

# **MAKING UP FOR LOST TIME:**

**WHAT THE WRONGFULLY CONVICTED ENDURE  
AND HOW TO PROVIDE FAIR COMPENSATION**

**AN INNOCENCE PROJECT REPORT**

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# EXECUTIVE SUMMARY

It's an accepted principle of fairness in our society to compensate citizens who, through no fault of their own, have suffered losses. When a person's land has been seized for public use, they receive adequate repayment. Crime victims and their families receive financial compensation in all 50 states. Yet, strangely, the wrongfully imprisoned, who lose property, jobs, freedom, reputation, family, friends and more do not receive compensation in 23 states of the nation.

For decades, many people, criminal justice professionals included, didn't acknowledge the extent of error in the criminal justice system or that wrongful convictions occurred. DNA testing has changed that. As of this writing, more than 240 people have been proven innocent and exonerated through post-conviction DNA testing. They spent on average 13 years, and as many as 31 years, in prison. Forty percent of them have not received any compensation, and many more received only a paltry amount that fell far short of repaying their losses or helping them get re-established in the free world.

## **The Exonerated Person's Ordeal and Why It Has Been Ignored**

Psychological research of the wrongfully convicted shows that their years of imprisonment are profoundly scarring. Many suffer from post-traumatic stress disorder, institutionalization and depression, and some were victimized themselves in prison. Physically, they have aged ahead of

their peers, and often their health has suffered from years of sub-standard prison health care. Professionally, they lag far behind, lacking the job experiences, and vocational or educational training to be competitive in the workforce. Many have never used a computer, cell phone or even an answering machine. Family members have passed away, children have grown, spouses and partners have moved on. The exonerated are released into a world that has changed dramatically from the one they knew, and they too have dramatically changed.

States offer little to no immediate support services to help with the transition. Exonerated people who live in one of the 27 states that has a compensation law may file for state compensation, but the average length of time exonerees wait to receive funds is almost three full years. In the meantime, the exoneree may lack a source of income, a means of transportation, health coverage and a stable home. Even from the first joyous day of release, exonerees face the immediate crisis of where to sleep, how to eat and how to provide for themselves.

The state should immediately extend a helping hand and provide the compassionate assistance necessary for exonerees to pick up the pieces and rebuild their lives. Instead, some states leave exonerees no other option but to sue. Lawsuits are not a viable alternative to state compensation; they require a long, protracted legal battle with no guarantee of assistance once it's over.

Only 28% of DNA exonerees have won lawsuits; others have tried and failed. Success depends on the exoneree's ability to show that his wrongful conviction was caused by intentional misconduct and to name the responsible party. Under this system, some exonerees get compensated, but many others don't. Everyone is deserving.

State compensation statutes present a better alternative. Only state government can provide reliable, fair and immediate assistance to the exonerated. In fact, it is their responsibility to do so. Although the wrongfully convicted are especially deserving of assistance, they have historically been overlooked perhaps because they are predominately poor, minority and underrepresented in state and local government. Of the over 240 people exonerated through DNA testing, 70% are people of color.

### **INNOCENCE PROJECT SOCIAL WORK PROGRAM**

The Innocence Project's work doesn't stop at exoneration. Our social work program designs a support plan for each of our exonerated clients and provides transitional services and financial assistance in the first year after release. Innocence Project social workers then continue to work with clients for as long as they're needed, helping exonerees build life skills and achieve independence. Since the program's inception in 2006, the Innocence Project has provided post-exoneration assistance to 60 clients in 18 states.

### **A Slow but Steady Change in Attitude**

At last, in recent years, states have begun to recognize a responsibility to the wrongfully convicted. In the last decade, 13 additional states have adopted compensation statutes. In addition, many states have improved existing laws to raise the amount of financial assistance available and also to include a provision for support services like job training, educational waivers, housing assistance and health coverage. Ten states now provide such services.

However, the 27 existing compensation statutes vary greatly—from a flat maximum total of \$20,000 regardless of the number of years spent wrongfully imprisoned in New Hampshire, to \$80,000 per year of wrongful imprisonment with no maximum total in Texas. The state of Montana offers no money at all, only educational aid to be used in the state university or community college system. Only five states meet the federal standard of up to \$50,000 per year of wrongful imprisonment.<sup>1</sup> Other states deny funding to applicants who falsely confessed or pled guilty, and still others deny funding to applicants who were exonerated without the benefit of DNA testing.

Eligibility for funding under compensation statutes is already significantly restrictive. The exoneree must be able to show that she served time in prison for a crime she didn't commit. DNA testing is the surest way of proving innocence, but it is not available in every case. Therefore, the applicant must show that the prosecution has dropped the charges, or that she was found not guilty on re-trial, or that the governor has issued a pardon. Having a conviction overturned based on a legal technicality would not be enough to qualify for compensation.

Applicants must have documentation that demonstrates actual innocence, and a small number of people qualify.

### **The Innocence Project's Recommendations**

For those few qualified applicants, the state should readily and generously offer assistance. No amount of money can make up for the lost years, the trauma of prison life, or the horrible experience of being falsely branded a murderer, rapist or thief. But compassionate state assistance can at least help bring the exoneree's struggle to an end by providing him with the finances to find a home, see a doctor, get job training and counseling, and attempt to make a new life for himself.

These recommendations for state compensation laws have been developed by the Innocence Project after years of working with exonerees and their families, legislators, social workers and psychologists:

- Provide a minimum of \$50,000, untaxed, per year of wrongful imprisonment and \$100,000, untaxed, per year on death row. This amount is based on the federal government's standard created through the Innocence Protection Act of 2004.
- Cover limited and appropriate attorney's fees associated with filing for compensation.
- Provide immediate services including housing, transportation, education, workforce development, physical and mental health care through the state employee's health care system and other transitional services.
- Issue an official acknowledgment of the wrongful conviction.

The support outlined in these recommendations is essential for exonerees' ability to reestablish a life for themselves. Equitable, immediate, comprehensive assistance like this is not available to exonerees through any other means. By fairly compensating those who have suffered under the criminal justice system, the state reassures its citizens that the government will attempt to rectify a wrong—whether the state is at fault or not. In short, it's the right thing to do.

This report details the specific obstacles that exonerees face, the lack of support they currently receive, and how compensation statutes in many states have not done justice to the wrongfully convicted. It also presents solutions to these shortcomings and gives examples of how exonerees have used state compensation to find housing and meet other urgent needs, nurture talents, find success, and get their bearings in the free world.

# EXONERATION IS JUST THE BEGINNING

## A Case History

Calvin Willis, a 22-year-old newlywed and young father living in his hometown of Shreveport, Louisiana, came home from work one day in June 1981 to hear that two police officers had been over to his grandmother's house asking for him. They were investigating the rape of a 10-year-old girl, who had been assaulted while babysitting for two younger girls. The younger girls, who were familiar with Calvin Willis, mentioned him in their interviews with police.

Willis reported to City Hall where a detective told him that he was wanted for aggravated rape. That day marked the beginning of his wrongful imprisonment. He was arrested and sent to jail where he would remain until his trial months later. At trial, the prosecution presented the eyewitness testimony and blood type testing results. According to the results, Willis, along with a significant portion of the African-American population, could have committed the crime.

Willis says, "I was found guilty. The judge asked me to come to the bench when I come back for sentencing. He asked me, 'Is there any thing you'd like to say?' I said, 'No, except that I'm innocent.' He sentenced me to life in a Louisiana State Penitentiary without the benefit of parole."<sup>2</sup>

Willis was transferred to the infamous Angola Penitentiary, where he made an effort to keep to himself and avoid conflict. "It could really, literally scare you to death," he says.<sup>3</sup> In 1996,

he learned of the Innocence Project and wrote a letter asking for help. Three years later, the DNA evidence in his case had been located and the District Attorney agreed to consent to DNA testing. At the time, the Innocence Project didn't have the financial backing to cover the costs of testing as it does today so Willis and his supporters raised the \$14,000 required to have the testing done.

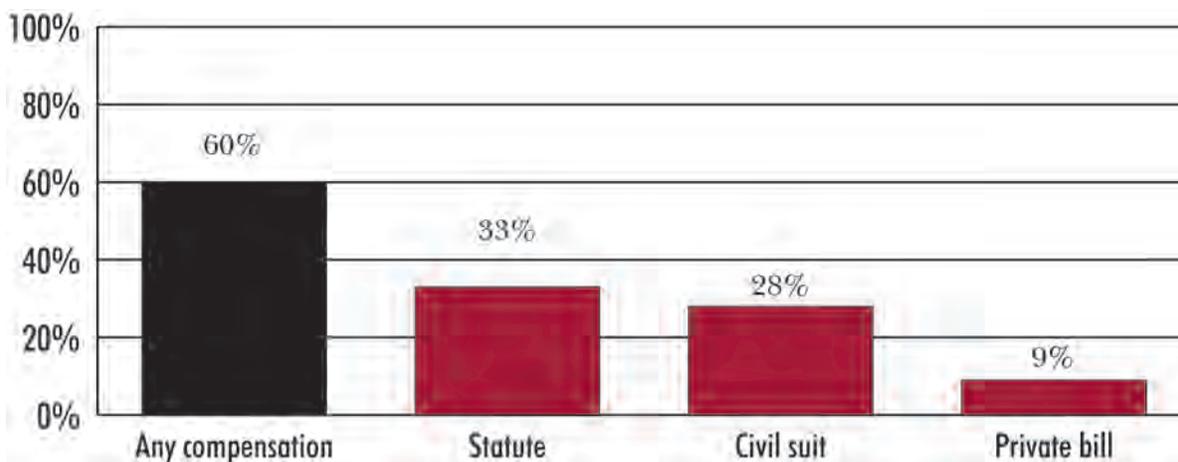
In 2003, after over 21 years of wrongful imprisonment, Willis was proven innocent and released. He had trouble adjusting. "It had been so long since I'd been outside and seen the stars and hills that when I got out and it was nighttime, it scared the hell out of me."<sup>4</sup> By that time, his grandfather, who raised him, had died. His wife had remarried and his children had grown up.

