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“OH LORD WON’T YOU BUY ME A MERCEDES BENZ?” : A COMPARISON OF STATE WRONGFUL CONVICTION COMPENSATION STATUTES

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“OH LORD WON’T YOU BUY ME A MERCEDES BENZ?”¹: A COMPARISON OF STATE WRONGFUL CONVICTION COMPENSATION STATUTES

Donna McKneelen²

I. Introduction

Post-conviction DNA testing has resulted in the exoneration 292 individuals in the United States.³ The number of those exonerated by DNA testing continues to increase every year. Most individuals exonerated by DNA testing served a considerable amount of time in prison separated from family and friends. According to the Innocence Project⁴, “those proven to have been wrongfully convicted through postconviction DNA testing [spent], on average, 13.5 years behind bars.”⁵ Many walked out of prison with no assistance to aid them with their reentry into society.

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¹ JANIS JOPLIN, MERCEDES BENZ (1971).
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⁴ See About the Innocence Project, INNOCENCE PROJECT, http://www.innocenceproject.org/about/ (last visited May 30, 2012) (The Innocence Project is: a non-profit legal clinic affiliated with the Benjamin N. Cardozo School of Law at Yeshiva University and created by Barry C. Scheck and Peter J. Neufeld in 1992. The project is a national litigation and public policy organization dedicated to exonerating wrongfully convicted people through DNA testing and reforming the criminal justice system to prevent future injustice.).
Of those exonerated by DNA testing, “40% have not received any form of assistance” upon exoneration or after.⁶ Further, “of the 60% that did receive 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.”⁷ And of those that did receive some sort of compensation, most had to wait a considerable amount of time before receiving the award.⁸

These exonerees⁹, while grateful for the scientific advances that restored their freedom, are challenged by many obstacles when entering back into society. Once the prison doors open, exonerees find few community support systems. Almost all must cope with at least some levels of psychological, physical, and financial difficulties.¹⁰

The most daunting concerns for many of these exonerees are for the most basic and fundamental human needs such as housing, food, clothing, medicine costs, transportation, identification documents and other necessities.¹¹ Many exonerees no longer have family and friends available to assist them. In such instances, these individuals must look to social service agencies or nonprofit organizations for assistance. Unfortunately, exonerees are not always

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⁷ Id.
⁸ Colorado Exoneree Struggles without Compensation, INNOCENCE BLOG, (July 6, 2012, 6:30 pm) http://www.innocenceproject.org/news/Blog.php (“[o]n average, the exonerated wait three years to receive the funds.”).
⁹ The use of the word “exoneree” in this article refers to those individuals who are factually innocent of the crimes for which they were convicted – proof of their innocence was based on DNA testing.
¹⁰ See infra note 16.
¹¹ See generally Compensating the Wrongly Convicted, supra note 5.
eligible for social service benefits, and many times nonprofit organizations are without funds to assist these individuals to the degree of assistance they need.\textsuperscript{12}

Many exonerees leave prison with health problems due to long years of incarceration. This is often attributed to less than stellar prison conditions and health care.\textsuperscript{13} If an exoneree leaves prison with an existing health concern such as diabetes, high blood pressure, heart disease, kidney disease, or cancer, for example, the exoneree will find it very difficult to find the funding for medications and follow up care.\textsuperscript{14} In many instances, exonerees are concerned for their very existence outside the prison walls as health care benefits are generally tied to employment and difficult and expensive to receive otherwise. Most exonerees lack the current educational and job training skills necessary to get the kind of employment that provides health care benefits,\textsuperscript{15} and even if they do -- most new employee benefit programs do not cover pre-existing conditions.

The psychological effects of serving time in prison for a crime they did not commit often weighs heavily on exonerees. Many are angry, bitter, frustrated, confused, and scared.\textsuperscript{16} Over the long term of their incarceration, many experience personality changes, difficulty in coping with confinement and loss of freedom, and feelings of deep loss and grief for the life they once had.\textsuperscript{17} Exoneration often brings conflicting feelings: feeling of relief and happiness on the one hand, and feelings of resentment and anger on the other.\textsuperscript{18}

\textsuperscript{12} The author knows this from attending Innocence Project Conferences, as well as discussing these issues with Michigan exonerees. See infra notes 19, 21-22.
\textsuperscript{13} See Making Up For Lost Time: What the Wrongfully Convicted Endure and How To Provide Fair Compensation supra note 6, at 8.
\textsuperscript{14} See generally id. ("[M]any exonerees find that they have less coverage than they had in prison.").
\textsuperscript{15} See id.
\textsuperscript{16} See id. at 7-8.
\textsuperscript{17} See Making Up For Lost Time: What the Wrongfully Convicted Endure and How To Provide Fair Compensation supra note 6, at 7-10. See generally TIM JUNKIN, BLOODSWORTH (2004); CALVIN C. JOHNSON JR. & GREG HAMPIKIAN, EXIT TO FREEDOM (2003); ERIC VOLZ, GRINGO
Most often, exonerees find no one apologizing or taking blame for their situation. In fact, often the public, family members, friends, law enforcement, and others refuse to accept that the exoneree is actually innocent. This stigma leaves the exoneree alone and with no one to assist them with recovering what they have lost. An exoneree must often learn to deal with the stigma associated with the crime from which they were exonerated as though they were the one who committed the crime. Michigan DNA exoneree, Ken Wyniemko,voiced to me how this stigma was one of the most difficult things for him to deal with after his exoneration. He shared that no matter where he went, he felt people were looking at him and talking about him behind his back believing he was released from prison based on a technicality. Employers would not hire him because his case was high profile and customers might believe he was really guilty. Mr. Wyniemko finally found a certain degree of closure on this issue when the real perpetrator of the crime was finally located based on a DNA match.

