



March 11, 2024

Dear Chair Hope, Vice Chairs Andrews and Filler and Members of the House Criminal Justice Committee,

Thank you for considering House Bill 5431, an amendment to the Wrongful Imprisonment Compensation Act (WICA) statute.


For the Organization of Exonerees it is critical that any WICA reform be written in such a way that it can be fairly and evenly applied to all exonerated individuals in Michigan, and that it will be clearly and consistently applied in the future regardless of who is serving as Michigan's Attorney General.

At the bill sponsor's suggestion, we have outlined our specific concerns with House Bill 5431 below, with proposed solutions and amendment language. Our Board of Directors, on behalf of the members of our organization which is composed entirely of exonerated individuals from across the state of Michigan, requests the following 4 amendments.


We look forward to discussing these changes with you, and collaborating with you and other stakeholders on the details of this bill as the legislative process unfolds.

Thank you,

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Concerns with WICA and Recommended Amendments to HB 5431

1) Compensation should be based on whether the claimant proves that he/she was innocent of the crime, not whether that proof was made through “new evidence” of innocence.

The “new evidence” requirement in WICA has been a source of unfairness, confusion and significant litigation, including before the Michigan Supreme Court.

The goal of a fair compensation statute should be to fairly and efficiently determine whether an individual has proven actual innocence and eligibility under other criteria. Whether an individual raised “new evidence” in a prior proceeding is simply irrelevant to that inquiry, leads to wasteful litigation, and – most importantly – will continue to deny compensation to individuals fully able to prove they did time for a crime they did not in fact commit.

HB5431 modifies the “new evidence” requirement to address two known problems: (1) it creates an exception for cases overturned on grounds of “insufficient evidence,” and (2) it allows claims where “new evidence” was presented to the court that reversed the conviction, but relief was granted on another basis. But even with these modifications, WICA would still block compensation to innocent people in a variety of situations.

Suppose you had your conviction overturned, or you got a pardon, and you face no further criminal prosecution. And suppose you are ready to present a WICA claim and have evidence sufficient to meet your burden of proving that you did not in fact commit the crime. Under HB 5431, you may have been innocent, but you would still would be denied compensation in these circumstances:

- Your case was reversed on direct appeal (which, by definition, will not include new evidence) on grounds other than “insufficient evidence.” These include: an improper jury instruction, improper inclusion/exclusion of evidence, and ineffective assistance of counsel based on the trial record alone (e.g., a failure to cross examine a witness).

- Your case was reversed on collateral appeal, but you did not raise new evidence in that collateral appeal.
- You received a pardon, but the pardon did not state that it was on the basis of new evidence.
- After your conviction was overturned, you obtain evidence that enables you to prove your factual innocence, on its own or together with evidence previously raised. Because that “new” evidence wasn’t raised in the appeal that reversed your conviction, you are still barred from bringing a WICA claim.

The “new evidence” requirement presents further problems to fair and efficient administration of exoneree compensation: Even if you can show that “new evidence” was raised in the proceeding that led to your reversal, you would still lose unless you can also prove that this new evidence “demonstrates that [you] did not perpetrate the crime and [were] not an accomplice or accessory to the acts that were the basis of the conviction.” In some cases, that “new evidence” will not suffice, even if given the chance, you could prove factual innocence.

For example, suppose your conviction was overturned on a *Brady* violation when you showed that potentially exculpatory evidence – e.g., the police incentivized testimony from a jailhouse snitch – was withheld from the defense. Under HB 5431, you would have to show that this new evidence “demonstrates” that you did not commit the crime, and that you were not an accomplice or an accessory to that crime. It’s easy to see how this new evidence of innocence – sufficient to get you a new trial – does not prove that you did not do the crime, nor were an accomplice or an accessory to the crime. You lose, even if you can prove your factual innocence.

Finally, there remains the likelihood of needless litigation over whether an item of evidence is or is not “new.”

At bottom, the problem here is not how “new evidence” is applied, but that WICA requires it in the first instance. While “new evidence” may have a legitimate place in post-conviction criminal litigation, as a bulwark against re-litigation of settled issues, it serves no fair purpose in a

wrongful conviction compensation statute, when in nearly every case, the issue of factual innocence has not previously been litigated.

HB 5431 should eliminate the “new evidence” requirement and compensate where a claimant shows they were factually innocent of the crime, irrespective of whether that proof comes by evidence that was or wasn’t part of a prior proceeding. That is a workable solution: thirty-eight other jurisdictions have wrongful conviction compensation statutes. None of them require the claimant to establish eligibility for compensation through “new evidence,” and none of them have had a flood of non-meritorious claims as a result.

Suggested Amendment #1: Strike the new evidence requirement at Section 2(b), at pg. 2, line 2 through pg. 2, line 14, and Section 5(c), at pg. 5, line 12 through pg. 6, line 1. At Section 5 (1)(c), at pg. 5, line 12, insert: **“THAT THE PLAINTIFF DID NOT COMMIT, NOR WAS AN ACCOMPLICE TO, 1 OR MORE OF THE CRIMES FOR WHICH HE OR SHE WAS CONVICTED.”**

2) The amounts provided for compensation should be adjusted annually for inflation, and the base amount should be increased to the national average of \$65,000 per year.

