



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-0316/P2
MS/TD/FFK/CMH:ahc + amn

8/11/17

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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Regent✓

1 **AN ACT** *to renumber* 893.57; *to renumber and amend* 775.05 (2); *to amend*
2 20.505 (4) (d), 40.51 (1), 227.03 (5), 775.05 (3) and (4) and 775.05 (5); and *to*
3 **create** 20.515 (1) (ds), 20.515 (1) (g), 40.516, 71.05 (6) (b) 53., 227.43 (1) (bw),
4 301.051, 775.05 (2) (b) and (c) and (2m), 775.05 (4c), 775.05 (4d), 775.05 (4g) and
5 (4h), 775.05 (4m) and (4r), 808.085, 893.57 (2), 977.05 (4) (jr) and 977.05 (4) (jw)
6 of the statutes; **relating to:** claims by and treatment of wrongfully imprisoned
7 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, the board must 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.

The bill provides that no person may file a claim for wrongful imprisonment, or be paid an award for wrongful imprisonment, as a result of a conviction resulting in imprisonment for a crime if the imprisoned person is also imprisoned for a conviction for a felony 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 a violent crime, specified in this bill, after his or her release from imprisonment.

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.

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.

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 three years after the cause of action accrues or be barred. Under the bill, an injured person may bring a

claim within three years, or within one year after a defendant receives compensation for wrongful imprisonment, whichever is later. If the injured person brings his or her claim more than three years after the cause of action accrues but within one year after the defendant receives compensation for wrongful imprisonment, the damages awarded due to the tort may not exceed 50 percent of the total compensation received for wrongful imprisonment.

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 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 must 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:

1 20.505 (4) (d) *Claims awards.* A sum sufficient for payment of awards made
2 by the claims board or department of administration under ss. 16.007, 775.05 (4),
3 775.06 and 775.11, awards of financial assistance under s. 808.085, and awards made
4 by an act of the legislature arising from a claim filed with the claims board which are
5 not directed by law or under s. 16.007 (6m) to be paid from another appropriation.

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

7 20.515 (1) (ds) *Payment of health insurance premiums for individuals who*
8 *receive compensation for wrongful imprisonment.* A sum sufficient to pay the state's
9 share of premium costs for health care benefits and the cost of administering the
10 benefits for individuals under s. 40.516.

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

12 20.515 (1) (g) *Benefit and coverage payments; health care coverage for*
13 *individuals who receive compensation for wrongful imprisonment.* All moneys
14 received from individuals under s. 40.516 who elect to be included in a health care
15 coverage plan under s. 40.51 (6), for the payment of benefits and the cost of
16 administering benefits for the individuals.

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

18 40.51 (1) The procedures and provisions pertaining to enrollment, premium
19 transmitted and coverage of eligible employees and individuals eligible for health
20 care coverage under s. 40.516 for health care benefits shall be established by contract
21 or rule except as otherwise specifically provided by this chapter.

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

23 **40.516 Health care coverage for individuals who receive**
24 **compensation for wrongful imprisonment.** (1) Beginning on January 1, 2019,
25 any individual who receives compensation under s. 775.05 after the effective date of

1 this subsection ... [LRB inserts date], may elect coverage under any health care
2 coverage plan offered under s. 40.51 (6) for a period equal to the time he or she was
3 imprisoned, but not to exceed 5 years. An individual who is eligible to obtain health
4 care coverage offered by his or her employer or by the employer of his or her spouse
5 may not elect or continue coverage under this subsection.

6 **(2)** The individual and the state shall jointly pay the full premium cost of health
7 care coverage and the cost of administering the benefits under sub. (1). The amount
8 that the individual must pay in health insurance premiums shall equal the amount
9 required to be paid by state employees, as determined by the administrator of the
10 division of personnel management in the department of administration under s.
11 40.05 (4) (ah). The remainder of the premium cost for health care coverage for these
12 individuals shall be paid from the appropriation account under s. 20.515 (1) (ds).

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

14 71.05 **(6)** (b) 53. Any amount received by an individual, or the individual's
15 estate, from the claims board under s. 775.05 (4), from the legislature under the
16 process described in s. 775.05 (4), from the state as a result of the state's payment of
17 an individual's premium costs under s. 40.516 (2) to the extent that the amount is
18 recognized by the individual as income, or from a financial assistance award granted
19 under s. 808.085, in the taxable year that relates to the year in which the payment
20 is received.

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

22 227.03 **(5)** This chapter does not apply to proceedings of the claims board,
23 except as provided in ss. ~~775.05 (5)~~, 775.06 (7) and 775.11 (2), and except that
24 proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in
25 s. 775.05.

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

2 227.43 (1) (bw) Assign a hearing examiner to preside over each hearing
3 conducted under s. 775.05.

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

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

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

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

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

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

22 775.05 (2) (a) Any Except as provided in pars. (b) and (c), any person who is
23 imprisoned as the result of his or her conviction for a crime in any court of this state,
24 of which crime the person claims to be innocent, and who is released from
25 imprisonment for that crime after March 13, 1980, may petition the claims board for

1 compensation for such imprisonment. ~~Upon~~ Within 5 days after receipt of the
2 petition, the ~~claims board~~ department of administration shall transmit a copy
3 thereof to the prosecutor who prosecuted the petitioner and the judge who sentenced
4 the petitioner for the conviction which is the subject of the claim, or their successors
5 in office, for the information of these persons.

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

7 775.05 (2) (b) Paragraph (a) does not apply to a person who is imprisoned as
8 the result of his or her conviction for a felony in any court of this state arising from
9 the same course of conduct that resulted in conviction for the crime of which the
10 person claims to be innocent if the person does not claim to be innocent of that felony.

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

15 **(2m)** (a) In this subsection, an individual who has the right to inherit assets
16 of a person is limited to a surviving spouse or domestic partner, child, parent, or
17 sibling, who would have a right to inherit assets of the person under s. 852.01.

