




The Good, the Bad, and the Uncertain: State Harm, the Aftermath of Exoneration, and Compensation for the Wrongly Convicted

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Abstract

As the number of exonerations in the USA continues to grow, so does the need to address post-release challenges faced by those who experience wrongful conviction. Research has highlighted many challenges faced by exonerees after release, yet compensation and reentry services are often lacking. In this paper, we provide a content analysis of existing exoneree-compensation statutes. Using Westervelt and Cook's (Crime Law Soc Change 53(3):259–275, 2010) conceptualization of the wrongly convicted as victims of state harm, we describe current policies, organizing our findings around what is good, what is bad, and what is left uncertain. We argue that during the reentry period, a time filled with extreme uncertainty, many existing laws remain inadequate and/or unclear. Rather than providing stability, existing laws often create an additional layer of uncertainty for exonerees seeking compensation and other reentry assistance as they try to rebuild their lives.

In November 1979, a cab driver was shot multiple times in Boston, Massachusetts.¹ One resident said she saw three men pulling the driver out of a cab; the shortest of the three then shot the driver. Another cab driver, who claimed to have seen the three men, identified two of them in a photograph array as 16-year-old Frederick Clay and 20-year-old James Watson. After a hypnosis session, the driver identified Clay a second time in another photograph array. Other residents were unable to identify the perpetrators, although one finally identified Clay and Watson after the police promised that the city would pay for the family's relocation out of their housing project.

¹ Unless otherwise noted, information about the case comes from the National Registry of Exonerations' profile of the Clay case (Possley & Otterbourg, 2020).

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Clay and Watson went to trial in 1981. Both witnesses testified. Watson's former girlfriend also testified that Watson had said he was present at the shooting. Despite the lack of physical evidence and several challenges to the existing evidence, Clay and Watson were convicted of first-degree murder and sentenced to life without parole in August 1981.

In 2016, after investigators learned of two others that fit the description of the perpetrators, Clay's defense filed a motion for a new trial. The case was given to the District Attorney's Conviction Integrity Unit who, after a re-investigation, agreed to vacate Clay's conviction and dismissed the charges in August 2017. Watson's charges were dismissed three years later, in November 2020.

Clay "struggled to find a good-paying job and decent housing" after his release from prison in 2017. He received no assistance from the state for 17 months. In 2019, he finally was awarded \$1 million in compensation from the state, the maximum allowed under Massachusetts law (Burrell, 2019). As of this writing, to our knowledge, James Watson has not yet received compensation or reentry assistance.

Clay's official compensation from the state amounts to approximately \$28,000 for each of the nearly 36 years he spent wrongly incarcerated. Like many other exonerees, such inadequate compensation may have exacerbated Clay's post-release struggles. In this paper, we explore the post-release challenges faced by exonerees and discuss the normative challenges of placing a value on time lost and the traumatic experiences faced during that time. We then examine existing compensation policies across the USA. In particular, we adopt Westervelt and Cook's (2010) conceptualization of the wrongfully convicted as victims of state harm to frame exonerees' challenges and critically assess state-provided reentry services. Through this framework, we posit that the extreme uncertainty that comes post-release can be partially alleviated through adequately structured compensation statutes.

Wrongful Convictions, State Harm, and the Aftermath of Exoneration

The story of Clay and Watson is a chilling one, but it does not stand alone. According to the National Registry of Exonerations (NRE), since 1989, more than 3,000 people in the USA have been exonerated after being wrongly convicted.² Each of these cases represents a grave miscarriage of justice in which the criminal legal system erroneously arrested, convicted, and punished an innocent person, and, in many cases, allowed the true perpetrator(s) to escape and continue committing crimes (Baumgartner et al., 2018; Norris et al., 2020). The consequences of such errors are widespread and affect a number of people who become entangled in the "web of impact" (Westervelt & Cook, 2012: p. 84) or "circles of harm" (Thompson & Baumgartner, 2018) that surround a wrongful conviction, including exonerees, their families, their communities, crime victims, and more. However, we primarily focus here on consequences for exonerees themselves.

To contextualize the post-release challenges faced by exonerees and critically assess state-provided reentry assistance, we view wrongful conviction as *state harm* or *state*

² As of April 12, 2022, the NRE includes 3,061 cases. These are not fully representative of all exonerations nor all wrongful convictions, but only those cases that were reinvestigated, in which probative evidence was available and located, and in which legal/political battles were won. It is also worth noting that official exoneration is not an exact proxy for actual innocence, but is the best available indicator. All cases in the database fit the NRE's criteria, available at <https://www.law.umich.edu/special/exoneration/Pages/glossary.aspx>.

crime.³ As Stratton (2015) notes, regardless of the specific circumstances that generate a wrongful conviction, the one constant in all such cases is the involvement of the state. Indeed, “[e]xonerees are victims of the state,” as “wrongful convictions cause harm and produce victims” whether they stem from illegal actions by state actors, resource imbalances, carelessness, or other factors (Westervelt & Cook, 2010: p. 261).

We agree with this conceptualization of wrongful conviction as state harm and of exonerees as victims of such. In particular, we find Westervelt and Cook’s (2010) approach a useful way to orient our thinking about the experiences of exonerees and the obligation of the state to provide compensation and other reintegration services. They adapt Kauzlarich et al.’s (2001) framework to explain why exonerees should be viewed as victims of state harm and outline six key propositions. Victims of the state (1) tend to be among the least socially powerful actors, (2) are often blamed for their suffering, (3) must generally rely on the victimizer, an associated institution, or civil social movements for redress, and (4) are easy targets for repeated victimization. Further, (5) victimizers generally fail to recognize and understand the nature, extent, and harmfulness of institutional policies, and (6) illegal state policies and practices, while committed by individuals and groups of individuals, are manifestations of the attempt to achieve organizational, bureaucratic, or institutional goals (Westervelt & Cook, 2010: pp. 261–264). To fully rehash these six propositions as they relate to the wrongly convicted is beyond the scope of this paper. However, we draw upon them throughout to contextualize the experiences of exonerees and aid in our assessment of current compensation policies.

