



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2017 Assembly Bill 548**

**Assembly Substitute  
Amendment 1**

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*Contact: Anna Henning, Senior Staff Attorney*

### **2017 ASSEMBLY BILL 548**

Under current law, the State Claims Board hears claims against the state for compensation by persons who are convicted of and imprisoned for crimes for which they claim innocence after their release from imprisonment. [s. 775.05, Stats.]

2017 Assembly Bill 548 makes various changes relating to claims against the state for wrongful imprisonment. Briefly, the bill does all of the following:

- Subject to a \$1 million per-person cap, increases the maximum amount of compensation that the State Claims Board may provide for wrongful imprisonment from \$5,000 per year of wrongful imprisonment under current law to \$50,000 per year, adjusted for inflation, together with certain costs, attorney fees, and disbursements, and minus certain financial assistance ordered by a court.
- Creates a new procedure and timeline governing such claims.
- Replaces the “clear and convincing evidence” standard of proof for such claims with a “preponderance of the evidence” standard.
- Modifies and clarifies the grounds on which a person is disqualified from bringing a claim or receiving compensation for wrongful imprisonment.
- Specifies that a petitioner may be represented by counsel of the petitioner’s choosing.
- Provides for certain rights of surviving family members of a person who is wrongfully imprisoned.
- Exempts compensation and benefits received for wrongful imprisonment from state taxes.

- Provides for temporary health insurance coverage for a person who receives compensation for wrongful imprisonment.
- Requires the State Claims Board to develop a pamphlet regarding financial information management services and to issue the pamphlet to individuals who receive compensation for wrongful imprisonment.
- Provides new options for relief that a court may grant if a person's conviction is reversed, set aside, or vacated because of the person's, including an order directing the Department of Corrections (DOC) to create a transition to release plan and limited financial assistance pending a proceeding before the State Claims Board.
- Provides an alternate statute of limitations framework for actions to recover damages for an intentional tort from a person who has received compensation from the State Claims Board for wrongful imprisonment.

### **ASSEMBLY SUBSTITUTE AMENDMENT 1**

Assembly Substitute Amendment 1 makes several changes, described below, to the bill.

#### **Initial Applicability**

**Current law** authorizes persons who are released from prison after March 13, 1980, and who claim to be innocent, to petition the state for compensation for wrongful imprisonment.

**The bill** generally first applies to petitions filed by persons who are released on or after January 1, 1990, from imprisonment for crimes of which they claim to be innocent.<sup>1</sup> In addition, with a limited exception for certain sex offenders, if a person was released from imprisonment on or after January 1, 1990, and had previously accepted compensation from the state for wrongful imprisonment prior to the effective date of the bill, the person may petition for additional compensation, and compensation must be awarded to the extent payable under the provisions of the bill, notwithstanding any release signed by the claimant as a condition precedent to receiving an initial compensation award.

In relevant initial applicability provisions, **the substitute amendment** replaces the January 1, 1990 date with a date of March 13, 1980.

#### **Eligibility**

**Current law**, unchanged by **the bill**, requires a person to have been released from prison before the person may file a petition with the State Claims Board for compensation from the state for wrongful imprisonment.

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<sup>1</sup> Certain provisions of the bill relating to tax exemptions and hearing procedures apply prospectively.

In addition to having been released from prison, **the substitute amendment** requires that one of the following conditions apply before a person may petition the State Claims Board for compensation for wrongful imprisonment:

- The person's conviction has been vacated and the person has been subsequently acquitted.
- The person's conviction has been vacated and the charges have been dismissed.
- The person received a pardon on the basis of innocence.

### **Procedures Governing Review of Petitions**

**The bill** provides certain timelines and procedures governing the review of petitions submitted to the State Claims Board for compensation for wrongful imprisonment.

**The substitute amendment** makes the following changes to those procedures:

- Clarifies that the Department of Administration (DOA) must refer a petition to the Division of Hearings and Appeals (DHA) only if the petitioner satisfies the statutory eligibility criteria.
- Removes authority for DOA to file a written request with the State Claims Board for an evidentiary hearing on a petition for compensation for wrongful imprisonment.<sup>2</sup>
- Specifies that the office of the prosecutor who was responsible for prosecuting the petitioner must represent the state in any evidentiary hearing on a petition filed for compensation for wrongful imprisonment.
- Removes a provision specifying that DOA must represent the interests of the state in proceedings before the State Claims Board on a petition for compensation for wrongful imprisonment.
- Authorizes the DHA Administrator to set the fees to be charged for any services rendered to the State Claims Board by a hearing examiner regarding a petition for compensation for wrongful imprisonment, and prohibits such fees from being imposed on, or passed down to, a person who files a petition for compensation for wrongful imprisonment.

### **List of Contact Information**

**The bill** provides certain new options for relief that a court may grant if a person's conviction is reversed, set aside, or vacated because of the person's innocence. One such option is a court order directing the Department of Corrections (DOC) to create a transition plan for the person's release. If a court orders such a transition plan, the bill requires DOC to provide the

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<sup>2</sup> The substitute amendment retains such authority for the office of the prosecutor who was responsible for prosecuting the petitioner.

person with a written list of certain community resources. In addition, the bill requires DOC to maintain lists of contact information for certain services for each county in the state.

**The substitute amendment** generally retains the provisions regarding transition plans, but it removes the requirement that DOC must maintain an up-to-date list of contact information for each county in the state.

### **BILL HISTORY**

Representatives Kooyenga and Hebl offered Assembly Substitute Amendment 1 on December 28, 2017. On January 3, 2018, the Assembly Committee on State Affairs voted to recommend adoption of the substitute amendment and passage of the bill, as amended, on votes of Ayes, 11; Noes, 0.

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