



**Testimony of Representative Garey Bies
Assembly Committee on State Affairs and Government Operations**

AB 519- Wrongfully Convicted Reentry Act

Chairman Weininger, committee members. I appreciate the opportunity to testify in support of Assembly Bill 519, also known as the Wrongfully Convicted Reentry Act.

For the past 3 years I've worked closely with the Wisconsin Innocence Project to bring this legislation forward. I am thankful that both times I've introduced the bill it's had support from both sides of the aisle. It shows this isn't a partisan issue -it's about doing the right thing for individuals whose freedom was taken away from them.

Most wrongfully convicted individuals serve decades-long prison sentences and face great hardships upon release. Apart from the horrors of prison life, the wrongfully convicted have few resources to draw upon when set free, and their families have often incurred enormous attorneys' fees related to their cases. While in prison, they miss out on educational opportunities, job training, and career advancement opportunities.

One of the exonerees you'll hear from today is Robert Lee Stinson. He spent 23 years in prison for a crime he didn't commit. When he was exonerated and released from prison, he was awarded \$25,000. That's the most he could receive because that's the cap on compensation in Wisconsin. Fortunately, our good friends in the Senate have recognized this injustice and unanimously passed a bill compensating Mr. Stinson an additional sum of money and I'm hopeful the Assembly will soon do the same.

Wisconsin has not updated its compensation and reentry statutes for wrongfully convicted persons in more than 30 years. As a result, Wisconsin has the most inadequate compensation and reentry statutes for the wrongfully convicted in the entire nation.

Under this bill, we raise the compensation from the current \$5000/year with a cap of \$25,000 to the federal standard \$50,000/year and eliminate the cap. This change means Wisconsin will join several other states that compensate exonerees at \$50,000 or more including Texas (\$80,000), Utah (\$55,000), Alabama (\$50,000), Florida (\$50,000) and most recently New Jersey (\$50,000).

First for Wisconsin!

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Other provisions of the bill include:

- Reimbursement for attorney and court fees for costs related to defense and postconviction relief.
- Assistance from the Department of Corrections with social services when the court mandates immediate release of the wrongly convicted individual.
- Criminal records related to the wrongful conviction are automatically expunged and removed from CCAP.
- Improving the timeliness and efficiency by having compensation claims heard by the Division of Hearings & Appeals, which will then make a recommendation to the Claims Board.
- Offering transitional financial assistance to cover basic living expenses between being released from prison and receiving an award from the Claims Board.

The bill also includes a provision ensuring that only those who are undoubtedly innocent are eligible for compensation. Persons who were rightfully imprisoned for other crimes that were associated with the same course of conduct that resulted in the conviction of which the person claims to be innocent (i.e.: someone who was convicted of a robbery and an assault but was only guilty of the robbery) are **ineligible** and persons who are convicted of a violent crime after their release from prison are also **ineligible**.

I've spent a great deal of time thinking about this bill. So I'd like to ask that when you contemplate this bill, visit a prison, if that's not possible, visit one of your county jails. Check out the inside of a cell and then find a quiet place where you sit without interruption and reflect. Think about being one of the people who you saw locked up, and then wonder what it would be like to know you have done none of the things you have been accused of.

Think about all the aspects of your daily life you could no longer do. Think about your family and friends and how you'd have very little to no contact with them. What would your life be like without them? Do they truly believe in your innocence? What would their life be like without you? Should they question whether or not to believe your pleas of innocence?

Think about the freedom you're not able to enjoy and the financial loss to your family. Think about all the things you enjoy doing – from the biggest to the smallest. What are you missing out on? Maybe it's walking your daughter down the aisle at her wedding. In what ways has your conviction hurt the family? Maybe it led to the untimely end of your marriage. Don't just think about this for 5 minutes, those who've been wrongfully convicted deserve more than a fleeting thought.

Now ask yourself, what the loss of one year of your freedom from an unjust decision is worth and then start multiplying.

Chairman Weininger, I appreciate your willingness to hold a hearing on AB 519. I'm happy to answer any questions the committee may have.



