



2013 ASSEMBLY BILL 519

November 22, 2013 – Introduced by Representatives BIES, HEBL, BERCEAU, BEWLEY, CLARK, GOYKE, KOOYENGA, T. LARSON, MASON, OHNSTAD, A. OTT, POPE, SARGENT, C. TAYLOR and WACHS, cosponsored by Senators HARRIS, LEHMAN, RISSER and L. TAYLOR. Referred to Committee on State Affairs and Government Operations.

1 **AN ACT** *to renumber and amend* 775.05 (2); *to amend* 20.505 (4) (d), 40.51 (1),
2 227.03 (5), 775.05 (3) and (4) and 775.05 (5); and *to create* 20.515 (1) (ds),
3 20.515 (1) (g), 40.516, 71.05 (6) (b) 51., 227.43 (1) (bw), 301.051, 775.05 (2) (b)
4 and (c) and (2m), 775.05 (4m) and (4r), 808.085, 977.05 (4) (jr) and 977.05 (4)
5 (jw) of the statutes; **relating to:** resolution of claims against the state for
6 wrongful imprisonment of innocent persons, exempting from taxation certain
7 amounts an individual receives from the claims board or legislature, health
8 benefits for wrongfully imprisoned persons, and making appropriations.

Analysis by the Legislative Reference Bureau

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

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amount includes any expenses for attorney fees, costs, and disbursements incurred by the petitioner. Any award is paid from state general purpose revenues. If the board determines that it is not able to award an adequate compensation, it is directed to submit a report to the legislature specifying the amount that it considers to be adequate.

This bill provides that when the claims board receives a claim for wrongful imprisonment filed by a petitioner who has been released from imprisonment and who claims to be innocent of the crime for which he or she was imprisoned, the board must refer the petition to the Division of Hearings and Appeals in the Department of Administration (DOA). The bill then allows either DOA or the office of the prosecutor who prosecuted the petitioner to file a written request with the claims board for a hearing within 30 days after the original petition is filed with the board. If a timely request for a hearing is filed, or if the division concludes that it cannot determine the petitioner's eligibility for compensation without a hearing, the division must hold a hearing within 60 days after the petition is filed. If a timely request for a hearing is not filed and the division is able to determine that the petitioner is eligible for compensation without a hearing, the division must decide the matter without a hearing, except that the division must afford a petitioner an opportunity for a hearing before denying compensation to the petitioner. If a hearing is held, the bill allows the petitioner to be represented by a public defender. If a hearing is held, the division appoints a hearing examiner to hear the petition. If no hearing is held, the division decides the matter without a hearing. The hearing examiner makes findings and issues a decision concerning whether the petitioner is entitled to compensation. 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 award compensation to the petitioner in an amount that the examiner considers to be adequate and the board must pay that amount to the petitioner. Under the bill, the amount of compensation is fixed at a rate of \$50,000 per year or any portion thereof and there is no limit on the total amount of an award. The \$50,000 annual rate is subject to annual adjustment based upon changes in the cost of living. In addition, each award must include reimbursement for reasonable, actual attorney fees, together with all costs and disbursements incurred by the petitioner in his or her defense, post-conviction, and compensation proceedings and all fees, surcharges, and restitution paid by the petitioner as a result of his or her arrest and imprisonment. The bill provides that no person may file a claim for wrongful imprisonment or be paid an award for such imprisonment as a result of a conviction resulting in imprisonment for a crime if the imprisoned person is also imprisoned as the result of a conviction for a felony in any court of this state arising from the same course of conduct that resulted in conviction for the crime of which the person claims to be innocent if the person does not claim to be innocent of that felony or if the imprisoned person is convicted of one or more certain violent crimes after his or her release from imprisonment.

