OBSTACLES AND BARRIERS AFTER EXONERATION

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ABSTRACT

The purpose of this Article is to review existing obstacles exonerees may face in the areas of compensation, mental health, and reentry issues and suggest solutions for exonerated individuals in these areas. Wrongful convictions are a vast issue that have plagued the criminal justice system for centuries. An encompassing response to the dilemma of wrongful convictions is compensation. First, we discuss compensation and how this applies to individuals who have been wrongfully convicted as a result of the plethora of negative consequences they suffer, many of which stem after they have been released. Compensation is anything awarded to someone as atonement for loss, injury, or suffering. Not all states have statutes in place for compensation, and the ones that do are insufficient and

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not easily attainable. Even with these compensation statues, exonerees are left to deal with many struggles on their own. Our next section addresses a second barrier in exoneration, exploring how exonerees may acquire mental health issues in prison and after release and are left with few resources to cope with after liberation. Third, we examine the lack of support systems designed assist exonerees in their efforts to reintegrate back into society and the stigma exonerees may experience once released. Difficulties of reintegrating into society include deteriorated reputation, trouble with personal relationships, and an inability to attain a steady job and income. Even after exonerees have been freed from incarceration, they may be scrutinized by negative public perceptions associated with their false criminality. Unfortunately, these are only a few of the many problems exonerees are forced to endure. The discrepancies between various state statutes regarding compensation create a void that warrants the need for a comprehensive compensation statue.

**Table of Contents**

Introduction ........................................................................................................831
I. Barriers in Compensation.............................................................................833
   A. Barriers in Private Bills.........................................................................833
   B. Barriers in Litigation..........................................................................834
   C. Barriers in Compensation Statutes.........................................................835
   D. Obstacles After Compensation Is Awarded..............................................839
   E. Compensation Reform..........................................................................840
II. Barriers in Mental Health ........................................................................841
III. Mental Health Compensation Reform .......................................................844
IV. Barriers in Reintegration..........................................................................845
   A. Financial and Employment Barriers......................................................845
   B. Personal Barriers...............................................................................847
   C. Barriers in Stigma and Public Perceptions.............................................848
V. Barriers in Attaining Compensation Due to Public Perception......................850
VI. Reform........................................................................................................853
Conclusion........................................................................................................854
Individuals who are exonerated for crimes they did not commit face a variety of barriers after exoneration.\(^1\) Difficulties in mental health, reintegration, and experiences of stigma are common among exonerated individuals.\(^2\) Further, compensation for the injustice levied upon them as an innocent person incarcerated in our criminal justice system is far from uniform across states and jurisdictions.\(^3\) For example, Ronald Taylor was convicted of sexual assault and sentenced to sixty years in prison in Texas.\(^4\) After twelve years of incarceration, DNA evidence demonstrated actual innocence, and Taylor was freed.\(^5\) Under Texas’s state statutes for compensation, Taylor was eligible for $80,000 for every year that he was wrongfully imprisoned.\(^6\) Instead of receiving the $1.1 million resulting from that calculation, he received an offer for $20,000.\(^7\) Eligibility requirements in Texas’s compensation law required that Taylor be free of prior convictions to be eligible for the full compensation amount, resulting in a reduced amount.\(^8\) Taylor represents one of several exonerees who have experienced losses in compensation due to eligibility requirements. Billy James Smith and Gregory Wallis also received less in compensation due to the law’s requirement that the exonerated individual be free of prior convictions to be eligible for full compensation.\(^9\) Taylor, Smith, and Wallis were all on parole when they were wrongfully convicted for sexual assault charges.\(^10\)

In another case, an exonerated individual was not eligible for compensation. Andrew Johnson was wrongfully convicted of sexual assault in the State of Wyoming.\(^11\) Johnson spent twenty-four years

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3. See Compensating the Wrongly Convicted, supra note 1.
5. Id.
7. Id.
8. See id.
9. Id.
10. Id.
wrongfully incarcerated before being exonerated by DNA evidence.\textsuperscript{12} When Johnson was exonerated, he left prison with no “job, health insurance, a car, or retirement income” and has acquired serious health problems.\textsuperscript{13} Wyoming does not possess compensation legislation for exonerated individuals.\textsuperscript{14} These are just two instances out of hundreds in which those who have been wrongfully convicted were not adequately compensated or supported upon reentry.

Similarly, in 2004, Wilton Dedge was exonerated after spending twenty-two years in prison in Florida for a crime he did not commit.\textsuperscript{15} Upon release, Dedge was not entitled to compensation from the state, and the lawsuit he filed seeking compensation from the state was dismissed by a trial court.\textsuperscript{16} To seek compensation, Dedge was forced to seek assistance through a private bill in the legislature, which was eventually awarded.\textsuperscript{17} However, forcing exonerated individuals to seek compensation through the legislature in the form of private bills makes compensation for exonerated individuals a political issue and relies on the resources of the exonerated individuals in successfully navigating that mechanism,\textsuperscript{18} which can result in unequal access to justice.\textsuperscript{19} Compensation should not be a political issue or based on an individual’s resources.\textsuperscript{20}

Compensation is just one of the barriers a wrongfully convicted individual faces post-exoneration. Psychological trauma experienced by wrongful imprisonment is common,\textsuperscript{21} and few reentry services are available for exonerated individuals, even when compared to services available for prisoners who are released upon parole.\textsuperscript{22} In this Article, we provide a review of barriers and obstacles exonerated individuals may face after exoneration in the areas of compensation, mental health, and reintegration into society. We also suggest solutions for overcoming these obstacles at a societal level.
Obstacles and Barriers After Exoneration

I. BARRIERS IN COMPENSATION

Most state statutes governing compensation for exonerated individuals have been enacted since 2000. This increased interest in compensation is in part due to the improvement and use of DNA technology in providing definitive evidence about an exoneree’s innocence. There are three main mechanisms that exonerated individuals can use to receive compensation, including private bills, litigation, and compensation statutes. Each of these mechanisms come with their own limitations, and importantly, it may take many years for exonerated individuals to receive compensation through any one of them. Compensation is rarely granted immediately.