Surely, no amount of money could make up for the hardship that Willis experienced. His loss is unfathomable. Willis may not be able to get those years back, but he can be given a brighter future. The question is: What does he need to get readjusted—psychologically, physically and financially?

**"When you are in prison for as long as I was, people either think you must be guilty or at least damaged. It's been lonely. Very lonely."**

Exoneree Michael Williams who was released with \$10 and a bus ticket, *Wall Street Journal*, October 30, 2007

## Percentage of People Exonerated Through DNA Testing Who Have Been Awarded Compensation\*



\* Percentages per type of compensation add up to more than 100% because each category includes exonerees who received two forms of compensation.

### Obstacles Exonerees Face

Long after the prison cell door has opened, the psychological impact of wrongful imprisonment distances exonerees from friends, family and a society that takes freedom for granted. The average number of years spent in prison by those who have been wrongfully convicted and exonerated through DNA testing is 13. Darryl Hunt, who was wrongfully convicted of murder and spent over 18 years in prison before his exoneration through DNA testing explains, “I’m physically free, but psychologically I’m still confined.”<sup>5</sup>

#### I. Psychological

Hunt speaks to what social scientists call institutionalization. Even after he’s free, the former prisoner struggles to shake those adaptations that made it possible to survive in a hostile environment. The regimented daily routine of prison life has made him unaccustomed to making his own decisions.

The violence of prison life has led to social distancing, emotional aloofness, and a lack of positive social skills. The lack of opportunity and alienation from the outside world has resulted in low self-esteem.<sup>6</sup> Not all former prisoners suffer from the effects of institutionalization, but in recent decades as prison policies have become more restrictive, and prison populations more overcrowded, its effects have become widespread—particularly for innocent people forced to endure these adverse conditions.<sup>7</sup>

Post-Traumatic Stress Disorder (PTSD), common among war veterans, also affects the wrongfully convicted. Almost all prisoners have witnessed violent acts or been victimized, and memories of these experiences can be re-traumatizing. A person suffering from PTSD may have trouble sleeping, recurrent nightmares, difficulty concentrating. He may be irritable, angry or hypervigilant—always tense and alert.<sup>8</sup> “I dream too much about it all,” says

exoneree Carlos Lavernia. “Too much. Almost every day. All the pain. I don’t want to go nowhere. I still got it on my mind. All the time I stay in my apartment complex.”<sup>9</sup>

All prisoners are vulnerable to psychological problems. Exonerees also struggle with the psychological dissonance of having been profoundly wronged by society. Those who served long prison terms or were wrongfully convicted at a young age are the most affected. During their periods of wrongful incarceration, friends and family have gotten married, children have grown, parents and grandparents have passed away. Grievous losses and feelings of “what might have been” follow the exonerated throughout their entire lives. In 2007, *The New York Times* researched 137 cases of people whose wrongful convictions had been overturned through DNA testing and found that most “have struggled to keep jobs, pay for health care, rebuild family ties and shed the psychological effects of years of questionable or wrongful imprisonment.”<sup>10</sup>

**“One big fear is that, really, that I’m just dreaming, that I’m not really here in the apartment right now. That maybe my mind couldn’t really deal with being in prison any longer.”**

Exoneree Jeffrey Deskovic being interviewed in his apartment, *The New York Times*, November 25, 2007.

## II. Physical

Medical care provided to prisoners is notoriously poor, exacerbating existing conditions and leaving others untreated.

A 50-year-old prisoner has been found to have the health of a 60 year old in the free world.<sup>11</sup> Given the lack of available healthcare, many exonerees find that they have less coverage than they had in prison. Even exonerees that are eligible for government supported health coverage may find that the bureaucracy and paperwork involved is enough to effectively prevent them from receiving it.

By the time Roy Brown was exonerated, he was dying of liver disease and expected to have only a matter of weeks left to live. As a prisoner, he had been told that he was not eligible for the organ transplant that could save his life, and as a free man, he had no health insurance. The Innocence Project worked with local services to ensure that Medicaid would cover his urgent health needs. Four months after his release, Brown received a liver transplant in May 2007. Exonerees do not automatically qualify for Medicaid, and very few states offer it to them. Moreover, the types of jobs they can secure are often low-wage and temporary without health benefits.

## III. Financial

Many exonerees were wrongfully convicted in their youth, while their peers were advancing their careers or getting an education. After a decade or more in prison, exonerees find themselves starting over at an older age. Exoneree A.B. Butler says, “When I went to prison, I was 28 years old, and you know, you make up your mind on what you’re going to do with your life in your thirties, and you’re still able to get out there and do it, whereas I’m in my fifties now. I can’t really work as hard as I could back when I was in my twenties and thirties. I just try the best I can.”<sup>12</sup>

**Median State Compensation Amount Per Year\***  
(based on number of years served)



\* Median provides a more accurate representation than average since maximum and minimum amounts vary so greatly.

There are few professional opportunities for prisoners. While many exonerees have held jobs in prison as janitors, cooks, or laborers, most have not developed specialized skills. In the mid-1990s, secondary educational programs for prisoners, namely bachelors and masters degree programs and many vocational programs, were severely cut. By 2005, post-secondary education programs were reaching only 5% of prisoners nationwide.<sup>13</sup> The average exonerated person has no higher than a high school education, little to no experience with computers or modern technology and is far behind his peers in the workforce.

Some exonerees face other extraordinary financial obstacles as a result of their wrongful conviction. After serving nearly 10 years in prison for a crime he didn't commit, David Shephard's wages were garnished for failing to pay child

support because his girlfriend and their son had been on welfare for a year while he was away.<sup>14</sup> Larry Peterson was expected to retroactively pay for his own public defender. The New Jersey Public Defender's Office put a lien (a claim on property or personal assets) on Peterson to pay for the cost of representing him. Peterson had to undergo litigation to have the lien removed.

### **\$40 and a Pair of Pants**

"You have everything taken away from you and then you're dumped back off on the street... there's just no support...what do you do?" asks Brandon Moon who was exonerated in 2005 after 17 years in prison.<sup>15</sup> Many people assume that exoneration involves some automatic compensation, state-sponsored support or other available resources. In fact, exoneration guarantees only one thing—release from prison.

In 2006, the Innocence Project developed a social work program that assists Innocence Project clients in the first year after release. Immediate concerns—clothing, housing, emergency financial assistance—are covered by the Innocence Project’s Exoneree Fund. Nationwide, member groups of the Innocence Network help generate community support, working with exonerees and their families. Without the support of private citizens and non-profit advocacy organizations, most exonerees would be entirely on their own. Exonerees without family face a particularly difficult release.

Services available to parolees in many states, including job placement and temporary housing, are not available to exonerees. Upon his release, David Shephard sought help from four agencies that provided services to ex-offenders. Each agency responded that he could not receive their services since he had not committed a crime.<sup>16</sup> Re-entry services provide an essential safety net for formerly incarcerated people as they transition back to the free world. Parolees need this assistance to get a strong footing and become active, contributing members of society.

It defies comprehension that such services would not also be available to exonerees who face all the same obstacles, in addition to the psychological effects of wrongful imprisonment. As Roy Brown put it, “When you get out of prison they give you \$40 and a pair of corduroy pants, but that’s only for the guilty people. I didn’t even have anything to wear.”<sup>17</sup>

To make matters worse, exonerees are saddled with the responsibility of continually having to explain their exonerated status to prospective employers, landlords, and others who identify them as “ex-cons.” Because the wrongful

## INCALCULABLE LOSSES

- Calvin Willis’ fees from the trial and post-conviction proceedings: \$14,700<sup>18</sup>
- Louisiana per capita personal income in 1982 when Calvin Willis was wrongfully convicted: \$10,560<sup>19</sup>
- Estimated lost income for 21 years: \$382,378<sup>20</sup>
- Value of good health care: ?
- Value of job skills and educational opportunities: ?
- Value of building lasting friendships, business partnerships and romantic relationships: ?
- Value of time with aging parents, grandparents and other loved ones: ?
- Value of raising one’s own children and opportunity to have children: ?
- Value of personal achievements and contributions to society: ?

conviction is not automatically expunged from the exoneree’s criminal record, he may be denied a job or housing based on a background check. Expungement is a separate legal process that can take many months or even years to complete depending on the state; in the meantime, rape and murder convictions will continue to show up in the system even if those convictions have been overturned. Exoneree

Keith Turner says, “I keep a copy of my pardon on me. Every job, you have to explain yourself. You have to put it on there—rape conviction—because they check it. I always write, ‘I’ll explain at the interview.’”<sup>21</sup> Not all exonerees have a pardon to show; many resort to carrying a news article about their exoneration.

