviction, and the plaintiff did not perpetrate the crime and was not an accomplice or accessory to the acts that were the basis of the conviction.
- New evidence was presented to the court that reversed or vacated the plaintiff's conviction, but relief was granted on another basis, and the new evidence demonstrated that the plaintiff did not perpetrate the crime and was not an accomplice or accessory to the acts that were the basis of the conviction.

"Plaintiff" means the individual making a claim for compensation under the Act. The bill specifies that the term also would include a trustee or conservator for that individual if the individual were not competent to act as plaintiff. The Act specifies that the term does not include the estate if an individual entitled to make a claim for compensation under the Act, the personal representative of the estate, or any heir, devisee, beneficiary, or other person who is entitled under law to pursue a claim for damages, injury, or death suffered by the individual. The bill specifies that the term would not include the estate of a *deceased* individual.

Currently, a plaintiff is entitled to judgment in the plaintiff's favor if the plaintiff proves the information generally required in the complaint documentation described above by clear and convincing evidence. The bill would lower the burden of proof to a *preponderance of evidence*.

## Court Consideration and Procedure

The bill specifies that the court could consider any of the following in determining whether the plaintiff had met the burden of proof described above to be entitled to favorable judgment:

- The entire record of the plaintiff's criminal case, including the lower court records, the plea trial transcripts, the appellate record, and the record of any postconviction proceedings.
- Evidence seized or obtained in violation of the Fourth Amendment of the United States Constitution or Section 11 of Article I of the State Constitution of 1963, which both generally protect individuals from unreasonable search and seizure.

A court would have to give due consideration to the difficulties of proof caused by the passage of time, the loss or destruction of evidence, the death or unavailability of witnesses, and other factors not caused by the parties when exercising its discretion regarding the weight of credibility of the presented evidence. The court could not find a witness incredible who testified at the plaintiff's criminal trial or in post-trial proceedings based solely on the fact that the witness was not testifying at the trial for the plaintiff's claim of wrongful imprisonment.

Under the Act, a copy of a complaint must be served on the Attorney General and on the prosecuting attorney for the county in which the plaintiff was convicted. The Attorney General and the prosecuting attorney may answer and contest the complaint. Under the bill, if the prosecuting attorney wished to participate further in the action, the prosecuting attorney would have to file an appearance within 60 days.

Additionally, an answer to a complaint could be served and filed within 60 days after service of the complaint, with the opportunity to request additional time extension if there were a showing of good cause, for the Attorney General to determine if compensation were appropriate before formal discovery began.

The bill would prohibit discovery for an action under the Act from being conducted before the Attorney General filed an answer.

## Compensation

Generally, if a court finds that a plaintiff was wrongfully convicted and imprisoned, it must award compensation. The compensation must include \$50,000 for each year from the date the plaintiff was imprisoned until the date the plaintiff was released from prison, regardless of whether the plaintiff was released on parole or because the maximum sentence was served. For incarceration of less than a year in prison, the amount must be prorated to 1/365 of \$50,000 for every day the plaintiff was incarcerated in prison. Under the bill, the period for compensation would include time served in pretrial detention and would have to be prorated as appropriate.

(Generally, the total amount awarded for compensation may be paid to the plaintiff in a single payment or multiple payments where the initial payment must be at least 20% of the total amount awarded and the remainder of the payments must be made over not more than 10 years.)

Among other things, the compensation also must include reasonable attorney fees incurred in an action under the Act. The attorney fees may not exceed either \$50,000 or 10% of the total amount awarded for compensation for time incarcerated and reimbursement of amounts collected under the State Correctional Facility Reimbursement Act, whichever is less, plus expenses. An award of attorney fees may not be deducted from the compensation awarded

the plaintiff, and the plaintiff's attorney is not entitled to receive additional fees from the plaintiff.

