

Senate Judiciary Hearing on Senate Bill 499-1

Written Testimony of Janis C. Puracal, Executive Director, Forensic Justice Project

March 2, 2021

Thank you for the opportunity to present testimony on Senate Bill 499-1 regarding compensation for wrongful convictions. We appreciate the Committee's willingness to consider this bill that would serve the critical purpose of providing just compensation to individuals who were wrongly convicted and incarcerated for crimes that they did not commit. I offer the following testimony in support of the -1 amendment based on my work with incarcerated individuals who are fighting wrongful conviction and those who are still fighting to rebuild their lives after exoneration.

A. Background of the Forensic Justice Project

The use of faulty forensics (like bite mark analysis or microscopic hair analysis) is one of the leading causes of wrongful conviction. The Forensic Justice Project ("FJP") is a nonprofit organization that was created in Oregon to challenge the use of faulty forensic evidence and to find helpful forensic evidence. We work at all stages of the criminal process from pre-trial through post-conviction. Our mission is to prevent wrongful convictions before they happen and correct them after they happen. To that end, we focus on getting good science into the courtroom and bad science out of the courtroom.

B. Wrongful Convictions Happen Around the Country, including in Oregon

As of March 2, 2021, there had been at least 2,738 exonerations around the country, which accounts for more than 24,770 years lost in our prison system.¹ That is 2,738 men and women who were innocent, but incarcerated and taken from their families. Some of those men and women spent decades behind bars before they were finally released. There are new exonerations each week, and recent years have set record numbers of exonerations around the country.²

C. The Trauma of Wrongful Conviction

Although we measure a wrongful conviction by the number of years lost in prison, that number does not accurately capture the full impact of a wrongful conviction.

Besides the obvious impact of losing one's job and earning capacity, individuals often spend years being intimidated, harassed, and tormented by false accusations. Families

¹ The National Registry of Exonerations,
<http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx>.

² *Id.*, <http://www.law.umich.edu/special/exoneration/Pages/Exoneration-by-Year.aspx>.



are destroyed as the accused is subjected to public humiliation in the courtroom and in the media. Those who have children miss out on birthdays, holidays, first days of school, and every other highlight of parenting a young child.

The ripple effects for family members are no less severe. I came to this work because my older brother, Jason, was wrongfully convicted, and I experienced first-hand the pain of watching as someone you love is slowly dehumanized. I have also watched Jason struggle for years to rebuild a life for himself and his family since his exoneration.

The fight is not over just because the person walks out of prison.

D. State of the Law in Oregon

There have been 21 exonerations in Oregon since 1991.³ And yet, Oregon is one of only 14 states that *do not* have a law to compensate a person after wrongful conviction. Washington and California have had compensation statutes for years, and Idaho just passed a statute this session.

Unlike these other states, Oregon exonerees' only path for justice is through civil suits, many of which are dismissed because of procedural bars, like the statute of ultimate repose,⁴ or because of laws that provide immunity for police and prosecutors, even if misconduct is intentional. The current process can be expensive, time-consuming, and re-traumatizing for exonerees.

SB 499 will provide exonerees with another path to the financial security they need to rebuild their lives and recover from the traumatic experience of being wrongly accused, convicted, and incarcerated.

E. SB 499 and -1 Amendment

The Forensic Justice Project proposed a -1 amendment to SB 499. The goal of the amendment is to ensure just compensation for those who have been wrongfully convicted. The amendment will bring the law in line with states like Kansas and Montana, which have passed statutes that provide an efficient and effective process to compensate exonerees.

In particular, the -1 amendment will create a more streamlined procedure that is less expensive and protracted for those wrongfully convicted. This more efficient procedure is particularly important for exonerees because many of them have already been subjected to years of post-conviction litigation and appeals to vacate the wrongful criminal conviction. The National Registry of Exonerations has calculated the average length of incarceration for individuals in the database, and for all races and all crimes, exonerees

³ *Id.*, <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx>.

⁴ ORS 12.115(1) (prevents an individual for bringing suit more than ten years after a negligent act or omission).

spent, on average, 8.9 years incarcerated before exoneration.⁵ The impact of race is also a factor: “Black exonerees spent an average of 10.7 years in prison, about 45% more than white exonerees, who averaged 7.4 years.”⁶ The streamlined procedure in SB 499-1 is a critical amendment for all exonerees.

The amendment also establishes a “preponderance of the evidence” standard, which is consistent with the civil standard of proof, and the amendment gives the court discretion to consider the difficulties of proof caused by, for example, the passage of time, the death of witnesses, or the destruction of evidence. The amendment further ensures that an exoneree’s fair compensation will not be diminished by state or federal taxes, or through inflation.

When we proposed the -1 amendment, we did so with the very specific goal of ensuring that those who deserve compensation can get it.

We support SB 499-1, and we remain available to assist the Committee. Thank you.

Sincerely,



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⁵ The National Registry of Exonerations, *Milestone: Exonerated Defendants Spent 20,000 Years in Prison*, at 2,
<https://www.law.umich.edu/special/exoneration/Documents/NRE.20000.Years.Report.pdf>.

⁶ *Id.* at 3.