



WISCONSIN LEGISLATURE

P.O. BOX 8952 • MADISON, WI 53708

December 20, 2017

TO: Members of the Assembly Committee on State Affairs
FR: Representative Dale Kooyenga and Senator Van Wanggaard
RE: Assembly Bill 548, fair compensation for exonerated persons

Thank you for your time today as we discuss the need to update Wisconsin's outdated exoneree compensation law.

Later this 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.

Right now in Wisconsin that lifetime *does* have a price - \$25,000. In our state, those that 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.

This bipartisan legislation will update Wisconsin's exoneree compensation statute to allow up to \$50,000 per year of wrongful incarceration and provide exonerees with transitional services. AB 548 aligns Wisconsin's wrongful conviction compensation law with the federal standard.

AB 548 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 the maximum amount of compensation that the claims board may award to \$50,000 per year. The total amount awarded may not exceed \$1,000,000. The \$50,000/year award is prorated.
 - The compensation from the claims board may be awarded in an annuity payment that cannot exceed the length of time that the exonerated individual, who is receiving compensation for their claim, was imprisoned.

- **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 five years. The exoneree pays a portion of the cost for the state health care being provided.
 - 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.

The provisions of Assembly Bill 548 provide fair and reasonable compensation to those who have been wrongfully convicted as they struggle to transition back to a semblance of normal life.

Some may say this delivers justice to the exonerated individuals but we disagree. No amount of money can erase the indignity associated with being falsely accused and convicted of rape or murder. Imagine missing the opportunity to raise a family, develop a career, purchase a home, or simply go for a walk. We must do better.

Thank you for your time. We respectfully ask for your support.



STATE REPRESENTATIVE
GARY HEBL
46TH ASSEMBLY DISTRICT

Thank you Chairman Swearingen and members of the committee for hearing Assembly Bill 548 today.

AB548 is a much-needed update to Wisconsin's outdated wrongfully convicted compensation law.

Wisconsin had been at the forefront of wrongful imprisonment compensation, having the oldest compensation law in the country. Unfortunately, that law has not been updated with the times and currently ranks as the lowest in the country, with a lifetime cap of just \$25,000. That is less than half of the *yearly* median income in Wisconsin. After spending years in prison for a crime that they did not commit, the current compensation levels are well below what an individual would need to transition to life outside prison. Insufficient compensation levels and lack of transitional care are setting up these individuals for failure as they try to re-acclimate into society.

I have worked with Rep. Kooyenga, as well as Senators Wanggaard and Risser, to update Wisconsin's compensation law to better reflect levels that will help individuals re-enter society and transition back to civilian life. The result is a bipartisan bill that last session passed unanimously through the Assembly but unfortunately it never got a vote on the Senate floor.

AB548 will align Wisconsin's exoneree compensation statute with federal standards by allowing up to \$50,000 per year of wrongful incarceration. It also provides exonerees with transitional services such as access to state health care, a transition-to-release plan created by DOC, and sealing of all records related to the case.

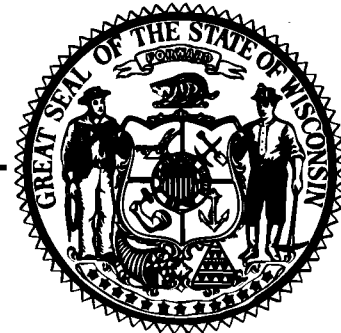
It is difficult to put a price on years lost due to wrongful imprisonment. You can't name a price for years spent away from families, losing out on educational opportunities to learn valuable skills, or derailing a promising career. Children may lose a valuable mentor; partners may lose a treasured loved one. Losing someone could throw an entire family into disarray, emotionally and financially. That time in prison are years that an untold number of people will never get back.

AB 548 provides an exoneree with fair compensation for the hardship they experienced in prison and provides a means to help them transition back and try to reassemble a life they should have never left.

Thank you for your time. I'm happy to answer any questions.

FRED A. RISSER

Wisconsin State Senator



December 20, 2017

Representative Swearingen and fellow members of the Assembly Committee on State Affairs,

Thank you for holding a public hearing on Assembly Bill 548, legislation which would provide fairer compensation to those who are proven wrongfully convicted. Wisconsin's law regarding this just compensation 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 and is extremely low. An exoneree today can only expect to receive \$5,000 for each year they were wrongfully imprisoned and can collect no more than \$25,000 in total.

