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STATE REPRESENTATIVE

AB 534 Testimony – Committee on State Affairs & Gov't Operations 1/15/2014

Wisconsin's process to review and issue decisions on cases before the Claims Board has not been updated or reformed in decades. I am now on my second session as a member of the Claims Board, and I drafted AB 534 to address some ongoing concerns. There have been multiple cases over the past couple of years that highlight the need for change. The important reforms in this bill will improve the Claims Board process and provide a better level of review for those seeking compensation.

AB 534 defines imprisonment to include confinement in a prison, county jail, other county facility, or under Huber Law. The definition does not include electronic monitoring.

AB 534 places the burden of proof on the petitioner before the Board to present clear and convincing evidence that they did not, by their own actions, bring about their conviction and imprisonment for which they are seeking compensation. This bill also increases the award amount to \$10,000 per year of confinement, with a maximum payout of \$200,000. There are currently 23 states that provide no compensation for those who have been wrongly convicted and imprisoned.

AB 534 clarifies the rules dealing with the death of the claimant. Should the claimant pass away, their estate can continue to bring the claim before the Board, as long as the death was not an act of negligence on the claimant's part and they have not been convicted of another crime after their release. Additionally, the bill requires the Department of Corrections to offer the same level of transition assistance that is currently provided for those individuals who are paroled.

Finally, this bill clarifies that the Claims Board can award compensation to a petitioner if they determine that the claim is of equitable principles. This clarifies that the Claims Board is not a judicial body; it is simply a board of equity.

These are positive reforms to the Claims Board process that are long overdue. I urge the members of this committee to support AB 534.

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Wrongful conviction compensation statutes

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The compensation to people wrongly imprisoned varies widely by state, and in 24 states, there is no money awarded at all. Check the table to see what each state pays to former inmates.

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State	Statute basics	Support services	Restrictions
Alabama	Minimum of \$50,000 for each year of wrongful incarceration.		The wrongfully convicted person can only receive compensation if the Legislature appropriates the funds. A new felony conviction will end the claimant's right to compensation.
Alaska	No statute.		
Arizona	No statute.		
Arkansas	No statute.		
California	Maximum of \$100 per day of wrongful incarceration.		The wrongfully convicted person must show he did not "contribute to the bringing about of his arrest or conviction for the crime with which he was charged." This provision may prevent people who falsely confessed or pled guilty from receiving compensation.
Colorado	No statute.		
Connecticut	Compensation is based on factors such as claims for loss of liberty and enjoyment of life; loss of earnings; loss of earning capacity; loss of familial relationships; loss of reputation; physical pain and suffering; mental pain and suffering; and attorney's fees and other expenses arising from or related to such person's arrest, prosecution, conviction and incarceration.	Employment training and counseling, tuition and fees at any constituent unit of the state system of higher education and any other services needed to facilitate reintegration into the community.	
Delaware	No statute.		
District Of Columbia	The court determines what amount fairly and reasonably compensates the exoneratee.		The wrongfully convicted person must show that he "did not contribute to his own prosecution." The wrongfully convicted person must not have pled guilty unless it was an Alford plea.
Florida	\$50,000 annually with a maximum of \$2 million. The wrongfully convicted person cannot be compensated for years served on another prior felony conviction.	120 hours of tuition at a career center, community college or state university and college or state university and college or state university and reimbursement for any fines or costs imposed at the time of his sentence.	The wrongfully convicted person must not have any prior felony convictions. Maximum of \$2 million regardless of time served.
Georgia	No statute.		
Hawaii	No statute.		
Idaho	No statute.		
Illinois	\$85,350 for those who served up to five years; \$170,000	Job search and placement services.	Compensation cannot exceed \$85,350 for up to five

for those who served between five and 14 years; \$199,150 for those who served more than 14 years. The law also reimburses attorney's fees up to 25 percent of the compensation award.

years of wrongful imprisonment, \$170,000 for up to 14 years and \$199,150 for more than 14 years.

