

Unjust Conviction, Unjust Compensation: The Need for Better Legislation and Systemic Assistance for the Wrongfully Convicted

By Courtney Smith

On March 10, 2009, Joseph R. Fears Jr. was released from prison after an Ohio court moved to vacate his conviction related to a 1983 rape charge.¹ DNA evidence, once lost by the prosecutor's office, had again come to light and precluded Mr. Fears from having committed the crime for which he was held.² He had served 25 years for a crime he did not commit.³

Sadly, Mr. Fears' newfound freedom will not keep the coming months free of legal troubles. His 1984 incarceration stemmed from convictions for a pair of rapes committed in the Columbus area within a week of each other.⁴ Although Mr. Fears maintains his innocence of all charges against him, the absence of DNA evidence for the second rape makes testing impossible.⁵ Two counts related to this second charge remain standing, although Mr. Fears was able to seek release for time served.⁶ These remaining counts will complicate any future claim by Mr. Fears for compensation under Ohio's wrongful conviction statute, which requires a showing of substantive innocence for all included offenses.⁷ Even if successful, Mr. Fears'

¹ Geoff Dutton & Mike Wagner, *Savoring His First Taste of Freedom*, Columbus Dispatch (Mar. 11, 2009) (available at: http://www.dispatch.com/live/content/local_news/stories/2009/03/11/FEARS_FREE.ART_ART_03-11-09_A1_G1D6LE7.html).

² *Id.* The DNA evidence matched that of a Michigan felon who was in the Columbus area at the time of the crime and is now deceased.

³ *Id.*

⁴ Carey Hoffman, *Ohio Innocence Project Helps Man Clear His Name After Wrongful Conviction*, Press Release (Mar. 6, 2009). (available at: <http://www.uc.edu/news/NR.aspx?id=9765>)

⁵ *Id.*

⁶ *Id.*

⁷ See Ohio Rev. Code Ann. §2743.48 (Westlaw current through 127th Gen. Assembly). The statutory definition for "wrongfully imprisoned" includes, in relevant part: "Subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release, or it was determined by a court of common pleas that the offense of which the individual was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person." See also Entin, Jonathan L., *Being the Government Means (Almost) Never Having to Say You're Sorry: The Sam Sheppard Case and the Meaning of Wrongful Imprisonment*, 38 Akron L. Rev. 139, 167-169 (noting Ohio courts' broad interpretation of

recovery is limited to a capped amount for each year of his incarceration, regardless of his individual needs or the harm sustained by him.⁸

The Ohio statute's inability to address the needs of its intended beneficiaries, such as Mr. Fears, underscores a problem prevalent in state compensation statutes of this kind. Individuals released from prison due to wrongful convictions face a set of unique obstacles in their attempts to reestablish themselves in society. Unfortunately, the system that wrongfully incarcerated them fails a second time by placing significant hurdles in the way of their ability to recover under inadequate compensation statutes. To better compensate the wrongfully convicted, legislators need to improve upon existing remedial statutes with an eye toward an individual's successful reintegration into society. Although it is unrealistic to expect states to allocate huge amounts of additional funding to this goal, it can still be achieved by more effective timing of compensation and by providing access to reentry services.

This paper will examine the need for more complete compensation for wrongfully convicted individuals and provide suggestions as to how legislators might better address the needs of this group while remaining mindful of fiscal and political realities. The first section will provide a short introduction to the problem of wrongful convictions. The second section will briefly discuss various claims available to exonerees outside of specific state compensatory statutes. The third section characterizes existing state statutes into three different approaches, ultimately arguing that legislators should look to those providing systemic support in addition to monetary compensation as a model for improved legislation. The fourth section draws upon the strengths and weaknesses of these statutes, as well as additional research, to introduce the components of better legislation for the wrongfully convicted.

§2743.38 such that recovery can rest on a showing that the offense in question was not committed by the claimant or any other person).

⁸ Ohio Rev. Code §2743.48; Ohio Rev. Code §2743.49 (Westlaw current through 127th Gen. Assembly).

I. Introduction to Wrongful Convictions

In general, it is difficult to quantify the incidence of wrongful convictions on a national scale, due largely to varying understandings of the term “wrongful.”⁹ For example, Northwestern University’s Center for Wrongful Convictions applies the term to cases where the defendant’s conviction is overturned after a showing of factual innocence,¹⁰ while other programs apply the term exclusively to those cleared by DNA evidence.¹¹ Despite the lack of consensus as to what constitutes a “wrongful conviction,” evidence suggests that the problem is increasingly prevalent. Studies indicate that some 340 exonerations occurred between 1989 and 2003,¹² with an average of forty-two convictions overturned annually between 2000 and 2003.¹³ As of March 2009, 234 inmates have been exonerated by DNA evidence.¹⁴ Additional studies speculate that thousands of individuals are currently serving time for false convictions.¹⁵

Statistics alone confirm that the criminal justice system operates imperfectly, but accepting these convictions as the inevitable failures of the justice system leaves people “free but uncompensated.”¹⁶ Indeed, there may be no legal obligation to indemnify those who were wrongfully convicted.¹⁷ Thus, states that pass on the cost of an imperfect criminal justice system

⁹ John Martinez, *Wrongful Convictions as Rightful Takings: Protecting “Liberty-Property,”* 59 Hastings L. J. 515, 526-27 (2007).

¹⁰ See Northwestern University School of Law’s Center for Wrongful Convictions website (available at: <http://www.law.northwestern.edu/wrongfulconvictions/>).

¹¹ See e.g. The Innocence Project (website available at: <http://www.innocenceproject.org/>).

¹² Martinez, *supra* n. 9 at 526 n. 45.

¹³ Jennifer L. Chunias & Yael D. Aufgang, *Beyond Monetary Compensation: The Need for Comprehensive Services for the Wrongfully Convicted*, 28 B.C. Third World L.J. 105, 106 (2008). See also: Samuel R. Gross et al., *Exonerations in the United States 1989 Through 2003*, 95 J. Crim. L. & Criminology 523, 527 (2005).

¹⁴ Hoffman, *supra* n. 4.

¹⁵ Gross, *supra* n. 12 at 532 (proposing that if the same level of examination applied to capital cases was applied to all cases, there would have been over 29,000 false convictions over a 15-year period).

¹⁶ Martinez, *supra* n. 9 at 536-37.

