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Testimony on Senate Bill 125
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My name is Michelle Feldman and I am a state policy advocate at the Innocence Project, a national organization dedicated to exonerating the wrongfully convicted. We work with our local partners across the country, including the Midwest Innocence Project, on policies that prevent and address wrongful conviction. I would like to begin by thanking Senator David Haley for his work on Senate Bill 125, and his dedication to the wrongfully convicted over the years.

Wrongful conviction is the ultimate government overreach. In eminent domain cases, the government compensates people for taking their personal property. It is almost unimaginable that the government does not do the same for taking someone's personal liberty.

Kansas does not have a compensation statute in place, which means that the only redress for a wrongfully convicted person after proving his innocence is to file a lawsuit alleging civil rights violations. This is often a long and difficult process because one must prove official misconduct that led to a constitutional violation, which are high thresholds to meet. In fact, only one-third of the nation's DNA exonerees have won civil lawsuits for their wrongful convictions.

Nationally, 32 states and the federal government have compensation laws to ensure that the wrongfully convicted do not have to endure a difficult civil lawsuit to get the financial support they deserve. Senate Bill 125 would create a fair and fiscally responsible compensation law in Kansas. The bill closely mirrors the Texas compensation statute, offering \$80,000 per year of wrongful incarceration. Only Kansans who can prove by "clear and convincing evidence" that they did not commit the crime for which they were convicted would be eligible. Many states have a lower burden of proof of "preponderance of the evidence." There is a provision that would offset any civil damages the exoneree received from the state or municipalities with money received under the statute. Through this legislation the state can expect the same consistent payout to exonerees and share the financial burden with municipalities and local taxpayers.

We would suggest two revisions to the legislation:

1. **Remove the bar to wrongfully convicted people who pled guilty.** Nationally, 11 percent of Americans whose wrongful convictions were proven with DNA pled guilty. Given the tremendous pressures that innocent people sometimes face to plead guilty, Kansans who can prove their innocence by the high standard of 'clear and convincing evidence' should be eligible for compensation. To date, there have not been any wrongful conviction cases in Kansas in which an innocent person pled guilty.
2. **Changing the time frame for when the claim must be filed from "two years after release from imprisonment" to "two years after the charges are dismissed or two years after the bill takes effect, whichever is first."** According to the National Registry of Exonerations, there are three wrongfully convicted Kansans who have been released from prison over two years ago, but would otherwise be eligible for compensation under this legislation, In addition, Floyd Bledsoe, who was exonerated in December 2015 would only be eligible to file for compensation until December 2017. Also, while a wrongfully convicted person might be released from prison after his conviction is vacated, the prosecutor could take time to decide whether to retry him. It would be preferable for the two-year deadline to correspond to the date that charges are dismissed.

These two proposed revisions would not come at a high cost to the state. There would only be a total of four wrongfully convicted Kansans who could possibly be eligible for state compensation, and it is not clear whether these individuals would meet the 'clear and convincing' burden of proof.

Kansas is also taking steps to prevent wrongful convictions, which should minimize the need for state payments under this statute. In the last couple of years, law enforcement, prosecutors, the Attorney General, criminal defense attorneys and the innocence community have worked together on statutes that protect the innocent against eyewitness misidentification and false confessions and statements, which are two of the leading contributors to wrongful conviction cases.

Senate Bill 125 would represent another step to address wrongful convictions by ensuring that innocent Kansans are financially compensated for the suffering they endured. Thank you for considering this important issue and we hope you will support this legislation.