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Senate Bill 98 (Substitute S-1 as reported)  
Sponsor: Senator Steven Bieda  
Committee: Judiciary

### **CONTENT**

The bill would create the "Wrongful Imprisonment Compensation Act" to allow a person to bring an action for compensation against the State if he or she had been wrongfully convicted under Michigan law and imprisoned in a State correctional facility for a crime he or she did not commit.

In an action under the Act, the plaintiff would have to attach to his or her complaint documentation establishing that: 1) he or she had been convicted of one or more crimes under the law of this State, was sentenced to prison in a State correctional facility, and had served at least part of the sentence; 2) that his or her judgment of conviction was reversed or vacated and either the charges were dismissed or, on retrial, the plaintiff was found not guilty; and 3) either a) DNA or similarly reliable evidence demonstrated that the plaintiff was not the perpetrator of the crime and was not an accomplice or accessory, resulted in the reversal or vacation of the judgment of conviction, and resulted in either the dismissal of the charges or a finding of not guilty on all of the charges on retrial, or b) the Governor had granted the plaintiff a full pardon on the basis of actual innocence.

The bill would do the following:

- Require the court to award compensation if it found that the plaintiff was wrongfully convicted and imprisoned.
- Require a copy of the complaint to be served on the Attorney General and prosecutor who prosecuted the crime, and require the court to allow them to contest the complaint.
- Require the prosecutor to notify a crime victim of the complaint, if the plaintiff had been convicted of an assaultive crime or serious misdemeanor.
- Specify that the victim or his or her representative would have the right to appear at any proceeding concerning the complaint and to make a written or oral statement.
- Require compensation, if awarded, to include \$60,000 per year for the period of incarceration; economic damages, including lost wages and other expenses; reasonable attorney fees; and reimbursement of any amount collected under the State Correctional Facility Reimbursement Act.
- Prohibit compensation from being awarded for any time during which the plaintiff was imprisoned under a concurrent or consecutive sentence for another conviction, or for any injury sustained while imprisoned.
- Specify that an award under the proposed Act would not be a finding of wrongdoing against anyone and would not be admissible in evidence in a civil action related to the investigation, prosecution, or conviction that gave rise to the wrongful conviction or imprisonment.
- Provide that a plaintiff's acceptance of an award or settlement would be final and conclusive and would bar any further action by the plaintiff against the State based on the same matter.

- Require a plaintiff who recovered damages for wrongful conviction or imprisonment from any other person to reimburse the State for compensation paid under the Act.
- Create the "Wrongful Imprisonment Compensation Fund" and require payments for compensation awards and all litigation costs of the State to be paid to the Department of Attorney General from the Fund.
- Require a court that determined a plaintiff had been wrongfully convicted and imprisoned to expunge records from the person's criminal history.
- Specify that a compensation award under the Act would be subject to the payment of child support owed by the plaintiff, including arrearages.
- Require an action for compensation to be commenced within three years after entry of a verdict, order, or judgment reversing or vacating a wrongful conviction.
- Specify that an individual convicted, imprisoned, and released from custody before the Act's effective date would have to commence an action within three years after that date.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State government. In at least one previous wrongful imprisonment case, action was brought against the State and the State settled for \$600,000. Therefore, this bill would not necessarily create a new potential liability for the State, but would formalize the structure under which these compensation lawsuits can proceed. The impact the bill would have on the magnitude of a potential payout relative to the status quo is ambiguous. The formalization could, however, help expedite the proceedings.

The frequency of wrongful convictions that are vacated in the manner detailed in the bill is quite low. Since 2001 when a DNA postconviction testing statute went into effect, three individuals have been exonerated by DNA, according to The Innocence Project at Cooley Law School. In addition to the DNA exonerations, there have been 31 exonerations in Michigan since 1989, according to a data set compiled by University of Michigan Law School and Northwestern Law School faculty members. However, this bill would not apply to all exonerations for various reasons, such as if an individual served probation only, or if a conviction was vacated based on evidence that was not "DNA or similarly reliable evidence". The bill also would not apply in cases in which the plaintiff was convicted of another criminal offense arising from the same transaction and that conviction was not dismissed or the plaintiff was convicted on retrial.

Despite the low frequency, the compensation awarded in such cases can be several million dollars. Therefore, the budgetary impact could be nontrivial, but it would be highly variable based on whether a case occurred in a given year.

The bill would not have an impact on local government. This does not mean that local government does not have liability in wrongful imprisonment cases; it just means that the status quo would be maintained. In fact, in two DNA-based cases in which compensation was awarded, the local entities, the City of Detroit and Clinton Township, paid out \$3.25 million and \$3.7 million, respectively.

Date Completed: 12-12-13

Fiscal Analyst: Dan O'Connor

#### Floor'sb98

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.