

TABLE

WHEN JUSTICE FAILS: INDEMNIFICATION FOR UNJUST CONVICTION

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The following table summarizes the statutes on indemnification for unjust conviction and imprisonment that Adele Bernhard discusses in her article *When Justice Fails*, 6 U Chi L Sch Roundtable 73. (Last updated October 5, 2005.)

STATE	STATUTE	CONDITIONS PRECEDENT (BESIDES IMPRISONMENT FOR UNJUST CONVICTION)	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	MAXIMUM AWARDS	WHEN PASSED	CONTRIBUTORY
AL	AL Act # 2001 659	Conviction vacated or reversed and the charges dismissed on grounds consistent with innocence	Not specified	State Division of Risk Management and the Committee on Compensation for Wrongful Incarceration	2 years after exoneration or dismissal	Minimum of \$50,000 for each year of incarceration, but legislature must appropriate the funds.	2004	Nothing specified, but a new felony conviction will end a claimant's right to compensation.
CA	Cal Penal Code §§ 4900 to 4906	Pardon for innocence or being "innocent"	Not specified	State Board of Control makes a recommendation to the legislature	6 months after acquittal, pardon, or release and 4 months before new legislative meeting	\$100 per day of incarceration	Amended 8/28/00	Claimant must show he did not contribute to arrest or conviction.
DC	DC Code § 1-1221 to 1-1225	Pardon for innocence or conviction reversed or set aside on the ground that claimant is not guilty	Clear & Convincing	Civil Court	Available to any person released after 1979	No maximum No punitive damages	1981	Claimant must show that he did not commit any of the acts charged, or that his acts constituted no crime and that he did not, by his misconduct, bring about the prosecution, and he must not have plead guilty.
IL	Ill Rev Stat ch. 705 § 505/8	Pardon for innocence	Preponderance of the evidence	Court of Claims		≤5 yrs., 15K max, ≤14 yrs., 30K max, >14 yrs., 35K max, with COLA increase for each year since 1945	1945	

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IA	Iowa Code Ann § 663A.1	Conviction vacated or reversed & charges dismissed	Clear & Convincing	District Court for liability; State Appeal Board or Civil Ct. for damages	2 years	\$50 per day & lost wages up to \$25,000/yr & attorney's fees	1997	Claimant must not have pleaded guilty.
LA	R.S.15:572.9 & Code Civ. Pro. Art. 87	Conviction reversed or vacated, and petitioner proves factual innocence	Clear and Convincing	19 th Judicial District Court; trial by judge alone.	2 years from vacatur of conviction or for cases pending when statute was passed, by September 2007.	\$15,000 per year; with a maximum award of \$150,000. Court may award costs of job/skills training for one year, and medically necessary medical and counseling services for three year; as well as tuition expenses at a community college or unit of the state university system.	2005	Nothing specified.
MA	Ann L. MA. Gen'l Laws, Chapter 258D § 1-9	Pardon or conviction reversed & charges dismissed on grounds consistent with innocence or case tried to acquittal.	Clear & Convincing	Superior Court in the county where the claimant was convicted or in Suffolk county.	2 years	A maximum of \$500,000 may be awarded and the Court may order services – physical &/or emotional, educational services at any state of community college, and expungement of the record of conviction	2004	Claimant not have plead guilty, unless such plea was withdrawn, vacated or nullified by operation of law..
ME	14 Me Rev Stat Ann 8241-8244	Pardon for innocence	Clear & Convincing	Superior Court	2 years from pardon	300K, no punitive damages	1993	Nothing specified.
MD	Md State Fin & Proc § 10-501	Pardon on the ground that conviction was in error	"Conclusive"	Board of Public Works	Not specified	Actual damages	1963	Nothing specified.
MO	MO Statute 650.055 – 9	Person must be "determined to be 'actually innocent' only by DNA evidence"	DNA evidence must demonstrate innocence.	Not specified	1 year form release from confinement – after August 28,2003.	\$50 per day of post-conviction confinement	2005	Nothing Specified