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18 The author knows this from attending Innocence Project Conferences, as well as discussing these issues with Michigan exonerees. See infra notes 19, 21-22.

19 See Making Up For Lost Time: What the Wrongfully Convicted Endure and How To Provide Fair Compensation supra note 6, at 6.

20 See Know the Cases, Kenneth Wyniemko, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Kenneth_Wyniemko.php (last visited May 30, 2012);

See also Exoneree Ken Wyniemko to speak Thursday at the University of South Dakota, INNOCENCE BLOG, (February 14, 2007), http://www.innocenceproject.org/news/Blog-Search.php?check=true&tag=251. Kenneth Wyniemko was convicted of 15 counts of first degree criminal sexual conduct, breaking and entering, and armed robbery and sentenced to 40-60 years in prison. “The victim of these crimes said that she had very little opportunity to view the assailant, but Wyniemko was still convicted based on a composite sketch,” and after a jailhouse snitch said Wyniemko confessed to the crime. Id. In 2003, after serving 9 years in prison, Wyniemko’s conviction was dismissed after postconviction DNA testing proved his innocence. Id.

the actual perpetrator of the crime for which he was wrongfully convicted was found, some still believe he must have done “something” that led the police to suspect him in the first place. While Mr. Wyniemko believes he finally has some closure, he still lives with the stigma of the crime for which he was wrongfully convicted to some degree.

After attending many conferences involving exonerees, I have learned that many exonerees consider themselves victims of the system. They view themselves as victims the same as the victims of the crimes for which they were convicted. Some exonerees spoke to me about feeling victimized even after release. For instance, the crime victim’s family often does not believe in the innocence of the exoneree. Exonerees shared with me that in some instances, unbelieving family members have been known to have threatened retaliation. In two of Michigan’s DNA exoneration cases that I was involved in, police continued to harass and follow the exonerees for some time after their release.

Many exonerees were incarcerated at a young age. They have moved through their adult years in a tightly regimented and controlled institutional facility. While incarcerated, virtually every aspect of their lives were controlled; they were told when to wake, when and what to eat,

23 See Know the Cases, Kenneth Wyniemko, supra note 18 (Ken Wyniemko has complained that police followed and harassed them for months after their release from prison); See also Know the Cases, Nathaniel Hatchett, INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Nathaniel_Hatchett.php (last visited May 30, 2012) (Nathaniel Hatchett has also complained that police followed and harassed them for months after their release from prison.). In 1998, “Nathaniel Hatchett was 17 years old when he was arrested in Michigan for a rape he didn’t commit.” Based on “false admissions and the fact that Hatchett was arrested driving the victim’s car, he was charged with kidnapping, carjacking, armed robbery and criminal sexual conduct.” Id. In 2006, the Cooley Innocence Project accepted Hatchett’s case and located the evidence from the case in the State Police crime lab. Id. In 2008, DNA testing was conducted on the evidence and confirmed that the semen sample on the vaginal swab excluded Hatchett. Id. Hatchett was released from prison on April 14, 2008.
when to shower, when to sleep, when to exercise, and whom they can associate with. As a result of this institutionalization, once released, these exonerees need help with basic every day skills most of us take for granted. Basic skills such as driving, using a telephone, using an answering machine, using a computer, using e-mail, grocery shopping, clothes shopping, and even sleeping often pose problems for these individuals. Studies of exoneree’s cases by the Innocence Project have revealed that many suffer from a sort of post-traumatic syndrome that makes everyday life difficult to deal with.

The recognition of the challenges faced by exonerees has led to the realization that some type of assistance is needed to help them move smoothly back into outside life and to become productive members of society. Accordingly, compensation statutes have been enacted in 27 states and the District of Columbia; however, 23 states still offer no aide to these individuals.

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24 See generally Making Up For Lost Time: What the Wrongfully Convicted Endure and How To Provide Fair Compensation, supra note 6, at 7-10.
26 The following 23 states do not have compensation statutes: Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Michigan, Minnesota,
Innocence Projects as well as private individuals and organizations are working to pass compensation legislation in the remaining states.

It is often difficult to get state legislators to understand and support the idea of compensation for exonerees. In Michigan for example, I have testified many times before both the State Senate and House Judiciary Committees over a six year period in support of a state statute for compensation. Numerous versions of proposed bills have been presented to the legislature over this period of time. Even explaining what Michigan’s exonerees have had to deal with since their release, we have been unsuccessful in getting the support to pass a compensation statute. Often the debate as to whether a proposed bill should be enacted centers around whether the bill goes too far or not far enough towards the goal.

The purpose of this article is to compare state compensation statutes in an effort to assist those working to enact compensation legislation. Inevitably, legislators want to know what other states are doing and the content of other state compensation statutes. It is helpful for those advocating for state legislation to be able to compare the existing 28 statutes. For that reason, this article is organized to be most helpful in comparing the subject matter and provisions most often of concern to legislators and to those advocating for compensation legislation when deciding what to consider and include in their own state compensation statute.27

27 The number of compensation statutes and the differences between these statutes in not conducive to comparing every aspect of every statute; instead this article will compare only those aspects that are most commonly addressed among these statutes. Additionally, many of the statutes do not go into great detail in areas that often are of legislative concern. For example, Wisconsin’s compensation statute contains only 5 short paragraphs in comparison to Louisiana’s compensation statute that is composed of 17 paragraphs. Compare Wis. Stat. Ann. § 775.05 (West 2010), with La. Rev. Stat. Ann. § 15:572.8 (West 2005).
Noting that compensation statutes are not uniform and some state statutes are poorly constructed and thought out, this article will endeavor to explore the elements that are often addressed in compensation statutes and those elements that are most essential to a thorough compensation package. These elements generally include where to file, time limits on filing, appointment of counsel and payment of fees, who can collect, offsets, tax exemptions, compensation amount and in what form, subrogation, and future claims.

