



WISCONSIN LEGISLATURE

P.O. BOX 8952 • MADISON, WI 53708

TO: Members of the Assembly Committee on State Affairs and Government Operations
FROM: Sen. Van Wanggaard and Sen. Fred Risser
Rep. Dale Kooyenga and Rep. Gary Hebl
DATE: December 16, 2015
RE: Assembly Bill 460, fair compensation for exonerated persons

Chairman Swearingen and members of the committee, thank you for your time today as we discuss the need to update Wisconsin's outdated exoneree compensation law.

Next week we will all likely be celebrating the Christmas season with family and close friends. Today you will hear testimony from individuals who had their lives taken away from them and spent their holidays in prison cells for crimes they did not commit.

How do you place a price on a lifetime of lost opportunities, damaged relationships and lost property? A wrongful conviction severs family ties, ends relationships, impedes educational opportunities, ruins reputations, destroys careers and causes emotional scarring. Family members may suddenly find themselves without a primary breadwinner. Children may lose a father or a mother who would have provided direction and support; the parent's absence may profoundly change the child's development and ability to succeed. It is nearly impossible to try to put a price tag on a lost life that could have been; a life that never was.

But right now in Wisconsin, that lifetime does have a price - \$25,000. In our state, those who are wrongfully convicted are entitled to \$5,000 per year, with a maximum of \$25,000 over a lifetime.

Wisconsin's compensation law is the oldest in the nation dating back to 1911. However, the value of compensation that wrongfully convicted persons can receive has not been consistently updated. Wisconsin's compensation law is currently the lowest in the country and provides no social services or support to exonerees. Compare Wisconsin's \$25,000 lifetime cap with Texas, which offers up to \$80,000 per year of a wrongful incarceration plus reentry services, a 120-hour tuition waiver for education and assistance obtaining health care services.

Today you will hear from Fredric Saecker. In 1990, Mr. Saecker was sentenced to 15 years in prison on a kidnapping and rape charge. Six years later DNA evidence proved his innocence. In 2003, nine years after his exoneration, Saecker received \$25,000 in compensation. Throughout those nine years and upon receiving compensation, he had received no transitional assistance.

We have introduced bipartisan legislation that would update Wisconsin's exoneree compensation statute to allow up to \$50,000 per year of wrongful incarceration and provide exonerees with transitional services. AB 460 aligns Wisconsin's wrongful conviction compensation law with the federal standard.

AB 460 balances the need to offer fair compensation to exonerees with our commitment to being responsible stewards of Wisconsin resources. The bill provides:

- **Fair compensation with a \$1,000,000 cap.**
 - The bill increases compensation to \$50,000 per year of a wrongful incarceration up to \$1,000,000.
- **Access to Transitional Services.**
 - The bill gives exonerees access to transitional services including:
 - Access to state health care, paid by the exoneree, for up to ten years.
 - Temporary financial assistance (which is part of the \$1 million cap calculation).
- **Protecting State Resources.**
 - The bill provides that if a wrongfully convicted person obtains a third-party settlement, judgment, or award in a civil wrongful conviction suit, the exoneree must return to the state the equal amount of the third-party award, up to the amount received from the state.

AB 460 provides that in those uncommon instances where a person is wrongfully convicted, an exoneree is fairly and adequately compensated for the undue struggles they experienced in prison and provides tools as they work to transition back to a semblance of a normal life.

Thank you for your time. We welcome any questions you may have.

TO: Members of the Assembly Committee on State Affairs and Government
Operations
FROM: Fred Saecker, Exoneree
DATE: December 16, 2015
RE: Assembly Bill 460 and Senate Bill 322, Fair Compensation for Exonerated
Persons

Members of the Assembly Committee on State Affairs and Government Operations,

Thank you for taking the time to listen to me today and for considering important legislation, Assembly Bill 460 and Senate Bill 322, that can change the lives of those unfortunate enough to be wrongfully convicted.

In 1989, I was convicted of a crime I did not commit. I was convicted of kidnapping, burglary, and raping a woman and sentenced to fifteen years in prison. I always maintained my innocence while I was in prison. Then, in 1991, my mother paid for DNA testing to be done on the semen found on the victim's clothing. The DNA results excluded me as the source of semen, proving my actual innocence. Despite this, my requests for a new trial continued to be denied for 5 years.

Finally, I was granted a new trial in 1996. Based on this new DNA evidence, the district attorney dismissed all of my charges. I spent six full years in prison before DNA results proving my innocence led to my exoneration. But my difficulties were not over after my liberty was rightfully returned to me.

My six long years in prison and an additional year spent in county jail waiting for the two trials were filled with birthdays, holidays, and celebrations of loved ones I could not attend. They were filled with moments I wanted to be a part of, but could not. Most of all, I lost out on my freedom—my freedom to support *myself*, my freedom to work, my freedom to progress my life at all, in any significant way. For those seven years my income was nothing.

After my release, I spent several years seeking compensation. After two failed lawsuits, I went before the State of Wisconsin Claims Board and finally, six years after my release, received the maximum compensation allowed under current law—\$25,000 for the nightmare I went through and all the suffering and losses I continue to endure. It was nice to get something, but it came nowhere close to making up for what I lost, or to helping me get back on my feet.

Spending seven years incarcerated without working for a salary meant I needed to support myself when I got out. Spending an additional four years trying to play catch-up without any compensation, health care or job training, and a damaged reputation made it tough for me to make ends meet.

Even today, I struggle to rebuild the life I had before. Because of my wrongful imprisonment, I lost several wage-earning years and the ability to advance in a career. Fair compensation would help give back what was wrongfully taken from me.

