



White Paper on Need for Legislative Compensation for Pennsylvania's Exonerated Citizens

INTRODUCTION

Since the acceptance of DNA testing beginning in 1989, there is no longer any doubt that wrongful convictions of innocent men and women have occurred within the criminal justice system with disturbing frequency.¹ Between 1989 and 2003, there were more than 340 exonerations nationwide.² By 2012, the number had grown to 873.³ According to the National Registry of Exonerations, the number topped 2,000 in early 2017.⁴ Since 1989, 66 men and women, who collectively spent 696 years behind bars, were exonerated in Pennsylvania.⁵

Wrongful convictions have occurred for many reasons, including eyewitness misidentification, unreliable jailhouse informants, ineffective representation by counsel, unreliable scientific evidence or expert testimony, and police or prosecutorial error.⁶ Most of the causes of wrongful convictions are factual errors – such as inaccurate scientific data or misidentification – and while improvements in investigative and criminal procedures may reduce the rate of wrongful convictions, wrongful convictions cannot be entirely eliminated.⁷ But society can pay for its mistakes.

For the exonerated, their struggle does not end after their release. Victims of wrongful conviction enter the world outside prison with limited resources, few job prospects, no recent references, and a

¹ There are several different definitions utilized in statistics for wrongful convictions in the United States. One approach defines exonerations as “an official act declaring a defendant not guilty of a crime for which he or she was previously convicted.” Another approach focuses on exonerations based on DNA evidence. A third defines wrongful conviction as a case in which defendant was convicted and later restored to status of legal innocence. John Martinez, *Wrongful Convictions As Rightful Takings: Protecting “Liberty – Property”*, 59 *Hastings Law Journal* 515, 527 (2008). “Although there are no consistent statistics of wrongful convictions in the United States, because the studies use differing definitions of wrongful convictions, the numbers evidence a real problem in the criminal justice system.” *Id.*

² Daniel S. Kahn, *Presumed Guilty Until Proven Innocent: The Burden of Proof in Wrongful Conviction Claims Under State Compensation Statutes*, 44 *U. Mich. J. L. Reform* 123, 126 (2010), “Yet it is now quite clear, if it was not before, that wrongfully convicted persons require compensation, not just for lost wages and the pain and suffering endured while incarcerated, but also for the substantial obstacles they face when they attempt to reenter and regain their life after prison.”

³ Samuel R. Gross and Michael Shaffer, *Exonerations in the United States, 1989 – 2012, Report by the National Registry of Exonerations*, https://www.law.umich.edu/special/exoneration/Documents/exonerations_us_1989_2012_full_report.pdf.

⁴ See The National Registry of Exonerations, <http://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx>. (Last accessed May 30, 2017).

⁵ See The *National Registry of Exonerations* (filter State for “PA”) available at <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={FAF6EDDB-5A68-4F8F-8A52-2C61F5BF9EA7}&FilterField1=ST&FilterValue1=PA> (last accessed May 30, 2017).

⁶ Kahn, *supra* note 2, at 128.

⁷ Adele Bernhard, *When Justice Fails: Indemnification for Unjust Conviction*, 6 *U. Chi. L. Sch. Roundtable* 73, 80 (1999).



criminal arrest history. Even with a hard-to-win expungement, in the age of the internet the notoriety of the conviction often follows an exoneree. The services provided to parolees, such as counseling and support procuring housing or a job, are not provided to the exonerated.⁸ The exonerated, with no contributions made to social security during their years of imprisonment, are not typically eligible for social security and will have no pension or retirement funds.

While the wrongfully convicted may seek compensation for the harm they suffered through civil suits or private legislation, these avenues contain many obstacles⁹ and inherent delays.¹⁰ Civil suits require a showing of culpability, which may not exist and is difficult to prove. And private legislation, available in some states for those with proper connections, are not available in Pennsylvania.¹¹

Pennsylvania has no
law compensating
our exonorees.

In recognition of this reality, 32 states,¹² as well as the District of Columbia and the federal government, provide statutory compensation for those who are wrongfully convicted. **Pennsylvania does not.**

A legislative remedy is the fair means of responding to the inevitable mistakes that will occur in the operation of a large criminal justice system.¹³ Compensation statutes allow the state to provide holistic support¹⁴, including counseling and job training, which exonerees need in order to reenter

⁸ Kahn, *supra* note 2, at 131.

⁹ See *Connick v. Thompson*, 563 U.S. 51 (2011), The U.S. Supreme Court held that a municipality may be held liable under § 1983 only in narrow circumstances. A municipality may only be held liable for “their own illegal acts” that violate an individual’s constitutional rights.

