

2019

Wrongfully Convicted Does Not Need to Mean Wrongfully Compensated: Using State Legislation to Assure Accurate Compensation

Lilia Valdez

Follow this and additional works at: <https://lawecommons.luc.edu/pilr>



Part of the [Civil Rights and Discrimination Commons](#), [Criminal Procedure Commons](#), [Environmental Law Commons](#), and the [Human Rights Law Commons](#)

Recommended Citation

Lilia Valdez, *Wrongfully Convicted Does Not Need to Mean Wrongfully Compensated: Using State Legislation to Assure Accurate Compensation*, 25 Pub. Interest L. Rptr. 55 (2019).

Available at: <https://lawecommons.luc.edu/pilr/vol25/iss1/9>

This Article is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Public Interest Law Reporter by an authorized editor of LAW eCommons. For more information, please contact law-library@luc.edu.

Wrongfully Convicted Does Not Need to Mean Wrongfully Compensated: Using State Legislation to Assure Accurate Compensation

Lilia Valdez

Many individuals would agree that the American government and its systems have many faults, but what about the systems which are in place to right the wrongs done by government individuals? The handling of wrongful convictions and the way in which the government handles compensating those whom are affected by this government mistake is an area in which growth is necessary and understanding is limited.¹ The group of people that are covered by these statutes are known as exonerees. They are individuals whom were once convicted of a crime which they did not commit and have since been released from prison through the proof of their innocence.² In order to be found innocent, they must prove not only their legal innocence, in the sense that their conviction was overturned due to a procedural error, but also their actual innocence, showing that they did not commit the crime in question.³

After this process occurs, individuals have the opportunity to recover through remedies such as private bills, litigation, and compensation statutes.⁴ A private bill is achieved through approaching one's state legislature individually. The exoneree presents his own case and the state has an opportunity to pass legislation to compensate the individual alone for his sentencing.⁵ Though this is a possibility, the success rate of this is very low and not effective on a large scale. This is because only one individual is compensated at the end of this process.⁶ Another route available is private litigation. Private litigation is often won through the argument of legal theories.⁷ Though available, cases presented as such often hold a very low likelihood of success.⁸ The third, and most effective, manner of compensation for individuals is compensation stat-

¹ Evan J. Mandery et al., *Compensation Statutes and Post-Exoneration Offending*, 103 J. OF CRIM. L. AND CRIMINOLOGY 553, 554 (2013).

² Jessica R. Lonergan, *Protecting the Innocent: A Model for Comprehensive, Individualized Compensation of the Exonerated*, 11 N.Y.U. J. LEGIS. & PUB. POL'Y 405, 406-407 (2008).

³ *Id.*

⁴ *Id.*

⁵ *Id.* at 408.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 409.

utes, which specifically grant monetary compensation to people wrongfully convicted of crimes.⁹ Many political scholars agree that this method, due to its fundamental fairness, uniform treatment of similarly situated individuals, and ease of access, is the best method among those presented for individuals to receive their deserved compensation.¹⁰ The statutes provide compensation based on the wrongful conviction itself, which in turn creates a process which is accessible and reliable to all, all while still being efficient and fair.¹¹

Though many would agree that compensatory statutes are the method which all should rely on, there are currently compensatory statutes in only 35 of the 50 states.¹² Therefore, uniformity in compensation is met within a state, but a national standard of either monetary amount of compensation received, or the factors which must be met in order to be deemed eligible, have not been established.¹³ Legislation which describes the compensation received by individuals often highlights two main factors: the eligibility of individuals and the compensation which will be received.¹⁴

The first of these factors is eligibility, which decides which individuals will be able to receive relief under the state's compensation statute.¹⁵ States often take one of two routes here, some deciding that individuals must have their conviction judicially vacated on the grounds of innocence, while others request that the individual receive a gubernatorial pardon.¹⁶ The burden of proof placed on most statutes is that of clear and convincing evidence of the claimant's innocence.¹⁷ In many states, in order to receive compensation an individual could not have pled guilty or falsely confessed to the crime presented.¹⁸ Though this standard is in effect throughout much of the United States, its unfairness is undeniable. The reality is that innocent individuals will rarely confess to a crime if they are not being coerced in some way; therefore the legislation should not bar individuals for that which they did due in part to the influence of the state.¹⁹ Similarly, states will often analyze an individual's previous criminal history, which is also seen by many as unjust due to the various

⁹ *Id.*

¹⁰ *Id.* at 410.