I'm sure none of us would give up a year of our life for \$5,000.

The wrongfully convicted not only suffer the unimaginable loss of their freedom, they suffer the loss of wages, job experience, and education that they could have otherwise had. A more just monetary compensation is the correct thing for the State to provide in order to offset at least some of the damage imprisonment has caused. This bill raises the per year compensation to the wrongfully convicted to \$50,000 and increases the total cap on payments to \$1 million.

Other states have compensation levels for wrongful incarceration ranging from \$18,250 per year of incarceration, up to \$80,000. No state is as low as \$5,000 per year. Washington DC allows for \$200,000 per year.

I am proud of the bipartisan effort and support behind AB 548 and hope for this committee's support in bringing it forth to the Legislature.

Most sincerely,


FRED A. RISSER
Wisconsin State Senate



**WISCONSIN
INNOCENCE PROJECT**
University of Wisconsin Law School

"Without such support, a wrongly convicted person might never be able to establish roots that would allow him to contribute to society. To help repair the lives that are shattered by wrongful convictions, the bill raises the Federal cap on compensation, and urges states to follow suit...It is the very least that Congress should do."

Senate Judiciary Committee Report, Prior to Unanimously Passing 2004 Innocence Protection Act

RESTORING INNOCENCE

Wisconsin Must Adequately Compensate the Wrongly Convicted



Exoneration is just the beginning. Most wrongfully convicted individuals face great hardships upon release. They typically have few resources to draw upon and their families have incurred enormous attorneys' fees related to their cases. While in prison, they miss out on educational opportunities, job training, and career advancement opportunities. They have no way to cope with their experience in prison.

CURRENT WISCONSIN LAW:

Insufficient monetary compensation

- Wisconsin's compensation statute is over 100 years old. It has not been adjusted in over 25 years.
- Provides \$5,000 per year, which is the lowest in the country.
- Caps total awards at \$25,000, which is the second lowest in the country.
- Requires a lengthy and burdensome process to receive available compensation.

Lack of social services and support

- Offers no housing, employment, education, medical or counseling services.
- Does not establish a procedure to expunge criminal records.

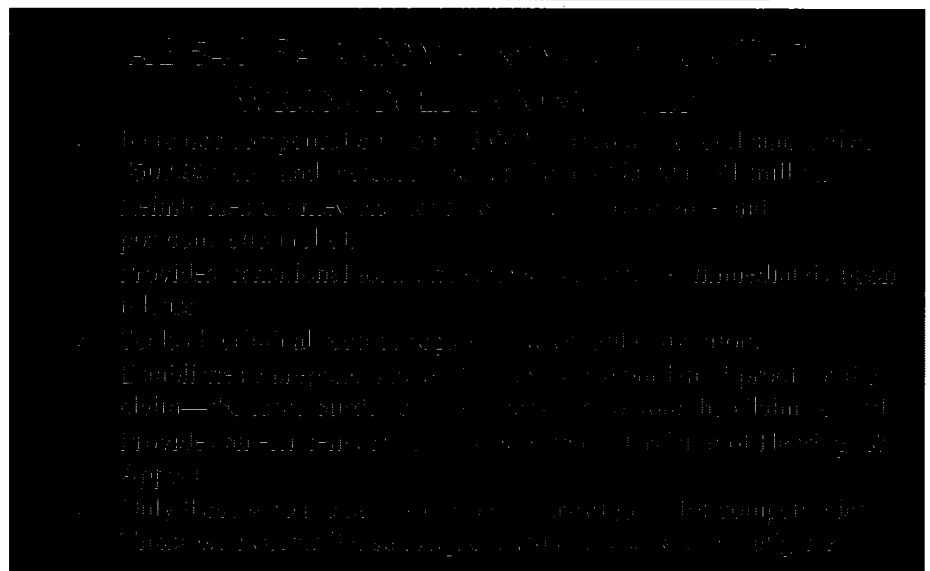
Yearly Compensation for the Wrongfully Convicted	
Jurisdiction	Compensation Per Year
Washington, D.C.	\$200,000
Texas	\$80,000
Colorado	\$70,000
California	\$51,100
Michigan	\$50,000
Mississippi	\$50,000
Alabama	\$50,000
Florida	\$50,000
New Jersey	\$50,000
Hawaii	\$50,000
Federal Gov't	\$50,000
Ohio	\$40,330
Louisiana	\$25,000
Missouri	\$18,250
Iowa	\$18,250
WISCONSIN	\$5,000

National Trends

Former President George W. Bush endorsed a law establishing compensation rates of \$50,000 per year of wrongful conviction.

