



PAT STRACHOTA

STATE REPRESENTATIVE

SB 587 Testimony – Senate Judiciary Committee 2/20/2014

Wisconsin's process to review and issue decisions on cases before the Claims Board has not been updated or reformed in decades. I am now on my second session as a member of the Claims Board, and I drafted this bill to address some ongoing concerns. There have been multiple cases over the past couple of years that highlight the need for change. The important reforms in this bill will improve the Claims Board process and provide a better level of review for those seeking compensation.

SB 587 defines imprisonment to include confinement in a prison, county jail, other county facility, or under Huber Law. The definition does not include electronic monitoring.

SB 587 places the burden of proof on the petitioner before the Board to present clear and convincing evidence that they did not, by their own actions, bring about their conviction and imprisonment for which they are seeking compensation. This bill also increases the award amount to \$10,000 per year of confinement, with a maximum payout of \$200,000. There are currently 23 states that provide no compensation for those who have been wrongly convicted and imprisoned.

SB 587 clarifies the rules dealing with the death of the claimant. Should the claimant pass away, their estate can continue to bring the claim before the Board, as long as the death was not an act of negligence on the claimant's part and they have not been convicted of another crime after their release. Additionally, the bill requires the Department of Corrections to offer the same level of transition assistance that is currently provided for those individuals who are paroled.

Finally, this bill clarifies that the Claims Board can award compensation to a petitioner if they determine that the claim is of equitable principles. This clarifies that the Claims Board is not a judicial body; it is simply a board of equity.

These are positive reforms to the Claims Board process that are long overdue. I urge the members of this committee to support SB 587.

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Submitted by Rep. Strachota

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OLYMPICS RESULT: It's a first-ever in women's halfpipe freestyle skiing.

Wrongful conviction compensation statutes

Recommend 169 people recommend friends.

The compensation to people wrongly imprisoned varies widely by state, and in 24 states, there is no money awarded at all. Check the table below to see which state pays to former inmates.

Search:

State	Statute basics	Support services	Restrictions
Alabama	Minimum of \$50,000 for each year of wrongful incarceration.		The wrongfully convicted person cannot receive compensation if the Legislature has passed a new felony conviction will end the compensation.
Alaska	No statute.		
Arizona	No statute.		
Arkansas	No statute.		
California	Maximum of \$100 per day of wrongful incarceration.		The wrongfully convicted person "contribute to the bringing about conviction for the crime with which provision may prevent people who pled guilty from receiving compe
Colorado	No statute.		
Connecticut	Compensation is based on factors such as claims for loss of liberty and enjoyment of life; loss of earnings; loss of earning capacity; loss of familial relationships; loss of reputation; physical pain and suffering; mental pain and suffering; and attorney's fees and other expenses arising from or related to such person's arrest, prosecution, conviction and incarceration.	Employment training and counseling, tuition and fees at any constituent unit of the state system of higher education and any other services needed to facilitate reintegration into the community.	
Delaware	No statute.		
District Of Columbia	The court determines what amount fairly and reasonably compensates the exoneratee.		The wrongfully convicted person not contribute to his own prosec

convicted person must not have an Alford plea.

Florida	\$50,000 annually with a maximum of \$2 million. The wrongfully convicted person cannot be compensated for years served on another prior felony conviction.	120 hours of tuition at a career center, community college or state university and college or state university and college or state university and reimbursement for any fines or costs imposed at the time of his sentence.	The wrongfully convicted person felony convictions. Maximum of time served.
Georgia	No statute.		
Hawaii	No statute.		
Idaho	No statute.		
Illinois	\$85,350 for those who served up to five years; \$170,000 for those who served between five and 14 years; \$199,150 for those who served more than 14 years. The law also reimburses attorney's fees up to 25 percent of the compensation award.	Job search and placement services.	Compensation cannot exceed \$8 years of wrongful imprisonment, years and \$199,150 for more the
Indiana	No statute.		
Iowa	\$50 per day of wrongful incarceration plus lost wages up to \$25,000 a year, plus attorney's fees.		The wrongfully convicted person guilty.
Kansas	No statute.		
Kentucky	No statute.		
Louisiana	\$15,000 per year of wrongful incarceration, with a maximum of \$150,000.	One year of job or skill training, three years of medical and counseling services, tuition expenses at a community college or unit of the state university system.	Maximum of \$150,000 regardless
Maine	Maximum of \$300,000.		Maximum of \$300,000 regardless
Maryland	The Board of Public Works determines compensation packages for pardoned persons who were wrongfully convicted, and may grant a reasonable amount for any financial or other appropriate counseling for the individual.		
Massachusetts	A maximum of \$500,000.	Physical and emotional services, educational services at any state or community college.	Any person is eligible so long as (unless such plea was withdrawn Maximum of \$500,000 regardless
Michigan	No statute.		
Minnesota	No statute.		
Mississippi	\$50,000 for each year of wrongful incarceration with a maximum of \$500,000.		Maximum of \$500,000 regardless wrongfully convicted person must suborn perjury or fabricate evidence proceedings related to the crime charged. This provision may pre confessed or pled guilty from rec
Missouri	\$50 per day of post-conviction confinement.		Only wrongfully convicted person DNA testing are eligible.