STATE REPRESENTATIVE
GARY HEBL
46TH ASSEMBLY DISTRICT

TO: ASSEMBLY COMMITTEE ON STATE AFFAIRS AND GOVERNMENT OPERATIONS
FROM: REPRESENTATIVE GARY HEBL
RE: SUPPORT FOR 2013 AB 519- The Wrongly Convicted Reentry Act”
DATE: JANUARY 15, 2014

Chairman Weininger, thank you holding a hearing on AB 519, the “Wrongly Convicted Reentry Act.” I would also like to thank Representative Bies for his leadership on this important issue.

AB 519 would provide persons wrongfully convicted of a crime with a meaningful chance to reclaim their lives and successfully transition back to society. Wisconsin exonerees desperately need this legislation, as Wisconsin currently maintains one of the nation’s most outdated and inadequate compensation and reentry regimes for the wrongfully convicted. The current system’s inadequacy is evidenced by many recent exonerees who have struggled to reestablish the lives that were wrongfully taken from them by the state. You will hear some of their powerful and moving stories today.

While no amount of money, services or transition planning can truly compensate someone who has been wrongfully convicted of a crime, AB 519 is an important step towards recognizing the grave injustice that was done to exonerees and providing them with the assistance they deserve. Exonerees often have their personal, educational and professional lives completely uprooted. Most have little to no assets when they are released from prison and have been out of the workforce for many years. Even worse, relationships with friends and family are ruined by their imprisonment. As a result, most exonerees return to their communities with very little support or opportunity to earn a living, often times while struggling with physical and/or mental health problems caused by their wrongful imprisonment.

Wisconsin’s current system of exoneree compensation is so broken that our state provides more support to people who are actually guilty of a crime than to someone who has been exonerated. This is simply wrong and Wisconsin needs to take swift action to remedy this glaring problem. Fortunately, AB 519 modernizes Wisconsin’s compensation system for the wrongfully convicted. The bill would provide them with a transition plan (just as we do with guilty offenders when their release date approaches), social services and monetary compensation. The bill also greatly improves the compensation process by creating firm timelines that will ensure a speedy disposition of exoneree compensation requests. After hearing about the hardships faced by many recent exonerees, I believe that this legislation is the least we can do for these people who have been wrongfully deprived of their liberty by the state.

(OVER)



STATE REPRESENTATIVE

GARY HEBL

46TH ASSEMBLY DISTRICT

It is often difficult for any of us to come to grips with the fact that our criminal justice system sometimes fails. While relatively rare, these failures have such dire consequences for peoples' lives. When someone has won their freedom, their reward should not be to return to society homeless, broke and without any support system. The federal government—under President Bush—and many other states have instituted responsible compensation programs that help ensure exonerees have the opportunity to rebuild their lives and contribute to their communities. It is long past time for Wisconsin to follow this example.

(OVER)



RESTORING INNOCENCE

Wisconsin Must Adequately Compensate the Wrongly Convicted

“Without such support, a wrongly convicted person might never be able to establish roots that would allow him to contribute to society. To help repair the lives that are shattered by wrongful convictions, the bill raises the Federal cap on compensation, and urges states to follow suit...It is the very least that Congress should do.”

– Senate Judiciary Committee Report, Prior to Unanimously Passing 2004 Innocence Protection Act



Exoneration is just the beginning. Most wrongfully convicted individuals face great hardships upon release. They typically have few resources to draw upon and their families have incurred enormous attorneys’ fees related to their cases. While in prison, they miss out on educational opportunities, job training, career advancement, and often, the chance to start a family. They have no way to cope with their experience in prison. **Exonerees who are compensated above \$500,000 commit offenses at a significantly lower rate than those who are either not compensated or compensated below \$500,000.**

CURRENT WISCONSIN LAW:

- Wisconsin’s compensation statute is over 100 years old. It has not been adjusted in over 25 years.
- Insufficient monetary compensation:
 - Provides \$5,000/year, which is the lowest in the country.
 - Caps total award at \$25,000, which is the second lowest cap in the country.
- Requires a lengthy and burdensome process to receive available compensation.
- Lack of social services and support
- Offers no housing, employment, education, medical or counseling services.
- Does not establish a procedure to expunge criminal records.