A. Barriers in Private Bills

Compensation for exonerees may happen through private bills or litigation, although this is the rarest mechanism by which exonerees may receive compensation. Exonerees attempting to obtain compensation through private bills or litigation face additional obstacles such as a higher burden of proof, immunity of state actors, and time consuming and costly process. In addition, requiring compensation for exonerated individuals take place through the legislature makes compensation a political issue, and political ideology may influence the support for wrongful conviction laws. Thus, using private bills as a mechanism for compensation results in an uneven availability of compensation for exonerated individuals who may vary in resources, skill, and political acumen, and whose cases may vary in appeal to legislative actors.

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24 See id. at 148.
26 See id. at 353–54.
27 See id. at 354.
28 See id. at 353–54.
29 See id.
31 See Kent & Carmichael, supra note 23, at 150–51.
B. Barriers in Litigation

To obtain compensation through litigation, the exonerated individual must first identify who they can take action against.32 In cases where wrongful convictions are due to the actions of law enforcement, these participants are generally protected against liability for damages they have caused under qualified immunity.33 That is, if an employee of the state performs actions that result in a wrongful conviction, the state is not liable unless the state waives its immunity.34 If the state does not waive immunity, plaintiffs may have the ability to sue smaller entities, such as individual cities.35

Even with this option, there are more criteria that need to be met in order to pursue legal action. To hold police liable, a judge needs to decide if their actions were negligent.36 Requiring negligence as a condition of compensation is problematic in that an officer may act correctly under the given circumstances, but nonetheless that non-negligent action may result in a wrongful conviction.37 In these cases, it would be difficult for an exonerated individual to attain compensation through litigation. Scholars have argued that even if criminal justice actors were performing their duties competently, the correct action does not rule out the need to take responsibility for someone being wronged by the system.38

Further, if it is deemed that a police officer is liable, but the officer’s actions were not authorized by their employer, the individual officer would be held liable, not the municipality employing that officer.39 In such cases, requiring the officer to be individually liable for their actions if they were not sanctioned by the employer results in plaintiffs seeking damages from individuals without resources to provide adequate compensation.40

33 See id. at 723.
34 See id.
35 See id. at 723–24.
36 See id. at 725–26.
38 See, e.g., id.
39 See Bernhard, supra note 32, at 724.
C. Barriers in Compensation Statutes

Due to the difficulty of receiving compensation through private bills and litigation, recent arguments by scholars and legal organizations have favored statutes as a mechanism to provide monetary and nonmonetary compensation for exonerated individuals. Compensation statutes are more likely than other forms of compensation to result in a uniform distribution of compensation across exonerees and require less burden on the exonerated individual to make the political case and invest personal resources for his or her compensation. However, even with the significant growth of compensation statutes, fifteen states are still lacking legislation that could help ensure they take responsibility for the costs of wrongful conviction for exonerated individuals. Further, variations in factors states consider, amount and type of compensation, eligibility requirements, and discretion in decision making still result in uneven outcomes across cases.

Currently, thirty-five states and the federal government provide specific compensation statutes for wrongfully incarcerated individuals. Eighteen of those states, the District of Columbia, and the federal government provide at least $50,000 per year of wrongful incarceration; eight states and Washington DC providing more than $50,000 per year. States may also award additional compensation for exonerated individuals who spend time on death row or in a post-release supervision program. At the federal level, exonerated individuals may receive an additional $100,000 per year spent on death row, and in four other states, exonerated individuals are eligible for additional compensation if they spent time incarcerated on death row, varying from $25,000 to $50,000. Three states include compensation for time spent on post-release supervision or a sex offender registry in the amount of $25,000 per year.

41 Norris, supra note 25, at 357.
42 See id. at 353–54.
43 Id.
44 See Compensating the Wrongly Convicted, supra note 1.
46 See id. at 2, 15.
48 See Brown & Salazar, supra note 30; Compensation Statutes: A National Overview, supra note 45, at 2, 7, 8, 15.
Beyond monetary compensation, nineteen states currently offer nonmonetary services for exonerees in the statutes.\(^\text{49}\) Currently, fourteen states offer some form of tuition or educational assistance.\(^\text{50}\) Nine states offer assistance with medical expenses, and twelve states offer counseling services.\(^\text{51}\) Six states offer some form of reentry services, seven states offer job search assistance, and three states offer housing assistance.\(^\text{52}\) Of all the statutes examined in the Innocence Project analysis, only one state offered immediate assistance upon exoneration (California), indicating that mandating immediate assistance upon exoneration is the exception rather than the norm.\(^\text{53}\) Thus, there is significant variation among states with compensation statutes in the amount of compensation for exonerated individuals, and fifteen states provide no statutory mechanism for compensation.