18 (b) Any individual specified in par. (a) who has the right to inherit assets of a
19 person who has the right to petition the claims board for compensation under sub.
20 (2) may, within one year after the death of such a person, exercise the rights of the
21 person to petition for compensation under sub. (2) (a) on behalf of the deceased
22 person. If more than one individual has that right, the individuals having that right
23 may file a joint petition or any individual or individuals may file a petition for
24 whatever portion of the compensation that would otherwise be payable to the
25 deceased person that the individual or individuals would be entitled to receive as an

1 inheritance had the award been paid before the death of the decedent. If, at the time
2 of death of a person, the person qualified or would qualify to receive compensation
3 under sub. (4) but has not been paid, any such individual or individuals may, within
4 one year of the death of the person, file a claim with the claims board for
5 compensation to be awarded on the decedent's behalf in whatever share of the
6 compensation that was payable to the petitioner that the individual or individuals
7 would be entitled to receive as an inheritance. The claims board shall pay a claim
8 filed by any individual under this subsection if the board determines that the
9 individual or individuals are entitled to be paid under this subsection.

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

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

15 775.05 (3) After hearing the evidence on the petition, the claims board Within
16 5 days after the claims board receives a petition under sub. (2) (a), the department
17 of administration shall refer the petition to the division of hearings and appeals. No
18 later than 30 days after the petition is filed, the department of administration or the
19 office of the prosecutor who was responsible for prosecuting the petitioner may file
20 a written request with the claims board for an evidentiary hearing on the petition.
21 The department of administration shall refer the request to the division within 5
22 days after the claims board receives the request. If a timely request for a hearing is
23 filed, or if the division concludes that it cannot determine the petitioner's eligibility
24 for compensation without a hearing, the division shall hold a hearing on the petition
25 no later than 60 days after the petition is filed. If no request for a hearing is filed

1 within the time specified in this subsection, and the division is able to determine that
2 the petitioner is eligible for compensation without a hearing, the division shall decide
3 the matter without a hearing, except that the division shall not deny a petition for
4 compensation without affording the petitioner an opportunity for a hearing. The
5 division shall find either that the preponderance of evidence is clear and convincing
6 demonstrates that the petitioner was innocent of the crime for which he or she
7 suffered imprisonment, or that the preponderance of evidence is not clear and
8 convincing does not demonstrate that he or she was innocent.

9 (4) ~~If the claims board~~ division of hearings and appeals finds that the
10 preponderance of evidence demonstrates that the petitioner was innocent and that
11 ~~he or she did not by his or her act or failure to act contribute to bring about the~~
12 ~~conviction and imprisonment for which he or she seeks compensation, the claims~~
13 ~~board of the crime for which he or she was imprisoned, the division shall transmit~~
14 its findings to the claims board. The claims board shall find the amount which will
15 equitably compensate the petitioner, not to exceed \$25,000 and at a rate of
16 compensation not greater than \$5,000 of \$50,000, or the amount determined under
17 sub. (4m) (a), whichever applies, per year, prorated daily, for the imprisonment.
18 ~~Compensation awarded by the claims board~~ In addition, the claims board shall
19 include find any amount to which the board finds the petitioner is entitled for
20 reasonable, actual attorney fees, together with all costs and disbursements incurred
21 by the petitioner in his or her defense, postconviction, and compensation proceedings
22 and all fees, surcharges, and restitution paid by the petitioner as a result of his or
23 her arrest and imprisonment. The claims board shall subtract any moneys received
24 by the petitioner under s. 808.085. If the claims board finds that the amount it is able
25 to award find is not an adequate compensation it shall submit a report specifying an

1 amount which it considers adequate to the chief clerk of each house of the legislature,
2 for distribution to the legislature under s. 13.172 (2). The claims board shall, subject
3 to sub. (4g), award the compensation specified in the decision and order
4 disbursement, pursuant to sub. (4d), of the award to the petitioner or any other
5 individual who is entitled to receive a payment from the appropriation under s.
6 20.505 (4) (d), except that the total amount of the award may not exceed \$1,000,000.

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

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

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

14 775.05 (4d) The claims board may award the compensation specified in the
15 decision under sub. (4) in an annuity payable over an amount of time determined by
16 the claims board, but not to exceed the time the petitioner was imprisoned.

17 **SECTION 15.** 775.05 (4g) and (4h) of the statutes are created to read:

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

1 amount equal to the amount of the settlement, judgment, or award, or the amount
2 of compensation awarded under sub. (4), whichever is less.

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

8 (4h) Once the claims board determines the proper compensation award, but
9 before the award is disbursed, the claims board shall determine the amount owed,
10 if any, by the petitioner for any outstanding restitution, court fees, and fines related
11 to any convictions that remain in place and that are not the subject of a finding of
12 innocence under this section. The prosecutor of such convictions is responsible for
13 providing the claims board with an accounting of all unpaid restitution, court fees,
14 and fines. The claims board shall deduct and withhold from the compensation award
15 any money owed, based on the accounting, before disbursing the compensation, and
16 shall distribute the money withheld to the person to whom it is owed.

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

18 775.05 (4m) (a) On April 1 of each year, the claims board shall adjust the
19 amount of yearly compensation specified in sub. (4) to reflect any changes in the U.S.
20 consumer price index for all urban consumers, U.S. city average, as determined by
21 the U.S. department of labor, for the 12-month period ending on the preceding
22 December 31. The board shall publish the adjusted amount so determined in the
23 Wisconsin Administrative Register.

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

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

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

8 775.05 (5) The claims board shall keep a complete record of its the proceedings
9 in each case petition under this section and of all the evidence related to the petition.
10 The findings and decision of the division of hearings and appeals and the award of
11 the claims board shall be subject to review as provided in ch. 227.

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

13 **808.085 Wrongful imprisonment; relief.** (1) If a court acts under s. 808.08
14 to release a person from confinement in a prison, the person may petition the court
15 for any or all of the following:

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

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

21 (c) Sealing of all records relating to the case. Records sealed under this section
22 shall be available to the person. Records on the consolidated court automation
23 program case management system shall be sealed and inaccessible by the public.
24 Other records sealed under this section may not be made available for public
25 inspection unless the person seeking access to the records files a petition with the

1 court for access to the records and the court determines that the benefit to the public
2 interest is greater than the harm to the public interest that may result from access
3 to those records.