Yearly Compensation for the Wrongly Convicted	
State	Compensation Per Year
Texas	\$80,000
Utah	\$55,974
Virginia	\$51,911
Alabama	\$50,000
Florida	\$50,000
Mississippi	\$50,000
Federal	\$50,000
New Jersey	\$20,000
Ohio	\$40,330
California	\$36,500
Nebraska	\$25,000
Missouri	\$18,250
Louisiana	\$15,000
WISCONSIN	\$5,000

National Trends

President George W. Bush endorsed a law establishing federal compensation rates of up to \$50,000/year of wrongful conviction.

Florida caps compensation at \$2 million and reimburses for fines and court costs.

Texas provides \$80,000/year plus an \$80,000 annuity, a 120hr tuition waiver for higher education, a case manager, reentry services, and assistance obtaining mental health, physical health, and dental care.

New Jersey Governor Chris Christie recently signed a bill into law that increases compensation from \$20,000/year to \$50,000/year.

AB 519, THE WRONGLY CONVICTED REENTRY ACT:

- Increases compensation from \$5,000/year to the federal standard of \$50,000/year, removes the overall cap, and indexes the amount for inflation.
- Reimburses attorney and court fees related to defense and postconviction relief.
- Provides transitional assistance and social services immediately upon release.
- Automatically expunges criminal records and removes them from CCAP.
- Establishes a preponderance of the evidence burden of proof for the claim—the standard of proof in civil cases.
- Provides an efficient claims process through Division of Hearings & Appeals.
- Only those who are *actually innocent* are eligible for compensation. **Those who commit a subsequent violent felony are ineligible.**



RESTORING INNOCENCE

The Wisconsin Innocence Project Strongly Supports the Wrongly Convicted Reentry Act

AB 534 Procedure for Claims Filed to the State Claims Board was introduced by Rep. Pat Strachota (R-West Bend). The bill amends the statutory provisions for compensating those who are wrongly convicted and serve time in prison. **This bill is bad for exonerees.** It will restrict access to financial assistance, give the claims board unchecked authority to deny claims without justification, and remove the claims board's decisions with respect to the wrongly convicted from judicial review. The co-sponsorship memo circulated with the bill states that the Wisconsin Innocence Project was consulted in the drafting of the bill. **The Wisconsin Innocence Project opposes this bill. Instead, the Wisconsin Innocence Project fully supports AB 519 the Wrongly Convicted Reentry Act, which was introduced by Rep. Garey Bies (R-Sister Bay) and Rep. Gary Hebl (D-Sun Prairie).** Both bills were referred to the House State Affairs and Government Operations Committee.

PLEASE SUPPORT ASSEMBLY BILL 519:

- Increases compensation from \$5,000/year to the federal standard of \$50,000/year, removes the overall cap of \$25,000 and indexes the amount for inflation.
- Reimburses attorney and court fees related to defense and postconviction relief.
- Provides transitional assistance and social services immediately upon release.
- Automatically expunges criminal records and removes them from CCAP.
- Establishes a preponderance of the evidence burden of proof for the claim—the standard of proof in most civil claims.
- Provides an efficient claims process through Division of Hearings & Appeals.
- Only those who are *actually innocent* are eligible for compensation. **Those who commit a subsequent violent felony are ineligible.**
- Maintains important safeguards including judicial review and objective burdens and standard.
- Does not penalize exonerees for being the victim of coercive police pressure.

PLEASE OPPOSE ASSEMBLY BILL 534:

Allows the claims board to deny compensation for any reason, even if the petitioner has proved actual innocence.

- Even if a petitioner has met the high burden of proof required under current law, this bill allows the claims board to decide the claim based on “equitable principles” including “whether the state should in good conscious assume and pay” the claim.

Removes **all** judicial oversight of the claims board's decision to compensate the wrongly convicted.