Source: Innocence Project

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Wrongful conviction compensation statutes

Recommend 169 people recommend friends.

The compensation to people wrongly imprisoned varies widely by state, and in 24 states, there is no money awarded at all. Check the table below to see how each state pays to former inmates.

Search :



State	Statute basics	Support services	Restrictions
Montana	No financial compensation.	Educational aid.	Only wrongfully convicted persons whose DNA testing are eligible.
Nebraska	\$25,000 per year with a maximum of \$500,000.		The wrongfully convicted person must not commit or suborn perjury, feign insanity, or otherwise make a false statement. A wrongfully convicted person falsely confessing to a crime must show that the confession was coerced. \$500,000 regardless of time served.
Nevada	No statute.		
New Hampshire	Maximum of \$20,000 for the entirety of the wrongful incarceration.		Maximum of \$20,000 regardless of time served.
New Jersey	Twice the amount of the exonerated person's income in the year prior to incarceration or \$20,000 per year of incarceration, whichever is greater.		The wrongfully convicted person must not be convicted of a crime by his own conduct cause or bribe. This provision may prevent people from receiving compensation if they are convicted of a crime or pled guilty from receiving compensation.
New Mexico	No statute.		
New York	The Court of Claims determines what amount will fairly and reasonably compensate the wrongfully convicted person. His request will be expedited by the court of claims.		The wrongfully convicted person must not be convicted of a crime by his own conduct cause or bribe. This provision may prevent people from receiving compensation if they are convicted of a crime or pled guilty from receiving compensation.
North Carolina	\$50,000 for each year of wrongful incarceration with a maximum of \$750,000.	Also includes provision of job skills training and education tuition waivers.	Maximum of \$750,000 regardless of time served.
North Dakota	No statute.		
Ohio	\$40,330 per year (or amount determined by state auditor) in addition to lost wages, costs, and attorney's fees.		The wrongfully convicted person must not be convicted of a crime by his own conduct cause or bribe. This provision may prevent people from receiving compensation if they are convicted of a crime or pled guilty from receiving compensation.
Oklahoma	\$175,000 for the entirety of the wrongful incarceration.		The wrongfully convicted person must not be convicted of a crime by his own conduct cause or bribe. This provision may prevent people from receiving compensation if they are convicted of a crime or pled guilty from receiving compensation. Maximum of \$175,000.

regardless of time served.

Oregon	No statute.		
Pennsylvania	No statute.		
Rhode Island	No statute.		
South Carolina	No statute.		
South Dakota	No statute.		
Tennessee	A maximum of \$1,000,000 for the entirety of a wrongful incarceration. The board of claims, in determining the amount of compensation, shall consider the person's physical and mental suffering and loss of earnings.		Maximum of \$1 million regardless
Texas	\$80,000 per year of wrongful incarceration, as well as \$25,000 per year spent on parole or as a registered sex offender, plus an annuity.	Compensation for child support payments, tuition for up to 120 hours at a career center or public institution of higher learning, and reentry and reintegration services, including life skills, job and vocational training for as long as those services are beneficial. In addition, the state provides necessary documentation (i.e. a state ID card) and financial assistance to cover living expenses. Help is also provided to access medical and dental services, including assistance in completing documents required for application to federal entitlement programs, assistance in obtaining mental health treatment and related support services through the public mental health system for as long as necessary. Assistance also includes obtaining appropriate support services, as identified by the exoneree and the assigned case manager, to assist in making the transition from incarceration into the community.	
Utah	A wrongfully convicted person is eligible to receive for each year or portion of a year he was incarcerated, up to a maximum of 15 years, the monetary equivalent of the average annual nonagricultural payroll wage in Utah.		A wrongfully convicted person w years will not receive compensat years of wrongful imprisonment.
Vermont	Between \$30,000 and \$60,000 per year the person was incarcerated.	The exoneree is also eligible for up to 10 years of state health care, economic damages (which may include lost wages), reimbursement for attorney fees, as well as reasonable reintegrative services and mental and physical health care costs incurred by the claimant for the time period between his or her release and the date of award.	The wrongfully convicted person not suborn perjury or fabricate e the proceedings related to the cr charged. This provision may pre confessed or pled guilty from rec
Virginia	90% of the Virginia per capita personal income for up to 20 years.	Tuition worth \$10,000 in the Virginia Community College system. Exonerees also receive a transition assistance grant of \$15,000, which is later deducted from the final award.	The wrongfully convicted person guilty--unless he was charged wi new felony conviction will end the compensation.
Washington	No statute.		
West Virginia	No maximum amount is specified.		The wrongfully convicted person by his own conduct cause or brii This provision may prevent peop or pled guilty from receiving corr
Wisconsin	\$5,000 for each year in prison, with a maximum of \$25,000 plus attorney's fees.		The wrongfully convicted person not by his act or failure to act co the conviction and imprisonment compensation. This provision ma falsely confessed or pled guilty fi compensation.
Wyoming	No statute.		
Federal	Up to \$50,000 per year of wrongful imprisonment and 100,000 per year on death row.		



