

**2017 DRAFTING REQUEST**

**Bill**

For: **Dale Kooyenga (608) 266-9180** Drafter: **chanaman**  
 By: **Rachel** Secondary Drafters: **tdodge**  
 Date: **10/4/2016** May Contact:  
 Same as LRB: **-3946**

Submit via email: **YES**  
 Requester's email: **Rep.Kooyenga@legis.wisconsin.gov**  
 Carbon copy (CC) to: **tamara.dodge@legis.wisconsin.gov**

**Pre Topic:**

No specific pre topic given

**Topic:**

Treatment of Wrongfully Convicted Persons

**Instructions:**

Redraft 2015 AB460 with amendments

Per MLJ

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 10/6/2016	aernstr 10/7/2016			
/P1	mshovers 4/26/2017		rmilford 10/7/2016		State S&L Tax Exempt
/P2	mjohns 5/11/2017	anienaja 5/11/2017	mbarman 4/27/2017		State S&L Tax Exempt
/P3	mjohns 5/11/2017	kfollett 5/11/2017	lparisi 5/11/2017		State S&L

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u> Tax Exempt
/P4	mjohns 7/11/2017	anienaja 7/11/2017	lparisi 5/11/2017		State S&L Tax Exempt
/1			mbarman 7/11/2017	mbarman 7/11/2017	State S&L Tax Exempt

FE Sent For:

<END>

AT  
INTRO



State of Wisconsin  
2015 - 2016 LEGISLATURE

-0316/P1

LRB-320173  
MK/MS/PH/TT:kjf&ahe

fkf,cmh

**2015 ASSEMBLY BILL 460**

October 27, 2015 - Introduced by Representatives KOOYENGA, HEBL, KESSLER, JOHNSON, MASON, MILROY, JARCHOW, KRUG, HINTZ, ROHRKASTE, KITCHENS, STEFFEN, OHNSTAD, GOYKE, ALLEN, KOLSTE, TITTL, SPREITZER, C. TAYLOR, T. LARSON, SINICKI, HUTTON, MURSAU, WACHS, BERCEAU, ZAMARRIPA, BROSTOFF, POPE, QUINN, EDMING and SUBECK, cosponsored by Senators WANGGAARD, RISSER, BEWLEY, L. TAYLOR, NASS, RINGHAND, LASSA, C. LARSON and DARLING. Referred to Committee on State Affairs and Government Operations.

sa ✓ gen ✓

1 AN ACT to renumber and amend 775.05 (2); to amend 20.505 (4) (d), 40.51 (1),  
2 227.03 (5), 775.05 (3) and (4) and 775.05 (5); and to create 20.515 (1) (ds),  
3 20.515 (1) (g), 40.516, 71.05 (6) (b) 53., 227.43 (1) (bw), 301.051, 775.05 (2) (b)  
4 and (c) and (2m), 775.05 (4g), 775.05 (4m) and (4r), 808.085, 977.05 (4) (jr) and  
5 977.05 (4) (jw) of the statutes; relating to: resolution of claims against the state  
6 for wrongful imprisonment of innocent persons, exempting from taxation  
7 certain amounts an individual receives from the claims board or legislature,  
8 health benefits for wrongfully imprisoned persons, and making appropriations.

***Analysis by the Legislative Reference Bureau***

This bill does the following: 1) makes changes to the requirements for claims for state compensation by wrongfully imprisoned persons; and 2) provides health care coverage and other assistance for such persons. Except as noted below, the bill initially applies with respect to claims filed by persons who are released on or after January 1, 1990, from imprisonment for crimes of which they claim to be innocent.

***Requirements for claims.*** Currently, the state claims board is directed to hear petitions for compensation by persons who are released from imprisonment for crimes of which they claim to be innocent. The board must find either that the evidence is clear and convincing that the petitioner was innocent of the crime for

**ASSEMBLY BILL 460**

which he or she was imprisoned or that the evidence is not clear and convincing that he or she was innocent. If the board finds that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the board must award the petitioner compensation not to exceed \$25,000 total nor more than \$5,000 for each year of imprisonment. This amount includes any expenses for attorney fees, costs, and disbursements incurred by the petitioner. Any award is paid from state general purpose revenues. If the board determines that it is not able to award an adequate compensation, it is directed to submit a report to the legislature specifying the amount that it considers to be adequate.

This bill provides that when the claims board receives a claim for wrongful imprisonment filed by a petitioner who has been released from imprisonment and who claims to be innocent of the crime for which he or she was imprisoned, the board must refer the petition to the Division of Hearings and Appeals in the Department of Administration (DOA). The bill then allows either DOA or the office of the prosecutor who prosecuted the petitioner to file a written request with the claims board for a hearing within 30 days after the original petition is filed with the board. If a timely request for a hearing is filed, or if the division concludes that it cannot determine the petitioner's eligibility for compensation without a hearing, the division must hold a hearing within 60 days after the petition is filed. If a timely request for a hearing is not filed and the division is able to determine that the petitioner is eligible for compensation without a hearing, the division must decide the matter without a hearing, except that the division must afford a petitioner an opportunity for a hearing before denying compensation to the petitioner. If a hearing is held, the bill allows the petitioner to be represented by a public defender. If a hearing is held, the division appoints a hearing examiner to hear the petition. If no hearing is held, the division decides the matter without a hearing.

The hearing examiner makes findings and issues a decision concerning whether the petitioner is entitled to compensation. Under the bill, the findings must be based upon the preponderance of evidence (a lesser evidentiary standard than clear and convincing evidence). The petitioner need not show that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation.

If the hearing examiner's finding is in the affirmative, the examiner must transmit its findings to the claims board, which shall award compensation to the petitioner in an amount that the board considers to be adequate and the board must pay that amount to the petitioner. Under the bill, the amount of compensation is fixed at a rate of \$50,000 per year or any portion thereof with a \$1,000,000 limit on the total amount of an award. In addition, subject to the \$1,000,000 limit, each award must include reimbursement for reasonable, actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, post-conviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment. The \$50,000 annual rate is subject to annual adjustments based on changes in the cost of living. The bill requires the board to make, every five years, a

pro-rated  
daily

ASSEMBLY BILL 460

recommendation to the legislature as to whether the \$1,000,000 limit should be changed.

The bill provides that no person may file a claim for wrongful imprisonment or be paid an award for such imprisonment as a result of a conviction resulting in imprisonment for a crime if the imprisoned person is also imprisoned as the result of a conviction for a felony in any court of this state arising from the same course of conduct that resulted in conviction for the crime of which the person claims to be innocent if the person does not claim to be innocent of that felony or if the imprisoned person is convicted of one or more certain violent crimes after his or her release from imprisonment.

x  
x  
The bill also provides that, with certain exceptions, a surviving spouse or domestic partner, child, parent, or sibling of a person who is entitled to compensation for wrongful imprisonment but who does not receive payment of an award may, within one year of the death of that person, file or pursue on behalf of the deceased person a claim for wrongful imprisonment. Under the bill, any payment that would have been payable to the deceased person then becomes payable to the individual who files or pursues the claim, except that if that person is only entitled under the law governing inheritances to inherit a portion of the estate of a deceased person, the individual may only receive the same portion of the payment. Any compensation is independent of any rights that a claimant or any other person may have to inherit assets under any will of the decedent.

The bill also creates requirements that apply if a person who petitions for compensation obtains any settlement, judgment, or award against a third party in a federal or state action for damages related to wrongful imprisonment for the crime that is the subject of the petition. If a person obtains such a settlement, judgment, or award in such an action before the claims board pays a claim, the claims board must subtract the amount of the judgment, settlement, or award from the compensation. The bill also provides that for any petition filed on or after the effective date of the bill, the petitioner automatically assigns to the claims board the petitioner's right to any settlement, judgment, or award obtained against a third party in such an action. The bill specifies that the assignment is a condition of eligibility to receive compensation from the claims board. Also, the assignment is considered to be a statutory lien on the settlement, judgment, or award. The amount of the lien is equal to the amount of the settlement, judgment, or award, or the amount of compensation awarded by the claims board, whichever is less.