Our compensation law has not been updated for over 30 years. People like me, who have been wrongfully convicted of crimes, are being exonerated, in part because of new scientific advances such as better DNA testing. But when we are released, we are sent out to fail – without resources, health care, or opportunities.

When I left prison I struggled. I struggled because I had been wrongly convicted, and the people who put me there were not there to help me pick up the pieces.

Please support Assembly Bill 460 and Senate Bill 322 on behalf of the people like me, those whose lives have been destroyed despite their innocence, and help them get back on their feet.



STATE BAR OF WISCONSIN

CRIMINAL LAW SECTION



WISCONSIN
INNOCENCE PROJECT
University of Wisconsin Law School

To: Senate Committee on the Judiciary and Public Safety, and Assembly Committee on State Affairs and Government Operations
From: Keith Findley, Co-Director, Wisconsin Innocence Project; Asst. Professor, UW Law School; & Representative of the State Bar of Wisconsin Criminal Law Section
Date: December 16, 2015
Re: SB-322 & AB-460

I want to thank the impressive bipartisan array of legislators who have worked so hard to develop and introduce this bill. I am here today wearing two hats. First, I appear as a representative of the State Bar of Wisconsin's Criminal Law Section. The Criminal Law Section represents lawyers throughout the state who practice criminal law or preside over criminal cases. I am pleased to say that the Criminal Law Section's Board, which includes prosecutors, defense lawyers, representatives of the State Department of Justice, judges, and academics, voted unanimously to endorse this bill, and to endorse it at its highest level of support. Support for this bill is wide and deep, cutting across all sorts of political and institutional lines.

I am also here speaking on behalf of the Wisconsin Innocence Project at the University of Wisconsin Law School. The Wisconsin Innocence Project is dedicated to education, service, and research in criminal justice, and in particular in remedying wrongful convictions and improving the system to reduce the risks of error in the future.

As you may know, Wisconsin was once a national leader in providing compensation and reentry assistance to individuals wrongly imprisoned for crimes they did not commit. But Wisconsin has not updated its compensation and re-entry statute in more than 30 years, and now has the worst assistance program of any such program in the nation; currently, Wisconsin provides exonerees only \$5,000 per year of wrongful imprisonment, capped at a maximum of \$25,000, and provides no assistance to address any of the other injuries and needs created by wrongful imprisonment. Sadly, under Wisconsin's current law, in many ways the state provides more support to a guilty person upon release than to an innocent person upon exoneration.

For these reasons, the Criminal Law Section of the State Bar and the Wisconsin Innocence Project wholeheartedly support AB-460 & SB-322. We have seen innocent person after innocent person struggle to reclaim any semblance of the life that was taken from them by their wrongful convictions. This bill would greatly expand both the compensation and social services available to wrongfully convicted individuals—an expansion that is badly needed, as illustrated by the stories of Wisconsin's exonerees such as Fred Saecker, Jarrett Adams, and Joseph Frey, who are here to testify today.

Exonerees face tremendous obstacles in attempting to reconstruct the lives they had before their wrongful incarcerations. With no job or credit history, and little, if any, extrinsic financial and emotional support, exonerees are forced to begin their lives at the bottom of society.

A helpful analogy is to think of wrongful conviction as a form of government taking. No one would dispute that if the government were to take your home to make room for a freeway, the government would be obligated to fully compensate you for the value of your home. Here, the government has taken property, but also something more precious: liberty. Wrongful conviction destroys reputations, severs family ties, destroys relationships, impedes educational opportunities, creates health problems, and causes emotional scarring. And it quite literally takes property as well. A wrongful conviction takes one's home, job, savings, and opportunity to earn a living; it creates poverty, destroys careers, and leaves glaring gaps in employment histories. Just as we have an obligation to compensate fully those whose property we take for public infrastructure projects, we have an obligation to compensate as close to fully as we can those from whom we wrongly take both property and liberty.

This bill is a necessary first step in correcting the injustices and losses that accompany a wrongful conviction. While no amount of money can fully compensate one for the wrong of an unjust conviction, the \$50,000 per year of wrongful imprisonment, with a cap of \$1,000,000, at least brings Wisconsin closer in line with other states and the federal government in terms of monetary compensation for the wrongly convicted. Failure to provide at least this much not only fails to compensate individuals adequately, it sends a message to exonerees that their lives are worth less here than in other states; it adds insult to injury.

Importantly, in addition to the more-adequate monetary compensation, this bill provides access to ongoing social services such as counseling, vocational assistance, and housing assistance as well as access to health insurance.

The bill also includes several process fixes that make the system work better. It sets deadlines for holding hearings and awarding compensation so that exonerees can receive compensation soon after their exoneration, when they need it most. Too often, under the current system, exonerees have to wait months or even years—as Fred Saecker had to wait—to get on the agenda for a quarterly Claims Board meeting.

Also worth noting, the bill is carefully drafted to exclude anyone who is undeserving. It only applies to individuals who can prove their innocence of the crime for which they were convicted and of any other felonies related to that one or committed at the same time. It also excludes anyone who, after exoneration, goes on to commit a subsequent serious felony. In short, this bill is crafted to ensure that it compensates only those individuals who have clean hands, and to prevent a windfall to the undeserving. And for those few exonerees who choose to file lawsuits, their damages awards are subtracted from what they would receive from the state, so that no one gets more than what is fair, and no one gets to double-dip.

