

INNOCENCE PROJECT

Contact: Laurie Roberts, State Policy Advocate, lroberts@innocenceproject.org

Senate Bill 499-1 (Favorable)
Establish an Oregon Exoneree Compensation Law
Laurie Roberts, Innocence Project
Senate Committee On Judiciary and Ballot Measure 110 Implementation
March 3, 2021

The Innocence Project is a national organization dedicated to freeing the innocent and working on changes to law and policy to strengthen the justice system. Since 1992, the Innocence Project has worked to exonerate 375 innocent men and women through DNA evidence.

When the state takes an innocent person's liberty, the state has a responsibility to help repair the damage. Wrongfully convicted people lose their freedom and time with family and friends, while suffering the agony of prison life. There is also economic suffering. Exonerees missed critical opportunities to build careers, increase earnings, establish savings and pay into Social Security. They often lose loved ones and the opportunity to grow a family. After proving innocence and securing their freedom, the wrongfully convicted often have to restart their lives without any resources.

Nationally 35 states, the federal government and Washington D.C. have exoneree compensation laws that provide a framework for wrongfully convicted people to receive financial justice. In recent weeks, the Idaho Legislature unanimously approved their own compensation legislation and the Governor will sign that bill into law soon. However, Oregon is one of only 15 (soon to be 14) states that provides wrongfully convicted people with nothing after exoneration.

Senate Bill 499-1, sponsored by Senators Kim Thatcher, Chris Gorsek, and Michael Dembrow, is modeled after similar legislation from Kansas, which passed their compensation law in 2018. In its amended form, the legislation finally establishes a straightforward process for Oregon's innocent to obtain compensation. The Innocence Project believes this legislation is a fair, fiscally responsible approach, and we urge you to vote in favor.

The following information details our suggested amendments, and compares provisions of the legislation to exoneree compensation laws nationally.

Suggested Amendments for SB 499

1. Recommend that a **“preponderance of evidence”** standard be included in the eligibility requirements; this is the standard used to prevail on federal civil rights claims stemming from wrongful convictions. 8 states also use this standard ((CA, CT, KS, HI, MN, NV, IL, OH).
2. Recommend that 1(1)(b) be amended to read, “The person’s conviction was reversed or vacated and either the charges were dismissed or on retrial the person was found not guilty, **or the person received a grant of pardon on the grounds of innocence;**”

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National Perspective: SB499 Compared to Other Exoneree Compensation Laws

1. Amount

SB 499: \$65,000 per year of wrongful incarceration, plus additional \$25,000 per year under state supervision (eg parole, probation, sex offender registry)

National Picture: The majority of states provide a set amount of compensation at a rate of at least \$50,000 per year of wrongful incarceration. The national average for state compensation payments is \$68,000 per year of wrongful incarceration.¹

- Greater than \$50k= D.C., NV, TX, CO, KS, OH, CA, CT, VT, ID²
- \$50k= AL, FL, HI, IN, MI, MN, MS, NJ, NC, WA
- Washington, DC- \$200,000
- NV- 1-10 years= \$50,000 per year of wrongful incarceration; 10-20 years= \$75,000 per year of wrongful incarceration; 20 or more years = \$100,000 per year of wrongful conviction
- TX- \$80,000
- CO- \$70,000
- KS- \$65,000
- ID- \$62,000 per year of wrongful incarceration; \$75,000 per year on death row; \$25,000 per year on sex offender registry

Additional Compensation:

- **Federal:** Additional \$100,000 per year on death row.
- **CO:** \$50,000 additional compensation per year on death row; \$25,000 per year on parole, probation or sex offender registry.
- **MN:** \$25,000 per year on parole, probation or sex offender registry.
- **WA:** \$50,000 additional per year on death row, \$25,000 per year on parole, probation, sex offender registry.
- **KS:** \$25,000 per year for each additional year served on parole, post-release supervision or on sex offender registry.
- **ID:** \$25,000 per year for each additional year served on parole or on sex offender registry.

2. Non-Monetary Benefits

SB 499: A circuit court judge may direct appropriate state agencies to provide the following: 1) counseling; 2) housing assistance; medical assistance as defined by ORS 414.025; 3) educational assistance; 4) job training; 5) legal services to regain custody of children; 6) assistance with food and transportation and personal financial literacy; and 7) immediate assistance upon exoneration.

¹ Jeffrey Gutman. *An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted*, 82 Mo. L. Rev. 369 (2017).