In addition, the bill exempts from taxation the payments that an individual, or his or her estate, receives from the claims board or from the state legislature as a result of claims board action.

**Health care coverage and other assistance.** Under current law, the Group Insurance Board, attached to the Department of Employee Trust Funds, contracts on behalf of the state for the purpose of providing health care coverage to state employees. This bill permits individuals who receive compensation from the state for wrongful imprisonment to elect, for up to ten years, health care coverage under plans offered by the Group Insurance Board to state employees beginning on January 1, 2017. Under the bill, these individuals would be required to pay the same

the individuals  
✓  
or from the state as payment for health insurance  
✓  
2019 ✓  
five ✓  
premiums ✓  
and who are not eligible for

**ASSEMBLY BILL 460**

2019  
health insurance premium amounts that state employees are required to pay, with the balance of the premium cost paid by the state. During the time before January 1, 2017, this bill makes these individuals eligible for health care benefits through the Medical Assistance program BadgerCare Plus, if the federal government does not disapprove of the Department of Health Services providing Medical Assistance to these individuals.

Under the bill, if a person's conviction for a crime is reversed, set aside, or vacated on grounds consistent with the person's innocence, and the person is ordered released from prison by a trial court, the court is required to grant the person, upon request, temporary financial assistance, transition assistance from the Department of Corrections and local aid agencies, and sealing of all records related to his or her conviction. If the person pursues a successful petition for wrongful imprisonment, any temporary financial assistance he or she received upon release from prison is subtracted from any compensation he or she receives for wrongful imprisonment.

Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1        ✓ **SECTION 1.** 20.505 (4) (d) of the statutes is amended to read:

2            20.505 (4) (d) *Claims awards.* A sum sufficient for payment of awards made  
3 by the claims board or department of administration under ss. 16.007, 775.05 (4),  
4 775.06 and 775.11, awards of financial assistance under s. 808.085, and awards made  
5 by an act of the legislature arising from a claim filed with the claims board which are  
6 not directed by law or under s. 16.007 (6m) to be paid from another appropriation.

7        ✓ **SECTION 2.** 20.515 (1) (ds) of the statutes is created to read:

8            20.515 (1) (ds) *Payment of health insurance premiums for individuals who*  
9 *receive compensation for wrongful imprisonment.* A sum sufficient to pay the state's  
10 share of premium costs for health care benefits and the cost of administering the  
11 benefits for individuals under s. 40.516.

12        **SECTION 3.** 20.515 (1) (g) of the statutes is created to read:

**ASSEMBLY BILL 460**

1           20.515 (1) (g) *Benefit and coverage payments; health care coverage for*  
2 *individuals who receive compensation for wrongful imprisonment.* All moneys  
3 received from individuals under s. 40.516 who elect to be included in a health care  
4 coverage plan under s. 40.51 (6), for the payment of benefits and the cost of  
5 administering benefits for the individuals.

6           † SECTION 4. 40.51 (1) of the statutes is amended to read:

7           40.51 (1) The procedures and provisions pertaining to enrollment, premium  
8 transmitted and coverage of eligible employees and individuals eligible for health  
9 care coverage under s. 40.516 for health care benefits shall be established by contract  
10 or rule except as otherwise specifically provided by this chapter.

11           SECTION 5. 40.516 of the statutes is created to read:

12           **40.516 Health care coverage for individuals who receive**

13 **compensation for wrongful imprisonment.** (1) Beginning on January 1, 2017,<sup>e2019</sup>  
14 any individual who receives compensation under s. 775.05 after the effective date of  
15 this subsection .... [LRB inserts date], may elect coverage under any health care  
16 coverage plan offered under s. 40.51 (6) for a period (not to exceed 10 years.)

17           (2) The individual and the state shall jointly pay the full premium cost of health  
18 care coverage and the cost of administering the benefits under sub. (1). The amount  
19 that the individual must pay in health insurance premiums shall equal the amount  
20 required to be paid by state employees, as determined by the administrator of the  
21 division of personnel management in the department of administration under s.  
22 40.05 (4) (ah). The remainder of the premium cost for health care coverage for these  
23 individuals shall be paid from the appropriation account under s. 20.515 (1) (ds).

24           SECTION 6. 71.05 (6) (b) 53. of the statutes is created to read:

equal to the time he or she was imprisoned, but  
5  
INS  
5-16

INS 6-3

1 71.05 (6) (b) 53. Any amount received by an individual, or the individual's  
2 estate, from the claims board under s. 775.05 (4), from the legislature under the  
3 process described in s. 775.05 (4), or from a financial assistance award granted under  
4 s. 808.085, in the taxable year that relates to the year in which the payment is  
5 received.

6 SECTION 7. 227.03 (5) of the statutes is amended to read:

7 227.03 (5) This chapter does not apply to proceedings of the claims board,  
8 except as provided in ss. ~~775.05 (5)~~, 775.06 (7) and 775.11 (2), and except that  
9 proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in  
10 s. 775.05.

11 SECTION 8. 227.43 (1) (bw) of the statutes is created to read:

12 227.43 (1) (bw) Assign a hearing examiner to preside over each hearing  
13 conducted under s. 775.05.

14 SECTION 9. 301.051 of the statutes is created to read:

15 **301.051 Wrongful imprisonment; transition plan.** Not more than 5 days  
16 after a court issues an order for a plan requested by an inmate pursuant to 808.085

17 (1) (a), the department shall create a transition to release plan for the inmate. The  
18 plan shall do all of the following:

19 (1) Provide the inmate with a written list of community resources available to  
20 the inmate upon his or her release from prison, including temporary housing and  
21 emergency shelters, food banks, education and job assistance, and health care  
22 services in the county into which the inmate will be released. The department shall  
23 maintain up-to-date lists with contact information for each county in the state.

under s. 808.085 (1) (a)



## ASSEMBLY BILL 460

1           (2) Provide the inmate with an individual counseling session with a person  
2 trained by the department or the county into which the inmate will be released to  
3 assist inmates in the transition to release from prison.

4           (3) Schedule an appointment, set for not later than 2 weeks after the inmate's  
5 date of release, for the inmate to meet with a social worker or aid program  
6 administrator for the county into which the inmate will be released.

7           ↓ SECTION 10. 775.05 (2) of the statutes is renumbered 775.05 (2) (a) and  
8 amended to read:

9           775.05 (2) (a) ~~Any~~ Except as provided in pars. (b) and (c), any person who is  
10 imprisoned as the result of his or her conviction for a crime in any court of this state,  
11 of which crime the person claims to be innocent, and who is released from  
12 imprisonment for that crime after March 13, 1980, may petition the claims board for  
13 compensation for such imprisonment. ~~Upon~~ Within 5 days after receipt of the  
14 petition, the ~~claims board~~ department of administration shall transmit a copy  
15 thereof to the prosecutor who prosecuted the petitioner and the judge who sentenced  
16 the petitioner for the conviction which is the subject of the claim, or their successors  
17 in office, for the information of these persons.

18           SECTION 11. 775.05 (2) (b) and (c) and (2m) of the statutes are created to read:

19           775.05 (2) (b) Paragraph (a) does not apply to a person who is imprisoned as  
20 the result of his or her conviction for a felony in any court of this state arising from  
21 the same course of conduct that resulted in conviction for the crime of which the  
22 person claims to be innocent if the person does not claim to be innocent of that felony.

23           (c) Paragraph (a) does not apply to a person who is convicted of a violent crime  
24 specified in s. 939.632 (1) (e) 1. or 2. after his or her release from imprisonment. A

**ASSEMBLY BILL 460****SECTION 11**

1 person who is ineligible to petition for compensation under this paragraph is also  
2 ineligible to receive any award of compensation that has not been paid.

3 (2m) (a) In this subsection, an individual who has the right to inherit assets  
4 of a person is limited to a surviving spouse or domestic partner, child, parent, or  
5 sibling, who would have a right to inherit assets of the person under s. 852.01.