WISCONSIN
INNOCENCE PROJECT
UNIVERSITY OF WISCONSIN LAW SCHOOL

To: Senate Committee on Judiciary and Labor

From: Keith Findley, Co-Director, Wisconsin Innocence Project; Asst. Professor, UW Law School

Date: February 20, 2014

Re: Procedure for Claims Filed to the State Claims Board (SB 587)

The Wisconsin Innocence Project Opposes SB 587

Thank you for the opportunity to address SB 587. I am grateful to Chairman Grothman and Representative Strachota and their colleagues for their awareness that our current compensation statute is inadequate. Regretfully, however, SB 587 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 SB 587. The Wisconsin Innocence Project supports AB 519, a measure proposed by Rep. Bies and Rep. Hebl in the Assembly. However, I am here today to both register my strong opposition to SB 587 as written, and also to propose a compromise between the two measures.

Despite appearances, SB 587 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, SB 537 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 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. 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. 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.

The Wisconsin Innocence Project commends Senator Grothman, and the members of this committee for their demonstrated commitment to supporting the wrongly convicted. We are grateful that you have taken the time to bring the woeful inadequacy of Wisconsin’s current statutory scheme to light. However, although we strongly support reform of the compensation scheme, we urge this committee to do so deliberately and with an eye to the future.

With that in mind, we propose the following compromise between SB 587 and AB 519:

- Compensation of \$50,000 per year of incarceration capped at \$500,000. This amount puts Wisconsin well in line with the trend in states that are revisiting exoneree compensation. Governor Chris Christie just signed into law a statute that provides \$50,000 per year. Since 2012, four states have revisited their compensation statutes. Only one of those four set the yearly amount at least than \$50,000. Further, in states that maintain a cap it is generally set for at least \$500,000.
- Maintain current claims board procedure. We propose continuing to allow the Claims Board to award wrongful conviction compensation but propose (1) requiring the Board to hear a claim within a certain amount of time after the petitioner is released from prison and (2) explicitly authorizing the Board to use an ALJ for fact-finding determinations.
- Maintain current level of discretion enjoyed by the Claims Board. We cannot support any bill that retains the provision of SB 587 giving the Claims Board unfettered discretion to deny the claim of an exoneree who has proved their innocence. We must retain safeguards that insure this is an unbiased process. Allowing the board to deny a petitioner who has otherwise proved that they are factually innocent based on ill-defined “equitable principles” is a recipe for disaster.

- Maintain judicial review. As we have discussed it is vital to retain judicial review. Like unfettered discretion, removing the Claims Board's decisions from judicial review will have devastating effects on exonerees as they seek justice for the years of their lives they spent in prison. The wrongly convicted must have access to objective review of the decisions of the Claims Board to ensure that the process is fair and that they are not once again denied justice. We cannot support any bill that removes safeguards from the compensation process.
- Standardize the burden of proof match that is used in all other civil cases and clarify current law to be fairer to exonerees. Change the burden of proof to "preponderance of the evidence" to match all other civil claims. We propose clarifying current law to ensure that those who falsely confess or enter a plea are not ineligible for compensation, as is possible under current law.
- Provide robust transitional assistance. This is vital to ensuring a smooth transition from prison back into the community. When leaving prison after years behind bars, the wrongly convicted face the same hurdles as guilty people who are released after serving their sentence. However, exonerees are simply released with no help or continued monitoring. Both bills provide appropriate transitional assistance including housing assistance, temporary financial assistance, and the availability of county-specific local reentry resources.
- Consider other components of AB 519, such as exempting exoneree benefits from income taxes, providing inheritance rights for the families of exonerees, and providing access to the state employee health care system.
- Explicitly make these new provisions retroactive, so that individuals already exonerated will receive the additional benefits provided in this compromise.