²Note that Idaho SB 1027 unanimously passed the Senate (2/4/21) and the House (2/23/21) and is expected to be signed into law in March 2021

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National Picture:

- **Tuition assistance:** 14 states (CO, CT, FL, KS, LA, MA, MN, MT, NC, NJ, NV, TX, VA, VT)
- **Medical expenses:** 9 states (CA, IL, KS, LA, MN, NJ, NV, TX, VT)
- **Job search assistance:** 7 states (CA, CT, LA, IL, NC, NJ, TX)
- **Housing assistance:** 3 states (CA, KS, NJ)
- **Counseling services:** 12 states: (CA, CT, IN, KS, LA, MA, NJ, NV, TX, VA, VT, WA)
- **Re-entry services:** 6 states: (CA, CT, IL, IN, NV, TX)
- **Immediate assistance upon exoneration:** 1 state (CA)

3. Who determines eligibility?

SB499: A circuit court judge in the claimant's home county would determine who meets the eligibility requirements.

National Picture: The federal law and 21 of 35 states compensation laws task a judge with determining eligibility for compensation.

- **Circuit Court:** 2 states (HI, MS)
- **Superior Court or County Supreme Court:** 5 states (MA, ME, NJ, VT, WA)
- **Court of Claims:** 5 states (IL, MI, NY, WV, OH)
- **District Court:** 5 states (CO, KS, NV, UT, IA)
- **Sentencing court:** 1 state (MO)
- **State civil court:** 1 state (OK)
- **Trial court:** 2 states (FL, LA)
- **U.S. Court of Claims:** Federal

4. Eligibility Requirements/Process

SB 499:

1. Circuit court determines eligibility & the compensation owed.

- a. Person did not commit the crime or act as an accessory or accomplice.
- b. Conviction was reversed or vacated, and charges were either dismissed, or person was retried and acquitted.
- c. Person did not commit perjury, fabricate evidence, or bring about the conviction by his own conduct.

National Picture:

- The criteria reflect eligibility requirements in other jurisdictions including **Kansas, Nevada, New Jersey** and the **federal government**.
- **These laws have a judge determine eligibility through a civil claims process.** The judge rules that a person is eligible if:
 - 1) He or she can affirmatively prove he or she did not commit the crime for which he or she was convicted or act as an accessory or accomplice;
 - 2) Conviction was reversed or vacated, and charges were either dismissed, or person was retried and acquitted.

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3) Person did not bring about his or her conviction by his or her own conduct.

- **“Preponderance of evidence”** is the standard used to prevail on federal civil rights claims stemming from wrongful convictions.

Kansas K.S.A. 60-5004

(c)(1) The claimant shall establish the following by a preponderance of evidence:

(A) The claimant was convicted of a felony crime and subsequently imprisoned;

(B) the claimant's judgment of conviction was reversed or vacated and either the charges were dismissed or on retrial the claimant was found to be not guilty;

(C) the claimant did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial; and

(D) the claimant did not commit or suborn perjury, fabricate evidence, or by the claimant's own conduct cause or bring about the conviction. Neither a confession nor admission later found to be false or a guilty plea shall constitute committing or suborning perjury, fabricating evidence or causing or bringing about the conviction under this subsection.

Nevada Nev. Rev. Stat. Ann. § 41.900

The court shall award damages for wrongful conviction in accordance with section 7 of this act if the person proves by a preponderance of the evidence that:

(a) He or she was convicted of a felony in this State and was subsequently imprisoned for the conviction;

(b) He or she did not commit the felony for which he or she was convicted and the person:

(1) Was not an accessory or accomplice to the acts that were the basis of the conviction;

(2) Did not commit the acts that were the basis of the conviction; and

(3) Did not aid, abet or act as an accomplice or accessory to a person who committed the acts that were the basis of the conviction;

(c) He or she was not convicted of an offense necessarily included in the offense charged;

(d) Any of the following occurred:

(1) The judgment of conviction was reversed or vacated and the charging document was dismissed;

(2) The basis for reversing or vacating the judgment of conviction was not legal error that was unrelated to his or her innocence, and if a court ordered a new trial, the person was found not guilty at the new trial or the person was not retried and the charging document was dismissed; or

(3) The person was pardoned by the State Board of Pardons Commissioners on the grounds that he or she was innocent; and

(e) The person did not commit perjury or fabricate evidence at the criminal proceeding that brought about his or her felony conviction and the person did not by his or her own conduct cause or bring about his or her felony conviction.