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

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

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

18 **SECTION 19.** 893.57 of the statutes is renumbered 893.57 (1).

19 **SECTION 20.** 893.57 (2) of the statutes is created to read:

20 893.57 (2) Notwithstanding sub. (1), an action to recover damages for libel,
21 slander, assault, battery, invasion of privacy, false imprisonment, or other
22 intentional tort brought against a person who has received compensation for a
23 wrongful conviction under s. 775.05 shall proceed as follows:

24 (a) An action to recover damages for an intentional tort that resulted in a final
25 judgement of conviction for a criminal offense that occurred prior to the offense for

1 which the individual has been awarded compensation under s. 775.05 shall be
2 brought within 3 years after the cause of action accrues or within one year after
3 compensation is awarded under s. 775.05, whichever is later, or be barred.

4 (b) If the action to recover damages for an intentional tort is brought later than
5 3 years after the cause of action accrues but within one year after compensation is
6 awarded under s. 775.05, any damages awarded may not exceed 50 percent of the
7 compensation awarded under s. 775.05, and any amounts the exonerated person
8 receives as an annuity under s. 775.05 (4d) shall not be counted as part of the total
9 compensation award but shall be exempt from a damage award for an intentional
10 tort.

11 **SECTION 21.** 977.05 (4) (jr) of the statutes is created to read:

12 977.05 (4) (jr) At the request of a person determined by the state public
13 defender to be indigent or upon referral of any court, represent the person in
14 proceedings under s. 775.05.

15 **SECTION 22.** 977.05 (4) (jw) of the statutes is created to read:

16 977.05 (4) (jw) At the request of an inmate determined by the state public
17 defender to be indigent or upon referral of any court, represent the person in
18 proceedings under s. 808.085.

19 **SECTION 23. Nonstatutory provisions.**

20 (1) **MEDICAL ASSISTANCE FOR WRONGFULLY IMPRISONED PERSONS.** Notwithstanding
21 the eligibility criteria under section 49.471 (4) (a) of the statutes, any individual who
22 receives compensation under section 775.05 of the statutes after the effective date
23 of this subsection is eligible for the Medical Assistance program under section 49.471
24 of the statutes during the period before January 1, 2019. The department of health
25 services shall request any approval from the federal department of health and

1 human services that is necessary to provide Medical Assistance benefits to those
2 individuals. If federal approval is not necessary or if federal approval is received, the
3 department of health services shall provide benefits under section 49.471 of the
4 statutes to those individuals. If federal approval is not received, the department of
5 health services is not required to provide Medical Assistance benefits to those
6 individuals.

7 **SECTION 24. Initial applicability.**

8 (1) Except as provided in subsections (2) and (3), this act first applies with
9 respect to petitions filed by persons who are released on or after January 1, 1990,
10 from imprisonment for crimes of which they claim to be innocent. ^{insert 16-10} (If) a person/was
11 released from imprisonment on or after January 1, 1990, ^{insert 16-11} and accepted compensation
12 from this state for wrongful imprisonment prior to the effective date of this
13 subsection, the person may petition for additional compensation. The claims board
14 may, at its discretion, consider the petition and may award compensation to the
15 extent payable under section 775.05 of the statutes notwithstanding any release
16 signed by the claimant as a condition precedent to receiving an initial compensation
17 award.

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

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

25 (END)

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

LRB-0316/P3insMJ
MS/TD/FK/CH/MJ:ahc

1 INSERT 16-10
2 may petition for additional compensation if he or she
3 INSERT 16-11
4 does not have a valid conviction on his or her criminal record for a first degree
5 sexual assault that occurred prior to release,



State of Wisconsin
2017 - 2018 LEGISLATURE

S1117

LRB-0316/P3 P4
MS/TD/RFK/CMH:ah&amn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

INSERT

1 **AN ACT to renumber 893.57; to renumber and amend 775.05 (2); to amend**
2 **20.505 (4) (d), 40.51 (1), 227.03 (5), 775.05 (3) and (4) and 775.05 (5); and to**
3 **create 20.515 (1) (ds), 20.515 (1) (g), 40.516, 71.05 (6) (b) 53., 227.43 (1) (bw),**
4 **301.051, 775.05 (2) (b) and (c) and (2m), 775.05 (4c), 775.05 (4d), 775.05 (4g) and**
5 **(4h), 775.05 (4m) and (4r), 808.085, 893.57 (2), 977.05 (4) (jr) and 977.05 (4) (jw)**
6 **of the statutes; relating to: claims by and treatment of wrongfully imprisoned**
7 **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, the board must 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.

The bill provides that no person may file a claim for wrongful imprisonment, or be paid an award for wrongful imprisonment, as a result of a conviction resulting in imprisonment for a crime if the imprisoned person is also imprisoned for a conviction for a felony 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 a violent crime, specified in this bill, after his or her release from imprisonment.

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.

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.

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 three years after the cause of action accrues or be barred. Under the bill, an injured person may bring a

claim within three years, or within one year after a defendant receives compensation for wrongful imprisonment, whichever is later. If the injured person brings his or her claim more than three years after the cause of action accrues but within one year after the defendant receives compensation for wrongful imprisonment, the damages awarded due to the tort may not exceed 50 percent of the total compensation received for wrongful imprisonment.

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 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 must 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:

1 20.505 (4) (d) *Claims awards.* A sum sufficient for payment of awards made
2 by the claims board or department of administration under ss. 16.007, 775.05 (4),
3 775.06 and 775.11, awards of financial assistance under s. 808.085, and awards made
4 by an act of the legislature arising from a claim filed with the claims board which are
5 not directed by law or under s. 16.007 (6m) to be paid from another appropriation.

