

## Key Provisions in Wrongful Conviction Compensation Laws

1. **Provide at least \$50,000 per year of wrongful incarceration.** Federal compensation law provides \$50,000 per year of wrongful incarceration. The majority of the 38 states, and D.C., with wrongful conviction compensation laws provide \$50,000 or more (TX, CO, KS, OH, CA, CT, VT, AL, FL, HI, IN, MI, MN, MS, NJ, NV, NC, WA, ID, RI, MD, MT, UT, VA, OR).
2. **Reasonable standard of proof for eligibility.** Claimant should have to establish by preponderance of evidence that he or she did not commit the crime or related acts. “The claimant did not commit the crime or crimes for which the claimant was convicted and was not an accessory or accomplice to the acts that were the basis of the conviction and resulted in a reversal or vacation of the judgment of conviction, dismissal of the charges or finding of not guilty on retrial.”
3. **Straightforward process through courts to adjudicate claims:** Nationally, 27 of the 37 states with compensation laws adjudicate claims through courts: the state high court, circuit courts, district courts, trial courts or state civil court. While some states designate state claims boards or commissioners, or other state commissions to adjudicate claims these entities do not have the same experience in weighing evidence and assess claims as the courts. The courts are the appropriate entities to handle these claims.
4. **Offset provision with federal civil awards/settlements:** To protect taxpayers, several states require exonerees who receive state compensation and later win federal civil rights lawsuits/settlements, to reimburse the state. Conversely, exonerees who first win federal civil rights lawsuits and then file for state compensation would only be entitled to an amount of state compensation that is subtracted from the civil awards.

### **38 states + Federal government + Washington, DC have laws to compensate the wrongfully convicted**

AL, CA, CO, CT, FL, HI, IA, ID, IL, IN, KS, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, NE, NH, NJ, NV, NY, OH, OK, OR, RI, TN, TX, UT, VA, VT, WA, WI, WV.

I. **Monetary Compensation:** *Federal government, Washington, DC + 23 states provide at least \$50,000 per year of wrongful incarceration.*

### **More than \$50,000= 14 States + DC**

- Washington, DC- \$200,000
- NV- 1-10 years= \$50,000 per year of wrongful incarceration; 11-20 years= \$75,000 per year of wrongful incarceration; 21 or more years = \$100,000 per year of wrongful conviction
- TX- \$80,000
- CO- \$70,000
- KS-\$65,000
- OH- \$56,752.36<sup>1</sup>
- CA- \$51,110
- CT- \$74,168 - \$148,336
- VT- \$30,000-\$60,000

<sup>1</sup> Pursuant to O.R.C. § 2743.49, the Auditor of the State’s Office adjusted the amount for wrongful imprisonment awards on January 27, 2021. <https://ohiocourtsofclaims.gov/claims-vs-the-state/wrongful-imprisonment-claims/>. NOTE: this amount is subject to change every odd calendar year.

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- ID - \$62,000 per year incarceration; \$75,000 for each year on death row; no less than \$25,000 for each year on parole or no less than \$25,000 each year on sex offender registry, whichever is greater.
- UT - \$58, 909; \$883,635 cap
- MD - number of days incarcerated times [median household income](#) divided by 365 rounded to the nearest whole cent. (In 2019, the median household income was \$ 84,805).
- MT - \$60,000
- VA - \$55,000
- OR - \$65,000

**\$50,000= 11 States** AL, FL, HI, IN, MI, MN, MS, NJ, NC, RI, WA

## **II. Additional Compensation for Years on Death Row and/or Post-Release Supervision:**

*8 states +Federal Government*

- **Federal:** Additional \$100,000 per year on death row.
- **CO:** \$50,000 additional compensation per year on death row; \$25,000 per year on parole, probation or sex offender registry.
- **MN:** \$25,000 per year on parole, probation or sex offender registry.
- **WA:** \$50,000 additional per year on death row, \$25,000 per year on parole, probation, sex offender registry.
- **KS:** \$25,000 per year for each additional year served on parole, post-release supervision or on sex offender registry.
- **NV:** \$25,000 per year for each year an exoneree was wrongfully on probation or sex offender registry.
- **ID:** \$62,000 per year incarceration; \$75,000 for each year on death row; no less than \$25,000 for each year on parole or no less than \$25,000 each year on sex offender registry, whichever is greater.
- **MT:** \$25,000 per year for years on parole, probation or sexual or violent offender registry. See Section 6
- **OR:** \$25,000 per year on parole or post-prison supervision, year on sex offender registry.

