

**Senate Judiciary Informational Hearing on Wrongful Conviction Compensation**

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

**March 1, 2024**

Thank you for the opportunity to present testimony regarding the implementation of the compensation statute for wrongful convictions. We appreciate the Committee's continued work on this program.

**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. Overview**

A reporter from HuffPost recently published a story about challenges exonerees are facing with the implementation of the wrongful conviction compensation program in Oregon.<sup>1</sup> The article highlights the fact that, although the legislature passed a bill to compensate individuals who were wrongfully convicted in Oregon, almost none of them have been paid. Instead, the compensation statute has turned into another years-long fight for these innocent individuals. We provide this testimony to highlight what has gone wrong, with the goal of starting a more productive conversation to see how we can correct the course.

**C. Background and Purpose of the Compensation Statute**

As a reminder, the legislature passed the compensation bill (SB 1584) in 2022. At that time, the Committee heard from several exonerees who shared their experience with wrongful conviction here in Oregon. They talked about the fact that it's not just about the years lost in prison. These individuals missed all the things that the rest of us live for. They missed the births of their children and grandchildren. They missed weddings, funerals, and graduations. They missed taking their kids to their first day of school and teaching them how to ride a bike.

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<sup>1</sup> Jessica Schulberg, *Oregon Passed a Bill to Compensate the Wrongfully Convicted. Almost None of Them Have Been Paid.*, HUFFPOST (Dec. 20, 2023), [https://www.huffpost.com/entry/oregon-wrongful-conviction-compensation-bill\\_n\\_6580ab28e4b08e9b410b898e](https://www.huffpost.com/entry/oregon-wrongful-conviction-compensation-bill_n_6580ab28e4b08e9b410b898e).



Our goal in bringing the compensation bill forward was to acknowledge some of what these individuals lost and give them a way to start to move forward.

An exoneree who can satisfy the requirements of the statute—including with proof by a preponderance of the evidence that they did not commit the crime—is awarded \$65,000 per year of incarceration.<sup>2</sup> Under the statute, an exoneree can also get access to state or local programs, such as counseling, job training, food assistance, and housing assistance.

At the time the compensation bill passed in 2022, Oregon was one of only 13 states that did not have a law to compensate those who were wrongfully convicted.

The Oregon Legislature passed the compensation bill with unanimous support in both chambers. The language of the bill that passed was the result of two years of hard work and compromise between the advocates of the bill and the Oregon Department of Justice (“DOJ”). That hard work led to DOJ coming out in support of the bill.

That is why DOJ’s approach to these cases since the law passed has been so surprising to many of us who handle these cases. Since the bill passed, DOJ has contested almost every claim.

#### **D. DOJ is Contesting Meritorious Claims**

We have exonerees who clearly meet the standard set out in the statute, and yet they are being forced to re-litigate the criminal case all over again.

Earl Bain is a great example. The Judiciary Committee heard from Mr. Bain in 2022. Mr. Bain was exonerated after the Governor pardoned him based on innocence. The Governor found that Mr. Bain is “truly innocent,” and yet DOJ has refused to compensate him. Mr. Bain has been litigating his compensation claim for over a year, and the case is scheduled for an eight-day trial in July. The case is scheduled for trial because DOJ argued to the court that the Governor’s pardon based on innocence is not enough. DOJ argued to the court that Mr. Bain has to actually prove his innocence all over again.

Santiago Morales is another great example. Mr. Morales was a migrant farm worker in Sandy, Oregon when he was wrongfully convicted of murder in 1986. He spent five years in prison before he was exonerated after an eyewitness to the murder testified under oath about what happened on the night of the killing. The eyewitness identified the true perpetrators by name and confirmed that Mr. Morales was not there. In 2014, the Governor publicly acknowledged Mr. Morales’ exoneration in a speech. Yet, DOJ has refused to compensate Mr. Morales. Mr. Morales gave notice of his compensation claim in 2022, filed his lawsuit in 2023, and he has been litigating the claim ever since.

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<sup>2</sup> The annual amount increased to \$67,000 per year as of July 1, 2023. Exonerees can also recover an annual amount for each year on post-prison supervision and the sex offender registry.

Bradley Holbrook is another great example. Mr. Holbrook was a lawyer in California when he was wrongfully convicted in Oregon. After his exoneration, Mr. Holbrook applied to the California bar to reinstate his law license, and the California court issued a 24-page written opinion discussing all of the evidence presented through trial and developed through post-conviction. The court found there was no evidence to support the conviction. After the California court reinstated his law license, Mr. Holbrook took and passed the bar in Oregon, and the Oregon bar accepted him as an attorney. Yet, DOJ has refused to compensate him.