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

7 20.515 (1) (ds) *Payment of health insurance premiums for individuals who*
8 *receive compensation for wrongful imprisonment.* A sum sufficient to pay the state's
9 share of premium costs for health care benefits and the cost of administering the
10 benefits for individuals under s. 40.516.

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

12 20.515 (1) (g) *Benefit and coverage payments; health care coverage for*
13 *individuals who receive compensation for wrongful imprisonment.* All moneys
14 received from individuals under s. 40.516 who elect to be included in a health care
15 coverage plan under s. 40.51 (6), for the payment of benefits and the cost of
16 administering benefits for the individuals.

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

18 40.51 (1) The procedures and provisions pertaining to enrollment, premium
19 transmitted and coverage of eligible employees and individuals eligible for health
20 care coverage under s. 40.516 for health care benefits shall be established by contract
21 or rule except as otherwise specifically provided by this chapter.

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

23 **40.516 Health care coverage for individuals who receive**
24 **compensation for wrongful imprisonment.** (1) Beginning on January 1, 2019,
25 any individual who receives compensation under s. 775.05 after the effective date of

1 this subsection [LRB inserts date], may elect coverage under any health care
2 coverage plan offered under s. 40.51 (6) for a period equal to the time he or she was
3 imprisoned, but not to exceed 5 years. An individual who is eligible to obtain health
4 care coverage offered by his or her employer or by the employer of his or her spouse
5 may not elect or continue coverage under this subsection.

6 **(2)** The individual and the state shall jointly pay the full premium cost of health
7 care coverage and the cost of administering the benefits under sub. (1). The amount
8 that the individual must pay in health insurance premiums shall equal the amount
9 required to be paid by state employees, as determined by the administrator of the
10 division of personnel management in the department of administration under s.
11 40.05 (4) (ah). The remainder of the premium cost for health care coverage for these
12 individuals shall be paid from the appropriation account under s. 20.515 (1) (ds).

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

14 71.05 **(6)** (b) 53. Any amount received by an individual, or the individual's
15 estate, from the claims board under s. 775.05 (4), from the legislature under the
16 process described in s. 775.05 (4), from the state as a result of the state's payment of
17 an individual's premium costs under s. 40.516 (2) to the extent that the amount is
18 recognized by the individual as income, or from a financial assistance award granted
19 under s. 808.085, in the taxable year that relates to the year in which the payment
20 is received.

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

22 227.03 **(5)** This chapter does not apply to proceedings of the claims board,
23 except as provided in ss. ~~775.05 (5)~~, 775.06 (7) and 775.11 (2), and except that
24 proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in
25 s. 775.05.

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

2 227.43 (1) (bw) Assign a hearing examiner to preside over each hearing
3 conducted under s. 775.05.

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

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

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

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

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

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

22 775.05 (2) (a) Any Except as provided in pars. (b) and (c), any person who is
23 imprisoned as the result of his or her conviction for a crime in any court of this state,
24 of which crime the person claims to be innocent, and who is released from
25 imprisonment for that crime after March 13, 1980, may petition the claims board for

1 compensation for such imprisonment. ~~Upon~~ Within 5 days after receipt of the
2 petition, the ~~claims board~~ department of administration shall transmit a copy
3 thereof to the prosecutor who prosecuted the petitioner and the judge who sentenced
4 the petitioner for the conviction which is the subject of the claim, or their successors
5 in office, for the information of these persons.

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

7 775.05 (2) (b) Paragraph (a) does not apply to a person who is imprisoned as
8 the result of his or her conviction for a felony in any court of this state arising from
9 the same course of conduct that resulted in conviction for the crime of which the
10 person claims to be innocent if the person does not claim to be innocent of that felony.

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

15 **(2m)** (a) In this subsection, an individual who has the right to inherit assets
16 of a person is limited to a surviving spouse or domestic partner, child, parent, or
17 sibling, who would have a right to inherit assets of the person under s. 852.01.

18 (b) Any individual specified in par. (a) who has the right to inherit assets of a
19 person who has the right to petition the claims board for compensation under sub.
20 (2) may, within one year after the death of such a person, exercise the rights of the
21 person to petition for compensation under sub. (2) (a) on behalf of the deceased
22 person. If more than one individual has that right, the individuals having that right
23 may file a joint petition or any individual or individuals may file a petition for
24 whatever portion of the compensation that would otherwise be payable to the
25 deceased person that the individual or individuals would be entitled to receive as an

1 inheritance had the award been paid before the death of the decedent. If, at the time
2 of death of a person, the person qualified or would qualify to receive compensation
3 under sub. (4) but has not been paid, any such individual or individuals may, within
4 one year of the death of the person, file a claim with the claims board for
5 compensation to be awarded on the decedent's behalf in whatever share of the
6 compensation that was payable to the petitioner that the individual or individuals
7 would be entitled to receive as an inheritance. The claims board shall pay a claim
8 filed by any individual under this subsection if the board determines that the
9 individual or individuals are entitled to be paid under this subsection.

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

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

15 775.05 (3) After hearing the evidence on the petition, the claims board Within
16 5 days after the claims board receives a petition under sub. (2) (a), the department
17 of administration shall refer the petition to the division of hearings and appeals. No
18 later than 30 days after the petition is filed, the department of administration or the
19 office of the prosecutor who was responsible for prosecuting the petitioner may file
20 a written request with the claims board for an evidentiary hearing on the petition.
21 The department of administration shall refer the request to the division within 5
22 days after the claims board receives the request. If a timely request for a hearing is
23 filed, or if the division concludes that it cannot determine the petitioner's eligibility
24 for compensation without a hearing, the division shall hold a hearing on the petition
25 no later than 60 days after the petition is filed. If no request for a hearing is filed

1 within the time specified in this subsection, and the division is able to determine that
2 the petitioner is eligible for compensation without a hearing, the division shall decide
3 the matter without a hearing, except that the division shall not deny a petition for
4 compensation without affording the petitioner an opportunity for a hearing. The
5 division shall find either that the preponderance of evidence is clear and convincing
6 demonstrates that the petitioner was innocent of the crime for which he or she
7 suffered imprisonment, or that the preponderance of evidence is not clear and
8 convincing does not demonstrate that he or she was innocent.