Life After Exoneration

Frederick Clay and James Watson each lost more than one-third of their life to wrongful incarceration; only 16 and 20 years old, respectively, at the time of the crime, both men were nearing traditional retirement-age by the time they were exonerated. As Clay said, “No amount of apology is going to bring back 38 years.... About the challenges that’s ahead of me, I got goosebumps about that” (Innocence Staff, 2017).

Those challenges are pervasive. Upon release, exonerees are subject to myriad struggles that may negatively impact their reintegration into society. Many of them are similar to those that plague anyone returning from incarceration. However, actual innocence can exacerbate them and exonerees are generally entitled to fewer services upon release than those on parole or probation (Westervelt & Cook, 2010).

Exonerees frequently exhibit financial hardships. Like many targeted by the criminal legal system, exonerees are disproportionately from poor, disadvantaged, or otherwise marginalized communities (Boies, 2011; Clear et al., 2005) and, like most victims of state harm, “tend to be among the least socially powerful actors” (Westervelt & Cook, 2010: p. 261). Further, upon release, exonerees often lack immediate assistance. Here, non-exonerated individuals (e.g., those under community supervision) may have an advantage; in California, for instance, those released under community supervision may receive \$200 in state funds known as “release allowance” (Root and Rebound, 2018), whereas exonerees are essentially cut loose with little or nothing. Exonerees are therefore victims who must

³ Scholarship on this topic has used both “state harm” and “state crime.” Here, we follow in the footsteps of Westervelt and Cook (2010) and use “harm” in relation to the wrongly convicted.

“rely on the victimizer, an associated institution, or civil social movements for redress” (Westervelt & Cook, 2010: p. 262), which often requires significant time and resources. In the meantime, this initial barrier requires many exonerees to seek informal assistance from family members, peers, and other advocates (Norris, 2012; Westervelt & Cook, 2010).

Exonerees’ financial hardships are not only short-term but often persist as they struggle to gain employment, sometimes due to the gap in their employment history during incarceration and a lack of education and/or vocational skills. These and other challenges often leave exonerees unable to secure jobs they may have otherwise been able to obtain if not wrongly convicted (Kukucka et al., 2020; Shlosberg et al., 2020).

Trouble finding employment and other necessities, such as housing (Zannella et al., 2020), is also driven by stigma. Despite their innocence, exonerees may be stigmatized as are others returning from incarceration (e.g., Clow & Leach, 2015; Scherr et al., 2020; Thompson et al., 2011/2012). The problems are compounded and exonerees “may paradoxically be worse off” than those who are guilty, as they not only face employment discrimination but also have access to fewer resources that may assist them in securing a job (Kukucka et al., 2020: p. 29). In short, exonerees face a form of cumulative disadvantage (Scherr et al., 2020) that may continue long after release and “are easy targets for repeated victimization” (Westervelt & Cook, 2010: p. 263).

The stigma exonerees face extends beyond employment and housing. Loved ones and community members may harbor negative or uncertain attitudes toward them. For example, Kirk Bloodsworth—the first person in the USA to be sentenced to death and later exonerated through DNA testing—faced extreme stigma. Notably, community members wrote “child killer” on his truck, even after he was proven innocent (Innocence Staff, 2018). And Gary Gauger, who was wrongly convicted of murdering his parents, became estranged from his sibling due to his perceived guilt (Westervelt & Cook, 2012).

Such experiences have implications for other aspects of reintegration after exoneration. Among the most prominent struggles is mental health. Traumatic experiences influence how individuals interact with their families, peers, and others. Exonerees are prone to personality change, post-traumatic stress disorder, anxiety, and other mental health challenges (Grounds, 2004; Westervelt & Cook, 2012; Wildeman et al., 2011).

Psychological and emotional struggles are tied intimately to familial difficulties. Families can change dramatically during incarceration and these changes can have a negative effect on exonerees’ lives post-release (Campbell & Denov, 2004). Many have lost family members while incarcerated and lacked the ability to adequately grieve, experiencing “ambiguous losses” or “frozen grief” (Westervelt and Cook, 2012: pp. 74–76). Even worse, some exonerees were convicted of killing family members—for example, Gary Gauger of killing his parents, and Sabrina Butler of killing her infant son—and thus had to navigate their loss while accused of causing it. Furthermore, exonerees may have missed the opportunity to start a family or, if they had children, to parent and be available to support them. Research often shows mixed feelings between children and their incarcerated parents; while some have positive attachments, others may have negative or no attachments (Shlafer and Poehlmann, 2010). Regardless of whether an individual is exonerated, their incarceration may have negative implications for their relationships post-release. Indeed, exonerees have expressed such struggles associated with reestablishing familial and other intimate relationships (Westervelt & Cook, 2012).

All of these intense challenges are accompanied by a variety of practical, day-to-day ones. For example, exonerees have reported struggling with tasks such as eating with traditional utensils and self-navigating the world after years of intensely structured schedules and movements (Westervelt & Cook, 2012). As Burrell (2018) wrote about Frederick Clay,

his “newly-found freedom quickly turned into a struggle for basic survival without any support from the state.”