Indiana	No statute.		
Iowa	\$50 per day of wrongful incarceration plus lost wages up to \$25,000 a year, plus attorney's fees.		The wrongfully convicted person must not have pled guilty.
Kansas	No statute.		
Kentucky	No statute.		
Louisiana	\$15,000 per year of wrongful incarceration, with a maximum of \$150,000.	One year of job or skill training, three years of medical and counseling services, tuition expenses at a community college or unit of the state university system.	Maximum of \$150,000 regardless of time served.
Maine	Maximum of \$300,000.		Maximum of \$300,000 regardless of time served.
Maryland	The Board of Public Works determines compensation packages for pardoned persons who were wrongfully convicted, and may grant a reasonable amount for any financial or other appropriate counseling for the individual.		
Massachusetts	A maximum of \$500,000.	Physical and emotional services, educational services at any state or community college.	Any person is eligible so long as he did not plead guilty (unless such plea was withdrawn, vacated, or nullified). Maximum of \$500,000 regardless of time served.
Michigan	No statute.		
Minnesota	No statute.		
Mississippi	\$50,000 for each year of wrongful incarceration with a maximum of \$500,000.		Maximum of \$500,000 regardless of time served. The wrongfully convicted person must show that he did not suborn perjury or fabricate evidence during any of the proceedings related to the crime with which he was charged. This provision may prevent people who falsely confessed or pled guilty from receiving compensation.
Missouri	\$50 per day of post-conviction confinement.		Only wrongfully convicted persons exonerated through DNA testing are eligible.

Source: Innocence Project

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The Claim Process

How Does the State Claims Board Work?

A signed, notarized original of the Claims Board Claim Form must be submitted along with a detailed explanation of the claim, documentation for the damages claimed, and complete insurance information, if applicable. (See "Filing a Claim" for forms and instructions.)

A copy of the claim is sent to the involved state agency for its response. When an agency response is received, a copy is sent to the claimant, who may then submit additional information, if desired.

If the claimant or the agency wish to do so, they may request a hearing before the Claims Board. All hearings take place in Madison, Wisconsin at a Claims Board meeting. Both the claimant (or his or her representative) and a representative of the state agency appear at the hearing. Both parties will be asked to briefly summarize their position on the claim and respond to questions from the Board members. Hearings are relatively informal and usually take less than 15 minutes.

If neither the claimant nor the agency wish to attend a hearing, the Claims Board can decide the claim based on the written material submitted by the claimant and the agency, without any appearances by the claimant or the agency.

Claims Board meetings are held approximately four times a year. The hearing portion of a Claims Board meeting is open to the public. After the hearings are completed, the Board goes into a closed session to discuss and decide the claims presented at hearings and also those claims for which no hearing was requested. This portion of the meeting is closed to everyone except Board members and staff pursuant to section 19.85 (1)(a) of the Wisconsin Statutes.

The Board may vote to pay up to \$10,000, recommend payment of more than \$10,000 to the legislature, or deny a claim. A unanimous vote is required for the Board to directly pay a claim up to \$10,000. A unanimous vote is not required to recommend payment to the legislature of claims greater than \$10,000.

The Board issues a written decision after each meeting. A copy of the decision is sent to each claimant within 20 days of the meeting. The decision of the Board is made public only through issuance of the written decision.

There is no appeal process before the Claims Board except for claims involving wrongful imprisonment or payments towards judgments against state law enforcement officers (sections 775.05 and 775.06 of the Wisconsin Statutes).

(+) External Link - Browser opens in a new window.

(a) In this subsection, “state agency” means an association, authority, board, department, commission, independent agency, institution, office, society, or other body in state government created or authorized to be created by the constitution or any law, including the legislature, the office of the governor, and the courts, but excluding the University of Wisconsin Hospitals and Clinics Authority, the Wisconsin Aerospace Authority, the Health Insurance Risk-Sharing Plan Authority, the Lower Fox River Remediation Authority, the Wisconsin Economic Development Corporation, and the Fox River Navigational System Authority.

(b) The department shall promulgate rules that apply to all state agencies governing surveillance by a state agency of the state agency’s employees.

(15) LEGAL SERVICES. (a) In this subsection, “state agency” means any office, department, or independent agency in the executive branch of state government.

(b) 1. At its own discretion, the department may provide legal services to any state agency that has a secretary who serves at the pleasure of the governor and shall assess the state agency for legal services provided by the division of legal services.

2. At the request of any state agency that does not have a secretary who serves at the pleasure of the governor, the department may provide legal services to the state agency and shall assess the state agency for legal services provided by the division of legal services.

3. The department shall credit all moneys received from state agencies under this paragraph to the appropriation account under s. 20.505 (1) (kr).

(bm) In the report submitted under s. 16.705 (8), the department shall document the division’s success in reducing the state’s use of contracted employees.

(16) OFFICE OF STATE EMPLOYMENT RELATIONS DIVISION ADMINISTRATOR POSITIONS. The secretary shall assign 3 of the unclassified division administrator positions authorized for the department to the office of state employment relations.

