

Mr. Chairman and Honorable Committee Members,

My name is _____ and I am here representing the lobby firm Michigan Votes in opposition of Senate Bill 98. While SB 98 does have its merits, it is my belief that this bill is incomplete, lacking answers to fundamental questions. This leaves me, a representative of Michigan society, and many others like me who would be affected by this legislation, with more questions than answers and an inability to fully support this bill in its present state.

At its core, Senate Bill 98 has good intentions; seeking to compensate individuals wrongly convicted of crime by agents of the state; however, my fear is if this committee were to pass this bill in its current form, it won't be long before we are all back in this same room deciding how to correct its shortcomings.

What is the most common human response to discovering a personal error has been made? To some, it would be to admit a mistake was made and work diligently to correct the mistake in a timely fashion. For others, admitting fault does not come naturally and they choose to dig in, finding ways to explain why they were led to make the mistake and how the mistake truly wasn't a mistake. The difference? The incentive. What incentive does this bill give to prosecutors and judges to correct a wrongful imprisonment case? I would argue there is none other than moral obligation which I fear is not enough. In its current form, the state is directly liable for all compensation owed to the plaintiff. For those charged with protecting the state's budget, they are incentivized to drag their feet or dig in altogether. No insurance or state fund exists to incentivize prosecutors to swiftly compensate the wrongly convicted. For example, a 2012 study conducted by University of Michigan Law School Professor Samuel Gross found that the average time from conviction to exoneration was 11.9 years, 13 years from arrest. Additionally, he found that in general, the time to exoneration is longer for more serious crimes. The median time from conviction ranges from four years for nonviolent crimes to 13.3

years for sexual assaults and 12.9 years for homicides. He writes “the likely explanation is that there is much less incentive to work to exonerate a defendant once he has been released, and those convicted of lesser crimes are released sooner than those convicted of major violent crimes. Based on this information, I would recommend to this committee that wrongful compensation insurance or a state fund be established and included in this bill before it’s approval in order to incentivize prosecutors and judges to act swiftly and compensate fairly.

My second concern is where the funds for wrongful imprisonment compensation will come from and how funds will be regularly appropriated. SB 98 makes no mention of how this compensation will be funded for the short or long-term. With Governor Snyder’s initiative to increase the state’s rainy day fund, it is assumed that if necessary, funds can be appropriated; however, assumption and unclear protocol is not a sustainable model. Additionally, what would happen if a fund was established and funding dwindled? An annually budgeted fund needs to be established, managed by the state treasury, and appropriated in a timely fashion.

My last concern that I’m able to share within my allotted time and something that I’m sure is shared by many: how was the annual compensation rate determined? Furthermore, why is annual compensation being used over a daily rate? I pose these questions because this bill in its current state does not, in my opinion, clearly state how the plaintiff will be compensated for time not adding up to one full year nor does it clearly define “economic wages, including, but not limited to, lost wages.” An example, a neurosurgeon and a bank teller both go to prison for 364 days. Should both wrongfully incarcerated individuals expect to receive 99% of the \$60,000 allotment in addition to 99% of their lost wages or would the state perhaps round up? Would the state be willing to pay the neurosurgeon’s full year of lost wages? The national average for a neurosurgeon’s annual salary is \$627,601 per year. A bank teller’s is \$31, 201. The difference is noticeable, yet this bill does not clearly confirm whether

both can expect to recover their lost wages in their entirety nor does it provide for incarceration that does not add up to one full year. I would recommend the committee refer to the statutes passed in New Jersey and Texas. New Jersey allows for a maximum of twice the amount of claimant's income in the year prior to incarceration or \$50K per year of incarceration, whichever is greater, (if damages exceed \$1 million the court may order that the award be paid as an annuity with a payout over a maximum period of 20 years), reasonable attorney fees, and costs related to the litigation. Not be subject to treatment as gross income. The statute passed in Texas is unique in that compensation is available up to \$80,000 per year, plus an annuity, in addition to reintegration financial assistance not exceeding \$10,000, attorney fees, and lost wages. I would argue that the reintegration assistance is something else that should be included, but that is another argument for another day.

For these reasons, it is my hope that this body would vote NO on Senate Bill 98 with the purpose of re-evaluating and improving it for the betterment of our future society.

Thank you and I would be open to any questions at this time.