Other characteristics of the statutes also differ by state.\(^\text{54}\) Robert J. Norris conducted an evaluation of variations in current state compensation statutes, comparing them to the recommendations of the Innocence Project.\(^\text{55}\) Norris reported that only four states included language that addresses expunging an exoneree’s criminal record.\(^\text{56}\) Thirteen statutes only allowed exonerated individuals who had convicted particular types of crimes to be eligible for compensation, most restricting eligibility to those who had initially convicted been convicted of a felony.\(^\text{57}\) However, an individual may be disqualified from seeking compensation in some states if they have a prior or subsequent unrelated felony conviction.\(^\text{58}\) The most common disqualification was an exoneree who was serving time for a crime in which they were not wrongfully convicted.\(^\text{59}\)

Twenty-five statutes included a requirement for the burden of proof, with the most common burden being clear and convincing evidence.\(^\text{60}\) Eligibility requirements for exoneration compensation may differ from state to state as well. For example, some statutes

\(^{49}\) See *Compensating the Wrongly Convicted*, supra note 1.  
\(^{50}\) Id.  
\(^{51}\) Id.  
\(^{52}\) Id.  
\(^{53}\) Id.  
\(^{54}\) Norris, supra note 25, at 371.  
\(^{55}\) See id. at 357.  
\(^{56}\) Id. at 363.  
\(^{57}\) Id.  
\(^{58}\) See *Compensating the Wrongly Convicted*, supra note 1.  
\(^{59}\) Id.  
\(^{60}\) Id.
exclude some exonerees from seeking compensation, stipulating that only individuals who have been exonerated through DNA evidence may be eligible for compensation. However, in practice, non-DNA exonerations outnumber exonerations accomplished using DNA evidence. In fact, most criminal cases do not involve DNA evidence, and if they do this evidence is not preserved after trial making it nearly impossible for these victims to be repaid.

Further, another obstacle that must be overcome in several statutes is the vague definition of innocence, or variations in the proof of eligibility. That is, according to Norris’s analysis, statutes differ in the requirements for the level of proof required for compensation. Some states require proof of actual innocence, meaning that exonerees must prove that they did not commit the crime; proving that their constitutional rights were violated is not sufficient to warrant compensation.

Other states may deny compensation for exonerated individuals who were judged to have contributed to their wrongful convictions. For example, in some states if a person falsely confessed and/or pled guilty, the person may be excluded from eligibility for compensation. Although it may seem plausible to believe that only a guilty person would plead guilty, an innocent person who feels a conviction is unavoidable may plead guilty to avoid a long sentence. Indeed, experimental work has shown that innocent people may confess and plead guilty to crimes they did not commit.

Further, among those states with compensation statutes, there is also significant variation in the designated adjudicators for compensation claims. There are separate processes that exonerees may have to undergo in order to receive the compensation if they have passed the many stipulations and disqualifiers. Depending on the state, compensation may be the responsibility of the court system or

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61 See Norris, supra note 25, at 363.
63 See id.
64 Id.
65 Id. at 514.
66 See id.
67 Compensating the Wrongly Convicted, supra note 1.
68 See Koehler, supra note 62, at 515.
69 Id.
70 Saul M. Kassin et al., Police-Induced Confessions: Risk Factors and Recommendations, 34 Law & Hum. Behav. 3 (2010).
a board of claims.\textsuperscript{72} Only twenty-two of the states with compensation statutes adjudicate claims through the courts, consistent with the Innocence Project’s recommendation.\textsuperscript{73} Further, only five states have civil offset provisions as a protection for tax payers, meaning that the state will be reimbursed if compensation is initially granted under the statute and then later the exonerated individual wins a civil lawsuit that is greater than the amount of compensation awarded to the exonerated individual under the statute.\textsuperscript{74}

Further, in Norris’s analysis, twenty state statutes provided a statute of limitations for seeking compensation, varying from one to ten years.\textsuperscript{75} Only ten states addressed a course of action if the exonerated individual dies before compensation is fully awarded.\textsuperscript{76} Thus, an exoneree overcoming these disqualifiers may still have to face another obstacle: a short timeframe to apply for compensation.\textsuperscript{77}

Although compensation statutes may be the best chance of compensation for most exonerees, for those states that have compensation statutes, these variations in eligibility, amount, and adjudication demonstrate the current statutes are far from perfect. Similar to obtaining compensation through litigation or private bills, compensation statutes include obstacles to receiving compensation, such as eligibility requirements that are too strict, requirements for higher standards of proof, limitations in the amount of awards or insufficient monetary compensation, shorter statutes of limitations, and a lack of nonmonetary or social services that may be useful for exonerees in reintegration.\textsuperscript{78}

An exoneree who has completed this time-consuming and discouraging process must understand that compensation may come with strings attached.\textsuperscript{79} Some states condition acceptance of compensation on an exoneree’s agreement to not file a civil lawsuit against the state.\textsuperscript{80}

Overall, compensation statutes theoretically provide a more fair and equitable mechanism to ensure exonerated individuals receive aid and compensation for the wrongs they have experienced

\textsuperscript{72} See Koehler, supra note 62, at 518, 520.
\textsuperscript{73} Id.
\textsuperscript{74} Id.
\textsuperscript{75} Norris, supra note 25, at 364.
\textsuperscript{76} Id.
\textsuperscript{77} Koehler, supra note 62, at 516.
\textsuperscript{78} Norris, supra note 25, at 353–54; Compensating the Wrongly Convicted, supra note 1.
\textsuperscript{80} See Koehler, supra note 62, at 517.
compared to litigation and private bills. However, in practice, most compensation statutes do not necessarily result in fair and equitable treatment. Variations in eligibility, amount of compensation, decision making bodies, and consequences of accepting statutory compensation result in uneven outcomes for exonerees who have experienced similar circumstances.