A. Eligibility Requirements

In every state it is the exoneree who is entitled to compensation. Oddly, in the event of the exoneree’s death before a claim is filed, most state statutes are silent as to whether others such as a surviving spouse, an heir, or a personal representative is eligible to file on behalf of an exoneree. Only two states expressly prohibit an exoneree’s estate, personal representative, or heirs from filing such a claim.28

Further, being wrongfully convicted does not automatically or necessarily make an individual eligible for compensation in most states. Standing alone, the mere fact that the claimant was wrongfully convicted and incarcerated is enough in only one state. New Hampshire is the only state that does not specify any particular eligibility requirements other than wrongful conviction and incarceration.29 New Hampshire’s statute simply states that a claimant is eligible “[i]f a claim is filed against the state for time unjustly served in the state

28 See Va. Code Ann. § 801-195.10(A) (West 2010) (“No estate of or personal representative for a decedent shall be entitled to seek a claim for compensation for wrongful incarceration.”); See also Fla. Stat. Ann. § 961.05 (2008) (“No estate of, or personal representative for, a decedent is entitled to apply on behalf of the decedent for compensation for wrongful incarceration.”)
prison when a person is found to be innocent . . . ”  30 Protectively, most state statutes specify additional eligibility requirements that must be met and these eligibility requirements vary greatly between state statutes.  31

Many states specify classes of crimes from which the claimant must have been exonerated before they are eligible to file a claim. In this regard, a minority of the statutes require that the claimant was wrongfully imprisoned based on a felony conviction;  32 however, in

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30 Id.
31 Compare, e.g., Cal. Penal Code § 4900 (West 2007) (at a hearing, claimant must prove that the crime for which he was convicted “was either not committed at all, or, if committed, was not committed by him . . . .”), with D.C. Code Ann. § 2-422 (1981) (requires a showing “upon clear and convincing evidence, he did not commit any of the acts charged or his acts or omissions in connection with such charge constituted no offense . . . .”), with Fla. Stat. Ann. §961.03 ((1)(a)(1))(2008) (claimant must “[s]tate that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence . . . ”), with Iowa Code Ann. § 663A.1(1)(d) (West 1997) (must show that the “conviction was vacated or dismissed, or was reversed, and no further proceedings can be or will be held against the individual on any facts and circumstances alleged in the proceedings which had resulted in the conviction.”), with La. Rev. Stat. Ann. § 15:572.8 (2) (West 2005) (claimant must prove “by clear and convincing scientific or non-scientific evidence that he is factually innocent of the crime for which he was convicted.”), with Neb. Rev. Stat. Ann. §29-4603 (2), (3) (West 2009) claimant must show by “clear and convincing evidence” that he or she was innocent and that “the Board of Pardons has pardoned the claimant, that a court has vacated the conviction of the claimant, or that the conviction was reversed and remanded for a new trial and no subsequent conviction was obtained.”), with N.Y., Ct. Cl. Law § 8-b(3(b)) (McKinney 2007) (claimant must show he has been “pardoned upon the ground of innocence . . . or his judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he was found not guilty at the new trial or he was retried and the accusatory instrument dismissed; provided that the judgment of conviction was reversed or vacated and the accusatory instrument was dismissed . . . “), with Ohio Rev. Code Ann. § 2743.48(A(4)) (West 2003) (claimant’s “conviction was vacated or was dismissed, or reversed on appeal . . . the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought . . . against the individual for any act associated with that conviction.”), and Wis. Stat. Ann. § 775.05 (3)(West 2010) (a claims board must find that “the evidence is clear andconvincing that the petitioner was innocent of the crime for which he or she suffered imprisonment . . . “).

a few states, a claimant may also be eligible for compensation based on a misdemeanor conviction or for pretrial incarceration. The majority of statutes do not require a conviction based on a certain class of crime and only require the claimant to have been incarcerated for a crime he did not commit, not stating any particular class of crime.

In place of the “class of crime” requirement, many states have set other more stringent eligibility requirements. For example, Missouri, Montana, Utah, and Vermont only allow those who can prove they were determined to be actually innocent through DNA testing to make a claim for state compensation. Maryland, Maine, North Carolina, and Illinois provide for

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33 See, e.g., Ala. Code §29-2-156(2) (2001) (claimant must have been convicted of a felony or “have been incarcerated pretrial on a state felony charge, for at least two years . . . .”); Iowa Code Ann. § 663A.1 (1)(c) (West 1997) (claimant is eligible if he was “sentenced to incarceration for a term of imprisonment not to exceed two years if the offense was an aggravated misdemeanor or to an indeterminate term of years . . . if the offense was a felony . . . .”); N.Y., Ct. Cl. Law § 8-b (3)(a) (McKinney 2007) (any person who was “convicted of one or more felonies or misdemeanors” is eligible.); W. Va. Code § 14-2-13a (b) (West 1987) (“Any person arrested or imprisoned or convicted and subsequently imprisoned for one or more felonies or misdemeanors” is eligible.”).


