

OBSTACLES AND BARRIERS AFTER EXONERATION

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ABSTRACT

The purpose of this Article is to review existing obstacles exonerates 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 statutes, 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 statute.

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INTRODUCTION

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

¹ See *Compensating the Wrongly Convicted*, INNOCENCE PROJECT, <https://www.innocenceproject.org/compensating-wrongly-convicted/> [https://perma.cc/ER5V-MT49].

² See Adina Thompson et al., *After Exoneration: An Investigation of Stigma and Wrongfully Convicted Persons*, 75 ALB. L. REV. 1373, 1376 (2011).

³ See *Compensating the Wrongly Convicted*, *supra* note 1.

⁴ *Ronald Gene Taylor*, INNOCENCE PROJECT, <https://www.innocenceproject.org/cases/ronald-gene-taylor/> [https://perma.cc/HG2K-8JN3].

⁵ *Id.*

⁶ See Chuck Lindell, *State Unfairly Cut Compensation, 3 Exonerated Men Say*, STATESMAN, <https://www.statesman.com/article/20120901/NEWS/308999486> [https://perma.cc/Y5BY-GXTN].

⁷ *Id.*

⁸ See *id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Meredith J. Heneage, Comment, *Rightful Compensation for a Wrongful Conviction: In Defense of a Compensation Statute in the State of Wyoming*, 19 WYO. L. REV. 305, 306–07 (2019); Maurice Possley, *Andrew Johnson*, NAT'L REGISTRY EXONERATIONS (July 19, 2013),

wrongfully incarcerated before being exonerated by DNA evidence.¹² When Johnson was exonerated, he left prison with no “job, health insurance, a car, or retirement income” and has acquired serious health problems.¹³ Wyoming does not possess compensation legislation for exonerated individuals.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.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.¹⁶ To seek compensation, Dedge was forced to seek assistance through a private bill in the legislature, which was eventually awarded.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,¹⁸ which can result in unequal access to justice.¹⁹ Compensation should not be a political issue or based on an individual’s resources.²⁰

Compensation is just one of the barriers a wrongfully convicted individual faces post-exoneration. Psychological trauma experienced by wrongful imprisonment is common,²¹ and few reentry services are available for exonerated individuals, even when compared to services available for prisoners who are released upon parole.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.

<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4228> [https://perma.cc/WF3J-TLKQ].

¹² See Heneage, *supra* note 11, at 307.

¹³ *Id.*

¹⁴ See *Compensating the Wrongly Convicted*, *supra* note 1.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *See id.*

²⁰ *See id.*

²¹ See Tina Simms, *Statutory Compensation for the Wrongly Imprisoned*, 61 SOC. WORK 155, 156 (2016).

²² *See id.*

I. BARRIERS IN COMPENSATION

Most state statutes governing compensation for exonerated individuals have been enacted since 2000.²³ 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.²⁴ There are three main mechanisms that exonerated individuals can use to receive compensation, including private bills, litigation, and compensation statutes.²⁵ 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.²⁶ Compensation is rarely granted immediately.²⁷

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.²⁸ 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.²⁹ In addition, requiring compensation for exonerated individuals take place through the legislature makes compensation a political issue³⁰, and political ideology may influence the support for wrongful conviction laws.³¹ 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.

²³ See Stephanie L. Kent & Jason T. Carmichael, *Legislative Responses to Wrongful Convictions: Do Partisan Principals and Advocacy Efforts Influence State-level Criminal Justice Policy?*, 52 SOC. SCI. RES. 147, 153 (2015).

²⁴ See *id.* at 148.

²⁵ See Robert J. Norris, *Assessing Compensation Statutes for the Wrongly Convicted*, 23 CRIM. JUST. POL'Y REV. 352, 353 (2012).

²⁶ See *id.* at 353–54.

²⁷ See *id.* at 354.

²⁸ See *id.* at 353–54.