Florida caps compensation at \$2 million and reimburses for fines and court costs.

Texas provides \$80,000 a year, a 120hr tuition waiver for higher education, a case manager, reentry services, and assistance obtaining mental health, physical health, and dental care.



TO: Members of the Assembly Committee on State Affairs
FROM: Mario Victoria Vasquez, Exoneree
DATE: December 20, 2017
RE: Assembly Bill 548, Fair Compensation for Exonerated Persons

Members of the Assembly Committee on State Affairs,

Thank you for holding a hearing on this important legislation to help exonerees like me obtain fair compensation for being wrongfully convicted.

In 2015, I was exonerated after spending almost 17 years in prison for a crime I did not commit. I maintained my innocence throughout all those years and was denied parole because I did not admit to the crime.

I lost so much during all the years I was incarcerated. My wife and I divorced. My son grew up without me. My father died and I was not even told about it until much later and was not able to attend his funeral. My grandpa died as well without my being able to say goodbye or go to his funeral. Many of my aunts, uncles, and neighbors that helped raise me grew old and died without my being able to see them or pay my respects to them before they passed away. My nieces and nephews were born and grew up without me, and I never got to spend time with them and they did not get to know me.

I also lost many years of income and my savings for retirement. I was steadily paying into social security so that I could ensure some income when I got old. I had worked as a waiter at my cousin's restaurant in Green Bay. I was well-known and well-liked by the customers and had saved some money. While I was incarcerated, I lost my career and my savings.

When I walked out of prison on a cold January night, I had nothing but the thin prison uniform I had on when they discharged me. Although I am fortunate to have family and friends that have supported me throughout all the years of my incarceration, the years since my release have been very difficult. Unlike guilty people, I did not get any help from the government reintegrating into society. I had a hard time getting a driver's license, health care, and a job. I can't seem to figure out how to use those new computers. A lot of the technology today did not exist back when I was incarcerated in 1998.

I have also struggled emotionally dealing with the trauma of being in prison for all those years. It has been difficult to get counseling services to help me deal with all of it. I have struggled to reestablish the relationships with my family and friends after so many years of being absent. I have had a hard time connecting with my own son because he never got to know me. It has been really hard.

I hope you will pass this bill so that we exonerees can get fair compensation for all we have lost and help getting back on our feet.

Please support Assembly Bill 548. It will make a big difference for exonerees to restore their lives and reintegrate into society.

Gimbel · Reilly · Guerin · Brown

LLP

Writer's E-mail
dallosto@grgblaw.com

December 20, 2017

TO: Members of Assembly Committee
FROM: Raymond Dall'Osto, State Bar of Wisconsin
RE: 2017 AB 548 - compensation for exonerated persons

Thank you for allowing me to speak today on this important issue. I have been working as a lawyer in the criminal law field around this state for more than forty years, and I speak from experience and from the heart. People can be wrongly charged, and yes, wrongly convicted and sent to prison for crimes they did not commit. This is a fact. While the various components of the criminal justice system strive to ensure that wrongful convictions do not occur, it is a human system and mistakes do happen. Recognition of this reality and providing a more adequate compensation structure to help an exonerated person get back on his or her feet upon release is a critical need in this state. The current statutory structure does not do this, and also does not provide for basic transitional services to help an exonerated person cope with the challenges faced upon release.

The time has come to recognize that people who have been wrongly convicted and exonerated should receive compensation well beyond the current statutory maximum of \$25,000. AB 548 provides for such and the Legislature should approve this bill. This is not a question of just money, but of providing the means and tools for a person to retrain themselves and better reintegrate into society. The changes called for in AB 548 are in the interests of all of society, not dissimilar to providing compensation for injured workers.

When a criminal conviction is invalidated by a reviewing court, the state is obligated to refund fees, court costs and restitution exacted from the defendant as a consequence of the conviction. *Nelson v. Colorado*, 581 U.S. __ (April 19, 2017). While *Nelson* dealt with one aspect of Colorado's Exoneration Act, important for the present discussion of AB 548 is that the Colorado law provides for \$70,000 of compensation per year of imprisonment to an exonerated criminal defendant, along with tuition waivers for the exonerated defendant at state institutions of higher education, and reasonable attorney fees for bringing an

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Exoneration Act claim. The exoneree compensation called for by Colorado and other states' comparable laws is instructive for the Wisconsin Legislature's consideration and approval of AB 548. The chart prepared by the Wisconsin Innocence Project on other state's comparable laws shows the sharp differential with Wisconsin's current extremely low maximum.