In short, the post-release period for exonerees is one of struggle and loss. From practical issues like where to go and what to do for basic necessities, to navigating emotional and psychological trauma, to broader existential questions—trying to understand “[w]here do they fit in? Where do they now belong?” (Westervelt and Cook, 2012: p. 102)—this period for exonerees is one filled with *uncertainty*. This is the crux of our argument. Those who experience the trauma of a wrongful conviction deserve stability upon exoneration, and considering the role of state actors and institutions in creating or failing to prevent that trauma, it is incumbent upon the state to help provide such stability through comprehensive and coherent policies. While the difficulties that follow exoneration cannot be undone nor the burdens lifted, state-provided assistance can help alleviate some of the challenges associated with the aftermath of exoneration.

Post-Exoneration Assistance

While exonerees face many challenges post-release, they are often entitled to fewer resources to assist with reentry than others returning from incarceration, including those on parole and probation. Exonerees must push through additional legal hurdles in order to receive compensation and other assistance, which create further barriers to reintegration. Indeed, in her examination of post-release assistance received by death row exonerees, Merritt (2017) found that less than 40% had received some form of financial compensation.

In general, there are three methods through which exonerees may seek compensation. The first is litigation. Exonerees may pursue lawsuits, but working against the state’s resources, high burdens of proof, and immunity protections of state actors is a difficult task. As Westervelt and Cook (2010: p. 262) noted in their discussion of the state’s failure to understand the harmfulness of its actions, officials “are rarely held accountable” and often “deny and neutralize the harmfulness” of their actions. Certainly, several exonerees have won significant civil awards, but such victories are relatively rare due to both the legal challenges and because they require extensive resources and time, which may be unavailable to many exonerees (Norris, 2012). Awards in civil suits also may be inconsistent across cases, creating an additional layer of uncertainty during an already-stressful period.

The second method is private legislation. Exonerees may lobby their state legislature to pass a bill in their name to provide compensation, but like litigation, this method is inconsistent and requires extensive time and resources. Further, private bills “politicize compensation based on the individuals and policymakers involved” (Innocence Project, n.d.).

Both litigation and private legislation are difficult, if not impossible, avenues of compensation to pursue for many exonerees; the success rates are low and the awards are uncertain and inconsistent (Bernhard, 1999; Lonergan, 2008; Norris, 2012). For these reasons, most scholars and advocates suggest that a broad statutory solution—including both monetary compensation and non-monetary reintegration services—is the fairest method for providing reentry assistance to exonerees. We agree and go further. Following Stratton’s (2015) argument that the state’s involvement in every wrongful conviction makes it a form of state harm, we suggest that the state should be accountable for its contribution to wrongful convictions and is therefore obligated to provide redress and assistance after exoneration. Additionally, such assistance should not be left to civil courts or individualized political processes, nor should extra-legal factors or “the social structure of cases”

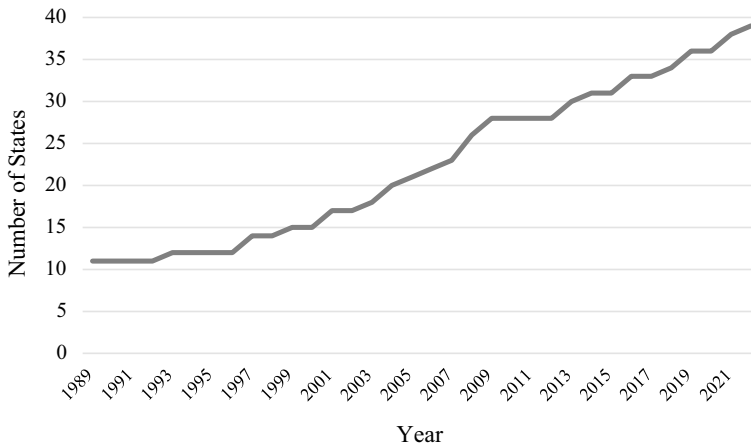


Fig. 1 Cumulative adoption of compensation statutes, 1989–2022. This figure includes Washington, DC but does not include the federal compensation law

(Merritt, 2017: p. 47) influence the distribution of compensation and reentry assistance to exonerees in any way. Rather, while states cannot undo the harm caused, they can, through clear and consistent compensation statutes, reduce some of the uncertainty and hardships that follow.

Statutory Compensation in the USA

Compensation statutes are among the oldest areas of innocence policy advocacy. In a critique of the US's lack of compensation, the first innocence scholar, Edwin Borchard (1913: p. 684), argued that the country “utterly disregards the plight of the innocent victim of unjust conviction or detention.” That year (1913), Wisconsin became the first state to pass a compensation law (Innocence Project, n.d.; Zaluska, 2018). Borchard remained involved in innocence advocacy, including the 1938 federal compensation statute.

Despite compensation statutes dating to the early twentieth century, little innocence advocacy was sustained until the modern “innocence movement” (Norris, 2017), which has brought with it the passage of additional compensation laws. Figure 1 shows the cumulative number of states with compensation laws every year from 1989—the year of the first DNA-based exoneration in the USA—through early 2022. In 1989, there were 11 compensation laws; by mid-April 2022, there were 39.

Perhaps more interesting than the *number* of states with a compensation statute is *which* states have one. Figure 2 shows the states with them in 1989 and early 2022.