²⁹ See *id.*

³⁰ See *Compensating the Wrongly Convicted*, *supra* note 1; Rebecca Brown & Carlita Salazar, *Wrongful Conviction Day 2017: Taking a Closer Look at Compensation Laws in the U.S.*, INNOCENCE PROJECT (Feb. 22, 2020), <https://www.innocenceproject.org/wrongful-conviction-day-2017-taking-closer-look-compensation-laws-u-s/> [<https://perma.cc/Q6A4-5WUY>].

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

³² See Adele Bernhard, *Justice Still Prevails: A Review of Recent Efforts to Compensate Individuals Who Have Been Unjustly Convicted and Later Exonerated*, 52 DRAKE L. REV. 703, 722–23 (2004).

³³ See *id.* at 723.

³⁴ See *id.*

³⁵ See *id.* at 723–24.

³⁶ See *id.* at 725–26.

³⁷ See Erik Encarnacion, *Why and How to Compensate Exonerees*, 114 MICH. L. REV. FIRST IMPRESSIONS 139, 142 (2015).

³⁸ See, e.g., *id.*

³⁹ See Bernhard, *supra* note 32, at 724.

⁴⁰ See *id.*; Caitlin Campbell, *Ryan Campbell Sues for Remainder of \$11 Million Judgment*, COLUM. DAILY TRIB. (Sept. 27, 2017) <https://www.columbiatribune.com/news/20170927/ryan-ferguson-sues-for-remainder-of-11-million-judgment> [<https://perma.cc/CZL2-UNZ7>].

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.⁴¹ 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.⁴² 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.⁴³ 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.⁴⁴ 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.⁴⁵ States may also award additional compensation for exonerated individuals who spend time on death row or in a post-release supervision program.⁴⁶ 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 \$50,000.⁴⁷ Three states include compensation for time spent on post-release supervision or a sex offender registry in the amount of \$25,000 per year.⁴⁸

⁴¹ Norris, *supra* note 25, at 357.

⁴² *See id.* at 353–54.

⁴³ *Id.*

⁴⁴ *See Compensating the Wrongly Convicted*, *supra* note 1.

⁴⁵ *See Compensation Statutes: A National Overview*, NAT'L REGISTRY EXONERATIONS 1–2, 5–11, 13, 15 (May 21, 2018), https://www.law.umich.edu/special/exoneration/Documents/CompensationByState_InnocenceProject.pdf [<https://perma.cc/N75B-79U7>].

⁴⁶ *See id.* at 2, 15.

⁴⁷ *See id.* at 1–2, 15, 16; Stephanie Slifer, *How the Wrongfully Convicted Are Compensated for Years Lost*, CBS NEWS (Mar. 27, 2014), <https://www.cbsnews.com/news/how-the-wrongfully-convicted-are-compensated/> [<https://perma.cc/UAT5-AM46>].

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.⁴⁹ Currently, fourteen states offer some form of tuition or educational assistance.⁵⁰ Nine states offer assistance with medical expenses, and twelve states offer counseling services.⁵¹ Six states offer some form of reentry services, seven states offer job search assistance, and three states offer housing assistance.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.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.⁵⁴ Robert J. Norris conducted an evaluation of variations in current state compensation statutes, comparing them to the recommendations of the Innocence Project.⁵⁵ Norris reported that only four states included language that addresses expunging an exoneree's criminal record.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.⁵⁷ However, an individual may be disqualified from seeking compensation in some states if they have a prior or subsequent unrelated felony conviction.⁵⁸ The most common disqualification was an exoneree who was serving time for a crime in which they were not wrongfully convicted.⁵⁹

Twenty-five statutes included a requirement for the burden of proof, with the most common burden being clear and convincing evidence.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 *Compensating the Wrongly Convicted*, *supra* note 1.