¹⁰ Kahn, *supra* note 2, at 124. See also Deborah Mostaghel, *Wrongfully Incarcerated, Randomly Compensated – How to Fund Wrongful-Conviction Compensation Statutes*, 44 Ind. L. Rev. 503, 510 (2011). “In states without compensation statutes, only three avenues may be available. First, an exoneree may try to get the state legislature to pass a private bill awarding compensation in his or her particular case. Second, an exoneree may be able to bring a federal civil rights lawsuit against the government. Third, the exoneree may be able to bring a state tort lawsuit against prosecutors, police, or defense lawyers. **Very few exonerees succeed under these approaches.**” (emphasis added)

¹¹ Kahn, *supra* note 2 at 124.

¹² The 32 states which offer compensation to the wrongfully convicted are Alabama, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Tennessee, Texas, Utah, Vermont, Virginia, Washington, Wisconsin, and West Virginia.

¹³ Bernhard, *supra* note 7, at 74.

¹⁴ The support offered by these statutes can include financial compensation for time in prison, reimbursement for costs associated with obtaining the exoneration, transition expenses, physical and mental health care, educational assistance, employment assistance, and housing assistance. See Jessica Loneragan, *Protecting the Innocent: A Model for Comprehensive, Individualized Compensation of the Exonerated*, 11 N.Y.U. J. Legis. & Pub. Pol’y 405 (2007).



society as productive citizens.¹⁵ Without statutory compensation, Pennsylvania will continue to be one of a handful of states which do not offer a remedy for those harmed for mistakes made by its criminal justice system.

IMPACT OF WRONGFUL CONVICTIONS ON INDIVIDUALS AND FAMILIES

On average, wrongfully convicted Pennsylvanians spend 10 years in prison. However, the effects of a wrongful conviction do not end upon release. Exonerees invariably suffer severe financial, psychological, and physical problems that persist long after release from prison.

Financial impact of wrongful convictions

One example of the financial toll taken on the wrongfully incarcerated can be seen in the story of **Vincent Moto**. Vincent was convicted in Philadelphia in 1987 of rape and sentenced to 12 – 24 years in prison. On his own, Vincent fought for DNA testing of the evidence from the investigation of the crime. Lawyers from the Innocence Project became involved, but Vincent's family paid for the testing themselves. Nine years after his conviction, Vincent was exonerated when the DNA testing showed he was not involved. All told, Vincent's family paid over \$100,000 in lawyer and lab fees, exhausting his parents' savings. His family has never recovered the money spent in freeing their son from this wrongful conviction. In addition, Mr. Moto, like the other 65 Pennsylvania exonerees, has received no compensation for the years he spent in prison.¹⁶

Vincent Moto's parents spent over \$100,000 trying to free their wrongly convicted son. They have never been compensated.

The wrongfully convicted lose significant time from their lives, including time typically used to establish themselves personally, professionally, and financially. Upon release, they lack an employment history, recent references, skills needed to compete in the modern job market, and instead present themselves to future employers with little more than a criminal record.¹⁷ Many, like

¹⁵ In addition to the compelling fairness argument, commentators have also argued that a compensation statute is an effective crime deterrent. See Evan Mandery, *Compensation Statutes and Post-Exoneration Offending*, 103 J. Crim. L. & Criminology 553 (2013).

¹⁶ See <http://www.innocenceproject.org/cases/vincent-moto/>

¹⁷ Kahn, *supra* note 2, at 129.



Vincent Moto's family, will have accumulated significant debt in their efforts to be exonerated.¹⁸ Most will have no retirement savings and will not be eligible for social security.¹⁹

Because the wrongfully convicted are not released into the normal system for ex-offenders, they are ineligible for vocational and job training services.²⁰ Yet they are presented with many of the same challenges as those released on parole. The majority of inmates released from prison have no savings, no entitlement to unemployment benefits, and few job prospects.²¹ A 2001 survey found that sixty percent of released inmates had not secured a job one year after release.²²

Psychological and physical impacts of wrongful convictions

In addition to financial trouble, many of the wrongfully convicted contend with emotional, psychological, and physical maladies as a result of their erroneous conviction and incarceration. The prison population has significantly greater physical and mental health needs than the population as a whole.²³ Mental health problems occur at a particularly high rate among prisoners. According to the Bureau of Justice Statistics, 56% of state prison inmates reported a mental health history – a rate much higher than the general population.²⁴ Additionally, psychologists have warned of the significant impact of overcrowded prisons on mental health, noting that inmates in these institutions tend to spend significant time in solitary or segregated housing, and that the isolation has been connected to depression and anxiety.²⁵ The wrongfully convicted suffer from the same physical and psychological ailments as the general prison population but face an additional layer of emotional and psychological issues, predicated on their wrongful conviction and incarceration.