D. Obstacles After Compensation Is Awarded

After winning the right to compensation, exonerated individuals may experience further obstacles. Some arguments against providing compensation for wrongly convicted people stem from the notion that states do not have the budget to provide adequate reparations.\textsuperscript{81} Thus, in practice, it is possible that an exoneree may not be awarded what they have been compensated. Most wrongful conviction compensation statutes do not consider the source of funding when deciding how exonerees will be compensated, this is shown on the lack of information on individual state budgets.\textsuperscript{82} Some states allocate funds from vague sources (e.g., the state’s general fund, any available state funds, or any money in the treasury not otherwise appropriated), creating confusion and hindering the compensation process.\textsuperscript{83} As unclear as these funds may seem, other states mention nothing about a funding source.\textsuperscript{84} To avoid further losses to exonerees, compensation statutes need to have a secure source of funding that should be defined in the statute.

It is possible that the threat of liability will result in an incentive for criminal justice actors to avoid actions that would result in liability.\textsuperscript{85} Therefore, creating secure sources of state funding for compensating wrongful convictions guarantees reparations to individuals who have been wronged by the criminal justice system and holds actors of the criminal justice system accountable. Therefore, it may reduce mistakes that lead to wrongful convictions.\textsuperscript{86} As Mostaghel states, by creating wrongful conviction compensation statutes with specific and identifiable sources of funding, financial costs will be more predictable and manageable, “it will be easier for

\textsuperscript{81} See Deborah Mostaghel, Wrongfully Incarcerated, Randomly Compensated—How to Fund Wrongful-Conviction Compensation Statutes, 44 IND. L. REV. 503, 529 (2011).
\textsuperscript{82} See id.
\textsuperscript{83} See id. at 538.
\textsuperscript{84} See id.
\textsuperscript{85} See id. at 542.
\textsuperscript{86} See id.
states to fulfill their moral obligations to their citizens,” and citizens may find “that there actually is justice in the justice system.”

E. Compensation Reform

First, given the limitations of obtaining compensation via private bill or litigation, the Innocence Project recommends states pass compensation statutes to ensure adequate compensation for the wrongfully convicted. The Innocence Project has provided a model for states to consider in developing these compensation statutes. The model includes stipulations that the statutes should provide at least $50,000 compensation per year of wrongful imprisonment, with an additional $50,000 for each year spent on death row, and $25,000 for each year spent on parole, probation, or as a registered sex offender. Second, the Innocence Project suggests a “reasonable standard of proof” for establishing an exonerated individual’s eligibility for compensation, stating that the exonerated individual should have to show that they did not commit the crime or acts by a preponderance of the evidence.

Third, the Innocence Project suggests that states establish a clear process that exonerated individuals can use to adjudicate their claims, noting that states should delegate the responsibility for evaluating compensation claims to the courts rather than state boards or commissions. Courts have the experience in weighing evidence and properly assessing claims that other state claims boards or state commissions may lack, leading to greater variation in compensation outcomes. Last, the Innocence Project suggests including language that the compensation awarded by statute should be offset with federal civil awards or other settlements rather than forbidding the exonerated individual from seeking civil redress as a condition of compensation.

States vary in whether their statutes match these guidelines. When compared to the Innocence Project model, none of the existing statutes Norris evaluated matched the model across all aspects.

87 See id. at 544.
88 See Compensating the Wrongly Convicted, supra note 1.
89 Norris, supra note 25, at 361.
91 Id.
92 Id.
93 See Compensating the Wrongly Convicted, supra note 1.
94 Norris, supra note 25, at 364.
The Innocence Project model also suggested a multitude of other assistances that were not included in all statutes. The model did not allow monetary rewards to be taxed, did “not require a pardon,” and did “not require a particular type of offense to be eligible for compensation.” In another proposal, one scholar suggests a model of compensation based on the wages of correctional officers, reasoning that exonerees deserve a fair wage for the time they have spent wrongfully incarcerated. In all, these reviews suggest that states have room for improvement over the current statutes governing compensation law and exonerated individuals.

Beyond monetary compensation, experts have suggested the development of individualized reentry plans created on an individualized basis in order to serve the unique needs of each exoneree. Currently, there is no national social service program for exonerees despite hundreds of wrongfully convicted people in need of long-term treatment and assistance. Increased collaboration between legal experts and health professionals, mentoring services, referrals housing and mental health services, and public education would help meet the non-monetary needs of exonerated individuals upon reentry. Receiving adequate monetary and nonmonetary compensation would also help exonerated individuals with other obstacles they face upon exoneration. One such barrier exonerated individuals may experience is in the area of mental health.

II. Barriers in Mental Health

As the number of exonerations have risen throughout recent years, the mental health issues that exonerated individuals face have become increasingly apparent. Long-term incarceration can have lasting effects on prisoners whether guilty or wrongfully incarcerated. That is, incarceration itself has “immediate and

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95 See id. at 361.
96 Id.
99 See, e.g., id. at 436 (providing an example calling for the mentioned social service programs).
100 See Norris, supra note 25, at 354, 357.
101 See Simms, supra note 21, at 155.
long-term effects on health." Prisoners may adapt their behavior to survive the traumatic environment of prison resulting in higher dependence on institutional structure, hypervigilance, psychological distancing, a lowered sense of self-worth, and post-traumatic stress disorder. Arguably, the effects of incarceration on health outcomes are more powerful for those who were wrongfully convicted in the first place. Communicable diseases, chronic illness, and physical impairments are relatively common among inmates, and violence experienced in the prison environment may lead to negative mental and physical health outcomes.

