

Legislative Analysis



WRONGFUL IMPRISONMENT COMPENSATION ACT

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House Bill 4250 (Substitute H-2)

House Bill 4251 (Substitute H-3)

Sponsor: Rep. Steve Bieda

Committee: Judiciary

First Analysis (8-8-08)

BRIEF SUMMARY: House Bill 4250 would create the Wrongful Imprisonment Compensation Act to allow an individual convicted and imprisoned for a crime he or she did not commit to sue for damages against the state; establish a minimum award for a claimant who prevailed in an action; and specify a statute of limitations for commencing an action under the act. House Bill 4251 would exclude from taxable income the compensation awarded under the provisions of House Bill 4250.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the state. A more detailed discussion follows later in the analysis.

THE APPARENT PROBLEM:

Imagine being arrested for a crime that you didn't commit. But then, based on the testimony of a jailhouse snitch looking for a sentence reduction or a cushier cell assignment, or on the testimony of an eyewitness who failed to initially identify you in a lineup, you were convicted by a jury and sent to prison. Imagine this happened even though there was no DNA evidence or fingerprints to link you to the crime and several witnesses corroborated that you were with them at the time the crime had been committed. Now imagine that you are one of the lucky innocents in prison who, through the persistent efforts of family members, advocacy groups, or a new good lawyer, received a new trial in which you were declared not guilty or the court threw out your conviction. Imagine you are now free. Now what?

Many would imagine that the newly released person could pick up where he or she left off before the unfortunate arrest and conviction. In reality, when years or even decades have been spent in prison, the exonerated person returns to a vastly altered environment. Often, family members have passed away, friends have died or moved on, and relationships with spouses and children may have ended years earlier. Job skills are outdated. Because a conviction may still appear on a criminal records check for a job or rental application, employment and housing may be difficult or impossible to obtain. Add to this scenario that the exoneree may be suffering from an illness contracted or made worse while in prison and is in need of appropriate medical care. Moreover, about one-quarter of those imprisoned for a crime they did not commit experience post traumatic stress disorder (PTSD) as a result of what they experienced while imprisoned.

and are in need of mental health services. Unfortunately, the exoneree has no health insurance, and without a job, no resources to pay for physician visits or medications.

On the flip side, if they really had been guilty and were newly released on parole, they would be eligible for a wide array of services as part of the new Michigan Prisoner Reentry Initiative (MPRI), that, when fully implemented state-wide next year, will facilitate access to housing and physical and mental health care; provide substance abuse treatment; and provide cognitive behavioral therapy, peer support, mentoring, and other basic living skills programs to help the parolee live independently and succeed in the community. Parolees can receive job skills training, assistance with transportation, help with obtaining personal identification necessary to get a driver's license or state identification card, housing expense assistance, and help getting a job. An exoneree receives none of this assistance. Often, they find themselves alone and without resources to rebuild their lives.

Though some who were wrongfully imprisoned may have grounds for a civil action against the state or a local police agency, not all do. Further, litigation can take years, especially if appeals are filed, and is expensive. Meanwhile, the newly exonerated person has few available resources to start life anew. A case in point is Dwight C. Love, convicted of murder at the age of 22 and incarcerated for almost 18 years for a crime he did not commit. Now suffering from a pulmonary condition resulting from asthma contracted while in the Wayne County Jail, Mr. Love lives on disability benefits of just over \$500 a month. According to his attorney, his relationships with family and friends are strained due to symptoms of PTSD. Prior to his wrongful imprisonment, Mr. Love worked at his family's lock shop as a trained locksmith. Since Mr. Love was innocent, he is ineligible to receive the medical care, counseling, and job assistance that could improve his health, repair his family relationships, and open employment opportunities.

Twenty-three states have enacted some form of statutory compensation for people such as Mr. Love who were wrongfully incarcerated. The compensation enables these innocents to begin to rebuild their lives. Some feel that Michigan should also compensate those who, for various reasons, had their lives disrupted by a wrongful conviction and incarceration.