Indemnification for Unjust Conviction

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MT	Mont. Code Ann. § 53-1-214			Funds to be appropriated by the legislature	Nothing specified.	Provides educational aid to wrongfully convicted persons exonerated by post-conviction DNA testing.	2003	Nothing specified.
NH	NH Stat § 541-B:14	"Found innocent"	Board must find by majority vote that claim is "justified"	Board of Claims	3 years	20K cap	1977	Nothing specified.
NJ	NJ Stat Ann §§ 52:4C-1 to 4C-6	None	Clear & Convincing	Superior Court	2 years from release or pardon	Twice the amount of claimant's income in the year prior to incarceration or 20K per year of incarceration, whichever is greater	1997	Claimant did not by his own conduct cause or bring about conviction
NY	NY Ct. of Claims Act § 8-b	Pardon or conviction reversed & charges dismissed on grounds consistent with innocence or case tried to acquittal	Clear & Convincing	Court of Claims	2 years	No limit	1984	Claimant did not commit any of the acts charged in the accusatory instrument or his acts did not constitute a crime
NC	NC Gen Stat §§ 148-82 to 148-84	Pardon for innocence	Not specified	Industrial Commission makes a recommendation to the governor	5 years	20,000 each year Max. of 500,000	1947 Amended 2001	Nothing specified
OH	Ohio Rev Code Ann § 2305.02 & § 2743.48	Conviction vacated or reversed & charges dismissed	Preponderance of evidence; Walden v. State, 547 N.E.2d 962	Court of Common Pleas for liability; Court of Claims for damages	2 years	25K/yr and lost wages, costs, and attorney's fees	1986 Amended	Claimant must not have plead guilty
OK	51 Okl. St. § 154	Conviction vacated and charges dismissed, or pardoned, and, in either case, upon a finding that the claimant did not commit the crime for which he or she had been convicted	Clear and convincing evidence	State Civil Court	No time limit	\$175,000 (no punitive damages)	2004	Claimant must not have pleaded guilty, and must have been imprisoned solely as a result of the wrongful conviction.

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TN	Tenn Code Ann §9-8-108	"Exoneration" or pardon for innocence	Not specified	Board of Claims	1 year	\$1,000,000	1984 Amended 2004	Nothing specified
TX	Tex Code Ann § 103.001	Pardon or has been granted relief on the basis of innocence	Preponderance of evidence	May file administrative claim with comptroller or civil suit but not both	2 years release from custody or discovery of evidence substantiating claim	25K per year to a max of \$500,000	Amended 2001	Claimant must not have plead guilty
VA	8.01-195.10	Conviction vacated pursuant to VA Code Cptr. 19.2-327.2 et seq.	Not Specified	General Assembly	Not Specified	90% of the VA per capita personal income— for up to 20 yrs. Tuition worth \$10,00 in the VA Comm. College system.	2004	Claimant may not have pled guilty – unless he or she was charged with a capital offense. If the claimant should subsequently be convicted of a felony, he or she becomes ineligible to receive further payments owed. Finally, acceptance of the award precludes filing any further or additional claims against the state for conduct arising out of the factual situation in connection with the conviction.
US (Fed)	28 USC § 1495 & § 2513	Pardon for innocence, or conviction reversed or set aside on ground that claimant is not guilty and found not guilty at new trial or rehearing	Not specified	U.S. Court of Federal Claims		5K	1948	Claimant did not commit acts charged and did not by misconduct or neglect cause prosecution
WV	W Va Code § 14-2-13(a)	Pardon for innocence, or conviction reversed & either charges dismissed or acquittal on retrial	Clear & Convincing	Court of Claims	2 years after pardon or dismissal	"fair and reasonable damages"	1987	Claimant did not contribute to or bring about conviction
WI	Wis Stat § 775.05	None specified besides proof of innocence	Clear & Convincing	Claims Board	None specified	5K/yr, max 25K but Board may petition legislature for additional funds	1913	Claimant did not contribute to or bring about conviction