



2015 ASSEMBLY BILL 460

October 27, 2015 – Introduced by Representatives KOOYENGA, HEBL, KESSLER, JOHNSON, MASON, MILROY, JARCHOW, KRUG, HINTZ, ROHRKASTE, KITCHENS, STEFFEN, OHNSTAD, GOYKE, ALLEN, KOLSTE, TITTL, SPREITZER, C. TAYLOR, T. LARSON, SINICKI, HUTTON, MURSAU, WACHS, BERCEAU, ZAMARRIPA, BROSTOFF, POPE, QUINN, EDMING and SUBECK, cosponsored by Senators WANGGAARD, RISSER, BEWLEY, L. TAYLOR, NASS, RINGHAND, LASSA, C. LARSON and DARLING. 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) 53., 227.43 (1) (bw), 301.051, 775.05 (2) (b)
4 and (c) and (2m), 775.05 (4g), 775.05 (4m) and (4r), 808.085, 977.05 (4) (jr) and
5 977.05 (4) (jw) of the statutes; **relating to:** resolution of claims against the state
6 for wrongful imprisonment of innocent persons, exempting from taxation
7 certain amounts an individual receives from the claims board or legislature,
8 health benefits for wrongfully imprisoned persons, and making appropriations.

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 January 1, 1990, 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

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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, 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. 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 or any portion thereof 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, 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 \$50,000 annual rate is subject to annual adjustments based on changes in the cost of living. The bill requires the board to make, every five years, a

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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 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.

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.

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

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.

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 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, 2017. Under the bill, these individuals would be required to pay the same

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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, 2017, 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 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.

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.

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:

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

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

7 40.51 (1) The procedures and provisions pertaining to enrollment, premium
8 transmitted and coverage of eligible employees and individuals eligible for health
9 care coverage under s. 40.516 for health care benefits shall be established by contract
10 or rule except as otherwise specifically provided by this chapter.

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

12 **40.516 Health care coverage for individuals who receive**
13 **compensation for wrongful imprisonment.** (1) Beginning on January 1, 2017,
14 any individual who receives compensation under s. 775.05 after the effective date of
15 this subsection [LRB inserts date], may elect coverage under any health care
16 coverage plan offered under s. 40.51 (6) for a period not to exceed 10 years.

17 (2) The individual and the state shall jointly pay the full premium cost of health
18 care coverage and the cost of administering the benefits under sub. (1). The amount
19 that the individual must pay in health insurance premiums shall equal the amount
20 required to be paid by state employees, as determined by the administrator of the
21 division of personnel management in the department of administration under s.
22 40.05 (4) (ah). The remainder of the premium cost for health care coverage for these
23 individuals shall be paid from the appropriation account under s. 20.515 (1) (ds).

24 **SECTION 6.** 71.05 (6) (b) 53. of the statutes is created to read:

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1 71.05 (6) (b) 53. Any amount received by an individual, or the individual's
2 estate, from the claims board under s. 775.05 (4), from the legislature under the
3 process described in s. 775.05 (4), or from a financial assistance award granted under
4 s. 808.085, in the taxable year that relates to the year in which the payment is
5 received.

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

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

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

12 227.43 (1) (bw) Assign a hearing examiner to preside over each hearing
13 conducted under s. 775.05.

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

15 **301.051 Wrongful imprisonment; transition plan.** Not more than 5 days
16 after a court issues an order for a plan requested by an inmate pursuant to 808.085
17 (1) (a), the department shall create a transition to release plan for the inmate. The
18 plan shall do all of the following:

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

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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 10.** 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 after March 13, 1980, may petition the claims board for
13 compensation for such imprisonment. ~~Upon~~ Within 5 days after receipt of the
14 petition, the ~~claims board~~ department of administration shall transmit a copy
15 thereof to the prosecutor who prosecuted the petitioner and the judge who sentenced
16 the petitioner for the conviction which is the subject of the claim, or their successors
17 in office, for the information of these persons.

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

19 775.05 **(2)** (b) Paragraph (a) does not apply to a person who is imprisoned as
20 the result of his or her conviction for a felony in any court of this state arising from
21 the same course of conduct that resulted in conviction for the crime of which the
22 person claims to be innocent if the person does not claim to be innocent of that felony.

23 (c) Paragraph (a) does not apply to a person who is convicted of a violent crime
24 specified in s. 939.632 (1) (e) 1. or 2. after his or her release from imprisonment. A

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1 person who is ineligible to petition for compensation under this paragraph is also
2 ineligible to receive any award of compensation that has not been paid.

3 (2m) (a) In this subsection, an individual who has the right to inherit assets
4 of a person is limited to a surviving spouse or domestic partner, child, parent, or
5 sibling, who would have a right to inherit assets of the person under s. 852.01.

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

23 (c) An individual's right to exercise the rights of a deceased person or to file a
24 claim on a decedent's behalf is independent of any right to inherit from the decedent

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1 under the decedent's will. Any compensation paid to any individual under this
2 subsection is not a part of the decedent's estate for purposes of the decedent's will.