THE CONTENT OF THE BILL:

House Bill 4250 would create an act allowing an individual convicted and imprisoned for a crime he or she did not commit to sue for damages against the state; establish a minimum award for a claimant who prevailed in an action; and specify a statute of limitations for commencing an action under the act. "Claimant" would mean the individual making the claim for compensation; the term would not include the estate of an individual entitled to make a claim for compensation who was deceased, his or her personal representative, or any heir, devisee, beneficiary, or other person who was entitled under other law to pursue a claim for damages, injury, or death suffered by the individual.

House Bill 4251 would amend the state tax laws to exclude from taxable income the compensation awarded under the provisions of House Bill 4250. The bills are tie-barred to each other.

House Bill 4250

The bill would create the Wrongful Imprisonment Compensation Act. Under the bill, an individual convicted under Michigan law and subsequently imprisoned for one or more crimes that he or she did not commit could bring an action for damages against the state in circuit court as allowed by the new act.

Filing a complaint for compensation. A claimant (person making a claim for compensation under the act) would have to attach documentation to the complaint that established that:

** The claimant had been convicted of one or more crimes under the laws of Michigan, was sentenced to a term of imprisonment, and served at least part of the sentence.

** The claimant's judgment of conviction had been vacated and either the accusatory instrument had been dismissed or the claimant had been determined not to be guilty by retrial or by court finding. (The accusatory instrument is the complaint filed against the claimant that resulted in the conviction and imprisonment that is the subject of the claim for compensation.)

** The claimant's actual innocence of the charged offense was demonstrated by the factual or evidentiary basis that had supported the judgment of conviction being vacated or the finding of not guilty. "Actual innocence" would mean that the claimant had not perpetrated and was not an accessory to the acts (crimes) that were the basis of the charge in the accusatory instrument.

The complaint would have to state the claim of the claimant as required under general rules of pleading adopted by the state supreme court and would have to include statements that both the following were true: 1) that he or she was actually innocent of the charges and was not an accessory to the crime; and, 2) did not commit or suborn perjury or fabricate evidence to cause or bring about his or her conviction. Pleading guilty to a crime the claimant did not commit or confessing or making an inculpatory statement during interrogation by law enforcement would not constitute perjury or fabricated evidence.

As provided under court rules generally applicable to civil actions adopted by the state supreme court, the claimant could file an amended complaint as a matter of course. If, after reading a complaint, a court found that the claimant would not be likely to succeed at trial, it would have to dismiss the claim, either on its own motion or on the motion of the state. If the dismissal were based on the claimant's failure to state a claim on which relief could be granted, the court would have to dismiss the case without prejudice (meaning that the claimant could file another action).

Finding for the claimant. A claimant would be entitled to judgment in his or her favor if he or she provided evidence to prove all of the following:

** He or she had been convicted of one or more crimes under Michigan law, had been sentenced to a term of imprisonment, and had served at least part of the sentence.

** The judgment of conviction had been vacated and either the accusatory instrument had been dismissed or the claimant determined to be not guilty upon retrial or by court finding.

** He or she was actually innocent of the charges in that he or she had not perpetrated nor been an accessory to the acts that were the basis of the charge in the accusatory instrument.

** He or she did not commit or suborn perjury or fabricate evidence to cause or bring about the conviction.

Compensation. If a court found that a claimant had been wrongfully convicted and imprisoned, it would have to award damages, including, but not limited to, the following:

** Not less than \$40,000 for each year of incarceration, adjusted to account for inflation from the act's effective date and partial years served.

** Economic damages, including, but not limited to, lost wages, costs associated with criminal defense and efforts to prove his or her innocence, and medical expenses required after release.