compensation only in cases where the Governor has granted a pardon.\textsuperscript{36} West Virginia requires the claimant to prove that their conviction was dismissed and that “another person was arrested or prosecuted and convicted for the same offense or offenses”\textsuperscript{37}—a difficult standard to meet since most of the cases are old, a conviction has been had, and the cases have long since been closed. Moreover, several states prohibit those who plead guilty from collecting compensation—this is true even if actual innocence has since been proven.\textsuperscript{38} Finally, a claimant is not eligible to collect compensation in nine states if the state determines that the claimant’s own conduct or action helped bring about his conviction.\textsuperscript{39}

\textsuperscript{36} Me. Rev. Stat. Ann. tit. 14, §8241(2)(c) (1993) (and the pardon must be “accompanied by a written finding by the Governor who grants the pardon that the person is innocent of the crime . . .”); Md. Code Ann., State Fin. & Proc. § 10-501(b) (West 2003) (“individual has received from the Governor a full pardon stating that the individual’s conviction has been shown conclusively to be in error); N.C. Gen. Stat. § 148-82(a) (West 1997) (“granted a pardon of innocence by the Governor upon the grounds that the crime with which the person was charged either was not committed at all or was not committed by that person . . . .”); 705 Ill. Comp. Stat. Ann. 505/8 (8)(c) (West 2009) (“person imprisoned received a pardon from the governor stating that such pardon is issued on the ground of innocence . . . .”).

\textsuperscript{37} W. Va. Code § 14-2-13a(e) (West 1987).

\textsuperscript{38} D.C. Code §2-425 (“unless that plea was pursuant to North Carolina v. Alford, 400 U.S. 25 (1970)); Iowa Code Ann. § 663A.1 (1)(b) (West 1997); Mass. Gen. Laws Ann. ch. 258D, § 1(C)(iii) (West 2004) (unless such guilty plea was withdrawn, vacated or nullified by operation of law on a basis other than a claimed deficiency in the plea warnings required by section 29D of chapter 278)”; Ohio Rev. Code Ann. § 2743.48(A)(2) (West 2010); Okla. Stat. Ann. tit. 51, § 154(B)(2)(b) (West 2003); Va. Code Ann. § 8.01-195.10(B) (West 2010) (he may still be able to collect “regardless of the plea”, only if “sentenced to death, or convicted of a Class 1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life . . . .”).

\textsuperscript{39} Ala. Code §29-2-156(2) (2001) (if an individual is requesting compensation for pretrial incarceration it is required that he or she was incarcerated “at least two years through no fault of his or her own . . . .”); Cal. Penal Code §4903 (West 2007) (claimant must prove “the fact that he or she did not, by any act or omission on his or her part, intentionally contribute to the bringing about of his or her arrest or conviction . . . .”); D.C. Code Ann. § 2-422(2); Neb. Rev. Stat. Ann. § 29-4603(4) (West 2009); N.J. Stat. Ann. § 52:4C-3(c) (West 1997); N.Y., Ct. Cl. Law § 8-b (5)(d) (McKinney 2007); Vt. Stat. Ann. tit. 13, § 5574 (a)(4) (West 2007); Va. Code Ann. § 8.01-195.10(B) (West 2010); W.Va. Code § 14-2-13a(e) (West 1987).
B. Where to File

Many state statutes specify where a claim must be filed. Where to file varies significantly depending on the state. As to the procedure for filing, some statutes’ provisions are quite complex and can be difficult to interpret and follow. For example, in Alabama, the legislature specifically created a Committee on Compensation for Wrongful Incarceration to hear compensation claims.\(^{40}\) The Committee is to be composed of nine members and four members are required to be present to make any decision regarding certification of a compensation award.\(^{41}\) Filing begins with an application to the Division of Risk Management, which then notifies the Committee.\(^{42}\) The State’s Division of Risk Management is required to make a record of and file a history of the case and to certify any awards made by the Committee.\(^{43}\) The Division of Risk Management is also tasked with providing any necessary administrative and legal support to the Committee on Compensation.\(^{44}\) Only if the claimant’s eligibility is verified by the Division of Risk Management of the Department of Finance, shall the Committee certify an amount of compensation based on the statute.\(^{45}\) The Committee’s recommendation can then be presented to the State Legislature for its approval in the form of a bill.\(^{46}\) If the bill is approved, it is then up to the State Comptroller to pay the amount of the award.\(^{47}\) There is also a provision that compensation is not necessarily an entitlement and an award’s disbursement will

\(^{41}\) § 29-2-152(a),(c).
\(^{42}\) § 29-2-158(a).
\(^{43}\) § 29-2-152(e).
\(^{44}\) See id.
\(^{45}\) § 29-2-158(a).
\(^{46}\) § 29-2-159(b).
\(^{47}\) Id. at (d).
depend on the Legislature appropriating funds for that purpose; it is not clear who is responsible for presenting the proposal for the appropriation of funds to the Legislature.\textsuperscript{48}

California, Texas, Virginia, and Wisconsin have similarly complex filing and procedural requirements.\textsuperscript{49} The complexity of such provisions can make it difficult for an exoneree to understand and file an appropriate application in the correct location without the assistance of an attorney. Confusion due to the complexity of many of these provisions is likely to lead to an exoneree missing a deadline for application or filing improperly and could result in the exoneree being procedurally barred from his claim.