¹⁷ Albert B. Lopez, *\$10 and a Denim Jacket? A Model Statute for Compensating the Wrongly Convicted*, 36 Ga. L.Rev. 665, 709 (2002); Adele Bernhard, *When Justice Fails: Indemnification for Unjust Conviction*, 6 U. Chi. L. Sch. Roundtable 73, 92 n.78 (1999).

to society through compensation for the wrongfully convicted do so on moral grounds.¹⁸ Moral obligations aside, states rarely provide restitution to the wrongfully convicted individuals due to low recovery rates. Regardless of how compensation is sought, less than one-third of exonerees actually receive compensation for the time they serve.¹⁹

II. Recovery Outside of State Compensatory Statutes

Exonerees who raise claims for their unjust convictions have several possible paths through which they can seek recompense. This section will briefly introduce some of the difficulties associated with damages claims brought outside of state compensatory statutes.

Those wrongfully convicted of federal crimes can turn to the national government to recover damages. Claimants under the federal unjust conviction statute may receive compensation for each year of their wrongful imprisonment.²⁰ Successful recovery compels satisfaction of two significant eligibility requirements: the claimant must prove that his challenged conviction was set aside or pardoned on grounds of innocence²¹ and that he neither committed the alleged crime nor contributed to his wrongful conviction.²²

Another possible route of recovery is through Section 1983 claims. Section 1983 claims are rooted in the idea that a state actor, working under the color of state law, deprived the exoneree of constitutional rights.²³ This allows the claimant to file suit against municipalities

¹⁸ Lopez, *supra* n.17 at 710.

¹⁹ Barry Scheck, Peter Neufeld & Jim Dwyer, *Actual Innocence*, 298 (New Am. Library 2003).

²⁰ 28 U.S.C. §1495 (2006).

²¹ 28 U.S.C. §2513(a)(1) (2006).

²² 28 U.S.C. §2513(a)(2) (2006)

²³ 42 U.S.C. §1983 (2006) [Civil Action for deprivation of rights]:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

and local police, prosecutors, or public defenders for violation of his Fourth, Fourteenth, or Sixth Amendment rights.²⁴ Presenting a successful Section 1983 claim is particularly onerous—the wrongfully convicted individual must avoid applicable strict or qualified immunity doctrines when establishing a constitutional violation by a state actor before he can proceed on the merits.²⁵

A common law malicious prosecution suit against a prosecutor would face similar obstacles with respect to immunity.²⁶ Moreover, under most circumstances the claimant would have difficulty demonstrating that the prosecutor acted with malice and lack of probable cause.²⁷

Although untried, a further possible avenue for compensation may arise under the Just Compensation Clause.²⁸ State constitutions with provisions similar to the Federal Just Compensation statute prohibit the government from taking private property without compensation.²⁹ Professor John Martinez argues for a new conceptualization of wrongful convictions as a taking of “liberty-property” which necessitates just compensation.³⁰ The crux of his argument lies in understanding “property” as a bundle of legal rights rather than assets: “A wrongful conviction prevents the wrongfully convicted person from exercising the freedom to mix his or her labor with natural resources and thereby create legal rights in relation to the world

²⁴ Lopez, *supra* n. 17 at 690-93.

²⁵ Shawn Armbrust, *When Money Isn't Enough: The Case for Holistic Compensation of the Wrongfully Convicted*, 41 Am. Crim. L. Rev. 157, 161-162 (2004).

²⁶ Lopez, *supra* n. 17 at 694 (summarizing the Supreme Court's finding that common law granted prosecutors absolute immunity in their prosecutorial role in *Imbler v. Pachtman*, 424 U.S. 409, 424 (1976)). 424 U.S. 409 at 424.

²⁷ See e.g. Restatement (Second) of Torts § 653 (1977) Elements of a Cause of Action: “A private person who initiates or procures the institution of criminal proceedings against another who is not guilty of the offense charged is subject to liability for malicious prosecution if (a) he initiates or procures the proceedings without probable cause and primarily for a purpose other than that of bringing an offender to justice, and (b) the proceedings have terminated in favor of the accused.”

²⁸ See generally Martinez, *supra* n. 9.

²⁹ *Id.*

³⁰ *Id.*

with respect to those assets. The deprivation of liberty thereby imposes harm that can be measured as the lost opportunity to establish legal rights in relation to the world”³¹ The Just Compensation Clause, or its state constitution equivalent, could therefore provide an alternative to the claims described above.³²

Another option for some wrongfully convicted individuals is to sue their private defense counsel for legal malpractice. Because the requisite standard of care for defense attorneys is perceived to be so low, claimants attempting to assert that their unfavorable verdict was the result of their defense counsel’s negligence face an uphill battle.³³

A final possibility for some wrongfully convicted individuals is to eschew litigation in favor of special legislation. In states that allow individuals to lobby for private bills, special compensatory legislation can address some of the inadequacies in the aforementioned legal remedies.³⁴ These bills provide legislators the freedom to compensate exonerees without fitting the award within the constraints of tort liability, and provide a more cost-effective mode of recovery for the exoneree.³⁵ Private legislation is not without its problems, however. Compensation through this method is frustrated by “the realities of politics and influence.”³⁶ Successful bills tend to reflect the social connections and personal appeal of the exoneree, and restitution is further influenced by the fiscal limitations of the state treasury.³⁷ Special legislation can be unreliable, granting one exoneree a huge sum, while the next fails to even find

³¹ *Id.* at 548

³² Professor Martinez observes that the Supreme Court has yet to consider whether the deprivation of liberty through unjust conviction constitutes a taking under the Just Compensation Clause. However, the Court has left room for argument. See *Id.* at 543.

³³ Lopez, *supra* n. 17 at 697.

³⁴ Not all states permit private legislation. See e.g. Neb. Rev. St. Const. Art. III, §18 (prohibiting local or special laws).

³⁵ John J. Johnston, Student Author, *Reasonover v. Washington: Toward a Just Treatment of the Wrongfully Convicted in Missouri*, 68 UMKC L. Rev. 411, 415 (2000).

³⁶ Lopez, *supra* n. 17 at 699.

³⁷ Jessica R. Lonergan, *Protecting the Innocent: A Model for Comprehensive, Individualized Compensation of the Exonerated*, 11 N.Y.U. J. Legis. & Pub. Pol’y 405, 408 (2008); Bernhard, *supra* n. 17 at 94.

a sponsor amongst state legislators.³⁸ Collectively, wrongfully convicted individuals would be better served by a more uniform approach to compensation.