Many employers are not willing to take a chance on hiring someone who has been in prison—innocent or not. “You would be surprised at how many people don’t know what exoneration is,” Calvin Willis says. “The thing of it is that you’ve been to prison. You’ve been exposed. Being free is one thing, but you’ve also experienced being around the criminalistic environment. That right there is like you been contaminated.”<sup>22</sup> Exonerees get the worst of both worlds—the stigma of prison, with none of the support services available to those who have served time.

When Willis was released in 2003, Louisiana had no law compensating exonerated prisoners. Since then, the Louisiana Legislature has enacted a compensation statute offering \$15,000 per year of wrongful incarceration with a maximum amount of \$150,000. Willis received an additional \$40,000 for job training and tuition. The total award of \$190,000 comes to approximately \$9,000 for each year that Willis lost. Willis waited six years to receive the money.

# AVAILABLE OPTIONS FOR THE EXONERATED

In his 1932 book, “Convicting the Innocent,” Yale Law Professor Edwin Borchard wrote, “It seems strange that so little attention has been given to one of the most flagrant of all publicly imposed wrongs—the plight of the innocent victim of unjust conviction in criminal cases.”<sup>23</sup> “Convicting the Innocent,” which describes dozens of cases of wrongful conviction from all over the country, closes with a lengthy argument for compensation.

**“What we generally do in America when someone’s been hurt is, we give them money.... Yet here are people who have been hurt as an inevitable byproduct of the criminal justice system, which is a government benefit that we all are entitled to and expect. These are sort of like the collateral consequences, and no one’s taking responsibility for them.”**

*Pace Law School Professor Adele Bernhard,  
PBS Frontline, May 1, 2003*

Compensation options for the wrongfully convicted have not improved much since then. In 1932, three states had compensation statutes; today there are 27. But even in those 27 states, the assistance for exonerees is limited. In 1932, just as today, wrongfully convicted people in states without

compensation systems had other alternatives. They could seek assistance through a lawsuit or private legislation. Borchard argued that these alternatives were inadequate and fell short of the state’s moral obligation to the wrongfully convicted. His reasoning still applies today.

## Lawsuits

Lawsuits for civil rights damages are completely different from state compensation. State compensation is the right thing to do in all cases; lawsuits are for the few exonerees who can prove that they are also victims of intentional government misconduct. Only a minority of cases qualifies; for example, cases in which police officers intentionally fabricated evidence, coerced a confession or intentionally withheld evidence from prosecutors. In most cases, there is no intentional misconduct that caused the wrongful conviction, or at least, none that can be proven.

Prosecutors and judges have “absolute immunity” and are completely shielded from lawsuits brought by wrongfully convicted individuals. The U.S. Supreme Court has ruled that this immunity is necessary to ensure that people in these positions can do their jobs without fear of personal legal implications. Therefore a prosecutor is not liable for anything he does in his official capacity: deciding whether to prosecute, examining witnesses, plea bargaining, etc.<sup>24</sup>

The financial awards exonerees receive through lawsuits often surpass those available through state compensation statutes. However, lawsuits are also more expensive, and part of the award money will be spent on litigation fees. In addition, lawsuits are more time-consuming and take longer to finalize. After years of fighting to prove their innocence, exonerees need a safety net, not another long legal battle. Winning a lawsuit can't help exonerees find jobs, counseling, medical care, educational aid and other essentials they need for a successful transition.

### Private Bills

If an exoneree can't file a lawsuit and her state has no compensation statute, she can try to convince a legislator to introduce a private bill on her behalf. The shortcomings of this approach are immediately obvious since most exonerees lack the political savvy or the political connections necessary to make their voices heard. Furthermore, having to convince the legislature of the need for compensation puts the exonerated person in the uncomfortable position of lobbying for her own support. She has finally proven her innocence; now she must also prove herself worthy of assistance.

Private bills allow states to directly compensate particular exonerees while avoiding financial responsibility in other wrongful convictions cases. Who receives money and how much depends on the size of the state's budget that year as well as the number of deserving applicants. Private bills are dangerously prone to becoming "popularity contests" based as much on the celebrity of the exoneree and the legislator introducing the bill as on the merits of the case.<sup>25</sup> There is no consistency between

states, or even within states, and awards can vary wildly without apparent reason.

For example, Florida has awarded compensation through private bills to two men out of 10 whose wrongful convictions were overturned through DNA testing in that state. In 2005, Wilton Dedge was awarded \$2 million for 22 years of wrongful imprisonment. Three years later, exoneree Alan Crotzer also received assistance through a private bill, but he received only \$1.25 million though he served nearly 25 years in prison. That works out to \$90,000 per year of wrongful imprisonment for Dedge, but about \$50,000 per year for Crotzer.

Only 9% of the more than 240 people who have been exonerated through DNA testing received compensation through private bills, making it the least likely remedy for the wrongfully convicted. Amounts have ranged from \$1,600 per year of wrongful imprisonment to nearly \$300,000 per year. The intent of private bills—that the state has a moral responsibility to exonerees—is just. However, the tremendous procedural and political challenges presented by private bill awards create yet another obstacle for the exoneree.

### Statutes

Compensation statutes provide a uniform amount of financial assistance, per year of wrongful imprisonment, to anyone who can show that he was innocent of the crime and wrongfully convicted. In states that provide adequate assistance, compensation statutes are the most equitable, comprehensive and compassionate form of compensation available. Exonerees applying for compensation through a state statute receive funds sooner than they would

if they were filing a lawsuit, although they still wait. And statutes generally treat each qualified applicant equally, so the level of support cannot vary depending on personality issues, race, educational background, political connections or other considerations. Compensation statutes provide a clear standard for what exonerees can expect, so they can begin to plan for their future.

Compensating people who sustain losses because of state actions is a historic American tradition. Perhaps the earliest compensation established was repayment to landowners whose private property had been seized for public use, or “eminent domain.” What about the wrongfully convicted? After all, a wrongfully convicted person loses his property as well as his freedom, job and family. But the wealthy landowners who lobbied for loss of property laws constituted a more powerful lobbying group than the wrongfully convicted, who are often poor and underrepresented.<sup>26</sup> The first statutes for the wrongfully convicted passed in California and Wisconsin in 1913.<sup>27</sup>

More recently, crime victims’ compensation has passed in all 50 states. The same logic that provides compensation for victims can be applied to compensation for the wrongfully convicted. The state is not legally liable in either case, but morally obligated for the harm caused.<sup>28</sup>

The federal government validated the need to provide uniform compensation to the wrongfully convicted when it passed its own statute in 1938. The original statute allocated only \$5,000, regardless of time served. In 2004, as part of the Innocence Protection Act, Congress increased this amount to up to \$50,000 per year of wrongful imprisonment and up to \$100,000 per year of wrongful imprisonment on death row. In its

report, the Senate Judiciary Committee wrote: “Without such support, a wrongly convicted person might never be able to establish roots that would allow him to contribute to society. To help repair the lives that are shattered by wrongful convictions, the bill raises the Federal cap on compensation, and urges states to follow suit...It is the very least that Congress should do.”<sup>29</sup>

The federal government standard has led to a new wave of compensation statutes nationwide. New laws in Texas, Vermont and North Carolina provide better financial assistance and an array of support services. But these good laws are the exception, not the rule (as the next section will show), and they benefit only the exonerated in those particular states. For exonerees in other parts of the country, the punishment continues long after exoneration.

# EXISTING SHORTCOMINGS OF COMPENSATION STATUTES

In spite of public support and federal urging, 23 states still have no system for compensating the wrongfully convicted. These 23 states include Georgia, Pennsylvania, Michigan, Kansas and others where innocent people have been wrongfully convicted and are now exonerated. These exonerees are in need of support. Some of these states are currently considering compensation legislation, but it's long overdue.

Of the more than 240 people exonerated through DNA testing nationwide, 40% have not received any form of assistance. Of the 60% that have received compensation, only about half received it through a state compensation statute. The others had to file a lawsuit, pursue special legislation or try to make do without any assistance. Even in states that offer compensation, wrongfully convicted applicants could be barred from receiving it. Often what they do receive is inadequate. What follows is an analysis of the limitations in many current state compensation statutes, with case examples showing why many statutes don't do justice to the wrongfully convicted.