On the other hand, Illinois and Ohio simply require filing in the Court of Claims.\textsuperscript{50} Nebraska requires filing claims for wrongful conviction under the State Tort Claims Act.\textsuperscript{51} In Connecticut, claims are to be submitted to the Claims Commissioner.\textsuperscript{52} Iowa and Louisiana only requires a filing in the district court.\textsuperscript{53} In Maine and New Jersey claims are to be made in the Superior Court.\textsuperscript{54} Maryland requires filing with the Board of Public Works\textsuperscript{55} and Tennessee requires filing with the board of claims.\textsuperscript{56} Missouri simply requires filing in the sentencing court.\textsuperscript{57} Montana requires filing with the department of corrections.\textsuperscript{58} Vermont requires filing

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\textsuperscript{48} § 29-2-165
\textsuperscript{57} Mo. Ann. Stat. § 650.058(1) (West 2006).
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with the Washington County superior court. Finally, three state statutes are silent and West Virginia merely requires filing “with the court.”

C. **Time Limits on Filing**

Time limits for filing claims vary by state from one year to five years. These time limits are often based on the timing of the exoneration in relation to the date of the passage of the state’s compensation statute. Generally, if exonerated while a compensation statute is in effect, most states require the claimant file within a specific amount of time after the exoneration, usually within two years. Seven state statutes are silent altogether as to time limits for filing.

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Only six states specifically address a claimant’s ability to file if the exoneration occurred before the effective date of the statute.\textsuperscript{64} In such cases, filing is required within a certain amount of time from the effective date of the statute.\textsuperscript{65} Only the District of Columbia expressly prohibits compensation in cases where the individual was exonerated prior to the effective date of the statute.\textsuperscript{66} Six states allow for a claim regardless of when the exoneration occurred and make no express distinction between those exonerated before or after the effective date.\textsuperscript{67}

\textsuperscript{64} See infra note 65.
\textsuperscript{65} Ala. Code § 29-2-162 (2001) (must file within two years from the effective date of the act); 2008 Conn. Gen. Stat. Ann. §54-102uu(f) (must file within two years from the effective date of the statute); La. Rev. Stat. Ann. § 15:572.8(J) (Those exonerated prior to the effective date of the statute must file a petition within three years from the effective date of the statute, “or be forever barred from filing an application.”); N.J. Stat. Ann. § 52:4C-4 (if released or pardoned “during the five year period prior to May 2, 1996 shall have two years from the effective date of this act to file suit.”); N.Y., Ct. Cl. Law § 8-b(7) (must file within two years of the effective date of the statute); W. Va. Code § 14-2-13a(h-i) (must file within two years of the effective date of the statute, or if claiming compensation:

based on the dismissal of a felony charge or charges against him when another person is subsequently charged, arrested and convicted of the same felony charge or charges based upon a dismissal of the felony charge that occurred before the effective date of this section shall file his claim within one year after the effective date of this section.).
\textsuperscript{66} D.C. Code Ann. § 2-424 (the statute does not apply “to any cause of action for unjust imprisonment arising prior to the effective date of this subchapter.”).
D. Appointment of Counsel and Fees

The majority of states do not provide for attorney’s fees or for appointment of counsel to assist a claimant seeking compensation.\textsuperscript{68} However, several states do provide reimbursement for reasonable attorney’s fees in connection with seeking compensation under the state’s compensation statute.\textsuperscript{69} In addition to “reasonable” attorney fees to assist in seeking compensation, Ohio also provides for the reimbursement of any fines or court costs and expenses associated with the claimant’s criminal proceedings and appeals “and, if applicable, in connection with obtaining the wrongfully imprisoned individual’s discharge from confinement.”\textsuperscript{70}

Florida and Nebraska will only compensate for attorney’s fees and expenses paid by the claimant in connection with the criminal proceedings and appeals resulting from the wrongful conviction but make no mention of reimbursement for attorney’s fees in connection with seeking compensation.\textsuperscript{71} Finally, Maryland specifically prohibits a claimant from paying any part of the


\textsuperscript{69} 705 Ill. Comp. Stat. Ann. 505/8 (c) (“... shall fix attorney’s fees not to exceed 25% of the award granted.”); Iowa Code Ann. § 663A.1(6)(d) (West 1997) (provides for “reasonable” attorney fees); N.J. Stat. Ann. § 52:4c-5(b) (West 1997) (provides for “reasonable” attorney fees); Vt. Stat. Ann. tit. 13, § 5574(b)(4) (West 2007) (provides for “reasonable” attorney fees); Wis. Stat. Ann. § 775.05(4) (West 2010) (Claimant is entitled to “any amount to which the board finds the petitioner is entitled for attorney fees, costs and disbursements.”).

\textsuperscript{70} Ohio Rev. Code Ann. § 2743.48(E)(2)(a) - (F)(2) (West 2010).

\textsuperscript{71} Fla. Stat. Ann. § 961.06(1)(d) (2008); Neb. Rev. Stat. Ann §28-4605 (West 2009) (“If the court finds that any property of the claimant was subjected to a lien to recover costs of defense services rendered by the state to defend the claimant . . . .” then the court will “extinguish the lien”);
compensation award “to another person for services rendered in connection with the collection” of claimant’s compensation award; although, stating this should not prohibit the claimant from contracting services to prove his innocence, pardon, or release from imprisonment.  

E. Who Can Collect

While the exoneree is alive, only the exoneree can collect compensation. If an exoneree dies prior to receiving the full amount of compensation in a state that does not pay compensation in a lump sum, only five states specifically allow for either the exoneree’s estate, surviving spouse, surviving minor children, or other heirs to collect amounts yet owed to the exoneree.  

