

KENTUCKY INNOCENCE PROJECT

HB 178

COMPENSATION FOR VICTIMS OF WRONGFUL INCARCERATION

SPONSORED BY REP. JASON NEMES
(BANTA, BAUMAN, BENTLEY, BLANTON, BRATCHER, BURKE,
DECKER, DOAN, DOSSETT, ELLIOTT, GENTRY, HUFF, MOSER,
RAWLINGS)

MORE THAN TWENTY KENTUCKIANS SPENT OVER 200 YEARS IMPRISONED FOR WRONGFUL CONVICTIONS, AND MANY STILL HAVE NOT BEEN COMPENSATED.

WHAT NEEDS TO CHANGE?

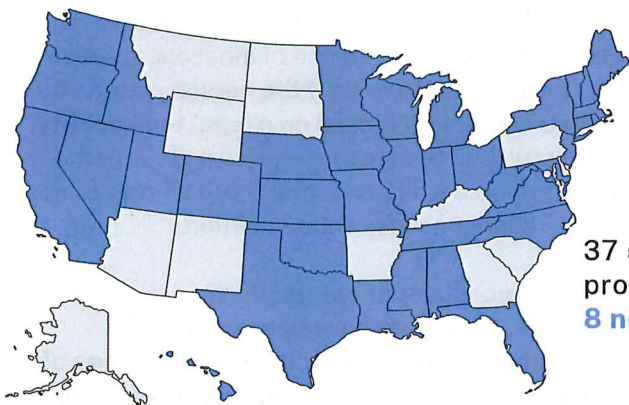
Innocent Kentuckians are robbed of their liberty and lose years, and sometimes decades, of their lives while wrongfully incarcerated. Upon release, they face a number of challenges that impact their ability to survive, including:

- lack of housing, transportation, health services and insurance, mental health treatment, and other basic needs;
- years of lost income and inability to save for retirement while wrongfully imprisoned; and
- missed educational and career opportunities.

Some continue to struggle with a criminal conviction on their record, despite their innocence.

Kentucky is one of only 13 states that does not compensate wrongfully convicted people.

The solution is a universal framework that will provide much-needed financial compensation to eligible exonerees. Wrongfully convicted Kentuckians deserve financial justice so they can rebuild their lives.



37 states, the federal government, and D.C. provide compensation to innocent exonerees.
8 new statutes passed in the last 5 years.



Johnetta Carr
Age at Wrongful Conviction: 16
Sentence: 20 years
Date Exonerated: 2019

Johnetta Carr was just 16 when she was prosecuted as an adult and wrongfully convicted of killing her boyfriend. She spent 13 years in prison and on parole, until the Kentucky Innocence Project discovered exculpatory DNA evidence. Johnetta was pardoned on the grounds of innocence in 2019.

Under state law, she received less help to reintegrate into society than what someone actually guilty of a crime would be able to access.

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Mike VonAllmen
Age at Wrongful Conviction: 24
Sentence: 35 years
Date Exonerated: 2010

Mike VonAllmen was wrongfully convicted of a 1981 rape after the victim identified him as her attacker in a photo lineup.

He was paroled in 1994, and he contacted the Kentucky Innocence Project for help. Attorneys found evidence that a man who closely resembled Mike had been charged with a very similar crime a few years prior to Mike's conviction, and who was virtually identical to the description given by the victim in Mike's case.

Mike's conviction was vacated in 2010. However, because his case did not involve intentional misconduct, his civil lawsuit was dismissed and he has never been compensated.

HOW CAN THIS BE FIXED?

Based off of compensation statutes recently passed in Idaho and Kansas, HB 178:

- Provides \$65,000 per year of wrongful imprisonment, plus up to \$25,000 for years spent on parole, in post-prison supervision, or on the sex offender registry.
- Provides access to non-monetary support services including health care and counseling, housing assistance, and personal financial literacy assistance.
- Ensures a fair and straightforward process for filing claims through the courts, so eligibility is determined by judges and courts.
- Provides a certificate of innocence and allows record sealing and expungement so exonerees can clear their names and move on with their lives.

FAQ

What is the fiscal impact?

KIP estimates **about 21 exonerees** may be eligible for up to \$12 million in compensation total, if all apply and are successful. Nationally, **not all eligible people apply** for compensation: only 60% filed claims and of that only, 73.5% were approved.

Who decides if a person has provided sufficient affirmative proof of innocence and under what standard?

Under proposed language, a person must prove they are innocent by a preponderance of evidence as **determined by a judge** in order to receive compensation. The preponderance standard is the **burden of proof for almost all civil cases, including federal wrongful conviction claims**, and the vast majority of recently adopted state compensation laws.

How was the compensation amount determined?

In 2004, **President George W. Bush signed a law** that provides \$50,000 per year (\$83,000 in today's dollars). Recently passed laws in ID, KS, OR, and NV recognize \$65,000 per year as reasonable and equitable for exonerees and taxpayers.

Who would qualify for compensation?

To qualify, a **person must present affirmative proof that they are innocent**. Additionally, they must have been wrongly convicted of a felony and imprisoned, and had their conviction reversed or vacated and either the charges were dismissed or the person was found not guilty on retrial, or they received a pardon.

Can guilty people or people freed on legal technicalities receive compensation?

No. The eligibility criteria are tightly construed to ensure only innocent people are compensated. It requires affirmative evidence of innocence, which would be **impossible to do if the person was guilty or had their conviction tossed on a legal technicality**. The criteria strike a balance of ensuring a clear path for innocent people while ensuring those who were not innocent cannot access compensation.

How many people does this impact?

Since 1989, **28 people have been wrongfully incarcerated in Kentucky**, spending an average of 10 years behind bars before exoneration. Nationally, **not all eligible people apply** for compensation: only 60% filed claims and of that, only 73.5% were approved.