

**MANDATING SOCIAL SERVICES FOR EXONEREES IN CALIFORNIA:
MODEL LEGISLATION & METHODS TO IMPLEMENT SERVICES**

I. Introduction:

When an innocent person is incarcerated, he undergoes numerous physical and emotional changes. Incarceration subjects an innocent person to the same mental and physical traumas that others experience from serving time in prison, but the innocent suffers the additional anguish of being wrongfully convicted. The gravity and uniqueness of exonerees' experiences must be considered when determining the extent to which the state that wrongfully convicted them is responsible for helping them rebuild their lives. In 2002, Northwestern Law School's Center on Wrongful Convictions held a conference in which individuals who had been wrongfully convicted were invited to discuss the needs of the wrongfully convicted.¹ The panel focused on the services the individual exonerees needed and the impact their communities and states could have on their reintegration into society. The primary services named by exonerees were: access to counseling, immediate financial assistance for food and housing, and programs to teach important life skills. Exonerees sought help from the states that had wrongfully imprisoned them, yet their expectations were understandably limited since many of the exonerees had lost faith in the very government agencies they relied upon to institute programs. Although the exonerees might not have faith in the system that punished them,

¹ *The Needs of the Wrongfully Convicted: A Panel Report*, Center on Wrongful Convictions, <http://www.law.northwestern.edu/depts/clinic/wrongful/documents/ILLPanelRpt.htm> (Detailing discussions by a panel of individuals who were wrongfully convicted of murder; individuals discussed the social services that would have supported their reintegration into society) (last visited November 11, 2007).

the responsibility for providing help is rightfully upon the states that wrongfully convicted these exonerees. The states must take into account their role in the wrongful convictions and, therefore, must take the initiative to help alleviate the burdens placed on the exonerees.

When an individual is exonerated, he faces many challenges as he attempts to readjust and lead a normal life. This paper proposes some things that California can and should do in order to make the transition easier for its exonerees.

II. The California Problem: The Victim Compensation & Government Claims Board:

California Penal Code Section 4900 provides that an exoneree “*may*...present a claim against the state to the California Victim Compensation and Government Claims Board [hereinafter, “the Board”] for the pecuniary injury sustained by him or her through the erroneous conviction and imprisonment.”² Instead of providing a clear remedy for exonerees, Section 4900 places an additional burden on a person who was wrongfully convicted and imprisoned by the State of California. Although an exoneree is often without any resources, the State requires him to prove to the Board “by a preponderance of evidence” that he was innocent of the crime for which he was wrongfully convicted. This standard, requiring a person to prove a negative, is a higher standard of proof than the “beyond a reasonable doubt” standard required of the State at the exoneree’s initial criminal trial. For the reasons discussed below, the Board’s process for determining whether to grant an exoneree’s claim is extremely problematic.

² Ca. Penal Code §4900 (emphasis added).

Claims Before the Board: The Board hears two types of claims: government claims (alleging that a state agency or employee is responsible for a death, physical injury, or property damage³) and victim claims (victims of domestic violence, child abuse, assault, sexual assault, molestation, homicide, robbery, drunk driving, and vehicular manslaughter⁴). An exoneree's claim for compensation is categorized as a government claim and is labeled "Claims for Erroneously Convicted Felons."⁵ This type of claim is not filed very often, but when filed, it stands out as very different from other claims in its category.

At the Board meeting in Sacramento on October 16, 2007, Dwayne McKinney's Claim for Erroneously Convicted Felons was one of ten government claim items on the agenda.⁶ In 1980, Mr. McKinney was wrongfully convicted of murdering a Burger King manager; he served almost 20 years in California State prisons as a result of the conviction.⁷ Mr. McKinney's claim in front of the Board on October 16th was for \$100

³ What's Covered, State of California Victim Compensation and Government Claims Board, <http://www.boc.ca.gov/claims/coverage.aspx> (showing how to proceed with a government claim)(last visited November 4, 2007).

⁴ Who's Eligible, State of California Victim Compensation and Government Claims Board, <http://www.boc.ca.gov/victims/eligibility.aspx> (showing which crime victims are eligible for compensation)(last visited November 4, 2007).

⁵ Claims Against the State of California, State of California Victim Compensation and Government Claims Board, <http://www.boc.ca.gov/claims/default.aspx> (providing a link to a claim form for "Erroneously Convicted Felons")(last visited November 4, 2007).