## Limited Monetary Assistance

The vast majority of exonerees who have received compensation through a statute—81%—received less than the federal standard of up to \$50,000 per year of wrongful imprisonment. Most state's statutes do not meet the federal standard. In fact, the median amount of financial assistance

awarded per year of wrongful imprisonment is approximately \$24,000. The median U.S. household income is over \$50,000 per year—more than twice as much as this.<sup>30</sup>

Some states set a maximum award amount. In Wisconsin, the maximum total lump sum award regardless of the number of years served is \$25,000; in New Hampshire it's \$20,000. These miserly amounts are far behind the times and do not reflect the public's desire to fairly compensate the wrongfully convicted.

Not all states set the cap so low, but any maximum award will be unfair to those who spent the most time in prison and therefore have lost the most. Michael Evans and Paul Terry were wrongfully convicted at the age of 17 for the rape and murder of a young girl who lived in their neighborhood. When they were released at age 44, they filed for state compensation under the Illinois statute and each received \$161,005, which only covered a fraction of their lost wages and assets. Paul Terry settled a lawsuit with the city and recovered additional funds. Evans never received any additional funds or services.

## No Social Services

Financial assistance can cover an exoneree's basic needs, but she will need more than that to make a successful transition and become self-sufficient. Navigating social services alone is very difficult for someone who has been away

from society for years, out of touch with modern technology, and unaccustomed to making her own decisions. Job placement, psychological counseling, medical care, housing assistance, legal services and more can help exonerees create meaningful lives for themselves.

Only 10 states include provisions for services within their compensation laws. Connecticut includes expenses for employment training, counseling and more; Vermont offers up to 10 years in the state health plan; North Carolina offers job skills training and expenses for tuition. Every state should offer support to the exonerated, at least through their already established social service, public works and education systems. To date, only 15 exonerees have had access to support services through compensation statutes.

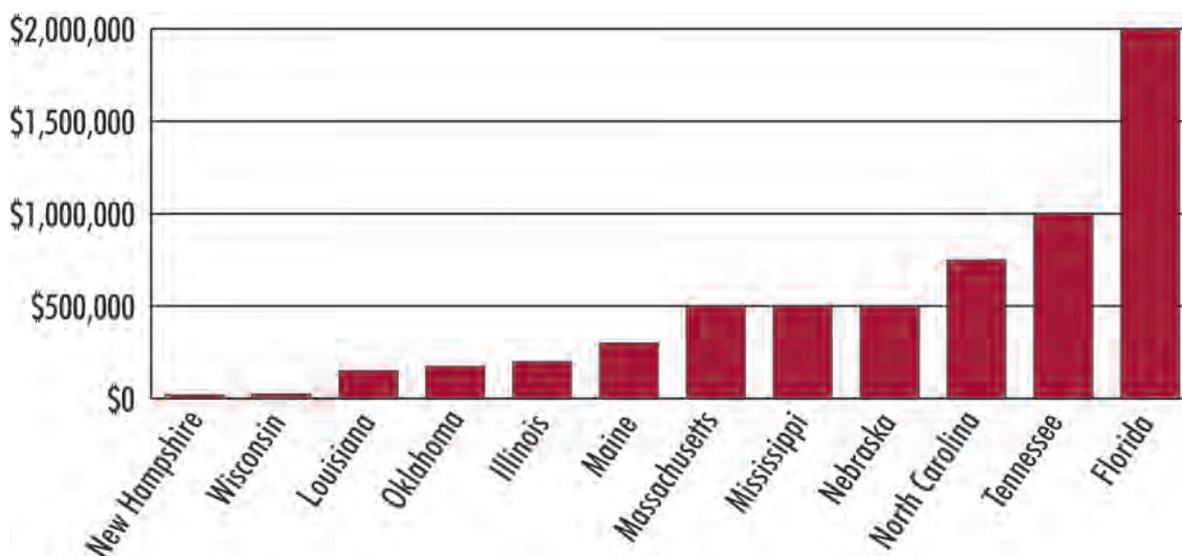
Some states provide services in lieu of adequate financial assistance. Montana for example, offers no money, only educational aid, and only to those exonerated through post-conviction DNA testing.

Jimmy Ray Bromgard was exonerated in 2002 and applied for the educational aid the following year only to discover that the bill hadn't been funded, and there was no money to support his pursuit.

For exonerees who were wrongfully convicted at a young age, exoneration is not so much a matter of starting over but of beginning. For these exonerees, social support services are especially imperative. Jeffrey Deskovic was wrongfully convicted at age 17 and had little experience in the outside world as an adult when he was released at age 35. "I'm this alien," he says. "I'm the man pretending he knows what the hell is going on around him when, in fact, he's clueless."<sup>31</sup>

Deskovic survived the first six months after his release on \$137 a month in disability checks and \$150 in food stamps from the federal government.<sup>32</sup> He ate mostly Cheerios, tuna, canned corn and pre-packaged noodle soups.<sup>33</sup> His mother was struggling financially herself and didn't have the money to help him.

### Caps on State Statutes



The Innocence Project also provided financial support, but it was little compared to what the state could have offered. Deskovic had lost his entire young adulthood—the prime of his life—to be released with nothing and no support.

### **Assistance Is Not Immediately Available**

After the initial elation of freedom, the newly exonerated person must face his many immediate needs: a place to live, food, clothing, medical care, some form of identification besides a prison ID card, some means of transportation, and perhaps other special needs depending on the individual. The exoneration date may have arrived without much advance notice, and the exoneree may not be prepared. Although the process of proving innocence can be arduous, a sudden judicial decision is often what ultimately opens the door.

In contrast, state compensation takes, on average, close to three years to secure. First, the exoneree must file a claim to the state claims board, or equivalent entity, detailing how the post-conviction evidence proves that he didn't commit the crime. Exonerees have already proven their innocence in court, the conviction has been overturned and the prosecution has dropped the charges. Nevertheless, according to many state laws, he must prove his innocence all over again. Depending on the number of other applications the claims board is considering (not just from other exonerees but also from anyone claiming an injury against the state), it could take months or even years before his case is considered. The exoneree may also be required to appear in court again and may need to travel in order to do so. Some statutes include additional procedural hurdles, like requiring the exoneree to be officially pardoned, and these hurdles can make the process take that much longer.

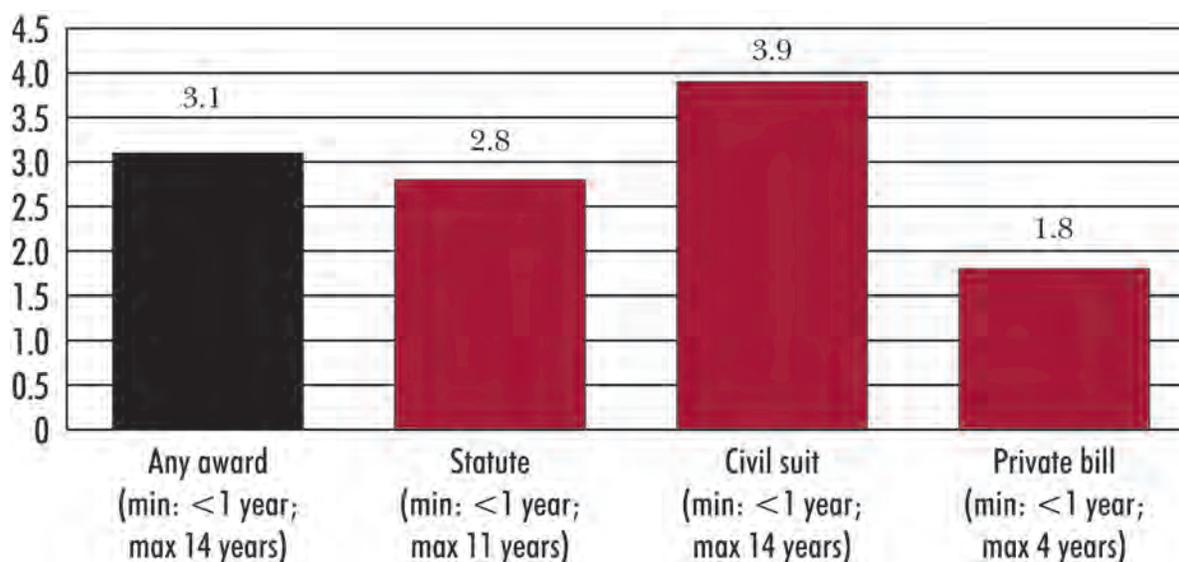
In the meantime, the exoneree struggles to find employment because the conviction still appears on his criminal record. He struggles to get a driver's license with nothing but a prison ID card for verification. If he doesn't have family, he may not have a place to live. If he doesn't have money or any means of transportation he'll be stranded wherever he stays. How will he get a job? See a doctor? Open a bank account?

**“One of the biggest challenges is that once an innocent person comes out of prison, they are not equipped with the tools to reintegrate into society, and that's something that money alone can't solve.”**

NJ State Rep. Donald M. Payne,  
The New York Times, December 2, 2007

Exoneree Ada JoAnn Taylor spoke of the difficulties she faced upon release when she testified in support of a compensation bill in Nebraska. “I can't get insurance. I have doctors that I need to go to because I have a chiropractic problem due to being in the prison...I can't obtain credit because I've never had credit and I'm 45 years old...I can't get housing because I don't have credit to even go get a loan for a house or an apartment or anything of that nature. I can't get a car for the same reasons. To be able to even think about retirement, that's not going to happen in my lifetime because I don't have the way to have a job to save for a retirement fund.” Taylor and other advocates convinced the Legislature to pass a compensation law this year; however, the new law includes a laborious claims process, which opponents say could take exonerees up to five years to complete.