6 (b) Any individual specified in par. (a) who has the right to inherit assets of a  
7 person who has the right to petition the claims board for compensation under sub.  
8 (2) may, within one year after the death of such a person, exercise the rights of the  
9 person to petition for compensation under sub. (2) (a) on behalf of the deceased  
10 person. If more than one individual has that right, the individuals having that right  
11 may file a joint petition or any individual or individuals may file a petition for  
12 whatever portion of the compensation that would otherwise be payable to the  
13 deceased person that the individual or individuals would be entitled to receive as an  
14 inheritance had the award been paid before the death of the decedent. If, at the time  
15 of death of a person, the person qualified or would qualify to receive compensation  
16 under sub. (4) but has not been paid, any such individual or individuals may, within  
17 one year of the death of the person, file a claim with the claims board for  
18 compensation to be awarded on the decedent's behalf in whatever share of the  
19 compensation that was payable to the petitioner that the individual or individuals  
20 would be entitled to receive as an inheritance. The claims board shall pay a claim  
21 filed by any individual under this subsection if the board determines that the  
22 individual or individuals are entitled to be paid under this subsection.

23 (c) An individual's right to exercise the rights of a deceased person or to file a  
24 claim on a decedent's behalf is independent of any right to inherit from the decedent

**ASSEMBLY BILL 460**

1 under the decedent's will. Any compensation paid to any individual under this  
2 subsection is not a part of the decedent's estate for purposes of the decedent's will.

3 SECTION 12. 775.05 (3) and (4) of the statutes are amended to read:

4 775.05 (3) ~~After hearing the evidence on the petition, the claims board~~ Within  
5 5 days after the claims board receives a petition under sub. (2) (a), the department  
6 of administration shall refer the petition to the division of hearings and appeals. No  
7 later than 30 days after the petition is filed, the department of administration or the  
8 office of the prosecutor who was responsible for prosecuting the petitioner may file  
9 a written request with the claims board for an evidentiary hearing on the petition.  
10 The department of administration shall refer the request to the division within 5  
11 days after the claims board receives the request. If a timely request for a hearing is  
12 filed, or if the division concludes that it cannot determine the petitioner's eligibility  
13 for compensation without a hearing, the division shall hold a hearing on the petition  
14 no later than 60 days after the petition is filed. If no request for a hearing is filed  
15 within the time specified in this subsection, and the division is able to determine that  
16 the petitioner is eligible for compensation without a hearing, the division shall decide  
17 the matter without a hearing, except that the division shall not deny a petition for  
18 compensation without affording the petitioner an opportunity for a hearing. The  
19 division shall find either that the preponderance of evidence is clear and convincing  
20 demonstrates that the petitioner was innocent of the crime for which he or she  
21 suffered imprisonment, or that the preponderance of evidence is not clear and  
22 convincing does not demonstrate that he or she was innocent.

23 (4) If the ~~claims board~~ division of hearings and appeals finds that the  
24 preponderance of evidence demonstrates that the petitioner was innocent and that  
25 he or she did not by his or her act or failure to act contribute to bring about the

ASSEMBLY BILL 460

SECTION 12

1 ~~conviction and imprisonment for which he or she seeks compensation, the claims~~  
 2 ~~board of the crime for which he or she was imprisoned, the division shall transmit~~  
 3 ~~its findings to the claims board. The claims board shall find the amount which will~~  
 4 ~~equitably compensate the petitioner, not to exceed \$25,000 and at a rate of~~  
 5 ~~compensation not greater than \$5,000 of \$50,000, or the amount determined under~~  
 6 ~~sub. (4m) (a), whichever applies, per year or any portion thereof, for the~~  
 7 ~~imprisonment. Compensation awarded by the claims board In addition, the claims~~  
 8 ~~board shall include find any amount to which the board finds the petitioner is~~  
 9 ~~entitled for reasonable, actual attorney fees, together with all costs and~~  
 10 ~~disbursements incurred by the petitioner in his or her defense, post conviction, and~~  
 11 ~~compensation proceedings and all fees, surcharges, and restitution paid by the~~  
 12 ~~petitioner as a result of his or her arrest and imprisonment. The claims board shall~~  
 13 ~~subtract any moneys received by the petitioner under s. 808.085. If the claims board~~  
 14 ~~finds that the amount it is able to award find is not an adequate compensation it shall~~  
 15 ~~submit a report specifying an amount which it considers adequate to the chief clerk~~  
 16 ~~of each house of the legislature, for distribution to the legislature under s. 13.172 (2).~~  
 17 ~~The claims board shall, subject to sub. (4g), award the compensation specified in the~~  
 18 ~~decision and order disbursement of the award to the petitioner or any other~~  
 19 ~~individual who is entitled to receive a payment from the appropriation under s.~~  
 20 ~~20.505 (4) (d), except that the total amount of the award may not exceed \$1,000,000.~~

Pro-rated  
daily,

SECTION 13. 775.05 (4g) of the statutes is created to read:

21  
 22 775.05 (4g) (a) As a condition of eligibility for compensation under sub. (4), a  
 23 petitioner shall automatically assign to the claims board his or her right to any  
 24 settlement, judgment, or award that may be obtained against any 3rd party in any  
 25 federal or state action for damages related to wrongful imprisonment for the crime

INS  
 10-21 A  
 10-21 B

**ASSEMBLY BILL 460**

1 specified in sub. (2) (a). The petition shall, in itself, constitute an assignment by  
2 operation of law. The assignment shall be considered a statutory lien on any  
3 settlement, judgment, or award received by the petitioner from a 3rd party in an  
4 amount equal to the amount of the settlement, judgment, or award, or the amount  
5 of compensation awarded under sub. (4), whichever is less.

6 (b) If a petitioner obtains, before the claims board awards compensation under  
7 sub. (4), a final judgment, settlement, or award for damages in a federal or state  
8 action related to wrongful imprisonment for the crime specified in sub. (2) (a), the  
9 claims board shall subtract the amount of the judgment, settlement, or award from  
10 the compensation.

11 **SECTION 14.** 775.05 (4m) and (4r) of the statutes are created to read:

12 775.05 (4m) (a) On April 1 of each year, the claims board shall adjust the  
13 amount of yearly compensation specified in sub. (4) to reflect any changes in the U.S.  
14 consumer price index for all urban consumers, U.S. city average, as determined by  
15 the U.S. department of labor, for the 12-month period ending on the preceding  
16 December 31. The board shall publish the adjusted amount so determined in the  
17 Wisconsin administrative register.

18 (b) On January 1, 2022, and once every 5 years thereafter, the claims board  
19 shall make a recommendation to the legislature as to whether the dollar amount of  
20 the maximum award under sub. (4) should be changed.

21 (4r) At any hearing conducted under this section, the petitioner may be  
22 represented by counsel of his or her own choosing. The department of administration  
23 shall represent the interests of the state.

24 **SECTION 15.** 775.05 (5) of the statutes is amended to read:

**ASSEMBLY BILL 460****SECTION 15**

1           775.05 (5) The claims board shall keep a complete record of ~~its~~ the proceedings  
2 in each case petition under this section and of all the evidence related to the petition.  
3 The findings and decision of the division of hearings and appeals and the award of  
4 the claims board shall be subject to review as provided in ch. 227.

5           **SECTION 16.** 808.085 of the statutes is created to read:

6           **808.085 Wrongful imprisonment; relief.** (1) If a court acts under s. 808.08  
7 to release a person from confinement in a prison, the person may petition the court  
8 for any or all of the following:

9           (a) A court order directing the department of corrections to create a transition  
10 to release plan.

11           (b) A financial assistance award not to exceed 133 percent of the federal poverty  
12 level for up to 14 months, or while proceedings under s. 775.05 are pending,  
13 whichever is shorter.

14           (c) Sealing of all records related to the case. Records sealed under this section  
15 shall be accessible to the person but may not be available for public inspection or  
16 through the consolidated court automation program case management system.

17           (2) The court shall, within 10 days after it receives the petition under sub. (1),  
18 grant the relief sought if the person's criminal conviction was reversed, set aside, or  
19 vacated for reasons not inconsistent with the person's innocence of the crime for  
20 which he or she was convicted.

21           (3) If a person who is granted relief under this section is subsequently convicted  
22 of the same charges for which he or she was granted relief, or if his or her conviction  
23 is reinstated, the person shall repay any financial assistance award granted under  
24 this section and all records related to the case shall be unsealed.