Moreover, collateral consequences of a prison record post release include difficulty attaining a job or unemployment, low pay and/or slow wage growth, and difficulty making social connections are also related to poor physical and mental health post-release. Former inmates with mental health issues may experience compounded disadvantage because of the additive nature of facing two stigmas (a mental health disorder and criminal history) simultaneously.

Although many of these findings concern inmate health, these same studies and findings can be applied to wrongfully convicted individuals and exonerees. That is, exonerated individuals may experience these same symptoms merely as an outcome of being incarcerated. However, the mental health consequences for exonerated individuals are exacerbated by their innocence. That is, exonerated individuals may experience more severe mental health outcomes than the average incarcerated individual because of the additional trauma attributable to the wrongful conviction itself.

Research regarding treatment such as clinical assessments and therapy is limited, leaving many exonerees struggling to overcome the mental barriers they face. Recent studies emphasize the importance of mental health treatment for exonerees that are re-integrating into society.

Providing post-release mental health

104 Id.
105 Id. at 115–16.
106 Id.
107 Id.
109 WESTERVETL & COOK, supra note 108, at 171; Simms, supra note 21, at 155.
110 See WESTERVETL & COOK, supra note 108, at 171; Simms, supra note 21, at 155–56.
111 See Simms, supra note 21, at 156.
112 See, e.g., Adrian Grounds, Psychological Consequences of Wrongful Conviction and Imprisonment, 46 CANADIAN J. CRIMINOLOGY & CRIM. JUST. 165, 177–78 (2004) (providing an example of a study that emphasizes the importance of mental health treatment for exonerees).
services or compensation designated for mental health services are two approaches that may help combat mental health issues resulting from wrongful convictions. As noted above, most compensation statutes do not allow for mental health services for exonerated individuals, despite the barriers that they may face in this area.

Several studies have documented the mental health struggles of exonerated individuals upon exoneration. Adrian Grounds conducted an in-depth study with eighteen exonerated men, examining the mental health consequences for these individuals. Importantly, these individuals had no history of mental health issues prior to their wrongful conviction. Findings showed that most of the eighteen individuals experienced serious mental health issues post wrongful conviction, with the majority meeting the diagnostic criteria for post-traumatic stress disorder and depression. Fourteen of the respondents exhibited a significant personality change after the wrongful conviction, and several experienced panic disorder, paranoia, or were dependent on substances. Data like these highlight the need for clinical psychological treatment for exonerees to help cope with the short- and long-term effects of wrongful incarceration.

Similarly, Jennifer Wildeman and her colleagues analyzed interviews of fifty-five exonerated individuals to assess psychological effects associated with the wrongful conviction. They found that a significant proportion of the exonerated individuals reported experiencing symptoms of anxiety, depression, post-traumatic stress disorder, or a combination of all these disorders. Further, the authors noted that financial resources were needed to assist the exonerees in addressing these symptoms, and should be provided as part of the post-release compensation package. Further, when exonerated individuals are released, the difficulties they experience in reentry may exacerbate the mental health issues they

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113 See Simms, supra note 21, at 159.
114 See id. at 159–60.
116 See Grounds, supra note 112, at 165, 167–68.
117 See id. at 169.
118 See id.
119 See id. at 168–69.
120 See Wildeman et al., supra note 115, at 416–17.
121 See id. at 425.
122 See id.
The physical and mental health of exonerees must be taken into account for current and all future compensation policy.

III. MENTAL HEALTH COMPENSATION REFORM

When exonerated individuals are released, they are confronted with mental health issues they developed while incarcerated and new problems that come with being released. However, non-monetary compensation in the form of individualized services to help plan for reentry can help attenuate these effects. Such services should be at least equivalent to those that parolees receive. By having each individual exoneree individually assessed and recommending a treatment plan, services can be better allocated for the exonerated individuals and may result in more effective treatment.

There have been recent attempts to address short- and long-term mental health effects resulting from wrongful incarceration. For example, in 2011, Life After Innocence at Loyola University Chicago School of Law sponsored a state bill that would grant exonerees free mental health services from professional clinicians. Life After Innocence is an organization that worked with exonerees and assisted them in their reintegration to society. However, in practice, the bill did not result in support for exonerees despite Life After Innocence advocating for the Illinois Department of Human Services to fulfill the statutory obligation. Instead, Life After Innocence worked with pro-bono providers to serve their clients. Even though the attempt at legislation to guarantee services for exonerated individuals was not seen to fruition in this example, it illustrates the potential and need for legislative response.

Mental health services may be coupled with other services that indirectly may improve mental health, including assistance with

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125 See id. at 128 (concluding that planning for reentry into society is vital for exonerees).
126 See id.
127 See id.
129 Id. at 32.
131 Id.
expungement of criminal records, pro bono legal services, assistance with finding housing. A holistic approach to compensation that encompasses monetary and nonmonetary compensation and addresses mental health is essential to helping exonerees reintegrate into society. Assisting with other difficulties upon reentry may have positive effects on exonerees’ mental health. That is, exonerated individuals also report experiencing struggles reintegrating back into society, and few statutes allow for services to assist exonerated individuals with this need.

IV. BARRIERS IN REINTEGRATION

Reintegrating back into society is another challenging aspect of being released for exonerated individuals, especially for those who have been wrongfully convicted for years. Notably, exonerated individuals have spent an average of twelve years wrongfully imprisoned. As discussed above, some may receive compensation, but for others, it is rarer to receive aid in the areas they need it the most. These areas include assistance in locating a job and steady income, combating the stigma associated with criminality, maintaining his or her social and psychological wellbeing, and more. It is common for exonerated individuals to receive fewer reentry benefits compared to those who were rightfully convicted and released. The first step in combatting the issues associated with reintegration for exonerees is to recognize the many personal and financial hardships exonerees face.

