



**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO ASSEMBLY BILL 548**

December 28, 2017 - Offered by Representatives KOYENGA and HEBL.

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) 54., 227.43 (1) (bw),
4 227.43 (3) (f), 301.051, 775.05 (2) (b) and (c) and (2m), 775.05 (4c), 775.05 (4d),
5 775.05 (4g) and (4h), 775.05 (4m) and (4r), 808.085, 893.57 (2), 977.05 (4) (jr)
6 and 977.05 (4) (jw) of the statutes; **relating to:** claims by and treatment of
7 wrongfully imprisoned persons and making appropriations.

Analysis by the Legislative Reference Bureau

This substitute amendment 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 substitute amendment initially applies with respect to claims filed by persons who are released on or after March 13, 1980, 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 substitute amendment 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 substitute amendment 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 substitute amendment 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 and the state is represented by the office of the prosecutor who prosecuted the petitioner. 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 substitute amendment, 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 substitute amendment, 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 substitute amendment 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 substitute amendment 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 substitute amendment, after his or her release from imprisonment.

The substitute amendment 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 substitute amendment, 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 substitute amendment 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 substitute amendment also provides that for any petition filed on or after the effective date of the substitute amendment, 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 substitute amendment 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 substitute amendment 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 substitute amendment 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 substitute amendment 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 substitute amendment, 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 substitute amendment 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 substitute amendment 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 substitute amendment, 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 substitute amendment 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 substitute amendment, 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.

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

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

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

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

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

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

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

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

19 40.51 (1) The procedures and provisions pertaining to enrollment, premium
20 transmitted and coverage of eligible employees and individuals eligible for health

1 care coverage under s. 40.516 for health care benefits shall be established by contract
2 or rule except as otherwise specifically provided by this chapter.

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

4 **40.516 Health care coverage for individuals who receive**
5 **compensation for wrongful imprisonment.** (1) Beginning on January 1, 2019,
6 any individual who receives compensation under s. 775.05 after the effective date of
7 this subsection [LRB inserts date], may elect coverage under any health care
8 coverage plan offered under s. 40.51 (6) for a period equal to the time he or she was
9 imprisoned, but not to exceed 5 years. An individual who is eligible to obtain health
10 care coverage offered by his or her employer or by the employer of his or her spouse
11 may not elect or continue coverage under this subsection.

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

19 **SECTION 6.** 71.05 (6) (b) 54. of the statutes is created to read:

20 71.05 (6) (b) 54. Any amount received by an individual, or the individual's
21 estate, from the claims board under s. 775.05 (4), from the legislature under the
22 process described in s. 775.05 (4), from the state as a result of the state's payment of
23 an individual's premium costs under s. 40.516 (2) to the extent that the amount is
24 recognized by the individual as income, or from a financial assistance award granted

1 under s. 808.085, in the taxable year that relates to the year in which the payment
2 is received.

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

4 227.03 (5) This chapter does not apply to proceedings of the claims board,
5 except as provided in ss. ~~775.05 (5)~~, 775.06 (7) and 775.11 (2), and except that
6 proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in
7 s. 775.05.

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

9 227.43 (1) (bw) Assign a hearing examiner to preside over each hearing
10 conducted under s. 775.05.

11 **SECTION 9.** 227.43 (3) (f) of the statutes is created to read:

12 227.43 (3) (f) The administrator of the division of hearings and appeals may
13 set the fees to be charged for any services rendered to the claims board by a hearing
14 examiner under this section. The fee shall cover the total cost of the services. In no
15 case may a fee that is set under this paragraph be imposed on, or passed down to, a
16 petitioner described under s. 775.05 (2) (a).

17 **SECTION 10.** 301.051 of the statutes is created to read:

18 **301.051 Wrongful imprisonment; transition plan.** Not more than 5 days
19 after a court issues an order under s. 808.085 (1) (a) for a plan requested by an
20 inmate, the department shall create a transition to release plan for the inmate. The
21 plan shall do all of the following:

22 (1) Provide the inmate with a written list of community resources available to
23 the inmate upon his or her release from prison, including temporary housing and
24 emergency shelters, food banks, education and job assistance, and health care
25 services in the county into which the inmate will be released.

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

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

7 **SECTION 11.** 775.05 (2) of the statutes is renumbered 775.05 (2) (a) and
8 amended to read:

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

21 **SECTION 12.** 775.05 (2) (b) and (c) and (2m) of the statutes are created to read:

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

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

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

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

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

5 **SECTION 13.** 775.05 (3) and (4) of the statutes are amended to read:

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

1 evidence is ~~not clear and convincing~~ does not demonstrate that he or she was
2 innocent.

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

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

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

7 **SECTION 15.** 775.05 (4d) of the statutes is created to read:

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

11 **SECTION 16.** 775.05 (4g) and (4h) of the statutes are created to read:

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

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

1 **(4h)** Once the claims board determines the proper compensation award, but
2 before the award is disbursed, the claims board shall determine the amount owed,
3 if any, by the petitioner for any outstanding restitution, court fees, and fines related
4 to any convictions that remain in place and that are not the subject of a finding of
5 innocence under this section. The prosecutor of such convictions is responsible for
6 providing the claims board with an accounting of all unpaid restitution, court fees,
7 and fines. The claims board shall deduct and withhold from the compensation award
8 any money owed, based on the accounting, before disbursing the compensation, and
9 shall distribute the money withheld to the person to whom it is owed.