⁵⁹ *Id.*

⁶⁰ *Id.*

exclude some exonerees from seeking compensation,⁶¹ stipulating that only individuals who have been exonerated through DNA evidence may be eligible for compensation.⁶² However, in practice, non-DNA exonerations outnumber exonerations accomplished using DNA evidence.⁶³ 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.⁶⁴

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.⁶⁵ 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.⁶⁶

Other states may deny compensation for exonerated individuals who were judged to have contributed to their wrongful convictions.⁶⁷ For example, in some states if a person falsely confessed and/or pled guilty, the person may be excluded from eligibility for compensation.⁶⁸ 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.⁶⁹ Indeed, experimental work has shown that innocent people may confess⁷⁰ and plead guilty⁷¹ 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

⁶¹ See Norris, *supra* note 25, at 363.

⁶² Audrey D. Koehler, Note, *Exonerated, Free, and Forgotten: How States Continue to Punish the Wrongfully Convicted Through Procedural Hoops and Inadequate Compensation*, 58 WASHBURN L.J. 493, 512 (2019).

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).

⁷¹ Kelsey S. Henderson & Lora M. Levett, *Investigating Predictors of True and False Guilty Pleas*, 42 LAW & HUM. BEHAV. 427 (2018).

a board of claims.⁷² Only twenty-two of the states with compensation statutes adjudicate claims through the courts, consistent with the Innocence Project's recommendation.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.⁷⁴

Further, in Norris's analysis, twenty state statutes provided a statute of limitations for seeking compensation, varying from one to ten years.⁷⁵ Only ten states addressed a course of action if the exonerated individual dies before compensation is fully awarded.⁷⁶ Thus, an exoneree overcoming these disqualifiers may still have to face another obstacle: a short timeframe to apply for compensation.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.⁷⁸

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

⁷² See Koehler, *supra* note 62, at 518, 520.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Norris, *supra* note 25, at 364.

⁷⁶ *Id.*

⁷⁷ Koehler, *supra* note 62, at 516.

⁷⁸ Norris, *supra* note 25, at 353–54; *Compensating the Wrongly Convicted*, *supra* note 1.

⁷⁹ See Sharon Cohen, *Wrongly Convicted and Unevenly Repaid*, L.A. TIMES (June 16, 2002), <https://www.latimes.com/archives/la-xpm-2002-jun-16-adna-dnaprison16-story.html> [https://perma.cc/79LE-4S7Y].

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.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.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.⁸³ As unclear as these funds may seem, other states mention nothing about a funding source.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.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.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

⁸¹ See Deborah Mostaghel, *Wrongfully Incarcerated, Randomly Compensated—How to Fund Wrongful-Conviction Compensation Statutes*, 44 IND. L. REV. 503, 529 (2011).

⁸² See *id.*

⁸³ See *id.* at 538.

⁸⁴ See *id.*

⁸⁵ See *id.* at 542.

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.”⁸⁷

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.⁸⁸ 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.⁸⁹ Second, the Innocence Project suggests a “[r]easonable 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.⁹⁰

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.⁹¹ Courts have the experience in weighing evidence and properly assessing claims that other state claims boards or state commissions may lack,⁹² 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.⁹³

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.⁹⁴

⁸⁷ See *id.* at 544.

⁸⁸ See *Compensating the Wrongly Convicted*, *supra* note 1.

⁸⁹ Norris, *supra* note 25, at 361.

⁹⁰ See *Key Provisions in Wrongful Conviction Compensation Laws*, INNOCENCE PROJECT, <https://www.law.umich.edu/special/exoneration/Documents/Key-Provisions-in-Wrongful-Conviction-Compensation-Laws.pdf> [<https://perma.cc/6XCH-FTUG>].

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.⁹⁵ 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.”⁹⁶ 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.⁹⁷ 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.⁹⁸ Currently, there is no national social service program for exonerees despite hundreds of wrongfully convicted people in need of long-term treatment and assistance.⁹⁹ 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.¹⁰⁰ Receiving adequate monetary and nonmonetary compensation would also help exonerated individuals with other obstacles they face upon exoneration.¹⁰¹ 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.¹⁰² That is, incarceration itself has “immediate and

⁹⁵ See *id.* at 361.