A. Financial and Employment Barriers

Exonerated individuals face several financial hardships, exacerbated by issues in finding employment. Finding employment can be incredibly difficult, especially after having been incarcerated for a
period of time and then having to disclose that information to potential employers.¹⁴¹

Further, research suggests that exonerated individuals may experience employment discrimination similar to an offender who is guilty of the same crime.¹⁴² In one study, researchers presented hiring professionals with a job applicant who was either a convicted (and released) offender, an exonerated individual, or who had no criminal history.¹⁴³ Apart from the criminal history, the job applications were identical.¹⁴⁴ The data showed that exonerated individual and the offender were viewed more negatively than the applicant with no criminal history.¹⁴⁵ Further, the exonerated individual was offered a lower wage than the applicant with no criminal history.¹⁴⁶ The employment discrimination exonerated individuals may face is exacerbated by the fact that exonerated individuals have less access to resources than offenders upon seeking employment.¹⁴⁷

One reason exonerated individuals may experience employment discrimination is the inability to purge one’s record after exoneration.¹⁴⁸ In one study, researchers tracked the behavior of 118 exonerees post-release and examined the effects of several variables on their future behavior.¹⁴⁹ Almost one-third of exonerated individuals did not have their records purged.¹⁵⁰ Further, whether an exonerated individual’s record was purged was a significant predictor of post-exoneration offending.¹⁵¹ Therefore, the presence of a record may lead to difficulty in finding and securing employment and can be associated with higher levels of offending after exoneration.¹⁵²

In addition to trouble in finding employment in the first place, other financial hardships stem from not being able to find employment and having been wrongfully incarcerated for a long

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¹⁴¹ See Delaney et al., supra note 140, at 53.
¹⁴² See Jeff Kukucka et al., Do Exonerees Face Employment Discrimination Similar to Actual Offenders?, 25 BRIT. PSYCHOL. SOC’Y 17, 19, 25 (2020).
¹⁴³ See id. at 19.
¹⁴⁴ See id.
¹⁴⁵ See id. at 23.
¹⁴⁶ See id. at 25.
¹⁴⁷ See id. at 29.
¹⁴⁹ See id. at 369–70.
¹⁵⁰ See id. at 354.
¹⁵¹ See id. at 379.
¹⁵² See id. at 379, 383.
amount of time. For example, one who spends a significant amount of time incarcerated lacks the ability to build retirement funds. To illustrate, social security requires individuals to work “for at least 10 years at a job that excises a contribution into a retirement fund.” This requirement makes it almost impossible for many exonerees to build a retirement plan since they are unable to contribute toward their retirement fund while incarcerated. For example, James Kluppelberg spent twenty-six years wrongfully incarcerated and was then released in his fifties with no steady job and an uncertain financial future. Kluppelberg never had the opportunity to build a retirement fund and is not eligible for social security. Hence, he will now have to work for the rest of his life. Although compensation could help offset some of this burden, recall that compensation is not guaranteed nor available in all cases.

B. **Personal Barriers**

In addition to the burden of financial and employment hardships, exonerated individuals face personal difficulties after release that are not usually addressed in compensation statutes. As noted above, these personal issues may result in mental health concerns; again, these are not sufficiently addressed in compensation. In addition to mental health difficulties, exonerated individuals may also experience barriers in social wellbeing, relationships, stigma upon reintegration, and more. That is, these difficulties may significantly affect the manner in which exonerated individuals are treated and seen by the public. Further, exonerated individuals may experience issues such as deteriorated reputation, trouble with personal relationships, and an inability to attain a steady job and income, leading to an increased amount of personal difficulties.

153 See id. at 383; Katie Burnett, Retired with Nothing to Retire on: A Proposal for Social Security Credits for the Burge Exonerees, 21 PUB. INT. L. REP. 175, 175 (2015).
154 See Burnett, supra note 153, at 175.
155 See id.
156 See id.
157 See id.
158 See id.
159 See id. at 176; Simms, supra note 21, at 155, 157.
160 See supra notes Part III.
161 See Simms, supra note 21, at 161.
Exonerated individuals need to learn to cope with these personal and relationship difficulties but often lack the resources to do so.\textsuperscript{164}

\textbf{C. Barriers in Stigma and Public Perceptions}

Difficulties exonerated individuals face in employment and personal relationships are at least in part due to how exonerated individuals are viewed and treated in society after exoneration.\textsuperscript{165} In this section, we evaluate the literature examining the stigma that exonerated individuals may experience upon release. Stigma is defined as a “devalued social identity—a mark or an indicator that an individual is flawed, spoiled, or less than human.”\textsuperscript{166} The stereotypes associated with incarceration can lead to conclusions that the individual is a threat or dangerous.\textsuperscript{167} Wrongful conviction is not necessarily a visible stigma, but research suggests that it is a pervasive factor in how exonerated individuals may be perceived or treated in society.\textsuperscript{168}