III. State Compensatory Statutes: Three Approaches

Seeking to alleviate the problems with litigation and private legislation, states are increasingly turning to statutes specifically designed to compensate exonerees. To date, half of the states, plus the District of Columbia, have some kind of compensatory statute.³⁹ These statutes can be roughly characterized into three groups: those exclusively providing monetary compensation, those providing only reentry services, and those providing a combination of monetary compensation and services. This section will examine these different approaches, finally concluding that legislators should follow the latter category when adopting or improving existing compensation schemes.

A. Exclusively Monetary Compensation

Of the jurisdictions with statutory compensation in place, sixteen grant recovery strictly in monetary form.⁴⁰ Calculation of these funds differs significantly across jurisdictions.

Most of these states use a single annual amount as a base award, then multiply the award for each year or partial year of incarceration. Alternatively, California and Missouri calculate damages *per diem*, awarding \$100 and \$50 respectively for each day the claimant is unjustly

³⁸ Adele Bernhart, *Justice Still Fails: A Review of Recent Efforts to Compensate Individuals Who Have Been Unjustly Convicted and Later Exonerated*, 52 Drake L. Rev. 703, 708-709 (2004) (describing the unpredictability of Georgia's legislature, which granted \$500,000 to the first man cleared by DNA testing but failed to introduce bills to benefit the two subsequent exonerees). Since Bernhart's publication, these individuals have received compensation. See Case Profiles, The Innocence Project (available at www.innocenceproject.org). Nonetheless, the comparatively long delay between the exoneration date and the introduction of compensatory bills for these individuals serves Professor Bernhart's point.

³⁹ States without this legislation include: Alaska, Arizona, Arkansas, Colorado, Delaware, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Mexico, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Washington and Wyoming.

⁴⁰ These jurisdictions include: Alabama, California, Illinois, Iowa, Maine, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Tennessee, Utah, West Virginia, Wisconsin, and the District of Columbia.

imprisoned.⁴¹ The base award may be uniform for all claimants in the jurisdiction, but may also serve as a floor or ceiling. For example, Alabama ensures a minimum of \$50,000 per year of incarceration,⁴² while Wisconsin permits recovery up to \$5,000 per year, capping total recovery at \$25,000.⁴³

Other states calculate damages as a single lump sum rather than as annual awards. In states such as Maine or Tennessee, the court is able to tailor the award up to a statutory maximum.⁴⁴ This framework works well in cases where the exoneree served a relatively shorter sentence, but is disadvantageous where the sentence was particularly lengthy. Illinois addresses this problem by applying a three-tiered scheme: claimants who served up to five years are entitled to \$85,350; those who served between five and fourteen years receive \$170,000; and those serving more than fourteen years receive a total of \$199,150.⁴⁵ New Hampshire, on the other hand, awards \$20,000 to all successful claims, regardless of time served.⁴⁶

Where recovery is limited to monetary awards, statutory caps make all the difference in exonerees' attempts to recover for their injuries due to incarceration. Professor Lopez attributes these statutory limitations to general tort reform efforts in the 1970s.⁴⁷ While most statutes pick an arbitrary sum, a few states make clear efforts to tie the award to an external benchmark. Utah, for instance, recently passed legislation granting an award for each year of imprisonment equal to "the monetary equivalent of the average annual nonagricultural payroll wage in Utah."⁴⁸

⁴¹ See Cal Penal Code §§4900-6 (Westlaw current through 2009 Reg. Sess.); Mo. Rev. Stat. Ann. §§ 650.055-9 (Westlaw current through 2008 2nd Reg. Sess.). Annually this amounts to \$35,500 and \$18,250, respectively.

⁴² Ala. Code 1975 §29-2-161(Westlaw current through Act 2009-14 of the 2009 Reg. Sess.).

⁴³ Wis. Stat. Ann. §775.05 (Westlaw current through 2009 Act 1). Iowa and Utah also allow discretionary awards up to a statutory-imposed maximum.

⁴⁴ See 14 Me. Rev. Stat. Ann. §8241 (Westlaw current through 2008 2nd Reg. Sess.) (awarding up to \$300,000) and Tenn. Code Ann §9-8-108 (Westlaw current through 2008 Reg. Sess.) (awarding up to \$1,000,000).

⁴⁵ 705 Ill. Comp. Stat. § 505/8(c) (Westlaw current through P.A. 96-3 2009 Reg. Sess.).

⁴⁶ N.H. Rev. Stat. §541-B:14 (Westlaw current through Ch.2 2009 Reg. Sess.).

⁴⁷ See Lopez, *supra* n. 17 at 706-07.

⁴⁸ Utah Code Ann. §78B-9-405 (Westlaw current through 2008 2nd Spec. Sess.).

Nonetheless, indication of how the award was calculated, if not tied to the particular exoneree's injuries, is no less arbitrary than any other statutory award.

Some states permit recovery for lost wages in addition to a statutory award. Ohio allows recovery of lost wages on top of its annual rate.⁴⁹ Iowa limits recovery on lost wages to \$25,000 for each year of compensation but this amount may be added on to its *per diem* award.⁵⁰ Presumably these jurisdictions intend the award in part to compensate for noneconomic injury. Generally noneconomic injuries are not explicitly provided for; at present only two states expressly provide for noneconomic harm suffered from an unjust conviction.⁵¹

Although not explicitly provided for, jurisdictions without statutory caps have some discretion in addressing both economic and noneconomic injuries. Without the strictures of statutory limitations, courts are free to award "fair and reasonable" compensation to the wrongfully convicted.⁵²

Although the compensation structure varies significantly across jurisdictions, compensation statutes remain consistent in their generalized attempt to translate injury into a dollar amount. Nonetheless, alternative ways to address an exoneree's recovery exist.

B. Reentry Services Alone

Another approach is to simply provide reintegration services to the wrongfully convicted. Still, as imperfect as monetary compensation may be, states overwhelmingly prefer awarding monetary compensation over exclusively service-oriented restitution. Montana is the sole

⁴⁹ Ohio Rev. Code Ann. §2743.48; §2305.02 (Westlaw current through the end of the 127th General Assembly).

⁵⁰ Iowa Code Ann. §663A.1.(Westlaw current through 2009 Reg. Sess.)

⁵¹ See Tenn. Code Ann. §9-8-108 (permitting recovery for mental suffering); Conn. Gen. Stat. Ann. 54-102uu (Westlaw current through Jan. 1, 2009) (permitting recovery for loss of enjoyment of life, loss of familial relationships, pain and suffering, and loss of reputation).