775-05 Claims

2/20/2014

Submitted by Claims Bldg. Murray

ClaimantLastN	First Name	Date Filed	Amount	Status	Decision Date	AmountPaid	AmountRecom
Cook	Joseph Loui	1/1/1960	\$25,940.00	Closed	4/13/1960	\$550.00	\$0.00
Gibson	Arthur Earl	1/1/1966	\$100,000.00	Closed	3/15/1966	\$0.00	\$0.00
Olig	James C.	1/1/1968	\$25,000.00	Closed	12/11/1968	\$0.00	\$0.00
Laabs	Arthur	1/1/1972	\$39,100.00	Closed	7/12/1972	\$0.00	\$0.00
Roberts	Richard D.	1/1/1973	\$755.00	Closed	3/5/1973	\$0.00	\$0.00
Kanieski	Edward F.	1/1/1973	\$250,000.00	Closed	10/15/1973	\$0.00	\$0.00
McClellan	Patrick E.	1/1/1974	\$20,000.00	Closed	1/17/1974	\$0.00	\$0.00
Bannier	Daniel J.	1/1/1974	\$1,571.52	Closed	1/17/1974	\$0.00	\$0.00
Pate	Gerald	1/1/1975	\$0.00	Closed	8/19/1975	\$0.00	\$0.00
Hurst	Joseph W.	8/9/1976	\$7,990.00	Closed	6/27/1977	\$0.00	\$0.00
Lambert	Owen Neal	1/1/1977	\$32,000.00	Closed	4/25/1977	\$0.00	\$0.00
Simos	Kenneth H.	1/1/1977	\$30,000.00	Closed	5/9/1977	\$0.00	\$0.00
Reichhoff	Kenny R.	10/31/1977	\$113,023.19	Closed	3/20/1978	\$0.00	\$0.00
Stanislawski	Robert J.	1/1/1978	\$75,000.00	Closed	3/20/1978	\$0.00	\$0.00
Leff	Robert	10/29/1979	\$5,349.00	Closed	6/16/1980	\$4,889.47	\$0.00
Hudson	Lossie	7/10/1980	\$25,000.00	Closed	11/10/1980	\$0.00	\$0.00
Pugh	Carlton	6/23/1981	\$7,500.00	Closed	3/22/1982	\$7,459.00	\$0.00
Woods	Aaron B.	7/16/1981	\$25,000.00	Closed	3/22/1982	\$23,890.80	\$0.00
Proite	Leonard	4/23/1982	\$25,000.00	Closed	10/17/1983	\$5,800.00	\$0.00
Gulley	Wallace	7/23/1982	\$15,230.00	Closed	5/16/1983	\$0.00	\$0.00
Williams	Jackie L.	10/5/1983	\$25,000.00	Closed	6/28/1984	\$0.00	\$0.00
Hemauer	Francis	10/21/1983	\$500,000.00	Closed	2/20/1984	\$0.00	\$85,260.28
Donaldson	Elwin	2/2/1984	\$25,000.00	Closed	5/23/1984		\$25,000.00
Balistreri	Anthony	5/14/1984	\$2,250.00	Closed	8/13/1984	\$0.00	\$0.00
Duarte-Vestar	Evelio	10/8/1987	\$500,000.00	Closed		\$0.00	\$0.00
Fillyaw	Ronald	2/17/1988	\$275,000.00	Closed	3/1/1989	\$0.00	\$0.00
Ambler	Peter	7/7/1989	\$111,000.00	Closed	1/23/1991	\$0.00	\$0.00
Baugh	Patrick	1/1/1992	\$6,720.00	Closed	6/23/1992	\$0.00	\$0.00
Henderson	Stephen A.	6/4/1992	\$25,000.00	Closed		\$0.00	\$0.00
Grissom	Terrance	5/15/1995	\$9,000,000.00	Closed		\$0.00	\$0.00

775-05 Claims

2/20/2014

ClaimantLastNa	First Name	Date Filed	Amount	Status	Decision Date	AmountPaid	AmountRecom
Hicks	Anthony T.	11/26/1997	\$165,326.75	Closed	11/29/2007	\$109,767.64	\$0.00
Saecker	Frederic	7/16/1999	\$25,000.00	Closed	12/19/2002	\$45,000.00	\$0.00
Avery	Steven	10/21/2004	\$1,097,200.00	Closed	12/2/2004	\$48,791.61	\$0.00
Moeck	Richard	11/28/2005	\$40,975.00	Closed	12/13/2006	\$0.00	\$0.00
Sanders	David	8/20/2007	\$23,240.00	Closed	1/24/2008	\$23,240.00	\$0.00
Rupp	John A.	2/4/2008	\$22,797.45	Closed	11/6/2008	\$0.00	\$0.00
Duarte-Vestar	Evelio	12/9/2008	\$25,000,000.00	Closed	4/28/2010	\$0.00	\$0.00
Adams	Jarrett	2/5/2009	\$25,000.00	Closed	12/2/2009	\$0.00	\$0.00
Futch	James	3/2/2009	\$5,000.00	Closed		\$0.00	\$0.00
Turnpough	David R.	7/24/2009	\$18,682.89	Closed	9/11/2013	\$0.00	\$0.00
Ott	Chaunte	11/30/2009	\$25,000.00	Closed	4/28/2010	\$25,000.00	\$0.00
Stinson	Robert Lee	12/16/2009	\$115,000.00	Awaiting Legisl	12/9/2010	\$25,000.00	\$90,000.00
Burrowes	Christopher	4/26/2010	\$15,000.00	Closed	10/11/2011	\$15,000.00	\$0.00
Isham	Rommain St	8/3/2010	\$3,650,000.00	Closed	10/11/2011	\$25,000.00	\$0.00
Shomberg	Forest Seat	4/27/2011	\$102,500.00	Awaiting Sche		\$0.00	\$0.00
Washington	Michael	5/18/2011	\$30,000.00	Closed		\$0.00	\$0.00
Avery	William Da	9/13/2011	\$30,000.00	Closed	12/12/2012	\$25,000.00	\$0.00
Reeves	Beth	10/28/2011	\$161,442.43	Closed	12/12/2012	\$0.00	\$0.00
Frey	Joseph	11/1/2013	\$25,000.00	Awaiting Sche		\$0.00	\$0.00



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/Year
Texas	\$80,000
Colorado	\$70,000
Utah	\$55,974
Virginia	\$51,911
Alabama	\$50,000
Federal	\$50,000
Florida	\$50,000
Mississippi	\$50,000
New Jersey	\$50,000
Washington	\$50,000
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.