Tennessee limits such collection by providing only for the surviving spouse and minor children; however, if the exoneree dies “without leaving a surviving spouse or surviving minor children, the payments shall cease.”

Missouri and Nebraska specifically state that compensation or compensation claims are not assignable and any obligation still owed the exoneree ceases upon the death of the

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73 Ala. Code § 29-2-150(a) (“in the event that a person awarded compensation dies prior to receiving the full amount of his or her compensation, the person’s estate shall be eligible to receive any remaining compensation”); La. Rev. Stat. Ann. § 15:572.8 (O)(1-4) (if compensation is more than one hundred thousand dollars, the court may fund an annuity contract for compensation payments over a period of time and the contract will provide for survivor benefits); Tenn. Code Ann. § 9-8-108 (7)(C) (2004) (“Upon the death of the claimant, any monthly installments left remaining shall be paid to the claimant's surviving spouse and surviving minor children in equal portions.”); Tex. Civ. Prac. & Rem. Code Ann. § 103.001(c) (West 2001) (“If a deceased person would be entitled to compensation . . . if living, including a person who received a posthumous pardon, the person's heirs, legal representatives, and estate are entitled to lump-sum compensation . . . .”); Va. Code Ann. § 8.01-195.11(B) (West 2010) (the claimant’s annuity must contain a beneficiary provision providing for the annuity’s continued disbursement in the event of death).
exoneree.\textsuperscript{75} Missouri further states that no claims may be filed by the individual’s estate or heirs.\textsuperscript{76} Maryland includes a provision stating, “The Board of Public Works may not pay any part of a grant made under this section to any individual other than the pardoned individual”; however, the provision makes no reference to the exoneree’s estate or heirs and may ambiguously only refer to payments for services rendered.\textsuperscript{77} Nineteen state statutes are silent as to whether the exoneree’s estate, surviving spouse, surviving minor children, or other heirs are eligible to collect compensation due to a claimant.\textsuperscript{78}

F. \textbf{Offsets}

The majority of state statutes do not discuss offsets.\textsuperscript{79} For the greater part, the state statutes that do discuss offsets specifically prohibit offsets for expenses acquired by the state or other political units of the state in connection with the arrest, prosecution, and/or imprisonment


\textsuperscript{76} Mo. Ann. Stat. § 650.058(3).


of the claimant. This includes any offsets for the feeding, clothing, shelter, and medical care of
the claimant. Moreover, Massachusetts prohibits an offset or reduction of the compensation
award for “tuition or fees for educational services or the value of services to be provided to the
claimant that may be awarded . . . .” Missouri vaguely prohibits the “costs of care” from being
deducted from any compensation award and mentions no other offset prohibitions.

G. Tax Exemptions

Surprisingly, only California, Massachusetts, Vermont and Utah expressly discuss state
tax exemptions for compensation awards -- the remainder of state statutes are silent. California
prohibits an award from being “treated as gross income to the recipient under the Revenue and
Taxation Code.” In Massachusetts, “[o]nly those portions of a judgment that are paid or
retained as compensation for services in bringing a claim . . . by an attorney representing the
claimant . . . shall be subject to taxation by the commonwealth.” In Vermont, claimant’s award
“shall not be subject to any state taxes, except for the portion of the judgment awarded as
attorney’s fees . . . .”

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Ann. ch. 258D, § 5(B) (West 2004) (also adds that no offset is allowed for “any reduction in
tuition or fees for educational services or the value of services to be provided to the claimant that
may be awarded to the claimant . . . .”); Neb. Rev. Stat. Ann § 29-4604(2(a-b) (West2009) (also
adds that no offset is allowed for any education provided to claimant while imprisoned); Utah
81 See id.
84 See Utah Code Ann. § 78B-9-405(5)(a); See also statutes cited infra notes 82-84.
85 Cal. Penal Code § 4904 (compensation not treated as gross income).
H. How Much Compensation and in What Form

Statutes vary significantly as to the cash amount awarded to claimants – from $80,000 for each year imprisoned in Texas,\(^{88}\) to a maximum amount of $20,000 in New Hampshire regardless of how many years spent in prison,\(^{89}\) to no money at all in Montana.\(^{90}\) In New Jersey, the claimant is awarded the greater of “twice the amount of the claimant's income in the year prior to his incarceration or $20,000.00 for each year of incarceration,” and the award cannot exceed this amount.\(^{91}\)

Wisconsin provides a mere $5,000 per year of incarceration, not to exceed $25,000 total.\(^{92}\) Maryland limits compensation to “actual damages”\(^{93}\) with no definition of “actual damages” anywhere in the statute.\(^{94}\) Imprecisely, Nebraska provides compensation for “damages found to proximately result from the wrongful conviction and that have been proved based upon a preponderance of the evidence.”\(^{95}\) Illinois stands alone in providing compensation using a graduated scale based on how long claimant was imprisoned: “for imprisonment of 5 years or less, not more than $85,350; for imprisonment of 14 years or less but over 5 years, not more than $170,000; for imprisonment of over 14 years, not more than $199,150.”\(^{96}\) California, Iowa, and Missouri calculate compensation on a daily basis -- California providing $100.00 per day with Iowa and Missouri providing $50.00 per day wrongfully imprisoned.\(^{97}\) Ohio provides $40,330

\(^{92}\) Wis. Stat. Ann. § 775.05 (4) (West 2010).
\(^{94}\) Id.
for each year of incarceration. Virginia provides compensation in an “amount equal to 90 percent of the inflation adjusted Virginia per capita personal income as reported by the Bureau of Economic Analysis of the United States Department of Commerce for each year of incarceration, or portion thereof.” Similarly, Utah provides that a claimant may receive “up to a maximum of 15 years, the monetary equivalent of the average annual nonagricultural payroll wage in Utah.” Three states provide $50,000 for each year wrongfully convicted.