While there is no empirical data on the psychological impacts of wrongful convictions, numerous individual examples speak to the emotional toll of these mistakes. One instance is **Earl Charles**, who described the experience of his wrongful conviction in Georgia as a scar that constantly followed him. In 1991 Charles committed suicide by walking into oncoming traffic.²⁶ Another example is of **Kirk Bloodworth**, who was released from a Maryland prison in 1992 after spending

¹⁸ See Shawn Armbrust, *When Money Isn't Enough: The Case for Holistic Compensation of the Wrongfully Convicted*, 41 Am. Crim. L. Rev. 157, 158 (2004).

¹⁹ See Social Security What Prisoners Need to Know, <https://www.ssa.gov/pubs/EN-05-10133.pdf> "Social Security pays retirement benefits to people who are age 62 or older. Generally, you must have worked and paid Social Security taxes for 10 years to be eligible."

²⁰ Armbrust, *supra* note 18, at 175.

²¹ Joan Petersilla, *When Prisoners Return to Communities: Political, Economic, and Social Consequences*, Fed. Probation, JUNE 2001, at 3, 5.

²² *Id.*

²³ Armbrust, *supra* note 18, at 177-78.

²⁴ U.S. Department of Justice, Office of Justice Programs, *Mental Health Problems of Prison and Jail Inmates*, September 2006; <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>.

²⁵ Petersilla, *supra* note 21, at 4.

²⁶ Armbrust, *supra* note 18, at 178.



years on death row. He has been diagnosed with PTSD and suffered from nervous breakdowns. Although he was exonerated by DNA evidence, some still do not believe he was innocent, and he must contend with the stigma that continues to follow him.²⁷

Wrongful convictions can have a striking impact on an individual's physical health. The health of the average 50-year-old inmate is equivalent to the health of the average 60-year-old among the general public.²⁸ Additionally, disease has a tendency to spread in prison. In 1989, a drug-resistant form of tuberculosis broke out in New York City. Eighty percent of the cases could be traced back to the prisons.²⁹ In 1996, 2.3% of inmates in state and federal prison were infected with HIV, a rate six times higher than the general population.³⁰ While inmates have access to health care while in prison, upon release they often do not have health insurance and their ailments go untreated.³¹

Because so few cases involve deliberate wrongdoing by officials the community must assume the responsibility to compensate the exonerated.

THE STATE'S MORAL OBLIGATION TO COMPENSATE THE WRONGFULLY CONVICTED

Maintaining the public order through the prosecution of crimes is an important and necessary government function that benefits everyone. But because those benefits must be balanced against the risk of wrongful convictions, the state is responsible for errors in the operation of this system.³² As a matter of simple morality, the state is duty-bound to make amends for having deprived an innocent person of freedom and the opportunities for work, income, a family, companionship, and all the other incidents of a life lived outside prison walls. And that is so regardless of whether any state actor was morally at fault.³³ Indeed, it is precisely because so few cases have identifiable culprits or deliberate "wrongdoers" responsible for the conviction of an innocent person and have the resources to make amends to the victimized defendant that the community must assume the responsibility to pay compensation.³⁴

²⁷ *Id.*

²⁸ Kahn, *supra* note 2, at 178.

²⁹ *Id.*

³⁰ *Id.*

³¹ Petersilla, *supra* note 21, at 5.

³² Joseph H. King, Jr., *Compensation of Persons Erroneously Confined by the State*, 118 U. Pa. L. Rev., 1091, 1096 (1970) ("[I]ability of erroneous confinements – 'special sacrifices' demanded by the government by its citizens, who acquiesce in the use of an imperfect instrumentality – should be imposed upon the government not because it was at fault by conventional standards but as a matter of social adjustment.").

³³ See Armburst, *supra* note 18, at 160.

³⁴ See Kahn, *supra* note 2, at 135-136; Edwin Borchard, *State Indemnity for Errors of Criminal Justice*, 21 B.U.L. Rev. 201, 208 (1941).