## Average Years from Exoneration to Compensation



The state must offer more than simply freedom and the potential for a check years down the road. By that time, the exoneree has already faced the biggest obstacles to readjustment on her own. If not for community support, individual generosity, and the assistance of the Innocence Project and other advocacy organizations, some people would have been homeless after exoneration. In spite of these efforts, in a few rare cases, exonerees have found themselves literally on the streets.

### Excluding People Who Have Falsely Confessed or Pled Guilty

Ada JoAnn Taylor and her co-defendants may not qualify for statutory compensation even if they do agree to submit to the protracted application process in Nebraska. Taylor and four of her five co-defendants falsely confessed and/or pled guilty to involvement in a crime they didn't commit. The new Nebraska law denies compensation to those who falsely

confessed or pled guilty unless they have evidence of "coercion by law enforcement," which would be very difficult to prove.

Other statutes include a clause stipulating that assistance is only available to an exoneree who "did not by his own conduct cause or bring about his conviction." In practice, this clause has excluded any exoneree who falsely confessed or pled guilty. If a prisoner has indeed brought about his own wrongful conviction, then the state may be justified in denying compensation; however, the clause, as it stands, has been too broadly interpreted. Years ago, before post-conviction DNA testing, many people didn't believe that a false confession could happen. Today, DNA exoneration cases have shown that false confessions are far more common than people believed. In approximately 25% of DNA exoneration cases, innocent defendants made incriminating statements, or delivered outright confessions. Eighteen pled guilty.

Those who falsely confessed are often young people, developmentally disabled, or suffer from mental illness. But even completely capable adults can falsely confess depending on the length of the interrogation, physical and emotional exhaustion, or police coercion. Some may fear the death penalty if they don't confess. These individuals should not suffer additional persecution by being denied compensation.

Professor Adele Bernhard writes, "Today, preventing individuals from benefiting from their own intentional misconduct, such as inducing others to give false testimony or hiding evidence, remains appropriate. But it no longer seems rational to consider all false confessions as misconduct, because multiple exonerations prove that innocent people falsely implicate themselves, despite gaining nothing for themselves in the process."<sup>34</sup> States that still discriminate against people who falsely confessed should clarify the clause so that it can't be interpreted to exclude those who falsely confessed or pled guilty.

### **Excluding People Who Have Prior Convictions**

In 2008, the Florida Legislature passed a long-awaited compensation statute. Ten people have been exonerated through DNA testing in the state, and only three of them have received any compensation. Ironically, the new statute can't help most of the remaining seven because of its "clean-hands provision," which bars anyone with a prior felony conviction from receiving compensation.

Exoneree Alan Crotzer, who recovered damages through a private bill, would have been denied statutory compensation because he stole beer from a convenience store and was also convicted of a drug offense while in prison. Both count as felonies, although relatively minor ones,

and yet would have been enough to deny him compensation for serving 24 years for a rape and kidnapping that DNA testing proved he didn't commit. Florida Exoneree William Dillon is also ineligible because of a drunk driving and possession of drugs conviction from when he was 19 years old. In response to public outcry, Dillon may receive compensation through a private bill. But the extra legislation and advocacy required for him and for Crotzer demonstrates how inefficiently Florida has approached the issue of compensation. No other state includes a clean-hands provision.

Prior convictions do not make the wrongful conviction any less of an injustice. In fact, having an existing criminal record makes someone more vulnerable to increased suspicion from law enforcement and more prone to wrongful conviction. Exonerated people pay their debt to society by serving time for any crimes they committed, but society has not paid its debt to them for a separate and unrelated crime that they did not commit.

# PROVIDING COMPASSIONATE ASSISTANCE

The assistance provided through compensation statutes can change an exoneree's life, allowing him to be independent for the first time in many years. Self-sufficiency means something different to each person, but it may include buying a home, buying a car to drive to work or to travel, starting a business, or going back to school. At best, compensation statutes provide gracious, generous assistance to those who qualify.

Nationally, over 240 prisoners have been proven innocent through DNA testing since the first DNA exoneration case in 1989. In some cases, a form of evidence other than DNA, such as a confession from the real perpetrator or a recantation from a key witness, proves innocence and overturns the wrongful conviction. The prosecutor will then either drop the charges or choose to conduct a re-trial. If the defendant is found not guilty, then she would also be eligible for compensation. If the defendant is pardoned, she would be eligible as well. These conditions determine who will receive compensation.

Even states with large prison populations and a relatively high incidence of wrongful convictions have shown that it's possible to provide compassionate assistance to the exonerated. Texas has the most generous compensation statute in the nation and also the most DNA exonerations at nearly 40, far more than any other state.

**"The criminal justice system is not perfect, so at the very least, we ought to do what we can to make amends to the people who were wrongly convicted—a very small number of people who pay a big, big price for those mistakes... The compensation they receive should not be taxed; that's certainly like throwing salt on a very deep wound."**

NY Senator Chuck Schumer,  
The New York Times, December 2, 2007

## Recommendations

The Innocence Project is intimately familiar with the challenges exonerated people encounter after release, and has developed a series of recommendations for states to compensate the wrongfully convicted:

- Provide a minimum of \$50,000 per year of wrongful imprisonment, untaxed, and \$100,000, untaxed, per year on death row, which is in accordance with the federal standard.
- Cover limited and appropriate attorney's fees associated with filing for compensation.

Currently, only five states meet this standard: Texas, Alabama, Florida, Mississippi and North Carolina. The amount is intended to cover costs

associated with lost liberty, lost wages, criminal defense, medical expenses; and losses, such as physical injuries and illness or psychological illness, suffered as a result of the time in prison. The amount should not be subject to taxation.

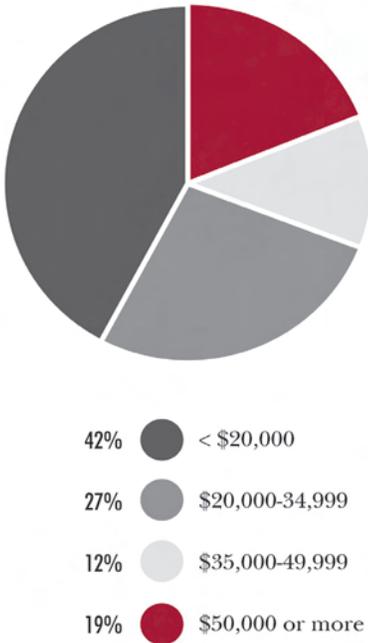
- Provide immediate services including housing, transportation, education, workforce development, physical and mental health care through the state employee’s health care system and other transitional services.

The county Department of Social Services or other appropriate entity should be tasked with creating a “release plan” based on the exoneree’s individual needs and work with state agencies like the Department of Health to ensure that these services will be provided free of charge. Services that aren’t immediately covered by the state should be reimbursed to the exoneree as part of the compensation package. A state needn’t look far to meet these immediate needs, many of its own existing programs and services can fill this role. For example, transportation vouchers for public transportation could be issued as part of the release package. Emergency slots in public housing could be made available. If the exoneree is interested in pursuing higher education, the state university system should offer free tuition. Computer classes offered to state employees should be made available to exonerees as well.

- Issue an official acknowledgment of the wrongful conviction.

Conceding that no system is perfect, the state government’s public recognition of the harm inflicted upon the wrongfully convicted person helps to foster the healing process, while assuring the public that the state—regardless of fault—is willing to own up to its wrongs.

**State Statute Payouts Per Year**



**Where It’s Working**

Public support for compensation laws helps to ensure their passage. Media surrounding exonerations has brought the issue to the public’s awareness, which has, in turn, motivated states to adopt new legislation or improve existing legislation. Some of the 27 states that currently have a compensation statute adopted it in the 2000s, after post-conviction DNA testing helped expose the frequency of wrongful convictions. This new wave of state compensation systems includes Vermont, Alabama, Connecticut and North Carolina, all of which provide more generous and comprehensive support than their predecessors. These states are meeting the standard set by the federal government, and are also offering support services in addition to financial assistance. The following states have become models for providing compassionate assistance to the wrongfully convicted.

## Texas

A steady tide of Texans have been proven innocent through DNA testing and exonerated in the last 15 years. To the state's credit, they have responded by offering an increasingly beneficial compensation package. In 2007, Texas raised the amount that exonerated people could receive under statutory compensation from \$25,000 per year of wrongful imprisonment to \$50,000 per year, in line with the federal standard. Two years later, the Legislature raised it again to \$80,000 plus \$25,000 per year spent on parole or as a registered sex offender. No other state has this provision, although wrongfully convicted people are often paroled before exoneration. Social services provided by Texas are also the best in the nation, including job training, tuition credits and access to medical and dental treatment. The bill was passed through the Tim Cole Act, in honor of an innocent man who died in prison and was later posthumously exonerated.

