

SENATE BILL No. 168

January 29, 2009, Introduced by Senators SCOTT, CLARK-COLEMAN, ANDERSON and BRATER and referred to the Committee on Judiciary.

A bill to provide compensation to individuals who are wrongfully incarcerated for crimes; to make appropriations for the compensation of wrongfully incarcerated individuals; to provide for the powers and duties of certain state and local governmental officers and entities; 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 "victims of wrongful incarceration compensation act".

3 Sec. 2. As used in this act:

4 (a) "Board" means the state administrative board created by
5 section 1 of 1921 PA 2, MCL 17.1.

6 (b) "Felony", except as defined otherwise in this act, means

1 an offense under the laws of this state that is punishable by
2 imprisonment for more than 1 year.

3 (c) "Governmental agencies of this state" means this state and
4 political subdivisions of this state, as "state" and "political
5 subdivision" are defined in section 1 of 1964 PA 170, MCL 691.1401.

6 (d) "Petitioner" means the individual who files an action
7 under section 5.

8 (e) "Prosecuting attorney" means that term as defined in
9 section 1 of chapter VIIA of the code of criminal procedure, 1927
10 PA 175, MCL 767A.1.

11 (f) "Sentencing court" means the court that sentenced the
12 petitioner for the felony conviction.

13 (g) "SOAHR" means the state office of administrative hearings
14 and rules created by Executive Reorganization Order No. 2005-1, MCL
15 445.2021.

16 Sec. 3. (1) Subject to subsection (2), an individual is
17 eligible for compensation under this act if the individual was
18 convicted of and incarcerated for a felony and both of the
19 following are applicable:

20 (a) The conviction is vacated by a court.

21 (b) The individual did not commit the felony or aid, abet, or
22 act as an accomplice or accessory to a person who committed the
23 felony.

24 (2) An individual is not eligible for compensation under this
25 act if any of the following are true:

26 (a) Before the individual's incarceration, the individual was
27 convicted of or, regardless of adjudication, pled guilty or nolo

1 contendere to another felony.

2 (b) During the individual's incarceration, the individual was
3 convicted of or, regardless of adjudication, pled guilty or nolo
4 contendere to another felony.

5 (c) During the individual's incarceration, the individual was
6 serving a concurrent sentence for another felony for which the
7 individual was not wrongfully convicted.

8 (d) As part of the individual's sentence for the conviction,
9 the individual was paroled or transferred to a community
10 residential program or electronic monitoring program and committed
11 a felony, resulting in revocation of the parole or transfer from
12 the community residential program or electronic monitoring program
13 to a state correctional facility.

14 (3) As used in subsection (2), "felony" includes a crime
15 committed in another state, the elements of which would constitute
16 a felony in this state, or a crime designated as a felony under the
17 laws of the United States. As used in subsection (2), felony does
18 not include an offense committed by a juvenile over which a court
19 has jurisdiction under section 2 of chapter XIIIA of the probate
20 code of 1939, 1939 PA 288, MCL 712A.2, or a similar law of another
21 state or the United States.

22 Sec. 5. (1) An individual may bring an action claiming that he
23 or she is eligible for compensation under this act by filing a
24 complaint with the sentencing court. The petitioner shall make the
25 complaint under oath and state all of the following in the
26 complaint:

27 (a) That there is verifiable and substantial evidence that the

1 individual is entitled to compensation under section 3(1).

2 (b) With particularity, the nature and significance of the
3 evidence on which the individual relies in making the statement
4 under subdivision (a).

5 (c) That the individual is not disqualified under section
6 3(2).

7 (2) The petitioner shall file a complaint under this section
8 within 1 of the following time periods:

9 (a) If the conviction is vacated by an order that became final
10 on or after the effective date of this act, within 90 days after
11 the order vacating the conviction becomes final.

12 (b) If the conviction is vacated by an order that became final
13 before the effective date of this act, within 2 years after the
14 effective date of this act.

15 Sec. 7. A petitioner shall promptly serve a copy of the
16 complaint on the prosecuting attorney who prosecuted the felony
17 case. The prosecuting attorney shall respond to the complaint
18 within 30 days after the prosecuting attorney receives the
19 complaint. The prosecuting attorney shall do 1 of the following in
20 the response:

21 (a) Certify to the sentencing court that, based on the
22 complaint and verifiable and substantial evidence of actual
23 innocence, no further criminal proceedings in the case can or will
24 be initiated by the prosecuting attorney, that no questions of fact
25 remain as to the petitioner's wrongful incarceration, and that the
26 petitioner is eligible to seek compensation under section 3(2).

27 (b) Contest the nature, significance, or effect of the

1 evidence of the petitioner's innocence, the facts related to the
2 petitioner's incarceration, or the petitioner's eligibility to seek
3 compensation under section 3(2).