Federal 28 U.S.C.A. § 2513

(a) Any person suing under section 1495 of this title must allege and prove that:

(1) His conviction has been reversed or set aside on the ground that he is not guilty of the offense of which he was convicted, or on new trial or rehearing he was found not guilty of such offense, as appears from the record or certificate of the court setting aside or reversing such conviction, or that he has been pardoned upon the stated ground of innocence and unjust conviction and

(2) He did not commit any of the acts charged or his acts, deeds, or omissions in connection with such charge constituted no offense against the United States, or any State, Territory or the District of Columbia, and he did not by misconduct or neglect cause or bring about his own prosecution.

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(b) Proof of the requisite facts shall be by a certificate of the court or pardon wherein such facts are alleged to appear, and other evidence thereof shall not be received.

New Jersey NJ Stat Ann §§ 52:4C-1 to 4C-7

52:4C-3. Burden and standard of proof

The person (hereinafter titled, “the claimant”) shall establish the following by clear and convincing evidence:

- a. That he was convicted of a crime and subsequently sentenced to a term of imprisonment, served all or any part of his sentence; and
- b. He did not commit the crime for which he was convicted;
- c. He did not commit or suborn perjury, fabricate evidence, or by his own conduct cause or bring about his conviction. Neither a confession or admission later found to be false shall constitute committing or suborning perjury, fabricating evidence, or causing or bringing about his conviction under this subsection; and
- d. He did not plead guilty to the crime for which he was convicted.

5. State Required to Pay in Lump Sum/Installment/Annuity

- A. **Not specified**: 15 states = CA, CT, HI, IA, IL, ME, MN, NC, NE, NH, NV, NY, OK, VT, WI, Fed.
- B. **Lump Sum Only**: 2 states + D.C = OH, WV
- C. **Option for Lump Sum or Installments/Annuities**: 10 states AL, CO, KS, MA, MI, MD, NJ, WA, TN, TX
 - **CO**: \$100,000 per fiscal year; exoneree can opt for lump sum after 1st year.
 - **KS**: Max initial payment \$100,000 or 25% of the award; remainder paid as annuity at \$80,000 per year.
 - **MI**: Lump sum or installments w/20% initial payment & remainder not to exceed 10 years.
 - **NJ**: If damages exceed \$1 million, the court may order the award to be paid as an annuity with a payout over a maximum period of 20 years.
 - **TN**: Monthly installments. Exoneree can request lump sum or payments as annuities.
- D. **Installments/Annuities Only**:
 - **FL**: State purchases annuity with 10 year term.
 - **IN**: Equal sums distributed over 5 years.
 - **LA**: \$25,000 over 10 years.
 - **MO**: Installments of \$36,500 per fiscal year
 - **MS** \$50,000 per fiscal year over 10 years.
 - **UT**, Quarterly payments not to extend beyond 10 years.
 - **VA**: Intital 20% payment; remaning 80% in annuity over 25 years.

6. State Required to Pay in Lump Sum/Installment/Annuity

Eight states have compensation statutes that explicitly account for inflation or cost of living adjustments in the amount of compensation that is awarded:

Colorado – The amount of compensation awarded per year of wrongful incarceration shall be adjusted annually by the state auditor to account for inflation.

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Connecticut – In determining the amount of compensation, the Claims Commissioner shall determine the yearly award amount as up to 200% of the median household income for the state, adjusted for inflation using the consumer price index for urban consumers.

Florida – The Chief Financial Officer may adjust the annual rate of compensation for inflation using the consumer price index for urban consumers.

Illinois – The Court of Claims shall annually adjust the maximum awards authorized under the compensation statute to reflect any increases in the Consumer Price Index for Urban Consumers for the previous calendar year, provided that no annual increment may exceed 5%.

Ohio – The amount of compensated specified in the statute is awarded, or the adjusted amount determined by the auditor of state. The auditor of state adjusts the amount “in January of each odd-numbered year” based on the yearly average of the previous two years of the consumer price index for urban consumers or its successive equivalent.

Utah – The amount of compensation per year or portion of a year of incarceration, shall be awarded as the monetary equivalent of the average annual nonagricultural payroll wage in Utah, as determined by the most recently published data from the Dept. of Workforce Services at the time of the petitioner’s release.

Virginia – Compensation is awarded per year or partial year of incarceration, in an amount equal to 90% of the inflation adjusted Virginia per capita personal income as reported by the Bureau of Economic Analysis of the U.S. Dept. of Commerce.

Washington – The amount of compensation awarded is adjusted “to account for inflation from July 28, 2013” onward.