If the state is to pay compensation at a fixed dollar amount per year, then that amount should be indexed for inflation so the award does not lose value in real dollars over time. Six other jurisdictions adjust their annual amounts for inflation.

WICA was adopted in 2016, at a time when the national average compensation paid by states was approximately \$50,000 per year of wrongful incarceration. Eight years later, as a result of inflation, that amount is not worth as much. 14 states and DC pay more than \$50K/year, including Kansas (\$65K/year), Oregon (\$65K/year) and Idaho (\$62K/year).

HB 5431 should be amended to increase the annual amount to \$65,000/year, and the annual amount should be increased to account for inflation.

Suggested Amendment #2: To Section 5(4)(a), at pg.6, line 25, strike “Fifty thousand dollars” and replace with “Sixty-five thousand dollars” and later in that subsection strike “\$50,000” and replace with “\$65,000.”

To Section 5, add a new subsection: “Beginning in 2025, and every year thereafter, the State Court Administrator shall determine the percentage increase or decrease in the cost of living for the previous calendar year, based on changes in the Consumer Price Index for All Urban Consumers, as published by the Bureau of Labor Statistics of the United States Department of Labor. On or before July 1 of the year in which the State Court Administrator makes the determination required by this subsection, the State Court Administrator shall adjust the amounts prescribed under paragraphs ___ through ___ of this section for the following calendar year by multiplying the amounts applicable to the calendar year in which the adjustment is made by the percentage amount determined under this subsection. The State Court Administrator shall round the adjusted limitation amount to the nearest \$100, but the unrounded amount shall be used to calculate the adjustments to the amounts in subsequent calendar years. The adjusted amounts become effective on July 1 the year in which the adjustment is made, and apply to all claims filed under this section on or after July 1 of that year and before July 1 of the subsequent year.”

3) Past claimants and potential claimants should have the benefit of the reforms in this bill.

Fairness requires that the positive changes to WICA benefit all exonerees, not just those with claims in the future. To that end, HB 5431 provides for supplemental claims for exonerees whose convictions were reversed based on insufficient evidence, but not for the other changes the bill would make. For example, it provides no supplemental claim for an exoneree whose claim was denied (or who had to compromise who had to take a compromised settlement for less than the full amount) because the court reversed the conviction on grounds other than innocence or insufficient evidence. Nor does it provide a supplemental claim for exonerees who made successful claims, but didn't receive compensation for their time in pre-trial detention or court-ordered hospitalization.

An individual who previously made a claim under WICA, irrespective of whether that claim was denied, granted or compromised, should be allowed a two-year window after enactment of this bill in which to bring a supplementary claim, upon a showing that the individual is due an

award, or additional sums, as a result of the revisions made under this bill, other than the change in the burden of proof.

Likewise, an exoneree who did not bring a prior claim should also receive the benefit of the new changes, if they can show that their claim would have been denied under the version of WICA that applied when the statute of limitations ran on their claim. For example, it would have been futile for an exoneree who received a pardon rather than a reversal, or who served all of their time in court-ordered hospitalization, to bring a WICA claim before passage of this bill. These exonerees, too, deserve the opportunity to bring a claim once the amendments make their claims viable.

Suggested Amendment #3: For Section (3), at pg. 11, line 12, substitute the following language: “An individual who previously made a claim under this Act, irrespective of whether that claim was denied, granted or compromised, irrespective of any waiver or release by plaintiff made in connection thereto, and irrespective of any other provision in this Act, may bring a supplementary claim under this Act for any award due to a plaintiff who has not received an award, or additional sums due to a plaintiff who becomes eligible for additional sums, as a result of the revisions made under this amendatory act, other than the standard of proof. Such supplementary claim must be brought within two years after the effective date of this amendatory act.”

4) There should be no compensation awarded for time served on an intact concurrent sentence, except to the extent that such time was longer than it would have been without one or more of the former convictions at issue in the petition.

WICA excludes payment for time the claimant would have served under an intact conviction. However, in certain instances that concurrent or successive time served was longer than it would have been but for the wrongful conviction. For example, the sentence for the intact conviction may have been enhanced as a result of the (now) former conviction, or the individual may have been paroled on the intact conviction but for the former conviction. A successful claimant should have the opportunity to prove that such time would not have been served but for the wrongful conviction, and be compensated for it.

Suggested Amendment #4: To Section (5)(6), at pg. 7, line 25, add the following language in **ALL CAPS**: “Compensation may not be awarded under subsection ~~(2)~~**(4)** for any time during which the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction, **whether running before or after the sentence on the conviction that is the basis of the claim, EXCEPT TO THE EXTENT THE TIME SERVED FOR THAT OTHER CRIME WAS LONGER THAN IT WOULD HAVE BEEN WITHOUT ONE OR MORE OF THE CRIMES AT ISSUE IN THE PETITION.** If the plaintiff was on parole for a prior offense at the time of the wrongful conviction and parole was revoked solely on the basis of the wrongful conviction, any concurrent or consecutive sentence relating to the prior offense is not covered by this subsection.