



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bill 291 (as enacted)  
House Bill 5815 (as enacted)  
Sponsor: Senator Steven Bieda (S.B. 291)  
Representative Stephanie Chang (H.B. 5815)  
Senate Committee: Judiciary  
House Committee: Criminal Justice

**PUBLIC ACT 343 of 2016**  
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Date Completed: 1-11-17

### **RATIONALE**

According to the National Registry of Exonerations, a project of the University of Michigan Law School, more than 1,900 people who have been convicted of crimes nationwide were exonerated between 1989 and December 2016. Sixty-six of those exonerations occurred in Michigan. These are cases of people who were convicted but later cleared of charges based on new evidence of innocence. In addition to losing their liberty, they lost out on career opportunities and, in many cases, their friendships and family relationships suffered. Some people believe that the State has a duty to make up for wrongs done on its behalf and should provide financial compensation to a person who is convicted of a crime, serves a term of imprisonment, and later is determined to have been innocent of the charges.

### **CONTENT**

**Senate Bill 291** creates the "Wrongful Imprisonment Compensation Act" to allow a person to bring an action for compensation against the State if he or she has been wrongfully convicted under Michigan law and imprisoned in a State correctional facility for a crime he or she did not commit. The bill does the following:

- Establishes procedures for such an action.
- Requires a copy of the complaint to be served on the Attorney General and the prosecuting attorney for the county in which the plaintiff was convicted.
- Requires the prosecuting attorney to notify the victim of the crime that an application for compensation has been filed, if the plaintiff's conviction was for an assaultive crime or a serious misdemeanor.
- Specifies that the victim, or his or her representative, has the right to appear at a proceeding under the Act and to make a statement.
- Requires the court to award compensation if it finds that a plaintiff was wrongfully convicted and imprisoned.
- Requires compensation to include \$50,000 per year for the period of incarceration prorated daily for incarceration of less than one year; reasonable attorney fees; and reimbursement of any amount collected from the plaintiff by the State under the State Correctional Facility Reimbursement Act.
- Prohibits compensation from being awarded for any time during which the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction, or for any injury sustained during imprisonment.
- Specifies that, in the court's discretion, an award may be paid in a single payment or multiple payments, with the initial payment being at least 20% of the award and the remainder paid over not more than 10 years.

- Specifies that an award under the Act is not a finding of wrongdoing against anyone and is not admissible in evidence in a civil action related to the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.
- Provides that a plaintiff's acceptance of an award or settlement bars any further action in State court by the plaintiff against the State based on the same matter.
- Provides that an award under the Act is not subject to income taxes.
- Provides that a plaintiff remains liable for any child support payments or arrearages, except those erroneously accrued while he or she was imprisoned.
- Requires child support to be deducted from an award before the plaintiff receives any of the money from it.
- Specifies that the Act does not impair or limit the right of a State or local government to collect a debt from the plaintiff's award.
- Specifies that an award under the Act is subject to setoff or reimbursement for damages obtained for wrongful conviction or imprisonment from any other person.
- Requires a court that determines that a plaintiff was wrongfully convicted and imprisoned to expunge records from the person's criminal history.
- Creates the "Wrongful Imprisonment Compensation Fund" and requires the State Treasurer to spend money from the Fund to pay claims under the Act.
- Requires the Treasurer, if there is insufficient money in the Fund to pay ordered claims, to pay those claims if money becomes available in the Fund before paying new claims.
- Requires the Treasurer to notify the Legislature that money in the Fund may be insufficient to cover future claims.
- Requires an action for compensation to begin within three years after entry of a verdict, order, or judgment reversing or vacating a wrongful conviction.
- Specifies that an individual convicted, imprisoned, and released from custody before the Act's effective date must commence an action within 18 months after that date.

**House Bill 5815 amends the Corrections Code to do the following:**

- Require the Department of Corrections (DOC) to provide reentry services and vital documents to a prisoner who is discharged because his or her conviction or sentence is reversed, vacated, or overturned.
- Require the DOC to assign staff to ensure that those services and documents are provided to a prisoner who is eligible for them.
- Require a prisoner who receives services under the bill to repay the DOC if his or her conviction is reinstated or he or she is resentenced and returned to DOC custody for the same conviction.

The bills will take effect on March 29, 2017.