⁹⁶ *Id.*

⁹⁷ Erik Encarnacion, *Backpay for Exonerees*, 29 YALE J.L. & HUMAN. 245, 269–70 (2017).

⁹⁸ See, e.g., Jessica R. Lonergan, Note, *Protecting the Innocent: A Model for Comprehensive, Individualized Compensation of the Exonerated*, 11 N.Y.U. J. LEGIS. & PUB. POL'Y 405, 440 (2008) (providing an example of an expert who supports individualized reentry plans).

⁹⁹ Heather Weigand, *Rebuilding a Life: The Wrongfully Convicted and Exonerated*, 18 B.U. PUB. INT. L.J. 427, 435 (2009).

¹⁰⁰ See, e.g., *id.* at 436 (providing an example calling for the mentioned social service programs).

¹⁰¹ See Norris, *supra* note 25, at 354, 357.

¹⁰² See Simms, *supra* note 21, at 155.

long-term effects on health.”¹⁰³ 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.¹⁰⁴ 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.¹⁰⁵

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.¹⁰⁶ 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.¹⁰⁷

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.¹⁰⁸ However, the mental health consequences for exonerated individuals are exacerbated by their innocence.¹⁰⁹ 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.¹¹⁰

Research regarding treatment such as clinical assessments and therapy is limited, leaving many exonerees struggling to overcome the mental barriers they face.¹¹¹ Recent studies emphasize the importance of mental health treatment for exonerees that are re-integrating into society.¹¹² Providing post-release mental health

¹⁰³ Jason Schnittker & Andrea John, *Enduring Stigma: The Long-Term Effects of Incarceration on Health*, 48 J. HEALTH & SOC. BEHAV. 115, 115 (2007).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 115–16.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Cf.* SAUNDRA D. WESTERVELT & KIMBERLY J. COOK, LIFE AFTER DEATH ROW 170–71 (2012); Simms, *supra* note 21, at 155.

¹⁰⁹ WESTERVELT & COOK, *supra* note 108, at 171; Simms, *supra* note 21, at 155.

¹¹⁰ *See* WESTERVELT & 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.¹¹³ 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.¹¹⁴

Several studies have documented the mental health struggles of exonerated individuals upon exoneration.¹¹⁵ Adrian Grounds conducted an in-depth study with eighteen exonerated men, examining the mental health consequences for these individuals.¹¹⁶ Importantly, these individuals had no history of mental health issues prior to their wrongful conviction.¹¹⁷ 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.¹¹⁸ Fourteen of the respondents exhibited a significant personality change after the wrongful conviction, and several experienced panic disorder, paranoia, or were dependent on substances.¹¹⁹ 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.¹²⁰ 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.¹²¹ 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.¹²² Further, when exonerated individuals are released, the difficulties they experience in reentry may exacerbate the mental health issues they

¹¹³ See Simms, *supra* note 21, at 159.

¹¹⁴ See *id.* at 159–60.

¹¹⁵ See, e.g., Grounds, *supra* note 112, at 167; Jennifer Wildeman et al., *Experiencing Wrongful and Unlawful Conviction*, 50 J. OFFENDER REHABILITATION 411, 412, 416 (2011).

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.*

experience.¹²³ 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.¹²⁴ However, non-monetary compensation in the form of individualized services to help plan for reentry can help attenuate these effects.¹²⁵ Such services should be at least equivalent to those that parolees receive.¹²⁶ 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.¹²⁷

There have been recent attempts to address short- and long-term mental health effects resulting from wrongful incarceration.¹²⁸ 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.¹²⁹ Life After Innocence is an organization that worked with exonerees and assisted them in their reintegration to society.¹³⁰ 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.¹³¹ 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

¹²³ Leslie Scott, "It Never, Ever Ends": *The Physiological Impact of Wrongful Conviction*, 5 AM. U. CRIM. L. BRIEF, no. 2, 2016, at 10, 10.