4 Sec. 9. (1) If the prosecuting attorney makes a certification
5 under section 7(a) and if the sentencing court determines, based on
6 the complaint and the prosecuting attorney's certification, that
7 the petitioner has presented clear and convincing evidence that the
8 petitioner is eligible for compensation under section 3(1), the
9 court shall enter its order certifying to the board that the
10 petitioner is eligible for compensation under section 3(1) and that
11 the prosecuting attorney certifies that the petitioner is eligible
12 for compensation under section 3(2).

13 (2) If the prosecuting attorney contests the petitioner's
14 claim under section 7(b), the sentencing court shall determine,
15 based on the complaint, the prosecuting attorney's response, and
16 any supporting documentation, whether, by a preponderance of the
17 evidence, the petitioner is eligible for compensation under section
18 3(2), regardless of eligibility under section 3(1). If the court
19 determines that the petitioner is ineligible under section 3(2), it
20 shall dismiss the complaint.

21 (3) If the sentencing court determines under subsection (2)
22 that the petitioner is eligible for compensation under section
23 3(2), the court shall state its determination in writing and
24 transfer the complaint to SOAHR for findings of fact and a
25 recommendation under section 11.

26 Sec. 11. (1) An action transferred under section 9 shall be
27 determined by a hearings officer appointed by SOAHR to make a

1 determination of the petitioner's eligibility for compensation
2 under section 3(1). The transferred action shall be conducted under
3 procedures applicable in a contested case under chapter 4 of the
4 administrative procedures act of 1969, 1969 PA 306, MCL 24.271 to
5 24.287, to the extent that the procedures under that chapter do not
6 conflict with this act.

7 (2) A hearing shall be held in a case under this section
8 within 120 days after the transfer. The prosecuting attorney may
9 appear at the hearing to contest the evidence presented by the
10 petitioner or the significance or effect of the evidence.

11 (3) In a case under this section, the petitioner has the
12 burden of establishing his or her eligibility for compensation
13 under section 3(1) by clear and convincing evidence.

14 (4) Within 45 days after the hearing under this section, the
15 hearings officer shall issue an opinion containing findings and a
16 recommendation and shall file the opinion with the sentencing
17 court.

18 (5) The sentencing court shall review the findings and
19 recommendation contained in the opinion issued under subsection (4)
20 and, within 60 days after the opinion is issued, shall enter its
21 order adopting or declining to adopt the findings and
22 recommendation of the hearing officer.

23 (6) If, after making its review under subsection (5), the
24 sentencing court concludes that the petitioner is eligible for
25 compensation under section 3(1), the court shall certify all of the
26 following to the board in its order:

27 (a) Either of the following:

1 (i) That the opinion of the hearings officer finds that the
2 petitioner has met the burden of establishing by clear and
3 convincing evidence that the petitioner is entitled to compensation
4 under section 3(1) and the court adopts that finding.

5 (ii) That the court declines to adopt the findings and
6 recommendation of the hearings officer and finds that the
7 petitioner has met the burden of establishing by clear and
8 convincing evidence that the petitioner is entitled to compensation
9 under section 3(1).

10 (b) That the court has determined that the findings and
11 recommendations on which its order is based are supported by
12 competent, substantial evidence.

13 Sec. 13. (1) An individual who a sentencing court determines
14 under section 9 or 11 to be eligible for compensation under this
15 act may file an application for compensation with the board as
16 required in this section. A personal representative of the estate
17 of a decedent is not entitled to apply on behalf of the decedent
18 for compensation under this section.

19 (2) An individual shall apply to the board under this section
20 within 2 years after the sentencing court enters its order under
21 section 9 or 11 determining that the individual is eligible for
22 compensation under this act.

23 (3) The board may adopt rules regarding the forms and
24 procedures related to applications for compensation under this
25 section.

26 (4) An application under this section shall include all of the
27 following:

1 (a) A certified copy of the order vacating the conviction.

2 (b) A certified copy of the sentencing court's order under
3 section 9 or 11 determining the applicant to be eligible for
4 compensation.

5 (c) Certified copies of the original judgment and sentence.

6 (d) Documentation demonstrating the length of the sentence
7 served, including documentation from the department of corrections
8 regarding the applicant's admission into and release from the
9 custody of the department of corrections.

10 (e) Positive proof of identification, including 2 full sets of
11 fingerprints administered by a law enforcement agency and a current
12 form of photo identification, demonstrating that the applicant is
13 the individual who was wrongfully incarcerated.

14 (f) Documentation of any fine, penalty, or court costs that
15 were imposed on and paid by the individual.

16 (g) Documentation of any reasonable attorney fees and expenses
17 described in section 15.

18 (h) Any other documentation, evidence, or information required
19 by rules adopted by the board.

