

Compensation for Exonerees

Compensation with money can never make up for these losses. It can't make up for all of those years of your life where you were just rotting away in a hole and everybody else was growing, living, moving on with their lives. It can never make up for that.

But if you don't have any money and you don't have any compensation and you can't afford medical care and you can't afford psychotherapy and you can't get a car to drive around and you can't get a job and you can't further your own education, well, it gets all that much worse, doesn't it? And that's what happens to so many of these people.

-- Barry Scheck, Co-Director, The Innocence Project IN The Burden of Innocence, Frontline, Public Broadcasting System, Dir. Ofra Bikel (2003).

Among the most frequently asked questions about exonerations are how, and how many, exonerees get compensated.

How are exonerees compensated?

Exonerees can receive compensation in three primary ways. The first relies on **state statutes** that provide compensation for wrongful imprisonment. Some states have passed laws providing compensation for exonerees who meet certain conditions. [As of 2017, 32 states and the District of Columbia had adopted compensation statutes.](#)

The second relies on the courts, i.e. through **lawsuits**. In some situations, exonerees can sue government officials or organizations that were responsible for their wrongful convictions for misconduct, in civil court, and recover monetary damages.

The third, and rarest, form of compensation is a **private bill**. State legislatures occasionally pass laws that grant compensation to specific individuals.

How many exonerees have been compensated?

This is a difficult question to answer with precision. The Registry frequently records exonerations as soon as they happen, or within months. Compensation often takes years to obtain, and—since we don't monitor our exonerations for later developments—we may learn about it years later, or never. We include compensation information in the coding and Narrative Summary of each case when we have it, and we update whenever we obtain new compensation information. This gap in time and information, however, leaves the Registry with incomplete data on compensation.

In 2016, the Registry conducted an in-depth study of the 351 exonerations that occurred between 2005 and 2009, and found that 173, almost one-half, obtained

some form of compensation.¹ More than three-quarters of these exonerees obtained compensation through one avenue only²: 66 by state statute, 55 by lawsuit, and 13 by private bill. Most of the rest have received—or hope to receive—compensation from multiple sources.

Professor Jeffrey Gutman of the George Washington University Law School recently published a [study](#) of the first 1,900 exonerees who were convicted in state courts. Of those 1,900, 523 are known to have been compensated through state statutes with a total payout of more than \$400 million; about 400 are known to have received compensation through lawsuits; and around 188 are known to have received compensation through both state statutes and lawsuits. In other words, approximately 735 of these 1,900 exonerees, or 39%, are known to have received compensation through either state statute or lawsuit.

These figures are roughly comparable to those of [The Innocence Project](#), which found that around one-third of its DNA exonerees (all of whom are also included in the Registry) had received compensation.

Professor Gutman explores the implications of these figures at greater length in [his article](#). Members of the public with more detailed questions about compensation are encouraged to contact [Professor Gutman](#) and read his article.

How does the Registry record compensation?

Compensation rarely is granted immediately upon exoneration. The process can take years. The Registry records information about compensation, if known, at the time the case is entered into the Registry. The Registry does not actively research compensation for all its cases after that time. (However, it did undertake a special project to research compensation for the exonerations that occurred from 2005 to 2009.) The Registry updates information on compensation when it receives new information about compensation from exonerees, their relatives, friends and advocates, and other interested people who write to us. Electronic tools like news alerts ensure that the Registry gathers a great deal of compensation information. We misses some compensation cases—possibly quite a few—so the Registry’s figures on compensation rates should be regarded as an underestimate.

What are the advantages and disadvantages of the various compensation schemes?

¹ The date range of 2005-2009 was chosen because enough time had passed for most compensation cases to wend their way through the courts, but not so long that the information would not be readily available through digital case databases or online newspapers.

² This does not mean they did not pursue other means of obtaining compensation. Rather it means we know that they only obtained compensation through the listed method, and that any other avenues they may have pursued are now closed.

State compensation statutes are sometimes considered the fairest scheme because they are the most consistent and equitable. Nonetheless, some state statutes have been criticized for placing unreasonable conditions on the granting of compensation. For example, some statutes bar compensation for exonerees who falsely confessed, pled guilty, have criminal records of any kind, or have are said to contributed to their wrongful conviction in some other way. In some unconscionable cases, exonerees have been forced to waive the rights to statutory and civil compensation as a condition of being exonerated. Other state statutes have also been criticized as stingy. And, of course, not all states have compensation statutes.

Lawsuits can result in larger payouts than state statutes, but they require exonerees to take risks. The exoneree may win big or lose altogether. Lawyers may be unwilling to take such lawsuits if the prospects for a favorable outcome are not great. At least one state requires exonerees to waive their rights sue if they seek statutory compensation. And, from a public policy perspective, lawsuits are an inefficient method of compensating exonerees.

Private bills are inequitable and inefficient. Politically connected, well represented, or especially sympathetic exonerees may get compensated, while others are not.

How much are exonerees compensated?

Compensation rates under state statutes range from \$5,000/year of incarceration (Wisconsin) to \$80,000/year (Texas). Since 2004, the federal compensation statute provides up to \$50,000/year for most exonerees.

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 \$40 million awarded to [Jeffrey Deskovic](#) in 2014. (The actual payout was limited by pretrial agreement.) One of the largest lawsuit settlements for a single exoneree was a \$20 million award to [Juan Rivera](#) in 2016.

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

Some were never incarcerated and, therefore, are not eligible for statutory compensation. Some may be ineligible for statutory compensation for other reasons. Some have been convicted in states without compensation statutes.

Some were recently exonerated, and so their compensation claims are still pending. Finally, some may be eligible for compensation but have not filed a claim. [Professor Gutman's article](#) discusses these outcomes in depth. An organization called [After Innocence](#) helps exonerees obtain the compensation to which they are entitled.

Is compensation taxable?

It was. Many people considered that unjust, and in 2015, the U.S. Congress passed the Wrongful Convictions Tax Relief Act exempting wrongful conviction compensation from federal income taxes. The law was retroactive, but exonerees who already paid or owed a tax had to file by the end of 2016 in order to take advantage of that retroactivity. Earlier this year, a bill was introduced to extend that time frame in both the House ([H.R.885](#) [Johnson, TX]) and in the Senate ([Senate Bill 1190](#) [Cornyn, TX]), but a vote has not yet taken place.

What other forms of assistance besides money do exonerees need?

Food, transportation, affordable housing, education, medical care, including mental health services and counseling, job training, and legal services.

Further Reading

- 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).
- 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).
- 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).

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