¹¹ *Id.*

¹² Interview with Rebecca Brown, Director of Policy, Innocence Project (Sept. 30, 2019).

¹³ Lonergan, *supra* note 2, at 411.

¹⁴ *Id.* at 413.

¹⁵ *Id.* at 414.

¹⁶ *Id.*

¹⁷ *Id.* at 415.

¹⁸ *Id.* at 416.

¹⁹ *Id.* at 417.

impacts this would have on cases, such as bias.²⁰ It seems reasonable to assume and apply the standard that once an individual has been released from prison, or has completed parole, they have served their debt and there should no longer be punishment in place.²¹ Each compensatory statute also includes a statute of limitations, in which claimant must file within in order to be eligible for compensation.²² This standard is created and justified to ensure that claimants have a chance to build their case while still assuring a quick resolution for both the state and the individual.

The second part of the legislation often covers the compensation itself, whether it be monetary or the provision of services. Monetary compensation varies by state, allowing a gap to occur for individuals among different states.²³ Though many have proposed the reality that liberty is not something which can be calculated, it has been established throughout the various systems of legislation that individuals should be awarded an amount which begins to reimburse them for the harms caused by the state. This includes, but is not limited to, lost wages and the emotional toll that incarceration takes on an individual.²⁴ Many states place a figure within their legislation that is somewhat based off the state's median income and tort false imprisonment claims.²⁵ Some states also have a cap in place for the amount which individuals can recover, though this has the possibility of limiting individuals from recovering the full amount to which they are entitled.²⁶ Other states also include different reasons for compensating the individual, such as reasonable integration expenses, legal fees, and any fines.²⁷ The payments themselves are distributed through two main approaches: installment payments and lumpsums.²⁸ Each statute attempts its own approach, but if the state uses a system of installment payments, it must also create a procedure by which the claimant can petition to have the installments commuted into a lump sum.²⁹ Following monetary compensation, many statutes also include provision of services. For instance, some states offer physical and mental health care, while others provide educa-

²⁰ *Id.* at 418.

²¹ *Id.* at 419.

²² *Id.*

²³ *Id.* at 420.

²⁴ *Id.*

²⁵ *Id.* at 421.

²⁶ *Id.* at 422.

²⁷ *Id.* at 423.

²⁸ *Id.* at 426.

²⁹ *Id.* at 427.

tional assistance, housing assistance, and employment assistance.³⁰ Very few states offer individuals all of the necessary resources and many focus on solely the need for monetary compensation, though the ideal comprehensive statute addresses all of the substantive areas in which individuals have a need for services.³¹

Due to the knowledge most Americans have about cases of injustice, the perception of the criminal justice system has greatly shifted; in return individuals, both in the public and in the legal community have placed a larger focus and more efforts into the legislation among states.³² Development of the system has also followed with the growth and affordability of postconviction DNA testing for those that claim factual innocence.³³ Many scholars and policy interest groups have placed their focus on state legislation due to the difficulty of receiving compensation through the other two methods, and the consistency, fairness, and ease that comes with compensation through state legislation.³⁴ Though a majority of states have legislation in place today, the variability and ambiguity among states and the statutes that do exist is what presents the biggest wrinkle in compensatory legislation throughout the U.S.³⁵

Many have agreed that the state of Texas has the most complete statute for compensating individuals.³⁶ Through their statute, the exoneree receives monetary compensation as well as services (such as vocational training), tuition and fees for a state university or college, counseling for a year, and assistance in obtaining other support services and medical care.³⁷ On the other hand, there are states like Virginia, who compensates individuals a monetary value equal to 90% of the state's per capita personal income for a maximum of 20 years, as well as career or technical training up to ten thousand dollars.³⁸ This is just one example of implementation, which still exists throughout legislation across the nation. What lacks is also evident through the limitations which individuals have in various states. Restrictions present in many states' legislations do not allow individuals to recover if they have contributed in any way to their

³⁰ *Id.* at 428.

³¹ *Id.* at 440.

³² Robert J. Norris, *Assessing Compensation Statutes for the Wrongly Convicted*, 23 CRIM. JUST. POL'Y REV. 352, 353 (2012).

³³ *Id.*

³⁴ *Id.* at 354.