An important component of this bill is that it makes this support available to all exonerees who can meet its requirements and who were exonerated in 1990 or later—a date that roughly coincides with the first availability of DNA as a forensic tool for proving innocence. This coverage is important, for if the bill were to exclude all individuals exonerated prior to its enactment, it would exclude every one of the men testifying before you today, with no real justification as to why they are deserving of less support from the state than someone who by fortuity is exonerated the day after this bill becomes law.

And that coverage is hardly a significant financial burden to the state. Thirteen individuals have been granted compensation by the Claims Board since 1990 based on a finding of their actual innocence. Theoretically, nine of those individuals would be eligible to seek additional compensation under this bill

(the other four are either deceased or ineligible for additional payments other reasons). Based on the number of years these nine people served for crimes they did not commit, they would be entitled to an additional \$2,735,000 if they were all to apply—not even the equivalent of three full-amount payouts under the bill’s \$1,000,000 cap for future exonerations. And we don’t know if all of these people are still around and that they will all apply for additional compensation. This figure is consistent with the experience in other states. The State of Washington, for example, passed a retroactive compensation law, setting the amount at \$50,000 per year. Total payouts to date have been approximately \$2,500,000 to \$3,000,000—right in line with our best estimates.

We do also know of a number of other individuals, not previously compensated, who might make a claim. But any claims they might bring would probably not change the fiscal impact much, because these are the individuals—having elected not to seek compensation or having been denied compensation previously—who presumably have the weakest factual claims and many will not be able to meet their burden of proving innocence. Moreover, some of these individuals have almost certainly moved on, passed away, or for some other reason will not avail themselves of the right to petition for compensation. In any event, the fiscal impact will be negligible, when compared to the important measure of justice it purchases, and the improved ability of exonerees to be successful, contributing members of our communities again.

We urge you to address the lack of compensation and support services currently available to those wrongfully convicted by supporting AB-460 and SB-322. It is time that Wisconsin once again become a leader in righting the wrong of false convictions, and in providing reentry support for those who have been wrongly convicted.

TO: Members of the Assembly Committee on State Affairs and Government Operations
FROM: Jarrett Adams, Exoneree
DATE: December 16, 2015
RE: Assembly Bill 460 (resolution of claims against the state for wrongful imprisonment of innocent persons)

Dear Committee Members:

My name is Jarrett Adams and I am Judicial Law Clerk for the United States Court of Appeals for the 7th Circuit Court. Before graduating law school and becoming a law clerk, I was serving a 28-year sentence in a Wisconsin state prison for a crime I did not commit. With the help of the Wisconsin Innocence Project, my conviction was reversed and all charges were dismissed on the prosecutor's motion. I am writing in support of Assembly Bill 460, because the needs of those wrongfully convicted are great and as of now they afford so little.

In 1998, I was barely seventeen years old when I was falsely accused and ultimately wrongfully convicted of a rape that never happened. After years of appeals, the 7th Circuit Court of Appeals reversed my conviction for ineffective assistant of counsel due to my lawyer's failure to call an alibi witness who corroborated my innocence and undermined the entire state's case.

I served nearly 10 years in prison before the courts reversed my conviction and granted me freedom. Ten years in prison have a tremendous negative societal and economic impact that this committee has the opportunity to correct. Years in prison mean years of isolation from society, years of missed opportunities to contribute to society, years of missed economic growth and development, years of loved ones growing older without you, years of mental and psychological affects and more importantly, years you are being left behind by society to never catch up.

Before my life was stolen from me, I was a working teenager, with a good track record and good credit, saving for college, surrounded by my loved ones. Following release, I returned home to aging or deceased family members, absolutely no credit and no means of obtaining employment or paying for school. Please do not be confused by my current status as an attorney and law clerk. Yes, I have figured out a way to turn my mess into my message; however, my road has been challenging and remains challenged by my wrongful conviction. I still need help and so many of my fellow exonerees have not even begun to receive a glimpse of support. Currently, when a wrongfully convicted person is released from prison in Wisconsin, he is afforded nothing but the ability to request at most \$25,000 to reenter society. Men and women are being released at the age of retirement with nothing to retire on. Because of these laws, many people are forced to live in shelters or with family members. Those who need medication and mental healthcare are forced to go without. There are no programs designed to help those

wrongfully convicted reenter society. However, those who are convicted and released from prison are afforded services by the state.

When wrongfully convicted men and women are released with nothing, they are likely to be a burden to their family and taxpayers. With the support provided by Assembly Bill 460, exonerees will have a fighting a chance of rebuilding their lives and contributing to society. I am asking this Committee to pass Assembly Bill 460 not only because it is the just thing to do, but also because its passage ensures the health and safety of the community and all of its members, including exonerees.

Respectfully,

Jarrett Adams
Jarrettmadams@gmail.com
773-459-4039

TO: Members of the Assembly Committee on State Affairs and Government Operations
FROM: Joseph Frey, Exoneree
DATE: December 16, 2015
RE: Assembly Bill 460 & Senate Bill 322, Fair Compensation for Exonerated Persons

Members of the Assembly Committee on State Affairs and Government Operations,

Thank you for having this public hearing on such crucial legislation. Thank you for taking time out of your busy schedules to hear our stories. But most of all, I hope I can thank you in advance for supporting Assembly Bill 460 and Senate Bill 322, which will make the re-entry into society that much easier for the wrongly convicted.

There is nothing in this world more valuable to me than my liberty. No compensation or experience will truly make up for the time lost in prison. On February 4th, 1994, I was sentenced to 102 years in prison for a rape that I did not commit. On July 12, 2013, that wrongful conviction was finally, and officially, vacated after DNA testing proved my innocence.