Most states provide little guidance as to the amount of compensation or as to how to calculate the amount the state may award a claimant. Maine is silent except to say that the amount “may not exceed $300,000 for all claims arising out of a single conviction.” Similarly, Oklahoma and Tennessee are silent except Oklahoma sets a cap of $175,000 and Tennessee sets a cap of $1,000,000 to any amount awarded. Connecticut mentions no specific amount or limit on the compensation amount and leaves it to the Claims Commissioner to consider relevant factors and determine an amount. Similarly, the District of Columbia,

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100 Utah Code Ann. § 78B-9-405(1)(a) (West 2008) (this amount is “as determined by the data most recently published by the Department of Workforce Services at the time of the petitioner's release from prison.”).
105 2008 Conn. Gen. Stat. Ann. §54-102uu(d) (West 2008) (factors to consider includes, but is not limited to, the evidence the claimant presents “as to the damages suffered by such person and whether any negligence or misconduct by any officer, agent, employee or official of the state or any political subdivision of the state contributed to such person’s arrest, prosecution, conviction or incarceration.”).

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Massachusetts, New York, Vermont and West Virginia leave the decision of the amount to the presiding judge.\textsuperscript{106}

Uniquely, Texas provides an exoneree who “was released on parole or required to register as a sex offender . . . to compensation in an amount equal to $25,000 multiplied by the number of years served either on parole or as a registered sex offender.”\textsuperscript{107}

Finally, many states provide forms of aid other than, or in addition to, monetary awards to help exonerees reintegrate smoothly back into the community. These forms of aid often include employment training, tuition assistance, health insurance coverage for medical and counseling services, back child support payments or some other form of aid.\textsuperscript{108}

\textsuperscript{106} D.C. Code Ann. § 2-423 (1981); Mass. Gen. Laws Ann. ch. 258D, § 5(A) (West 2004) (amount determined by “the court or the jury” and not to exceed $500,000); N.Y., Ct. Cl. Act § 8-b (6) (McKinney 2007); Vt. Stat. Ann. tit. 13, § 5574(b) (West 2007) (“provided that the amount of damages shall not be less than $30,000.00 nor greater than $60,000.00 for each year the claimant was incarcerated . . . .”); W. Va. Code § 14-2-13a(g) (West 1987).

\textsuperscript{107} Tex. Civ. Prac. & Rem. Code Ann. § 103.052(b) (West 2009) (“expressed as a fraction to reflect partial years”).

\textsuperscript{108} See, e.g., 2008 Conn. Gen. Stat. Ann. § 54-102uu(e) (“in addition to the compensation paid . . . . Claims Commissioner may order payment for the expenses of employment training and counseling, tuition and fees at any constituent unit of the state system of higher education and any other services such person may need . . . .”); Fla. Stat. Ann. § 961.06(1)(b),(c),(d) (2008) (provides state tuition, reimbursement for fines, penalties, or court costs, and reasonable attorney fees and expenses); Iowa Code Ann. § 663A.1 (6)(c)(West 1997) (provides for “any lost wages, salary, or other earned income which directly resulted from the individual’s conviction and imprisonment, up to twenty-five thousand dollars per year.”); La. Rev. Stat. Ann. § 15:572.8 (2)(a),(b),(c)(i-ii) (West 2005) (provides for “costs of job-skills training for three years,” “necessary medical and counseling services for six years,” tuition expenses at any state of Louisiana community college or public university, and tuition for “completion of secondary education” or “adult education program,” with total costs not to exceed $80,000.); Md. Code Ann., State Fin. & Proc. § 10-501(a)(1) (West 2003) (may pay a “reasonable amount for any financial or other appropriate counseling for the individual, due to the confinement.”); Mass. Gen. Laws Ann. ch. 258D, § 5(A) (provides for tuition benefits and compensation for services necessary “to address any deficiencies in the individual’s physical and emotional condition that [is] shown to be directly related to the individual’s erroneous felony conviction and resulting incarceration . . . .”); Mont. Code Ann. § 53-1-214 (1) (West 2003) (while no monetary compensation is provided, the statute does allow for educational aid); Neb. Rev. Stat. Ann. § 29-4606 (West 2009) (Statute allows for providing services; however, the statute does not list the
Texas also includes reentry and reintegration services and other programs for those wrongfully convicted within a separate inmate welfare and reentry statute. The Texas statute dictates that “the department shall develop a comprehensive plan to ensure the successful reentry and reintegration of wrongfully imprisoned persons . . . and [the plan] must include: life-skills, job, and vocational training . . . .” Most unusual is the Texas mandate requiring that “the department provide, before a wrongfully imprisoned person is discharged from the department, the person with any documents that are necessary after discharge, including a state identification card.”

I. Subrogation

Tennessee’s is the only state that adds a subrogation provision to its compensation statute. Tennessee provides that the state “shall have the right of subrogation . . . against any person who willfully and intentionally committed an act or engaged in conduct that directly resulted in or contributed to the wrongful conviction and imprisonment of the claimant.”