**“We have taken a significant step forward to help wrongfully convicted Texans rebuild their shattered lives.”**

TX State Senator Rodney Ellis,  
Press Release, April 19, 2007

## Vermont

In 2007, Vermont became the 23rd state to adopt a compensation statute, and the statute is one of the most generous in the nation. An exonerated person can file a claim for compensation up to three years after the exoneration. The court can award between \$30,000 and \$60,000 per year of wrongful imprisonment. The exoneree is also eligible for up to 10 years of state health care, economic damages (which may include

lost wages), reimbursement for attorney fees, as well as reimbursement for support services and mental and physical health care costs paid for by the exoneree after exoneration and before the compensation funding was available. Vermont is also one of the few states that explicitly exempt compensation money from state income taxes.

## Connecticut

The Connecticut statute is one of the few that doesn't specify a set amount of compensation per year of wrongful conviction. However, there is also no limit on the amount that could be awarded. Passed in 2008, the law provides repayment 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 the wrongful conviction. In addition to the financial compensation, the exoneree can also receive employment training and counseling, tuition waivers, and other transitional services.

## Success Stories

Compensation has enabled exonerees to pay off debts, get established in the free world and even achieve their goals. Here are a few of their stories.

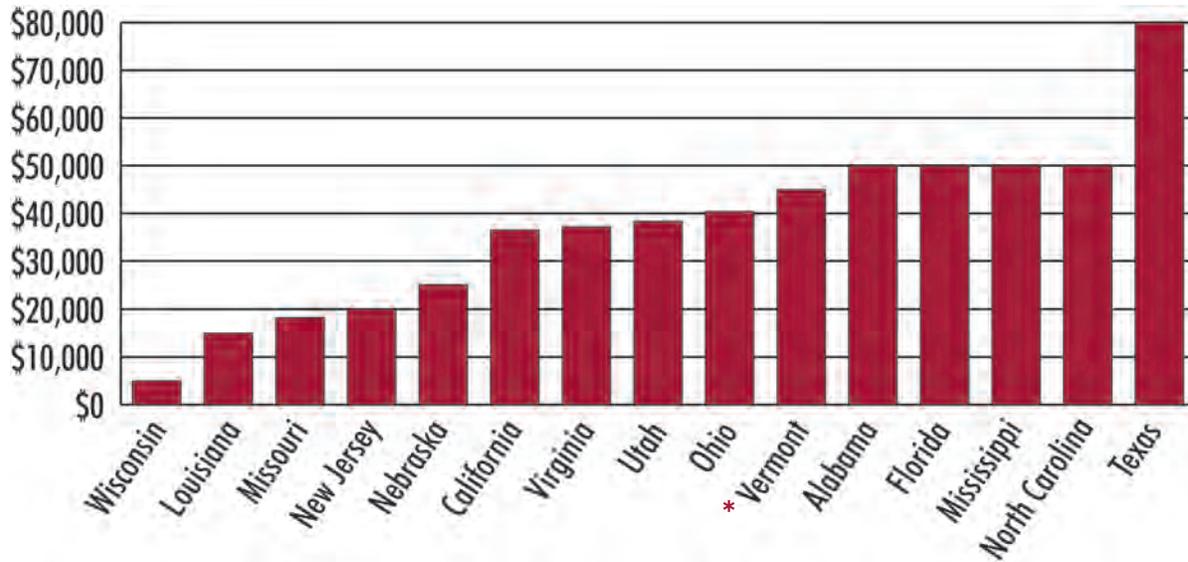
### Rickie Johnson

**Sentence served:** 25 years

**State:** Louisiana

With the help of his local District Attorney, Rickie Johnson received \$150,000 in compensation money soon after he was exonerated. He used it to pursue his dream of opening a leatherworks business—RJ Leather—which had its grand opening on January 14, 2009, a year to the day that Johnson was released from prison after 25 years of wrongful imprisonment. Although

## Annual Payments Per Year of Wrongful Imprisonment



\* Vermont awards between \$30,000 and \$60,000 per year.

Johnson received the maximum that Louisiana provides, it was still less than what many exonerees serving that amount of time have received.

Undaunted, Johnson got to work.

He spent the money on machines, leather and other supplies that he needed to open the store. He also purchased a pick-up truck for the business and painted “RJ Leather” on the side. The store in Leesville, Louisiana, where Johnson is a member of the Chamber of Commerce, sells custom-made belts, shoes, sandals, wallets, purses and more.

RJ Leather also gives him an opportunity to spend time with family members who help him manage the store. “This is a family-owned business,” he says. “The next thing I want to do is get a bigger store. Teach my family how to do the business and build it up. Look at them run it and then go retire.”

### Larry Fuller

**Sentence served:** 19.5 years

**State:** Texas

Larry Fuller’s childhood home had fallen into disrepair during the years that he was gone. His elderly father couldn’t keep it up, and his mother had passed away while he was in prison. So, when Fuller received \$1 million in compensation from the state of Texas a year after his exoneration in 2007, he knew exactly what to do with the money.

“Roofing, plumbing, remodeling the kitchen, fixing the garage... We’ve shaped it up from top to bottom.” All that’s left to do is paint the outside of the house and get the shudders back up. Fuller, who has a background in fine arts, has chosen the color—eucalyptus green.

Shortly before his wrongful conviction, Fuller completed a fine arts degree at The Art Institute of Dallas. His artistic talents came in handy in prison; he was given a job at the sign shop, and he taught himself calligraphy. Now that he's out, he's looking forward to refining his talent for drawing and painting in the Impressionist style. He's recently purchased an easel, a sketchbook and other art supplies to get started again.

But first, he's got an important job to finish. "Giving tribute to the house where I grew up," he says. Once the house is complete, Fuller will find his own place, where he can live close enough to his father to continue taking care of him.

### **Roy Brown**

**Sentence served:** 15 years

**State:** New York

Roy Brown didn't think he would ever live to see the day that he was compensated. The joy of his exoneration in 2007 was tempered by the knowledge that he was dying of liver disease and had only a few months left to live. But Brown beat the odds; he received a liver transplant soon after his release and has made a remarkable recovery. His sister Billie Jo Kuczynski calls him "our walking miracle."

Two years later, Brown received \$2.6 million from the state of New York. He has big plans for the money. He's embarked on a renovation project of historic homes in Cayuga County, New York, and plans to become a real estate manager. He recently married his childhood sweetheart and first love from when he was 14 years old. For the honeymoon, he purchased an RV for traveling around the country.

"It's some sort of justice, you know," Brown says.

"It doesn't correct things. It doesn't make things right. I can still feel the weight of those chains. They're not as heavy anymore." <sup>35</sup>

### **Fair Compensation for All**

The Innocence Project works with state legislators nationwide to create new compensation legislation and improve existing legislation. Criminal justice professionals have been calling for similar reforms for over 70 years. Exonerates, who know firsthand what it feels like to be released from prison with next to nothing, have also become advocates for the cause, and are determined to help others avoid the struggles they faced upon release. Exonerates and their families cannot be expected to bear the loss alone. After so many years of the state controlling their lives, of losing homes, jobs opportunities, loved ones and precious freedom, they are owed the fair compensation that only state statutes can provide.

# ENDNOTES

1. Only five states explicitly provide \$50,000 per year of wrongful imprisonment. Four additional states plus the District of Columbia do not specify an amount of compensation and in some cases, effectively provide \$50,000 per year of wrongful imprisonment. Vermont provides between \$30,000 and \$60,000.
2. Lola Vollen and Dave Eggers, eds., *Surviving Justice: America's Wrongfully Convicted and Exonerated* (San Francisco: McSweeney's Books, 2005), 152.
3. Ibid., 154.
4. Ibid., 159.
5. Abby Aguirre et al., "Exonerated, Freed, and What Happened Then," *The New York Times*, November 25, 2007.
6. Craig Haney, "The Psychological Impact of Incarcerations: Implications for Post-Prison Adjustment," 2001, <http://aspe.hhs.gov/HSP/prison2home02/Haney.htm>.
7. Ibid.
8. American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, 4th ed., text rev. (Washington, DC: American Psychiatric Association, 2000), 463.
9. Michael Hall, "The Exonerated," *Texas Monthly*, November 2008, 155.
10. Janet Roberts and Elizabeth Stanton, "A Long Road Back After Exoneration, and Justice is Slow to Make Amends," *The New York Times*, November 25, 2007.
11. Joan Petersilia, "When Prisoners Return to Communities: Political, Economic and Social Consequences," *Federal Probation* 65 (2001): 3-9.
12. Hall, "The Exonerated," 151.
13. Jeanne Contardo and Michelle Tolbert, "Prison Postsecondary Education: Bridging Learning from Incarceration to the Community," <http://www.urban.org/projects/reentry-roundtable/upload/Contardo.pdf>.
14. Shawn Armbrust, "When Money Isn't Enough: The Case for Holistic Compensation of the Wrongfully Convicted," *American Criminal Law Review* (2004): 173.
15. Roberts and Stanton, "Long Road Back."
16. Armbrust, "When Money Isn't Enough," 175.