The years I spent in prison taught me many things, but especially to cherish the freedom I have. Upon my exit from prison in 2013, I had limited resources and few connections to help ease the transition back into society. Because I left prison with virtually nothing, I decided to come to Madison to be closer to my attorney with the Wisconsin Innocence Project and community resources. Because I had no money to pay rent and no help from the state, I started my life outside of bars in a homeless shelter. Like many other exonerees, I left prison with serious health issues, but did not have access to health care to afford the medications I desperately needed. Despite these setbacks, I worked to make connections, take classes to learn new skills, and find employment opportunities.

It's not easy to start over many years after you went into prison. Those who are guilty of crimes receive valuable re-entry services to help with reintegration. Those who are actually innocent are left receive nothing. I had a very small social safety net, no re-entry services, and I felt distrusted by so many as a result of my prison term. Imagine today that each of you was wrongly sent to prison for many years. When you re-enter society, the people you knew are different or gone, the places you knew are gone. You have no recent job experience or marketable skills, and the State is not going to assist you in reintegration. Would \$25,000 be enough to make up for those years? Would it be enough to rebuild your shattered life?

None of us is here today to ask for a handout. We just want to be fairly compensated for what has been taken from us. **I ask that you listen to these stories and support Assembly Bill 460 and Senate Bill 322. If not for me, then for any others who DNA evidence and modern science prove innocent in the future.**

Thank you again for your time.

TO: Members of the Assembly Committee on State Affairs and Government Operations
FROM: Christopher Ochoa, Exoneree
DATE: December 16, 2015
RE: Assembly Bill 460 and Senate Bill 322, Fair Compensation for Exonerated Persons

Members of the Assembly Committee on State Affairs and Government Operations,

Thank you for welcoming us here to testify on Assembly Bill 460.

For most of you, your twenties were a time of new experiences and explorations of the world around you. You probably went to college with people of your own age, where you joined clubs, went to social events, and created lifelong friendships. You probably secured your first real job, and some of you may have even started your first business.

For me, my twenties were spent in a Texas prison, serving a life sentence for a rape and murder that I didn't commit. For me, there was not taste of freedom. I lost my job. I did not attend college or have the opportunity to learn and grow with people my own age. I didn't have the opportunity to build a resume that would set me up for financial security or teach me valuable skills.

Fortunately, DNA testing proved my innocence in 2002 after I wrongfully served 13 years. I am grateful for the freedom, but will never regain those years that I lost. After my release, I went to the University of Texas El Paso to obtain my B.A. I then went on to receive my law degree from the University of Wisconsin where, as a student, I worked for the Wisconsin Innocence Project helping others like myself prove their innocence.

I am not here today for my own financial gain. Rather, I am here today to advocate on behalf of those who did not have the opportunity to receive the financial security that I did. I am a Texas exoneree and am not entitled to compensation in Wisconsin. However, a civil lawsuit provided me with financial security after my release and allowed me to get back on my feet. While it can never make up for the years lost, having the necessary resources allowed me to obtain an education and support myself as a practicing attorney. Passing this bill will provide Wisconsin exonerees the opportunity to do the same.

They too, missed their twenties. Or their thirties, or their forties, or their fifties. They missed birthday and Christmas parties. They missed starting families or watching their children grow up. They lost out on an education and career opportunities. They missed memories and experiences that can be so easily taken for granted.

They missed so much, and yet, after leaving prison for crimes they did not commit, they have to step into a world where they have no financial security or resources to assist in this transition.

Liberty is the most important promise America makes to its citizens. There is no price for the loss of that liberty. But we can adequately compensate exonerees for the memories they lost, the skills they never learned, and the opportunities they never had.

Let's not let the wrongful destruction of their past be the wrongful destruction of their future. Please support Assembly Bill 460 and Senate Bill 322.



Benjamin N. Cardozo School of Law, Yeshiva University

**Testimony of Amol Sinha, Esq., State Policy Advocate, Innocence Project
Before the Wisconsin State Assembly Committee on State Affairs and Governmental
Operations**

December 16, 2015

RE: A.B. 460

On behalf of the Innocence Project, thank you for the opportunity to submit testimony before the Assembly Committee on State Affairs and Governmental Operations. The Innocence Project is a national litigation and public policy organization dedicated to exonerating wrongfully convicted individuals through DNA testing and reforming the criminal justice system to reduce the likelihood of wrongful convictions.

Since its U.S. introduction, forensic DNA testing has proven the innocence of 334 people who had been wrongly convicted of serious crimes, seven of whom hail from Wisconsin. The Innocence Project regards each DNA exoneration as an opportunity to review where the system fell short and identify factually supported policies and procedures to minimize the possibility that such errors will impair justice again in the future. We also regard it as a time to consider the reentry needs and appropriate compensation due to the victims of those errors who, innocent of the crime accused, were nonetheless stripped of their lives and liberty and forced to endure the misery of prison. Not only have DNA exonerations led to a growing public awareness of the possibility of wrongful conviction, but media accounts accompanying these exonerations have brought into stark relief those issues facing individuals who are attempting to reenter society following protracted incarceration.

This testimony will describe some of the impacts of incarceration on the wrongfully convicted, explain some of their extraordinary needs upon release, and voice our support for A.B. 460, which would raise the amount of restitution received by Wisconsin's wrongfully convicted and provide the services and transitional support desperately needed by the exonerated when they are released to the free world.