**Senate Bill 291**

**Action for Compensation**

An individual convicted under the law of this state and subsequently imprisoned in a State correctional facility for one or more crimes that he or she did not commit may bring an action for compensation against the State in the Court of Claims.

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

The plaintiff must attach to his or her complaint documentation that establishes all of the following:

- He or she 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.

The plaintiff must verify the complaint.

A copy of the 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.

If the plaintiff's conviction was for an assaultive crime or a serious misdemeanor, the prosecuting attorney must notify the victim of the application pursuant to the Crime Victim's Rights Act. The victim or victim's representative will have the right to appear at any proceeding under the Wrongful Imprisonment Compensation Act concerning the complaint and to make a written or oral statement.

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 the Act.

The plaintiff will be entitled to judgment in his or her favor if he or she proves by clear and convincing evidence all of the conditions that must be documented in the complaint.

The plaintiff will not be entitled to compensation if both of the following apply: 1) he or she was convicted of another crime arising from the same transaction, and 2) either that offense was not dismissed or the plaintiff was convicted of that offense on retrial.

The bill defines "new evidence" as 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. The term 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 the Attorney General, if the Attorney General had prosecuted the case, agrees that the recantation constitutes new evidence without other evidence to support it.

### Compensation

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 he or she was released from prison, regardless of whether he or she 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.

The compensation also must include all of the following:

- Reasonable attorney fees incurred in an action under the Act.
- Reimbursement of any amount awarded and collected by the State under the State Correctional Facility Reimbursement Act.

(That Act prescribes procedures for securing reimbursement to the State of the expenses it incurs for the cost of care of prisoners in State correctional facilities.)

All of the following apply to attorney fees under the Act:

- The court may not award attorney fees unless the plaintiff has actually paid the amount awarded to the attorney.
- 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 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.

A compensation award will not be subject to a limit on the amount of damages, except as stated in the Wrongful Imprisonment Compensation Act.

Compensation may not be awarded for any time the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction. Compensation also may not be awarded for injuries the plaintiff sustained while imprisoned. Making a claim or receiving compensation under the Act, however, will not preclude a claim or action for compensation because of such an injury.

In the discretion of the court, the total amount awarded for compensation for time incarcerated and reimbursement of amounts collected under the State Correctional Facility Reimbursement Act may be paid to the plaintiff in a single payment or in multiple payments. If the court orders multiple payments, 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.

An award of compensation under the Wrongful Imprisonment Compensation Act will not be 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.

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 acceptance by the plaintiff of an award under the Act, or of a compromise or settlement of the plaintiff's claim, however, will 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.

A compensation award under the Act may not be offset by any of the following:

- 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, including expenses required to be collected under the State Correctional Facility Reimbursement Act.
- The value of any services awarded to the plaintiff under the Wrongful Imprisonment Compensation Act.
- The value of any reduction in fees for services awarded to the plaintiff.

An award under the Act will not be subject to income taxes.

An award of compensation will be subject to setoff or reimbursement for damages obtained for wrongful conviction or imprisonment from any other person.

A compensation award under the Act also will be subject to the payment of child support owed by the plaintiff, including child support arrearages. The plaintiff will remain 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 will not affect a plaintiff's ongoing child support obligations.

The Act will 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.

## Wrongful Imprisonment Compensation Fund

The Act creates the Wrongful Imprisonment Compensation Fund as a separate fund in the State Treasury. The State Treasurer may receive money or other assets from any source for deposit into the Fund, and must direct its investment. The Treasurer also must credit to the Fund any interest and earnings from Fund investments. The Department of Treasury will be the administrator of the Fund for auditing purposes. Money in the Fund at the close of the fiscal year must remain in it and may not lapse to the General Fund.

The State Treasurer may spend money from the Fund only for the purpose of paying claims authorized under the Act and the costs of administering the Fund. The Treasurer must pay money from the Fund in amounts and at the times as ordered by courts under the Act. If there is insufficient money in the Fund to pay claims as ordered, the Treasurer must pay claims that are ordered, but not yet paid, if money becomes available in the Fund, and must pay those claims before paying subsequently ordered claims.

