

**SUBSTITUTE FOR
SENATE BILL NO. 291**

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
7 imprisonment of the plaintiff that are the subject of the claim for
8 compensation under this act.

9 (b) "New evidence" means any evidence that was not presented

1 in the proceedings leading to plaintiff's conviction, including new
2 testimony, expert interpretation, the results of DNA testing, or
3 other test results relating to evidence that was presented in the
4 proceedings leading to plaintiff's conviction.

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

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

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

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

23 Sec. 4. (1) In an action under this act, the plaintiff shall
24 attach to his or her verified complaint documentation that
25 establishes all of the following:

26 (a) The plaintiff was convicted of 1 or more crimes under the
27 law of this state, was sentenced to a term of imprisonment in a

1 state correctional facility for the crime or crimes, and served at
2 least part of the sentence.

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

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

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

14 (3) A copy of a complaint filed under this section must be
15 served on the attorney general and on the office of the prosecuting
16 attorney who prosecuted the crime. The court shall give the
17 attorney general and the prosecuting attorney an opportunity to
18 contest the complaint.

19 (4) If the plaintiff's conviction was for an assaultive crime
20 or a serious misdemeanor, the prosecuting attorney shall notify the
21 victim of the assaultive crime or serious misdemeanor of the
22 application under section 22a or 77a of the William Van Regenmorter
23 crime victim's rights act, 1985 PA 87, MCL 780.772a and 780.827a.
24 The prosecuting attorney shall give the victim notice under this
25 subsection by first-class mail sent to the victim's last known
26 address. The victim or victim's representative has the right to
27 appear at any proceeding under this act concerning the complaint

1 and to make a written or oral statement.

2 Sec. 5. (1) In an action under this act, the plaintiff is
3 entitled to judgment in the plaintiff's favor if the plaintiff
4 proves all of the following by a preponderance of the evidence:

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

9 (b) The plaintiff's judgment of conviction was reversed or
10 vacated and either the charges were dismissed or the plaintiff was
11 determined upon retrial to be not guilty. However, the plaintiff is
12 not entitled to compensation under the act if the plaintiff was
13 convicted of another criminal offense arising from the same
14 transaction and either that offense was not dismissed or the
15 plaintiff was convicted of that offense on retrial.

16 (c) New evidence demonstrates that the plaintiff did not
17 perpetrate the crime and was not an accomplice or accessory to the
18 acts that were the basis of the conviction, results in the reversal
19 or vacation of the charges in the judgment of conviction or a
20 gubernatorial pardon, and results in either dismissal of all of the
21 charges or a finding of not guilty on all of the charges on
22 retrial.

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

26 (a) Sixty thousand dollars for each year from the date the
27 plaintiff was imprisoned until the date the plaintiff was released

1 from prison, regardless of whether the plaintiff was released from
2 imprisonment on parole or because the maximum sentence was served.

3 (b) Economic damages, including, but not limited to, lost
4 wages, actual costs including attorney fees paid by the plaintiff
5 associated with the plaintiff's criminal defense or to actual costs
6 paid to prove his or her innocence, and actual medical expenses
7 related to the imprisonment required after release.

8 (c) Reasonable attorney fees incurred in an action under this
9 act. An award under this act must not include any attorney fees or
10 expenses incurred in bringing a previous action that was dismissed.
11 An award of attorney fees under this act may not be deducted from
12 the compensation awarded the plaintiff, and the plaintiff's
13 attorney is not entitled to receive additional fees from the
14 plaintiff.

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

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

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

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

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

6 (7) The acceptance by the plaintiff of an award under this
7 section, or of a compromise or settlement of the claim, must 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 (8) A compensation award under this section may not be offset
13 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 including expenses required to be collected under the state
19 correctional facility reimbursement act, 1935 PA 253, MCL 800.401
20 to 800.406. The attorney general is specifically excused from
21 complying with the state correctional facility reimbursement act,
22 1935 PA 253, MCL 800.401 to 800.406.

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

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

27 (9) A compensation award under this act is subject to the

1 payment of child support, including child support arrearages, owed
2 by the plaintiff. The plaintiff remains liable for any child
3 support or arrearage under the office of child support act, 1971 PA
4 174, MCL 400.231 to 400.240, and the support and parenting time
5 enforcement act, 1982 PA 295, MCL 552.601 to 552.650, except for
6 any child support or arrearage that erroneously accrued while the
7 plaintiff was imprisoned. Child support must be deducted from an
8 award under this act before the plaintiff receives any of the money
9 from the award. This subsection does not affect any ongoing child
10 support obligation of the plaintiff.

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

14 (11) An award of compensation under this act is subject to
15 setoff or reimbursement for damages obtained for the wrongful
16 conviction or imprisonment from any other person.

17 (12) If a court determines that a plaintiff was wrongfully
18 convicted and imprisoned, the court shall enter an order that
19 provides that any record of the arrest, fingerprints, conviction,
20 and sentence of the plaintiff related to the wrongful conviction be
21 expunged from the criminal history record. A document that is the
22 subject of an order entered under this subsection is exempt from
23 disclosure under the freedom of information act, 1976 PA 442, MCL
24 15.231 to 15.246.

25 Sec. 7. Any reimbursement as provided for under section
26 5(2)(d) must be paid from the general fund of this state and not
27 reimbursed out of any state department's or agency's annual budget

1 or current funding.

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

11 Enacting section 1. This act takes effect 90 days after the
12 date it is enacted into law.