No statute provides for subrogation against a claimant who collects in a separate civil suit against a party other than the state for the wrongful conviction. There are no pay-back services allowed and states that “the value of services provided shall be treated as an advance against any award or judgment under the act.”; N.C. Gen. Stat. § 148-84(a)(1-2) (West 1997) (provides for job skills training and tuition expenses); Ohio Rev. Code Ann. § 2743.48 (E)(2)(c-d) (West 2010) (statute provides for “any loss of wages, salary, or other earned income directly resulted from the wrongfully imprisoned individual’s arrest, prosecution, conviction, and wrongful imprisonment . . . ” as well as any debts due to the department of corrections); Tex. Civ. Prac. & Rem. Code Ann. § 103.052(a)(2) (West 2009) (compensation may be awarded for child support payments owed by the claimant that accrued during incarceration); Va. Code Ann. § 8.01-195.11(C) (West 2012) (compensation may be awarded for tuition reimbursement up to $10,000 from a Virginia community college for career or technical training).

110 Id. at § 501.091(b)(1).
111 Id.at § 501.091(b)(2).
provisions in any of the state statutes regardless of whether an inmate collects money from any independent suit or source prior to making a state claim for compensation or after collection of compensation under a state claim.\textsuperscript{113}

J. Prohibitions for Future Claims

In a few states, the acceptance of an award of compensation bars any future civil redress or claims by the claimant against the state for the same wrongful conviction.\textsuperscript{114} It can be argued, unless specifically stated, a prohibition against further action against the state does not include a prohibition of action against a county or city or its employees in that state. Texas protects against this assumption by prohibiting an exoneree from bringing a civil action against “any governmental unit or an employee of any governmental unit.”\textsuperscript{115}

Alabama protects only its Committee on Compensation; in doing so, it prohibits any civil action against the “committee or any of its members, for providing any reports, records, opinions or any actions or recommendations . . . .”\textsuperscript{116} Additionally, anyone “acting in good faith and without negligence or malicious intent in providing information to the committee” is protected from civil liability.\textsuperscript{117}

\textsuperscript{113} See generally supra note 25 (excluding the Tennessee statute).
\textsuperscript{117} Id.
Virginia is the most detailed in its prohibition and requires an exoneree to “execute a waiver forever releasing” the state, agencies of the state, employees, political subdivisions, and others from any future claims.\textsuperscript{118}

Connecticut affirmatively allows claimants to pursue “any other action or remedy . . . against the state and any political subdivision of the state . . . arising out of such wrongful conviction and incarceration.”\textsuperscript{119} Iowa clarifies that a compensation award to claimant does not bar claimant from bringing an action “based on any negligent or wrongful acts or omissions which arose during the period of the wrongful imprisonment, but which are not related to the facts and circumstances underlying the conviction or proceedings to obtain relief from the conviction.”\textsuperscript{120}

K. Conclusion

Nineteen of the twenty-one compensation statutes have been enacted only since 2001.\textsuperscript{121} This may be the result of recent forensic science advances that have provided tangible proof that wrongful convictions actually do occur. Those advocating for those individuals who have suffered the ramifications of being wrongfully convicted have made a rush to legislators seeking compensation to help these individuals get back on their feet. Currently, there is no consistency among state statutes.

All exonerees, regardless of in what state convicted, deserve some sort of state assistance in getting their lives back. Unfortunately, depending on the state where the individual was convicted, some fare better than others. As this article presents, states have addressed this issue

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\textsuperscript{118} Va. Code Ann. § 8.01-195.12(B) (West 2010).
\textsuperscript{120} Iowa Code Ann. § 663A.1(5) (West 1997).
\textsuperscript{121} See generally statutes cited supra note 25.
\end{footnotesize}
in very different manners. Some states like Texas have been very generous in providing compensation that fairly provides adequate support to assist the wrongfully convicted in the recovery of their lives. While no amount of compensation or assistance can ever compensate for the disruption of their lives, a comprehensive, well planned out compensation statute can certainly go a long way toward helping in the individual’s recovery and assimilation back into society.

A comprehensive look at the best of what other states have included in their statutes can help in advancing better compensation statutes. A good statute, in addition to a monetary award, at a minimum should include the following:

- A simple, easy to understand filing process as in Illinois, Ohio, Iowa, Louisiana, Maine, Maryland, Missouri, and Montana.
- An allowance for attorney’s fees or the appointment of counsel to assist a claimant in seeking compensation as in Iowa, Ohio, Vermont, Wisconsin, New Jersey, and Illinois.
- A provision in the event of an exoneree’s death, for the filing of a claim or the continuing collection of a compensation award by a surviving spouse, an heir, or a personal representative.
- A lengthy filing deadline or no filing deadline at all as in Illinois, Massachusetts, Missouri, Montana, Nebraska, Utah, Vermont, and Virginia.
- An Offset prohibition for expenses incurred by the state or other political unit connected to claimants arrest, prosecution and/or incarceration.
- A provision prohibiting the award from being treated as gross income under the Federal Tax Code as in California.
• A provision exempting the compensation award from state taxes.

• Provisions for services to help exonerees reintegrate smoothly back into the community: such as employment training, tuition assistance, health insurance coverage for medical and counseling services, back child support payments, and other reentry and reintegration services.

Hopefully, this article will assist those legislating to reform current deficient compensation statutes and those lobbying for legislation in states where no current compensation statutes exist. Existing statutes have both strong points and weak points. Awareness of these points may assist in eventually obtaining uniform, comprehensive compensation statutes in every state.