Impact of Incarceration on the Wrongfully Convicted

Individuals who reenter society after lengthy prison sentences suffer from significant emotional, physical, and economic needs, and thus require as much support as they can get. According to a report by the Re-entry Policy Council, a bipartisan group comprised of leading elected officials, policymakers and practitioners working in state and local governments, barriers to successful reentry are profound. "Research shows that when people who are released from prison or jail return to the community, their job prospects are generally dim, their chances of finding their

own place to live are bleak, and their health is typically poor.”¹ Indeed, the National Institute of Justice – the research arm of the Department of Justice – has found that individuals reentering the free world frequently face a lack of adequate education and job skills, limited housing options, substance abuse issues, and mental health issues.²

Scholarship recognizes the well-established emotional and psychological harm wrought by incarceration. Institutionalization reaps profound psychological consequences for the incarcerated, from diminished decision-making capabilities to overwhelming distrust of others to psychological distancing. Prison culture demands the rejection of any behavior that might reveal any sort of emotional weakness or intimacy. As a result, the “emotional flatness” that an individual might have adopted in prison in the service of self-protection can be devastating to his social relationships upon release.³ A 2007 New York Times expose tracked the experiences of those wrongfully convicted individuals proven innocent through DNA testing and found that most “have struggled to keep jobs, pay for health care, rebuild family ties and shed the psychological effects of years of questionable or wrongful imprisonment.”⁴

Of course, all of these experiences are only compounded by one’s knowledge that he has been wrongfully convicted and incarcerated.⁵ A 2004 study that examined the psychological effects of wrongful conviction presented a series of clinical findings based on assessments of a sample of wrongfully convicted men. More than 75% of the sample group experienced enduring personality changes, defined as “personality change with characteristics that were not previously seen such as hostile or mistrustful attitude towards the world, social withdrawal, feelings of emptiness or hopelessness, a chronic feeling of threat, and estrangement.”⁶ Two-thirds of those assessed experienced post-traumatic stress disorder, and 90% evidenced some form of a psychiatric disorder.

As one might expect, nearly all of individuals interviewed experience incredible feelings of bitterness and “strong and unresolved feelings of loss.”⁷ These feelings of loss may exist because of grief and mourning over loved ones – often parents – who passed during the course of their incarceration. But, additionally, relationships with family members, including children, are often permanently fractured or destroyed.

The average prison stay of individuals exonerated through DNA testing is 14 years. During the course of those years, many of the exonerated missed out on educational and workforce

¹ *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community*. Council of State Governments. Reentry Policy Council. New York: Council of State Governments. January 2005.

² “Offender Reentry,” National Institute of Justice, available at <http://www.nij.gov/topics/corrections/reentry/pages/welcome.aspx> (last visited Dec. 10, 2015).

³ *Ibid.*

⁴ Roberts, Janet and Elizabeth Stanton. “A Long Road Back After Exoneration, and Justice is Slow to Make Amends.” *New York Times*, November 25, 2007.

⁵ See Scott, Leslie. “It Never, Ever Ends”: The Psychological Impact of Wrongful Conviction ” *American University Criminal Law Brief* 5, no. 2 (2010):10-22.

⁶ Grounds, A. 2004, Psychological Consequences of Wrongful Conviction and Imprisonment. *Canadian Journal of Criminology and Criminal Justice*. 46(2): 165-183.

⁷ *Ibid.*

development opportunities. They return to their communities feeling out of step, often unable to meet even basic professional expectations. They are often coping with seriously debilitating insecurities and a persistent feeling of “what might have been” in their professional lives.

In addition to the psychological, emotional, and economic harms, the exonerated typically face serious medical issues upon release. Research shows that the strain and trauma of prison life yields a higher incidence of medical problems for the incarcerated as compared to the general population. For instance, the health of fifty-year-old prisoner has been found, on average, to be similar to that of the average sixty-year-old in the free world.⁸ Of course, prison life also increases exposure to communicable and serious diseases, including HIV and Hepatitis B and C, many of which require long-term and comprehensive healthcare upon release. Medical care provided to prisoners is notoriously poor, exacerbating existing conditions and leaving others untreated. Prison rape is also prevalent, with some experts estimating that more than 40% of the prison population has been victimized.⁹ As such, the medical and mental health problems facing individuals upon release are enormous. Correspondingly, the expenses associated with treatment for such mental and physical health issues, finding suitable housing, and providing for basic sustenance quickly add up.

The costs associated with reentering society are extremely onerous. This is particularly true for the wrongly convicted, who, as described above, are often indigent and are experiencing a unique trauma. Tragically, they have paid another’s significant debt to society. While it is impossible to give back an innocent person the years he or she lost, it is crucial that we provide a path to try to make them as whole as possible, so that they can develop into the full, productive members of society they were intending to become. A.B. 460 is that pathway.

Litigation is Neither a Suitable Alternative Nor Supplement to Statutory Compensation

Some speculate that the wrongly convicted who live in states that have not passed universal compensation legislation – or in states that do not offer as much compensation as necessary to provide justice to them – will be able to recover monetary compensation for their wrongful imprisonment through federal civil rights litigation. The most common vehicle for this would be filing a claim under section 1983 of the Civil Rights Act of 1871.¹⁰ However, the burden and costs associated with litigating such a case are extremely high, successes are few and far between, and monetary relief - if any - lacks uniformity.