(17) BUSINESS INTELLIGENCE AND DATA WAREHOUSING SYSTEM. The department may implement an enterprise-wide reporting, data warehousing, and data analysis system applicable to every agency, as defined in s. 16.70 (1e), other than the legislative and judicial branches of state government.

(18) INTERGOVERNMENTAL AFFAIRS OFFICES. The secretary may maintain intergovernmental affairs offices to conduct public outreach and promote coordination between agencies, as defined in s. 16.70 (1e), and authorities, as defined in s. 16.70 (2).

History: 1971 c. 270; 1973 c. 333; 1975 c. 39 s. 732 (1); 1975 c. 224; 1977 c. 196 ss. 21, 130 (3); 1977 c. 272; 1979 c. 34, 221, 357; 1981 c. 20 ss. 3v, 55d, 55m; 1983 a. 27 ss. 58, 2202 (49) (a); 1983 a. 524; 1985 a. 29; 1985 a. 332 s. 251 (3); 1987 a. 27; 1989 a. 335; 1991 a. 39, 316; 1993 a. 496; 1995 a. 27; 1999 a. 9; 2001 a. 16; 2003 a. 33 ss. 140 to 141f, 9160; 2005 a. 25, 74, 335; 2007 a. 20, 97; 2009 a. 28; 2011 a. 7, 10; 2013 a. 20.

Cross-reference: See also Adm. Wis. adm. code.

16.005 Bradley Center Sports and Entertainment Corporation. This chapter does not apply to the Bradley Center Sports and Entertainment Corporation except where expressly otherwise provided.

History: 1985 a. 26; 1991 a. 39.

16.006 Treatment of classified employees. Those individuals holding positions in the classified service in the department who are engaged in legislative text processing functions and who achieved permanent status in class on August 9, 1989, shall retain, while serving in the unclassified service in the legislature or any legislative branch agency, those protections afforded employees in the classified service under ss. 230.34 (1) (a) and 230.44 (1) (c) relating to demotion, suspension, discharge, layoff, or reduction in base pay except that the applicability of any reduction in base pay of such an employee shall be determined on the basis of the base pay received by the employee on August 9, 1989, plus the total amount of any subsequent general economic increases provided in the compensation plan under s. 230.12 for nonrepresented employees in the classified service. Such employees shall also have reinstatement privileges to the classified service as provided under s. 230.33 (1). Employees of the

department holding positions in the classified service on August 9, 1989, who are engaged in legislative text processing functions and who have not achieved permanent status in class in any position in the department on that date are eligible to receive the protections and privileges preserved under this section if they successfully complete service equivalent to the probationary period required in the classified service for the positions which they hold.

History: 1989 a. 31; 1997 a. 27; 2001 a. 16 s. 373; Stats. 2001 s. 16.006.

16.007 Claims board. (1) PURPOSE. The claims board shall receive, investigate and make recommendations on all claims of \$10 or more presented against the state which are referred to the board by the department. No claim or bill relating to such a claim shall be considered by the legislature until a recommendation thereon has been made by the claims board.

(2) RULES. Except as provided in s. 901.05, the board shall not be bound by common law or statutory rules of evidence, but shall admit all testimony having reasonable probative value, excluding that which is immaterial, irrelevant or unduly repetitious. The board may take official notice of any generally recognized fact or established technical or scientific fact, but parties shall be notified either before or during hearing or by full reference in preliminary reports, or otherwise, of the facts so noticed, and the parties shall be afforded an opportunity to contest the validity of the official notice.

(3) PROCEDURE. When a claim has been referred to the claims board, the board may upon its own motion and shall upon request of the claimant, schedule such claim for hearing, giving the claimant at least 10 days’ written notice of the date, time and place thereof. Those claims described under sub. (6) (b) shall not be heard or decided by the claims board. The board shall keep a record of its proceedings, but such proceedings may be recorded by a permanent recording device without transcription. It may require sworn testimony and may summon and compel attendance of witnesses and the production of documents and records. Any member of the board may sign and issue a subpoena.

(4) AGENCIES TO COOPERATE. The several agencies shall cooperate with the board and shall make their personnel and records available upon request when such request is not inconsistent with other statutes.