AB 548 would increase the current compensation allowed of \$5,000 per year, up to a maximum of \$25,000, to \$50,000 per year, up to a maximum compensation total of \$1 million. It is time for Wisconsin to amend and increase its exonerated person compensation law so that it actually provides adequate compensation more in line with what other states and the federal compensation laws provide and also real transitional assistance. The numbers in AB 548 are also consistent with Bureau of Labor Statistics average annual wage earnings for persons without a college degree, which amounts to what a wrongfully incarcerated individual would likely have earned had he or she not been in prison, not including social security and/or retirement plan contributions. The proposed \$50,000 per year is a sound number necessary to help an exonerated person get back into society.

AB 548 is a significant step in the right direction. I respectfully urge this Committee to recommend passage of AB 548 by the Assembly, and further urge the Assembly and Senate to approve this legislation.



STATE BAR OF WISCONSIN

Leaders in the Law. Advocates for Justice.®

To: Members, Assembly Committee on State Affairs
From: State Bar of Wisconsin
Date: Dec. 20, 2017
Re: AB 548 – exoneree compensation

The State Bar of Wisconsin supports AB 548, Rep. Kooyenga’s wrongful conviction compensation legislation, which would adequately compensate those who the justice system has failed through wrongful convictions and imprisonment. This legislation is similar to 2015’s AB 460, but incorporates changes made at legislators’ request.

Wisconsin was once a leader in providing a statutory mechanism for compensating individuals who are able to prove that they were innocent of the offense for which they were wrongly convicted. However, Wisconsin’s statute has not been updated in decades, and is now the most inadequate of any such statute in the nation.

Currently, the state claims board can award compensation to individuals who can prove their innocence, but can only award up to \$5,000 per year of wrongful imprisonment, capped at a maximum of \$25,000. In addition, there is no provision for assistance with education, housing, health care, counseling, employment, or anything else that the system would provide for a person released on parole or extended supervision.

This proposal is a significant step forward in correcting these deficiencies. Most importantly, there is an increase in compensation to the national norm of \$50,000/year with a \$1 million cap. Exonerees would also be eligible for health insurance at a subsidized rate, and receive transition assistance from the Department of Corrections. The proposal would also create an effective and timely process for hearing and deciding compensation claims, while also ensuring that undeserving individuals (those who committed related offenses or subsequent serious felonies) do not receive a windfall.

Provisions are also included in the bill for the claims board to re-evaluate the caps on annual and lifetime compensation every five years in order to make adjustments based on the cost of living.

The State Bar of Wisconsin believes AB 548 is an attempt to correct errors in the judicial system, to ensure that exonerees are appropriately compensated for the injustice they suffered and the years of freedom they lost. As such, **the State Bar of Wisconsin respectfully requests support from the members of the Assembly State Affairs Committee for AB 548.**

For more information, please do not hesitate to contact the State Bar lobbyists, Cale Battles, cbattles@wisbar.org or (608) 695-5686, or Lynne Davis, ldavis@wisbar.org or (608) 852-3603.

TO: Members of the Assembly Committee on State Affairs
FROM: Fred Saecker, Exoneree
DATE: December 20, 2017
RE: Assembly Bill 548, Fair Compensation for Exonerated Persons

Members of the Assembly Committee on State Affairs,

Thank you for taking the time to listen to me today and for considering important legislation, Assembly Bill 548, 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.

I would like to briefly explain the events that led to my conviction and eventually to my release from prison. I was represented by a public defender, who advised me against DNA testing. He said it was not in general use, might not be admissible, and I would spend additional time in jail waiting for trial.

There was evidence that put me miles from the crime scene at the time of the crime and would have only allowed me to commit these crimes if I was superhuman. This evidence was not brought forward until my sentencing. There were pubic hairs found on the victim. An expert witness testified that they were similar to mine when viewed under a microscope. Years later, DNA testing proved they were the victim's. This type of expert testimony is now considered completely unreliable.