Much research has been done to investigate the stigma associated with offenders and rightfully convicted persons, but not as much has investigated stigma specifically related to exonerees.\textsuperscript{169} Clow and Leach attempted to rectify this by conducting a study in which participants were randomly assigned to complete surveys regarding their attitudes, stereotypes, and discrimination tendencies toward either individuals who were wrongfully convicted of a crime, actual offenders, or people in general (included as a control group for comparison purposes).\textsuperscript{170} Their results demonstrated that there was “contemptuous prejudice towards” wrongfully convicted persons compared to average individuals.\textsuperscript{171} Specifically, exonerated individuals were subjected to more negative stereotypes and emotions and “held at a greater social distance” compared to individuals with no criminal history.\textsuperscript{172} Participants reported feeling more pity for a wrongfully convicted individual than a person with no criminal history, but this feeling of pity did not result in more support or assistance for that individual.\textsuperscript{173}
Similarly, Thompson, Molina, and Levett assessed the extent to which exonerated individuals are stigmatized by the general public.\textsuperscript{174} In their study, they varied whether participants read a newspaper article about an exonerated individual, a guilty individual who was released from prison, or an individual with no criminal history.\textsuperscript{175} They found that the exonerated individual was evaluated more negatively than an individual with no criminal history on most measures of personal characteristics, indicating that the public may assign more negative personal characteristics to an exonerated individual.\textsuperscript{176}

Further, the cause of the wrongful conviction may affect the way the public perceives an exonerated individual.\textsuperscript{177} In another study, participants read a news story of an exonerated individual who was either wrongly convicted because he falsely confessed or because of a mistaken eyewitness.\textsuperscript{178} If the exonerated individual had falsely confessed, participants perceived the individual as less intelligent, and therefore were more uncertain about the exonerated individual’s actual innocence.\textsuperscript{179} Ultimately, if the exonerated individual falsely confessed, those perceptions resulted in less support for reintegration services.\textsuperscript{180}

Collectively, these studies demonstrated the potential for stigma in the way exonerated individuals are perceived. Exonerated individuals may encounter challenges such as being “incorrectly labelled as criminals, creating tension with neighbours, impeding their ability to secure employment, and preventing them from moving forward with their lives.”\textsuperscript{181} Such stigmatization may result in less public support for policies that would assist exonerated individuals\textsuperscript{182} or may politicize the issue of restoration or compensation for the wrongfully convicted.\textsuperscript{183}

\textsuperscript{174} See Thompson et al., supra note 2, at 1373–74.
\textsuperscript{175} See id. at 1374.
\textsuperscript{176} See id.
\textsuperscript{178} See id. at 343.
\textsuperscript{179} See id. at 342.
\textsuperscript{180} See id. at 350.
\textsuperscript{181} Clow & Leach, supra note 162, at 148.
\textsuperscript{182} See Scherr et al., supra note 177, at 343.
After the initial excitement of release and returning home, exonerated individuals must begin the process of building a life after exoneration. Lack of job experience, stigma due to incarceration, and a lack of support or programs for helping them with reintegration (that are often provided for ex-felons) lead to additional stressors in building their post-exoneration life. Compensation statutes must to address the monetary and non-monetary needs of exonerated individuals, but also need to provide resources and assistance for combating the additional stigmatization of having been wrongfully convicted and imprisoned.

V. BARRIERS IN ATTAINING COMPENSATION DUE TO PUBLIC PERCEPTION

Public perception of how exonerated individuals should be compensated may be influenced by the negative stigma exonerated individuals experience upon release. Because wrongfully convicted individuals are viewed as societally undesirable, people may less likely to help them, especially if the exonerated individual falsely confessed.

The public’s awareness of wrongful convictions may be growing given the increased prevalence of wrongful convictions in the United States and Canada. However, this does not necessarily mean the public is aware of inconsistencies in the administration of compensation and reentry services for exonerated individuals in the criminal justice system. Exonerated individuals may be revictimized after they are exonerated because of the lack of assistance with reentry issues in employment, housing, mental health, and other areas of difficulty. Many exonerated individuals do not receive any governmental assistance when they are released, even though their rightfully convicted counterparts may receive assistance in various forms upon release.

Kimberly A. Clow and her colleagues interviewed fifteen community members to investigate public perceptions of

184 See id.
185 See Simms, supra note 21, at 156; Pishko, supra note 183.
187 See id. at 373–74.
189 See id. at 1415–16.
190 See, e.g., id. at 1417, 1419.
191 See id. at 1417.
compensation for exonerees.\textsuperscript{192} The interviewees unanimously opined that exonerated individuals should be compensated for the wrongful conviction.\textsuperscript{193} Many of those interviewed supported the idea of public apologies, and noted that apologies would benefit the wider community and the criminal justice system.\textsuperscript{194} Apologies may benefit exonerated individuals as well; apologies may accelerate the healing process by helping with feelings of forgiveness, restoring dignity, and attenuating feelings of vengeance.\textsuperscript{195}

Similarly, Jeffrey Kukucka and Andrew Evelo conducted a study examining public perceptions of compensation in cases in which the exonerated individual falsely confessed.\textsuperscript{196} In this study, participants evaluated a case in which an exonerated individual was seeking damages resulting from a wrongful conviction. The wrongful conviction was the result of a false confession or mistaken eyewitness identification, and the researchers also varied whether the faulty evidence was the result of police misconduct. Results showed that exonerated individuals who falsely confessed absent of police misconduct were seen as more responsible for their wrongful convictions and were awarded smaller damage awards.\textsuperscript{197} Thus, those who falsely confessed may experience more stigma, and possibly less compensation, resulting in more problems (financial, social, medical) after release than those who did not falsely confess.\textsuperscript{198} Education and advocacy are important to combat the stigma that surrounds exonerees and aids in the prevention of compensation disbursement.\textsuperscript{199}