Since 2012, four states have revised their compensation laws. Only one of those states set the compensation amount at less than \$50,000/year. States are also moving away from setting a cap on awards. Those states that maintain a cap generally set it for at least \$500,000.

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.

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.**



**WISCONSIN
INNOCENCE PROJECT**
University of Wisconsin Law School

RESTORING INNOCENCE

The Wisconsin Innocence Project Opposes SB 587

The Wisconsin Innocence Project (WIP) strongly opposes Senate Bill 587. The bill gives the Claims Board unchecked authority to deny the claims of exonerees—even after they prove that they are actually innocent. Further, the bill removes Claims Board decisions regarding wrongful conviction claims from judicial oversight. And it does too little to provide the compensation and support that exonerees need.

There is a better way. WIP 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). AB 519 and AB 534, the Assembly version of SB 587, introduced by Rep. Patricia Strachota, have both been heard in the Assembly State Affairs and Government Operations Committee. Rep. Bies has proposed a compromise to Rep. Strachota.



WIP thanks this committee for its demonstrated interest in adequately compensating the wrongly convicted. We urge you to continue to support exonerees by passing a bill that both adequately compensates them, and maintains vital safeguards that ensure the impartiality and efficacy of the compensation scheme.

THE WISCONSIN INNOCENCE PROJECT SUPPORTS COMPROMISE:

Increased compensation for the wrongly convicted

- \$50,000 per year with a \$500,000 cap.

Keep current Claims Board procedure

- Retain Claims Board authority over compensation claims for wrongful conviction.
 - Build a specific time limit into the claims board process (we recommend 90 days) that will require the Board to hear the claim promptly to ensure swift resolution.
 - Explicitly authorize the Claims Board to refer the claim to an ALJ for fact finding.

Maintain current level of Claims Board discretion

- Retain current law which instructs the Claims Board to award compensation when the petitioner has proven that they are factually innocent.

Maintain judicial oversight

- Retains current law judicial oversight of Claims Board decisions with respect to the wrongly convicted.

Maintain language that denies compensation to demonstrably people who “bring about the conviction.”

- But add a provision clarifying that this is provision is not intended to apply to someone who falsely confesses, or enters a plea deal.

Standardize burden of proof to match that used in all other civil cases

- Use the preponderance of the evidence standard.

Provide robust transitional assistance

- Both bills offer transitional assistance to ensure that the wrongly convicted can succeed after they are released from prison.

Provide retroactive coverage, so that inmates already exonerated are entitled to the benefits of this bill



To: Senate Committee on Judiciary and Labor
From: Lindsey Smith, Wisconsin Innocence Project
Date: February 20, 2014
Re: Procedure for Claims Filed to the State Claims Board (SB 587)

The Wisconsin Innocence Project's Exonerees Oppose SB 587

Thank you for the opportunity to address SB 587 and speak on behalf of our project's exonerees. I've worked with and spoken to many of our exonerees who wished they could be here today. With a bit of notice, they would all be happy to come speak with you about the importance of compensation for those who were wrongly convicted. Again, we are grateful to Chairman Grothman and Representative Strachota for their efforts to bring awareness to this issue and to this Committee for passing the bill out of committee. Reform is badly needed, but this bill, SB 587, is a step backwards for our exonerees. We were able to speak with three of our exonerees who permitted me to voice their opposition to SB 587 and describe their cases and needs as they continue to rebuild their lives. All three of these exonerees spoke at the January 15, 2014 Assembly Committee on State Affairs and Government Operations Hearing and voiced their support of AB 519 and opposition to AB 534/SB 587 and would encourage you to listen to their testimony.

Chaunte Ott – “Just grateful for being out with my family and loving life.”

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 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. For Chaunte, receiving adequate healthcare is one of the most important parts of exoneree compensation. As he has said, “I believe that health care is one of the best things that you could give a person like us because I was under stress and psychological pressures and family pressures were added on top of that. People in this position need psychological counseling. That would help.” SB 587 forces exonerees to rely on public health care and it's risky at best, whether they would qualify.

After his release, Chaunte enrolled in school, but had to drop out due to a lack of funds. He 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. As he states, "I know the money would help me as well because I'm struggling just to live every day. I had to quit school just so I could work to have money for the things that I need to live. The money would be a great lift to me, just to get me a better education and go back to school."