20 (5) The board shall forward the fingerprints of the applicant
21 to the department of state police. The department shall conduct a
22 check of the criminal records of this state and shall forward the
23 second set of fingerprints to the federal bureau of investigation
24 for national criminal records checks. The department of state
25 police shall submit results of the state and national criminal
26 records checks to the board.

27 (6) Within 30 days, after receiving an application under this

1 section, the board shall examine the application and notify the
2 applicant of any error or omission and request any additional
3 information relevant to the review of the application. The
4 applicant may supplement the application within 15 days after
5 notification under this subsection. The board shall not deny an
6 application because the applicant failed to correct an error or
7 omission or supply additional information unless the board timely
8 notified the applicant of the error or omission or requested
9 additional information under this subsection.

10 (7) The board shall process and review each completed
11 application within 90 days. Within 5 business days after the board
12 determines whether the claim for compensation meets the
13 requirements of this act, the board shall notify the applicant of
14 its determination.

15 (8) Within 15 days after notifying an applicant under
16 subsection (7) that the applicant's claim meets the requirements of
17 this act, the board shall determine the compensation to which an
18 applicant is entitled under section 15 and shall notify the state
19 treasurer to satisfy the claim of the applicant from appropriations
20 as provided in section 19.

21 Sec. 15. (1) Except as otherwise provided in this act and
22 subject to the limitations and procedures prescribed in this
23 section, an individual who the board finds to be entitled to
24 compensation under section 13 is entitled to all of the following:

25 (a) \$50,000.00 for each year of wrongful incarceration,
26 prorated as necessary to account for a portion of a year. Beginning
27 as soon as practicable after January 1, 2010 and January 1 of each

1 subsequent year, the state treasurer shall adjust the amount
2 applicable for the preceding year by an amount determined by the
3 state treasurer to reflect the cumulative annual percentage change
4 in the consumer price index. As used in this subsection, "consumer
5 price index" means the most comprehensive index of consumer prices
6 available for this state from the bureau of labor statistics of the
7 United States department of labor.

8 (b) A waiver of tuition and fees for up to 120 hours of
9 instruction at a community college or state institution of higher
10 education, if the individual meets and maintains the regular
11 admission requirements of the community college or institution,
12 remains registered at the community college or institution, and
13 makes satisfactory academic progress as defined by the community
14 college or institution.

15 (c) The amount of any fine, penalty, or court costs imposed on
16 and paid by the individual.

17 (d) The amount of any reasonable attorney fees and expenses
18 incurred and paid by the individual in connection with all criminal
19 proceedings and appeals related to the wrongful conviction.

20 (2) The total compensation awarded under subsection (1)(a),
21 (c), and (d) shall not exceed \$2,000,000.00. This state shall not
22 award an additional amount for attorney fees, lobbying fees, costs,
23 or other similar expenses.

24 Sec. 17. (1) After receiving notice from the board under
25 section 13, the state treasurer shall draw a warrant on the general
26 fund or another source designated by the legislature in law for the
27 purchase of an annuity for the applicant based on the total amount

1 determined by the board under section 15.

2 (2) The state treasurer shall purchase an annuity under this
3 section that provides all of the following:

4 (a) A 10-year term.

5 (b) A prohibition on the sale, discounting, or use of the
6 annuity as security for a loan or mortgage by the applicant.

7 (c) Continued disbursement of the annuity to beneficiaries if
8 the applicant dies during the term of the annuity.

9 (3) Before the state treasurer draws a warrant for the
10 purchase of an annuity under this section, the applicant shall sign
11 a release and waiver on behalf of the applicant and his or her
12 heirs, successors, and assigns forever releasing all governmental
13 agencies of this state from all present or future claims that the
14 applicant or his or her heirs, successors, or assigns may have
15 against any governmental agencies of this state arising out of the
16 conviction for which compensation is being sought under this act.
17 The state treasurer shall not issue a warrant under this section
18 until the release and waiver are provided to the treasurer.

19 Sec. 19. An amount sufficient to pay compensation awarded
20 under this act during the fiscal year ending September 30, 2009 is
21 appropriated from the general fund for the fiscal year ending
22 September 30, 2009.

23 Sec. 21. (1) An individual shall not file a complaint or
24 submit an application for compensation under this act if the
25 individual has an action pending against any governmental agencies
26 of this state in state or federal court that requests compensation
27 in relation to the individual's conviction or incarceration.

1 (2) An individual who files a complaint or application under
2 this act is not entitled to an appeal or other determination of
3 issues decided under this act except as provided in this act.

4 (3) Payment under this act is not a waiver of a defense of
5 governmental or sovereign immunity and does not increase the
6 liability of this state or any person under 1964 PA 170, MCL
7 691.1401 to 691.1419.