Additionally, the court may not award attorney fees unless the plaintiff has actually paid the amount awarded to the attorney and the Wrongful Imprisonment Compensation Act specifies that it is not necessary that the plaintiff pay the attorney fees before an initial award under the Act, and the court may award attorney fees on a motion brought after the initial award. The bill would delete these provisions.

The Act specifies that an award under the Act is not subject to income taxes and an award of compensation will be subject to setoff or reimbursement for damages obtained for wrongful conviction or imprisonment from any other person. The bill would specify that an award of compensation, or compensation under a compromise or settlement of a claim would be subject to a setoff or reimbursement for damages received directly by the plaintiff that were obtained for the wrongful conviction or imprisonment from any other person or political subdivision, after the damage of award was reduced for attorney fees.

The Act prohibits compensation from being awarded for any time the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction. Under the bill, this provision would apply to a concurrent or consecutive sentence whether running before or after the conviction that was the basis of the claim. Additionally, if the plaintiff were on parole for a prior offense at the time of the of the wrongful conviction and parole was revoked solely on the basis of the wrongful conviction, the provision prohibiting compensation from being awarded for concurrent or consecutive sentences would not apply.

#### Compromise of Settlement of a Claim

The Wrongful Imprisonment Compensation Act specifies that an award of compensation is not a finding of wrongdoing against anyone, or admissible in evidence in a civil action related to the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.

The Act also specifies that a compensation award under the Act may not be offset by expenses incurred by the State or any political subdivision of the State, including expenses incurred to secure the plaintiff's custody or to feed, clothe, or provide medical services for the plaintiff while imprisoned, among other things.

A compensation award under the Act also is subject to the payment of child support owed by the plaintiff, including child support arrearages. The plaintiff remains liable for any child support arrearage under the Office of Child Support Act and the Support and Parenting Time Enforcement Act, except for any child support or arrearage that erroneously accrued while the plaintiff was imprisoned. Child support must be deducted from an award under the Wrongful Imprisonment Compensation Act before the plaintiff receives any of the money from the award. These provisions do not affect a plaintiff's ongoing child support obligations.

Finally, the Act specifies that it does not impair or limit the right of a state or local government to collect a debt of the plaintiff from his or her award of compensation.

Under the bill, the provisions described above also would apply to compensation under a compromise or settlement of a claim.

The Act specifies that a plaintiff's acceptance of an award under the Act, or of a compromise or settlement of the claim, must be in writing. Unless it is procured by fraud, the acceptance of an award, compromise, or settlement will be final and conclusive on the plaintiff, constitute

a complete release of all claims against the State, and be a complete bar to any action in State court by the plaintiff against the State based on the same subject matter. The bill would delete the provision that the acceptance would constitute a complete release of claims against the State.

Under the Act, the acceptance by the plaintiff of an award under the Act, or of a compromise or settlement of the plaintiff's claim, however, does not waive or bar 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. The bill would specify that this provision also would apply to a recovery in Federal court and against a political subdivision.

### Records

If a court determines that a plaintiff was wrongfully convicted and imprisoned, the court must enter an order that requires any record of the arrest, fingerprints, conviction, and sentence of the plaintiff related to the wrongful conviction to be expunged from the criminal history record. A document that is the subject of such an order is exempt from disclosure under the Freedom of Information Act. Under the bill, the parties could stipulate the entry of an order expunging records without an award of compensation.

### Filing Deadline

Generally, the Act requires an action for compensation to be commenced within three years of the entry of a verdict, judgment, or order. Under the bill, an action also would have to be commenced within three years after entry of a pardon.

Under the bill, irrespective of any other provision of the Act, an individual could bring a claim within 18 months of the bill's effective date, if that individual could prove that the individual qualified for an award as a result of the reversal or vacation of the judgement of conviction based on insufficient evidence supporting the conviction and the plaintiff did not perpetrate the crime and was not an accomplice or accessory to the acts that were on the basis of the conviction.

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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.