The reasons for the growing enactment of exoneree-compensation statutes are beyond the scope of this paper, but suffice it to say that studies suggest it may be tied to states' number of exonerations, the presence of innocence advocacy organizations, partisan politics, and/or policy diffusion (Hicks et al., 2021; Kent & Carmichael, 2015; Norris, 2014; Owens & Griffiths, 2011/2012). Regardless of the specific forces that influence states to adopt compensation laws, it is undeniable that these laws have spread greatly in recent decades. Given the growth of the innocence movement over the last thirty years, including the

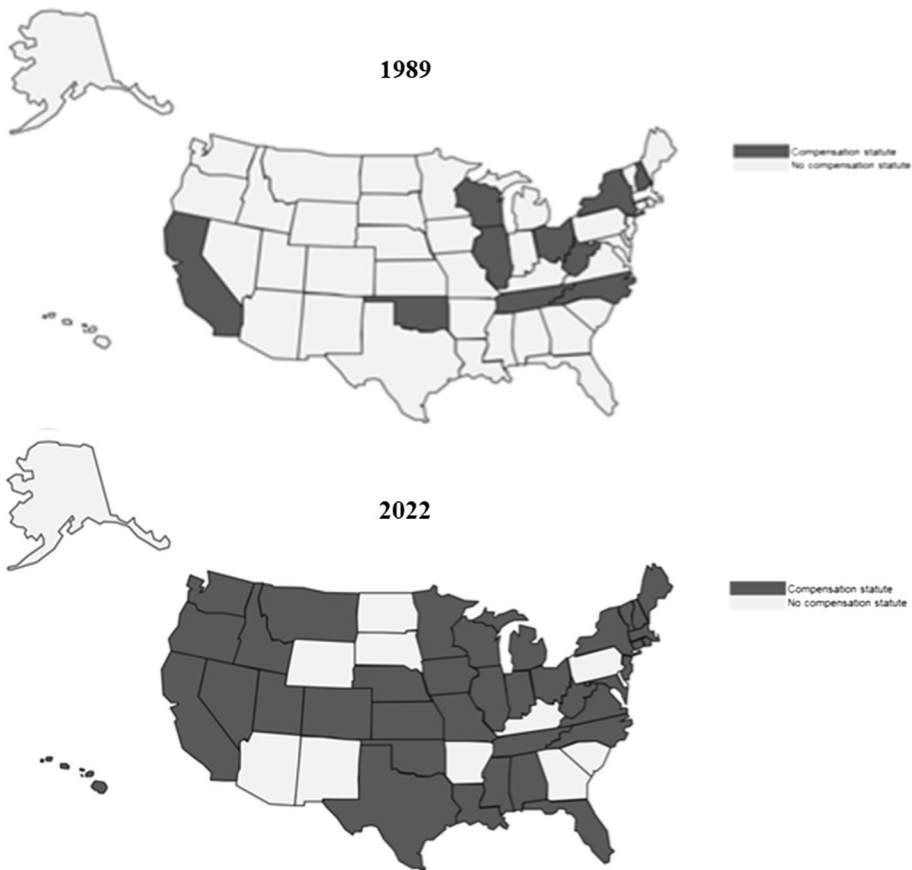


Fig. 2 States with compensation statutes, 1989 versus 2022

growing enactment of innocence-related reforms (Acker, 2017), this seems a good point at which to reflect on the current state of exoneree-compensation statutes.

What *Should* Compensation Statutes Provide?

The issue of compensation for exonerees brings with it a bevy of normative questions, ethical and moral dilemmas that have no straightforward solutions but require discussion in any assessment of existing policies.

Financially, what is time worth? How much is owed to an individual who lost years of their life and its experiences as a result of a wrongful conviction? We cannot answer such questions definitively—nobody can—but argue that some form of financial compensation is warranted. The Innocence Project (n.d.; emphasis added)—the most prominent organization working in the wrongful conviction space—suggests that financial compensation should be “based upon a *set minimum amount for each year served*” and notes that federal compensation stands at *\$50,000 per year* of wrongful incarceration. We add that the compensation award should *not have a set maximum cap*, but rather, for ethical and practical

purposes, should be based on the total amount of time served. Finally, states should provide *additional financial remuneration* for things like attorney fees, court costs, fines, and child support payments.

Beyond financial compensation are questions about additional services. Exonerees often lack adequate social services, healthcare, and educational and vocational opportunities. In these areas, what is adequate when considering the victimization exonerees experienced? Again, we cannot answer this question definitively, but the Innocence Project (n.d.; emphasis added) recommends that compensation statutes include at least the following:

- Immediate financial support for basic necessities
- Assistance securing housing
- Health care (medical, dental, and mental health/counseling)
- Educational/vocational assistance
- Legal services (for obtaining public benefits, record expungement, and child custody)
- Official acknowledgment of error

In addition to what statutes provide, there are several problematic *restrictions and limitations* that make reentry services difficult or impossible to obtain for many exonerees. The Innocence Project (n.d.) emphasizes three particular “shortcomings.” The first is disallowing compensation for exonerees who were deemed to have *contributed to or brought about their own convictions*. These restrictions can prohibit compensation for exonerees who falsely confessed or pled guilty (Kassin et al., 2010; Redlich et al., 2017), who compose nearly one-third of current exonerees.⁴ Given the scope of what psychological science and legal scholarship has taught us about false admissions (e.g., Gudjonsson, 2021; Kassin et al., 2010; Redlich, 2010), such provisions are troubling. More fundamentally, though, these restrictions, as well as those that explicitly *disqualify those who pled guilty*, essentially blame exonerees for their suffering, a common characteristic of state-harm victims (Westervelt & Cook, 2010), and allow the state to distance itself from responsibility for the harm to which it contributed (Stratton, 2015).

A second restriction is *not allowing additional relief for civil rights violations*. That is, forbidding exonerees from pursuing damages through litigation if they pursue compensation through the statute. This limitation presents exonerees with a difficult choice—seek statutory compensation, which may be well-below what is appropriate or necessary to cover the cost of living, or pursue a lawsuit, which may provide more money but is time-consuming, costly, and challenging—that creates additional uncertainty and unease during a difficult period. More than that, however, wrongful incarceration imposes tremendous physical, psychological, and emotional damages that simply warrant additional redress, but some exonerees are restricted from pursuing it. Third, some statutes *restrict compensation for exonerees with other (unrelated) felony convictions*, which unfairly punishes exonerees for matters unrelated to their victimization and further diminishes the harm caused by the state.