**ASSEMBLY BILL 460**

1 (4) To the extent it is not contrary to or inconsistent with federal law, financial  
2 assistance a person receives pursuant to this section may not be included as income  
3 for the purpose of determining whether the person is indigent under rules  
4 promulgated under ch. 977 or for the purpose of determining the person's eligibility  
5 for any program for which the department of health services or the department of  
6 children and families provides services, benefits, or other assistance under ch. 49.

7 **SECTION 17.** 977.05 (4) (jr) of the statutes is created to read:

8 977.05 (4) (jr) At the request of a person determined by the state public  
9 defender to be indigent or upon referral of any court, represent the person in  
10 proceedings under s. 775.05.

11 **SECTION 18.** 977.05 (4) (jw) of the statutes is created to read:

12 977.05 (4) (jw) At the request of an inmate determined by the state public  
13 defender to be indigent or upon referral of any court, represent the person in  
14 proceedings under s. 808.085.

15 **SECTION 19. Nonstatutory provisions.**

FD  
16 (1) **MEDICAL ASSISTANCE FOR WRONGFULLY IMPRISONED PERSONS.** Notwithstanding  
17 the eligibility criteria under section 49.471 (4) (a) of the statutes, any individual who  
18 receives compensation under section 775.05 of the statutes after the effective date  
19 of this subsection is eligible for the Medical Assistance program under section 49.471  
20 of the statutes during the period before January 1, ~~2017~~<sup>2019</sup>. The department of health  
21 services shall request any approval from the federal department of health and  
22 human services that is necessary to provide Medical Assistance benefits to those  
23 individuals. If federal approval is not necessary or if federal approval is received, the  
24 department of health services shall provide benefits under section 49.471 of the  
25 statutes to those individuals. If federal approval is not received, the department of

## ASSEMBLY BILL 460

## SECTION 19

1 health services is not required to provide Medical Assistance benefits to those  
2 individuals.

3 **SECTION 20. Initial applicability.**

4 (1) Except as provided in subsections (2) and (3), this act first applies with  
5 respect to petitions filed by persons who are released on or after January 1, 1990,  
6 from imprisonment for crimes of which they claim to be innocent. If a person was  
7 released from imprisonment on or after January 1, 1990, and accepted compensation  
8 from this state for wrongful imprisonment prior to the effective date of this  
9 subsection, the person may petition for additional compensation. The claims board  
10 may, at its discretion, consider the petition and may award compensation to the  
11 extent payable under section 775.05 of the statutes notwithstanding any release  
12 signed by the claimant as a condition precedent to receiving an initial compensation  
13 award.

14 (2) The treatment of section 71.05 (6) (b) ~~52~~<sup>53</sup> of the statutes first applies to  
15 taxable years beginning on January 1 of the year in which this subsection takes  
16 effect, except that if this subsection takes effect after July 31, section 71.05 (6) (b) ~~52~~<sup>53</sup>  
17 of the statutes first applies to taxable years beginning on January 1 of the year  
18 following the year in which this subsection takes effect.

19 (3) The treatment of section 775.05 (4g) (a) of the statutes first applies to  
20 petitions filed on or after the effective date of this subsection.

21

(END)





State of Wisconsin  
2015 - 2016 LEGISLATURE

LRBa1491/1  
PJH:jld

ASSEMBLY AMENDMENT 4,  
TO ASSEMBLY BILL 460

January 12, 2016 - Offered by Representative GANNON.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 10, line 6: delete "or any portion thereof," and substitute ", prorated  
3 daily".

4 (END)



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRBa1492/1  
PJH:jld

**ASSEMBLY AMENDMENT 5,  
TO ASSEMBLY BILL 460**

January 12, 2016 – Offered by Representative GANNON.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 5, line 16: delete “not to exceed 10” and substitute “equal to the time  
3 he or she was imprisoned, but not to exceed 5”.

4 **2.** Page 5, line 16: after “years.” insert “An individual who is eligible to obtain  
5 health care coverage offered by his or her employer or by the employer of his or her  
6 spouse may not elect or continue coverage under this subsection.”

7 (END)

(N) 5-16



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRBa1256/1  
MES:emw

ASSEMBLY AMENDMENT 1,  
TO ASSEMBLY BILL 460

December 14, 2015 – Offered by Representatives KOOYENGA and HEBL.

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 6, line 3: after “s. 775.05 (4),” insert “from the state as a result of the  
3 state’s payment of an individual’s premium costs under s. 40.516 (2) to the extent  
4 that the amount is recognized by the individual as income.”

5

(END)

INS  
6-3



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRBa1374/1  
MDK:amn

ASSEMBLY AMENDMENT 2,  
TO ASSEMBLY BILL 460

January 7, 2016 – Offered by Representative RIPP.

1 At the locations indicated, amend the bill as follows:

2 1. Page 10, line 20: after that line insert:

3 "SECTION 12m. 775.05 (4c) of the statutes is created to read:

4 775.05 (4c) The claims board shall develop and issue a pamphlet regarding  
5 financial information management services to each petitioner or other individual to  
6 whom the claims board awards compensation under sub. (4). The pamphlet shall  
7 include Internet Web site addresses or other general contact information for publicly  
8 available financial management tools and resources."

9 (END)

INS  
10-21  
A



State of Wisconsin  
2015 - 2016 LEGISLATURE

LRBa1606/1  
PJH:kjf

ASSEMBLY AMENDMENT 6,  
TO ASSEMBLY BILL 460

January 19, 2016 – Offered by Representative KOOYENGA.

1 At the locations indicated, amend the bill as follows:

2 1. Page 10, line 18: after “disbursement” insert “, pursuant to sub. (4d).”

3 2. Page 10, line 20: after that line insert:

4 “SECTION 12m. 775.05 (4d) of the statutes is created to read:

5 775.05 (4d) The claims board may award the compensation specified in the  
6 decision under sub. (4) in an annuity payable over an amount of time determined by  
7 the claims board, but not to exceed the time the petitioner was imprisoned.”

8 (END)

CNS  
10-21  
B

## Johns, Melinda

---

**From:** Hanaman, Cathlene  
**Sent:** Friday, April 21, 2017 10:52 AM  
**To:** Johns, Melinda  
**Subject:** FW: Draft Changes

Sounds really courtsy to me.

---

**From:** Rep.Kooyenga  
**Sent:** Friday, April 21, 2017 10:45 AM  
**To:** Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>  
**Subject:** RE: Draft Changes

Hi Cathlene

I've got one more change for you.

We would like to amend statute 893.57 by adding a new subsection that essentially says that, notwithstanding the current torts statute of limitations, when an individual has received compensation for a wrongful conviction under 775.05, any actions against that individual to recover damages for any intentional tort that resulted in a judgment of conviction for a crime committed prior to the offense for which the individual has been awarded compensation under 775.05 and which remains in effect and unreversed, shall be brought within 3 years after the cause of action accrues or within 1 year after the Claims Board awards compensation under 775.05, whichever is later, or be barred. If, however, the action to recover damages is brought later than 3 years after the cause of action accrues, but within 1 year after a compensation award under 775.05, any damages award shall not exceed 50% of the compensation awarded under 775.05, exclusive of any amounts the exonerated individual has chosen to be paid as an annuity under the provisions of the amended 775.05, which amounts shall be exempt from any damages awards in actions brought later than 3 years from the accrual of the action.

Let me know if you have any questions – thanks!

**Rachel Vander Wiele**  
Legislative Assistant  
State Representative Dale Kooyenga  
14<sup>th</sup> Assembly District  
608-266-9181  
[Rachel.Vanderwiele@legis.wi.gov](mailto:Rachel.Vanderwiele@legis.wi.gov)

---

**From:** Hanaman, Cathlene  
**Sent:** Friday, April 14, 2017 5:58 PM  
**To:** Vander Wiele, Rachel <[rachel.vanderwiele@legis.wisconsin.gov](mailto:rachel.vanderwiele@legis.wisconsin.gov)>  
**Subject:** RE: Draft Changes

Thank you!

