

WRONGFUL CONVICTION COMPENSATION



A Call for Legislative Action and Reform

Suzanne Hopf – Kentucky Innocence Project

TIME LOST, LIFE LOST²

- Estimates - 1 - 5% of convictions are wrongful convictions
- Average time in prison = **9 years** (*National Registry of Exonerations*)
- Average time in prison DNA exonerations = **14 years** - (*Innocence Project*)
- Many individual clients spend **20 years of more** behind bars
 - Kentucky:
 - Jeff Clark – 22 years
 - Garr Hardin – 22 years
 - William Virgil – 28 years

KENTUCKY HAS NO COMPENSATION BILL

Vast majority of states assure exonerees receive compensation –38 states, D.C. and federal government


Kentucky has no law addressing compensation

EXONERATIONS

- Many years after crime – 20 or more years have elapsed
 - Family support is diminished
 - Time Lost
 - Job skills
 - Health issues
-
- Some exonerees are 40-50 years old trying to start a life

MIKE VONALLMAN

WANTED



THE PERSON RESEMBLING THIS COMPOSITE IS WANTED BY THE LOUISVILLE DIVISION OF POLICE SEX OFFENSES SQUAD, 561-2473.

CASE NO. 1768 OFFENSE(S) Rape 1st, Seducy 1st, Robbery 1st

LOCATION Jurgens Park

DATE 10-10-81 TIME 0400-0445

OTHER INFORMATION operating A old Dark Green Auto Pass License of Lic. Plate CNB-or CNM

PHYSICAL DESCRIPTION:

RACE W SEX M AGE 25-30

HEIGHT 6' WEIGHT 200-225

BUILD Large COMPLEXION Mud

HAIR COLOR Br LENGTH over Ears

STYLE Perm EYES Blue

SCARS OR QUILTIES _____

WEARING:

COAT _____ COLOR _____ STYLE _____ SHOES _____

PANTS/SKIRT/SHORTS Dark SHIRT plaid

ACCESSORIES _____

IDENTI-KIT CODE HH91, CC13, EE19, LL34, NN08

WITNESS [Redacted]

TECHNICIAN Witten

DATE & TIME OF COMPOSITE 10-11-81 0300

MIKE VONALLMAN



JOHNETTA CARR



FOUR KEY ELEMENTS FOR WRONGFUL CONVICTION COMPENSATION

- Provide ***at least \$50,000*** per year of wrongful incarceration.
- Reasonable standard of proof for eligibility.
- Straightforward process for ***courts to adjudicate claims.***
- ***Offset provision*** with federal civil awards/settlements.

PROVIDE **AT LEAST \$50,000** PER YEAR OF WRONGFUL INCARCERATION

Comports with the federal rate, and is followed by most states:

TX, CO, KS, OH, CA, CT, VT, AL, FL, HI, IN, MI, MN, MS, NJ, NV, NC, WA

TX \$ 80,000; CO \$ 70,000; KS \$ 65,000

10 states at \$50,000 – AL, FL, HI, IN, MN, MS, NJ, NC, WA

OR was most recent to pass at \$ 65,000

STANDARD OF PROOF FOR ELIGIBILITY

Preponderance of evidence standard

to establish exonerate did not commit the crime

Many states that had no standard or clear and convincing standards have recently revised for a preponderance standard. IN, ID, KS, NV, OR, RI

ESTABLISHES COURTS SHALL ADJUDICATE CLAIMS

Majority of states adjudicate claims in state courts
21 states, 17 states have various mechanisms

A state claim board or commission may not have the experience to weigh evidence and assess claim, thus criminal courts are the best entity to make determinations

OFFSET PROVISION **WITH FEDERAL CIVIL AWARDS/SETTLEMENTS**

To protect taxpayers some states have offset provisions reimbursing the state when a civil award or settlement occurs

5 states – CO, KS, NJ, NV, OH

DEATH ROW AND/OR POST RELEASE SUPERVISION **ADDITIONAL COMPENSATION**

- Death Row Federal - additional \$ 100,000 per year death row
- CO - \$ 50,000 additional per year death row, \$ 25,000 per year parole, probation or sex offender registry
- MN - \$ 25,000 additional per year parole, probation or sex offender registry
- WA - \$ 50,000 additional per year death row, parole, probation, sex offender registry
- KS - \$ 25,000 additional per year parole, post-release supervision or sex offender registry

ADDITIONAL PROVISIONS TO PROVIDE ADEQUATE COMPENSATION AND GREATER REENTRY SUCCESS

- Medical expenses – 9 states
- Tuition assistance – 14 states
- General reentry expenses – 6 states
- Job search assistance – 7 states
- Counseling and mental health services – 12 states
- Housing assistance – 3 states
- Immediate assistance upon release and reentry - states

MODEL LEGISLATION¹⁵

SEE HANDOUTS

- Defines claimant (a)
- Establishes state court adjudicates claim (b)
- Standard of evidence and burden of proof(c)
- Time limit of two years (d)
- Amount of compensation (e)(1)
 - Imprisonment - \$ 65,000 year
 - Death row - \$ 75,000 year
 - Parole, post release supervision, sex offender registration - \$ 25,000 year
- No compensation if serving sentence on a different offense (e)(2)

MODEL LEGISLATION¹⁶

SEE HANDOUTS

- Attorney fees, capped at \$ 25,000 (e)(3)(A)
- Counseling, housing assistance, personal finance literacy (e)(3)(B)
- Tuition assistance (e)(3)(C)
- State health care benefits (e)(3)(D)
- Any restitution, court fees or assessments made by the courts (e)(3)(E)
- Adjustments for cost of living increases (e)(4)
- Non-taxable (e)(5)
- Civil award offset, funds awarded back to the state (f)
- Certificate of innocence finding (g)

Questions ?

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