⁵² See N.Y. Ct. of Claims Act §8-b (McKinney current through 2009); W.Va. Code §14-2-13a (Westlaw current through S.B. 403 2009 Reg. Sess.).

jurisdiction with official legislation that offers some reintegration services but no monetary support.⁵³

Despite states' preference for monetary awards, there is a distinct need for reentry services for wrongfully convicted individuals. Monetary awards compensate for the harm sustained during incarceration, but fail to recognize the significant, ongoing obstacles facing exonerees when they leave prison.⁵⁴ Exonerees are not entered into the system for ex-offenders.⁵⁵ In general, this means they do not qualify for the traditional parole services offered to regular inmates on release.⁵⁶ Exonerees, however, are perhaps even more in need of reintegration services than other inmates. Under normal circumstances, inmates have several months to prepare for their anticipated release and transition back into society.⁵⁷ Exonerees, on the other hand, often are released abruptly following an overturned conviction, leaving little or no time for reentry planning.⁵⁸

Seeking to address this problem, a 2005 American Bar Association resolution called for transition assistance for exonerees at least equivalent to services available to parolees and individuals on probation.⁵⁹ While the resolution takes a step in the right direction, it sets a low bar in terms of recommended assistance for new exonerees. In particular, the recommendation fails to account for the unique hardships faced by the wrongfully convicted that traditional support is not designed to address. Traditional programs for ex-convicts are geared around

⁵³ Mont. Code Ann. §53-1-214 (Westlaw current through 2007 Spec. Sess.).

⁵⁴ Armbrust, *supra* n. 25 at 170.

⁵⁵ *Id.* at 176.

⁵⁶ Chunias & Aufgang, *supra* n. 13 at 109; Barry Scheck, Peter Neufield & Jim Dwyer, *Actual Innocence: Five Days to Execution and Other Dispatches from the Wrongly Convicted* 223-24 (2000).

⁵⁷ Chunias & Aufgang, *supra* n. 13 at 109. See also Jeremy Travis, Amy L. Solomon & Michelle Waul, *From Prison to Home: The Dimensions and Consequence of Prisoner Reentry* (2001) at 14 (noting that all states provide some form of pre-release program, including services such as work release, substance abuse counseling, halfway houses, and major prerelease facilities). (available at http://www.urban.org/UploadedPDF/from_prison_to_home.pdf).

⁵⁸ Travis, Solomon & Waul, *supra* n. 57 at 14.

⁵⁹ Am. Bar Ass'n, Section of Crim. Justice, Report to the House of Delegates 1 (2005) (available at <http://www.abanet.org/crimjust/policy/my05108a.pdf>).

limiting recidivism;⁶⁰ exonerees require reintegration plans that also ameliorate the harm from their unjust conviction.⁶¹ In addition to the problems faced by other released inmates, such as the need for housing, health care, and employment, exonerees also deal with the psychological strain of wrongful incarceration and an abrupt release back into society.⁶²

A well-crafted statute could make great strides in addressing the needs of a wrongfully convicted individual, even without monetary compensation. Montana's statute, however, provides little more than symbolic support for exonerees. Under the statute, an exoneree is entitled only to educational aid.⁶³ Access to education and job training may be important aspects in making an unjustly imprisoned individual whole, but do not assist the exoneree in meeting more basic and immediate needs. Moreover, even if the statute did provide tremendous systemic assistance to exonerees, it would still fail to compensate for the exoneree's unjust imprisonment at the hands of the state. Inherent notions of fairness and tort liability justify some level of monetary compensation.

C. Hybrid Approach: Reentry Services in Addition to Monetary Compensation

A final approach used by states is a more comprehensive statute that provides for both monetary compensation and reintegration services. This "hybrid" approach allows the exoneree to recover for his time in prison and address his needs for successful reintegration. Essentially, a well-drafted hybrid statute includes the benefits of other statutory approaches while minimizing any disadvantages.

⁶⁰ Travis et al, *supra* n. 47 at 14.

⁶¹ Chunias & Aufgang, *supra* n. 13 at 111.

⁶² *Id.* at 114-15.

⁶³ See Mont. Code Ann. §53-1-214.

In 2004, Massachusetts became the first state to adopt a statute providing monetary damages in addition to support services for wrongfully convicted individuals.⁶⁴ Since then, eight other states have introduced or amended existing statutes to include some form of reentry service on top of financial awards.⁶⁵

An examination of these statutes demonstrates the flexibility available to state legislators in crafting this legislation. Across jurisdictions, the statutes vary greatly with respect to both the size of the monetary award and the extent and variety of services available to the exoneree. For example, Louisiana caps awards at \$15,000 per year of incarceration, with a maximum recovery of \$150,000.⁶⁶ Vermont allows recovery between \$30,000 and \$60,000 per year of incarceration,⁶⁷ while Florida and Texas grant \$50,000 per year.⁶⁸ Similarly, the service provisions included in these statutes compensate the exoneree to varying degrees. Most states provide for some combination of following services: counseling, job skill training, tuition for higher education, and health care. For example, Florida, North Carolina, and Louisiana all provide for community college or state university tuition and expenses. Additionally, North Carolina includes a year of job skills training, while Louisiana includes both job skill training and access to physical and mental health care providers. Connecticut and Massachusetts include broad provisions that allow funding or access to any other services the exoneree may need.⁶⁹

⁶⁴ Mass. Gen. Laws Ann. ch 258D, §§ 1-9 (Westlaw current through 2009 1st Sess.).

⁶⁵ These states are: Connecticut (Conn. Gen. Stat. 54-102uu), Florida (Fla. Stat. §§961.01-.06 (Westlaw current through 2009 Spec. A Sess.)), Louisiana (La. Stat. Ann. §15:572.8 and 15:572.9 (Westlaw current through 2008 Reg. Sess.)), Maryland (Md. State Fin. & Proc. Code Ann. §10-501 (Westlaw current through 2008 Reg. Sess.)), North Carolina (N.C. Gen. Stat. §§148-82-84 (Westlaw current through 2008 Reg. Sess.)), Texas (Tex. Code Ann. §9-8-108), Vermont (Vt. Stat. Ann. Tit. 13, §5574 (Westlaw current through 2008 Gen. Assembly)), and Virginia (Va. Code Ann. §8.01-195.10 (Westlaw current through 2009 Reg. Sess.))

⁶⁶ La. Stat. Ann. §15:572.8.

⁶⁷ Va. Code. Ann. §8.01-195.10.

⁶⁸ See Fla. Stat. §961.01-.06 and Tex. Code Ann. §9-8-108. Exonerees who served on death row are entitled to another \$50,000 under Texas law.