The evidence used to convict me was a concocted story. Neither the victim nor her husband, who was present during the robbery, picked me out of a lineup. Nor did they identify my voice. The description given was of a person 5' 8" tall, over 200 pounds and balding. I am 6'3" and 165 pounds.

While in county jail I was attacked twice by two different inmates. I had to be sent out to a doctor for stitches both times. In prison I received a broken finger from another altercation. It is stiff most of the time and I cannot straighten it.

After my mother wrote to the public defender's office, they investigated the case, which led to DNA testing in 1991. The hair and semen samples excluded me. However, the district attorney continued to raise arguments that kept me in prison for another 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 seven years incarcerated 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 in 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.

When I was released I was afraid to cross the street. I was afraid of interaction. Being in a public place was difficult. Even today, I struggle with PTSD and trust issues. 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.

One can be so quickly wrongfully convicted but it takes years to recover. 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. We need legislation that will provide for others who have been wrongfully convicted and are not as fortunate as I was to have DNA evidence. 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.

This is the fourth time I have appeared to testify in support of this legislation. I hope you are listening and will vote to pass this bill.

Please support Assembly Bill 548 on behalf of the people like me, those whose lives have been destroyed despite their innocence, and help them get back on their feet.



Wisconsin State Public Defender

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Kelli S. Thompson
State Public Defender

Michael Tobin
Deputy State
Public Defender

Assembly Committee on State Affairs
Wednesday, December 20, 2017
Assembly Bill 548

Chairman Swearingen and members,

Thank you for having this hearing on Assembly Bill (AB) 548. The State Public Defender (SPD) would like to thank Representative Kooyenga and Senator Wanggaard for their long-standing commitment to forwarding this legislation.

Others will speak more specifically on the most relevant portions and merits of the bill. Generally, the SPD supports this legislation to increase the potential compensation for people wrongfully convicted and incarcerated. While nothing can ever give people back the months and years they were deprived of liberty, AB 548 can at least help to ensure that they are able return to their community with the resources to restart their lives.

The one specific of AB 548 on which we wanted to comment is related to the provision that authorizes the SPD to represent an exoneree before the Claims Board and in creating a transition to release plan. SPD recognizes the value in providing representation at these stages. It is not expected that the number of cases will result in a need for additional staff or funding.

Thank you again for having this hearing on Assembly Bill 548. We look forward to the committee's favorable recommendation to the Assembly.



STATE OF WISCONSIN

DEPARTMENT OF ADMINISTRATION

Scott Walker, Governor
Scott A. Neitzel, Secretary

Testimony on Assembly Bill 548 Assembly Committee on State Affairs December 20, 2017

Good afternoon, Chairman Swearingen and members of the Assembly Committee on State Affairs. Thank you for the opportunity to testify for information only on Assembly Bill 548, which would make several changes to how wrongfully convicted individuals in Wisconsin receive compensation from the State.

The State of Wisconsin Claims Board, a part of the Department of Administration, has the responsibility to consider monetary claims against the state. The types of claims heard by the Claims Board ranges from damage to a vehicle to wrongfully imprisoned persons. The Board currently has the authority to pay wrongfully imprisoned persons \$5,000 per year of imprisonment with a maximum payment of \$25,000, plus attorney's fees. Any awards that exceed that amount must be passed into law by the legislature.

Under current law, the Claims Board receives an average of three to four claims from wrongfully imprisoned persons each year, with an additional two to three attempts to file a claim that are rejected. Assembly Bill 548 changes some of the criteria for an individual to bring a claim to the Claims Board. The Board currently estimates there will likely be 10 accepted and 10 rejected claims each year under the changed criteria, including individuals who have already received compensation but may be eligible for additional compensation under the legislation.

DOA, through the Claims Board and Division of Hearings and Appeals, would be happy to work with bill authors and committee members to provide clarification on the following items as the bill moves through the legislative process. If the bill is enacted into law, the Claims Board wants to ensure that the intent of the legislature to provide additional compensation and services for wrongfully convicted individuals is properly implemented.