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

1 amount which it considers adequate to the chief clerk of each house of the legislature,
2 for distribution to the legislature under s. 13.172 (2). The claims board shall, subject
3 to sub. (4g), award the compensation specified in the decision and order
4 disbursement, pursuant to sub. (4d), of the award to the petitioner or any other
5 individual who is entitled to receive a payment from the appropriation under s.
6 20.505 (4) (d), except that the total amount of the award may not exceed \$1,000,000.

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

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

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

14 775.05 (4d) The claims board may award the compensation specified in the
15 decision under sub. (4) in an annuity payable over an amount of time determined by
16 the claims board, but not to exceed the time the petitioner was imprisoned.

17 **SECTION 15.** 775.05 (4g) and (4h) of the statutes are created to read:

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

1 amount equal to the amount of the settlement, judgment, or award, or the amount
2 of compensation awarded under sub. (4), whichever is less.

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

8 **(4h)** Once the claims board determines the proper compensation award, but
9 before the award is disbursed, the claims board shall determine the amount owed,
10 if any, by the petitioner for any outstanding restitution, court fees, and fines related
11 to any convictions that remain in place and that are not the subject of a finding of
12 innocence under this section. The prosecutor of such convictions is responsible for
13 providing the claims board with an accounting of all unpaid restitution, court fees,
14 and fines. The claims board shall deduct and withhold from the compensation award
15 any money owed, based on the accounting, before disbursing the compensation, and
16 shall distribute the money withheld to the person to whom it is owed.

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

18 775.05 **(4m)** (a) On April 1 of each year, the claims board shall adjust the
19 amount of yearly compensation specified in sub. (4) to reflect any changes in the U.S.
20 consumer price index for all urban consumers, U.S. city average, as determined by
21 the U.S. department of labor, for the 12-month period ending on the preceding
22 December 31. The board shall publish the adjusted amount so determined in the
23 Wisconsin Administrative Register.

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

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

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

8 775.05 (5) The claims board shall keep a complete record of its the proceedings
9 in each case petition under this section and of all the evidence related to the petition.
10 The findings and decision of the division of hearings and appeals and the award of
11 the claims board shall be subject to review as provided in ch. 227.

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

13 **808.085 Wrongful imprisonment; relief.** (1) If a court acts under s. 808.08
14 to release a person from confinement in a prison, the person may petition the court
15 for any or all of the following:

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

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

21 (c) Sealing of all records relating to the case. Records sealed under this section
22 shall be available to the person. Records on the consolidated court automation
23 program case management system shall be sealed and inaccessible by the public.
24 Other records sealed under this section may not be made available for public
25 inspection unless the person seeking access to the records files a petition with the

1 court for access to the records and the court determines that the benefit to the public
2 interest is greater than the harm to the public interest that may result from access
3 to those records.

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

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

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

18 **SECTION 19.** 893.57 of the statutes is renumbered 893.57 (1).

19 **SECTION 20.** 893.57 (2) of the statutes is created to read:

20 893.57 (2) Notwithstanding sub. (1), an action to recover damages for libel,
21 slander, assault, battery, invasion of privacy, false imprisonment, or other
22 intentional tort brought against a person who has received compensation for a
23 wrongful conviction under s. 775.05 shall proceed as follows:

24 (a) An action to recover damages for an intentional tort that resulted in a final
25 judgement of conviction for a criminal offense that occurred prior to the offense for

1 which the individual has been awarded compensation under s. 775.05 shall be
2 brought within 3 years after the cause of action accrues or within one year after
3 compensation is awarded under s. 775.05, whichever is later, or be barred.

4 (b) If the action to recover damages for an intentional tort is brought later than
5 3 years after the cause of action accrues but within one year after compensation is
6 awarded under s. 775.05, any damages awarded may not exceed 50 percent of the
7 compensation awarded under s. 775.05, and any amounts the exonerated person
8 receives as an annuity under s. 775.05 (4d) shall not be counted as part of the total
9 compensation award but shall be exempt from a damage award for an intentional
10 tort.

11 **SECTION 21.** 977.05 (4) (jr) of the statutes is created to read:

12 977.05 (4) (jr) At the request of a person determined by the state public
13 defender to be indigent or upon referral of any court, represent the person in
14 proceedings under s. 775.05.

15 **SECTION 22.** 977.05 (4) (jw) of the statutes is created to read:

16 977.05 (4) (jw) At the request of an inmate determined by the state public
17 defender to be indigent or upon referral of any court, represent the person in
18 proceedings under s. 808.085.

19 **SECTION 23. Nonstatutory provisions.**

20 (1) **MEDICAL ASSISTANCE FOR WRONGFULLY IMPRISONED PERSONS.** Notwithstanding
21 the eligibility criteria under section 49.471 (4) (a) of the statutes, any individual who
22 receives compensation under section 775.05 of the statutes after the effective date
23 of this subsection is eligible for the Medical Assistance program under section 49.471
24 of the statutes during the period before January 1, 2019. The department of health
25 services shall request any approval from the federal department of health and

1 human services that is necessary to provide Medical Assistance benefits to those
2 individuals. If federal approval is not necessary or if federal approval is received, the
3 department of health services shall provide benefits under section 49.471 of the
4 statutes to those individuals. If federal approval is not received, the department of
5 health services is not required to provide Medical Assistance benefits to those
6 individuals.

7 **SECTION 24. Initial applicability.**

8 (1) Except as provided in subsections (2) and (3), this act first applies with
9 respect to petitions filed by persons who are released on or after January 1, 1990,
10 from imprisonment for crimes of which they claim to be innocent. A person may
11 petition for additional compensation if he or she was released from imprisonment on
12 or after January 1, 1990, does not have a valid conviction on his or her criminal record
13 for a first degree sexual assault that occurred prior to release, and accepted
14 compensation from this state for wrongful imprisonment prior to the effective date
15 of this subsection. ^{INSERT 6-15} The claims board may, at its discretion, consider the petition and
16 may award compensation to the extent payable under section 775.05 of the statutes
17 notwithstanding any release signed by the claimant as a condition precedent to
18 receiving an initial compensation award.