There are additional problematic limitations that have been highlighted by other scholars (e.g., Bernhard, 1999; Lonergan, 2008; Norris, 2012). For example, some states *end compensation upon the exoneree’s death and/or do not allow compensation to be awarded to an exoneree’s family* if they are proven innocent posthumously. We suggest that statutes

⁴ As of January 19, 2022, 914 out of 2,937 (31.1%) exoneration cases in the National Registry of Exonerations involved a false confession and/or guilty plea.

should allow exonerees' families, who also suffer from wrongful convictions, to pursue or receive compensation on their behalf if the exoneree dies prior to receiving the full award or is posthumously exonerated. A wrongful conviction may disrupt a family's income and create both long-term and short-term financial burdens, and such compensation may assist families in overcoming them. Other restrictions include *limiting compensation based on the type of crime for which the exoneree was convicted* and *requiring a minimum amount of time served to be eligible for compensation*, both of which suggest that some victims are more deserving than others, and *requiring a gubernatorial pardon* even if exonerated through the courts. Finally, while compensation awards are not subject to federal taxes due to 2015 federal legislation (Ferner, 2016), the issue of state taxation is less clear, and we suggest that compensation awards should *explicitly be exempt from state taxes*.

Ultimately, at the heart of these questions about the appropriate amount of compensation and other assistance, as well as eligibility criteria, are more fundamental ones about "the price of a life" (Levy, 2015) and about deservingness of assistance in the aftermath of injustice. Perhaps they speak to the state's failure to recognize the extent of the harm caused by wrongful convictions, or, perhaps, to their desire to distance themselves from their contribution to it, a form of *institutional protectionism* or *legitimacy-maintenance* by the state. Regardless, to the extent that our policies are reflections of our moral values and sociopolitical priorities, we may look to states' compensation statutes to understand how these issues are perceived by our elected lawmakers.

In the following sections, we assess the content of existing compensation statutes. Our descriptive analyses are rooted in the perspective, shared by many other innocence advocates and scholars, that while the damage of a wrongful conviction cannot be undone, it is incumbent upon the state to provide redress and assistance after exoneration. In order to provide the best possible outcome, the government should not only make it feasible and realistic for exonerees to receive compensation, but to provide adequate financial assistance and additional services to ensure they have a reasonable opportunity to adjust and successfully reenter their communities.

The State of Exoneree-Compensation Statutes

On its website, The Innocence Project (IP) maintains information about which states have compensation statutes and provides links to the existing legislation. We collected all original compensation statutes through the IP's website, with two exceptions.⁵

After collecting the 39 statutes, we coded them across four dimensions: (1) monetary compensation, (2) non-monetary assistance, (3) eligibility criteria and disqualifications, and (4) additional provisions. These four categories and the key provisions within each are shown in Table 1, along with their frequencies.

As shown in Table 1, the breadth and scope of existing compensation statutes vary tremendously. Generally, while having such a law on the books is better than not having one, some states appear more committed to addressing the needs of exonerees after release than others. In the following sections, we discuss the contents of compensation laws. We organize our discussion around what is good, what is bad, and what is uncertain, based on

⁵ We were unable to obtain the legislative documents from the IP's website for Alabama and Minnesota. For these states, we collected statutes through the relevant state government websites.

Table 1 Compensation statute coding

Dimensions and specific provisions	Number of statutes	Percentage of statutes ^a
Monetary compensation	39	100
Set yearly amount	30	76.9
Additional money for time on death row	3	7.7
Additional money for time on parole/probation/SO registry	10	25.6
Based on state income	4	10.3
Maximum cap	18	46.2
Attorney fees/court costs/detention fees	24	61.5
Lost wages	5	12.8
Fines from original sentence	10	25.6
Other (non-monetary) assistance		
Explicitly provides anything	22	56.4
Employment/vocational assistance	16	41.0
Counseling/mental health	15	38.5
Medical/physical health	14	35.9
Educational assistance	16	41.0
Eligibility		
Crime type	24	61.5
Pardon required	2	5.1
Disqualifications/restrictions		
Prior felony conviction	1	2.6
Concurrent sentence	23	59.0
Subsequent felony conviction	5	12.8
Contributing to/bringing about conviction	21	53.8
Guilty plea	10	25.6
Fabricating evidence/perjury	21	53.8
Minimum time served	4	10.3
Other provisions		
Explicitly non-taxable	13	33.3
Record expungement	13	33.3
Upon-death provision	11	28.2
Family/estate may file	8	20.5
Further civil redress allowed	10	25.6

^aOut of 39 statutes

whether existing policies meet the basic recommendations of the Innocence Project and established researchers in the field discussed above.⁶

⁶ We recognize that there are no definitive, objective measures of what is “good” or “bad” in existing statutes. Every exoneree’s case is different; their experiences overlap but are unique, their financial situations, health, and family environments differ. However, in our view, the Innocence Project and existing scholarship provide a reasonable (if somewhat conservative) baseline for the minimum that states owe to the wrongly convicted, and thus are useful for evaluating current policies.

The Good

We begin our discussion of the “good” by noting that the substantial rise in the number of states with compensation statutes is, in itself, a positive development. A decade ago, there were 27 such statutes (Norris, 2012); there are now 39. This 44.4% increase in the number of statutes suggests that more states have at least acknowledged that errors occur and that the state should provide assistance in the wake of exoneration.

All 39 statutes provide some form of monetary compensation. As noted earlier, the Innocence Project recommends a set amount of money for each year served. We believe this is particularly important; during a period as uneasy and uncertain as reentry after exoneration, states should strive to reduce uncertainty as much as possible. Currently, 30 statutes (76.9%) provide a set yearly amount. However, the specific amount provided varies greatly. The federal compensation law provides \$50,000 per year and while more may be warranted, we believe this is a decent starting point for considering what may be seen as reasonable financial compensation. Currently, 24 statutes (61.5%) provide at least \$50,000 for each year of wrongful incarceration. This includes states that are income-based, like Virginia, where compensation is 90% of the state’s per-capita income (roughly \$55,000–56,000, currently).

