

## **Compensation for Exonerees**

Among the most frequently asked questions about exonerations are those regarding compensation: How does compensation work? How many exonerees receive compensation? How much do they get? This section of the website addresses these questions. Our “Compensation Under the Microscope” series by Professor Jeffrey Gutman examines particular states and policies on this issue. Our “Compensation By the Numbers” data, which will be periodically updated, contains Professor Gutman’s compensation data.

### **How are exonerees compensated?**

Exonerees can receive compensation in three ways, In some states, these paths are mutually exclusive.

**The first relies on state statutes** that provide compensation for wrongful imprisonment. **As of June 2022, 38 states and the District of Columbia had compensation statutes.**

These statutes vary from state to state. Generally, they set forth the substantive qualifications for compensation. They are no-fault statutes, meaning that the claimant does not need to prove that the state did something unlawful that caused the wrongful conviction. They do, however, require claimants to demonstrate their innocence, either by standards of a preponderance of the evidence or by clear and convincing evidence.

Most require the underlying crime for which the claimant has been exonerated to be a felony and that the claimant was incarcerated following conviction. Some statutes require claimants to show that they did not cause or contribute to their prosecution or conviction (by pleading guilty, for example). A few states require that the claimant have a gubernatorial pardon, that the exoneration be based solely on DNA evidence, or that claimants not have prior felony convictions.

The statutes assign a decisionmaker for such claims, most commonly a state trial court judge, but sometimes a state claims board or administrative agency. They set forth the procedures by which a claim is made and decided. These state compensation statutes also establish a compensatory metric. In most states, there is an assigned yearly compensation amount. In some states, the statutes set a total maximum payment. Some states pay the amounts over time through an annuity or partial annual payments. A growing number of states also provide a successful claimant non-compensatory relief, such as vocational training, access to health care, educational benefits, and housing support. Some states condition awards on the claimant’s waiver of their right to file lawsuits against particular governmental entities or actors, or require the claimant to repay the state should they later seek and obtain a higher award through litigation.

**The second relies on civil lawsuits.** The vast majority of these lawsuits are filed in federal court. Generally, they allege that certain state actors, such as prosecutors, police, or forensic analysts, engaged in forms of unconstitutional misconduct that violated the exonerees’ federal rights to due process and caused their wrongful convictions. Some

allege, in addition, that certain governmental policies and customs were responsible for the wrongful convictions.

Some lawsuits are filed in state courts and often make state tort claims, such as malicious prosecution, wrongful imprisonment, or attorney malpractice. Often, these state law tort claims are made in federal civil rights cases as well. Unlike claims under state compensation statutes, these lawsuits can only succeed if the plaintiff demonstrates fault and causation – that a state actor breached some constitutional norm or state common law duty – and that the breach caused the wrongful conviction. Thus, recoveries in such cases are less frequent than in state statutory claims.

An exoneration is necessary, but not sufficient, for a civil rights case recovery. For example, in a wrongful conviction caused by an erroneous cross-group identification, if the police coerced or misled the victim into identifying the defendant, that could form the basis of a viable federal civil rights case. If there was no such coercion, and the victim honestly, but mistakenly, misidentified the defendant, there likely would not be a viable civil rights case. However, state statutory compensation could be available if the claimant proves their innocence.

Federal civil rights cases fail when a judge, typically in response to the defendants' motion to dismiss or for summary judgment, concludes that the plaintiff has not sufficiently alleged or demonstrated unconstitutional misconduct and causation, or that the named defendants are immune from suit. The substantial majority of recoveries in these cases follow settlements with some or all of the defendants. Jury trials, resulting in verdicts for the plaintiff or defendants, are much less common than pre-trial dismissals or settlements.

**The third, and rarest, form of compensation is a private bill.** State legislatures occasionally pass laws that grant compensation to specific individuals. These private bills were never common, but they have become much less frequent as more states have adopted state compensation statutes. Obtaining compensation through a private bill is difficult. It typically requires both an influential legislative advocate and a compelling narrative. These private bills should not be confused with provisions in some state statutes, like those of California and Illinois, that require the state legislature to approve an award of compensation recommended or made by an administrative agency or state court of claims.

### **How long does it take to get compensated?**

Just as state compensation statutes differ by state, so does the length of time to obtain compensation. As a very general rule, it takes less time to receive state compensation than a civil rights award.

Some states, however, require a multi-step process for compensation that begins by obtaining a certificate of innocence from the convicting court, followed by filing a claim with an agency or claims court. After a claim is granted, legislative approval may be required. How long this takes depends on the procedure by which these claims are decided and whether the state challenges the claimant's actual innocence. The measure of possible

damages tends not to be litigated as most states prescribe the compensatory amount. A small number of states offer a modest emergency grant pending the outcome of the claims procedure.

Civil rights cases often take years to litigate as they require extensive discovery and motions practice. Decisions to deny motions to dismiss on immunity grounds are immediately appealable, and often are. Beginning in 2020, the COVID-19 virus outbreak slowed the courts, and jury trials were delayed. In a small number of cases, most commonly in New York, pre-filing settlements have resolved potentially strong cases for plaintiffs at amounts less than might have resulted from extensive litigation.