³⁵ *Id.* at 367.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

own conviction.³⁹ For example, this is a standard of the New York legislation; as a result, 44% of the first twenty seven DNA exonerees were not able to recover due to false convictions.⁴⁰

The issue with much of the legislation in place is that it often creates a substantial barrier on recovery instead of developing a guarantee for individuals to receive restitution.⁴¹ In some states, though individuals may have convictions which have been reversed or vacated, in order to be compensated they may be required to prove their innocence through a preponderance of evidence or through clear and convincing evidence.⁴² It is also often argued that the available methods of remedy are inadequate for the wrongfully convicted through their lack of acknowledgement for different issues, such as treating individuals on death row differently.⁴³ Many would argue that there is a fundamental difference between a death sentence and other punishments, and current methods of compensation inadequately acknowledge the value of life and the weight of death.⁴⁴ It seems logical for statutes to provide easier access for increased compensation to individuals whom have spent time on death row.⁴⁵

Policy makers and legislators alike agree that there are two things that need to occur and continue to develop within the issue of compensation. The first is the creation of legislation in states which do not have any in place, and the second is that of adjustments to the legislation in place that does not justly compensate individuals. In regards to creating legislation, the need for all states to provide meaningful services to wrongfully convicted individuals through both monetary means and the provision of services is necessary in order to assist Americans in successful integration into society.⁴⁶ It is a reality that most current legislation focuses on the monetary compensation of individuals.⁴⁷

Looking forward, it is becoming a clear intent to provide exonerees with reasonable monetary and non-monetary compensation due to the criminal jus-

³⁹ *Id.* at 368.

⁴⁰ *Id.*

⁴¹ Jean Coleman Blackerby, *Life after Death Row: Preventing Wrongful Capital Convictions and Restoring Innocence after Exoneration*, 56 VAND. L. REV. 1179, 1216 (2003).

⁴² *Id.* at 1217.

⁴³ *Id.* at 1219.

⁴⁴ *Id.* at 1220.

⁴⁵ *Id.*

⁴⁶ Jennifer L. Chunias & Yael D. Aufgang, *Beyond Monetary Compensation: The Need for Comprehensive Services for the Wrongfully Convicted*, 28 B.C. THIRD WORLD L.J. 105, 108 (2008).

⁴⁷ *Id.* at 122.

tice system errors they dealt with.⁴⁸ It is often found that the obstacles these individuals face upon their release have gone largely unaddressed by the existing systems in place, though many argue that those who have been wrongfully convicted face even more issues and erroneous circumstances than those who actually committed the crime they were accused of.⁴⁹ These issues are things that would be most efficiently addressed upon release, yet there are no state or federal systems in place to support exonerates.⁵⁰

As more time passes and more research is conducted, clarity has come in multiple areas which have been deemed necessary in regard to inclusion in compensation legislation. For instance, the psychological effect that prisons have on individuals have been made clear.⁵¹ As a result, it is deemed necessary that future legislation has some sort of counseling service for individuals.⁵² Another area in which policy makers are attempting to see improvement is that of employment services and aid following release.⁵³ This is anticipated to be reflected through long-term mental health services, along with any other services which are deemed necessary to address the detrimental impacts of imprisonment.⁵⁴

A problem which often tends to prevent progress is the opposition states present with regard to creating a legislative solution.⁵⁵ They argue that the statutes are going to be increasingly expensive, as there are more exonerates which petition for awards.⁵⁶ The reality is that the amount of individuals who are both innocent and have the means to establish their innocence are small and decreasing as time passes.⁵⁷ The second argument states often make is the fear that undeserving individuals will recover.⁵⁸ These ideas are often reflected through the use of disqualifications by states, which often do not allow individuals to recover if they have confessed to a crime or pleaded guilty.⁵⁹ It is reasonable for states to continue to include limitations in the ability of individ-

⁴⁸ *Id.* at 128.

⁴⁹ *Id.* at 110.

⁵⁰ *Id.* at 111.

⁵¹ *Id.* at 110.

⁵² *Id.* at 113.

⁵³ *Id.* at 117.

⁵⁴ *Id.* at 128.

⁵⁵ Adele Bernhard, *Justice Still Fails: A Review of Recent Efforts to Compensate Individuals Who Have Been Unjustly Convicted and Later Exonerated*, 52 *DRAKE L. REV.* 703, 713 (2004).