One powerful mechanism for altering public perceptions of exonerees and to help the public understand the plight of the exonerated individual is to use a first-person narrative.\textsuperscript{200} First-person narratives provide the public with deeper insight to the thoughts and struggles exonerees face.\textsuperscript{201} In discussing the importance of this narrative, Westervelt and Cook pointed out that

\textsuperscript{192} See id. at 1415.
\textsuperscript{193} See id. at 1438.
\textsuperscript{194} See id. at 1434.
\textsuperscript{195} See id. at 1435.
\textsuperscript{196} See Kukucka & Evelo, supra note 186, at 374–75.
\textsuperscript{197} See id. at 380.
\textsuperscript{198} See id.
\textsuperscript{201} See id.
the public’s perception of exonerated individuals is often the picture of the exonerated person at the joyful, happy time of exoneration.\footnote{See id. at 33.} The public tends to think of these pictures as the conclusions of the exonerated individual’s story.\footnote{See id.} However, in reality, the moment of exoneration and release is the beginning of the exonerated individual’s journey in reintegration. In the first-person narrative, one can explore the reception of exonerated individuals into society, reintegration into their communities, and the journey of the exonerated individual as they cope with their wrongful conviction, imprisonment, and subsequent release.\footnote{See id.}

For example, in 1992, Kennedy Brewer went to prison in Mississippi for the rape and murder of a three-year-old girl that he did not commit.\footnote{See Kennedy Brewer, INNOCENCE PROJECT, https://www.innocenceproject.org/cases/kennedy-brewer/ [https://perma.cc/H728-W87P].} The girl was named Christine Jackson and was Brewer’s girlfriend’s daughter.\footnote{Id.} The autopsy reports included disturbing evidence such as several suspected bite marks on Christine’s body.\footnote{Id.} A forensic odontologist concluded that Brewer “indeed and without a doubt” caused the marks on the victim.\footnote{Id.} The forensic odontologist overstated the conclusions, claiming a degree of certainty that was impossible given the limitations of bite mark analysis.\footnote{Id.} In addition, he was discredited and suspended from the American Board of Forensic Odontology prior to Brewer’s trial.\footnote{Id.}

Despite his lack of credibility, the court allowed the forensic odontologist to testify at Brewer’s trial.\footnote{See id.} Brewer was convicted of capital murder and sexual battery on March 24, 1995, and sentenced to death. DNA testing in 2001 proved Brewer did not commit the crime, and this led to his conviction eventually being overturned.\footnote{See id.} However, prosecutors were insistent on retrying Brewer and this resulted in Brewer being sent back to jail for another five years.\footnote{See id.} After the Innocence Project investigation led to a different suspect in the case, Brewer was exonerated in 2008. In total, he served fifteen years in prison (seven on death row and 8 awaiting trial).\footnote{Id.}
Understanding stories like the long road to exoneration for Kennedy Brewer may help the public understand the experiences of exonerated individuals and advocate for or support legislation to help them.

VI. REFORM

Ideally, reforms associated with compensating exonerated individuals should provide both monetary and nonmonetary resources for individuals who were wrongfully convicted. Increasing public awareness may be one vehicle that advocates can use to help support such reform efforts.215 One study examining Michigan citizens’ attitudes toward wrongful conviction showed that the participants generally recognized the problem of wrongful conviction and supported criminal justice reform based on these concerns.216 This study suggests that the general public likely will support the passing of legislation to help exonerees after being released.217 That is, “citizen opinion is a resource that [advocates] can draw on to spur legislation, albeit with limitations.”218

Researchers have also argued to model compensatory legislation after other subsets who have had experiences similar to exonerated individuals.219 For example, Chinn and Ratliff (2009) argue that the experiences of exonerees are comparable to experiences of refugees upon reentry, opining that both groups experience similarly traumatic incidents.220 They argue that the services given to refugees may provide a model for case management and crisis intervention to help exonerated individuals.221 Legislation to compensate exonerees can be derived from compensation statutes that are already in place to help others in the population.222

One unique way of approaching reform efforts is understanding the way exonerated individuals themselves and those involved with innocence organizations initiate change and respond to public policy.223 Exonerated individuals may be in a unique position to

215 Marvin Zalman et al., Citizens’ Attitudes Toward Wrongful Conviction, 37 CRIM. JUST. REV., 51, 63 (2012).
216 See id. at 62.
217 See id.
218 Id. at 63.
220 See id.
221 See id. at 408.
222 See id. at 412.
223 Konvisser & Werry, supra note 199, at 44.
understand the flaws of the system, and may find purpose and meaning in taking action to systematically address the flaws in the system that harmed them.\textsuperscript{224} There may be personal and broader societal benefits of including exonerated individuals in educating, generating awareness, and advocating for law that would address wrongful conviction and compensation for exonerees.\textsuperscript{225} In addition, personal stories that make wrongful conviction more accessible for lawmakers and the public may increase awareness of wrongful conviction, resulting in increased motivation to attenuate the problem. That is, there is power in sharing the story from the perspective of the exoneree that “if they can do it to me, they can do it to anybody.”\textsuperscript{226}

CONCLUSION

Exonerees face obstacles after exoneration in attaining compensation, mental health, and social support. Comprehensive state statutes are needed that represent best practices in compensating exonerated individuals, including monetary compensation, reasonable eligibility and standard of proof requirements, straightforward pathways by which exonerated individuals can pursue compensation, and non-monetary assistance in the form of educational, medical, employment, housing, and mental health assistance. Stigma resulting from wrongful conviction may be a barrier to attaining compensation, but education and personal narratives may help attenuate stigma. Attenuating stigma may help fuel public policy changes to allow for adequate compensation for those who have experienced wrongful conviction.