

## Why SB1007 should be amended

The state claims the compensation bill is intended to compensate people who are actually innocent and not factually innocent. The issue with this interpretation is that it violates the defendants' constitutional rights and statutory rights. The Oregon Constitution Art XV Section 10 (2)(a) says, "A basic tenant of a democratic society is that a person is presumed innocent and should not be punished until proven guilty." The Oregon revised statutes 136.415 says, "A defendant in a criminal action is presumed to be innocent until the contrary is proved. In case of a reasonable doubt whether the guilt of the defendant is satisfactorily shown, the defendant is entitled to be acquitted." The state's objection to compensation lacks merit when the defendant can show undisputed evidence, they were unlawfully convicted when they were presumed innocent or acquitted after the state has exhausted its remedies to prove guilt of an alleged crime. The compensation bill is intended to compensate defendants who are unlawfully convicted of no fault of their own while the state was prosecuting the defendant. The defendant is found not guilty proves the incarceration was unlawful and violated their right under the constitution and statutes. The state cant un-ring a bell (incarceration) claiming no violation occurred because the defendant was not actually innocent. It is an undisputed fact the defendant was incarcerated violating their rights until proven guilty. The defendant was never required to prove actual innocence to be found not guilty that would allow the state to ring the bell.

The compensation petition can only be filed once the state has exhausted its legal remedy to convict the defendant. This means the case can never be opened by the defendant or the state because the outcome is final. The compensation bill should not allow the state to undo what is final.

The question that needs to be answered regarding the compensation bill should be simple. Was the defendant wrongfully convicted of no fault of their own doing and was the defendant harmed? What does wrongfully convicted mean? Anytime a defendant is convicted, and their conviction is reversed, and the case is dismissed or acquitted in a new trial, the defendant has been wrongfully convicted.

What does it mean defendant was harmed from a wrongful conviction? A person who has been wrongfully convicted would suffer harm if they were incarcerated as a result of the wrongful conviction. A person who paid restitution on a wrongful conviction would suffer harm. There are many other things a person would suffer harm if they are wrongfully convicted. The bill could qualify which harms are necessary to meet the requirements in Section (2) to be eligible for the other damages awarded that are not monetary in value.

The compensation bill should not allow the state to object to compensation because the defendant wasn't harmed by being incarcerated because they were not actually innocent. The defendant never suffers harm from being unlawfully convicted for being actually innocent. The legal system does not allow for such action to take place. The defendant can't prove or disprove a negative, something that just does not exist. The only way a defendant is unlawfully convicted is by a guilty verdict of factually not innocent that is later reversed and dismissed or acquitted in a new trial. If the bill requires a defendant to prove they are actually innocent to prove harm was suffered then it demands a wrongful conviction is in error. If defendant has to prove harm to be compensated then the finality of his conviction being dismissed or acquitted is moot. It would be wrong to consider a defendant's journey for years through the justice system is moot after the defendant prevails against the state.

What needs to be amended in SB1584 to ensure the harm done to a defendant is compensated? Nobody disagrees that SB1584 passed unanimously acknowledging unlawful convictions exist in our judicial system and should compensate the harm created. The problem with SB1584 is how it was worded to make sure the state was not compensating an individual who could be abusing the process. The majority would agree with the DOJ that nobody should be compensated who was not harmed or abused the process.

The proposed amendments in HB1007 should address the DOJ's concern. ORS 30.657(2)(c) should not be required to establish eligibility if the defendant case has been dismissed or acquitted. It is not likely the DOJ believes it is in the best interest of justice to relitigate a case that is final. The courts do not allow the state to relitigate a case after it is dismissed or resulted in an acquittal. Allowing ORS 30.657(2)(c) would render all cases moot which is what has happened in the last two years with petitions filed for compensation. Defendants don't have years to give waiting to receive resolution from the appeals court that section (2)(c) violates a defendant's constitutional rights by allowing the state to challenge their judicial ruling once it was finalized. Therefore, this should be removed to avoid any delay in compensation for harm done from wrongful convictions. This relitigating of a case that is final serves no purpose in achieving the intent of HB1007 as described above.