⁶⁹ See Conn. Gen. Stat. 54-102uu (allowing, in addition to employment training, counseling, and college tuition, funds for “any other services such person may need to facilitate such person’s reintegration into the community);

As a whole, these hybrid statutes provide the most complete compensation to wrongfully convicted individuals. The flexibility to provide systemic support on top of monetary compensation allows states to provide restitution for any harm caused by an unjust conviction while providing additional services to address any ongoing effects as the individual transitions back into society.

D. An Appraisal of These Approaches

Statutes providing monetary compensation have distinct advantages over other legal and legislative methods of recovery. Shifting the basis of compensation to the unjust conviction itself rather than the wrongful conduct of a state actor removes significant hurdles to recovery, while a uniform statute allows the claimant to proceed without dependence on legislative sponsors.⁷⁰ Still, adjudication of compensation claims is a slow-moving process,⁷¹ leaving claimants without funding immediately upon release.⁷² This shortcoming demonstrates a need for aid beyond that provided in compensatory statutes. In contrast, service-oriented statutes address the needs of individuals released from prison, but in no way compensate exonerees for their actual incarceration. Hybrid statutes provide a means of providing both kinds of compensation. Of the three possible approaches identified in this section, policymakers should look to this schema for model legislation.

Despite their advantages, hybrid statutes are still susceptible to the weakness of all statutory compensation: namely, the delay between the exoneree's release and receipt of the award. Further, while the hybrid structure is the most flexible of statutory awards, any individual

Mass. Gen. Laws Ann. Ch 268D §1-9 (requiring the commonwealth to provide "services that are reasonable and necessary to address any deficiencies in the individual's physical and emotional condition that are shown to be directly related to the individual's erroneous felony conviction").

⁷⁰ Lonergan, *supra* n. 37 at 410.

⁷¹ Armbrust, *supra* n. 25 at 171 (noting that current versions of compensation statutes designate authority to tribunals or traditional courts).

⁷² Chunias & Aufgang, *supra* n. 13 at 123.

statute is only as good as its drafting. Finally, critics of compensation statutes argue that statutes place too great a financial burden on states and run the risk of granting awards to undeserving individuals.⁷³ The next section will examine ways to correct these weaknesses through improved legislation as part of its general recommendations for legislators.

IV. Model Legislation

The previous section categorized existing state compensation statutes into three approaches, concluding that statutes providing reentry services in addition to monetary compensation are best equipped to address the entirety of an exoneree's injuries. Although statutory compensation has its drawbacks, this section argues that better drafting can improve upon these deficiencies. Drawing upon statutes already in place, anecdotal evidence, and the work of scholars in the field, this section will make recommendations for new legislation that balances the concerns of legislators while providing more comprehensive awards to wrongfully convicted individuals. Most importantly, improved legislation should relax actual innocence requirements to facilitate immediate funding to exonerees, and devote resources toward reintegration services for the wrongfully convicted.

A. Immediately Upon Release

Pursuing compensation for wrongful convictions takes time. Even for successful claimants, the process may take months or possibly years.⁷⁴ In the interim, the innocent exoneree often is left without the benefit of social services that would be available had he been guilty and released on parole.⁷⁵ Research suggests that the first days following release are

⁷³ Bernhard, *supra* n. 38 at 713 (based on interviews with state legislators who have tried to introduce compensation statutes in their jurisdictions)

⁷⁴ Chunias & Aufgang, *supra* n. 13 at 123.

⁷⁵ *Id.* at 111; Armbrust, *supra* n. 25 at 156-157 (describing one exoneree's experience being refused assistance from four different agencies serving ex-offenders).

crucial to successful reintegration for all former prisoners.⁷⁶ Exonerees need to access to services immediately upon release, as well as funding to meet basic needs. Addressing this need should be a major focus of improved legislation.

Vermont's compensation statute is one of two that contemplates the needs of exonerees prior to receiving their official compensation award. The Vermont plan allows the court to award "compensation for any reasonable reintegrative services and mental and physical health care costs incurred by the claimant for the time period between his or her release from mistaken incarceration and the date of the award."⁷⁷ This helps get reintegration started without waiting for adjudication of the compensation claim.

An additional benefit of Vermont's commitment to reimbursement for reintegration expenses is that it allows the exoneree to seek services beyond what the state provides. One serious criticism of service-oriented compensation statutes is that providing access to state programs rather than funding limits an exoneree's options to only those services actually provided by the state.⁷⁸ Furthermore, the claimant is restricted to state-run programs rather than given a choice of service providers. In light of the distrust of the state and residual anger common among wrongfully convicted individuals,⁷⁹ at least the freedom to seek counseling from other sources is necessary. In the words of one exonerated individual,

[A]nyone associated or aligned with the state could not counsel me, could not talk to me, because [they] have a state mentality about people like me [. . .] that I'm different from people in society because I was placed in that environment. In other words, you lay down with fleas, you get up with fleas, just

⁷⁶ Travis et al, *supra* n. 57 at 25.

⁷⁷ 13 V.S.A. §5574(b)(3).

⁷⁸ Chunias & Aufgang, *supra* n. 13 at 123.

⁷⁹ Northwestern Law's Center on Wrongful Convictions, *The Needs of the Wrongfully Convicted: A Panel Report*, Report to the Governor's Commission on Capital Punishment by the Illinois Criminal Justice Information Authority's Research & Analysis Unit (2002) (noting unanimous anger and distrust in the justice system) [hereinafter Panel Report].

like you're with them you are fleas. So that the way [they] look at us. No state counselor could talk to me.⁸⁰

Reimbursement for services allows exonerees to seek assistance within the community, furthering the transition out of state programs and back into society.

Nonetheless, the Vermont approach has some drawbacks that keep it from being model legislation. First, the requirement that services be “reasonable” adds an element of uncertainty regarding what services will be reimbursed.⁸¹ A newly released exoneree cannot be certain that the transition expenses incurred prior to adjudication will be fully or partially reimbursed. Second, reimbursement is not beneficial in the short-run. The statute presumes that exonerees will have access to funds to initially begin reintegration programs.

A different solution to the funding issue appears in Virginia’s statute.⁸² Virginia provides a transition grant of \$15,000 to exonerees at release; the grant is deducted from later awards.⁸³ This approach gets funds in the hands of exonerees immediately. An added benefit is that because the grant is structured as an advance on future recovery, the cost to the state is minimized. Any actual cost of the transition grants occurs only in situations where the exoneree ultimately would be unable to recover further compensation under the statute.

Virginia, like all states that have enacted compensation statutes, has eligibility requirements that bar recovery for some wrongfully convicted individuals. All of these states require proof of actual innocence to set aside the conviction. In addition, some states require

⁸⁰ *Id.*

⁸¹ Lonergan, *supra* n. 37 at 425.