⁶ Agenda, Victim Compensation and Government Claims Board, October 16, 2007, <http://www.boc.ca.gov/board/2007meetings.aspx> (providing a link to a PDF version of Board Agendas) (last visited November 4, 2007).

⁷ Joan Ryan, *Deadly Mistakes in the Name of Justice*, S.F. CHRON., April 16, 2000, available at <http://www.sfgate.com/cgi-bin/article.cgi?file=/chronicle/archive/2000/04/16/SC71409.DTL> (last visited Nov. 13, 2007); Hans Sherrer, *The 19-Year Ordeal of Dwayne McKinney: Injured and on Crutches 30 Miles Away From a Murder Is Finally Recognized as an Alibi*, 1 JUSTICE: DENIED – THE MAGAZINE FOR THE WRONGFULLY CONVICTED 11, available at http://www.forejustice.org/wc/dwayne_mckinney_v1_i11.htm (last visited Nov. 13, 2007)(concluding that Mr. McKinney was wrongfully convicted because: the prosecution's entire case against Mr. McKinney rested on the cross-racial identification of four restaurant workers; the restaurant workers' testimony was relied upon despite the fact that several witnesses testified that they were with Mr. McKinney at his Ontario home

per day compensation for the days he was wrongfully incarcerated, totaling almost \$1,000,000. Every other claim on the government claims docket that day dealt with claims that were for a few thousand dollars each. Before the October 16th meeting, Mr. McKinney's attorneys had conducted a 3-day hearing in front of a Board hearing officer (not the Board members who ultimately decide whether to grant or deny claims), and had briefed numerous legal arguments requesting further fact-finding and clarity from the Board before it issued its decision. The hearing officer recommended denial of the claim, in a written decision which seemed to ignore the evidence Mr. McKinney's attorneys presented. Not surprisingly, the Board followed the hearing officer's recommendation and denied Mr. McKinney's claim.

Duplicative Process: To obtain compensation, an exoneree must file a compensation claim with the board, and must then go through an administrative hearing to prove "by a preponderance of evidence" that he was innocent of the crime for which he was wrongfully convicted. This process, and the requirement that the Board conduct a court-like hearing (where a hearing officer can make a recommendation to the Board to deny or grant a claim based on findings that do not cite to any evidence) creates a system that unnecessarily duplicates the much more formal hearing in a California court of law that led a judge to vacate the conviction at issue. Regardless of whether an exoneree has

when the murder took place, and that Mr. McKinney's home was located 30 traffic-congested miles from the Burger King where the murder took place; the defense witnesses also testified that at the time of the murder, Mr. McKinney had a leg injury and could only walk with the aid of crutches; there was absolutely no physical evidence linking Mr. McKinney to the robbery or to the murder, and he didn't fit the killer's physical description that witnesses gave to police at the crime scene; and, the testimony of the prosecution witnesses, who underwent the trauma of seeing their manager killed, was further impacted by a detective who falsely led them to believe that Mr. McKinney had confessed to the crime).

been found factually innocent or not, a much more simplified process would be to leave the issue of compensation to the California court system, rather than to an administrative body.

Factual Innocence Requires a Different Process: Mr. McKinney did not have a Superior Court's finding of factual innocence that he could present to the Board. In many cases, especially those without physical evidence or DNA evidence, it is difficult for an exoneree to prove his factual innocence years after a wrongful conviction. However, we recommend that where an exoneree *has* been found factually innocent by a judge of the State of California, the compensation claim should be automatically granted. After a judge determines that someone is factually innocent, it is a waste of taxpayer money to require the Board to repeat what a judge has determined in a court of law. Instead, an exoneree with a factual finding of innocence should be automatically entitled to compensation for each day he or she was wrongfully incarcerated (See Section V "Model Legislation").

III. Case Study: A Look at Services Available to Victims of Domestic Violence and to Participants in the Delancey Street Foundation:

Such programs as the President's Family Justice Center Initiative (PFJCI) and Delancey Street may serve as examples for California when the state is working on creating a program to provide proper services for wrongfully convicted exonerees.