- Like all administrative decisions, the court may now review the decisions of the claims board. Removing judicial oversight gives the board unchecked power to act without consequence. Most importantly it leaves exonerees without redress by preventing them from challenging claims board decisions.

Includes language that denies compensation to demonstrably innocent people if they “bring about the conviction.”

- In 25% of DNA exonerations the exoneree made incriminating statements or falsely confessed. Typically, these individuals made such incriminating statements in response to coercive interrogation tactics. This provision unjustifiably continues to keep innocent exonerees, who were victims of undue police or other systemic pressures, from obtaining compensation for their imprisonment.

Provides insufficient financial support and maintains a restrictive cap.

- The bill provides compensation of \$15,000 per year of wrongful imprisonment with a \$200,000 cap.
- That amount is still below the federal standard of up to \$50,000 a year with no cap and well below the national norm among states.



To: Assembly Committee on State Affairs and Government Operations
From: Keith Findley, Co-Director, Wisconsin Innocence Project; Asst. Professor, UW Law School
Date: January 15, 2014
Re: Wrongly Convicted Reentry Act (AB-519)

Wisconsin was once a national leader in providing compensation and reentry assistance to individuals wrongly imprisoned for crimes they did not commit. But Wisconsin has not updated its compensation and re-entry statute in more than 30 years, and now has the most inadequate assistance program of any such program in the nation; currently, Wisconsin provides exonerees only \$5,000 per year of wrongful imprisonment, capped at a maximum of \$25,000, and provides no assistance to address any of the other injuries and needs created by wrongful imprisonment. Sadly, under Wisconsin's current law, the state provides more support to a guilty person upon release than to an innocent person upon exoneration.

For these reasons, the Wisconsin Innocence Project wholeheartedly supports AB-519, the bi-partisan Wrongly Convicted Reentry Act. We have seen innocent person after innocent person struggle to reclaim any semblance of the life that was taken from them by their wrongful convictions. AB-519 would greatly expand both the compensation and social services available to wrongfully convicted individuals—an expansion that is badly needed, as illustrated by the stories of Wisconsin's exonerees such as Fred Saecker, Chaunte Ott, and Robert Lee Stinson, who are here to testify today.

The compensation and services detailed in this legislation are essential to provide wrongfully convicted individuals the assistance necessary to transition back into society. Exonerees face tremendous obstacles in attempting to reconstruct the lives they had before their wrongful incarcerations. With no job or credit history, and little, if any, extrinsic financial and emotional support, exonerees are forced to begin their lives at the bottom of society.

A helpful analogy is to think of wrongful conviction as a form of government taking. No one would dispute that if the government were to take your home to make room for a freeway, the government would be obligated to fully compensate you for the value of your home. Here, the government has property, but also something more precious: liberty. Wrongful conviction destroys reputations, severs family ties, destroys relationships, impedes educational opportunities, creates health problems, and causes emotional scarring. And it quite literally takes property as well. A wrongful conviction takes one's home, job, savings, and opportunity to earn a living; it creates poverty, destroys careers, and leaves glaring gaps in employment histories. Just as we have an obligation to compensate fully those whose property we take for public infrastructure projects, we have an obligation to compensate as close to fully as we can those from whom we wrongly take both property and liberty.

AB-519 is a necessary first step in correcting the injustices and losses that accompany a wrongful conviction. While no amount of money can fully compensate one for the wrong of an unjust conviction, the \$50,000 per year of wrongful imprisonment at least brings Wisconsin into line with other states and the federal government in terms of monetary compensation for the wrongly convicted. Failure to provide at least this much not only fails to compensate individuals adequately, it sends a message to exonerees that their lives are worth less here than in other states; it adds insult to injury.

Importantly, this bill also makes the process of obtaining such assistance to exonerated individuals more timely and accessible. Perhaps even more important than increasing compensation for exonerees, AB-519 provides ongoing social services such as counseling, vocational assistance, and housing assistance as well as access to health insurance to those who have been wrongfully convicted.