⁸² Va. Code Ann. §8.01-195.10)

⁸³ *Id.* Section C: “Any person who is convicted of a felony by a county or city circuit court of the Commonwealth and is wrongfully incarcerated for such felony shall receive a transition assistance grant of \$15,000 to be paid from the Criminal Fund, which amount shall be deducted from any award received pursuant to [previous sections of the statute.]”

official pardons,⁸⁴ exoneration through DNA evidence,⁸⁵ or a demonstration that the claimant did not contribute to his arrest or conviction through guilty pleas, false confessions, or involvement in lesser offenses.⁸⁶ Virginia’s factual innocence requirement becomes the biggest hurdle to recovery, barring claims from those who cannot affirmatively establish substantive innocence.⁸⁷ By issuing funds prior to a finding of actual innocence, however, the ex ante transition grant allows all exonerees to receive transitional funds regardless of the success of later claims.

As mentioned previously, a concern of opponents of statutory compensation is the risk of rewarding undeserving individuals—those that were actually guilty of their convicted crime, but were released on some technicality. The substantive innocence requirement in every state statute speaks to this concern.⁸⁸ While acknowledging the political pressure that requires an actual innocence requirement for larger compensatory awards,⁸⁹ this paper argues that ex ante transition grants are appropriate for all exonerees.

Regardless of whether an exoneree is substantively or procedurally innocent, the criminal justice system presumes innocence, and incarceration where the prosecution has not satisfied its burden of proof is wrongful.⁹⁰ As previously mentioned, states compensate wrongfully convicted individuals on moral grounds rather than a legal obligation. Those that are

⁸⁴ Maine, North Carolina, and Tennessee.

⁸⁵ Missouri, Utah, and Vermont.

⁸⁶ California, Florida, Iowa, Minnesota, New Jersey, New York, Ohio, Oklahoma, Vermont, West Virginia, Wisconsin, and District of Columbia. Additionally, Virginia bars a claimant’s contribution to his or her arrest except where the claimant was charged with a capital offense.

⁸⁷ See Va. Code Ann. §8.01-195.10 (defining “wrongfully incarcerated” as those who have had their conviction overturned pursuant to a writ of actual innocence as defined in Va. Code Ann. §19.2-327.2).

⁸⁸ For example, California authorizes an applicant’s claim on if “the crime with which he was charged was either not committed at all or, if committed, was not committed by him, or who, being innocent of the crime with which he was charged for either of the foregoing reasons, shall have served the term or any part thereof for which he was imprisoned.” Cal. Penal Code §4900.

⁸⁹ See generally Lopez’s discussion of “the diverging interests of state legislators and the wrongly convicted,” *supra* n. 17 at 704.

⁹⁰ See Entin, *supra* n. 7 at 173; Martinez, *supra* n. 9 at 519-20.

procedurally innocent are still victims of the state.⁹¹ These individuals have a moral claim to some compensation for the infringement of their liberty.⁹² The ex ante transition grant allows a moderate level of recovery for these victims of the state who may not have as strong a moral claim to additional compensation. Furthermore, the transition grant ensures a minimal level of recovery to aid reentry for factually innocent exonerees who may not be able to affirmatively establish their substantive innocence. Requiring a finding of factual innocence, either at release or in a later claim, denies compensation to these individuals.

In sum, model legislation should include ex ante transition grants for all individuals released from prison following overturned convictions. For those exonerees who successfully recover under a compensation statute, this grant constitutes an advance from future recovery, allowing the exoneree the ability to start those programs necessary for successful reintegration during the most critical period immediately following release. For the remainder, it allows at least a modicum of transitional aid for those victims of the state that are unable to recover under traditional statutes. In effect, the grant creates greater access to a minimum standard of compensation for a larger number of exonerees with minimal effect on state treasuries.

B. Statutory Financial Award

Model compensation statutes awards should be awarded both economic and noneconomic damages. Actual damages are identifiable, and therefore do not need to be subject to statutory caps because there is little risk of overcompensation.⁹³ Because most exonerees are indigent or earned low levels of income prior to their conviction, the cost to states will be

⁹¹ Entin, *supra* n. 7 at 173 (noting that, “In either case, the claimant would not have been imprisoned but would have remained at liberty.”)

⁹² *Id.*

⁹³ Lopez, *supra* n. 17 at 711.

small.⁹⁴ The greatest part of a wrongfully convicted individual's injuries come from noneconomic damages.⁹⁵ Therefore, the focus of the financial component of compensation statutes should be on adequately compensating for these noneconomic wrongs.

The adequacy of the compensation provision can be measured in terms of the scope of the damages included in the recovery and in the permissible size of the award. Connecticut's financial provision is exemplary in its breadth, awarding damages for "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."⁹⁶ However, Connecticut requires the claimant to prove actual damages for both economic and noneconomic injuries.⁹⁷ In theory this allows for the claimant to receive awards tailored to their unique situation. However, proving noneconomic injuries requires the claimant to measure soon after release the extent of damages that will continue for a long time thereafter.⁹⁸

An alternative to requiring the complainant to prove actual damages is to allow the court or a jury to factor in the various injuries suffered by the exoneree when determining an appropriate award. Some states have bestowed large awards on successful claimants where the statute did not cap the award.⁹⁹ However, the need for huge awards is diminished where states are able to provide reintegration services in addition to compensation. Instead, statutory caps can

⁹⁴ *Id.* at 719.

⁹⁵ *Id.* at 711-712.

⁹⁶ Conn. Gen. Stat. 54-102uu.

⁹⁷ See *Id.*

⁹⁸ Armbrust, *supra* n. 25 at 174.

⁹⁹ For example, Warith Habib Abdal received a settlement for \$2 million after wrongfully serving nearly 17 years (profile available at <http://www.law.northwestern.edu/wrongfulconvictions/exonerations/nyAbdalSummary.html>).

be utilized to translate noneconomic injuries into monetary amounts in wrongful conviction cases just as they do in other tort cases.¹⁰⁰ Statutory caps provide greater predictability for legislators and claimants alike by providing a benchmark from which to base awards.

As previously discussed, most compensatory statutes work around a base award. The problem with existing statutory caps is not the cap itself, but rather that the cap is too low to adequately compensate the exoneree. Low caps are especially damaging to exonerees who served a relatively short time in prison, where the cost of associated legal fees would make filing a compensation claim inefficient.¹⁰¹ Saving the state treasury at the expense of any compensation for exonerees is an unacceptable outcome.