On average, successful federal civil rights cases result in recoveries that are between four and five times greater per year of incarceration than those in state statutory cases. Many exonerees have received multi-million-dollar settlements or verdicts. It is frequently said that civil rights cases in this area are hard to win, but the data show that just over half of the cases filed result in some recovery.

### **How many exonerees have been compensated?**

Our new “Compensation By the Numbers” section provides this data. It will be updated frequently. Professor Gutman researches each person listed on the Registry, whether wrongly convicted in a federal or state court, to determine if they have sought and received state statutory compensation and/or a recovery from a civil lawsuit. The data lags the postings to the Registry by a few months. As of June 2022, 953 state compensation awards had been made. Three exonerees had received compensation under the federal compensation statute and about 630 people had received a recovery as a result of (or in anticipation of) a civil lawsuit. About 285 exonerees had received a civil case recovery and state statutory compensation. All told, this amounted to somewhat less than half of those on the Registry.

### **How much are exonerees compensated?**

Compensation rates under state statutes vary considerably. Wisconsin, for example, pays only \$5,000 per year of incarceration up to \$25,000. Texas, in contrast, pays \$80,000 per year as a lump sum plus an annual annuity. Since 2004, the federal compensation statute provides \$50,000 per year for exonerees not receiving death sentences (\$100,000 for those who had been sentenced to death). Many state statutes are generally about the same as the federal metric, with some permitting increases for inflation.

The range of outcomes is enormous in civil litigation. One of the largest lawsuit verdicts is believed to be the \$101.7 million awarded to [Peter Limone](#), [Joseph Salvati](#), [Louis Greco](#), and [Henry Tameleo](#) in 2007. (Salvati and Tameleo were exonerated posthumously, and the awards went to their estates.) One of the largest verdicts for a single exoneree was \$41 million awarded to [Jeffrey Deskovic](#) in 2014. (The actual payout was limited to \$10 million by a pretrial agreement.) A jury awarded [Thaddeus Jimenez](#) of Illinois \$25 million in 2012.

More recently, **Eddie Bolden**, of Illinois, won a \$25.2 million jury verdict in 2021. **Craig Coley**, of California, settled a federal civil rights case for \$23.1 million. **Nathson Fields**, of Illinois, won a \$22 million jury verdict in 2016. These large recoveries, which are fairly uncommon, require context. It is important to be mindful of how long these exonerees were wrongly incarcerated and the particular harms they suffered as a result. There have been verdicts exceeding \$1 million per year of incarceration. Settlements of several hundred thousand dollars per year are not uncommon.

### **What are the reasons some exonerees don't get compensated?**

Roughly 10 percent of the exonerees on the Registry did not serve time in prison. With respect to those in states with statutory compensation, such exonerees would not be eligible except in Illinois. Others are not compensated because they served relatively little time in prison and the potential payoff may not be sufficient to warrant the effort to file a claim. Some may not qualify due to particular requirements in the statute.

Others may have been exonerated at a time when there was no state statute. While subsequently passed statutes typically allow prior exonerees to get compensation, some exonerees may not become aware of the statute; some may have passed away and some may be incarcerated following conviction of other crimes. About 15 percent of those who seek state compensation are denied. A significant number of those exonerees failed because they were not able to demonstrate that they met the definition of innocence in the statute.

On the civil litigation side, some exonerees may not file suit because short incarcerations may limit the value of their claims. For others, it may be difficult to prove unconstitutional misconduct or to overcome immunity defenses. The loss of evidence and witness testimony in cases occurring many years ago is sometimes a barrier too difficult to surmount. In other cases, factors may discourage an attorney from taking the case, such as an exoneree's commission of subsequent crimes, or difficult legal precedent in the district or circuit where the case may be filed. As noted, in some states, exonerees who receive state compensation are barred from bringing civil cases arising from their wrongful conviction.

### **Who helps exonerees?**

An organization called **After Innocence** helps some exonerees obtain the compensation to which they are entitled. There are lawyers across the country who have developed considerable expertise in bringing and litigating these claims. Many exonerees have used some of the money they have recovered to start their own non-profit organizations to help those seeking exoneration or those recently exonerated.

### **Is compensation taxable?**

In 2015, federal legislation was passed that exempted wrongful conviction awards from federal taxation. Most state statutes explicitly provide that state statutory compensation is also exempt from state taxation.

Further Reading:

- Jeffrey S. Gutman and Lingziao Sun, [Why is Mississippi the Best State in Which to be Exonerated? An Empirical Evaluation of State Statutory and Civil Compensation for the Wrongfully Convicted](#), 11 Ne. U. L. Rev 694 (2019).
- Jeffrey S. Gutman, An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted, 82 MISSOURI LAW REVIEW 369 (2017).
- Robert J. Norris, Exoneree Compensation: Current Policies and Future Outlook, in WRONGFUL CONVICTION AND CRIMINAL JUSTICE REFORM: MAKING JUSTICE 289 (Marvin Zalman & Julia Carrano eds., 2014).
- Justin Brooks & Alexander Simpson, Find the Cost of Freedom: The State of Wrongful Conviction Compensation Statutes Across the Country and the Strange Legal Odyssey of Timothy Atkins, 49 SAN DIEGO L. REV. 627 (2012).
- Adele Bernhard, A Short Overview of the Statutory Remedies for the Wrongly Convicted: What Works, What Doesn't and Why, 18 B.U. PUB. INT. L.J. 403 (2009).