In addition to the base compensation award, three statutes (7.7%) provide additional compensation for any time exonerees spent on death row and 10 (25.6%) provide additional compensation for time spent on parole, probation, or a sex offender registry (usually \$25,000 per year). Such additional compensation is important, as it suggests a recognition of the harms caused by experiences on death row or under forms of correctional supervision beyond incarceration. Further, 24 statutes (61.5%) have provisions outlining additional compensation for attorneys’ fees, court costs, and/or detention facility costs; 10 (25.6%) have provisions for fines imposed as part of the original sentence; and five (12.8%) have provisions for lost wages. Finally, five states include provisions for missed or due child support payments. All of these forms of additional financial compensation are, in our view, elements of fair compensation packages.

As discussed above, the challenges exonerees face extend beyond financial woes, and it is imperative that states recognize the broad scope of harm produced by wrongful convictions and provide additional forms of reentry assistance after exoneration. Of the 39 statutes, only 22 (56.4%) explicitly provide something other than money. These include employment or vocational assistance (16 statutes)—which is important considering that, once released, exonerees often struggle to obtain employment (Kukucka et al., 2020; Shlosberg et al., 2020; Westervelt & Cook, 2012)—educational assistance (16), health care (14), and counseling/mental health services (15).

Beyond employment, education, and health care, only 13 (33.3%) statutes address record expungement, which is among the most important aspects of any reintegration policy. By expunging the records of those who were found innocent of the crime(s) for which they were convicted, states put exonerees in a better position to reintegrate back into society, as a criminal record produces a barrier to employment, housing, and more (Shlosberg et al., 2011/2012; Western et al., 2015). It is also important to emphasize that 10 states (25.6%) allow for additional civil redress even if compensated via statute. This gives exonerees an opportunity to be further compensated for any damages incurred as a result of their wrongful incarceration and to make up for potential statutory shortcomings. Lastly, eight statutes (20.5%) allow an exoneree’s heirs/estate to file for compensation (if, for instance, they are posthumously exonerated), and 11 contain upon-death provisions that allow the exoneree’s

family to continue to receive compensation (28.2%) should they pass away before receiving the full award.

We conclude our discussion of “good” compensation statutes by considering the one in Texas, which despite several shortcomings is often considered the most comprehensive. The Texas statute provides \$80,000 per year of wrongful incarceration (with no cap), plus \$25,000 for each year spent on probation, parole, or as a registered sex offender, additional money for child support payments, and up to \$10,000 to cover living expenses after release. Additionally, exonerees are eligible for up to 120 hours of tuition assistance at a public institution, and they can buy into the healthcare plan available to employees of the Texas Department of Criminal Justice. The state also provides for a reentry and reintegration plan that includes life-skills and vocational training, and a state identification card, akin to what is provided for those on parole or mandatory supervision. It is also worth noting that Texas allows an exonerees’ heirs or estate to receive lump-sum financial compensation on their behalf, including those who were exonerated posthumously.

The Bad

While some states provide fairly comprehensive reentry assistance for exonerees, others fall short of the recommendations outlined above. For instance, not all states offer at least \$50,000 per year; currently, six states (15.4%) have a set yearly amount under this suggested figure. Here, Wisconsin is the worst, providing only \$5,000 per year of wrongful incarceration (up to \$25,000 total). Further, 18 statutes (46.2%) place a maximum cap on compensation awards—ranging from \$20,000 (New Hampshire) to \$2 million (Florida)—which unduly punishes the longest serving exonerees. Interestingly, Illinois, which provides a total amount based on ranges of time served (see Table 2 below), only reaches the “good” threshold for those who served one year; for anyone else, the total amounts to under \$50,000 per year.

To provide a helpful context for these figures, we compared them to median state incomes. According to the U. S. Census (2020), in Wisconsin, the median household income in 2019 was just over \$64,000 and more than 83% of households made at least \$25,000, the *maximum* award available to exonerees. In New Hampshire, the median income was nearly \$78,000. Table 2 shows a comparison of each state’s compensation amount (for those with a set figure) compared to its median household income in 2019. Although imperfect, this provides a crude measuring stick for compensation laws. As shown in Table 2, while some jurisdictions’ compensation awards meet or exceed median income, many fall (far) short.

In addition to financial shortcomings, a number of existing statutes contain disqualifications and restrictions that limit availability for many exonerees. Currently, 21 statutes (53.8%) contain restrictions on exonerees who are deemed to have “contributed to” or “brought about” their convictions. It may be difficult to discern whether and how one contributed to their own wrongful conviction, but as noted above, such language may be problematic for exonerees who falsely confessed or pled guilty if there is not a clear-cut exception. Ten statutes (25.6%) contain provisions explicitly disqualifying exonerees who pled guilty.