---

**From:** Vander Wiele, Rachel  
**Sent:** Friday, April 14, 2017 8:41 AM  
**To:** Hanaman, Cathlene <[Cathlene.Hanaman@legis.wisconsin.gov](mailto:Cathlene.Hanaman@legis.wisconsin.gov)>  
**Subject:** Draft Changes

Hi Cathlene

I have a few changes to LRB 0316 (it is attached). Please let me know if you have any questions.

Section 18. 808.085 (1) (c) – All records related to the case shall be sealed, including those on the consolidated court automation program case management system. Records sealed under this section shall be accessible to the person. These records are not accessible for public inspection, unless the individual seeking access to the records petitions the circuit court for access to the records and the court determines that the benefit to the public interest from public examination of the records is greater than the harm to the public interest from opening these records to examination.

Section 12. 775.05 (5) Once the claims board has determined the proper compensation award, but prior to disbursement, the claims board shall determine the amount owed by the petitioner for any outstanding restitution, and court fees and fines on any convictions that remain in place and that are not the subject of a finding of innocence under this provision. The prosecutor shall be responsible for providing the claims board with an account of all unpaid restitution, court fees and fines. The claims board shall withhold and deduct any money owed before disbursing compensation.

I have one more change but am still working out the details of that so I will be back in touch next week.

Have a Happy Easter!

**Rachel Vander Wiele**  
Legislative Assistant  
State Representative Dale Kooyenga  
14<sup>th</sup> Assembly District  
608-266-9181  
[Rachel.Vanderwiele@legis.wi.gov](mailto:Rachel.Vanderwiele@legis.wi.gov)



State of Wisconsin  
2017 - 2018 LEGISLATURE

DUE 4/27/17 H

LRB-0316/P1  
MS/TD/FFK/CMH:ahc

P2

fmk

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

3 INSERTS - CMH, MES, MLJ

reg en sev

1 AN ACT to renumber and amend 775.05 (2); to amend 20.505 (4) (d), 40.51 (1),  
2 227.03 (5), 775.05 (3) and (4) and 775.05 (5); and to create 20.515 (1) (ds),  
3 20.515 (1) (g), 40.516, 71.05 (6) (b) 53., 227.43 (1) (bw), 301.051, 775.05 (2) (b)  
4 and (c) and (2m), 775.05 (4c), 775.05 (4d), 775.05 (4g), 775.05 (4m) and (4r),  
5 808.085, 977.05 (4) (jr) and 977.05 (4) (jw) of the statutes; relating to:

6 resolution of claims against the state for wrongful imprisonment of innocent  
7 persons, exempting from taxation certain amounts an individual receives from  
8 the claims board or legislature, health benefits for <sup>claims by and treatment of</sup> wrongfully imprisoned  
9 persons, and making appropriations.

**Analysis by the Legislative Reference Bureau**

This bill does the following: 1) makes changes to the requirements for claims for state compensation by wrongfully imprisoned persons; and 2) provides health care coverage and other assistance for such persons. Except as noted below, the bill initially applies with respect to claims filed by persons who are released on or after January 1, 1990, from imprisonment for crimes of which they claim to be innocent.

**Requirements for claims.** Currently, the state claims board is directed to hear petitions for compensation by persons who are released from imprisonment for



crimes of which they claim to be innocent. The board must find either that the evidence is clear and convincing that the petitioner was innocent of the crime for which he or she was imprisoned or that the evidence is not clear and convincing that he or she was innocent. If the board finds that the petitioner was innocent and that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation, the board must award the petitioner compensation not to exceed \$25,000 total nor more than \$5,000 for each year of imprisonment. This amount includes any expenses for attorney fees, costs, and disbursements incurred by the petitioner. Any award is paid from state general purpose revenues. If the board determines that it is not able to award an adequate compensation, it is directed to submit a report to the legislature specifying the amount that it considers to be adequate.

This bill provides that when the claims board receives a claim for wrongful imprisonment filed by a petitioner who has been released from imprisonment and who claims to be innocent of the crime for which he or she was imprisoned, the board must refer the petition to the Division of Hearings and Appeals in the Department of Administration. The bill then allows either DOA or the office of the prosecutor who prosecuted the petitioner to file a written request with the claims board for a hearing within 30 days after the original petition is filed with the board. If a timely request for a hearing is filed, or if the division concludes that it cannot determine the petitioner's eligibility for compensation without a hearing, the division must hold a hearing within 60 days after the petition is filed. If a timely request for a hearing is not filed and the division is able to determine that the petitioner is eligible for compensation without a hearing, the division must decide the matter without a hearing, except that the division must afford a petitioner an opportunity for a hearing before denying compensation to the petitioner. If a hearing is held, the bill allows the petitioner to be represented by a public defender. If a hearing is held, the division appoints a hearing examiner to hear the petition. If no hearing is held, the division decides the matter without a hearing.

The hearing examiner makes findings and issues a decision concerning whether the petitioner is entitled to compensation. Under the bill, the findings must be based upon the preponderance of evidence (a lesser evidentiary standard than clear and convincing evidence). The petitioner need not show that he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation.

If the hearing examiner's finding is in the affirmative, the examiner must transmit its findings to the claims board, which shall award compensation to the petitioner in an amount that the board considers to be adequate and the board must pay that amount to the petitioner. Under the bill, the amount of compensation is fixed at a rate of \$50,000 per year, prorated daily, with a \$1,000,000 limit on the total amount of an award. In addition, subject to the \$1,000,000 limit, each award must include reimbursement for reasonable, actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, postconviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment. The \$50,000 annual rate

is subject to annual adjustments based on changes in the cost of living. The bill requires the board to make, every five years, a recommendation to the legislature as to whether the \$1,000,000 limit should be changed.

for a ✓ The bill provides that no person may file a claim for wrongful imprisonment or be paid an award for such imprisonment, as a result of a conviction resulting in imprisonment for a crime if the imprisoned person is also imprisoned as the result of a conviction for a felony in any court of this state arising from the same course of conduct that resulted in conviction for the crime of which the person claims to be innocent if the person does not claim to be innocent of that felony or if the imprisoned person is convicted of one or more certain violent crimes after his or her release from imprisonment. *specified in this bill*

The bill also provides that, with certain exceptions, a surviving spouse or domestic partner, child, parent, or sibling of a person who is entitled to compensation for wrongful imprisonment but who does not receive payment of an award may, within one year of the death of that person, file or pursue on behalf of the deceased person a claim for wrongful imprisonment. Under the bill, any payment that would have been payable to the deceased person then becomes payable to the individual who files or pursues the claim, except that if that person is entitled only under the law governing inheritances to inherit a portion of the estate of a deceased person, the individual may receive only the same portion of the payment. Any compensation is independent of any rights that a claimant or any other person may have to inherit assets under any will of the decedent.

The bill also creates requirements that apply if a person who petitions for compensation obtains any settlement, judgment, or award against a third party in a federal or state action for damages related to wrongful imprisonment for the crime that is the subject of the petition. If a person obtains such a settlement, judgment, or award in such an action before the claims board pays a claim, the claims board must subtract the amount of the judgment, settlement, or award from the compensation. The bill also provides that for any petition filed on or after the effective date of the bill, the petitioner automatically assigns to the claims board the petitioner's right to any settlement, judgment, or award obtained against a third party in such an action. The bill specifies that the assignment is a condition of eligibility to receive compensation from the claims board. Also, the assignment is considered to be a statutory lien on the settlement, judgment, or award. The amount of the lien is equal to the amount of the settlement, judgment, or award, or the amount of compensation awarded by the claims board, whichever is less.

In addition, the bill exempts from taxation the payments that an individual, or his or her estate, receives from the claims board or from the state legislature as a result of claims board action, or from the state as payment for the individual's health insurance premiums.

**Health care coverage and other assistance.** Under current law, the Group Insurance Board, attached to the Department of Employee Trust Funds, contracts on behalf of the state for the purpose of providing health care coverage to state employees. This bill permits individuals who receive compensation from the state for wrongful imprisonment and who are not eligible to obtain health care coverage

FINS  
ANC  
MES  
TREN  
MLW INSERT A

from an employer to elect, for up to five years, health care coverage under plans offered by the Group Insurance Board to state employees beginning on January 1, 2019. Under the bill, these individuals would be required to pay the same health insurance premium amounts that state employees are required to pay, with the balance of the premium cost paid by the state. During the time before January 1, 2019, this bill makes these individuals eligible for health care benefits through the Medical Assistance program BadgerCare Plus, if the federal government does not disapprove of the Department of Health Services providing Medical Assistance to these individuals.