In order to prevail on a §1983 claim, the wrongly convicted individual must demonstrate that his conviction was the result of official misconduct that directly led to a constitutional violation. First, the wrongly convicted individual has the heavy burden of showing that he or she was the victim of “intentional misconduct.” Next, the wrongly convicted must also prove that the misconduct fit into a narrow category of clearly established constitutional standards, and that the standards existed and were widely known by the relevant officials when the person was convicted. However, there are many instances in which actions do not constitute “intentional misconduct” for

⁸ Joan Petersilia, *When Prisoners Return to Communities: Political, Economic, and Social Consequences*, 65 *Fed. Probation* 3, 5 (2001).

⁹ Christine A. Saum et al., *Sex in Prison: Exploring the Myths and Realities*, 75 *PRISON i.* 413, 414 (1995).

¹⁰ 42 U.S.C. § 1983.

§1983 purposes, including when:

- Individuals are pressured into providing a false confession;
- Individuals agree to plea agreements (10% of the nation's 334 people who were proven innocent through DNA testing agreed to a plea);
- Individuals are wrongfully convicted based on incentivized testimony, including that of jailhouse informants;
- Mistaken eyewitness identifications result from procedures that are not declared problematic at the time of the criminal investigation.

Additionally, even if a wrongly convicted individual is able to overcome these difficult burdens and present a viable claim, most official actors, including police and prosecutors, are often immune from liability for their misconduct.

Simply put, §1983 claims do not guarantee compensation for three basic reasons:

1. The wrongly convicted plaintiff must not only prove that mistakes were made, but that there was deliberate and/or reckless conduct on the part of officials.
2. In most cases, the doctrines of qualified and absolute immunity shield official actors, such as police, crime lab personnel, and prosecutors from liability for misconduct.
3. Even if there is a successful suit, litigation takes years and there is still no guarantee that the wrongly convicted plaintiff will recover damages. Often, smaller towns are not insured or do not have sufficient funds in their coffers to cover significant claims. Outside insurers that cover municipalities often refuse to cover the most egregious conduct carried out by official actors.

Therefore, the Innocence Project recommends that each state pass a statute that includes a fixed sum of recovery for each year a wrongfully convicted person spends in prison. Ten years ago, President George W. Bush endorsed Congress's recommended amount of up to \$50,000 per year, with up to an additional \$50,000 for each year spent on death row. All fixed sums included in state compensation laws should, at minimum, meet the federal standard and include a provision that contemplates inflation and makes annual adjustments on that basis.

A.B. 460 would bring Wisconsin in line with the federal standard, as it would increase compensation for the wrongly convicted from \$5,000 per year with a limit of \$25,000, to \$50,000 per year with a limit of \$1,000,000. Indeed, the Wisconsin model is a conservative one given that the federal framework does not include a lifetime limitation on the total amount of compensation one may receive.

A.B. 460 is a Conservative Approach to Compensating the Wrongly Convicted

While A.B. 460 will bring the state in line with the federal standard, it is still a rather conservative approach to compensation when compared with other states across the country. Thirty states and the District of Columbia all have compensation statutes that vary in terms of eligibility

requirements, amount of annual compensation, and lifetime limits. The median compensation for an individual per year served nationwide (including through statutory compensation, private bills, and civil suits) is \$76,923. Many states offer compensation of \$50,000 per year or more, including Colorado and Texas, which offer \$70,000 per year and \$80,000 per year, respectively, in addition to other compensation such as attorneys' fees, healthcare, child support arrears, education costs, and other relief. Many states are currently in the process of revisiting their compensation statutes to increase the annual compensation offered and/or add reentry expenses to the compensation, after recognizing their original compensation amounts were too low. For instance, New Jersey, which offers additional compensation for expenses and damages, recently increased its annual compensation award from \$20,000 per year to \$50,000 per year. There are several states that have compensation statutes, but do not specify yearly awards. The calculations for awards in these states are very fact-specific. Median compensation for wrongly convicted individuals in these states through statute, private bill, or civil suits varies greatly, with ranges up to \$500,000 per year. Therefore, a \$50,000 standard for all individuals who have been wrongly convicted will limit the amount of money the state will have to expend, yet still provide a modest income for those who have had their liberty taken away and their lives shattered.