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

Under current law, the Group Insurance Board, attached to the Department of Employee Trust Funds, contracts on behalf of the state for the purpose of providing health care coverage to state employees. This bill permits individuals who receive compensation from the state for wrongful imprisonment to elect, for up to ten years, health care coverage under plans offered by the Group Insurance Board to state employees beginning on January 1, 2015. 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, 2015, this bill makes these individuals eligible for health care benefits through the Medical Assistance program BadgerCare Plus, if the federal government does not disapprove of the Department of Health Services providing Medical Assistance to these individuals.

Under the bill, if a person's conviction for a crime is reversed, set aside, or vacated on grounds consistent with the person's innocence, and the person is ordered released from prison by a trial court, the court is required to grant the person, upon request, temporary financial assistance, transition assistance from the department of corrections (DOC) 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 bill also 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.

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.

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.

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

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

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

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

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

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

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

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

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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, 2015,
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 not to exceed 10 years.

9 **(2)** The individual and the state shall jointly pay the full premium cost of health
10 care coverage and the cost of administering the benefits under sub. (1). The amount
11 that the individual must pay in health insurance premiums shall equal the amount
12 required to be paid by state employees, as determined by the director of the office of
13 state employment relations under s. 40.05 (4) (ah). The remainder of the premium
14 cost for health care coverage for these individuals shall be paid from the
15 appropriation account under s. 20.515 (1) (ds).

16 **SECTION 6.** 71.05 (6) (b) 51. of the statutes is created to read:

17 71.05 **(6)** (b) 51. Any amount received by an individual, or the individual's
18 estate, from the claims board under s. 775.05 (4), from the legislature under the
19 process described in s. 775.05 (4), or from a financial assistance award granted under
20 s. 808.085, in the taxable year that relates to the year in which the payment is
21 received.

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

23 227.03 **(5)** This chapter does not apply to proceedings of the claims board,
24 except as provided in ss. ~~775.05 (5)~~, 775.06 (7) and 775.11 (2), and except that

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1 proceedings under s. 775.05 are subject to this chapter, unless otherwise provided in
2 s. 775.05.

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

4 227.43 (1) (bw) Assign a hearing examiner to preside over each hearing
5 conducted under s. 775.05.

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

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

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

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

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

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

24 775.05 (2) (a) Any Except as provided in pars. (b) and (c), any person who is
25 imprisoned as the result of his or her conviction for a crime in any court of this state,

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1 of which crime the person claims to be innocent, and who is released from
2 imprisonment for that crime after March 13, 1980, may petition the claims board for
3 compensation for such imprisonment. ~~Upon~~ Within 5 days after receipt of the
4 petition, the ~~claims board~~ department of administration shall transmit a copy
5 thereof to the prosecutor who prosecuted the petitioner and the judge who sentenced
6 the petitioner for the conviction which is the subject of the claim, or their successors
7 in office, for the information of these persons.

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

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

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

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

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

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

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

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

17 775.05 (3) After hearing the evidence on the petition, the claims board Within
18 5 days after the claims board receives a petition under sub. (2) (a), the department
19 of administration shall refer the petition to the division of hearings and appeals. No
20 later than 30 days after the petition is filed, the department of administration or the
21 office of the prosecutor who was responsible for prosecuting the petitioner may file
22 a written request with the claims board for an evidentiary hearing on the petition.
23 The department of administration shall refer the request to the division within 5
24 days after the claims board receives the request. If a timely request for a hearing is
25 filed, or if the division concludes that it cannot determine the petitioner's eligibility

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1 for compensation without a hearing, the division shall hold a hearing on the petition
2 no later than 60 days after the petition is filed. If no request for a hearing is filed
3 within the time specified in this subsection, and the division is able to determine that
4 the petitioner is eligible for compensation without a hearing, the division shall decide
5 the matter without a hearing, except that the division shall not deny a petition for
6 compensation without affording the petitioner an opportunity for a hearing. The
7 division shall find either that the preponderance of evidence is clear and convincing
8 demonstrates that the petitioner was innocent of the crime for which he or she
9 suffered imprisonment, or that the preponderance of evidence is not clear and
10 convincing does not demonstrate that he or she was innocent.