If ORS 30.657(2)(c) is not removed from HB1007 then ORS 30.657(5)(c) should be amended as follows: The fact finder-includes the jury. The section needs to ensure the defendant has a right to a jury trial if HB1007 is going to allow the state to relitigate the defendant's conviction. Allowing only a bench trial prejudices the defendant in obtaining a fair trial. The defendant has already been convicted twice from the bench if an acquittal was granted by a jury after the original conviction was reversed. It is most likely the defendant filed a MOJA that was denied before the jury convicted defendant in first trial. It is

most likely the defendant filed a MOJA that was denied before the jury found the defendant not guilty on the new trial. There is prejudice from the bench when it believes defendant is guilty by denying the MOJA. There would be no prejudice from the bench if the bench had granted the MOJA in the new trial which would have agreed with the not guilty verdict. The defendant should be given the right to decide if a bench or jury trial is warranted.

ORS 30.657(5)(e) needs to be amended if ORS 30.657(2)(c) is not removed. This section should include all of the language in ORS 30.657(2)(c) and not just the words crime or crimes. Leaving out parts of section (2)(c) implies the state can bifurcate the finding of innocence by ignoring the defendant didn't commit the crime but was involved. Being involved in a crime doesn't always mean the defendant has committed the crime of conviction. The opposite is true the defendant is always involved in the acts that are the basis of the crime when convicted. In all criminal cases the elements of a crime that allow for a conviction presume the defendant was involved. Therefore, it stands to reason the defendant is not involved in the acts that are the basis of the conviction if found not guilty.

ORS 30.657(6)(a)(B) should include "released on bail after reversal of conviction". The defendants' rights are infringed while they are released on bail. Any infractions of the release agreement and defendant is incarcerated. The infractions in the release agreement are not punishable by way of prison in of themselves. This provision for compensation could be mitigated by the state if the state didn't object to a motion to stay execution after the first trial conviction when defendant was already released on bail from first trial.

ORS 30.657(8) should explain what reasonable attorney fees are paid. The defendant could have attorney fees from the first trial, appeal, post conviction relief, new trial and compensation trial. The state could avoid paying all the attorney fees mentioned above if the defendant was never convicted unlawfully and failed to satisfy the requirements in Section (2). On the other hand, the defendant should be entitled to all the attorney fees mentioned above if all the requirements in Section (2) are met. Allowing all attorney fees would deter the state from unlawfully convicting defendants that meet the requirements to be compensated. Not all unlawful convictions require the state to pay reasonable attorney fees. It would not deter the state from its ability to prosecute lawfully. Most of the exonerees were unlawfully convicted because of errors made by the prosecution, like withholding evidence, faulty lab tests and improper investigations. The defendant should not bear the financial burden of all the attorney fees that were the result of the unlawful conviction that meet the requirements of HB1007.

Nobody disagrees that SB1584 passed unanimously acknowledging unlawful convictions exist in our judicial system and should compensate the harm created. HB1007 should provide relief to defendants who have been harmed as a result of an unlawful conviction. Not all unlawful convictions cause harm as defined in SB1007. HB1007 is necessary because the DOJ has found reasons to object to compensation for the wrong reasons. It is never justified to incarcerate a defendant based on an unlawful conviction because the defendant was not actually innocent. This argument of actual innocence doctrine is not relevant and it is unlawful to be used in criminal trials to convict. The DOJ somehow thinks the harm to a defendant who is incarcerated from an unlawful conviction is removed as long as the state can reopen the case and show defendant was not actually innocent. HB1007 should never invite prosecution to use the doctrine of actual innocence to dismiss harm caused to a defendant who is incarcerated based on an unlawful conviction. Especially when the unlawful conviction has been closed and is not lawful to relitigate the case. This type of litigation should not introduce additional error in the judicial process that already admits unlawful convictions exist. Please consider amending HB1007 to include a means the harmed individuals can receive relief based on a simple process of undisputed facts without relitigating a closed case. This would be in the best interest of the state and those who are unlawfully convicted that are harmed. The number of defendants who are eligible is around 25 but one is too many to ignore. Public safety law are made when only one person has been harmed and this bill should be no different.