In 2004, the Bush administration successfully updated the federal compensation statute. The statutory award increased from a maximum \$5,000 award, regardless of time served, to the current \$50,000 annually, or \$100,000 for time served on death row.¹⁰² While states certainly could enact higher awards if it is needed to justify the injuries by the exoneree, the federal awards provide a good standard for states to follow. It is reasonable to think that a wrongfully convicted individual's injuries stem from the loss of liberty more than the indignity of being convicted of a federal versus state crime. Thus, states can look to the federal compensation statute as a guideline.

States should also compensate for legal obligations, such as child support or property taxes, that the exoneree was unable to meet while wrongfully incarcerated. In 1990, exoneree Clarence Brandley of Texas was released from death row, only to be re-arrested shortly

¹⁰⁰ Lopez, *supra* n. 17 at 713.

¹⁰¹ See Panel Report, *supra* n. 79 (describing how exonerees in Illinois serving under 4 years in prison were told not to bother pursuing compensation).

¹⁰² 28 U.S.C. §1495.

thereafter for failure to pay child support while imprisoned.¹⁰³ Texas' statute now includes a provision to compensate for these lost payments, which benefits both the exoneree and the child. This is a sensible provision that provides meaningful benefits to the individual exoneree, and is unlikely to cost much to the state.

In conclusion, states should include both economic and noneconomic damages in their compensatory scheme to address the totality of the harms suffered by the exoneree. Adequate compensation requires higher statutory caps, such as those used in the federal compensation statute. Provisions should also include compensation for any child support payments the exoneree may owe. Overall, the small number of exonerations each year¹⁰⁴ and even smaller number of successful compensation claims¹⁰⁵ means the actual cost to the state is not exorbitant in light of the significant harm done to innocent citizens. A compensation package that includes actual economic damages and a base award for noneconomic damages will “redistribute the cost from the individual to the society as a whole, as the cost of having an admittedly less-than-perfect criminal justice system.”¹⁰⁶

C. Financial and Psychological Counseling

In addition to financial compensation, better compensation statutes should include financial and psychological counseling for exonerees. Arguably it is overly paternalistic to assume exonerees are unable to make wise financial decisions,¹⁰⁷ but anecdotal evidence suggests many exonerees spend large sums in efforts to gain acceptance or simply for the sake of

¹⁰³ Armbrust, *supra* n. 25 at 174, from Richard Willing, *Exonerated Prisoners are Rarely Paid for Lost Time*, USA Today (June 18, 2002) at 2A.

¹⁰⁴ Bernhart, *supra* n. 38 at 713.

¹⁰⁵ Scheck et al, *supra* n. 19 at 298.

¹⁰⁶ Lopez, *supra* n. 17 at 538.

¹⁰⁷ Armbrust, *supra* n. 25 at 170.

spending.¹⁰⁸ Exonerees themselves indicate that financial counseling would be a valuable service.¹⁰⁹

Financial counseling is a preferable alternative to annuities or installment payments, which ensure the exoneree has a continual stream of funds, but hinder the exoneree's ability to make large purchases, such as a home or car, as part of their reintegration.¹¹⁰

More importantly, exonerees need access to counseling services to deal with the emotional impact of wrongful imprisonment and the subsequent release back into society. This section has already explored the need to provide counseling services immediately after release. Further counseling services are needed to address the long-term mental health issues of exonerees. As one wrongfully incarcerated individual observed, "The person I had to become to survive eighteen years of incarceration is not the person I wanted to be, and it's not the person that I am. It became a part of me because I had to survive in prison."¹¹¹ Additionally, exonerees deal with mistrust in the justice system and a lack of security in their new release.¹¹² Statutes in place today address the emotional needs of exonerees, but temporal restrictions on the aid provided do not fully address the long-term recovery exonerees face.¹¹³

Effective legislation should ensure that adequate counseling services remain available to the exoneree. State-provided counseling is an acceptable way to furnish these services but private services need to be available where the exoneree desires. Statutes should ensure

¹⁰⁸ *Id.* at 173, based on interview with exoneree Kirk Bloodsworth (Jan. 19, 2003).

¹⁰⁹ Panel Report, *supra* n. 79.

¹¹⁰ Lonergan, *supra* n. 37 at 427.

¹¹¹ Panel report, *supra* n. 79.

¹¹² In the words of one exoneree, "Yeah, well I could say that I'm free, but I'm not free now. I could walk out here today, right after we leave here today and they could give me another crime. And if I can't prove that I didn't do it then I'm going to (the) penitentiary. And it goes on and on." *Id.*

¹¹³ See La. Stat. Ann. §15:572.8 (providing 3 yr counseling) and Tex. Code Ann. §9-8-108 (1 year counseling).

continued counseling services for exonerees for as long as the exoneree wishes to participate, and provide direct payment or vouchers to providers to meet these expenses.

D. Health Care

Incarceration can have an enormous effect on an individual's physical health. Just as the state should provide mental health services, so should the state provide continued support for any physical conditions resulting from unjust imprisonment at the hand of the state. States have addressed this need in various ways, ranging from no aid,¹¹⁴ three years,¹¹⁵ ten years,¹¹⁶ or permitting "reasonable" expenses.¹¹⁷ As these statutes seem to acknowledge, many ongoing or later-occurring health issues related cannot be accurately factored into compensation claims filed soon after release.¹¹⁸ For this reason, Shawn Ambrust argues that monetary compensation for health services is inappropriate, and instead calls for state-provided health insurance.¹¹⁹ This proposal strikes a balance between providing coverage for exonerees' medical expenses and controlling costs to the state.¹²⁰ By using the same insurance plan the state provides to its employees, exonerees can receive medical coverage at minimal cost, while access to preventative treatment could save the state from later litigation or health care costs.¹²¹ The efficiency of this proposal makes it one states should incorporate into their compensatory statutes.

¹¹⁴ Florida, North Carolina, Texas, Virginia

¹¹⁵ Louisiana

¹¹⁶ Vermont

¹¹⁷ Connecticut, Maryland

¹¹⁸ Ambrust, *supra* n. 25 at.179

¹¹⁹ *Id.* at 180.

¹²⁰ *Id.*

¹²¹ *Id.* at 180-81.

E. Housing

Access to safe housing is closely related to successful transitions out of prison,¹²² and is required by exonerated individuals just as it is needed by parolees. Exonerees should be placed immediately in public housing upon release. Public housing has been described as “the only realistic option for safe and stable places to live” for individuals leaving prison.¹²³ Alternatively, the state could provide housing vouchers, similar to Section 8 vouchers, to allow the exoneree to obtain safe housing. The state should cover housing expenses for as long as needed to let the exoneree become self-sufficient. Because the state was already housing the individual while in prison, this measure will likely result in little or no additional expenditure.

