

## The Civil Compensation Table: An Explanation

### The Research

The Civil Compensation Table provides state-by-state data on compensation paid to exonerees as a result of civil litigation. By civil litigation, we mean civil lawsuits seeking damages. The substantial majority of these cases are federal civil rights lawsuits in which the plaintiffs allege that a municipality and/or state actor violated their constitutional right to due process and a fair criminal trial as a result of unconstitutional conduct. These federal cases often also include state tort claims, such as malicious prosecution or false imprisonment. Only a few exonerees have filed civil rights or state tort cases (without civil rights claims) in state court. Those, too, are included.

We distinguish these civil lawsuits from lawsuits or claims filed pursuant to a state wrongful conviction compensation statute. Those cases and claims are the subject of our separate **State Compensation Table**.

Over the last several years, the National Registry of Exonerations and Professor Jeffrey Gutman of the George Washington University Law School have researched whether exonerees listed in the Registry have filed civil cases for compensation and, if so, the status and results of those cases. Generally, finding such cases and their status is not difficult using LEXIS CourtView, PACER, Bloomberg Law and other resources. It is possible that some cases were not discovered if the plaintiff filed under a different name or if the suit was filed by an estate administrator on behalf of a deceased exoneree's estate. A small number of cases blocked by state court paywalls also may not have been located.

Court dockets typically reveal whether the case ended with a jury verdict or a pre-trial judgment. Opinions accompanying orders of dismissal or judgment for the defendants are largely available. With some frequency, the case ends with a stipulated dismissal, suggesting that there was a negotiated settlement. Sometimes, the settlement amount is publicly disclosed. The media is often a source of information about wrongful conviction litigation and settlements. In addition, we obtain information about these cases from reports published by municipalities, minutes from county or city board meetings, attorneys who participated in the litigation, court clerk's offices, and by filing Freedom of Information Act requests. Generally, the older the case is, the more difficult it is to find the outcome of the lawsuit.

When we have been unable to find a settlement amount, we code that as an award for the plaintiff of an undisclosed amount. The number of such undisclosed amount cases is reflected in Column M of the Table.

The actual amounts that exonerees ultimately receive are not always apparent. In some cases, when multiple exonerees filed a lawsuit jointly, the settlement agreement or reported settlement figure did not reveal how the amount was divided among the plaintiffs. In such cases, for this study, each plaintiff was coded as having received compensation in an amount that divides the total evenly by the number of plaintiffs.

The Registry calculates the time each exoneree was imprisoned from the date of conviction to the date of release. That “lost years” number is generally reflected in Columns C and O of the Table. When a settlement or award was expressly based on a different calculation of lost years, that calculation was used, rather than the Registry’s. Sometimes, for example, there is a reference to lost years that includes time in pre-trial detention, a period that the Registry does not include.

Finally, tracking civil compensation cases occasionally reveals defendants who were not listed on the Registry. Researchers with the Registry study those cases and determine whether these individuals qualify for the Registry.

### The Table

Columns A and B list the states, plus the District of Columbia, Guam and Puerto Rico, and the number of exonerees listed in the Registry who were wrongfully convicted in that jurisdiction. This Table does not include exonerees who were wrongfully convicted in federal court. The number in Column B includes exonerees who served no time in prison after their conviction. Some “0-timers” do file civil cases. The number in Column B is likely less than the number of exonerees wrongfully convicted in that jurisdiction listed in the Registry. Once someone is added, research is conducted on any compensatory activity before they are included in the totals in the Table.

Column C shows the total number of lost years experienced by all exonerees wrongly convicted in the state or territory indicated. Column D reflects the number of “premature” civil cases in each state. We have researched the applicable statute of limitations in each state for the claims typically made in these civil cases. Assuming the statute begins to run on the date of exoneration, exonerees are coded as “premature” if they have not yet filed a civil case, but the statute of limitations not expired.

Column E shows the number of exonerees who did file civil cases arising from the wrongful conviction. We exclude cases which are filed against either private counsel or a public defender for malpractice, or other third parties, in connection with the wrongful conviction. Column F shows the percentage of exonerees wrongfully convicted in that state who did file a civil case.

Column G provides the number of exonerees who recovered money as a result of (or, in a small number of cases, in expectation of) filing a civil case. Sometimes, a plaintiff settles claims against some defendants and continues litigating against others. In those cases, the case is coded as one in which compensation is paid, but it is periodically rechecked to determine the outcome of the remainder of the case. Column H shows the percentage of plaintiffs in that state who received an award (whether known or unknown) while Column I reflects the percentage of total exonerees, whether they filed a case or not, who received compensation.

Column J shows the number of “pending” cases. These are cases that have been filed but are not resolved. If a case was dismissed by the district court, but appealed to an appellate court, the case is coded as “pending.” The Registry will periodically post updated charts that will, of

course, reflect the resolutions of those cases. Column K shows the number of cases that were unsuccessful; the case is coded as “denied.” In most cases, the denial was the result of a judicial decision ruling on a pre-trial motion. In a few, a jury found for the defendant or defendants. In some, often with plaintiffs representing themselves, the case was dismissed for a procedural error (such as being filed too late) or for failure to prosecute the case. On rare occasions, the civil case was dismissed as a condition of receiving state statutory compensation.

Column L totals all the civil awards made to exonerees in the given state. As noted above, Column M reflects the number of settlements for which we could not locate a settlement amount. Column N shows the average award made per successful plaintiff. Column O totals the number of “lost years” experienced by each exoneree from the state who was awarded some compensation. Column P shows the percentage of lost years experienced by exonerees in that state that were subject to some compensation. Last, Column Q shows the amount of compensation paid to exonerees per year of incarceration.

National totals are set forth in the final row.