¹²⁴ Jennifer L. Chunias & Yael D. Aufgang, *Beyond Monetary Compensation: The Need for Comprehensive Services for the Wrongfully Convicted*, 28 B.C. THIRD WORLD L.J. 105, 113, 114–15 (2008).

¹²⁵ See *id.* at 128 (concluding that planning for reentry into society is vital for exonerees).

¹²⁶ See *id.*

¹²⁷ *Id.*

¹²⁸ See Christine Kregg, *Right to Counsel: Mental Health Approaches to Support the Exonerated*, ADVOCATES' F., 2016, at 31, 38–40, https://ssa.uchicago.edu/sites/default/files/uploads/AdvocatesForum_2016_Final.pdf [<https://perma.cc/6ADS-V2VT>].

¹²⁹ *Id.* at 32.

¹³⁰ See *About LIA*, LIFE AFTER INNOCENCE, <https://lifeafterinnocence.wordpress.com/about-the-clinic/> [<https://perma.cc/VW8B-2RUA>].

¹³¹ *Id.*

expungement of criminal records, pro bono legal services, assistance with finding housing.¹³² A holistic approach to compensation that encompasses monetary and nonmonetary compensation and addresses mental health is essential to helping exonerees reintegrate into society.¹³³ 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.¹³⁴

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.¹³⁵ Notably, exonerated individuals have spent an average of twelve years wrongfully imprisoned.¹³⁶ As discussed above, some may receive compensation, but for others, it is rarer to receive aid in the areas they need it the most.¹³⁷ 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.¹³⁸ It is common for exonerated individuals to receive fewer reentry benefits compared to those who were rightfully convicted and released.¹³⁹ 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.¹⁴⁰ Finding employment can be incredibly difficult, especially after having been incarcerated for a

¹³² See *id.*

¹³³ See Simms, *supra* note 21, at 155, 159–60, 161.

¹³⁴ See INNOCENCE PROJECT, MAKING UP FOR LOST TIME: WHAT THE WRONGFULLY CONVICTED ENDURE AND HOW TO PROVIDE FAIR COMPENSATION 15–16 (2009).

¹³⁵ See *id.* at 15–16, 17.

¹³⁶ See Simms, *supra* note 21, at 155.

¹³⁷ See INNOCENCE PROJECT, *supra* note 134, at 14, 15–16.

¹³⁸ See Simms, *supra* note 21, at 159–60.

¹³⁹ See *id.* at 155.

¹⁴⁰ See Ali M. Ahmed & Elisabeth Lang, *The Employability of Ex-Offenders: A Field Experiment in the Swedish Labor Market*, 6 IZA J. LAB. POL'Y 1, 1, 17 (2017); Mary C. Delaney et al., *Exonerees' Hardships after Freedom*, WIS. LAW., Feb. 1, 2010, at 18, 19.

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 exonerates 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

¹⁴¹ See Delaney et al., *supra* note 140, at 53.

¹⁴² See Jeff Kukucka et al., *Do Exonerates 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.

¹⁴⁸ See Amy Shlosberg et al., *Expungement and Post-Exoneration Offending*, 104 J. CRIM. L. & CRIMINOLOGY 353, 382–83 (2014).

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.¹⁵³ For example, one who spends a significant amount of time incarcerated lacks the ability to build retirement funds.¹⁵⁴ To illustrate, social security requires individuals to work “for at least 10 years at a job that excises a contribution into a retirement fund.”¹⁵⁵ 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.¹⁵⁶ 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.¹⁵⁷ 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.¹⁵⁸ 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.¹⁵⁹ As noted above, these personal issues may result in mental health concerns; again, these are not sufficiently addressed in compensation.¹⁶⁰ In addition to mental health difficulties, exonerated individuals may also experience barriers in social wellbeing, relationships, stigma upon reintegration, and more.¹⁶¹ That is, these difficulties may significantly affect the manner in which exonerated individuals are treated and seen by the public.¹⁶² 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.¹⁶³

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.