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

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

LRB-0316/P4insMJ
MS/TD/FK/CH/MJ:ah&amn

1 INSERT 16-15

2 A person may not petition for additional compensation if he or she was released
3 from imprisonment on or after January 1, 1990, has a valid conviction on his or her
4 criminal record for a first degree sexual assault that occurred prior to release and is
5 required to comply with lifetime reporting requirements under section 301.45 of the
6 statutes for the conviction, and accepted compensation from this state for wrongful
7 imprisonment prior to the effective date of this subsection.



State of Wisconsin
2017 - 2018 LEGISLATURE

DUE 7/11/17

LRB-0316/P4

MS/TD/FK/CH/MJ:ah&amn

no other changes!

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA ✓

1 **AN ACT** to renumber 893.57; to renumber and amend 775.05 (2); to amend
2 20.505 (4) (d), 40.51 (1), 227.03 (5), 775.05 (3) and (4) and 775.05 (5); and to
3 **create** 20.515 (1) (ds), 20.515 (1) (g), 40.516, 71.05 (6) (b) 53., 227.43 (1) (bw),
4 301.051, 775.05 (2) (b) and (c) and (2m), 775.05 (4c), 775.05 (4d), 775.05 (4g) and
5 (4h), 775.05 (4m) and (4r), 808.085, 893.57 (2), 977.05 (4) (jr) and 977.05 (4) (jw)
6 of the statutes; **relating to:** claims by and treatment of wrongfully imprisoned
7 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, the board must 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.

The bill provides that no person may file a claim for wrongful imprisonment, or be paid an award for wrongful imprisonment, as a result of a conviction resulting in imprisonment for a crime if the imprisoned person is also imprisoned for a conviction for a felony 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 a violent crime, specified in this bill, after his or her release from imprisonment.

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.

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.

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 three years after the cause of action accrues or be barred. Under the bill, an injured person may bring a

claim within three years, or within one year after a defendant receives compensation for wrongful imprisonment, whichever is later. If the injured person brings his or her claim more than three years after the cause of action accrues but within one year after the defendant receives compensation for wrongful imprisonment, the damages awarded due to the tort may not exceed 50 percent of the total compensation received for wrongful imprisonment.

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 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 must 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:

1 20.505 (4) (d) *Claims awards.* A sum sufficient for payment of awards made
2 by the claims board or department of administration under ss. 16.007, 775.05 (4),
3 775.06 and 775.11, awards of financial assistance under s. 808.085, and awards made
4 by an act of the legislature arising from a claim filed with the claims board which are
5 not directed by law or under s. 16.007 (6m) to be paid from another appropriation.

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

7 20.515 (1) (ds) *Payment of health insurance premiums for individuals who*
8 *receive compensation for wrongful imprisonment.* A sum sufficient to pay the state's
9 share of premium costs for health care benefits and the cost of administering the
10 benefits for individuals under s. 40.516.

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

12 20.515 (1) (g) *Benefit and coverage payments; health care coverage for*
13 *individuals who receive compensation for wrongful imprisonment.* All moneys
14 received from individuals under s. 40.516 who elect to be included in a health care
15 coverage plan under s. 40.51 (6), for the payment of benefits and the cost of
16 administering benefits for the individuals.

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

18 40.51 (1) The procedures and provisions pertaining to enrollment, premium
19 transmitted and coverage of eligible employees and individuals eligible for health
20 care coverage under s. 40.516 for health care benefits shall be established by contract
21 or rule except as otherwise specifically provided by this chapter.

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

23 **40.516 Health care coverage for individuals who receive**
24 **compensation for wrongful imprisonment. (1)** Beginning on January 1, 2019,
25 any individual who receives compensation under s. 775.05 after the effective date of

1 this subsection [LRB inserts date], may elect coverage under any health care
2 coverage plan offered under s. 40.51 (6) for a period equal to the time he or she was
3 imprisoned, but not to exceed 5 years. An individual who is eligible to obtain health
4 care coverage offered by his or her employer or by the employer of his or her spouse
5 may not elect or continue coverage under this subsection.

6 (2) The individual and the state shall jointly pay the full premium cost of health
7 care coverage and the cost of administering the benefits under sub. (1). The amount
8 that the individual must pay in health insurance premiums shall equal the amount
9 required to be paid by state employees, as determined by the administrator of the
10 division of personnel management in the department of administration under s.
11 40.05 (4) (ah). The remainder of the premium cost for health care coverage for these
12 individuals shall be paid from the appropriation account under s. 20.515 (1) (ds).

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

14 71.05 (6) (b) 53. Any amount received by an individual, or the individual's
15 estate, from the claims board under s. 775.05 (4), from the legislature under the
16 process described in s. 775.05 (4), from the state as a result of the state's payment of
17 an individual's premium costs under s. 40.516 (2) to the extent that the amount is
18 recognized by the individual as income, or from a financial assistance award granted
19 under s. 808.085, in the taxable year that relates to the year in which the payment
20 is received.

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

22 227.03 (5) This chapter does not apply to proceedings of the claims board,
23 except as provided in ss. ~~775.05 (5)~~, 775.06 (7) and 775.11 (2), and except that
24 proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in
25 s. 775.05.

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

2 227.43 (1) (bw) Assign a hearing examiner to preside over each hearing
3 conducted under s. 775.05.

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

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

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

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

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

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

22 775.05 (2) (a) Any Except as provided in pars. (b) and (c), any person who is
23 imprisoned as the result of his or her conviction for a crime in any court of this state,
24 of which crime the person claims to be innocent, and who is released from
25 imprisonment for that crime after March 13, 1980, may petition the claims board for

1 compensation for such imprisonment. ~~Upon~~ Within 5 days after receipt of the
2 petition, the ~~claims board~~ department of administration shall transmit a copy
3 thereof to the prosecutor who prosecuted the petitioner and the judge who sentenced
4 the petitioner for the conviction which is the subject of the claim, or their successors
5 in office, for the information of these persons.