And the bill includes several process fixes that make the system work better. It sets deadlines for holding hearings and awarding compensation so that exonerees can receive compensation soon after their exoneration, when they need it most. Too often, under the current system, exonerees have to wait months or even years—as Fred Saecker had to wait—to get on the agenda for a quarterly Claims Board meeting.

Finally, the bill changes the burden of proof that an exoneree must meet from the very high standard required for proving innocence in the current law of “clear and convincing” evidence, to a “preponderance” of evidence. The preponderance standard is the standard required in our legal system for just about every other type of claim for redress for injury. It makes no sense to require those who have been so horribly wronged by a wrongful conviction to prove their innocence by the extraordinarily high standard of clear and convincing evidence. And this bill does this in a way that ensures that no guilty person will be unjustly enriched: under the bill, anyone who was actually involved in the crime but just not guilty of one of the charged crimes arising from the incident is ineligible. Likewise, anyone who commits a serious felony after exoneration forfeits his right to compensation.

We urge you to address the lack of compensation and support services currently available to those wrongfully convicted by supporting the Wrongly Convicted Reentry Act this session. It is time that Wisconsin once again become a leader in righting the wrong of false convictions, and in providing reentry support for those who have been wrongfully convicted.



January 15, 2014

To: Assembly Committee on State Affairs and Government Operations
From: Mr. Chaunte Ott, Exoneree

"Just grateful for being out with my family and loving life."
- Chaunte Ott

Chaunte Ott Urges The Committee to Pass AB 519

Chaunte spent 12 years in prison for a murder he didn't commit. In 1996 Chaunte was convicted of first-degree intentional homicide and sentenced to life in prison for the murder of 16-year old Jessica Payne. Chaunte was convicted on the testimony of two men who falsely confessed to being involved in the murder. In 2002, DNA tests excluded Chaunte as a contributor to semen found in a rape kit. The two men who implicated him were also excluded. Still, Chaunte remained in prison for five years until it was discovered that the male profile found in the semen matched DNA found on the bodies of two other women who were murdered in the same neighborhood as Payne, after Chaunte was convicted. Based on this new evidence, the Wisconsin Court of Appeals granted Chaunte a new trial. The DNA found on the victims was eventually matched to Walter Ellis. Ellis, now known as the "North Side Strangler," killed 9 women including the two victims who were murdered after Chaunte's conviction.

Chaunte's re-entry into society demonstrates the difficulties the wrongly convicted face after release and the need to provide transitional assistance aimed at helping the wrongly convicted become productive, taxpaying citizens. Since his release, Chaunte has persistently sought employment, trying as hard as he can to support himself, rather than relying on the support of family members who are also of modest means. Despite his best efforts, he has faced periods of unemployment and poverty, because of the difficulty of finding a steady, full-time job. He has been forced to scrape by during these periods, relying on the generosity of family and the few short-term jobs he can find. Although he was exonerated and all charges were dropped, employers still sometimes disqualify him merely because there is a CCAP entry under his name that appears to be a serious case.

AB 519 provides transitional assistance to ensure that the wrongly convicted can transition smoothly back into society. Inmates who are released from prison because they have served their term receive social services, the support of community organizations, and the continued supervision of the department of corrections. Inmates who are released because they are innocent, however, leave prison with nothing. There are few community organizations focused on transitional issues specific to this population, they have no

continued interaction with the Department of Corrections, and no help finding and keeping a job.

AB 519 requires the Department of Corrections to provide transitional assistance to exonerees in the form of a county-specific transitional plan, complete with area social services. Further, AB 519 gives exonerees money to help them survive until their claim is processed by the Claims Board, which could take months or even years. AB 519 requires that the record of the offense is immediately removed from CCAP which will allow exonerees to obtain employment. AB 519 will help ensure that the wrongly convicted can become productive members of society quickly and easily.

Chaunte Ott Urges the Committee to Oppose AB 534

AB 534 unfairly and unnecessarily increases the burdens exonerees face. Because of the inadequate compensation available under current law, Chaunte has been forced to pursue compensation via a time-consuming, complex federal lawsuit. With adequate and timely compensation under state law, Chaunte's lawsuit would likely be unnecessary.