Other restrictions also unnecessarily prevent some exonerees from receiving compensation and reentry assistance. For instance, 23 statutes (59.0%) disqualify exonerees if they were serving any *concurrent sentences* at the time of their wrongful incarceration and

Table 2 Exoneree-compensation versus median income^a

State	Compensation (base award)	2019 median household income
Alabama	\$50,000/year	\$51,734
California	\$51,100/year ^b	\$80,440
Colorado	\$70,000/year (plus additional \$50,000 for each year on death row)	\$77,127
District of Columbia	\$200,000/year (plus \$40,000 per year on parole, probation, supervised release, or SO registry)	\$92,266
Florida	\$50,000/year	\$59,227
Hawaii	\$50,000/year	\$83,102
Idaho	\$62,000/year or \$75,000/year on death row (plus \$25,000/year on parole or SO registry)	\$60,999
Illinois	\$85,350 total (for those who served up to five years); \$170,000 (5–14 years); \$199,150 (> 14 years)	\$69,187
Indiana	\$50,000/year	\$57,603
Iowa	\$18,250/year ^c	\$61,691
Kansas	\$65,000/year (plus \$25,000/year on parole, probation, or SO registry)	\$62,087
Louisiana	\$40,000/year (\$400,000 max)	\$51,073
Maine	Up to \$300,000 total	\$58,924
Massachusetts	Up to \$1,000,000 total	\$85,843
Michigan	\$50,000/year	\$59,584
Minnesota	\$50,000–\$100,000/year (plus \$25,000/year on parole, probation, or SO registry)	\$74,593
Mississippi	\$50,000/year (\$500,000 max)	\$45,792
Missouri	\$18,250/year ^c	\$57,409
Montana	\$60,000/year (plus \$25,000/year on parole or SO registry)	\$57,153
Nebraska	Up to \$500,000 total	\$63,229
Nevada	\$50,000/year (for those who served 1–10 years); \$75,000/year (10–20 years); \$100,000/year (>20 years)	\$63,276
New Hampshire	Up to \$20,000 total	\$77,933
New Jersey	Greater of twice their income in the year prior to incarceration or \$50,000/year	\$85,751
North Carolina	\$50,000/year (\$750,000 max)	\$57,341
Ohio	\$55,045/year	\$58,642

Table 2 (continued)

State	Compensation (base award)	2019 median household income
Oklahoma	Up to \$175,000 total	\$54,449
Oregon	\$65,000/year (plus \$25,000/year on parole, probation, or SO registry)	\$62,818
Rhode Island	\$50,000/year	\$71,169
Tennessee	Up to \$1,000,000 total	\$56,071
Texas	\$80,000/year (plus \$25,000/year on parole or SO registry)	\$64,034
Utah	Average nonagricultural payroll wage in Utah/year (currently \$49,000–50,000/year)	\$75,780
Vermont	\$30,000–60,000/year	\$63,001
Virginia	90% of state per-capita income/year (~\$55,000–56,000/year)	\$76,456
Washington	\$50,000/year (plus \$50,000 for each year on death row and \$25,000 for each year on parole, community custody, or SO registry)	\$78,687
Wisconsin	\$5,000/year (\$25,000 max)	\$64,168

^aCompensation figures based on current statutes and only include the base compensation awards. These figures do not include additional money for attorney fees, lost wages, etc. Several statutes also specify that the amount will increase based on cost-of-living or inflation, which is not reflected here. Median household income from U. S. Census, available at <https://www.census.gov/library/visualizations/interactive/2019-median-household-income.html>

^bCalifornia's law specifies compensation as \$140 per day of wrongful incarceration

^cIowa's and Missouri's laws specify compensation as \$50 per day of wrongful incarceration

five (12.8%) disqualify those (or terminate compensation for) those with any *subsequent convictions*. Interestingly, Florida is the only state with a “clean-hands provision” (Norris, 2014: p. 293), which disqualifies exonerees from receiving compensation who have any *previous* felony convictions on their record. Regardless of the specific approach, all of these restrictions further punish exonerees for separate unrelated actions and exacerbate the damage caused by the wrongful conviction.

If an exoneree is eligible for statutory compensation, they may be placed in the difficult position of choosing between the statutory remedy and civil litigation, as discussed above. Thirteen statutes (33.3%) explicitly prohibit exonerees who receive statutory compensation from pursuing additional damages through the courts. Other problematic limitations and restrictions include requiring a minimum amount of time served (four statutes, 10.3%), suggesting that the immense harms of incarceration are only suffered by those who spend some arbitrary minimum amount of time behind bars; limiting compensation only to certain categories of crimes (24 statutes, 61.5%), despite the difficulties posed by *any* criminal conviction; and requiring a gubernatorial pardon (two statutes, 5.1%), a highly politicized and notoriously difficult thing to achieve. As we have previously noted, these types of limitations undermine the harms caused by any wrongful conviction and suggest that some exonerees are more deserving of assistance than others.

Lastly, exonerees are not the only ones that may be considered victims of state harm; their families also bear a great burden during the wrongful incarceration of their loved one. Currently, there are four (10.3%) states that deny and/or end payment of compensation claims from the heirs/estates of exonerees. Given the toll of the wrongful conviction and incarceration on exonerees’ families, to not allow a spouse or child to file for compensation or receive the remainder of previously awarded compensation victimizes the family further, expanding the “circle of harm” (Thompson & Baumgartner, 2018) by generating additional burdens.

The Uncertain

For exonerees, perhaps as much as anything else, there is an immense level of uncertainty that comes with reintegration. In addition to simply learning to live outside of the institution again, exonerees must simultaneously navigate legal battles, reestablish family and other personal connections, negotiate mental and physical health challenges and issues of day-to-day living, and more. At the very least, it is reasonable to suggest that the state is obligated to provide some sense of stability in the foundation on which exonerees are expected to rebuild.

Unfortunately, in some ways, compensation statutes contribute to this uncertainty, which has been and continues to be a weak point in many existing statutes. First, as Guttman (2017) explained, the compensation process itself can be uncertain, as it varies from state-to-state. More than that, though, uncertainty is baked into the content of existing laws.