(5) FINDINGS. The board shall report its findings and recommendations, on all claims referred to it, to the legislature. Except as provided in sub. (6), if from its findings of fact the board concludes that any such claim is one on which the state is legally liable, or one which involves the causal negligence of any officer, agent or employee of the state, or one which on equitable principles the state should in good conscience assume and pay, it shall cause a bill to be drafted covering its recommendations and shall report its findings and conclusions and submit the drafted bill to the joint committee on finance at the earliest available time. If the claims board determines to pay or recommends that a claim be paid from a specific appropriation or appropriations, it shall include that determination or recommendation in its conclusions. A copy of its findings and conclusions shall be submitted to the claimant within 20 days after the board makes its determination. Findings and conclusions are not required for claims processed under sub. (6) (b).

(6) SETTLEMENT. (a) Except as provided in par. (b), whenever the claims board by unanimous vote finds that payment to a claimant of not more than the amount specified in s. 799.01 (1) (d) is justified, it may order the amount that it finds justified to be paid on its own motion without submission of the claim in bill form to the legislature. The claim shall be paid on a voucher upon the certification of the chairperson and secretary of the board, and shall be charged as provided in sub. (6m).

(b) Whenever the representative of the department designated by the secretary pursuant to s. 15.105 (2) finds that payment of a claim described in this paragraph to a claimant is justified, the representative of the department may order the amount so found to be justified paid without approval of the claims board and without

submission of the claim in the form of a bill to the legislature. Such claims shall be paid on vouchers upon the certification of the representative of the department, and shall be charged as provided in sub. (6m). The representative of the department shall annually report to the board all claims paid under this paragraph. Claims which may be paid directly by the department are:

1. Payment of the amount owed by the state under any check, share draft or other draft issued by it which has been voided for failure to present the check, share draft or other draft for payment within the prescribed period from the date of issuance.

3. Payment of a refund due as the result of an overpayment made by mistake of the applicant in filing articles of incorporation or amendments thereto, or a certificate of authority for a foreign corporation to transact business in this state pursuant to s. 180.0122.

4. Payment of any claim of less than \$10.

(6m) PAYMENT CHARGES. The claims board, for claims authorized to be paid under sub. (6) (a), or the representative of the department, for claims authorized to be paid under sub. (6) (b), may specify that a claim shall be paid from a specific appropriation or appropriations. If a claim requires legislative action, the board may recommend that the claim be paid from a specific appropriation or appropriations. If no determination is made as to the appropriation or appropriations from which a claim shall be paid, the claim shall be paid from the appropriation under s. 20.505 (4) (d).

(7) EXCEPTION. This section shall not be construed as relieving any 3rd-party liability or releasing any joint tort-feasor.

(8) EXPENSES. The board may pay the actual and necessary expenses of employees of the department of justice or the department of administration authorized by the board to secure material information necessary to the disposition of a claim.

History: 1975 c. 397; 1977 c. 196 s. 130 (3); 1979 c. 34 s. 2102 (1) (c); 1981 c. 20; 1983 a. 368; 1985 a. 29; 1987 a. 27, 142; 1989 a. 31, 303; 1991 a. 269; 2003 a. 138; 2005 a. 253.

Upon completion of arbitration involving the state, any claim resulting from the award must be submitted to the claims board for processing. *State v. P.G. Miron Const. Co. Inc.* 181 Wis. 2d 1045, 512 N.W.2d 499 (1994).

16.008 Payment of special charges for extraordinary police service to state facilities. (1) In this section “extraordinary police services” means those police services which are in addition to those being maintained for normal police service functions by a municipality or county and are required because of an assemblage or activity which is or threatens to become a riot, civil disturbance or other similar circumstance, or in which mob violence occurs or is threatened.

(2) The state shall pay for extraordinary police services provided directly to state facilities, as defined in s. 70.119 (3) (e), in response to a request of a state officer or agency responsible for the operation and preservation of such facilities. The University of Wisconsin Hospitals and Clinics Authority shall pay for extraordinary police services provided to facilities of the authority described in s. 70.11 (38). The Fox River Navigational System Authority shall pay for extraordinary police services provided to the navigational system, as defined in s. 237.01 (5). Municipalities or counties that provide extraordinary police services to state facilities may submit claims to the claims board for actual additional costs related to wage and disability payments, pensions and worker’s compensation payments, damage to equipment and clothing, replacement of expendable supplies, medical and transportation expense, and other necessary expenses. The clerk of the municipality or county submitting a claim shall also transmit an itemized statement of charges and a statement that identifies the facility served and the person who requested the services. The board shall obtain a review of the claim and recommendations from the agency responsible for the facility prior to proceeding under s. 16.007 (3), (5), and (6).

History: 1977 c. 418; 1995 a. 27; 2001 a. 16, 104.