Because of 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. Though SB 587 does raise the amount of the award under current law just slightly, it would still make Wisconsin tied with Louisiana for the lowest amount awarded to an exoneree per year under a wrongful compensation statute. Further, SB 587 does not provide the timelines needed to ensure that the compensation process happens quickly.

Finally, 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. On the importance of having a mechanism for removing records from CCAP, Chaunte has stated "I was most concerned with getting my CCAP record expunged. I just applied for a new job maybe about three months ago, still says on CCAP that he was convicted of first-degree intentional homicide." SB 587 does not provide a mechanism for the removal of CCAP records for the wrongly convicted.

Robert Lee Stinson – "Help rebuild the lives of innocent men and women who served for crimes they did not commit."

Robert Lee Stinson spent 23 years in prison for a crime that he did not 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 was adjacent to the lot where the victim's body was found. While interviewing Lee, the police noticed that he was missing a tooth, although not the same tooth that the perpetrator was missing. The state's forensic odontologist (dentist) nonetheless concluded that Lee's teeth matched the bite marks on the victim.

After a 3-day jury trial, Lee was convicted of first-degree murder and sentenced to life without parole. The state's case rested almost entirely on the bite-mark evidence. 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."

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, Lee applied to the claims board under the current statute and received only \$25,000 – the statutory maximum. As he has stated, "I've been a free man going on 5 years and all I've received is \$25,000 for the 23 years of my life that was taken away from me by the hands of two odontologists and two police officers. How can that be fair justice?" 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. He is grateful to Sen. Grothman and Rep. Kooyenga for sponsoring a bill to increase his award.

With adequate compensation, Lee would like to move his family out of a bad neighborhood. He has said, "Now that I am a free man, I have a wonderful family. They have been very supportive. It is four of us. We stay in a two bedroom apartment, which is very small and can be very frustrating at times." He realizes that adequate compensation is needed not only for him, but for all the other exonerees like himself. "Some of us have already climbed out of a deep dark abyss and there are others on the way. We would just like to live a brighter future because our past was taken away from us."

Under SB 587, 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. Under SB 587, Lee could receive even less than he did under the current law. Further, SB 587 maintains a low cap on the inadequate amount of compensation. And SB 587 has no retroactivity provisions, so even its marginally increased compensation limits would not provide any additional redress for Lee or any other exonerees whose names were cleared prior to passage of the bill.

Fred Saecker - "The miscarriages of justice continued after I was released from prison."

In 1989, Fred was convicted of burglary, second-degree sexual assault and kidnapping and sentenced to 15 years in prison. Fred spent 7 years incarcerated 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.

Once release, Fred did what he could to rebuild his life. He has stated that he "was afraid of interaction with others. [He] had trouble going to the store to get groceries and other public places. There are PTSD issues that continue to have an effect on [his] life, even to the present day." He did what he could. He found employment and tried to recover financially. However, when he receives a social security statement, there are seven blank years that influence the benefits he will receive. He hopes he will remain healthy enough to keep working in his later years.

Fred turned to the Claims Board for some help and his 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 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 entitled to compensation. Finally, on January 6, 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. With no time limits, exonerees can be waiting months or years for compensation.

Fred's experience with the claims process shows that timelines and judicial oversight are vital components of a successful claim for compensation. SB 587 provides no timelines in which the Claims board must review claims. Further, SB 587 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.

I had an opportunity to speak with Fred yesterday and he said that if he could be here today, one of question he had for this Committee was "Why is this bill going through when it seems to hurt exonerees like me?"

While our exonerees again would like to thank you all for raising awareness of this issue, they would like to emphasize that SB 587 does not do enough to correct the current law. SB 587 unfairly and unnecessarily increases the burdens exonerees face. There is an alternative bill, AB 519, that more fully and fairly addresses these problems. And there is certainly room for compromise between these two bills that could be made to ensure that Wisconsin adequately compensates those who are wrongfully convicted. As Mr. Stinson has said, "If this bill AB 519 is passed, our future would be a brighter one."

Barry C. Scheck, Esq.
Peter J. Neufeld, Esq.
Directors

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February 20, 2014

Chairman Glenn Grothman & Members of the Committee on Judiciary & Labor
Senate Committee on Judiciary & Labor
Wisconsin State Capitol
2 East Main Street
Madison, WI 53703

Re: Senate Bill 587 Related to Compensating the Wrongfully Convicted

Dear Chairman Grothman & Members of the Committee on Judiciary & Labor:

I am writing to you on behalf of the Innocence Project, a national litigation and public policy organization dedicated to exonerating wrongfully convicted individuals using DNA testing and reforming the criminal justice system to prevent future injustice. As the Director of State Policy Reform, I work on the state level across the nation on policy efforts that both reveal and prevent wrongful conviction and that seek to compensate the wrongfully convicted for the unique horror of wrongful incarceration.

I understand that your committee is considering a bill, SB 587, that seeks to make some enhancements to Wisconsin's existing compensation law. While well-intentioned, I would like to caution the committee that its passage would essentially strip many deserving individuals seeking compensation the opportunity to receive restitution and set a devastating precedent for states across the country that are considering passage of compensation laws.