** Physical and mental health coverage comparable to that provided to civil service employees under a group health plan; this would be offset by any amount provided through the claimant's employers during that time period. The Department of Community Health would have to provide health coverage awarded under this provision for 10 years from the date of the award by purchasing a health coverage plan, policy, certificate, or contract selected by the DCH director.

** Compensation for costs incurred by the claimant for reasonable reintegrative services and mental and physical health care after release from wrongful imprisonment and before the date of the award.

** Reasonable attorney fees, calculated at 10 percent of the damage award (not to exceed \$75,000 plus an adjustment for inflation from the effective date of the act) and expenses. The award could not include any attorney fees or expenses incurred in bringing a previous action that had been dismissed. The award could not be deducted from the compensation awarded the claimant. The claimant's attorney would not be entitled to receive additional fees from the claimant.

A damage award would not be subject to either a cap applicable to private parties in civil lawsuits or taxes, except for the portion of the award for attorney fees.

Damages could not be awarded for any time during which the claimant had been incarcerated under a concurrent sentence for another conviction, or for injuries sustained while imprisoned. The making of a claim or receipt of damages under the bill would not preclude a claim or action for damages because of injuries sustained by the claimant while imprisoned.

The claimant would have to accept an award, or a compromise or settlement of the claim, in writing. The acceptance – unless procured by fraud – would be final and conclusive, would constitute a complete release of all claims against the state, and would be a complete bar to any action by the claimant against the state on the same subject matter.

The damage award could not be offset by expenses incurred by the state or any political subdivision (i.e., local governments) including, but not limited to, expenses incurred to secure the claimant's custody or to feed, clothe, or provide medical services to the claimant; the value of any services awarded to the claimant under the act; or the value of any reduction in fees for services awarded to the claimant under the act. However, if a claimant who received damages for wrongful conviction or imprisonment under this provision from any other person, the claimant would have to reimburse the state for damages paid under this provision to the extent of damages recovered from the other person.

Statute of limitation. An action for compensation under the act would have to be commenced within three years after the entry of a verdict, order, or judgment vacating the conviction, dismissing the accusatory instrument, or a determination of not guilty either by a retrial or a court finding. Any action by the state challenging or appealing a verdict, order, or judgment entered that overturned a conviction would toll (stop) the three-year period. An individual who had been convicted, incarcerated, and released from custody prior to the act's effective date could commence an action within five years of the act's effective date.

Responsibilities of the court. A court that on or after the effective date of the new act entered a verdict, order, or judgment that vacated a conviction, dismissed an accusatory instrument, or determined a claimant was not guilty either by a retrial or a court finding would have to provide a copy of the act to the defendant at the time the verdict, order, or judgment was entered. The individual would have to acknowledge receipt of the act in writing on a form approved by the State Court Administrator's Office (SCAO). The acknowledgment would have to be filed with the court and would be admissible in any proceeding filed by a claimant under the act's provisions.

A claimant entitled to receive a copy of the act that can show he or she did not properly receive the copy would be entitled to a one-year extension of the statute of limitations.

The SCAO would also have to make a reasonable attempt to notify every person in whose favor a verdict, order, or judgment had been entered before enactment of the new act that vacated a conviction, dismissed an accusatory instrument, or determined a claimant was not guilty either by a retrial or a court finding of his or her rights under the act.

House Bill 4251

The bill would amend the Income Tax Act (MCL 206.30) to exclude from the definition of taxable income compensation received in the tax year pursuant to the Wrongful Imprisonment Compensation Act. The bill would apply to tax years beginning after December 31, 2007 and would allow a claimant under that act to deduct, to the extent included in adjusted gross income, any compensation received as a result of an award in his or her favor.

FISCAL INFORMATION:

House Bill 4250 would have an indeterminate fiscal impact on the state and the Judiciary depending upon the number of actions that are brought for damages against the state. Currently, data is not available concerning the number of individuals who, after imprisonment, had their convictions vacated because they were later found not guilty.