There are several other cases that fall under the same category. These are meritorious cases where the individuals spent years fighting to prove they did not commit the crime. Mr. Holbrook spent 18 years fighting to prove his innocence. Another exoneree, Scott Cannon out of Marion County, spent nine years fighting to prove his innocence. Another exoneree, Nicholas McGuffin out of Coos County, spent 19 years fighting to prove his innocence.<sup>3</sup>

In each of these cases, a court or the Governor credited new evidence of innocence developed post-conviction. That is, a court or the Governor found new evidence of innocence to be credible and granted relief. And DOJ is opposing these cases. The goal of the compensation statute was to get these meritorious cases paid quickly so that these individuals would not have to spend another decade in litigation.

#### **E. DOJ is Engaging in Unnecessary Litigation**

We understand that DOJ has to vet cases and decide which cases are appropriate to resolve and which cases are not appropriate to resolve. But what we are seeing goes far beyond just vetting cases. Indeed, there are at least two cases where the Governor publicly acknowledged innocence, and still DOJ wants to re-litigate the entire case.

We are also seeing motions filed and hearings held because DOJ is taking positions that directly contradict what DOJ negotiated in the bill. For example, in Mr. Morales' case, DOJ issued 23 requests for production demanding that Mr. Morales produce, for example, every transcript and document associated with any civil or criminal case that he has ever been involved in at any time over the past 32 years since his exoneration. DOJ is also demanding Mr. Morales produce every document showing any time he has requested food assistance over the past 32 years. DOJ is also demanding Mr. Morales produce every document showing his income since exoneration and his forecasted income for the future.

Despite what DOJ represented when it backed the compensation bill, DOJ is now representing something different to the courts. Where the Judiciary Committee clearly

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<sup>3</sup> During the informational hearing, I mistakenly said that Mr. McGuffin spent 19 years litigating his innocence. The statement should be clarified to note that Mr. McGuffin was charged 10 years after he was first accused of the crime and, after he was charged, he spent the next nine years in litigation. In total, Mr. McGuffin spent 19 years fighting to prove his innocence.

established the annual compensation amount, DOJ is now trying to whittle away at the amount recoverable by exonerees such as Santiago Morales.

I am aware of another case that is scheduled for trial next month where DOJ is arguing that the individual should not get compensation for any time spent in county jail as opposed to the Department of Corrections. If an exoneree spent time in county jail awaiting trial, DOJ is arguing that the time does not count. The statute provides compensation for all of the time incarcerated, because the person was innocent and should not have been behind bars. Whether those bars are in county or DOC does not matter; the person was innocent.<sup>4</sup>

## **F. Impact on Exonerees**

We know that, for those individuals who are wrongfully convicted, the process of getting convicted and then fighting for exoneration was traumatizing enough. Most of them lost their families and friends and all sense of safety and security. Some of them are still struggling with PTSD and medical conditions from their time inside. The point of the compensation statute was not to re-traumatize them all over again. And yet, that is exactly what is happening. The State is subjecting these individuals to the trauma of re-trying the criminal case in its entirety.

Our fear is that if we do not act to fix this now, the very exonerees who have appeared before the Judiciary Committee to support the compensation bill will end up with nothing. And it will be too late.

Our purpose in submitting this testimony is to start a discussion in the interim with DOJ about how the compensation statute should be implemented so that meritorious cases and resolved quickly and exonerees are compensated.

More broadly, we need to talk about how the State handles wrongful convictions. We can learn from other states, such as Texas, where they have a robust and more comprehensive program to address the causes of wrongful conviction (such as faulty and misleading forensics), how to correct past wrongful convictions, and how to prevent future wrongful convictions that ruin innocent lives. Thank you.

Sincerely,



Janis C. Puracal

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<sup>4</sup> The Kansas Supreme Court already rejected this argument from the Kansas Attorney General. See Tim Carpenter, *Kansas Supreme Court: Wrongful Conviction Law Applies to Inmates at State Prisons, County Jails*, KANSAS REFLECTOR (Oct. 20, 2023), <https://kansasreflector.com/2023/10/20/kansas-supreme-court-wrongful-conviction-law-applies-to-inmates-at-state-prisons-county-jails/>.