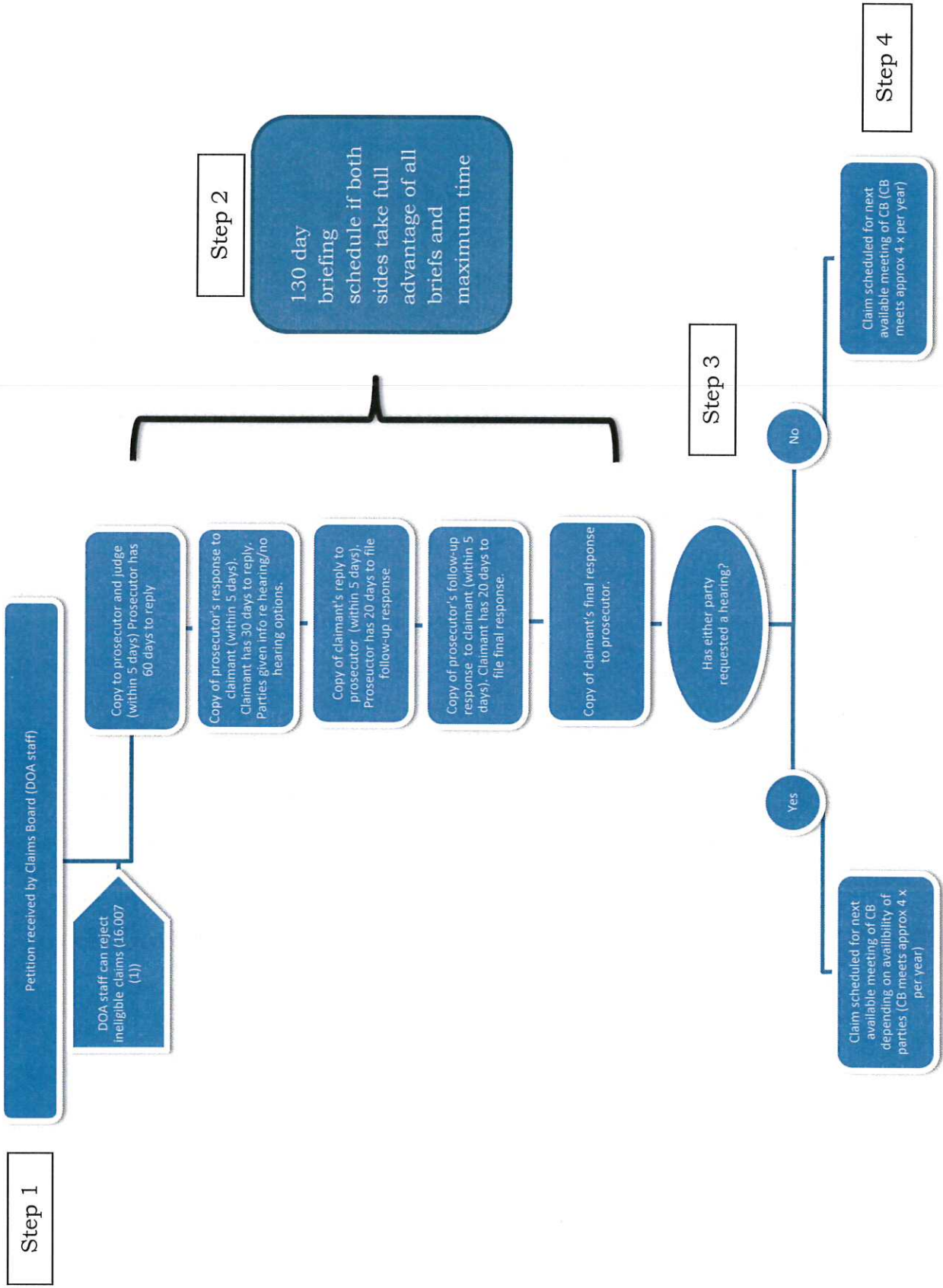
The \$1,000,000 cap on total compensation on the amount of money a wrongly convicted individual can recover is in line with other states, and is in fact a conservative approach as the federal standard and most other states do not have such limits. There are some states that cap compensation at \$1,000,000 and at least one state caps it at \$2,000,000. The federal government does not have a cap. While there is no amount of money that could bring back lost years, a \$1,000,000 limit allows individuals the potential to recover an adequate amount towards restoring their lives, while insulating the state from multi-million dollar payouts.

A.B. 460 also contains an off-set provision to ensure that wrongly convicted individuals are not compensated multiple times. If A.B. 460 is passed, any individual who qualifies to receive compensation under the bill would be required to subtract any amount received under the statute from a civil suit or a settlement that is meant to provide restitution for the wrongful conviction. This will prevent concerns about double-recovery, and will provide the state with predictability and uniformity when considering compensation.

Conclusion

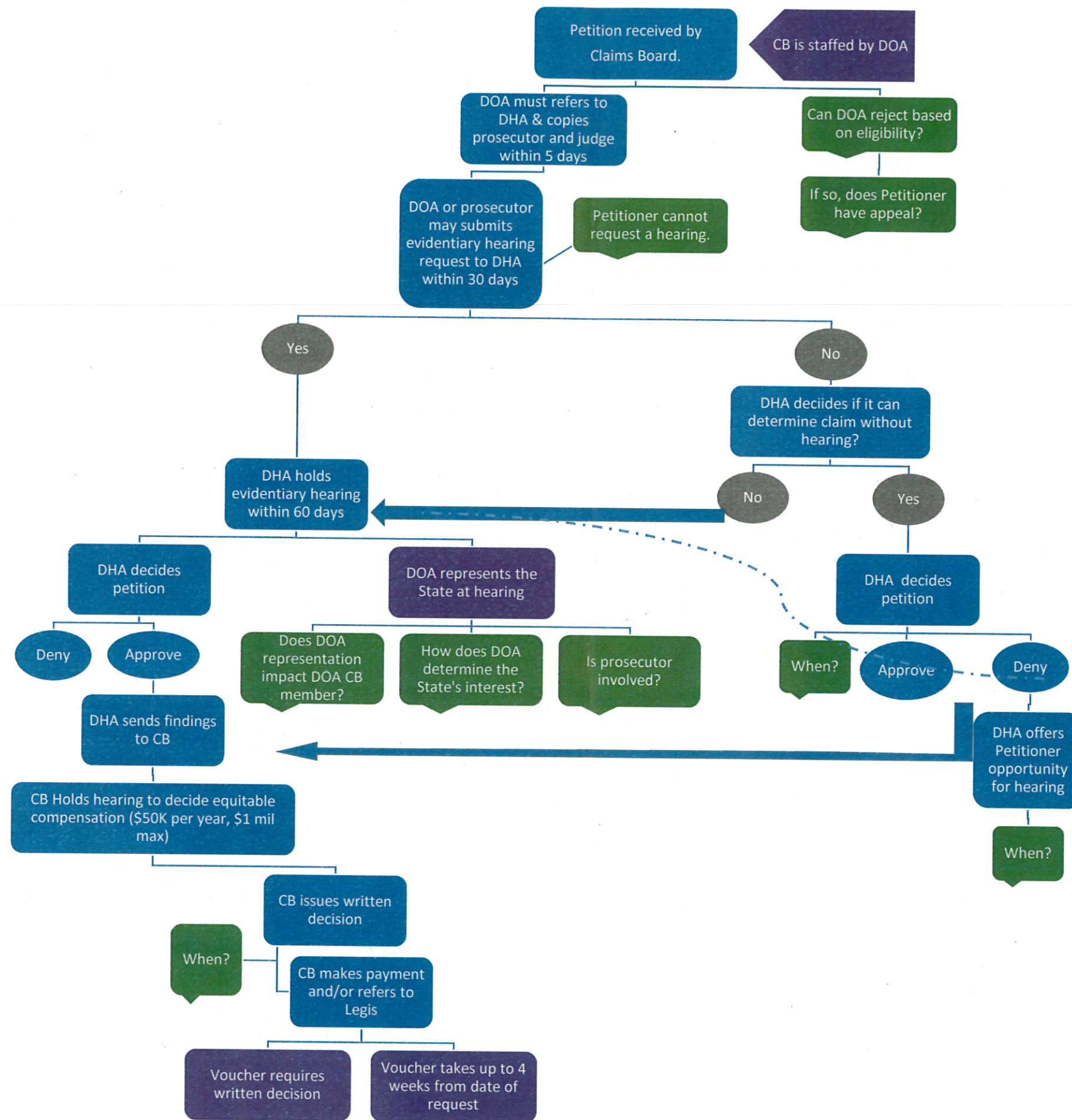
Stakeholders from all corners of the criminal justice system – from advocates to police to prosecutors – agree that the wrongly convicted deserve to be compensated for their lost years. The victims of criminal justice system error deserve strong support from the government that harmed them – however inadvertently – to return them to where they could have been in life but for their wrongful conviction, and to compensate them for the horror they endured. The Innocence Project urges the Assembly Committee on State Affairs and Governmental Operations to pass A.B. 460 to help the wrongly convicted better transition from prison life to mainstream society.