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

11 775.05 **(4m)** (a) On April 1 of each year, the claims board shall adjust the
12 amount of yearly compensation specified in sub. (4) to reflect any changes in the U.S.
13 consumer price index for all urban consumers, U.S. city average, as determined by
14 the U.S. department of labor, for the 12-month period ending on the preceding
15 December 31. The board shall publish the adjusted amount so determined in the
16 Wisconsin Administrative Register.

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

20 **(4r)** At any hearing conducted under this section, the petitioner may be
21 represented by counsel of his or her own choosing.

22 **SECTION 18.** 775.05 (5) of the statutes is amended to read:

23 775.05 **(5)** The claims board shall keep a complete record of its the proceedings
24 in each case petition under this section and of all the evidence related to the petition.

1 The findings and decision of the division of hearings and appeals and the award of
2 the claims board shall be subject to review as provided in ch. 227.

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

4 **808.085 Wrongful imprisonment; relief. (1)** If a court acts under s. 808.08
5 to release a person from confinement in a prison, the person may petition the court
6 for any or all of the following:

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

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

12 (c) Sealing of all records relating to the case. Records sealed under this section
13 shall be available to the person. Records on the consolidated court automation
14 program case management system shall be sealed and inaccessible by the public.
15 Other records sealed under this section may not be made available for public
16 inspection unless the person seeking access to the records files a petition with the
17 court for access to the records and the court determines that the benefit to the public
18 interest is greater than the harm to the public interest that may result from access
19 to those records.

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

24 **(3)** If a person who is granted relief under this section is subsequently convicted
25 of the same charges for which he or she was granted relief, or if his or her conviction

1 is reinstated, the person shall repay any financial assistance award granted under
2 this section and all records related to the case shall be unsealed.

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

9 **SECTION 20.** 893.57 of the statutes is renumbered 893.57 (1).

10 **SECTION 21.** 893.57 (2) of the statutes is created to read:

11 893.57 (2) Notwithstanding sub. (1), an action to recover damages for libel,
12 slander, assault, battery, invasion of privacy, false imprisonment, or other
13 intentional tort brought against a person who has received compensation for a
14 wrongful conviction under s. 775.05 shall proceed as follows:

15 (a) An action to recover damages for an intentional tort that resulted in a final
16 judgement of conviction for a criminal offense that occurred prior to the offense for
17 which the individual has been awarded compensation under s. 775.05 shall be
18 brought within 3 years after the cause of action accrues or within one year after
19 compensation is awarded under s. 775.05, whichever is later, or be barred.

20 (b) If the action to recover damages for an intentional tort is brought later than
21 3 years after the cause of action accrues but within one year after compensation is
22 awarded under s. 775.05, any damages awarded may not exceed 50 percent of the
23 compensation awarded under s. 775.05, and any amounts the exonerated person
24 receives as an annuity under s. 775.05 (4d) shall not be counted as part of the total

1 compensation award but shall be exempt from a damage award for an intentional
2 tort.

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

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

7 **SECTION 23.** 977.05 (4) (jw) of the statutes is created to read:

8 977.05 (4) (jw) At the request of an inmate determined by the state public
9 defender to be indigent or upon referral of any court, represent the person in
10 proceedings under s. 808.085.

11 **SECTION 24. Nonstatutory provisions.**

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

24 **SECTION 25. Initial applicability.**

1 (1) Except as provided in subsections (2) and (3), this act first applies with
2 respect to petitions filed by persons who are released on or after March 13, 1980, from
3 imprisonment for crimes of which they claim to be innocent. A person may petition
4 for additional compensation if he or she was released from imprisonment on or after
5 March 13, 1980, and accepted compensation from this state for wrongful
6 imprisonment prior to the effective date of this subsection. A person may not petition
7 for additional compensation if he or she was released from imprisonment on or after
8 March 13, 1980, has a valid conviction on his or her criminal record for a first degree
9 sexual assault that occurred prior to release and is required to comply with lifetime
10 reporting requirements under section 301.45 of the statutes for the conviction, and
11 accepted compensation from this state for wrongful imprisonment prior to the
12 effective date of this subsection. The claims board may, at its discretion, consider the
13 petition and may award compensation to the extent payable under section 775.05 of
14 the statutes notwithstanding any release signed by the claimant as a condition
15 precedent to receiving an initial compensation award.

16 (2) The treatment of section 71.05 (6) (b) 54. of the statutes first applies to
17 taxable years beginning on January 1 of the year in which this subsection takes
18 effect, except that if this subsection takes effect after July 31, section 71.05 (6) (b) 54.
19 of the statutes first applies to taxable years beginning on January 1 of the year
20 following the year in which this subsection takes effect.

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

23 (END)