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

7 775.05 (2) (b) Paragraph (a) does not apply to a person who is imprisoned as
8 the result of his or her conviction for a felony in any court of this state arising from
9 the same course of conduct that resulted in conviction for the crime of which the
10 person claims to be innocent if the person does not claim to be innocent of that felony.

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

15 **(2m)** (a) In this subsection, an individual who has the right to inherit assets
16 of a person is limited to a surviving spouse or domestic partner, child, parent, or
17 sibling, who would have a right to inherit assets of the person under s. 852.01.

18 (b) Any individual specified in par. (a) who has the right to inherit assets of a
19 person who has the right to petition the claims board for compensation under sub.
20 (2) may, within one year after the death of such a person, exercise the rights of the
21 person to petition for compensation under sub. (2) (a) on behalf of the deceased
22 person. If more than one individual has that right, the individuals having that right
23 may file a joint petition or any individual or individuals may file a petition for
24 whatever portion of the compensation that would otherwise be payable to the
25 deceased person that the individual or individuals would be entitled to receive as an

1 inheritance had the award been paid before the death of the decedent. If, at the time
2 of death of a person, the person qualified or would qualify to receive compensation
3 under sub. (4) but has not been paid, any such individual or individuals may, within
4 one year of the death of the person, file a claim with the claims board for
5 compensation to be awarded on the decedent's behalf in whatever share of the
6 compensation that was payable to the petitioner that the individual or individuals
7 would be entitled to receive as an inheritance. The claims board shall pay a claim
8 filed by any individual under this subsection if the board determines that the
9 individual or individuals are entitled to be paid under this subsection.

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

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

15 775.05 (3) After hearing the evidence on the petition, the claims board Within
16 5 days after the claims board receives a petition under sub. (2) (a), the department
17 of administration shall refer the petition to the division of hearings and appeals. No
18 later than 30 days after the petition is filed, the department of administration or the
19 office of the prosecutor who was responsible for prosecuting the petitioner may file
20 a written request with the claims board for an evidentiary hearing on the petition.
21 The department of administration shall refer the request to the division within 5
22 days after the claims board receives the request. If a timely request for a hearing is
23 filed, or if the division concludes that it cannot determine the petitioner's eligibility
24 for compensation without a hearing, the division shall hold a hearing on the petition
25 no later than 60 days after the petition is filed. If no request for a hearing is filed

1 within the time specified in this subsection, and the division is able to determine that
2 the petitioner is eligible for compensation without a hearing, the division shall decide
3 the matter without a hearing, except that the division shall not deny a petition for
4 compensation without affording the petitioner an opportunity for a hearing. The
5 division shall find either that the preponderance of evidence is clear and convincing
6 demonstrates that the petitioner was innocent of the crime for which he or she
7 suffered imprisonment, or that the preponderance of evidence is not clear and
8 convincing does not demonstrate that he or she was innocent.

9 (4) ~~If the claims board~~ division of hearings and appeals finds that the
10 preponderance of evidence demonstrates that the petitioner was innocent and that
11 he or she did not by his or her act or failure to act contribute to bring about the
12 conviction and imprisonment for which he or she seeks compensation, the claims
13 board of the crime for which he or she was imprisoned, the division shall transmit
14 its findings to the claims board. The claims board shall find the amount which will
15 equitably compensate the petitioner, not to exceed \$25,000 and at a rate of
16 compensation not greater than \$5,000 of \$50,000, or the amount determined under
17 sub. (4m) (a), whichever applies, per year, prorated daily, for the imprisonment.
18 ~~Compensation awarded by the claims board~~ In addition, the claims board shall
19 include find any amount to which the board finds the petitioner is entitled for
20 reasonable, actual attorney fees, together with all costs and disbursements incurred
21 by the petitioner in his or her defense, postconviction, and compensation proceedings
22 and all fees, surcharges, and restitution paid by the petitioner as a result of his or
23 her arrest and imprisonment. The claims board shall subtract any moneys received
24 by the petitioner under s. 808.085. If the claims board finds that the amount it is able
25 to award find is not an adequate compensation it shall submit a report specifying an

1 amount which it considers adequate to the chief clerk of each house of the legislature,
2 for distribution to the legislature under s. 13.172 (2). The claims board shall, subject
3 to sub. (4g), award the compensation specified in the decision and order
4 disbursement, pursuant to sub. (4d), of the award to the petitioner or any other
5 individual who is entitled to receive a payment from the appropriation under s.
6 20.505 (4) (d), except that the total amount of the award may not exceed \$1,000,000.

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

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

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

14 775.05 (4d) The claims board may award the compensation specified in the
15 decision under sub. (4) in an annuity payable over an amount of time determined by
16 the claims board, but not to exceed the time the petitioner was imprisoned.

17 **SECTION 15.** 775.05 (4g) and (4h) of the statutes are created to read:

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

1 amount equal to the amount of the settlement, judgment, or award, or the amount
2 of compensation awarded under sub. (4), whichever is less.

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

8 (4h) Once the claims board determines the proper compensation award, but
9 before the award is disbursed, the claims board shall determine the amount owed,
10 if any, by the petitioner for any outstanding restitution, court fees, and fines related
11 to any convictions that remain in place and that are not the subject of a finding of
12 innocence under this section. The prosecutor of such convictions is responsible for
13 providing the claims board with an accounting of all unpaid restitution, court fees,
14 and fines. The claims board shall deduct and withhold from the compensation award
15 any money owed, based on the accounting, before disbursing the compensation, and
16 shall distribute the money withheld to the person to whom it is owed.