Under the bill, if a person's conviction for a crime is reversed, set aside, or vacated on grounds consistent with the person's innocence, and the person is ordered released from prison by a trial court, the court is ~~required~~ <sup>must</sup> grant the person, upon request, temporary financial assistance, transition assistance from the Department of Corrections and local aid agencies, and sealing of all records related to his or her conviction. If the person pursues a successful petition for wrongful imprisonment, any temporary financial assistance he or she received upon release from prison is subtracted from any compensation he or she receives for wrongful imprisonment.

*space* → Because this bill relates to an exemption from state or local taxes, it may be referred to the Joint Survey Committee on Tax Exemptions for a report to be printed as an appendix to the bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 20.505 (4) (d) of the statutes is amended to read:

2           20.505 (4) (d) *Claims awards.* A sum sufficient for payment of awards made  
3 by the claims board or department of administration under ss. 16.007, 775.05 (4),  
4 775.06 and 775.11, awards of financial assistance under s. 808.085, and awards made  
5 by an act of the legislature arising from a claim filed with the claims board which are  
6 not directed by law or under s. 16.007 (6m) to be paid from another appropriation.

7           **SECTION 2.** 20.515 (1) (ds) of the statutes is created to read:

8           20.515 (1) (ds) *Payment of health insurance premiums for individuals who*  
9 *receive compensation for wrongful imprisonment.* A sum sufficient to pay the state's

1 share of premium costs for health care benefits and the cost of administering the  
2 benefits for individuals under s. 40.516.

3 **SECTION 3.** 20.515 (1) (g) of the statutes is created to read:

4 20.515 (1) (g) *Benefit and coverage payments; health care coverage for*  
5 *individuals who receive compensation for wrongful imprisonment.* All moneys  
6 received from individuals under s. 40.516 who elect to be included in a health care  
7 coverage plan under s. 40.51 (6), for the payment of benefits and the cost of  
8 administering benefits for the individuals.

9 **SECTION 4.** 40.51 (1) of the statutes is amended to read:

10 40.51 (1) The procedures and provisions pertaining to enrollment, premium  
11 transmitted and coverage of eligible employees and individuals eligible for health  
12 care coverage under s. 40.516 for health care benefits shall be established by contract  
13 or rule except as otherwise specifically provided by this chapter.

14 **SECTION 5.** 40.516 of the statutes is created to read:

15 **40.516 Health care coverage for individuals who receive**  
16 **compensation for wrongful imprisonment.** (1) Beginning on January 1, 2019,  
17 any individual who receives compensation under s. 775.05 after the effective date of  
18 this subsection .... [LRB inserts date], may elect coverage under any health care  
19 coverage plan offered under s. 40.51 (6) for a period equal to the time he or she was  
20 imprisoned, but not to exceed 5 years. An individual who is eligible to obtain health  
21 care coverage offered by his or her employer or by the employer of his or her spouse  
22 may not elect or continue coverage under this subsection.

23 (2) The individual and the state shall jointly pay the full premium cost of health  
24 care coverage and the cost of administering the benefits under sub. (1). The amount  
25 that the individual must pay in health insurance premiums shall equal the amount

**SECTION 5**

1 required to be paid by state employees, as determined by the administrator of the  
2 division of personnel management in the department of administration under s.  
3 40.05 (4) (ah). The remainder of the premium cost for health care coverage for these  
4 individuals shall be paid from the appropriation account under s. 20.515 (1) (ds).

5 **SECTION 6.** 71.05 (6) (b) 53. of the statutes is created to read:

6 71.05 (6) (b) 53. Any amount received by an individual, or the individual's  
7 estate, from the claims board under s. 775.05 (4), from the legislature under the  
8 process described in s. 775.05 (4), from the state as a result of the state's payment of  
9 an individual's premium costs under s. 40.516 (2) to the extent that the amount is  
10 recognized by the individual as income, or from a financial assistance award granted  
11 under s. 808.085, in the taxable year that relates to the year in which the payment  
12 is received.

13 **SECTION 7.** 227.03 (5) of the statutes is amended to read:

14 227.03 (5) This chapter does not apply to proceedings of the claims board,  
15 except as provided in ss. ~~775.05 (5)~~, 775.06 (7) and 775.11 (2), and except that  
16 proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in  
17 s. 775.05.

18 **SECTION 8.** 227.43 (1) (bw) of the statutes is created to read:

19 227.43 (1) (bw) Assign a hearing examiner to preside over each hearing  
20 conducted under s. 775.05.

21 **SECTION 9.** 301.051 of the statutes is created to read:

22 **301.051 Wrongful imprisonment; transition plan.** Not more than 5 days  
23 after a court issues an order under s. 808.085 (1) (a) for a plan requested by an  
24 inmate, the department shall create a transition to release plan for the inmate. The  
25 plan shall do all of the following:

1           (1) Provide the inmate with a written list of community resources available to  
2 the inmate upon his or her release from prison, including temporary housing and  
3 emergency shelters, food banks, education and job assistance, and health care  
4 services in the county into which the inmate will be released. The department shall  
5 maintain up-to-date lists with contact information for each county in the state.

6           (2) Provide the inmate with an individual counseling session with a person  
7 trained by the department or the county into which the inmate will be released to  
8 assist inmates in the transition to release from prison.

9           (3) Schedule an appointment, set for not later than 2 weeks after the inmate's  
10 date of release, for the inmate to meet with a social worker or aid program  
11 administrator for the county into which the inmate will be released.

12           **SECTION 10.** 775.05 (2) of the statutes is renumbered 775.05 (2) (a) and  
13 amended to read:

14           775.05 (2) (a) Any Except as provided in pars. (b) and (c), any person who is  
15 imprisoned as the result of his or her conviction for a crime in any court of this state,  
16 of which crime the person claims to be innocent, and who is released from  
17 imprisonment for that crime after March 13, 1980, may petition the claims board for  
18 compensation for such imprisonment. ~~Upon~~ Within 5 days after receipt of the  
19 petition, the ~~claims board~~ department of administration shall transmit a copy  
20 thereof to the prosecutor who prosecuted the petitioner and the judge who sentenced  
21 the petitioner for the conviction which is the subject of the claim, or their successors  
22 in office, for the information of these persons.

23           **SECTION 11.** 775.05 (2) (b) and (c) and (2m) of the statutes are created to read:

24           775.05 (2) (b) Paragraph (a) does not apply to a person who is imprisoned as  
25 the result of his or her conviction for a felony in any court of this state arising from

1 the same course of conduct that resulted in conviction for the crime of which the  
2 person claims to be innocent if the person does not claim to be innocent of that felony.

3 (c) Paragraph (a) does not apply to a person who is convicted of a violent crime  
4 specified in s. 939.632 (1) (e) 1. or 2. after his or her release from imprisonment. A  
5 person who is ineligible to petition for compensation under this paragraph is also  
6 ineligible to receive any award of compensation that has not been paid.

7 **(2m)** (a) In this subsection, an individual who has the right to inherit assets  
8 of a person is limited to a surviving spouse or domestic partner, child, parent, or  
9 sibling, who would have a right to inherit assets of the person under s. 852.01.

10 (b) Any individual specified in par. (a) who has the right to inherit assets of a  
11 person who has the right to petition the claims board for compensation under sub.  
12 (2) may, within one year after the death of such a person, exercise the rights of the  
13 person to petition for compensation under sub. (2) (a) on behalf of the deceased  
14 person. If more than one individual has that right, the individuals having that right  
15 may file a joint petition or any individual or individuals may file a petition for  
16 whatever portion of the compensation that would otherwise be payable to the  
17 deceased person that the individual or individuals would be entitled to receive as an  
18 inheritance had the award been paid before the death of the decedent. If, at the time  
19 of death of a person, the person qualified or would qualify to receive compensation  
20 under sub. (4) but has not been paid, any such individual or individuals may, within  
21 one year of the death of the person, file a claim with the claims board for  
22 compensation to be awarded on the decedent's behalf in whatever share of the  
23 compensation that was payable to the petitioner that the individual or individuals  
24 would be entitled to receive as an inheritance. The claims board shall pay a claim

1 filed by any individual under this subsection if the board determines that the  
2 individual or individuals are entitled to be paid under this subsection.

