WRONGFUL IMPRISONMENT COMPENSATION ACT

Act 343 of 2016

AN ACT 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; to provide remedies; and to make an appropriation.

History: 2016, Act 343, Eff. Mar. 29, 2017 ;-- Am. 2019, Act 10, Imd. Eff. May 10, 2019

The People of the State of Michigan enact:

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691.1751 Short title.

Sec. 1.

This act shall be known and may be cited as the "wrongful imprisonment compensation act".

History: 2016, Act 343, Eff. Mar. 29, 2017

691.1752 Definitions.

Sec. 2.

As used in this act:

(a) "Charges" means the criminal complaint filed against the plaintiff by a county prosecutor or the attorney general on behalf of the people of this state that resulted in the conviction and imprisonment of the plaintiff that are the subject of the claim for compensation under this act.

(b) "New evidence" means any evidence that was not presented in the proceedings 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 plaintiff's conviction. New evidence does not include a recantation by a witness unless there is other evidence to support the recantation or unless the prosecuting attorney for the county in which the plaintiff was convicted or, if the department of attorney general prosecuted the case, the attorney general agrees that the recantation constitutes new evidence without other evidence to support the recantation.

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

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

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

History: 2016, Act 343, Eff. Mar. 29, 2017

691.1753 Wrongful conviction and imprisonment; action for compensation against state.

Sec. 3.

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

History: 2016, Act 343, Eff. Mar. 29, 2017

691.1754 Complaint; documentation; verification by plaintiff; service; notice to victim of assaultive crime or serious misdemeanor; discovery.

Sec. 4.

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

(a) The plaintiff was convicted of 1 or more crimes under the law of this state, 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.

(b) 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.

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

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

(3) A copy of a complaint filed under this section 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.

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

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

History: 2016, Act 343, Eff. Mar. 29, 2017

691.1755 Judgment in plaintiff's favor; findings; award of compensation; payments; evidence in civil action; acceptance; compromise or settlement of claim; writing; offset; award as subject to income taxes; payment of child support owed by plaintiff; collection of debt by state or local government; setoff or reimbursement for damages; order.

Sec. 5.

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

(a) The plaintiff was convicted of 1 or more crimes under the law of this state, 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.

(b) The plaintiff's judgment of conviction was reversed or vacated and either the charges were dismissed or the plaintiff was determined on retrial to be not guilty. However, the plaintiff is not entitled to compensation under this act if the plaintiff was 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.

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(c) New evidence demonstrates 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, results in the reversal or vacation of the charges in the judgment of conviction or a gubernatorial pardon, and results in either dismissal of all of the charges or a finding of not guilty on all of the charges on retrial.

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

(a) Fifty thousand dollars 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 from imprisonment on parole or because the maximum sentence was served. For incarceration of less than a year in prison, this amount is prorated to 1/365 of $50,000.00 for every day the plaintiff was incarcerated in prison.

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

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

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

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

(iii) The attorney fees must not exceed 10% of the total amount awarded under subdivisions (a) and (b) or $50,000.00, whichever is less, plus expenses.

(iv) An award of attorney fees under this act 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.

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

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

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

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

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

(8) The acceptance by the plaintiff of an award under this act, or of a compromise or settlement of the claim, must be in writing and, unless it is procured by fraud, is final and conclusive on the plaintiff, constitutes a complete release of all claims against this state, and is a complete bar to any action in state court by 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.

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

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

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

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

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

(11) A compensation award under this act is subject to the payment of child support, including child support arrearages, owed by the plaintiff. The plaintiff remains liable for any child support or arrearage under the office of child support act, 1971 PA 174, MCL 400.231 to 400.240, and the support and parenting time enforcement act, 1982 PA 295, MCL 552.601 to 552.650, except for any child support or arrearage that erroneously accrued while the plaintiff was imprisoned. Child support must be deducted from an award under this act before the plaintiff receives any of the money from the award. This subsection does not affect any ongoing child support obligation of the plaintiff.

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

(13) An award of compensation under this act is subject to setoff or reimbursement for damages obtained for the

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wrongful conviction or imprisonment from any other person.

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

History: 2016, Act 343, Eff. Mar. 29, 2017

691.1756 Wrongful imprisonment compensation fund; report.

Sec. 6.

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

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

(3) The state treasurer shall direct the investment of the wrongful imprisonment compensation fund. The state treasurer shall credit to the fund interest and earnings from fund investments.

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

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

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

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

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

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

(c) Outline a clear process indicating the order in which claims that were pending with the fund when money became insufficient will be paid, if money subsequently becomes available.

(8) The attorney general shall report quarterly to the house and senate appropriations committees, the house and senate fiscal agencies, and the state budget office all of the following as of the end of the quarter:

(a) All payments made from the wrongful imprisonment compensation fund in the quarter, indicating for each payment whether it is for a new settlement or award or continued payment for a previous settlement or award.

(b) Any settlements that have been reached or awards that have been made for which payments have not been made.

(c) The number of actions in which an order or judgment has been entered denying the claim, and the reasons for each denial.

(d) The number of known claims for compensation under this act for which there are no final settlements or awards, indicating for each claim, if known, the amount claimed and the potential payment.

(e) The balance in the wrongful imprisonment compensation fund.

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

History: 2016, Act 343, Eff. Mar. 29, 2017 ;-- Am. 2019, Act 10, Imd. Eff. May 10, 2019

Compiler's Notes: Subsection (10) of Sec. 6, as amended by Act 10 of 2019, was vetoed by the governor on May 9, 2019. Subsection (10) of Sec. 6, as amended by Act 10 of 2019, reads as follows:"(10) There is appropriated to the wrongful imprisonment compensation fund for the fiscal year ending September 30, 2019, $10,000,000.00 from the general fund of this state."

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691.1757 Action for compensation; commencement.

Sec. 7.

(1) An action for compensation under this act must be commenced within 3 years after entry of a verdict, order, or judgment as the result of an event described in section 4(1)(b). Any action by this state challenging or appealing a verdict, order, or judgment entered as the result of an event described in section 4(1)(b) tolls the 3-year period.

(2) An individual convicted, imprisoned, and released from custody before March 29, 2017 must commence an action under this act within 18 months after the effective date of the 2020 amendatory act that amended this section.

History: 2016, Act 343, Eff. Mar. 29, 2017 ;-- Am. 2020, Act 43, Imd. Eff. Mar. 3, 2020

Compiler's Notes: Enacting section 1 of Act 43 of 2020 provides:"Enacting section 1. Section 7 of the wrongful imprisonment compensation act, 2016 PA 343, MCL 691.1757, as amended by this amendatory act, applies retroactively to March 29, 2017."

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