⁵⁶ *Id.*

⁵⁷ *Id.* at 714.

⁵⁸ *Id.* at 713.

⁵⁹ *Id.* at 717.

uals to recover, but the reality is that it is not necessary to consider all false confessions as misconduct.⁶⁰ This is proven through the continued discovery that individuals are often pleading guilty or confessing to crimes they did not commit because of a state's coercion claiming that individuals will benefit from it.⁶¹ Many will argue that a state's concerns are often invalid; this is shown by various instances where studies and past exonerations have shown that these instances are few and far between.

To many, exoneration sounds like the solution to a large problem, and though it is, one would be naïve to believe that individuals would become immune from the detrimental effect that the prison system has on individuals.⁶² Exonerees are often experience reentry problems, especially after most of them spend an average of twelve and a half years wrongfully convicted.⁶³ To relieve the process may be difficult, with substantial obstacles that may often require a large amount of both time and money.⁶⁴ The process is expensive and even in states where there is compensation legislation, only about 41% of exonerated individuals ever receive any compensation.⁶⁵

The need for compensation seems clear to most. This follows the idea that individuals should be compensated to create a sense of fairness after being mistreated and incorrectly found guilty.⁶⁶ It is easy to categorize these individuals as victims of a system that, instead of protecting them, turned them into an enemy.⁶⁷ The use of legislation and compensation statutes defends the idea that law and economics are closely related and should be a system which works for its members.⁶⁸ Through a statute, liability would then be placed on the government and would in return create an incentive for prosecutors to avoid wrongful convictions with more effort and accuracy.⁶⁹ Studies have repeatedly shown the way in which positive consequences that result from compensating the wrongfully convicted may create a sufficient justification for new statutes and improvement for those which already exist.⁷⁰

⁶⁰ *Id.* at 718.

⁶¹ *Id.* at 719.

⁶² Mandery et al., *supra* note 2, at 554.

⁶³ *Id.* at 555.

⁶⁴ *Id.* at 557.

⁶⁵ *Id.* at 559-560.

⁶⁶ *Id.* at 563.

⁶⁷ *Id.*

⁶⁸ *Id.* at 564.

⁶⁹ *Id.*

⁷⁰ *Id.*

Compensatory statutes are based on the idea of substantial compensation.⁷¹ If the compensation is not enough, it does not provide individuals with the resources necessary to reenter society successfully and as a result, may cause most to feel devalued by the criminal justice system.⁷² The issue is something that can be seen through a two-fold perspective.⁷³ The first is that each issue is a contributing source, not an exclusionary cause of wrongful convictions.⁷⁴ Holding individuals accountable for their actions does not assure that these things will no longer occur, but will hold them to a standard they must meet. Another issue is the way in which sources operate and remedies that prevent the effect of the compensation.⁷⁵ More specifically, the work that is done and the compensation found has some downsides. These include the cost of exoneration, or the effort which individuals must partake in so that their innocence is believed and valued by a system that has already deemed them members of a certain party.

The reality is that state legislation allows for the most amount of progress to occur in the least amount of time.⁷⁶ The availability of individuals to bring civil cases depends largely on a monetary amount, as well as on civil claims which are often very difficult to prove.⁷⁷ The easiest and most realistic approach is that of a state by state situation, where state entities are creating and defining the standard which they are going to be upheld to and understand the weight and necessity of these situations.⁷⁸ Resources are also at an easier reach when teams like *The Innocence Project* are able to create a standard that others could follow when they are determining what exactly should be placed in the legislation.⁷⁹ The reality is that America is full of people with conflicting ideas and interests; therefore improvement is not often found when individuals are required to follow a standard on a large scale.⁸⁰ Due to this, a response to the events going on in the world around us and a desire to manifest justice is what

⁷¹ *Id.* at 583.

⁷² *Id.*

⁷³ Jon B. Gould & Richard A. Leo, *One Hundred Years Later: Wrongful Convictions After A Century of Research*, 100 THE J. OF CRIM. L. AND CRIMINOLOGY 825, 827 (2010).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ Interview with Rebecca Brown, *supra* note 12.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

will allow for individuals to be awarded for the crime which has been committed against them. This will be in a manner that is fair and just, while also being understood and available for all.⁸¹

⁸¹ *Id.*