¹⁶² See Kimberley A. Clow & Amy-May Leach, *After Innocence: Perceptions of Individuals Who Have Been Wrongfully Convicted*, 20 LEGAL & CRIMINOLOGICAL PSYCHOL. 147, 161 (2015).

¹⁶³ See Andrew D. Leipold, *The Problem of the Innocent, Acquitted Defendant*, 94 NW. U. L. REV. 1297, 1299 (2000).

Exonerated individuals need to learn to cope with these personal and relationship difficulties but often lack the resources to do so.¹⁶⁴

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.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.”¹⁶⁶ The stereotypes associated with incarceration can lead to conclusions that the individual is a threat or dangerous.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.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.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).¹⁷⁰ Their results demonstrated that there was “contemptuous prejudice towards” wrongfully convicted persons compared to average individuals.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.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.¹⁷³

¹⁶⁴ See Simms, *supra* note 21, at 156.

¹⁶⁵ See Leipold, *supra* note 163, at 1304–05.

¹⁶⁶ See Clow & Leach, *supra* note 162, at 148.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ See *id.*

¹⁷⁰ See *id.* at 147.

¹⁷¹ See *id.*

¹⁷² *Id.*

¹⁷³ *Id.*

Similarly, Thompson, Molina, and Levett assessed the extent to which exonerated individuals are stigmatized by the general public.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.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.¹⁷⁶

Further, the cause of the wrongful conviction may affect the way the public perceives an exonerated individual.¹⁷⁷ In another study, participants read a news story of an exonerated individual who was either wrongfully convicted because he falsely confessed or because of a mistaken eyewitness.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.¹⁷⁹ Ultimately, if the exonerated individual falsely confessed, those perceptions resulted in less support for reintegration services.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.”¹⁸¹ Such stigmatization may result in less public support for policies that would assist exonerated individuals¹⁸² or may politicize the issue of restoration or compensation for the wrongfully convicted.¹⁸³

¹⁷⁴ See Thompson et al., *supra* note 2, at 1373–74.

¹⁷⁵ See *id.* at 1374.

¹⁷⁶ See *id.*

¹⁷⁷ See Kyle C. Scherr et al., *Perpetually Stigmatized: False Confessions Prompt Underlying Mechanisms That Motivate Negative Perceptions of Exonerees*, 24 PSYCHOL., PUB. POL'Y, & L. 341, 341 (2018).

¹⁷⁸ See *id.* at 343.

¹⁷⁹ See *id.* at 342.

¹⁸⁰ See *id.* at 350.

¹⁸¹ Clow & Leach, *supra* note 162, at 148.

¹⁸² See Scherr et al., *supra* note 177, at 343.

¹⁸³ See, e.g., Jessica Pishko, *Tim Atkins Was Wrongfully Imprisoned for 23 Years—Why Is California Denying Him Compensation*, NATION (Mar. 9, 2016), <https://www.thenation.com/article/archive/tim-atkins-was-wrongfully-imprisoned-for-31-years-why-is-california-denying-him-compensation/> [<https://perma.cc/9CYU-LDR6>].

After the initial excitement of release and returning home, exonerated individuals must begin the process of building a life after exoneration.¹⁸⁴ 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.¹⁸⁵ 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.¹⁸⁶ Because wrongfully convicted individuals are viewed as societally undesirable, people may less likely to help them, especially if the exonerated individual falsely confessed.¹⁸⁷

The public's awareness of wrongful convictions may be growing given the increased prevalence of wrongful convictions in the United States and Canada.¹⁸⁸ 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.¹⁸⁹ 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.¹⁹⁰ 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.¹⁹¹

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.

