



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-4565/1  
MS/TD/FK/CH:cjs

## 2019 SENATE BILL 881

February 28, 2020 - Introduced by Senators RISSER, KOOYENGA, WANGGAARD and SMITH, cosponsored by Representatives HEBL, POPE, SUBECK, BROSTOFF, OHNSTAD, SINICKI, SARGENT, STUBBS, ZAMARRIPA, C. TAYLOR, CONSIDINE, EMERSON, BOWEN, CROWLEY, ANDERSON and SPREITZER. Referred to Committee on Insurance, Financial Services, Government Oversight and Courts.

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

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### ***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 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

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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 claims to be innocent of the crime for which he or she was imprisoned, and whose conviction has been vacated and who has been acquitted; or whose conviction has been vacated and the charges have been dismissed; or who has been pardoned on the basis of innocence, the board must refer the petition to the Division of Hearings and Appeals in the Department of Administration. The bill then allows 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

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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.

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 seven years, health care coverage under plans offered by the Group Insurance Board to state employees beginning on January 1, 2021. 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, 2021, 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,

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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.

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***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:

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

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

6           **40.516 Health care coverage for individuals who receive**  
7 **compensation for wrongful imprisonment.** (1) Beginning on January 1, 2021,  
8 any individual who receives compensation under s. 775.05 after the effective date of  
9 this subsection .... [LRB inserts date], may elect coverage under any health care  
10 coverage plan offered under s. 40.51 (6) for a period equal to the time he or she was  
11 imprisoned, but not to exceed 7 years. An individual who is eligible to obtain health  
12 care coverage offered by his or her employer or by the employer of his or her spouse  
13 may not elect or continue coverage under this subsection.

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

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

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

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1 recognized by the individual as income, or from a financial assistance award granted  
2 under s. 808.085, in the taxable year that relates to the year in which the payment  
3 is received.

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

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

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

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

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

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

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

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

23 (1) Provide the inmate with a written list of community resources available to  
24 the inmate upon his or her release from prison, including temporary housing and

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1 emergency shelters, food banks, education and job assistance, and health care  
2 services in the county into which the inmate will be released.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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1 ~~of evidence is clear and convincing demonstrates~~ that the petitioner was innocent of  
2 the crime for which he or she suffered imprisonment, or that the preponderance of  
3 ~~evidence is not clear and convincing does not demonstrate~~ that he or she was  
4 innocent.

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

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1 a payment from the appropriation under s. 20.505 (4) (d), except that the total  
2 amount of the award may not exceed \$1,000,000.

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

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

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

10 775.05 (4d) The claims board shall award the compensation specified in the  
11 decision under sub. (4) in a form selected by the petitioner, which may be an annuity  
12 or installment amounts payable over time or a lump sum.

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

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

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

23 (4r) At any hearing conducted under this section, the petitioner may be  
24 represented by counsel of his or her own choosing.

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

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

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

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

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

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

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

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

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

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

11           **SECTION 19.** 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 20.** 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 21. Nonstatutory provisions.**

20           **(1) MEDICAL ASSISTANCE FOR WRONGFULLY IMPRISONED PERSONS.** Notwithstanding  
21 the eligibility criteria under s. 49.471 (4) (a), any individual who receives  
22 compensation under s. 775.05 after the effective date of this subsection is eligible for  
23 the Medical Assistance program under s. 49.471 during the period before January  
24 1, 2021. The department of health services shall request any approval from the  
25 federal department of health and human services that is necessary to provide

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

**SECTION 22. Initial applicability.**

7 (1) Except as provided in sub. (2), this act first applies with respect to petitions  
8 filed by persons who are released on or after March 13, 1980, from imprisonment for  
9 crimes of which they claim to be innocent. A person may petition for additional  
10 compensation if he or she was released from imprisonment on or after March 13,  
11 1980, and accepted compensation from this state for wrongful imprisonment prior  
12 to the effective date of this subsection. The claims board may, at its discretion,  
13 consider the petition and may award compensation to the extent payable under s.  
14 775.05 notwithstanding any release signed by the claimant as a condition precedent  
15 to receiving an initial compensation award.

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

21

(END)