F. Education and Job Skills Training

Nearly all states providing reentry services grant access to high education or job skills training. This is necessary for exonerees, who may not qualify for similar programs for parolees, but have similar gaps in their employment history.¹²⁴ Provisions range from waiving 120 hours of tuition at career centers or post-secondary institutions¹²⁵ to half or full tuition at state universities and community colleges.¹²⁶ An important provision that appears in only a few states is assistance in meeting “any admission standards or criteria required at any of the applicable institutions, including but not limited to assistance in satisfying requirements for a certificate of equivalency of completion of secondary education and assistance in completing any adult education program or courses.”¹²⁷ The provision demonstrates a sincere commitment on the part

¹²² Lonergan, *supra* n. 37 at 436-437; Amy L. Solomon, *Outside the Walls: A National Snapshot of Community-Based Prisoner Reentry Programs*, 4-5 (2004) (available at http://www.urban.org/UploadedPDF/411289_reentry_portfolio.pdf)

¹²³ Corinne A. Carey, Human Rights Watch, *No Second Chance: People with Criminal Records Denied Access to Public Housing*, 36 U. Tol. L. Rev. 545, 552 (2005); Lonergan, *supra* n. 37 at 438.

¹²⁴ Armbrust, *supra* n. 25 at 175.

¹²⁵ Florida.

¹²⁶ Massachusetts, Connecticut, Louisiana, North Carolina.

¹²⁷ LSA-R.S. 15:572.8(c)(1).

of the state to provide educational opportunities to exonerees, and should be included in future legislation to help ensure the future self-sufficiency of exonerees.

G. Expungement of Record

Collective notions of fairness would suggest that a wrongfully convicted individual's record be expunged when a conviction is vacated. However, only three compensatory statutes require the state to do so.¹²⁸ Exonerees face ongoing challenges obtaining employment with criminal records.¹²⁹ Similarly, criminal records will complicate an exoneree's later attempts to obtain safe and affordable housing.¹³⁰ Legislators should be sure that clearing the name of an individual also clears his record.

H. Suggested Statutory Language

Drawing on the needs described above, as well as certain statutory provisions aimed at meeting these needs, model legislation would appear as follows:

- A. Any person who has served in whole or in part a sentence of imprisonment under the laws of this state for a crime for which he was convicted, and the conviction of the applicant has been reversed or vacated shall receive a transition assistance grant of \$15,000, which amount shall be deducted from any award received pursuant to subsection B.
- B. An applicant entitled to compensation pursuant to subsection A and who has proven that he is factually innocent of the crime for which he was convicted shall receive in addition:
 - (1) Actual compensation for the applicant's loss of earnings and loss of earning capacity.
 - (2) Reasonable compensation for the damages suffered by the applicant, which may include, but are not limited to, claims for loss of liberty and enjoyment of life, 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.

¹²⁸ Missouri, Massachusetts, Florida.

¹²⁹ Lonergan, *supra* n. 37 at 437.

¹³⁰ Chunias & Aufgang, *supra* n. 13 at 119.

- (i) The amount of damages under this subparagraph shall be a minimum of \$100,000 for each year of incarceration for any applicant who was unjustly sentenced to death and \$50,000 for each year of incarceration for any other applicant.
- (3) Compensation for child support payments and property taxes, plus interest accrued, owed by the applicant that became due during the time served in prison but were not paid.
- (4) Provision of appropriate financial counseling for funds received pursuant to this subsection.
- (5) Provision of services for, or payment to private providers of, appropriate psychological counseling that is reasonable and necessary to address any deficiencies in the applicant's emotional condition that are directly related to his wrongful conviction. Applicant shall be entitled to such services for as long as applicant sees fit.
- (6) Payment of premiums for coverage of medical services under the insurance policy provided for state-employees. Applicant shall be entitled to such services for as long as applicant sees fit.
- (7) Placement in public housing, or vouchers in amounts reasonable and necessary to secure private housing. Applicant shall be entitled to such services for as long as applicant sees fit.
- (8) Provision of job skills training, or provision of expenses for tuition and fees at any community college or branch of the public university system of the state. State education aid shall continue for up to a total of five years of aid when initiated within the ten-year period or until the degree or program for which the applicant is authorized is completed, whichever is less, as long as the applicant makes satisfactory progress in the courses or program in which he is enrolled.
 - (i) Educational aid in accordance with this subparagraph shall include assistance in meeting any admission standards or criteria required at any of the applicable institutions, including but not limited to assistance in satisfying requirements for a certificate of equivalency of completion of secondary education and assistance in completing any adult education program or courses.
- (9) Expungement or sealing of those records of the applicant maintained by the criminal history systems board, the probation department, and the sex offender registry that directly pertain to the applicant's wrongful conviction case, including any documents or other materials or samples obtained from the applicant.

V. Conclusion

Wrongfully convicted individuals can never be fully compensated for the loss of liberty and life experiences resulting from their incarceration. Because other legal and legislative remedies place substantial obstacles in the exoneree's compensation process, states should consider it a moral obligation to better compensate for the injuries stemming from a flawed criminal justice system.

Of those states that have enacted legislation to compensate exonerees, the majority are inadequate in form as well as in substance. The most appropriate way to compensate exonerees is through the most comprehensive means possible: a combination of reentry services in addition to monetary compensation. State provided services allow the exoneree to better address prison-related injuries and future needs than monetary compensation alone.

Despite a number of states adopting this combination of remedies, the statutory language of any one statute fails to adequately meet the needs of exonerees. Ideal legislation would include transition grants immediately available to all exonerees upon release. It would permit further monetary awards for both economic and noneconomic injuries. Finally, it would include a variety of services designed to address the needs of exonerees as they reintegrate into society. Financial and mental health counseling, physical health care in the form of state-provided insurance, access to affordable housing, and educational opportunities are all necessary components in improved legislation. Additionally, expungement of exoneree records is appropriate to ensure that exoneree does not have continuing problems as a result of their wrongful conviction.

Existing compensation statutes can be improved by addressing the timing of compensation and the combination of reintegrative services provided to exonerees. These

proposals can be implemented at reasonable cost to states while providing more adequate compensation to the wrongfully convicted. Legislators drafting new legislation or modernizing existing statute can look to these components as necessary elements in comprehensive compensation statutes for the wrongfully convicted.