When the federal government was faced with the national crisis of a proliferation of victims of domestic violence, it developed the very successful PFJCI. A number of communities across the country received twenty million dollars to plan, develop, and

establish comprehensive domestic violence victim service and support centers. The Office on Violence Against Women (OVW) administers the PFJCI. The PFJCI's goal is to make a victim's search for help and justice more efficient and effective by bringing together under one roof professionals who provide an array of services to victims.⁸

For instance, funded by the U.S. Department of Justice, Alameda County Family Justice Center located in Oakland, California, provides the following services: crisis intervention, survivor support, and victim advocacy; legal assistance services; medical care and mental health counseling for victims and children impacted by family violence; employment assistance, and information and referral to other community services.⁹

Although it may not be feasible to create a similar center for wrongfully convicted exonerees, because there are so few of these exonerees compared to the number of domestic violence victims, California could address the special needs of exonerees by funding a social worker for each person released from prison following a finding of wrongful conviction.

These social workers would be responsible for approaching the exonerees either while they are still in prison or as soon as they get out and letting them know that the social workers are available to help serve them. The social workers would provide guidance to the exonerees along with referrals to the following services: medical care, mental health counseling, housing assistance, employment assistance, assistance with getting education, and information about and referral to other community services.

⁸ <http://www.usdoj.gov/ovw/pfjci.htm> (last visited October 11, 2007).

⁹ www.acfjc.org (last visited October 11, 2007).

In addition, the state should be willing to pay for counseling services for exonerees' families to help them reconnect with their loved ones. It may even be practical for the state to either offer government jobs for the exonerees or to at least let them intern in the government offices, either of which will enable the exonerees to get used to working among non-prisoners.

The exonerees should also receive legal assistance to help them expunge their record and receive any benefits they qualify for. Such legal assistance may either come from the Public Defender's offices or from non-profit organizations or from private attorneys.

There should be no time limit on how long the social workers will be providing services for the exonerees. It should be decided on a case-by-case basis, following recommendations from each exoneree's social worker and psychologist or psychiatrist. Exonerees' social workers may direct them to Family Justice Centers (FJC) to utilize their services. However, these centers will have to make some changes to accommodate the exonerees. To begin with, the centers will have to set-up support groups for the exonerees only and train their legal department to handle the exonerees' claims. Additionally, the funding for the exonerees will have to come from the State of California, not the federal government, because California wrongfully convicted these people.

Alternatively, exonerees' social workers may direct them to stay at the Delancey Street, where they would be able to receive a high-school equivalency certificate,

possibly followed by college courses, and hands-on experience in Delancey Street's training businesses, which include a high-tech print shop, a moving and trucking operation, paratransit services, an advertising-specialty operation involving the sale of college and institutional souvenirs, catering, a restaurant, and body shop. By the time exonerees are ready to leave, they will have received the equivalent of a high-school diploma and thorough training in at least three job skills, and will have had plenty of opportunity to supervise and work on their management talents.¹⁰

Letting the exonerees stay at the Delancey Street may be easier both on the state and on the exonerees. The exonerees, besides receiving a lot of the critical help in a timely fashion under one roof, will be going through similar experiences with the other residents, many of whom are former convicts. However, the wrongfully convicted exonerees will still need to receive professional counseling to help them cope with the fact that they have spent their best years in prison for crimes they had not committed and get re-acquainted with the outside world.

Finally, if the exonerees neither want to go to the Family Justice Centers nor to the Delancey Street, their social workers should refer them out to various individual providers of services, either funded or contracted by the state.

The state's goal should be to ensure the healing of exonerees to the point where they start feeling like they fit back in our society. Like victims of domestic violence leaving abusive relationships, exonerees face so many challenges when they emerge from

¹⁰ <http://www.grass-roots.org/usa/delancey.html> (last visited October 11, 2007).

prison that the state should provide guidance so that they need not make it through a confusing and overwhelming process on their own. California should realize that wrongfully convicted exonerees cannot be left on their own to cope with their re-entry into our society.

IV. Case Study: The Commonwealth of Massachusetts & Exonerees:

Few states have gone beyond compensating wrongfully convicted individuals with money and considered providing services for individuals when they are released after being wrongfully convicted. Massachusetts is one of the leading states to legislate and allow judicial discretion in granting exonerees compensation for social services to help them adapt to being free. The statute is not specific on the type of services that can be considered, except to provide for physical and mental health services in addition to educational funds. The legislature did begin consideration into providing funds for services and the resulting statute mandates that money be provided to the individual through a civil trial to determine compensation.

