

KANSAS LEGISLATIVE RESEARCH DEPARTMENT

68-West-Statehouse, 300 SW 10th Ave.
Topeka, Kansas 66612-1504
(785) 296-3181 • FAX (785) 296-3824

kslegres@klrd.ks.gov

<http://www.kslegislature.org/klrd>

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To: Joint Committee on Special Claims Against the State

From: Dezeree Hodish, Legislative Fellow

Re: Exoneree Compensation

EXONERATION OVERVIEW

The National Registry of Exonerations, a joint project of the University of Michigan Law School and the Center on Wrongful Conviction at Northwestern University Law School, maintain the country's largest database of exonerations. According to the Registry, there have been 1,245 exonerations since 1989. The majority of exonerees are African American males convicted by juries for homicide and sexual assault. DNA evidence contributed to the release of 30 percent of the exonerated, while non-DNA evidence was used to release 70 percent of the exonerated. Perjury, false accusation, and official misconduct were the most common factors that led to wrongful convictions. Other factors include mistaken witness identification, false or misleading forensic evidence, and false confessions. The Registry estimates that the average time from conviction to exoneration is 11.9 years, and 13.0 years from arrest to exoneration. There have been four exonerations in Kansas, three of which resulted in compensation for the exoneree.

EXONEREE COMPENSATION

Twenty nine states, Washington, D.C., and the federal government have laws that allow an exoneree to submit a claim for compensation. These laws provide compensation for felony convictions that resulted in incarceration. Thirteen states also provide compensation for incarceration that resulted from non-felony convictions. Four states (Colorado, Massachusetts, Virginia, Washington) offer compensation to juveniles who would have faced a felony conviction if tried as adults.

All but one state (Montana) provide monetary compensation to the exoneree. Montana provides a tuition waiver at community colleges and state universities. Monetary compensation is typically calculated at a rate per day or per year that the exoneree was incarcerated. The rate of per day compensation ranges from \$50 to \$100. The rate of per year compensation ranges from \$20,000 to \$75,000. Colorado, Texas, Washington, and the federal government provide additional compensation for time spent sentenced to execution or time spent on parole, probation, or a sex offender registry. In 14 states and Washington, D.C. where a daily or yearly rate is unspecified, legislatures have granted the supervising authority of the claims process the

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right to determine appropriate compensation, although an upper limit is often specified. Supervising authorities include claims boards, claims commissioners, superior courts, and courts where original convictions were obtained. In addition to financial compensation, the majority of states provide support services. These can include tuition waivers at community colleges and state universities; full health insurance coverage; payment for physical and mental health care costs; compensation for child support payments owed by the exoneree that became due during incarceration; payment for unemployment training; and attorney's fees.

In order to receive compensation, an individual must often file a claim for compensation no later than two years after the date of receiving a pardon, vacated sentence, or reversal. Laws place the burden of proof on the individual to prove his or her own innocence by demonstrating that the claimant did not intentionally contribute to the bringing about of his or her own arrest or conviction for the crime with which he or she was charged. Some laws detail specific actions that prevent an individual from receiving compensation. These can include: pleading guilty to the offense charged, or to any lesser offense; committing perjury; fabricating evidence; and making false statements. Three states (Missouri, Montana, and Vermont) require that a claimant provide DNA evidence that proves innocence. The majority of states prohibit an exoneree from the receipt of compensation for any portion of a sentence in prison during which the individual was also serving a concurrent sentence for the conviction of another crime. Compensation is revoked if the exoneree is convicted of a felony offense after the date compensation was issued.

The enclosed table provides a comparative overview of monetary and support services that are provided to those whose crimes were exonerated. Please contact me if I can be of further assistance.

Enclosure

DMH/rc

EXONEREE COMPENSATION

Entity	Monetary Compensation	Support Services
Alabama (Ala. Code § 29-2-150 <i>et seq.</i>)	\$50,000 for each year of incarceration. Committee on Compensation for Wrongful Incarceration may award supplemental funds if circumstances warrant such an award.	
California (Cal. Pen. Code § 4900 <i>et seq.</i>)	\$100 per day of incarceration.	
Colorado (Col. Rev. Stat. § 13-65-101 <i>et seq.</i> , § 13-3-114, § 23-1-132, § 39-22-104)	<p>\$75,000 for each year of incarceration. An additional \$50,000 for each year incarcerated and sentenced to execution. \$25,000 for each year served on parole, on probation, or as a registered sex offender.</p> <p>*Exoneree must complete a personal financial management class prior to receiving funds.</p> <p>*Compensation will be reduced if exoneree does not provide proof of health insurance coverage.</p>	Tuition waiver at state institutions for exoneree and exoneree's children. Compensation for child support payments owed by the exoneree that became due during incarceration. Payment of attorney's fees.
Connecticut (Conn. Gen. Stat. Ann. § 54-102uu)	Claims Commissioner determines amount based on evidence, damages suffered, professional misconduct or negligence (if any).	May include payment for employment training and counseling, tuition and fees at state institutions, and other services needed to facilitate reintegration into the community.
Washington, D.C. (D.C. Code Ann. § 2-421)	Court determines amount.	
Florida (Fla. Stat. Ann. § 961.01 <i>et seq.</i>)	\$50,000 for each year of incarceration. Maximum: \$2,000,000 (includes monetary and support services).	Tuition waiver for up to 120 credits at career center, community college, or state institution. Payment of fines, penalties, and costs paid by the exoneree. Payment of attorney's fees.
Illinois (Ill. Com. Stat. Ann. § 505/8, 1015/2, 1710-125).	Court determines amount. No more than \$85,350 for incarceration up to five years. No more than \$170,000 for incarceration up to 14 years. No more than \$199,150 for incarceration exceeding 14 years.	Job and placement services, including assessment, resume assistance, interview preparation, occupational and labor market information, referral to employers, job training, and program providers. Access to re-entry services program to assist exoneree in obtaining mental health services. Payment of attorney's fees up to 25 percent of compensation award.