January 15, 2014

To: Assembly Committee on State Affairs and Government Operations
From: Mr. Fred Saecker, Exoneree

"I just happened to be in the wrong place at the wrong time."
- Frederick Saecker

Fred Saecker Urges The Committee to Pass AB 519

In 1989 Fred was convicted of burglary, second-degree sexual assault and kidnapping and sentenced to 15 years in prison. Fred spent 7 years in prison before DNA testing conclusively proved that he was not the source of semen found in the victim's underwear. Fred was convicted largely because of testimony regarding microscopic hair analysis—a forensic hair comparison that has since been shown to be a completely baseless technique. Even after the exculpatory DNA results were obtained, Fred waited three years to be released from prison.

Fred's experience with the claims process demonstrates the need for a streamlined fact-finding process so that exonerees can get the help they need quickly and easily. Fred filed his claim for compensation in July of 1999. In December 2001, the Claims Board referred him to the Division of Hearings and Appeals for fact-finding to determine whether there was clear and convincing evidence that Fred was innocent. Fred's claim was not even heard by an Administrative Law Judge until May 2002. Ultimately the Judge found that Fred was innocent and therefore entitled to compensation. Finally, on January 6th, 2003 the Claims Board awarded Fred \$25,000.

It took 4 years for Fred's claim to be resolved by the Claims Board. Recognizing its limited capacity as a fact-finder, the Board outsourced the claim to the Division of Hearings and Appeals. Fred's experience highlights significant problems in the current system. Had Fred had immediate access to an Administrative Law Judge, the claim could have been resolved years earlier.

Fred's story illustrates common problems with the current compensation scheme. AB 519 streamlines the process so that claims can be heard and processed efficiently. Instead of having to send the claim to a fact-finder, AB 519 automatically uses an Administrative Law Judge to make fact-finding determinations, while still giving the Claims Board the authority to process the claim. Further, AB 519 standardizes the burden of proof by which an exoneree must prove his/her innocence so that it is in line with most other administrative decisions and all civil cases. In all AB 519 will ensure easier and quicker access to compensation for the wrongly convicted.

Fred Saecker Urges the Committee to Oppose AB 534

Fred's experience with the claims process shows that judicial oversight is a vital component of a successful claim for compensation. AB 534 removes Claims Board decisions regarding compensation for the wrongly convicted from judicial review. This is a dangerous move that will leave exonerees without recourse and give the Claims Board unprecedented power. Judicial oversight ensures a fair and transparent claims process. It is a vital safeguard for exonerees like Fred.



January 15, 2014

To: Assembly Committee on State Affairs and Government Operations
From: Mr. Robert Lee Stinson, Exoneree

"I'm finally out, and I'm going to enjoy my life."
- Robert Lee Stinson

Robert Lee Stinson Urges The Committee to Pass AB 519

An Innocent Man Incarcerated for 23 Years

Robert Lee Stinson spent 23 years in prison for a crime he didn't commit. In 1985 Lee Stinson was convicted of the murder of his 62-year-old neighbor. The victim had been beaten, stabbed and bitten. The police employed a dental expert who drew a sketch of the bite marks found on the body. The police interviewed several suspects missing teeth consistent with the sketch, however they quickly focused their investigation on 21-year old Lee, whose backyard connected to the lot where the victim's body was found. While interviewing Lee, they noticed that he was missing a tooth, however it was not the same tooth that the perpetrator was missing.

After a 3-day jury trial Lee was convicted of first-degree murder and sentenced to life without parole. In 2009 Lee was exonerated using both DNA found on the victim's sweater, and the testimony of forensic experts who re-evaluated the bite-mark evidence and found that Lee's bite did not match the marks on the victim. Eventually the DNA found on the victim not only excluded Lee, but also implicated another man, who later confessed to the crime. After he was released Lee said that it was "a long ride."