¹⁸⁶ See Jeff Kukucka & Andrew J. Evelo, *Stigma Against False Confessors Impacts Post-Exoneration Financial Compensation*, 37 BEHAV. SCI. & L. 372, 380 (2019).

¹⁸⁷ See *id.* at 373–74.

¹⁸⁸ See Kimberly A. Clow et al., *Public Perception of Wrongful Conviction: Support for Compensation and Apologies*, 75 ALB. L. REV. 1415, 1415 (2011).

¹⁸⁹ See *id.* at 1415–16.

¹⁹⁰ See, e.g., *id.* at 1417, 1419.

¹⁹¹ See *id.* at 1417.

compensation for exonerees.¹⁹² The interviewees unanimously opined that exonerated individuals should be compensated for the wrongful conviction.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.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.¹⁹⁵

Similarly, Jeffrey Kukucka and Andrew Evelo conducted a study examining public perceptions of compensation in cases in which the exonerated individual falsely confessed.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.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.¹⁹⁸ Education and advocacy are important to combat the stigma that surrounds exonerees and aids in the prevention of compensation disbursement.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.²⁰⁰ First-person narratives provide the public with deeper insight to the thoughts and struggles exonerees face.²⁰¹ In discussing the importance of this narrative, Westervelt and Cook pointed out that

¹⁹² See *id.* at 1415.

¹⁹³ See *id.* at 1438.

¹⁹⁴ See *id.* at 1434.

¹⁹⁵ See *id.* at 1435.

¹⁹⁶ See Kukucka & Evelo, *supra* note 186, at 374–75.

¹⁹⁷ See *id.* at 380.

¹⁹⁸ See *id.*

¹⁹⁹ See Zieva Dauber Konvisser & Ashley Werry, *Exoneree Engagement in Policy Reform Work: An Exploratory Study of the Innocence Movement Policy Reform Process*, 33 J. CONTEMP. CRIM. JUST. 43, 46 (2016).

²⁰⁰ See Sandra D. Westervelt & Kimberly J. Cook, *Coping with Innocence After Death Row*, CONTEXTS, Nov. 2008, at 32, 33–34.

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.²⁰² The public tends to think of these pictures as the conclusions of the exonerated individual's story.²⁰³ 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.²⁰⁴

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.²⁰⁵ The girl was named Christine Jackson and was Brewer's girlfriend's daughter.²⁰⁶ The autopsy reports included disturbing evidence such as several suspected bite marks on Christine's body.²⁰⁷ A forensic odontologist concluded that Brewer "indeed and without a doubt" caused the marks on the victim.²⁰⁸ The forensic odontologist overstated the conclusions, claiming a degree of certainty that was impossible given the limitations of bite mark analysis.²⁰⁹ In addition, he was discredited and suspended from the American Board of Forensic Odontology prior to Brewer's trial.²¹⁰

Despite his lack of credibility, the court allowed the forensic odontologist to testify at Brewer's trial.²¹¹ 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.²¹² However, prosecutors were insistent on retrying Brewer and this resulted in Brewer being sent back to jail for another five years.²¹³ 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).²¹⁴

²⁰² *See id.* at 33.

²⁰³ *See id.*

²⁰⁴ *See id.*

²⁰⁵ *See Kennedy Brewer*, INNOCENCE PROJECT, <https://www.innocenceproject.org/cases/kennedy-brewer/> [<https://perma.cc/H728-W87P>].

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *See id.*

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *See id.*

²¹² *See id.*

²¹³ *See id.*

²¹⁴ *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.

²¹⁹ Jeffrey Chinn & Ashley Ratliff, "I Was Put Out the Door with Nothing"—Addressing the Needs of the Exonerated Under a Refugee Model, 45 CAL. W. L. REV. 405, 418 (2009).

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.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.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.”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.

²²⁴ *See id.*

²²⁵ *Id.*

²²⁶ *Id.* at 46.