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

4 775.05 (3) ~~After hearing the evidence on the petition, the claims board~~ Within
5 5 days after the claims board receives a petition under sub. (2) (a), the department
6 of administration shall refer the petition to the division of hearings and appeals. No
7 later than 30 days after the petition is filed, the department of administration or the
8 office of the prosecutor who was responsible for prosecuting the petitioner may file
9 a written request with the claims board for an evidentiary hearing on the petition.
10 The department of administration shall refer the request to the division within 5
11 days after the claims board receives the request. If a timely request for a hearing is
12 filed, or if the division concludes that it cannot determine the petitioner's eligibility
13 for compensation without a hearing, the division shall hold a hearing on the petition
14 no later than 60 days after the petition is filed. If no request for a hearing is filed
15 within the time specified in this subsection, and the division is able to determine that
16 the petitioner is eligible for compensation without a hearing, the division shall decide
17 the matter without a hearing, except that the division shall not deny a petition for
18 compensation without affording the petitioner an opportunity for a hearing. The
19 division shall find either that the preponderance of evidence is clear and convincing
20 demonstrates that the petitioner was innocent of the crime for which he or she
21 suffered imprisonment, or that the preponderance of evidence is ~~not clear and~~
22 convincing does not demonstrate that he or she was innocent.

23 (4) ~~If the claims board~~ division of hearings and appeals finds that the
24 preponderance of evidence demonstrates that the petitioner was innocent and that
25 he or she did not by his or her act or failure to act contribute to bring about the

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

21 **SECTION 13.** 775.05 (4g) of the statutes is created to read:

22 775.05 (4g) (a) As a condition of eligibility for compensation under sub. (4), a
23 petitioner shall automatically assign to the claims board his or her right to any
24 settlement, judgment, or award that may be obtained against any 3rd party in any
25 federal or state action for damages related to wrongful imprisonment for the crime

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1 specified in sub. (2) (a). The petition shall, in itself, constitute an assignment by
2 operation of law. The assignment shall be considered a statutory lien on any
3 settlement, judgment, or award received by the petitioner from a 3rd party in an
4 amount equal to the amount of the settlement, judgment, or award, or the amount
5 of compensation awarded under sub. (4), whichever is less.

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

11 **SECTION 14.** 775.05 (4m) and (4r) of the statutes are created to read:

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

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

21 (**4r**) At any hearing conducted under this section, the petitioner may be
22 represented by counsel of his or her own choosing. The department of administration
23 shall represent the interests of the state.

24 **SECTION 15.** 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 16.** 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 related to the case. Records sealed under this section
15 shall be accessible to the person but may not be available for public inspection or
16 through the consolidated court automation program case management system.

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

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

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

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

8 977.05 (4) (jr) At the request of a person determined by the state public
9 defender to be indigent or upon referral of any court, represent the person in
10 proceedings under s. 775.05.

11 **SECTION 18.** 977.05 (4) (jw) of the statutes is created to read:

12 977.05 (4) (jw) At the request of an inmate determined by the state public
13 defender to be indigent or upon referral of any court, represent the person in
14 proceedings under s. 808.085.

15 **SECTION 19. Nonstatutory provisions.**

16 (1) **MEDICAL ASSISTANCE FOR WRONGFULLY IMPRISONED PERSONS.** Notwithstanding
17 the eligibility criteria under section 49.471 (4) (a) of the statutes, any individual who
18 receives compensation under section 775.05 of the statutes after the effective date
19 of this subsection is eligible for the Medical Assistance program under section 49.471
20 of the statutes during the period before January 1, 2017. The department of health
21 services shall request any approval from the federal department of health and
22 human services that is necessary to provide Medical Assistance benefits to those
23 individuals. If federal approval is not necessary or if federal approval is received, the
24 department of health services shall provide benefits under section 49.471 of the
25 statutes to those individuals. If federal approval is not received, the department of

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1 health services is not required to provide Medical Assistance benefits to those
2 individuals.

3 **SECTION 20. Initial applicability.**

4 (1) Except as provided in subsections (2) and (3), this act first applies with
5 respect to petitions filed by persons who are released on or after January 1, 1990,
6 from imprisonment for crimes of which they claim to be innocent. If a person was
7 released from imprisonment on or after January 1, 1990, and accepted compensation
8 from this state for wrongful imprisonment prior to the effective date of this
9 subsection, the person may petition for additional compensation. The claims board
10 may, at its discretion, consider the petition and may award compensation to the
11 extent payable under section 775.05 of the statutes notwithstanding any release
12 signed by the claimant as a condition precedent to receiving an initial compensation
13 award.

14 (2) The treatment of section 71.05 (6) (b) 52. of the statutes first applies to
15 taxable years beginning on January 1 of the year in which this subsection takes
16 effect, except that if this subsection takes effect after July 31, section 71.05 (6) (b) 52.
17 of the statutes first applies to taxable years beginning on January 1 of the year
18 following the year in which this subsection takes effect.

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

21 (END)