Under this bill, it is unknown how many claimants would bring an action for damages. The state would be responsible for paying court-awarded damages to claimants. The bill provides that for each claimant that the court finds was wrongfully convicted and imprisoned, the court shall award damages of at least \$40,000 for each year of incarceration – adjusted by inflation and economic damages, including wages, defense costs, and medical expenses. The court shall also award 10 years of a physical and mental health care coverage plan comparable to that provided to state civil service employees (which would be offset by any employer-sponsored benefits) and legal fees of up to \$75,000, plus expenses.

Under the bill's provisions, circuit courts may experience an increase in administrative workload, depending upon the number of actions for damages that they handle. The State Court Administrator's Office would see an increase in administrative costs under the bill's new requirements for providing defendants copies of this act and the additional responsibility of notifying past defendants.

ARGUMENTS:

For:

According to advocates for the innocents, many inmates lose all assets while incarcerated, including their home, car, bank accounts, personal belongings, and custody of their children. When a person is exonerated, he or she has nothing. With outdated job skills and possible health or emotional needs, exonerates need resources to access the services that will enable them to rebuild their lives. The bills would provide a reasonable

amount of financial compensation and physical and mental health benefits needed by an innocent person whose life was disrupted when he or she was wrongfully convicted and imprisoned.

House Bill 4250 would establish the statutory framework for reasonable compensation and House Bill 4251 would exempt an award from taxable income. The bill is not expected to be exceedingly expensive to implement as improved investigative techniques and DNA evidence results in few people who are newly convicted being later proven to be innocent. For instance, the Innocence Project, comprising law students and lawyers who work with inmates to have DNA evidence tested or retested, have only successfully exonerated a little over 200 inmates out of thousands who requested assistance. In Michigan, two out of 4,000 applicants were exonerated. Several others have received new trials or had their convictions overturned for reasons other than DNA evidence, but those numbers are also small.

However, for those few who are able to prove their innocence, the bills represent hope for the future and fair compensation for what was wrongly taken away. Some supporters of the legislation believe that compensating exonerees in this manner also may reduce the number of lawsuits initiated against law enforcement agencies and county prosecutors. Regardless, enactment of a fair compensation statute for the wrongfully incarcerated is simply the right thing to do.

Response:

House Bill 4250 would prevent a person who received compensation under the bill from bringing an action against the state for higher damages. Sometimes, a person is mistakenly convicted. Other times, a person is mistakenly convicted because of bad acts on the part of state or local law enforcement, such as suppressing evidence, deliberately ignoring other leads, using intimidation techniques during interrogations, and so forth. The Innocence Project feels this provision should be amended so that wrongfully convicted persons could still bring a suit against any unit of government -- state or local -- that violated a person's civil rights. In addition, a person's ability to "double dip" (by receiving compensation under House Bill 4250 and by receiving damages under a civil suit) could be lessened if the damages awarded in a civil action were reduced by the amount of compensation awarded under House Bill 4250.

Against:

Compensation awarded under House Bill 4250 would be paid by the state, even if the case had been investigated and prosecuted by local authorities. It doesn't seem right that all taxpayers should bear the burden of compensating the wrongfully incarcerated when the person had been wrongfully convicted based on the case as investigated and prosecuted by local authorities.

Response:

Local governments simply do not have the same resources to award compensation under a wrongful incarceration statute that the state has. Therefore, it is appropriate for the state to carry the responsibility.

POSITIONS:

The Innocence Project supports the bills. (3-18-08)

The Ken Wynnemko Foundation supports the bills. (3-19-08)

The Thomas Cooley Innocence Project supports House Bill 4250. (6-25-08)

The Michigan Association for Justice supports House Bill 4250. (10-23-07)

The Justice Project supports House Bill 4250. (10-23-07)

The Michigan Department of Treasury is neutral on House Bill 4251. (6-25-08)

The Office of Attorney General opposes House Bill 4250. (10-23-07)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.