

DATE: February 29, 2024

TO: Chair Prozanski, Vice-Chair Thatcher, and Members of the Senate Committee on Judiciary

FROM: Laurie Roberts, Policy Advocate, Innocence Project

RE: Wrongful Conviction Compensation

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Thank you for inviting me here today to discuss the implementation of SB1584, Oregon's wrongful conviction compensation statute. Over the past 31 years, the Innocence Project has freed or exonerated over 245 innocent people, identified the leading causes of wrongful conviction, and worked to transform the systems responsible for these injustices.

We are extremely proud of the collaborative effort undertaken by this committee, the Oregon Innocence Coalition – which includes the Oregon Innocence Project and the Forensic Justice Project – and the Department of Justice in 2021 and 2022 to develop a comprehensive compensation program to finally provide financial justice to wrongfully convicted people of this state. That is why we are extremely surprised and disappointed by the aggressive approach now undertaken by DOJ to contest nearly all of the claims filed since the passage of SB1584. While certainly in every state with a statutory compensation system, there are some cases that take a long time to adjudicate and some cases that go to trial to determine whether the claimant can meet their burden under the law, the Innocence Project is not aware of any state anywhere in the country that has enacted a compensation law and then immediately fought over 90% of the claims filed. Oregon is a serious outlier among the 37 states with a statute on the books. Anecdotally, after consulting with several attorneys who litigate under similar statutes around the country, all were very surprised to learn how many claims DOJ is contesting.

Per the number reported by DOJ, since the effective date of SB1584 in March 2022, 32 claimants have provided notice of intent to file, approximately 14 have filed a petition, and DOJ has agreed to compensate 2 people (arising out of the same case). Collecting data from other states on how long a compensation claim takes to finally adjudicate can be difficult, but here is what we do know:

- In Michigan (eff. Mar 2017), 63 petitioners have successfully filed for compensation, taking an average of 16 months to finally adjudicate, under a clear and convincing standard.¹

¹ See "Michigan: How Long Does it Take to Resolve State Compensation Claims and Civil Rights Claims?" Gutman, Jeff. <<https://www.law.umich.edu/special/exoneration/Documents/UTM%20Michigan.pdf>>

- In Indiana (eff. Nov 2019), the first claimant succeeded in October 2020, less than a year after the effective date. In the 4 years since enactment, 33 people have filed claims, and 10 have prevailed.²
- In Kansas (eff. Jul 2018), the first claimant succeeded in December 2018, six months after the effective date. In the 5 years since enactment, 7 people have prevailed.³
- In Nevada (eff. Oct 2019), the first claimant succeeded in July 2020, less than a year after the effective date. In the first 2 years since enactment, at least 6 petitions were filed, and at least 5 people were successful.⁴

This committee was moved to establish a compensation program in particular after hearing the story of Earl Bain, who was wrongfully convicted in Malheur County by a nonunanimous jury of sexually abusing his own daughter. In addition to destroying his relationship with his children and living with the horrific stigma of having to formally register as a child sex offender, Earl was forced to miss more than six years of birthdays, first days of school, funerals, and other formative milestones with his family, friends, and community. But Earl never wavered in his innocence, and in 2020, he received the only gubernatorial pardon on the basis of innocence in Oregon history, with the support of the District Attorney of Malheur County. This committee made amendments to SB1584 to address some of the specific difficulties Earl faced during his wrongful conviction, with the intent that he would soon be able to benefit from those generous additions to the law. Yet, Earl is going to trial in July 2024 to once again prove his innocence, at the behest of DOJ. If Earl doesn't have as good a case for deserving a swift adjudication to his claim under the language of SB1584, then it is hard to imagine who would.

The posture of DOJ is in stark contrast with its neighbor to the east, Idaho, which passed its own compensation statute 1 year before Oregon, in March 2021. By June, both of Idaho's known exonerees had been compensated, and the state comptroller spoke very proudly in a budget presentation that year about the speediness of their program. Since then, another exoneree has been discovered. Joseph LaCroix was wrongfully convicted in 2017⁵; in 2022, the head of the Commission of Pardons and Parole happened to review his file, and realized Joseph should not be in prison. She contacted the governor's office, whose staff reviewed the file and agreed. They worked together to get an attorney in the State Appellate Public Defender's office to represent him pro bono, who eventually filed a motion to vacate the conviction in December 2022, which the state did not oppose. By March 2023, Joseph was a free man. Six months later, the state of Idaho agreed to pay him the compensation he was owed.

²<https://indianacapitalchronicle.com/2023/08/16/indiana-has-paid-out-1-million-in-restitution-to-eight-wrongfully-in-carcerated-people/>

³ Innocence Project communication with Kansas Office of the Attorney General, April 2021

⁴ Innocence Project communication with Nevada Office of the Attorney General, April 2021

⁵ <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=6658>

INNOCENCE PROJECT

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It is the hope of the Innocence Project, with guidance and leadership from the committee, that Oregon's exoneree community will have their cases resolved efficiently, as Idaho does. We are committed to being a partner to all stakeholders in this effort to optimize the implementation of SB1584, so that the numerous meritorious claims still pending are addressed quickly, and so that the exonerees this committee intended to help are able to receive those benefits, focus on rebuilding their lives, and begin the long process of healing.

Respectfully submitted,



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