After Exoneration the Struggle Continues

Lee Stinson's story exemplifies how woefully insufficient Wisconsin's current wrongful conviction compensation scheme is. After serving 23 years in prison for a crime he didn't commit, Mr. Stinson applied to the Claims Board for compensation under the current statute § 775.05. The current statute only allows an exonerated person to claim \$5,000 per year of incarceration up to \$25,000. Even though Lee was incarcerated for 23 years, he was only able to claim \$25,000—just over \$1000 for each year he was imprisoned for a crime he didn't commit. Unlike some exonerees, Lee was able to surpass the high burden of proof required by the current statute, and the Claims Board awarded him the maximum amount available under current law. Noting the inadequacy of the amount, the Claims Board recommended that the Wisconsin Legislature make a separate appropriation to more adequately compensate him for his wrongful imprisonment. Sen. Grothman and Rep. Kooyenga have sponsored a bill to increase Lee's claim.

AB 519 Would Help Mr. Stinson Get Back on His Feet

Under the proposed bill Lee would be entitled to up to \$50,000 for each of his 23 years of wrongful imprisonment. Lee would be able to more easily and efficiently obtain the money he is entitled to for the time he spent in prison as an innocent man. He wouldn't have to go through the cumbersome and time-consuming legislative process to receive adequate compensation—the Claims Board awarded Lee \$25,000 in 2010, but even now in 2014 the Board's recommended legislative appropriation still has not passed. Lee wants to use his money to move his family out of a bad neighborhood. He wants to buy a house for his fiancé and her young daughter, and to help care for his mother who is suffering from cancer.

Robert Lee Stinson Urges the Committee to Oppose AB 534

Under AB 534 as it is currently written the Claims Board would have the authority to deny compensation to exonerees under poorly defined "equitable principles" if the Board felt the state should not pay the claim. This provision applies even to exonerees, like Lee, who met the legal standard and proved actual innocence. Under such a deferential standard, the Board could deny Lee even though he spent 23 years in prison, proved his actual innocence and is legally entitled to the compensation. Further AB 534 maintains a cap on the inadequate amount of monetary compensation.



To: Assembly Committee on State Affairs and Government Operations
From: Keith Findley, Co-Director, Wisconsin Innocence Project; Asst. Professor, UW Law School
Date: January 15, 2014
Re: Procedure for Claims Filed to the State Claims Board (AB-534)

Thank you for the opportunity to address AB-534, as well as AB-519. I am grateful to Representative Strachota and her colleagues for their awareness that our current compensation statute is inadequate. Unfortunately, however, AB-534 is so burdened by inadequacies and procedural problems that I fear it is on the whole a step backwards, rather than a step forward. Therefore, reluctantly, the Wisconsin Innocence Project must oppose AB-534; sadly, no bill is better than passing this bill, no matter how well-intentioned it might be.

Despite appearances, AB-534 is bad for exonerees and for our communities. It will restrict access to financial assistance, give the Claims Board broad authority to deny claims without justification, and removes the Claims Board from judicial review, a critical safeguard for exonerees and an essential component of the system of checks and balances that ensures fairness in our system of government. Specifically:

- AB-534 gives the Claims Board unbridled and unreviewable discretion to deny compensation, even if a claimant has met the burden of proving innocence by the very high standard of clear and convincing evidence, based on vague factors other than actual innocence. The bill gives the board the power to decide a claim based on “equitable principles” including “whether the state should in good conscious assume and pay” the claim. The bill thus changes the compensation process from one based on objective and fair fact-based criteria to one based on whether the claims board for unarticulated reasons approves of the particular individual and the particular claim. It turns what should be an objective search for the truth into a political process that runs the risk of being corrupted by favoritism and bias.
- The bill removes **all** judicial oversight of the claims board’s decisions on compensating the wrongly convicted. Like all administrative decisions, the court may now review the decisions of the Claims Board. Removing judicial oversight gives the Board unchecked power to act without consequence. Most importantly it leaves exonerees without redress by preventing them from challenging Claims Board decisions. Part of the genius of our democracy is the principle of checks and balances, of which judicial review is an essential component. This bill flaunts that bedrock principle. Under this bill, establishing policy for who should be compensated for wrongful conviction is transferred from the legislature to the unlimited discretionary judgments of the Board, and enforcement of legislative intent is stripped from the courts and transferred, again, to the unreviewable discretion of the Board. It changes compensation for wrongful conviction from a

legal right to an unenforceable and unreviewable act of “grace.” Under this bill nothing would stop a misguided Claims Board from denying compensation on the basis of one’s race, sex, look, lifestyle, or any other irrational basis. As Justice Harry Blackmun once wrote, “If an exercise of a legal right turns on ‘an act of grace,’ then we no longer live under a government of laws.”