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

18 775.05 (4m) (a) On April 1 of each year, the claims board shall adjust the
19 amount of yearly compensation specified in sub. (4) to reflect any changes in the U.S.
20 consumer price index for all urban consumers, U.S. city average, as determined by
21 the U.S. department of labor, for the 12-month period ending on the preceding
22 December 31. The board shall publish the adjusted amount so determined in the
23 Wisconsin Administrative Register.

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

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

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

8 775.05 (5) The claims board shall keep a complete record of its the proceedings
9 in each ease petition under this section and of all the evidence related to the petition.
10 The findings and decision of the division of hearings and appeals and the award of
11 the claims board shall be subject to review as provided in ch. 227.

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

13 **808.085 Wrongful imprisonment; relief.** (1) If a court acts under s. 808.08
14 to release a person from confinement in a prison, the person may petition the court
15 for any or all of the following:

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

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

21 (c) Sealing of all records relating to the case. Records sealed under this section
22 shall be available to the person. Records on the consolidated court automation
23 program case management system shall be sealed and inaccessible by the public.
24 Other records sealed under this section may not be made available for public
25 inspection unless the person seeking access to the records files a petition with the

1 court for access to the records and the court determines that the benefit to the public
2 interest is greater than the harm to the public interest that may result from access
3 to those records.

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

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

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

18 **SECTION 19.** 893.57 of the statutes is renumbered 893.57 (1).

19 **SECTION 20.** 893.57 (2) of the statutes is created to read:

20 893.57 (2) Notwithstanding sub. (1), an action to recover damages for libel,
21 slander, assault, battery, invasion of privacy, false imprisonment, or other
22 intentional tort brought against a person who has received compensation for a
23 wrongful conviction under s. 775.05 shall proceed as follows:

24 (a) An action to recover damages for an intentional tort that resulted in a final
25 judgement of conviction for a criminal offense that occurred prior to the offense for

1 which the individual has been awarded compensation under s. 775.05 shall be
2 brought within 3 years after the cause of action accrues or within one year after
3 compensation is awarded under s. 775.05, whichever is later, or be barred.

4 (b) If the action to recover damages for an intentional tort is brought later than
5 3 years after the cause of action accrues but within one year after compensation is
6 awarded under s. 775.05, any damages awarded may not exceed 50 percent of the
7 compensation awarded under s. 775.05, and any amounts the exonerated person
8 receives as an annuity under s. 775.05 (4d) shall not be counted as part of the total
9 compensation award but shall be exempt from a damage award for an intentional
10 tort.

11 **SECTION 21.** 977.05 (4) (jr) of the statutes is created to read:

12 977.05 (4) (jr) At the request of a person determined by the state public
13 defender to be indigent or upon referral of any court, represent the person in
14 proceedings under s. 775.05.

15 **SECTION 22.** 977.05 (4) (jw) of the statutes is created to read:

16 977.05 (4) (jw) At the request of an inmate determined by the state public
17 defender to be indigent or upon referral of any court, represent the person in
18 proceedings under s. 808.085.

19 **SECTION 23. Nonstatutory provisions.**

20 (1) **MEDICAL ASSISTANCE FOR WRONGFULLY IMPRISONED PERSONS.** Notwithstanding
21 the eligibility criteria under section 49.471 (4) (a) of the statutes, any individual who
22 receives compensation under section 775.05 of the statutes after the effective date
23 of this subsection is eligible for the Medical Assistance program under section 49.471
24 of the statutes during the period before January 1, 2019. The department of health
25 services shall request any approval from the federal department of health and

1 human services that is necessary to provide Medical Assistance benefits to those
2 individuals. If federal approval is not necessary or if federal approval is received, the
3 department of health services shall provide benefits under section 49.471 of the
4 statutes to those individuals. If federal approval is not received, the department of
5 health services is not required to provide Medical Assistance benefits to those
6 individuals.

7 **SECTION 24. Initial applicability.**

8 (1) Except as provided in subsections (2) and (3), this act first applies with
9 respect to petitions filed by persons who are released on or after January 1, 1990,
10 from imprisonment for crimes of which they claim to be innocent. A person may
11 petition for additional compensation if he or she was released from imprisonment on
12 or after January 1, 1990, and accepted compensation from this state for wrongful
13 imprisonment prior to the effective date of this subsection. A person may not petition
14 for additional compensation if he or she was released from imprisonment on or after
15 January 1, 1990, has a valid conviction on his or her criminal record for a first degree
16 sexual assault that occurred prior to release and is required to comply with lifetime
17 reporting requirements under section 301.45 of the statutes for the conviction, and
18 accepted compensation from this state for wrongful imprisonment prior to the
19 effective date of this subsection. The claims board may, at its discretion, consider the
20 petition and may award compensation to the extent payable under section 775.05 of
21 the statutes notwithstanding any release signed by the claimant as a condition
22 precedent to receiving an initial compensation award.

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

1 of the statutes first applies to taxable years beginning on January 1 of the year
2 following the year in which this subsection takes effect.

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

5

(END)

Barman, Mike

From: LRB.Legal
To: Rep.Kooyenga
Subject: Draft review: LRB -0316/1
Attachments: 17-0316/1

State of Wisconsin - Legislative Reference Bureau
One East Main Street - Suite 200 - Madison

The attached draft was prepared at your request. Please review it carefully to ensure that it satisfies your intent.

We will jacket this draft for introduction in the Assembly.

If you have any questions concerning the draft or would like to have it redrafted, please contact Cathlene M. Hanaman, Deputy Chief and Chief Operating Officer, at (608) 267-9810, at cathlene.hanaman@legis.wisconsin.gov, or at One East Main Street, Suite 200.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will submit a request to DOA when the draft is introduced. You may obtain a fiscal estimate on the draft prior to introduction by contacting our program assistants at LRB.Legal@legis.wisconsin.gov or at (608) 266-3561. If you requested a fiscal estimate on an earlier version of this draft and would like to obtain a fiscal estimate on the current version before it is introduced, you will need to request a revised fiscal estimate from our program assistants.

Please call our program assistants at (608) 266-3561 if you have any questions regarding this email.