The Treasurer must develop and implement a process to notify the Legislature that money in the Fund may be insufficient to cover future claims when the Treasurer reasonably believes that, within 60 days, the money in the Fund will be insufficient. The process, at a minimum, must do both of the following:

- Identify a specific date by which the money in the Fund will become insufficient to pay claims.
- Outline a clear process indicating the order in which claims pending with the Fund will be paid, and the order in which claims that were pending when money became insufficient will be paid.

Any compensation under the 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.

## 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 will be exempt from disclosure under the Freedom of Information Act.

## Filing Deadlines

An action for compensation under the Act must be commenced within three years after entry of a verdict, order, or judgment as the result of the reversal or vacation of a conviction. Any action by the State challenging or appealing such a verdict, order, or judgment will toll the three-year period.

An individual convicted, imprisoned, and released from custody before the Act's effective date must commence an action under the Act within 18 months after that date.

## **House Bill 5815**

The bill requires the DOC to provide all of the following to a prisoner who is discharged from custody before his or her maximum discharge date without being granted parole because the prisoner's conviction or sentence has been reversed, vacated, or overturned:

- Reentry services, excluding housing, consistent with the services received by parolees, for a period of up to two years following the date of discharge.
- Reentry housing, consistent with the transitional housing provided to parolees, for up to one year following discharge.
- Vital documents, including the prisoner's birth certificate.

The DOC must assign staff to ensure that a prisoner eligible for services and documents under the bill is given them in a timely manner.

A prisoner who received reentry services under the bill and whose conviction subsequently is reinstated or who is resentenced and returned to DOC custody for the same conviction that previously was reversed, vacated, or overturned must repay the Department for all reentry services that he or she received. The DOC must determine the amount the prisoner owes.

MCL 691.1751-691.1757 (S.B. 291)  
791.283 (H.B. 5815)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The American system of criminal justice is designed to ensure that the innocent are not found guilty, with safeguards such as the presumption of innocence and the prosecutorial burden of proof beyond a reasonable doubt. Nevertheless, as evidenced by the cases compiled by the National Registry of Exonerations, innocent people sometimes are convicted of crimes they did not commit. While those who are exonerated are released from prison, their lost liberty and foregone opportunities during their time of incarceration can never be returned to them. To achieve fairness and equity, when the justice system makes such an egregious error as convicting and incarcerating a person who is later shown to be innocent, the State should make amends to the aggrieved person. Indeed, at least 30 states and Washington, D.C., have some sort of compensation system for people who are exonerated after serving time for a crime they did not commit.

By establishing a procedure for an exonerated person to file an action for compensation, and requiring the court to award \$50,000 for each year of incarceration plus reasonable attorney fees, Senate Bill 291 recognizes the State's responsibility to pay individuals who have been improperly convicted of crimes and wrongfully imprisoned. The bill also brings the State in line with a majority of states that have enacted laws compensating exonerated prisoners. Compensation will not automatically be available under the bill, however, as the individual's conviction must have been reversed or vacated and there must be new evidence showing that the person was not the perpetrator or an accessory or accomplice. These criteria set a very high threshold for a person seeking compensation. In addition, a person will not be entitled to compensation if he or she was convicted of another crime arising from the same transaction. The bill also prohibits an award for any time the person was imprisoned under a concurrent or consecutive sentence for another conviction.

### **Supporting Argument**

The State's law enforcement and judicial systems should strive to achieve justice for those who are drawn into those systems. When a person is wrongfully convicted, justice is not served. Those who are erroneously convicted and sentenced to prison suffer a trauma that is unimaginable to most other people. This is illustrated by Senate Judiciary Committee testimony of two people who were exonerated after a wrongful conviction and time served in prison.

According to the testimony of Ken Wyniemko, he was convicted in 1994 of criminal sexual conduct, breaking and entering, and armed robbery. Nine years later, he was cleared of those charges by analysis of DNA evidence that showed that someone else had committed the crimes. Wyniemko said that he continues to suffer from the effects of being wrongfully imprisoned, and compared exonerates' suffering to that of military veterans who suffer from post-traumatic stress disorder.

According to the testimony of Julie Baumer, she was convicted of first-degree child abuse in 2005. She had been pursuing adoption of her sister's baby, who was born prematurely and spent time in neonatal intensive care. Six weeks after the baby's birth, he became very ill while under Baumer's care. A doctor diagnosed the child with shaken baby syndrome and Baumer was convicted of abusing him. Four and a half years later, the baby was correctly diagnosed with a form of childhood

stroke, and Baumer was exonerated. While in prison, Baumer missed out on career advancement opportunities and her personal relationships with family members were harmed.