In 2004, there was public outrage in Massachusetts following news reports of 22 exonerations since 1982 in the state.¹¹ The reports explored the numerous factors which contributed to these wrongful convictions and led the way for the legislature to realize something had to be done. The public outcry finally pressed the passing of legislation which had been proposed in 1999. The statute provides state compensation up to a maximum of \$500,000 against the state, which can be provided to the exoneree in a lump sum or in various installment payments.

¹¹ http://www.cjpc.org/i_crb_restitution.htm. (last visited October 10, 2007).

The Massachusetts statute was finally adopted in December, 2004 and provides in part,

“The court may include, as part of its judgment against the commonwealth, an order requiring the commonwealth to provide the claimant with 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 and resulting incarceration through documentary or oral evidence presented to the court or jury by the claimant as part of the claim if the claimant provided in his original claim for compensation under this chapter....The court may also include in its judgment an order that entitles any claimant who wishes to apply for and receive educational services from any state or community college of the commonwealth.¹²

The Massachusetts statute has both positive and negative aspects. The positive aspects of the statute start with Massachusetts being one of the first states to consider social services as necessary to be considered when an individual is released. Massachusetts has made great strides to begin the discussion of taking care of exonerees when they have faced a horrible ordeal. The statute provides for funding for physical and emotional trauma, in addition to funding to support exonerees' educational goals to attend schools in Massachusetts. The education provisions are especially important because they help an exoneree envision a positive future starting upon release. These elementary provisions are important cornerstones to begin to address the numerous issues facing exonerees.

However, there are additional social services needed. These services include: access to counseling, immediate financial assistance, and programs to teach practical

¹² M.G.L.A. Pt. III, T. IV, Ch. 258D, Refs & Annos. Section 5. Compensation for Certain Erroneous Felony Convictions.

skills.¹³ Although it would be difficult for the legislature to address each potential issue that might face individuals when they are released, the legislature should make an attempt to be more explicit as to the services that should be considered. Massachusetts could have provided a list of services that can be considered, as long as it is clear that the list is not exhaustive. In addition, the wording of the statute indicates steps that must be taken in order to receive funding. The “deficiencies” must be directly related to the wrongful conviction and there must be documentary or oral evidence to demonstrate these problems. Although these steps do not seem complicated, it would be hard to directly link physical and emotional problems and it would be difficult to get evidence to prove these deficiencies. There can be a number of improvements on the Massachusetts statute; however, taking the first step and being aware of a problem is an important element to begin the movement towards developing a more productive and helpful statute.

Ideally, following the passage of the statute, the exonerees who met the strict requirements would have been rightfully compensated in order to develop a positive future for themselves. In 2006, there were 20 individuals who had tried to get compensation under the statute and in half of the cases the government did not dispute liability and paid some damages.¹⁴ However, in 2006 there were complaints by exonerees in court who were still waiting to receive compensation.¹⁵ The attorneys

¹³ <http://www.law.northwestern.edu/depts/clinic/wrongful/documents/ILLPanelRPt.htm>. [Panel held at Northwestern’s Center for Wrongful Convictions with exonerees on their needs]. These considerations were developed by a panel of exonerees at Northwestern Law Center on Wrongful Convictions. (last visited October 10, 2007).

¹⁴ <http://www.masslaw.com/news1201.cfm>. (last visited October 10, 2007).

¹⁵ <http://www.masslaw.com/news1201.cfm>. [News report of the process of the system]. (last visited October 10, 2007).

working on obtaining compensation complained there were too many obstacles to demonstrating the individual's innocence and liability of the state. In response, Attorney General Reilly defended the statute and said there were many elements which had to be considered, such as confirming the wrongful conviction, running background checks, and a number of other precautionary measures to ensure the "plaintiffs meet the requirements laid forth in the statute."¹⁶

Although approximately 27 states have compensation statutes for wrongfully convicted individuals, many states still do not provide any monetary redemption besides bringing separate civil suits.¹⁷ In other states, very few statutes for erroneous felony convictions have added considerations or any mention of services that might be required by the individuals upon release. (See the table below).

State	Maximum Total Amount	Money allotted for Services
Massachusetts	\$500,000	Services deemed appropriate by the court, including educational aid.
Maryland	None	Actual damages and reasonable amount for counseling.
Texas	\$500,000	Medical expenses including counseling considered.

