



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-420

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.