3 (c) An individual's right to exercise the rights of a deceased person or to file a  
4 claim on a decedent's behalf is independent of any right to inherit from the decedent  
5 under the decedent's will. Any compensation paid to any individual under this  
6 subsection is not a part of the decedent's estate for purposes of the decedent's will.

7 **SECTION 12.** 775.05 (3) and (4) of the statutes are amended to read:

8 775.05 (3) After hearing the evidence on the petition, the claims board Within  
9 5 days after the claims board receives a petition under sub. (2) (a), the department  
10 of administration shall refer the petition to the division of hearings and appeals. No  
11 later than 30 days after the petition is filed, the department of administration or the  
12 office of the prosecutor who was responsible for prosecuting the petitioner may file  
13 a written request with the claims board for an evidentiary hearing on the petition.  
14 The department of administration shall refer the request to the division within 5  
15 days after the claims board receives the request. If a timely request for a hearing is  
16 filed, or if the division concludes that it cannot determine the petitioner's eligibility  
17 for compensation without a hearing, the division shall hold a hearing on the petition  
18 no later than 60 days after the petition is filed. If no request for a hearing is filed  
19 within the time specified in this subsection, and the division is able to determine that  
20 the petitioner is eligible for compensation without a hearing, the division shall decide  
21 the matter without a hearing, except that the division shall not deny a petition for  
22 compensation without affording the petitioner an opportunity for a hearing. The  
23 division shall find either that the preponderance of evidence is clear and convincing  
24 demonstrates that the petitioner was innocent of the crime for which he or she



1 suffered imprisonment, or that the preponderance of evidence is not clear and  
2 convincing does not demonstrate that he or she was innocent.

3 (4) If the claims board division of hearings and appeals finds that the  
4 preponderance of evidence demonstrates that the petitioner was innocent and that  
5 he or she did not by his or her act or failure to act contribute to bring about the  
6 conviction and imprisonment for which he or she seeks compensation, the claims  
7 board of the crime for which he or she was imprisoned, the division shall transmit  
8 its findings to the claims board. The claims board shall find the amount which will  
9 equitably compensate the petitioner, not to exceed \$25,000 and at a rate of  
10 compensation not greater than \$5,000 of \$50,000, or the amount determined under  
11 sub. (4m) (a), whichever applies, per year, prorated daily, for the imprisonment.  
12 Compensation awarded by the claims board In addition, the claims board shall  
13 include find any amount to which the board finds the petitioner is entitled for  
14 reasonable, actual attorney fees, together with all costs and disbursements incurred  
15 by the petitioner in his or her defense, postconviction, and compensation proceedings  
16 and all fees, surcharges, and restitution paid by the petitioner as a result of his or  
17 her arrest and imprisonment. The claims board shall subtract any moneys received  
18 by the petitioner under s. 808.085. If the claims board finds that the amount it is able  
19 to award find is not an adequate compensation it shall submit a report specifying an  
20 amount which it considers adequate to the chief clerk of each house of the legislature,  
21 for distribution to the legislature under s. 13.172 (2). The claims board shall, subject  
22 to sub. (4g), award the compensation specified in the decision and order  
23 disbursement, pursuant to sub. (4d), of the award to the petitioner or any other  
24 individual who is entitled to receive a payment from the appropriation under s.  
25 20.505 (4) (d), except that the total amount of the award may not exceed \$1,000,000.

1           **SECTION 13.** 775.05 (4c) of the statutes is created to read:

2           775.05 (4c) The claims board shall develop and issue a pamphlet regarding  
3 financial information management services to each petitioner or other individual to  
4 whom the claims board awards compensation under sub. (4). The pamphlet shall  
5 include Internet site addresses or other general contact information for publicly  
6 available financial management tools and resources.

7           **SECTION 14.** 775.05 (4d) of the statutes is created to read:

8           775.05 (4d) The claims board may award the compensation specified in the  
9 decision under sub. (4) in an annuity payable over an amount of time determined by  
10 the claims board, but not to exceed the time the petitioner was imprisoned.

11           **SECTION 15.** 775.05 (4g) <sup>and (4h)</sup> of the statutes <sup>is</sup> <sup>are</sup> created to read:

12           775.05 (4g) (a) As a condition of eligibility for compensation under sub. (4), a  
13 petitioner shall automatically assign to the claims board his or her right to any  
14 settlement, judgment, or award that may be obtained against any 3rd party in any  
15 federal or state action for damages related to wrongful imprisonment for the crime  
16 specified in sub. (2) (a). The petition shall, in itself, constitute an assignment by  
17 operation of law. The assignment shall be considered a statutory lien on any  
18 settlement, judgment, or award received by the petitioner from a 3rd party in an  
19 amount equal to the amount of the settlement, judgment, or award, or the amount  
20 of compensation awarded under sub. (4), whichever is less.

21           (b) If a petitioner obtains, before the claims board awards compensation under  
22 sub. (4), a final judgment, settlement, or award for damages in a federal or state  
23 action related to wrongful imprisonment for the crime specified in sub. (2) (a), the  
24 claims board shall subtract the amount of the judgment, settlement, or award from  
25 the compensation.

FNS  
11-25



**SECTION 16**

1           **SECTION 16.** 775.05 (4m) and (4r) of the statutes are created to read:

2           775.05 (4m) (a) On April 1 of each year, the claims board shall adjust the  
3 amount of yearly compensation specified in sub. (4) to reflect any changes in the U.S.  
4 consumer price index for all urban consumers, U.S. city average, as determined by  
5 the U.S. department of labor, for the 12-month period ending on the preceding  
6 December 31. The board shall publish the adjusted amount so determined in the  
7 Wisconsin Administrative Register.

8           (b) On January 1, 2022, and once every 5 years thereafter, the claims board  
9 shall make a recommendation to the legislature as to whether the dollar amount of  
10 the maximum award under sub. (4) should be changed.

11           (4r) At any hearing conducted under this section, the petitioner may be  
12 represented by counsel of his or her own choosing. The department of administration  
13 shall represent the interests of the state.

14           **SECTION 17.** 775.05 (5) of the statutes is amended to read:

15           775.05 (5) The claims board shall keep a complete record of its the proceedings  
16 in each case petition under this section and of all the evidence related to the petition.  
17 The findings and decision of the division of hearings and appeals and the award of  
18 the claims board shall be subject to review as provided in ch. 227.

19           **SECTION 18.** 808.085 of the statutes is created to read:

20           **808.085 Wrongful imprisonment; relief.** (1) If a court acts under s. 808.08  
21 to release a person from confinement in a prison, the person may petition the court  
22 for any or all of the following:

23           (a) A court order directing the department of corrections to create a transition  
24 to release plan.

1 (b) A financial assistance award not to exceed 133 percent of the federal poverty  
2 level for up to 14 months, or while proceedings under s. 775.05 are pending,  
3 whichever is shorter.

4 (c) Sealing of all records related to the case. Records sealed under this section  
5 shall be accessible to the person but may not be available for public inspection or  
6 through the consolidated court automation program case management system.

7 (2) The court shall, within 10 days after it receives the petition under sub. (1),  
8 grant the relief sought if the person's criminal conviction was reversed, set aside, or  
9 vacated for reasons not inconsistent with the person's innocence of the crime for  
10 which he or she was convicted.

11 (3) If a person who is granted relief under this section is subsequently convicted  
12 of the same charges for which he or she was granted relief, or if his or her conviction  
13 is reinstated, the person shall repay any financial assistance award granted under  
14 this section and all records related to the case shall be unsealed.

15 (4) To the extent it is not contrary to or inconsistent with federal law, financial  
16 assistance a person receives pursuant to this section may not be included as income  
17 for the purpose of determining whether the person is indigent under rules  
18 promulgated under ch. 977 or for the purpose of determining the person's eligibility  
19 for any program for which the department of health services or the department of  
20 children and families provides services, benefits, or other assistance under ch. 49.