17. "A Social Work Success: Securing Long-Term Support for an Ailing Client," *The Innocence Project 2007 Annual Report*, 14-15.
18. Vollen and Eggers, eds., *Surviving Justice*, 157.
19. U.S. Department of Commerce, Bureau of Economic Analysis, Personal Income and Its Disposition data: <http://www.bea.gov>.
20. Ibid.
21. Hall, "The Exonerated," 162.
22. Vollen and Eggers, eds., *Surviving Justice*, 161.
23. Edwin M. Borchard, *Convicting the Innocent: Errors of Criminal Justice* (New Haven: Yale University Press, 1932), 375
24. Mary Massaron Ross and Edwin P. Voss, Jr., eds., *Sword and Shield: a Practical Approach to Section 1983 Litigation*, 3rd ed. (Chicago: American Bar Association, 2006), 44.
25. Adele Bernhard, "Justice Still Fails: A Review of Recent Efforts to Compensate Individuals Who Have Been Unjustly Convicted and Later Exonerated," *Drake Law Review* (2004): 708.
26. Borchard, *Convicting the Innocent*, 390.
27. Ibid.
28. Adele Bernhard, "When Justice Fails: Indemnification for Unjust Conviction," University of Chicago Law School Roundtable (1999): 97.
29. U.S. Senate, The Innocence Protection Act of 2002, 107th Cong., 2d sess., S.486, March 7, 2001, <http://thomas.loc.gov/cgi-bin/cpquery/T?&report=sr315&dbname=107&>.
30. U.S. Census Bureau, "Income, Poverty, and Health Insurance Coverage in the United States: 2007," <http://www.census.gov/prod/2008pubs/p60-235.pdf>
31. Fernanda Santos, "Vindicated by DNA, but a Lost Man on the Outside," *The New York Times*, November 25, 2007.
32. Ibid.
33. Ibid.
34. Bernhard, "Justice Still Fails," 718.
35. Roy Brown quoted in John Stith, "DNA Tosses Auburn Man's 1995 Murder Conviction," *The Post-Standard*, June 20, 2008.

# APPENDIX A

## Compensation Statues by State

STATES	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 exoneree.		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.

STATES	STATUTE BASICS	SUPPORT SERVICES	RESTRICTIONS
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 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 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.	Job search and placement services.	Compensation cannot exceed \$85,350 for up to five 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.		

STATES	STATUTE BASICS	SUPPORT SERVICES	RESTRICTIONS
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.
Montana	No financial compensation.	Educational aid.	Only wrongfully convicted persons exonerated through DNA testing are eligible.
Nebraska	\$25,000 per year with a maximum of \$500,000.		The wrongfully convicted person must show that he did not “commit or suborn perjury, fabricate evidence, or otherwise make a false statement.”* If the wrongfully convicted person falsely confessed or pled guilty, he must show that the confession was coerced. Maximum of \$500,000 regardless of time served.
Nevada	No statute.		
New Hampshire	Maximum of \$20,000 for the entirety of the wrongful incarceration.		Maximum of \$20,000 regardless of time served.
New Jersey	Twice the amount of the exoneree’s income in the year prior to incarceration or \$20,000 per year of incarceration, whichever is greater.		The wrongfully convicted person must show “he did not by his own conduct cause or bring about his conviction.” This provision may prevent people who falsely confessed or pled guilty from receiving compensation.*
New Mexico	No statute.		
New York	The Court of Claims determines what amount will fairly and reasonably compensate the wrongfully convicted person. His request will be expedited by the court of claims.		The wrongfully convicted person must show “he did not by his own conduct cause or bring about his conviction.” This provision may prevent people who falsely confessed or pled guilty from receiving compensation.*
North Carolina	\$50,000 for each year of wrongful incarceration with a maximum of \$750,000.	Also includes provision of job skills training and education tuition waivers.	Maximum of \$750,000 regardless of time served.
North Dakota	No statute.		

STATES	STATUTE BASICS	SUPPORT SERVICES	RESTRICTIONS
Ohio	\$40,330 per year (or amount determined by state auditor) in addition to lost wages, costs, and attorney's fees.		The wrongfully convicted person must not have pled guilty.
Oklahoma	\$175,000 for the entirety of the wrongful incarceration.		The wrongfully convicted person must not have pled guilty and must show that he was imprisoned solely as a result of the wrongful conviction. Maximum of \$175,000 regardless of time served.
Oregon	No statute.		
Pennsylvania	No statute.		
Rhode Island	No statute.		
South Carolina	No statute.		
South Dakota	No statute.		
Tennessee	A maximum of \$1,000,000 for the entirety of a wrongful incarceration. The board of claims, in determining the amount of compensation, shall consider the person's physical and mental suffering and loss of earnings.		Maximum of \$1 million regardless of time served.
Texas	\$80,000 per year of wrongful incarceration, as well as \$25,000 per year spent on parole or as a registered sex offender, plus an annuity.	Compensation for child support payments, tuition for up to 120 hours at a career center or public institution of higher learning, and reentry and reintegration services, including life skills, job and vocational training for as long as those services are beneficial. In addition, the state provides necessary documentation (i.e. a state ID card) and financial assistance to cover living expenses. Help is also provided to access medical and dental services, including assistance in completing documents required for application to federal entitlement programs, assistance in obtaining mental health treatment and related support services through the public mental health system for as long as necessary. Assistance also includes obtaining appropriate support services, as identified by the exoneree and the assigned case manager, to assist in making the transition from incarceration into the community.	

STATES	STATUTE BASICS	SUPPORT SERVICES	RESTRICTIONS
Utah	A wrongfully convicted person is eligible to receive for each year or portion of a year he was incarcerated, up to a maximum of 15 years, the monetary equivalent of the average annual nonagricultural payroll wage in Utah.		A wrongfully convicted person who served more than 15 years will not receive compensation for those additional years of wrongful imprisonment.
Vermont	Between \$30,000 and \$60,000 per year the person was incarcerated.	The exoneree is also eligible for up to 10 years of state health care, economic damages (which may include lost wages), reimbursement for attorney fees, as well as reasonable reintegrative services and mental and physical health care costs incurred by the claimant for the time period between his or her release and the date of award.	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.*
Virginia	90% of the Virginia per capita personal income for up to 20 years.	Tuition worth \$10,000 in the Virginia Community College system. Exonerees also receive a transition assistance grant of \$15,000, which is later deducted from the final award.	The wrongfully convicted person must not have pled guilty—unless he was charged with a capital offense. A new felony conviction will end the claimant’s right to compensation.
Washington	No statute.		
West Virginia	No maximum amount is specified.		The wrongfully convicted person must show “he did not by his own conduct cause or bring about his conviction.” This provision may prevent people who falsely confessed or pled guilty from receiving compensation.*
Wisconsin	\$5,000 for each year in prison, with a maximum of \$25,000 plus attorney’s fees.		The wrongfully convicted person must show that he did not by his act or failure to act contribute to bring about the conviction and imprisonment for which he seeks compensation. This provision may prevent people who falsely confessed or pled guilty from receiving compensation.*
Wyoming	No statute.		
Federal	Up to \$50,000 per year of wrongful imprisonment and \$100,000 per year on death row.		

*\*See pages 18-19 for more information about this provision.*

# APPENDIX B

## **Model Legislation, 2010 State Legislative Sessions An Act Concerning Claims for Wrongful Conviction and Imprisonment**



Benjamin N. Cardozo School of Law, Yeshiva University

MODEL LEGISLATION, 2010 STATE LEGISLATIVE SESSIONS

**AN ACT CONCERNING CLAIMS FOR WRONGFUL CONVICTION AND IMPRISONMENT**

SECTION 1. LEGISLATIVE INTENT

The legislature finds that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned have been uniquely victimized, have distinct problems re-entering society, have difficulty achieving legal redress due to a variety of substantive and technical obstacles in the law, and that such persons should have an available avenue of redress over and above the existing tort remedies to seek compensation for damages. In light of the particular and substantial horror of being imprisoned for a crime one did not commit, the legislature intends by enactment of the provisions of this Act that those persons who can demonstrate that they were wrongfully convicted receive immediate services upon release, and those who can meet the higher standard of proving their actual innocence be able to receive monetary compensation.

SECTION 2. STATEMENT OF CLAIM FOR COMPENSATION

A. In order to present an actionable claim for wrongful conviction and imprisonment, claimant must establish by documentary evidence that:

1. He has been convicted of one or more crimes and subsequently sentenced to a term of imprisonment and has served all or any part of the sentence;
2. On grounds not inconsistent with innocence:
  - a. He was pardoned for the crime or crimes for which he was sentenced and which are the grounds for the complaint;



- b. The statute, or application thereof, on which the accusatory instrument was based, violated the Constitution of the United States or the [State];
  - c. The judgment of conviction was vacated; or
  - d. The judgment of conviction was reversed;
3. If there was a vacatur or reversal, either the accusatory instrument was dismissed; or if a new trial was held, the defendant was found not guilty; and
  4. His claim is not time-barred by the provisions of Section 6 of this Act.
- B. The claim shall be verified by the claimant.
- C. If the court finds after reading the claim that the claimant has not alleged sufficient facts to succeed at trial, it shall dismiss the claim, either on its own motion or on the state's motion.

