



PA 24-106—sSB 439

Judiciary Committee

AN ACT CONCERNING COMPENSATION FOR PERSONS WHO ARE WRONGFULLY INCARCERATED

SUMMARY: This act makes various changes in the law that governs wrongful incarceration compensation.

Among other things, the act does the following:

1. expands the eligibility criteria by allowing compensation when the complaint or information is dismissed on grounds consistent with innocence (e.g., the conviction was vacated or reversed and there is substantial evidence of innocence);
2. specifies that the two-year filing deadline also applies from the date the information was dismissed;
3. requires the claims commissioner to determine whether a claimant meets the eligibility requirements within 90 days after the hearing;
4. calculates the award based on the “median family income” instead of the “median household income”;
5. requires compensation awards to be offset by the amount of certain other damages awarded to the claimant;
6. limits payments for reintegration services;
7. increases, from \$20,000 to \$35,000, the threshold for legislative review of claims;
8. eliminates the General Assembly’s authority to modify awards but allows it to remand the matter to the claims commissioner;
9. allows a deceased claimant’s estate to receive compensation under certain conditions; and
10. specifies that the wrongful incarceration compensation provisions do not apply to certain agreements or stipulations the attorney general enters into on the state’s behalf.

Lastly, it also makes minor, technical, and conforming changes.

EFFECTIVE DATE: Upon passage and applicable to claims pending before the claims commissioner on the act’s passage or filed with the claims commissioner on or after that date.

WRONGFUL INCARCERATION COMPENSATION

Eligibility

By law, a person is eligible for wrongful incarceration compensation if he or she was convicted by the state of one or more crimes and served time for the crime or crimes, the conviction was vacated or reversed, and the complaint or information

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was dismissed on one of the following grounds:

1. innocence, or
2. malfeasance or serious misconduct by a state officer, agent, employee, or official.

The act expands the eligibility criteria by also allowing compensation when the complaint or information is dismissed on grounds consistent with innocence.

Under the act, “grounds consistent with innocence” includes a situation in which a conviction was vacated or reversed and there is substantial evidence of innocence, whether the evidence was available at the time of the investigation or trial or is newly discovered.

Filing Deadline

Under existing law, claims based on a pardon or dismissal that occurred on or after October 1, 2008, must be filed within two years after the pardon was granted or complaint was dismissed. The act makes a conforming change to similarly set the filing deadline from within two years after the information was dismissed.

Hearing Before the Claims Commissioner

By law, a person who meets the eligibility criteria may file a claim against the state for compensation. The person must file the claim with the claims commissioner and, at the hearing, prove his or her eligibility by a preponderance of the evidence. The act requires the claims commissioner to determine whether a claimant meets the eligibility requirements within 90 days after the hearing.

Determining Compensation

By law, if the commissioner determines that a claimant is eligible for compensation, the commissioner must order immediate payment to the claimant for an amount the commissioner determines after assessing certain relevant factors.

Award Calculation. Prior law required the commissioner to award a claimant, for each year he or she was wrongfully incarcerated, an amount equal to or up to twice the median household income for the state, as determined by the U.S. Department of Housing and Urban Development (HUD), adjusted for inflation using the consumer price index for urban consumers. The act bases this amount on HUD’s “median family income” instead of the “median household income.” By law, unchanged by the act, the award amount must be prorated for any partial year the claimant served in incarceration.

By law, the commissioner may decrease or increase the award amount by 25% based on an assessment of relevant factors, including certain evidence the claimant presented at the hearing (e.g., evidence of his or her age, income, vocational training, and level of education at the time of conviction).

Offset. The act requires that the amount of compensation awarded be offset by the amount of any damages awarded to the claimant from an action by the claimant against any other unit of the state government by reason of the same subject of the

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claim.

Reintegration Services. Prior law allowed the commissioner to also award payment for any reintegration services the claimant may need. The act limits this to payment for the expenses of employment training, counseling, and tuition and fees at state colleges and universities.

Legislative Review of Compensation

Prior law required the General Assembly to review a compensation award if the claimant requested a review or the award exceeded \$20,000. The act increases this threshold to \$35,000.

The law requires the commissioner to submit the claim to the General Assembly for a review within five business days after the commissioner determined the award or the claimant requested it. The act specifies that this deadline is based on whichever event is sooner.

Under prior law, the General Assembly had to review the award and the claim from which it arose within 45 days after receiving the claim and could (1) deny the claim, (2) confirm the award, or (3) modify the award to any amount it deemed just and reasonable. The act removes the General Assembly's ability to modify the award and instead allows it to (1) deny or confirm the award or (2) remand the claim to the claims commissioner's office for any further proceedings the General Assembly may direct.

Under prior law, if the General Assembly took no action on the award or the claim, the commissioner's determination was deemed confirmed. The act specifies that this pertains to the award only.

Submissions During the Interim or Close to the End of Session

Under the act, compensation awards and their associated claims must be deemed to be submitted on the first day of the next regular session if the claims commissioner submits them to the General Assembly (1) when the General Assembly is not in a regular session or (2) 30 or fewer days before the end of a regular session and they are not acted upon dispositively before the end of the session.

Other Actions or Remedies

By law, a compensated claimant must sign a release that voluntarily relinquishes his or her right to pursue any other action or remedy arising from the wrongful conviction and incarceration. The act limits the applicability of this release to only those actions or remedies against the state.

Future Damages Awarded

Under the act, any future damages awarded to the claimant resulting from an action by the claimant against any other unit of government within the state by

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reason of the same subject of the claim must be offset by the compensation award received.

Deceased Claimants

The act establishes conditions under which a claimant's estate would be entitled to compensation.

Under the act, if a deceased claimant would be entitled to compensation if he or she were alive, including a claimant whose conviction was vacated or reversed posthumously, the claimant's estate is entitled to compensation if the claim was pending before the claims commissioner at the time of the claimant's death.

Applicability of the Law

The act specifies that the wrongful incarceration compensation provisions do not apply to any agreement or stipulation the attorney general enters into in connection with a lawsuit in which the state is a party and that contains provisions requiring more than \$2.5 million of General Fund expenditure. By law, these agreements or stipulations require the General Assembly's approval.