The Barriers to Successful Re-entry Following Incarceration

According to a recent report written by the Re-entry Policy Council, a bipartisan group comprised of leading elected officials, policymakers and practitioners working in state and local governments, barriers to successful reentry are profound: "Research shows that when people who are released from prison or jail return to the community, their job prospects are generally dim, their chances of finding

their own place to live are bleak, and their health is typically poor.”¹ Institutionalization reaps profound psychological consequences for the incarcerated, from diminished decision-making capabilities to overwhelming distrust of others to psychological distancing. Prison culture demands the rejection of any behavior that might reveal any sort of emotional weakness or intimacy. As a result, the “emotional flatness” that an individual might have adopted in prison in the service of self-protection can be devastating to his social relationships upon release.

The Specific Effects of Wrongful Incarceration

All of these experiences are only compounded by one’s knowledge that he has been wrongfully convicted and incarcerated. A 2004 study that examined the psychological effects of wrongful conviction presented a series of clinical findings based on assessments of a sample of wrongfully convicted men.² More than 75% of the sample group experienced enduring personality changes, defined as “characteristics that were not previously seen such as hostile or mistrustful attitude towards the world, social withdrawal, feelings of emptiness or hopelessness, a chronic feeling of threat, and estrangement.” Two-thirds of those assessed experienced post-traumatic stress disorder, and 90% evidenced some form of a psychiatric disorder. As one might expect, nearly all of individuals interviewed experience incredible feelings of bitterness and “strong and unresolved feelings of loss.” These feelings of loss are not limited to grief and mourning over loved ones – often parents – who died during the course of their incarceration; relationships with family members, including children, are often permanently fractured or destroyed. Feelings of “what might have been” extend to their professional lives. The average prison stay of individuals exonerated through DNA testing is 12 years. During the course of those years, many of the exonerated missed out on educational and workforce development opportunities. They typically return to their communities unable to meet even basic professional expectations and feeling generally out of step – as indeed they have in so many instances proven to be, particularly in light of the conviction and incarceration having been wrongful.

A 2007 *New York Times* exposé tracked the experiences of those wrongfully convicted individuals proven innocent through DNA testing and found that most “have struggled to keep jobs, pay for health care, rebuild family ties and shed the psychological effects of years of questionable or wrongful imprisonment.”³ The in-depth investigation further noted a delay in the provision of monetary compensation and services, if these were to come at all. According to their research, “nearly 40 percent ...got no money for their years in prison...More than half of those who did receive compensation waited two years or longer after exoneration for the first payment.”

How SB 587 Will Impede Justice for the Wrongfully Convicted

Despite the obvious debt owed by each State to the men and women it has wrongfully convicted, many

¹ *Report of the Re-Entry Policy Council. Charting the Safe and Successful Return of Prisoners to the Community.* Council of State Governments. Reentry Policy Council. New York: Council of State Governments (2005).

² Grounds, A. 2004, *Psychological Consequences of Wrongful Conviction and Imprisonment.* Canadian Journal of Criminology and Criminal Justice, 46(2): 165-183.

³ Roberts, J. & E. Stanton. (2007, November 25). A Long Road Back After Exoneration, and Justice Is Slow to Make Amends. *New York Times*. It is worth noting that from the Innocence Project’s experience and perspective, monetary compensation – along with both the services consistent with those contemplated in this legislation and some form of sincere apology from the government - are essential components to the foundation necessary to an exoneree’s ability to move beyond his wrongful conviction and incarceration, and successfully build a post-exoneration life.



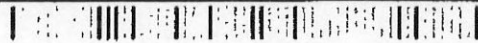
states have fallen short on their responsibility to provide true restitution to these deserving individuals. While SB 587 contains some laudable provisions, it also includes a number of provisions that would not only harm Wisconsin's wrongfully convicted; it would provide an alternative framework for the consideration of claims that could serve as a dangerous precedent to other states seeking to establish restitution frameworks for the first time.

SB 587 would permit the claims board to deny compensation for any reason it sees fit within its discretion, regardless of whether the applicant seeking compensation is actually innocent of the crime for which he or she served time. Indeed, the proposal indicates that "the claims board shall award compensation to the petitioner if the board determines that the petitioner's claim for compensation is one in which, on the basis of equitable principles, the state should in good conscience assume and pay." **To be clear, the purpose of a compensation statute is to provide the *actually innocent* with restitution for the time they spent wrongfully behind bars. A compensation statute should not enable a framework that removes all judicial oversight of the claims board's decision about whether or not to compensate the wrongfully convicted.**

No other compensating state both permits a claims board from denying a claim on the basis of "equitable principles" – as opposed to actual innocence for the crime for which a person was wrongfully incarcerated – while disqualifying a court from reviewing such a decision. The potential impact of permitting a claims board unfettered discretion in this area, absent judicial oversight, could have devastating consequences. The fact that Wisconsin is contemplating such a scheme is of great concern, and would represent a troublesome deviation from the national trend toward comprehensive compensation systems.