### SECTION 3: PRESENTATION OF CLAIM

All claims of wrongful conviction and imprisonment shall be presented to and heard by the state's civil court or the state's other appropriate administrative structure that handles similar compensation claims.

### SECTION 4: JUDGMENT AND AWARD

A. In order to obtain a judgment in his favor, claimant must prove by a preponderance of the evidence that:

1. He was convicted of one or more crimes and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and
  - a. He has been pardoned for the crime or crimes for which he was sentenced and



which are the grounds for the complaint; or

b. His judgment of conviction was reversed or vacated, and:

i. The accusatory instrument was dismissed; or

ii. If a new trial was ordered, either he was found not guilty at the new trial or he was not retried and the accusatory instrument was dismissed, provided that:

a. The judgment of conviction was reversed or vacated, or the accusatory instrument was dismissed, on grounds not inconsistent with innocence; or

b. The statute, or application thereof, on which the accusatory instrument was based violated the Constitution of the United States or the [State]; and

2. He did not commit any of the crimes charged in the accusatory instrument, or the acts or omissions charged in the accusatory instrument did not constitute a crime; and

3. He did not commit or suborn perjury, or fabricate evidence to cause or bring about his conviction. However, neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit constitutes bringing about his own conviction under this Act.

B. If the court finds that the claimant was wrongfully convicted and incarcerated pursuant to Section 4, subsection A of this Act, the court shall award:

1. Damages for the physical injury of wrongful conviction and incarceration which shall be:



- a. Not less than \$50,000 for each year of incarceration, with an additional \$50,000 for each year served on death row. This amount shall reflect:
    - i. Inflation from the date of enactment as adjusted by the state auditor, and partial years the claimant served;
    - ii. Consideration of:
      - a. Economic damages including but not limited to:
        - i. Lost wages;
        - ii. Costs associated with his criminal defense and efforts to prove innocence; and
        - iii. Medical and dental expenses incurred or expected to be incurred after release;
      - b. Non-economic damages for:
        - i. Personal physical injuries or physical sickness; and
        - ii. Any non-physical injuries or sickness arising out of same, incurred during or as a result of incarceration; and
  - b. Not less than \$25,000 for each year served either on parole, probation or as a registered sex offender, to be pro-rated for partial years served;
2. Physical and mental health care for the life of the claimant through the state employees' health care system, to be offset by any amount provided through claimant's employers during that time period;
  3. Reimbursement for any tuition and fees paid for the education of the claimant and any biological children that were conceived prior to his incarceration for the wrongful

conviction at any community college or other unit of the [State] public university system, including any necessary assistance to meet the criteria required therefor, or a mutually agreed upon vocational program; and employment skills development training;

4. Compensation for child support payments owed by the claimant that became due, and interest on child support arrearages that accrued, during the time served in prison but were not paid;

5. Compensation for any reasonable costs incurred by claimant for immediate services secured upon exoneration and release, including housing, transportation and subsistence, re-integrative services and mental and physical health care costs incurred by claimant for the time period between his release from wrongful incarceration and the date of his award; and

6. Reasonable attorneys' fees for bringing a claim under this Act calculated at ten percent of the damage award plus expenses;

a. These fees, exclusive of expenses, shall not exceed \$75,000, as adjusted by the state auditor to account for inflation from the date of enactment; and

b. These fees shall not be deducted from the compensation due claimant; nor is counsel entitled to receive additional fees from the client.

C. The damage award shall not be subject to:

1. Any cap applicable to private parties in civil lawsuits;

2. Any taxes, except for those portions of the judgment awarded as attorneys fees for bringing a claim under this Act; or

3. Treatment as gross income to a claimant under the provisions of [the State's taxation



code].

D. The acceptance by a claimant of any such award, compromise or settlement shall:

1. Be reduced to writing; and
2. Except when procured by fraud, be final and conclusive on the claimant.

E. Any future damages awarded to the claimant resulting from an action by the claimant against any unit of government within [State] by reason of the same subject shall be offset by the damage award received under this Act.

F. The damage award shall not be offset by any expenses incurred by the state or any political subdivision of the state, including, but not limited to:

1. Expenses incurred:
  - a. To secure the claimant's custody; or
  - b. To feed, clothe or provide medical services for said claimant; or
2. The value of any services or reduction in fees for service, or the value thereof to be provided to the claimant that may be awarded to the claimant pursuant to this Act.

G. If the court finds that the claimant was subjected to a lien pursuant to defense services rendered by the State to defend the client in connection with the criminal case that resulted in his wrongful conviction, the court shall extinguish said lien.

*Drafters' Note: Because a criminal record can prevent a wrongfully convicted person from rebuilding a successful life, every state should include an expungement and/or sealing provision. Since state laws vary greatly and there are important concerns to be addressed under each state law, please contact the Innocence Project to discuss how to most appropriately craft this*



*provision in your state.*

#### SECTION 5. NOTICE

A. A court granting judicial relief consistent with the criteria set forth in clause (2) of subsection A of Section 2 of this Act on or after the effective date of this Act shall provide a copy of this to the individual granted such relief at the time the criteria of said clause (2) of subsection A of Section 2 of this Act are satisfied.

B. The individual shall be required to acknowledge his receipt of a copy of this Act in writing on a form established by the Chief Justice for administration and management of the Trial Court.

C. The court shall enter said acknowledgement on the docket and the acknowledgement shall be admissible in any proceeding filed by a claimant under this Act.

D. The parole board, upon the issuance of a full pardon under section XX of Chapter XX on or after the effective date of this Act, shall provide a copy of this Act at the time the pardon is issued to the individual pardoned. The individual shall be required to acknowledge his receipt of a copy of this Act in writing on a form established by the parole board, which shall be retained on file by the parole board as part of its official records and shall be admissible in any proceeding filed by a claimant under this Act.

E. In the event a claimant granted judicial relief or a full pardon on or after the effective date of this Act shows he did not properly receive a copy of the information required by this section, he shall receive a one-year extension on the three-year time limit provided in Section 6 of this Act.

F. The Chief Justice for administration and management of the Trial Court shall make reasonable attempts to notify all persons pardoned or granted judicial relief consistent with the



criteria set forth in subclauses (b), (c), or (d) of clause (2) of subsection A of Section 2 of this Act before enactment of said Act of their rights under this Act.

#### SECTION 6. TIME LIMITATIONS

A. An action for compensation brought by a wrongfully convicted person under the provisions of this Act shall be commenced within three years after either the grant of a pardon or the grant of judicial relief and satisfaction of other conditions described in subsection A of Section 2 of this Act; provided, however, that any action by the state challenging or appealing the grant of said judicial relief shall toll said three-year period. Persons convicted, incarcerated and released from custody prior to the effective date of this Act shall commence an action under this Act within three years of said effective date.

B. Notwithstanding any other provision of law, failure to file any applicable Notice of Claim shall not bar filing of a claim under this Act.

#### SECTION 7. RIGHT OF APPEAL

Any party is entitled to the rights of appeal afforded parties in a civil action following a decision on such motions as set forth in section XX of said Chapter XXX of the [State] code.

#### SECTION 8. ELIGIBILITY FOR IMMEDIATE SERVICES

A. Any person convicted and subsequently imprisoned for one or more crimes for which either he is pardoned on grounds not inconsistent with innocence, or the conviction(s) are reversed or vacated on the basis of newly discovered evidence, and either the charges are dismissed or he is



subsequently re-tried and acquitted, shall receive up to three years of immediate services needed upon release and for successful return to society, including but not limited to: housing, which may include authorizing the prioritization of the wrongfully convicted as a category in [State's] Section 8 Housing Voucher Program; secondary or higher education; vocational training; transportation; subsistence monetary assistance; re-integrative services, and mental, physical and dental health care. The need for these services shall be determined through a review by the appropriate staff at the Department of Social Services [or [State's] relevant agency], and provided by the appropriate state entities, or contractors thereof.

B. Where a conviction is vacated on legal grounds, a judge may order that services similar to those in Section 8(A) of this Act be provided.

# THE INNOCENCE PROJECT

**The Innocence Project** was founded in 1992 by Barry C. Scheck and Peter J. Neufeld at the Benjamin N. Cardozo School of Law at Yeshiva University to assist prisoners who could be proven innocent through DNA testing. To date, over 240 people in the United States have been exonerated by DNA testing, including 17 who served time on death row. These people served an average of 13 years in prison before exoneration and release. The Innocence Project's full-time staff attorneys and Cardozo clinic students provide direct representation or critical assistance in most of these cases. The Innocence Project's groundbreaking use of DNA technology to free innocent people has provided irrefutable proof that wrongful convictions are not isolated or rare events but instead arise from systemic defects. Now an independent nonprofit organization closely affiliated with Cardozo School of Law at Yeshiva University, the Innocence Project's mission is nothing less than to free the staggering numbers of innocent people who remain incarcerated and to bring substantive reform to the system responsible for their unjust imprisonment.

**INNOCENCE PROJECT**



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