We noted above that we agree with the Innocence Project’s recommendation that compensation laws should provide a set monetary amount for each year lost. At the very least, this serves to clearly explicate what monetary assistance is available, and allows exonerees and their families to plan accordingly. However, currently, nine statutes (23.1%) do not provide a fixed yearly amount. Further, a handful of statutes do not even provide a total award amount, but rather leave it solely to the discretion of those granting it, for example, a court of claims. On the one hand, an exoneree in one of these states may end up receiving an award

that far exceeds the recommended minimum of \$50,000 per year of incarceration. However, it is entirely uncertain and may range from quite impressive to disastrous; one exoneree may receive an award well in excess of this amount, while another receives far less. In this case, our argument is not that the overall dollar amount is necessarily problematic, but rather that the lingering question about what that dollar amount will be—the *uncertainty*—is.

Uncertainty permeates existing compensation statutes beyond the monetary figures, as many issues are simply never mentioned. For instance, while the 2015 Wrongful Conviction Tax Relief Act ensures that compensation awards received due to wrongful incarceration are not subject to federal income taxes, the issue of state taxes is murkier. To our knowledge, nothing universally precludes states from taxing compensation awards; it is, presumably, left to states' discretion. Here, many states fail to address the question in their compensation laws. Of the 39 existing compensation statutes, only 13 (33.3%) explicitly state that the compensation award is non-taxable. While we would argue in favor of not taxing compensation awards, we suggest that, at the very least, this issue be addressed explicitly in compensation statutes rather than left open to interpretation, as the lack of clarity carries important financial implications for exonerees and creates additional layers of uncertainty.

There also is uncertainty regarding whether an exoneree's record will be expunged. In many states, record expungement is not automatic after exoneration; it requires a separate civil action (Shlosberg et al., 2011/2012). While this may be separated from the compensation process, we argue that, should an exoneree demonstrate enough to secure compensation for their wrongful conviction before their criminal record has been expunged, these matters should go hand-in-hand. That is, compensation statutes should also address expungement. And, indeed, some do; 13 states (33.3%) explicitly address record expungement. That so few even mention record expungement is disheartening, considering the immense consequences of a criminal record for finding employment, housing, and more. Exonerees already have enough to manage in this regard—navigating stigma, gaps in employment history, psychological trauma—and dealing with a criminal record and the label of felon should not be among them.

Finally, several important issues are simply left unaddressed. For example, a few states explicitly allow further civil redress for exonerees who receive statutory compensation and a few explicitly forbid further civil actions; many others, however, simply do not mention it. The same is true of provisions regarding whether or not an exoneree's family may file for or continue receiving compensation on their behalf; in many cases, it is simply not addressed at all.

As we said earlier, this *uncertainty* is the crux of our argument. The state can and should help reduce uncertainty and provide exonerees with stability upon exoneration, which may serve as a key to successful reintegration. Indeed, uncertainty is related to heightened stress, anxiety, and depression (e.g., Bakioglu et al., 2021; Grupe & Nitschke, 2013), which may be barriers to adjustment after incarceration. The more clear and consistent language statutes have, the less uncertainty that exonerees will experience.

Discussion

Only in the last couple of decades have scholars begun to uncover the immense harms generated by wrongful convictions (e.g., Campbell & Denov, 2004; Grounds, 2004; Westervelt & Cook, 2012), which leave in their wake a devastating trail of damages. We agree with Stratton (2015) that wrongful convictions can be viewed through the lens of state crime, and with Westervelt and Cook's (2010) conceptualization of exonerees as

victims of such. Through this lens, we view compensation as an obligation of the state that should be critically assessed.

The growing enactment of exoneree-compensation statutes is a positive development but, as we have shown, many existing laws fall short. From limited financial remuneration to a lack of reentry services, overly restrictive eligibility requirements and disqualifications to a complete lack of attention, many current statutes fail to address the vast array of difficulties that follow wrongful conviction and exoneration. In particular, we sought to highlight the strengths, weaknesses, and, perhaps most importantly, the uncertainties in many existing policies. The best statutes may alleviate post-release uncertainty for exonerees, while the worst may exacerbate it, and those in between in some ways perpetuate it.

Of course, our analysis here involves a level of subjectivity and we are not neutral in our normative judgments. Yet, those judgments are not arbitrary; they are based on evidence, reason, and principle. By marshalling evidence on the production of and harms caused by wrongful convictions, we reason that the state is, to some extent, culpable for those harms and should take responsibility in alleviating them. Further, it should not be arbitrary or inconsistent; as Merritt (2017: p. 47) noted, “no variation should exist in who receives financial redress and who does not; all who are exonerated should receive financial redress.”

Importantly, the evidence upon which we have drawn in our evaluations is both empirical and experiential—one of the authors is the son of an exoneree who was wrongly incarcerated for nearly a decade and has been pursuing state compensation for more than 12 years. To our point about uncertainty, we asked him whether he would prefer to be compensated in a state without a set amount of monetary compensation, where it is discretionary but in which there was the possibility (but no guarantee) of receiving millions of dollars, or in a state in which there was a set yearly amount, even if it provided significantly less money. He quickly and unequivocally said he preferred compensation set at a yearly amount. His reasoning for this was the uncertainty of the former, in which state actors (in whom the exoneree maintains little trust) have the power to determine what is appropriate. The exoneree said, quite clearly, that he preferred the stability that comes with a set amount, even if that amount is lower. This response brings us back to the fundamental moral questions raised earlier. What is the price of a life? What is someone’s lost time worth? What is appropriate redress for the suffering of an individual, their family, and their community?

As we stated, there are no definitive answers to these questions. However, we argue that a state policy that provides *fair* or *reasonable* compensation for exonerees but does not inform victims of what substance lies behind those words, fails to adequately recognize and address the harms generated by a flawed criminal legal system and continues to generate additional harm by expanding the uncertainty already faced by exonerees. By providing clear and comprehensive monetary compensation and reentry assistance, states can help reduce the uncertainty associated with the aftermath of exoneration, help victims of wrongful conviction establish stable foundations on which to rebuild their lives, and ultimately move toward justice.

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