EXONEREE COMPENSATION

Entity	Monetary Compensation	Support Services
Iowa (Iowa Code Ann. § 663A.1)	\$50 per day of incarceration plus lost wages, salary, or other earned income up to \$25,000 a year.	Payment of attorney's fees.
Louisiana (La. Rev. Stat. Ann. § 15:572.8)	\$25,000 per year of incarceration. Max: \$250,000.	Up to \$80,000 for job skills training for three years, medical and counseling services for six years, and tuition waiver at community colleges and state universities.
Maine (Me. Rev. Stat. Ann. § 8241 et seq.)	Superior Court determines amount. Maximum: \$300,000.	
Maryland (Md. Code, Fin. & Proc. § 10-501)	Board of Public Works determines amount based on damages suffered by exonerée.	Board of Public Works may grant a reasonable amount for any financial or other appropriate counseling for the exonerée, due to incarceration.
Massachusetts (Mass. Gen. Laws Ann. § 10-501)	Court determines what is fair and reasonable compensation. Maximum: \$500,000.	Court may grant funding for services that are reasonable and necessary to address physical and emotional conditions related to incarceration, and a tuition reduction of 50 percent at state universities and community colleges.
Mississippi (Miss. Code Ann § 11-44-1 et seq.)	\$50,000 for each year of incarceration. Maximum: \$500,000.	Payment of attorney's fees at various levels of compensation.
Missouri (Mo. Ann. Stat. § 650.058)	\$50 per day of post-conviction confinement.	
Montana (Mont. Code Ann. § 53-1-214)		Tuition waiver at community colleges and state universities.
Nebraska (Neb. Rev. Stat. Ann § 29-4601 et seq.)	Court determines amount based on damages resulting from wrongful conviction. Maximum: \$500,000.	
New Hampshire (N.H. Rev. Stat. Ann. § 541-B:1 et seq.)	Board of Claims determines amount. Maximum: \$20,000.	

EXONEREE COMPENSATION

State	Monetary Compensation	Support Services
New Jersey (N.J. Stat. Ann. § 52:4C-1 et seq.)	Twice the amount of the claimant's income in the year prior to incarceration or \$20,000 for each year of incarceration, whichever is greater	Payment of reasonable attorney's fees.
New York (N.Y. U.C.C. Law § 8-b)	Court determines what is fair and reasonable compensation.	
North Carolina (N.C. Gen. Stat. Ann. § 148-82 et seq.)	\$50,000 per year of incarceration. Maximum: \$750,000.	Court may grant funding for job skills training for at least one year through an appropriate state program, and tuition waiver at community college or state institution.
Ohio (Ohio Rev. Code Ann. § 2305.02, 2743.48)	\$40,333 per year or amount determined by state auditor for lost wages, salary, and earned income.	Payment of attorney's fees.
Oklahoma (Okla. Stat. Ann. tit. 51 § 154)	Court determines amount. Maximum: \$175,000.	
Tennessee (Tenn. Code Ann. § 9-98-108)	Board of Claims determines amount based on exonerate's physical and mental suffering and loss of earnings. Maximum: \$1,000,000.	Exonerate is eligible for group health benefit plan through the Department of Criminal Justice. Compensation for child support payments owed by the exonerate that became due during incarceration.
Texas (Tex. Civ. Prac. & Rem. Ann. Code § 103.001 et seq.)	\$80,000 for each year of incarceration. An additional \$25,000 for each year served on parole or as a registered sex offender.	Tuition waiver for up to 120 credits at career center or public institution of higher education.
U.S. Government (28 U.S.C. § 2513)	Court of Federal Claims determines amount. Maximum: \$50,000 per year of incarceration. \$100,000 per year of incarceration sentenced to execution.	
Utah (Utah Code Ann. § 78B-9-405)	For each year of incarceration, up to a maximum of 15 years, exonerate will receive the average annual non-agricultural payroll wage in Utah.	

EXONEREE COMPENSATION

State	Monetary Compensation	Support Services
Vermont (Vt. Stat. Ann. tit. 13 § 5572 et seq.)	Superior Court determines amount between \$30,000 and \$60,000 per year for each year of incarceration.	Superior Court may grant eligibility for up to ten years of the Vermont Health Access plan, compensation for re-integrative services, mental and physical health care costs, and reasonable attorney's fees. Court can award economic damages, including lost wages and costs incurred by the claimant for his or her criminal defense and for efforts to prove his or her innocence.
Virginia (Va. Code Ann. § 8.01-195.10 et seq.)	90% of the Virginia per capita personal income for up to 20 years.	Transition assistant grant of \$15,000. Reimbursement, up to \$10,000, for career and technical training at a community college.
Washington (Wash. Rev. Code. § 4.92.130, 28B.15, 72.09)	\$50,000 for each year of incarceration, including time spent awaiting trial. An additional \$50,000 for each year incarcerated and sentenced to execution.	Compensation for child support payments owed by the exonerated person that became due during incarceration. Reimbursement for all restitution, assessments, fees, and court costs paid by exoneratee as required by pretrial orders, judgment, and sentence. Payment of attorney fees, up to 10 percent of compensation award, for successfully bringing the wrongful conviction claim (Maximum: \$75,000).
West Virginia (W.V. Code Ann. § 14-2-13a)	Court determines what is fair and reasonable compensation.	
Wisconsin (Misc. Stat. Ann. § 775.05)	Claims Board determines amount. Maximum: \$25,000, \$5,000 per year. Additional compensation may be awarded, but must be approved by legislature.	