Current Innocent Convict Compensation Claim Process



Innocent Convict Compensation Claims Since 1960

Burrowes	Christopher	4/26/2010	\$15,000.00	Closed		10/11/2011	\$15,000.00	\$0.00	3 years
Isham	Romain Steven	8/3/2010	\$3,650,000.00	Closed		10/11/2011	\$25,000.00	\$0.00	10 years
Shomberg	Forest Seaton	4/27/2011	\$102,500.00	Closed		4/30/2014	\$970,500.00	\$0.00	6 years
Washington	Michael	5/18/2011	\$30,000.00	Closed			\$0.00	\$0.00	5 years 6 months
Avery	William Damon	9/13/2011	\$30,000.00	Closed		12/12/2012	\$25,000.00	\$0.00	6 years
Reeves	Beth	10/28/2011	\$161,442.43	Closed		12/12/2012	\$0.00	\$0.00	90 days
Frey	Joseph	11/1/2013	\$25,000.00	Closed		3/19/2014	\$25,000.00	\$0.00	8 years
Verkuilen	Maxwell J.	2/19/2014	\$450,000.00	Closed		12/9/2014	\$25,016.76	\$0.00	3 years
Gavin	Willie	5/27/2014	\$48,703.50	Closed		5/11/2015	\$48,703.50	\$0.00	5 years 3 months
Reed	Cornelius	6/23/2014	\$25,000.00	Scheduled		12/15/2015	\$0.00	\$0.00	4 years 2 months
Werner	Jack	9/15/2014	\$560,000.00	Claimant			\$0.00	\$0.00	14 years 6 months
Jackson	Raynard R.	12/17/2014	\$25,000.00	Awaiting Scheduling			\$0.00	\$0.00	6 years 3 months
Clements	Marvin D.	8/31/2015	\$40,000.00	Awaiting Scheduling			\$0.00	\$0.00	9 months
Corbine	Maurice J.	11/9/2015	\$90,000.00	Agency			\$0.00	\$0.00	3 years





WISCONSIN CATHOLIC CONFERENCE

TO: Members, Senate Committee on Judiciary and Public Safety
Members, Assembly Committee on State Affairs and Government Operations

FROM: Barbara Sella, Associate Director

DATE: December 16, 2015

RE: Senate Bill 332 and Assembly Bill 460 - Compensating Wrongfully Imprisoned

The Wisconsin Catholic Conference (WCC) supports Senate Bill 332 and Assembly Bill 460.

We support increasing state compensation for people who have been wrongly imprisoned because it accords well with the principles articulated by Wisconsin's Catholic bishops in their statement, *Public Safety, the Common Good, and the Church: A Statement on Crime and Punishment in Wisconsin*, namely respect for the human person, common good, concern for the poor and marginalized, restoration, and solidarity.

People who have been wrongly imprisoned have lost years of their lives that can never be returned to them. They deserve to be compensated generously so they can rebuild their lives, care for their loved ones, and fully participate in their communities.

The State has a responsibility to stand in solidarity with these innocent persons, as well as their surviving family members, not just for their sake, but also for the sake of the common good. For when the State acknowledges its error and attempts to make amends it reestablishes trust and legitimacy.

We also support provisions within SB 332 and AB 460 that recognize restoration of the exonerated should start immediately, through the provision of transitional services as well as health care coverage for up to ten years. Such coverage is essential to achieving and maintaining a stable and productive life.

Finally, we applaud this bipartisan effort to make our criminal justice system more just. We look forward to supporting further bipartisan reform efforts.

Thank you.