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

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1 division finds that the amount it is able to award find is not an adequate
2 compensation it shall submit a report specifying an amount which it considers
3 adequate to the chief clerk of each house of the legislature, for distribution to the
4 legislature under s. 13.172 (2). Upon conclusion of the proceeding, the division shall
5 transmit its findings and decision to the claims board, which shall award the
6 compensation specified in the decision and order disbursement of the award to the
7 petitioner or any other individual who is entitled to receive a payment from the
8 appropriation under s. 20.505 (4) (d).

9 **SECTION 13.** 775.05 (4m) and (4r) of the statutes are created to read:

10 775.05 (4m) On April 1 of each year, the claims board shall adjust the
11 maximum amount specified in sub. (4) to reflect any changes in the U.S. consumer
12 price index for all urban consumers, U.S. city average, as determined by the U.S.
13 department of labor, for the 12-month period ending on the preceding December 31.
14 The board shall publish the adjusted amount so determined in the Wisconsin
15 administrative register.

16 (4r) At any hearing conducted under this section, the petitioner may be
17 represented by counsel of his or her own choosing. The department of administration
18 shall represent the interests of the state.

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

20 775.05 (5) The claims board shall keep a complete record of ~~its~~ the proceedings
21 in each case petition under this section and of all the evidence related to the petition.
22 The findings and decision of the division of hearings and appeals and the award of
23 the claims board shall be subject to review as provided in ch. 227.

24 **SECTION 15.** 808.085 of the statutes is created to read:

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

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

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

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

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

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

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

ASSEMBLY BILL 519**SECTION 16**

1 **SECTION 16.** 977.05 (4) (jr) of the statutes is created to read:

2 977.05 (4) (jr) At the request of a person determined by the state public
3 defender to be indigent or upon referral of any court, represent the person in
4 proceedings under s. 775.05.

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

6 977.05 (4) (jw) At the request of an inmate determined by the state public
7 defender to be indigent or upon referral of any court, represent the person in
8 proceedings under s. 808.085.

9 **SECTION 18. Nonstatutory provisions.**

10 (1) **MEDICAL ASSISTANCE FOR WRONGFULLY IMPRISONED PERSONS.** Notwithstanding
11 the eligibility criteria under section 49.471 (4) (a) of the statutes, any individual who
12 receives compensation under section 775.05 of the statutes after the effective date
13 of this subsection is eligible for the Medical Assistance program under section 49.471
14 of the statutes during the period before January 1, 2015. The department of health
15 services shall request any approval from the federal department of health and
16 human services that is necessary to provide Medical Assistance benefits to those
17 individuals. If federal approval is not necessary or if federal approval is received, the
18 department of health services shall provide benefits under section 49.471 of the
19 statutes to those individuals. If federal approval is not received, the department of
20 health services is not required to provide Medical Assistance benefits to those
21 individuals.

22 **SECTION 19. Initial applicability.**

23 (1) This act first applies with respect to petitions filed by persons who are
24 released on or after January 1, 1990, from imprisonment for crimes of which they
25 claim to be innocent. If a person was released from imprisonment on or after January

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1 1, 1990, and accepted compensation from this state for wrongful imprisonment prior
2 to the effective date of this subsection, the person may petition for additional
3 compensation and compensation shall be awarded to the extent payable under
4 section 775.05 of the statutes notwithstanding any release signed by the claimant as
5 a condition precedent to receiving an initial compensation award.

6 (2) The treatment of section 71.05 (6) (b) 51. of the statutes first applies to
7 taxable years beginning on January 1 of the year in which this subsection takes
8 effect, except that if this subsection takes effect after July 31, section 71.05 (6) (b) 51.
9 of the statutes first applies to taxable years beginning on January 1 of the year
10 following the year in which this subsection takes effect.

11 (END)