- Eligibility Date:
 - The bill changes the eligibility date to receive compensation to individuals released after 1/1/90. However, the current eligibility date of 3/13/80 is still included in Section 10 of the bill.
 - It is unclear if those released between 3/13/80 and 1/1/90 are eligible for any compensation. If those individuals are eligible for compensation, there seems to be no process for this compensation as the bill is written.
- DOA Representation:
 - The bill requires DOA to represent the interest of the State in hearings related to this process.
 - DOA's Division of Legal Services does not have experience with criminal law that would be necessary to properly represent the interests of the state. Additionally, the bill does not describe what the interests of the state should be, which could leave DOA in a position of contradicting the intent of the bill authors in the future.
- Health Insurance
 - The bill allows wrongfully convicted individuals to gain health insurance through the state health insurance program. Currently only state employees, their dependents and retirees are offered this health insurance.
 - Therefore, the administrative process for providing health insurance to these individuals would need to be developed by the Department of Employee Trust Funds and some requirements may be burdensome to develop.

- Involvement of Division of Hearings and Appeals:
 - DOA's Division of Hearings and Appeals is an assessment-funded Division, meaning the hearings that are conducted are paid for by the state agencies that request hearings and due process services. For example, for a hearing on a Medicaid decision, DHS would pay an assessment to the Division for conducting the hearing. Currently, the Division serves 16 different state agencies and has an annual budget of \$10.8 million – its spending authority.
 - The legislation requires the Division to conduct evidentiary hearings for wrongfully imprisoned person claims, but does not create a method for how the hearings will be funded. The authorization and funding method for the Division is found in Wis. Stats. 227.43(3) but the bill does not specifically authorize the new evidentiary hearings in this section of the statutes.
 - The funding for the Division comes from agencies – both state and federally-funded – who are charged based on the amount of work requested. A non-paying agency creates a situation that requires assessments from other agencies to pay the hearings. Specifically, in the case of federal funding, this presents an auditing problem when federal agencies ask why federal money is used to pay for hearings in other program areas. The legislation does not offer additional budget authority in DHA's appropriation to cover the estimated additional costs, so the costs must be attributed to current customers.

Thank you again for the time to share informational testimony with you today. We are happy to answer any questions or concerns you may have.



STATE BAR OF WISCONSIN

CRIMINAL LAW SECTION



**WISCONSIN
INNOCENCE PROJECT**
University of Wisconsin Law School

To: Assembly Committee on State Affairs and Government Operations
From: Keith Findley, Founder and Senior Adviser, Wisconsin Innocence Project; Assoc. Professor, UW Law School; & Board Member, Criminal Law Section, State Bar of Wisconsin, and Cristina Bordé, Supervising Attorney and Clinical Instructor, Wisconsin Innocence Project.
Date: December 20, 2017
Re: AB-548

We would like to thank the impressive bipartisan array of legislators who have worked so hard to develop and introduce this bill. Unfortunately, Professor Keith Findley, the founder of the Wisconsin Innocence Project, cannot be present to testify at the hearing. I am Cristina Bordé, a Supervising Attorney at the Wisconsin Innocence Project. Professor Findley and I submit this written statement in support of AB-548 on behalf of the Wisconsin Innocence Project. Professor Findley submits this statement wearing two hats. First, Professor Findley is 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. Professor Findley is 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 political and institutional lines.

We also provide this written statement 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-548. 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 and Mario Vasquez, 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 crimes 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.

The current bill also ensures that exonerees first pay any outstanding debts before obtaining compensation. The bill provides that the claims board must withhold and deduct from the compensation award any money owed in restitution, court fees, and fines. Further, the bill extends the statute of limitations for tort damages, thereby enabling victims of prior crimes for

which an exoneree has been convicted to file a civil claim to obtain up to 50% of the compensation to redress their damages. The bill thus ensures that exonerees first pay any debts owed to the court system and prior victims, before obtaining compensation.

An important component of this bill is that it applies 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. Fourteen individuals have been granted compensation by the Claims Board since 1990 based on a finding of their actual innocence. Only ten of those individuals might theoretically be eligible to seek additional compensation under this bill (the other four are either deceased or ineligible for additional payments for other reasons). Based on the number of years these ten people served for crimes they did not commit, they would be entitled to an additional \$2,682,000 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 do not 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-548. 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
FROM: Jarrett Adams, Exoneree
DATE: December 20, 2017
RE: Assembly Bill 548

Dear Committee Members:

My name is Jarrett Adams and I am a licensed practicing attorney in New York. Before attending law school and becoming an attorney, 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 548, because the needs of those wrongfully convicted are great and the current law affords us very 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 had a tremendous negative societal and economic impact on me 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 effects, 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. 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 or she 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 rightfully 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 548, exonerees will have a fighting chance of rebuilding their lives and contributing to society. I am asking this Committee to pass Assembly Bill 548 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

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