Although providing a measure of compensation to people like Mr. Wyniemko and Ms. Baumer will not erase the damage done to them in the name of the State, it will give them financial resources to which they otherwise would not have access. This will put them in a better position to recover from the physical and emotional trauma of wrongful conviction and imprisonment and help them to regain some of the lost opportunities caused by the injustice done to them.

### **Supporting Argument**

Exonerated prisoners can face tremendous difficulty in reintegrating into society. Typically, they have some of the same challenges as people who are released from prison on parole, such as finding housing and employment, but they have not been entitled to the services that other released prisoners receive. Like parolees, exonerated prisoners return to their communities with little or no resources to reconnect with potential employers or housing providers. Through its prisoner reentry program, however, the DOC helps guide parolees in their transition back into the community. According to the DOC's prisoner reentry model, "The community and discharge phase begins when the prisoner is paroled from prison and continues until discharge from community supervision. During this phase, the parolee, the parole officer, human services providers and the offender's personal support network must collaborate to optimize the parolee's chances for a successful adjustment to community living." Exonerated prisoners have not received any of those services, but may need them as much as a paroled prisoner. By requiring the DOC to provide reentry services to exonerated prisoners, House Bill 5815 will ensure that they are treated at least as well as parolees while they acclimate to living and working outside of prison.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

### **Senate Bill 291**

The bill will have no fiscal impact on local government and a significant but indeterminate cost to State government. According to the National Registry of Exonerations (NRE) maintained by the University of Michigan Law School, 66 exonerations have occurred in Michigan to date. Of those 66 documented exonerations, according to the University of Michigan Law School's Innocence Project, 26 individuals will be eligible for the compensation. According to the Innocence Project's dataset, the average number of years of wrongful imprisonment per exoneration is 10.1 for the 26 documented cases. If all payments are made under the conditions in the Innocence Project's dataset, the total minimum costs will be approximately \$13.1 million paid from the Wrongful Imprisonment Compensation Fund either in a single payment or multiple payments over not more than 10 years. If the compensation is made over multiple payments, the initial payments will have to be at least 20% of the total amount awarded.

The figure of approximately \$13.1 million in total minimum costs is based on the fixed amounts taken from the bill; however, there are other variables that may increase the figure on a per-case basis given that the compensation may include attorney's fees and other reimbursable amounts. Attorney's fees are capped at 10% of the total amount awarded or \$50,000, whichever is less, plus expenses. Additionally, the bill allows future claims to be made for exonerations. Since the facts of those cases are currently unknowable, a fiscal impact cannot be determined.

As this bill relates exclusively to wrongful imprisonment in a State correctional facility and claims against the State, there will be no fiscal impact on local government except to the extent that judicial resources are required.

### **House Bill 5815**

The bill will have a negative, though likely negligible, fiscal impact on the State and no fiscal impact on local government. According to the National Registry of Exonerations, a project of the University

of Michigan Law School, 25 individuals were released from DOC facilities between 2012 and 2016 because their convictions or sentences were reversed, vacated, or overturned. That gives an average of five individuals per year, with not more than eight in a single year.

According to the DOC, housing contracts vary by region, but a daily rate of \$25 to \$35 is a reasonable estimate. If an individual uses transitional housing for an entire year, the cost is \$9,000 to \$13,000. The cost for other reentry services varies greatly depending on what each individual needs. When looking solely at high-need offenders, the average cost will be \$1,500 to \$2,500 per year. The Department currently pays to get birth certificates for all inmates before they are released and assists in getting other documentation needed to obtain a State ID, so the provisions of the bill will have no additional cost from that area.

When taken together, the estimated cost per individual affected by the bill will be between \$0 and \$18,000, depending on the level of services needed. If five to eight people per year need the maximum level of services required by the bill, the total cost will be \$90,000 to \$144,000 per year, which is 0.37% of the more than \$38.5 million per year that the DOC currently spends on reentry services. Any costs from the bill will be handled within existing appropriations.

Fiscal Analyst: Ryan Bergan  
John Maxwell

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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.