21 *MLJ*  
*INSERT*  
*13-21* **SECTION 19.** 977.05 (4) (jr) of the statutes is created to read:

22 977.05 (4) (jr) At the request of a person determined by the state public  
23 defender to be indigent or upon referral of any court, represent the person in  
24 proceedings under s. 775.05.

25 **SECTION 20.** 977.05 (4) (jw) of the statutes is created to read:

1           977.05 (4) (jw) At the request of an inmate determined by the state public  
2 defender to be indigent or upon referral of any court, represent the person in  
3 proceedings under s. 808.085.

4           **SECTION 21. Nonstatutory provisions.**

5           (1) MEDICAL ASSISTANCE FOR WRONGFULLY IMPRISONED PERSONS. Notwithstanding  
6 the eligibility criteria under section 49.471 (4) (a) of the statutes, any individual who  
7 receives compensation under section 775.05 of the statutes after the effective date  
8 of this subsection is eligible for the Medical Assistance program under section 49.471  
9 of the statutes during the period before January 1, 2019. The department of health  
10 services shall request any approval from the federal department of health and  
11 human services that is necessary to provide Medical Assistance benefits to those  
12 individuals. If federal approval is not necessary or if federal approval is received, the  
13 department of health services shall provide benefits under section 49.471 of the  
14 statutes to those individuals. If federal approval is not received, the department of  
15 health services is not required to provide Medical Assistance benefits to those  
16 individuals.

17           **SECTION 22. Initial applicability.**

18           (1) Except as provided in subsections (2) and (3), this act first applies with  
19 respect to petitions filed by persons who are released on or after January 1, 1990,  
20 from imprisonment for crimes of which they claim to be innocent. If a person was  
21 released from imprisonment on or after January 1, 1990, and accepted compensation  
22 from this state for wrongful imprisonment prior to the effective date of this  
23 subsection, the person may petition for additional compensation. The claims board  
24 may, at its discretion, consider the petition and may award compensation to the  
25 extent payable under section 775.05 of the statutes notwithstanding any release

1 signed by the claimant as a condition precedent to receiving an initial compensation  
2 award.

3 (2) The treatment of section 71.05 (6) (b) 53. of the statutes first applies to  
4 taxable years beginning on January 1 of the year in which this subsection takes  
5 effect, except that if this subsection takes effect after July 31, section 71.05 (6) (b) 53.  
6 of the statutes first applies to taxable years beginning on January 1 of the year  
7 following the year in which this subsection takes effect.

8 (3) The treatment of section 775.05 (4g) (a) of the statutes first applies to  
9 petitions filed on or after the effective date of this subsection.

10

(END)

2017-2018 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0316/P2insMJ  
MS/TD/FFK/CMH/MJ:ahe

59 ✓

1 MLJ INSERT A

This bill also extends the statute of limitations for a civil claim for damages brought by a person who was injured because of an intentional tort that resulted in an earlier criminal conviction of the person who has received compensation for wrongful imprisonment for a later crime. Under current law, an injured person must bring a claim for damages due to an intentional tort within <sup>three</sup> 3 years after the cause of action accrues or be barred. Under the bill, an injured person may bring a claim within <sup>three</sup> 3 years, or within <sup>one</sup> 1 year after a defendant receives compensation for wrongful imprisonment, whichever is later. If the injured person brings his or her claim more than <sup>three</sup> 3 years after the cause of action accrues but within <sup>one</sup> 1 year after the defendant receives compensation for wrongful imprisonment, the damages awarded due to the tort may not exceed 50% of the total compensation received for wrongful imprisonment. <sup>percent</sup>

2

3 MLJ INSERT 13-21

4 SECTION 1. 893.57 of the statutes is renumbered 893.57 (1).

5 SECTION 2. 893.57 (2) of the statutes is created to read:

6 893.57 (2) Notwithstanding sub. (1), an action to recover damages for libel,  
7 slander, assault, battery, invasion of privacy, false imprisonment or other intentional  
8 tort brought against a person who has received compensation for a wrongful  
9 conviction under <sup>5</sup> 775.05 shall proceed as follows:

10 (a) An action to recover damages for an intentional tort that resulted in a final  
11 judgement of conviction for a criminal offense that occurred prior to the offense for  
12 which the individual has been awarded compensation under s. 775.05 shall be  
13 brought within 3 years after the cause of action accrues or within <sup>one</sup> 1 year after  
14 compensation is awarded under s. 775.05, whichever is later, or be barred.

15 (b) If the action to recover damages for an intentional tort is brought later than  
16 3 years after the cause of action accrues but within <sup>one</sup> 1 year after compensation is  
17 awarded under s. 775.05, any damages awarded may not exceed 50% of the  
<sup>percent</sup>

1 compensation awarded under s. 775.05, and any amounts the exonerated person  
2 receives as an annuity under s. 775.05 (4d) shall not be counted as part of the total  
3 compensation award but shall be exempt from a damage award for an intentional  
4 tort.



2017-2018 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB-0316/P2insMES  
MS/TD/FFK/CMH:ah

✓ INS ANL-MES

The bill also provides that if a person who is awarded compensation owes money for outstanding restitution, court fees, and fines (collectively deductions) related to any conviction that remains in place and is not subject to a *finding* of innocence, the claims board must withhold and deduct from the compensation award any such money that is owed. The bill requires the prosecutor of such convictions to provide the claims board with an accounting of all unpaid deductions, and the claims board must distribute the deductions to the person to whom they are owed.

INS 11-25

*bold a*

(4h) Once the claims board determines the proper compensation award, but before the award is disbursed, the claims board shall determine the amount owed, if any, by the petitioner for any outstanding restitution, court fees, and fines related to any convictions that remain in place and that are not the subject of a finding of innocence under this section. The prosecutor of such convictions is responsible for providing the claims board with an accounting of all unpaid restitution, court fees, and fines. The claims board shall deduct and withhold from the compensation award any money owed, based on the accounting, before disbursing the compensation, and shall distribute the money withheld to the person to whom it is owed.

**2017-2018 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0316/p2ins  
CMH...

1           Insert 13-7

2           ✓(c) Sealing of all records relating to the case. Records sealed under this section ✓  
3 shall be available to the person. Records on the consolidated court automation  
4 program case management system shall be sealed and inaccessible by the public.  
5 Other records sealed under this section ✓ may not be made available for public  
6 inspection unless the person seeking access to the records files a petition with the  
7 court for access to the records and the court determines that the benefit to the public  
8 interest is greater than the harm to the public interest that may result from access  
9 to those records.

## **Johns, Melinda**

---

**From:** Hanaman, Cathlene  
**Sent:** Wednesday, May 10, 2017 12:00 PM  
**To:** Johns, Melinda  
**Subject:** FW: One More Draft Change  
**Attachments:** 17-0316\_P2.pdf

And I think she'll want a companion but I'm not sure if the office is ready.

---

**From:** Vander Wiele, Rachel  
**Sent:** Wednesday, May 10, 2017 11:56 AM  
**To:** Hanaman, Cathlene <Cathlene.Hanaman@legis.wisconsin.gov>  
**Subject:** One More Draft Change

Hi Cathlene

I have one more additional change to make to our wrongful conviction bill. See below.

Any individual previously convicted of first degree sexual assault, prior to being exonerated, that is still on record and unreversed and remains on the sex offender registry and who has been compensated already under statute is ineligible to receive further compensation under this bill.

We do want the language to be extremely narrow. I know there will be some changes in wording for the statutes but if you have any questions, feel free to call me.

Also, we are under a bit of a time crunch so if this draft could be turned around quickly that would be appreciated. The Senate author of this legislation will be Sen. Wanggaard (staff point of contact is Scott Kelly).

Thank you!

**Rachel Vander Wiele**  
Legislative Assistant  
State Representative Dale Kooyenga  
14<sup>th</sup> Assembly District  
608-266-9181  
[Rachel.Vanderwiele@legis.wi.gov](mailto:Rachel.Vanderwiele@legis.wi.gov)