Therefore, although the Massachusetts statute is not perfect, it is more comprehensive because the legislature thought of going beyond merely giving money to individuals who have been wrongfully convicted. The statute provides consideration of the implications of being wrongfully imprisoned by granting judges discretion to give funding for social services which could be deemed necessary. By using the

¹⁶ http://realcostofprisons.org/blog/archives/2005/06/10_men_wrongful.html. (last visited October 10, 2007).

¹⁷ <http://www.exonerated.org/files/Compensation%20Statutes%20chart.xls>. (last visited October 10, 2007).

Massachusetts statute as a model for developing legislation, states such as California can protect exonerated individuals by going further in providing services to those who have been wronged by the state.

V. Model Legislation:

California needs a statute which both mandates that exonerees are entitled to specific social services and compensation, and outlines the means by which an exoneree receives services and compensation. Such a statute would benefit exonerees by providing them with much-needed services, but would also provide the benefits of judicial economy and efficiency to California taxpayers. As it currently stands in California, after a person found innocent of a crime is released (often from years of wrongful imprisonment) he/she is not automatically entitled to compensation, health care, job training, or therapy. Rather, the scheme provided in California Penal Code Section 4900 requires exonerees to present a claim to the Victim Compensation and Government Claims Board for the “pecuniary injury sustained by him or her through the erroneous conviction and imprisonment.”¹⁸ If California enacted the following statute, the state would take a significant step towards remedying a wrongful conviction, and would put into place a clear and efficient process:

California Penal Code §

Any person who, having been convicted of any crime against the state and imprisoned in the state prison for that conviction, a judge finds factually innocent of the crime for which he or she was charged, and who served the term or any part thereof for which he or she was imprisoned, shall be automatically entitled to:

¹⁸ Cal. Penal Code §4900.

- (a) Compensation amounting to \$100 per day for the total amount of days he or she was wrongfully imprisoned, to be paid by the State of California directly to the exoneree within 30 days of the initial finding of the person's innocence;

- (b) The life-long services of a social worker licensed by the State of California, whose services will be paid for by the State of California, and who will be appointed to the exoneree upon the initial finding of his or her innocence for the purposes of assisting the exoneree to obtain, at a minimum, the following services, all of which are to be paid by the State of California:
 - i. *Medical Treatment*: the social worker will help the exoneree find a primary care physician in addition to any medical specialists the exoneree may need the assistance of;
 - ii. *Psychological Treatment*: the social worker will help the exoneree find a mental health worker licensed by the State of California who has experience counseling those who have been wrongfully convicted;
 - iii. *Health Insurance*: the social worker will help the exoneree select and enroll in a state-funded health insurance plan;
 - iv. *Job Training*: the social worker will help the exoneree enroll in job training programs and will help the exoneree find gainful employment;
 - v. *Housing*: the social worker will assist the exoneree to find suitable housing;
 - vi. *Social Services*: the social worker will assist the exoneree in applying for any sort of social service for which the exoneree is eligible;
 - vii. *Legal Representation*: the social worker will assist the exoneree to find suitable counsel for any law-related issues that stem from the exoneree's wrongful conviction;
 - viii. *Expungement*: within 30 days of a judge's finding of factual innocence, the social worker will have obtained expungement of the conviction for which the exoneree was wrongfully convicted;
 - ix. *Yearly Check-In*: Where the exoneree does not utilize the services offered by the State of California through the social worker, the social worker is required to contact the exoneree once per year to offer the required services to the exoneree.

- (c) A letter from the Governor apologizing on behalf of the State of California for the exoneree's wrongful conviction.

VI. Conclusion:

Prior to being released, wrongfully convicted individuals have many obstacles to overcome. When an individual is finally redeemed and released from custody, the state

should be required to extend an array of services to the exoneree as a step towards helping the exoneree overcome the wrong he has suffered. However, in most states, wrongfully convicted individuals exist in a gray area – they are not eligible for state-funded services that ex-convicts on parole are eligible for (because the exonerees are not actually ex-convicts), and they are left with the sole option of bringing a civil suit against the state.

By looking at the problems with the California Victim Compensation Board and the states that have tried to implement funding to provide resources to exonerees, California can learn how to help those who have been wrongfully convicted. In addition, by reviewing functioning models such as Delancey Street, California can see how a similar program would work to support exonerees released from custody.

California should seek to implement a program to support individuals who have been wrongfully convicted by the criminal justice system. The implementation of such a program would be highly beneficial to exonerees by providing them with services which could make the transition to freedom easier.