

# INNOCENCE PROJECT

## Senate Bill 1584 (Favorable) Pass the Oregon Justice for Exonerees Act

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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 37 states, the federal government and Washington D.C. have exoneree compensation laws that provide a framework for wrongfully convicted people to receive financial justice. Since last session, new or updated laws have passed in Idaho, Montana, Maryland, and Rhode Island. However, Oregon is one of only 13 states that provides wrongfully convicted people with nothing after exoneration.

**Senate Bill 1584**, sponsored by a large bipartisan group of legislators including Senators Thatcher, Gorsek, Prozanski, Gelsner, Manning, and Dembrow, is modeled after similar legislation from Kansas, which passed their compensation law in 2018. SB 1584 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 compares provisions of the legislation to exoneree compensation laws nationally.

### **National Perspective: SB1584 Compared to Other Compensation Laws**

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**SB1584: \$65,000 per year of wrongful incarceration, plus additional \$25,000 per**

**year of wrongful state supervision** (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.<sup>1</sup>

- Greater than \$50k = DC, NV, TX, CO, KS, OH, CA, CT, VT, ID
- \$50k = AL, FL, HI, IN, MI, MN, MS, NJ, NC, WA
- Washington DC - \$200k
- Nevada - 1-10 years=\$50k/yr; 10-20 years=\$75k; 20+ years=\$100,000
- Texas - \$80k
- Colorado - \$70k
- Kansas - \$65k
- Idaho - \$62k; \$75k per year on death row; \$25k 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.

## **//. Non-Monetary Benefits**

**SB 1584:** 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

#### **National Picture**

- **Tuition assistance:** 14 states and D.C. (CO, CT, FL, KS, LA, MD, MA, MN, MT, NC, NJ, NV, TX, VA)
- **Child Support:** 4 states and D.C. (CO, MN, RI, TX)
- **Medical Assistance :** 9 states and D.C. (CA, KS, LA, MD, MN, MT, NJ, NV, TX, VT)
- **Employment Assistance:** 7 states (CA, CT, LA, NC, NJ, WA, TX)
- **Housing assistance:** 7 states (CA, KS, MD, MN, MT, NV, NJ)

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

- **Counseling services:** 8 states (CA, KS, LA, MA, NJ, NV, VT, WA)
- **Re-entry/Transitional services:** 8 states (CA, CT, ID, IN, NV, VT, WA, TX )
- **Immediate assistance upon exoneration:** 1 state (CA)

### III. Who determines eligibility?

**SB 1584:** A circuit court judge determines who meets the eligibility requirements.

**National Picture:** The federal government and 26 out of 35 state compensation laws task a judge with determining eligibility for compensation.

- **Circuit Court:** 2 states (HI, MS)
- **Superior Court or County Supreme Court:** 6 states (MA, ME, NJ, RI, VT, WA)
- **Court of Claims:** 5 states (IL, MI, NY, WV, OH)
- **District Court:** 7 states (CO, ID, KS, MN, MT, NV, UT, IA)
- **Sentencing court:** 1 state (MO)
- **State civil court:** 1 state (OK)
- **Trial court:** 2 states (FL, LA)
- **U.S. Court of Federal Claims:** Federal
- **Administrative Court:** 1 state (MD)

### IV. Eligibility Requirements/Process

**SB 1584:** A circuit court judge determines eligibility and amount owed:

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

Note: (2)(a) requires that a nonunanimous jury verdict is not sufficient, by itself, to prove eligibility under SB 1584.

**National Picture:**

The criteria reflect eligibility requirements in other jurisdictions including **Kansas, Nevada, 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.

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.

(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.