## **III. Non-Monetary Services 20 states.**

- **Tuition assistance:** 15 states and D.C. (CO, CT, FL, KS, LA, MD, MA, MN, MT, NC, NJ, NV, OR, TX, VA)
- **Child Support:** 5 states and D.C. (CO, MN, RI, OR, TX)
- **Medical Assistance :** 10 states and D.C. (CA, KS, LA, MD, MN, MT, NJ, NV, OR, TX, VT)
  - Participation in Health Care Program: 8 states and D.C. (CA, KS, MD, MT,<sup>2</sup> NV, NJ, VT, TX)
  - Reimbursement Medical Expenses: 3 states (MN, NV, VT)
  - Payment of Expenses: 1 state (LA)
- **Employment Assistance:** 8 states (CA, CT, LA, NC, NJ, OR, TX, WA)
- **Housing assistance:** 8 states (CA, KS, MD, MN, MT, NV, NJ, OR)
  - Reimbursement: 2 states (MN, NV)
- **Counseling services:** 9 states (CA, KS, LA, MA, NJ, NV, OR, VT, WA)
- **Re-entry/Transitional services:** 8 states (CA, CT, ID, IN, NV, VT, WA, TX )
- **Immediate assistance upon exoneration:** 1 state (CA)
- **Other/Catch-All Provisions:**
  - Connecticut: ...any other services such person may need to facilitate such person's reintegration into the community. Conn. Gen. Stat. § 54-102uu.

<sup>2</sup> limited to a one year state-funded medical insurance

- o Indiana: **Nothing in this chapter shall be construed to prevent** a person from enrolling in, participating in, or receiving the benefit of one (1) or more of the following treatments, programs, or services if the person is otherwise eligible to receive or participate in the treatment, program, or service: (1) Mental health evaluation or treatment; (2) Substance abuse evaluation or treatment; (3) Community transition programs or services; (4) Any other program, service, or treatment that is designed to provide rehabilitation or reintegration services to an incarcerated person. Burns Ind. Code Ann. § 5-2-23-6(b)
- o Kansas: The Court may award non-monetary relief including personal financial literacy assistance. K.S.A. § 60-5004(e)(4)(B).
- o Massachusetts: the court may include an order requiring the commonwealth to provide the claimant with services that are reasonable and necessary to address any deficiencies in the individual's physical and emotional condition. ALM GL ch. 258D, § 5.
- o Maryland: In addition to compensation the administrative law judge may direct the state to provide: (1) a state identification card and any other document necessary for the individual's health or welfare on the individual's release from confinement. § 10-501(a)(2).
- o Nevada<sup>3</sup>: The Court may award reimbursement for financial literacy assistance commenced not later than 2 years and completed not later than 3 years after the date the award of damages is issued pursuant to subsection 1. Nev. Rev. Stat. Ann. § 41.950(2)(d).
- o Rhode Island: The award may be expanded to include, at the discretion of the court, in the interest of justice: **(ii)** Access to and eligibility for any services provided by the state for offenders who have been adjudicated by the courts and are residing in the community. Coordination of said services shall be through the department of probation and parole. 12-33-4(b)(1).
- o Oregon: Sec1(7) the court: (c) may award to the petitioner access to existing state, local or other programs that provide services, including, but not limited to, assistance with food and transportation and personal financial literacy assistance, as appropriate.

#### ***IV. Who decides? 27 states and the federal gov't have courts adjudicate claims***

- **Board of Claims:** 3 states (TN, NH, WI)
- **Victim Compensation Board and Board of Claims:** 1 state (CA)
  - o Applicants with successful writs of habeas corpus, motions to vacate, dismissed charged, or acquittal on retrial, absent challenge from the Attorney General, are automatically recommended compensation by the Board. Cal. Penal Code Sec. 1485.55(a)
- **Claims Commissioner:** 1 state (CT)
- **Comptroller's Judiciary Section:** 1 state (TX)
- **General Assembly:** 1 state (VA)
- **Industrial Commission:** 1 state (NC)
- **State Division of Risk Management and Committee on Compensation for Wrongful Incarceration:** 1 state (AL)
- **Criminal Justice Institute:** 1 state (IN)
- **Not specified:** 1 state (NE)
- **Courts:** 27 states + Federal Gov't
  - o **Circuit Court:** 3 states (HI, MS, OR)
  - o **Superior Court or County Supreme Court:** 6 states (MA, ME, NJ, RI, VT, WA)
  - o **Court of Claims:** 5 states (IL, MI, NY, WV, OH)
  - o **District Court:** 7 states (CO, ID, KS, MN, MT, NV, UT, IA)
  - o **Sentencing court:** 1 state (MO)
  - o **State civil court:** 1 state (OK)

<sup>3</sup> Nevada caps the expense of non-monetary services to \$100,000 in a single calendar year. NRS 41.950(6).

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- o **Trial court:** 2 states (FL, LA)
- o **U.S. Court of Federal Claims:** Federal
- o **Administrative Court:** 1 state (MD)

*V. **Civil Offset Provisions:** 11 States (CO, ID, KS, MD, MT, NJ, NV, OH, OR, RI, WA)*

Nine states have an offset provision for civil awards/settlements. The state is reimbursed if the exoneree first receives state compensation under the law, and then wins a civil lawsuit against the local government actors that is greater than the amount of state compensation. If exoneree first received a civil award/settlement stemming from the wrongful conviction, that amount would be deducted from any state compensation owed.