Indeed, this proposal also contains other concerning provisions. Wisconsin currently provides woefully inadequate monetary compensation to its wrongfully convicted. This proposal would raise the award to a petitioner from \$5,000 per year to \$15,000, with a \$200,000 cap. Indeed, states that have passed laws in the past few years provide for at least \$50,000 per year of wrongful incarceration. Mississippi passed a 2009 statute, setting compensation at \$50,000 per year. Texas amended its existing statute in 2011, raising compensation to \$80,000 per year plus an annuity valued at the same; Colorado passed a statute in 2013 that provides for \$70,000 per year; Washington passed a 2013 statute that set compensation at \$50,000 per year; and New Jersey just this year raised compensation from \$20,000 per year to \$50,000 per year. Most state statutes do not possess a cap, but nearly every state that does enumerates that cap at \$500,000 at a minimum. Put simply, the monetary framework contemplated in this bill would be out of step with the rest of the nation and also set poor precedent for the other states that are considering similar laws.

I understand that you have the power to pass a fair and modern compensation law, long overdue in Wisconsin. I implore you to use your access and abilities to pass an equitable and just one. As an advocate for victims devastated and traumatized by decades of brutal incarceration despite actual innocence, I do not believe that the proposed bill can be squared with the overarching principle of compensation: having falsely accused, prosecuted and incarcerated a citizen, the state must do all it can to make that citizen whole again. I urge this committee to vote against or amend SB 587 in service of a framework that will ensure that all wrongfully convicted – and actually innocent – Wisconsinites achieve the justice they so rightly deserve.



I am very appreciative of your consideration of the issues I raised in this correspondence. I am confident that amendments can be made to assure the fair administration of justice on this matter. It would be my pleasure to serve the committee at any stage of its work and can be reached at rbrown@innocenceproject.org or (212)364-5360.

Sincerely,

A handwritten signature in cursive script that reads "Rebecca Brown".

Rebecca Brown
Director of State Policy Reform



STATE REPRESENTATIVE
Garey Bies
1ST ASSEMBLY DISTRICT

February 19, 2014

Senator Glenn Grothman
10 South, State Capitol

Re: AB 534 - Procedure for deciding certain claims against the state filed with the claims board

Senator Grothman,

I'm submitting this letter to express my position on AB 534. I have registered opposed to the bill, specifically to the provisions that relate to claims for the wrongfully convicted. I have introduced AB 519, which has many similarities to AB 534, but also some important differences.

I have included with this, a letter I submitted to Rep. Strachota outlining some areas where we may find some compromise in an effort to move the bills forward.

I believe we all want to see changes in the current law and I'm hopeful we can find common ground to compensate these individuals who've been through the unimaginable.

I would welcome an opportunity to talk with you about this further.

Thank you,

Garey Bies

First for Wisconsin!

Capitol: P.O. 8952, Madison, WI 53708-8952 • (608) 266-5350 • Fax: (608) 282-3601
Toll-Free: (888) 482-0001 • Rep.Bies@legis.state.wi.us

Home: 2590 Settlement Road, Sister Bay, WI 54234 • (920) 854-2811



February 19, 2014

Representative Pat Strachota
324 East, State Capitol

Re: Compromise between AB 519 (Bies) and AB 534 (Strachota)

Dear Rep. Strachota:

We both have invested a great deal of time reviewing our current statutes as they relate to the process and amounts awarded for wrongful conviction claims. Our bills, although similar in many ways, have some major differences and I'm hopeful we can find a compromise to move the bills forward.

To that end, I'd like to offer the following recommendations for your consideration:

1. The definition of imprisonment- Use the definition provided in AB 534.
2. Inheritance rights for heirs upon the death of a claimant – Use the provision in AB 519
3. The ALJ provisions - remove the provision in AB 519 that requires referral of all wrongful conviction claims to an Administrative Law Judge. But : (1) the bill should include a specific time limit built into the claims board process, recommend 90 days; and (2) add a provision that explicitly authorizes, but does not require, the claims board to use an ALJ, when needed to promptly resolve factual questions.
4. Tax provisions—Keep Tax exemption included in AB 519
5. Health care- Keep provision in AB 519 that allows exonerees to obtain health insurance, but change it from the recommended 10 years in the bill to 5 years
6. Annual amount and cap- Amend AB 519 to include an annual payment of \$30,000 with a cap of \$500,000.

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I know we both would like to see meaningful change to our current statutes. The powerful and emotional testimony at the hearing underscored how antiquated the current system is and why significant reform is necessary.

Thank you for considering this compromise between our two bills.

Sincerely,

A handwritten signature in black ink that reads "Garey Bies". The signature is written in a cursive, slightly slanted style.

Garey Bies

CC:

Rep. Chad Weininger, Chair

Rep. Dale Kooyenga

Sen. Glenn Grothman



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Garey Bies

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Rep. Chad Weininger, Chair

Rep. Dale Kooyenga

Sen. Glenn Grothman