16.009 Board on aging and long-term care. (1) In this section:

(a) “Beneficiary” means an individual who is eligible for coverage.

(ag) “Board” means the board on aging and long-term care.

(ar) “Client” means an individual who requests services of the office, or a resident on whose behalf a request is made.

(b) “Homestead credit program” means the program under ss. 71.51 to 71.55.

(c) “Household” has the meaning given in s. 71.52 (4).

(d) “Household income” has the meaning given in s. 71.52 (5).

(e) “Income” has the meaning given in s. 71.52 (6).

(em) “Long-term care facility” includes any of the following:

1. A nursing home, as defined in s. 50.01 (3).

2. A community-based residential facility, as defined in s. 50.01 (1g).

3. A facility, as defined in s. 647.01 (4).

4. A swing bed in an acute care facility or extended care facility, as specified under 42 USC 1395tt.

5. A hospice, as defined in s. 50.90 (1) (c).

6. An adult family home, as defined in s. 50.01 (1).

7. A residential care apartment complex, as defined in s. 50.01 (6d).

NOTE: The cross-reference to s. 50.01 (6d) was changed from s. 50.01 (1d) by the legislative reference bureau under s. 13.92 (1) (bm) 2. to reflect the renumbering under s. 13.92 (1) (bm) 2. of s. 50.01 (1d).

(f) “Long-term care insurance” means insurance that provides coverage both for an extended stay in a nursing home and home health services for a person with a chronic condition. The insurance may also provide coverage for other services that assist the insured person in living outside a nursing home, including but not limited to adult day care and continuing care retirement communities.

(gm) “Office” means the office of the long-term care ombudsman.

(gr) “Ombudsman” means the long-term care ombudsman, as specified in sub. (4) (a).

(h) “Physician” has the meaning given in s. 448.01 (5).

(i) “Program” means the long-term care ombudsman program.

(j) “Resident” means a person cared for or treated in a long-term care facility.

(2) The board shall:

(a) Appoint an executive director within the classified service who shall employ staff within the classified service.

(b) Implement a long-term care ombudsman program, to do all of the following:

1. Investigate complaints from any person concerning improper conditions or treatment of aged or disabled persons who receive long-term care or concerning noncompliance with or improper administration of federal statutes or regulations or state statutes or rules related to long-term care for the aged or disabled.

2. Serve as mediator or advocate to resolve any problem or dispute relating to long-term care for the aged or disabled.

(d) Promote public education, planning and voluntary acts to resolve problems and improve conditions involving long-term care for the aged or disabled.

(e) Monitor the development and implementation of federal, state and local laws, regulations, rules, ordinances and policies that relate to long-term care facilities for the aged or disabled.

(em) Monitor, evaluate and make recommendations concerning long-term community support services received by clients of the long-term support community options program under s. 46.27.

Claims Board Bill - AB 534		
	Strachota Bill	Bies Bill
Definition of Imprisonment	Will define imprisonment to include confinement in a prison, county jail, or other county facility or under Huber law.	Nothing in the bill
Burden of Proof	Places the burden on the petitioner to present clear and convincing evidence that the petitioner did not, by their act or failure to act, contribute to bring about the conviction and imprisonment for which they are seeking compensation.	Retains current law
Compensation Amount	Will increase award to \$10,000 per year with a maximum pay out of \$200,000	Will increase to \$50,000 per year with no limit. (Federal standard)
Awarding Costs and Fees	Retains that it is to the discretion of the Claims Board.	Specifies that 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.
Agency Responsibility	Retains current statute authority to the Claims Board	Changes the statute that the Claims Board must refer all claims for wrongful imprisonment, the Claims Board must refer to the DHA in the DOA to be heard and decided un on by an Administrative Law Judge. They cite this as a timeliness matter but the Claims Board meets 4 times per year on average.
Death of a Claimant	If a petitioner dies before Claims Board awards compensation, the bill allows for the petitioner's estate to petition the board for compensation no longer than 1 year after the death. The estate is not eligible to receive any compensation if the Claims Board determines that the petitioner died as a direct result of his or her own deliberate or negligent action.	Allows for certain exceptions to be made for survivors to be entitles to compensation within one year of the claimants death.
Transitional Assistance	Would require DOC to provide the same services to the wrongfully imprisoned that paroles receive.	Same as our bill, but adds State Employee Health Insurance Coverage.
Tax Exemption	None-would be eligible for Medicaid, except for the one month that they would receive their compensation.	Provides a tax exemption on the payments.