- The bill includes language that denies compensation to demonstrably innocent people if they were the victims of police pressure or coercion that produced false admissions to the offense. The bill disallows claims by exonerees who in anyway (either by their actions or failure to act) contributed to their conviction. In 25% of DNA exonerations the exoneree made incriminating statements or falsely confessed. Typically, these individuals made such incriminating statements in response to coercive interrogation tactics. This provision unjustifiably continues to keep innocent exonerees, who were victims of undue police or other systemic pressures, from obtaining compensation for their imprisonment.
- The bill inexplicably retains the onerous “clear and convincing” evidence burden of proof, rather than the ordinary “preponderance of the evidence” burden of proof.
- The bill prevents families from claiming a deceased exoneree’s share, even when those families have expended tremendous financial resources fighting the conviction for years, and have suffered terribly by the wrong committed against their mother, father, brother, sister, or child.
- The maximum compensation amounts provided by the bill—\$15,000 per year of wrongful imprisonment with a \$200,000 cap—is woefully inadequate, and leaves Wisconsin at the bottom of all states in providing compensation. That amount is below the federal standard—\$50,000 per year with no cap—and well below the national norm among the states. It comes nowhere close to providing the kind of support most exonerees need to reclaim their lives, or to compensating individuals for their actual losses.

For these reasons, we oppose AB-534, and encourage you to support AB-519.

Freddie Saecker in prison 1989-1996

I would like to quickly explain some of the miscarriages of justice that occurred as my case was being tried and then continued after I was imprisoned.

I was represented by a public defender that talked me out of DNA testing. He said it was not in general use, maybe not even admissable, and that it would take a long time for results, so I would spend more time in jail waiting for trial.

There was evidence that put me at a place and time that would only have allowed me to commit these crimes if I had been superhuman. This evidence was not brought forward by him until my sentencing.

There were pubic hairs found on the victim that experts testified were similar to mine when viewed under a microscope. Years later when they were tested for DNA they were identified as the victims.

And finally after DNA testing of hair and semen samples excluded me. The district attorney continued to raise arguments that kept me in prison for another 5 years.

Having your life and freedom taken away for seven years is difficult to adjust to. To say the least, when I was released I was afraid of interaction with others. I had trouble just going to the store to buy groceries and other public places also made me feel uncomfortable. There are PTSD issues that continue to have an effect on my life even up to the present day. I did what I could by working in the woods cutting firewood, ^{then} a sawmill and finally the job I have had for the last ten years driving forklift in a manufacturing plant.

Now,
when I get a social security statement there are seven years that show no income ^{and} that might also effect the benefits I will receive when I retire.

I tried to recover financially thru the court system. The first suit was dismissed, I tried again but the statute of limitations had run out. I then went before the claims board. My hearing was before an administrative judge appointed by the board. He found me innocent and I was awarded the maximum amount of 25,000 dollars, seven years after my release in 1996.

These are ^{not} exclusive elements of my particular case. They occur, many of them, in similar cases of wrongful conviction.

These most often are not mistakes of error, but deliberate attempts to convict ~~when there is not enough evidence to support a conviction and the proper effort is not made to uncover what really happened.~~ when there is not enough evidence to support a conviction and the proper effort is not made to uncover what really happened. In my case the person who actually committed the crime has never been found; no one is trying

It is because of unfair treatment that I received from 1989 until 1996 and the aftermath that continues to have an effect on me even now. If I am able to I will probably work until I am 70.

It is for this reason that I ask you to see that this bill becomes law. That all of us who deserve compensation might be able to more fairly be compensated.

as we are also victims!