In other areas, the state compensates individuals when it infringes on their rights for the public good. Compensation is provided when property is taken for a public purpose through eminent domain.³⁵ Article 1, Section 10 of the Pennsylvania Constitution provides that: “No person shall, for the same offense, be twice put in jeopardy of life or limb; **nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured.**”(emphasis added.) However, when an individual’s liberty is taken for a public purpose—the preservation of public safety through the implementation of a criminal justice system—the right to compensation, at least in Pennsylvania, is not recognized.³⁶ The justification for publicly funded compensation of the wrongly convicted is certainly as compelling as is the case for compensating those whose property is taken through eminent domain.³⁷

THE INADEQUACY OF ALTERNATIVE FORMS OF COMPENSATION

While alternative means of acquiring compensation after a wrongful conviction and subsequent exoneration are possible, they present significant challenges. Lawsuits are prohibitively slow and expensive.³⁸ Additionally, civil claims require a showing of intentional misconduct; but many, if not most, convictions are not the fault of any actor but the result of systemic error such as witness misidentification.³⁹ Private legislation—available in many states without compensation laws—are unavailable by law in Pennsylvania.⁴⁰ Furthermore, even successful civil claims do not provide holistic support such as job training or medical and psychological care.⁴¹

ACCESS TO COMPENSATION FOR THE WRONGFULLY CONVICTED IN PENNSYLVANIA IS DIFFICULT TO OBTAIN NO MATTER THE CAUSE OF THE WRONGFUL CONVICTION.

³⁵ Borchard, *supra* note 34, at 207.

³⁶ *Id.*

³⁷ Alberto B. Lopez, *\$10 and A Denim Jacket? A Model Statute of Compensating the Wrongly Convicted*, 36 Ga. L. Rev. 665, 710-711 (2002); Bernhard, *supra* note 7, at 74; Martinez, *supra* note 1, at 515-6. “Wrongful convictions resulting in incarceration destroy numerous quintessentially “liberty” interests, including the right to move about freely, to privacy, to free speech, to security of person, and to the freedom to engage in personal and professional achievement. A wrongful conviction often destroys these liberty interests, and this destruction, in turn, causes devastating economic consequences for those wrongfully convicted. This Article suggests that destruction of liberty interests by wrongful convictions causes a taking of “liberty-property” for which a remedy is constitutionally compelled by state and federal just compensation clauses. In order to use just compensation clause arguments effectively to provide compensation for the wrongfully convicted, we must utilize a conceptualization of property that focuses on rights, not on the asset in question. Such a relational concept of property makes possible a consideration of what is really at stake in wrongful conviction settings: rights, not assets. Compensation, therefore, may be re-envisioned as the value of the rights of which those wrongfully convicted have been deprived.”

³⁸ Bernhard, *supra* note 7, at 92.

³⁹ *Id.* at 86.

⁴⁰ Kahn, *supra* note 2, at 124; Armburst, *supra* note 17, at 166.

⁴¹ Armburst, *supra* note 18, at 161-162.



The factors that lead to wrongful convictions are complex and reflective of systemic error, rather than personal misconduct. It is rare for a wrongful conviction to be attributable to only one factor. In the 66 wrongful convictions in Pennsylvania, 21 (31%) involved eyewitness misidentification, 6 (9%) involved a false confession, 14 (21%) included false or misleading forensic evidence, 38 (58%) included perjury or false accusation, 32 (48%) included official misconduct, and 18 (27%) included inadequate legal defense.⁴²

The great majority of these errors that led to the conviction of innocent people are a result of unreliable methods, not bad actors. Even for those categories involving error—by law enforcement, prosecutors, or defense counsel—achieving compensation through the civil system remains virtually unachievable.

Police or Prosecutorial Error

Police or prosecutor misconduct figured in about 48% of the Pennsylvania wrongful convictions.⁴³ When a heinous crime is committed, police and prosecutors are subject to significant public pressure to make an arrest and convict. This pressure has been known to lead to cutting corners or bringing charges despite scant evidence.⁴⁴ Police or prosecutors have, on occasion, used coercion to obtain false confessions,⁴⁵ or withheld exculpatory evidence in violation of *Brady v. Maryland*.

Every person who, under color of any statute, ordinance, regulation, custom, or usage . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress
42 U.S. 1983

⁴² See The National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx?View={faf6eddb-5a68-4f8f-8a52-2c61f5bf9ea7}&FilterField1=ST&FilterValue1=PA&&SortField=ST&SortDir=Asc>. The total is greater than 100 percent as many cases included two or three of the elements discussed above.

⁴³ See The National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?FilterClear=1&View={b8342ae7-6520-4a32-8a06-4b326208baf8}&SortField=State&SortDir=Asc&FilterField1=State&FilterValue1=Pennsylvania&FilterField2=Contributing%5F%0020%5FFactors%5F%0020&FilterValue2=Official%20Misconduct> (last accessed on May 30, 2017).

⁴⁴ Lopez, *supra* note 37, at 677-78.

⁴⁵ *Id.* at 682.



Federal law allows citizens to bring claims against the government when their civil rights have been violated through what are commonly called Section 1983 actions. However, federal civil rights claims under 42 U.S.C. § 1983 are difficult to prosecute and do not offer a realistic alternative for compensation.⁴⁶

A successful claim for a coerced confession or a *Brady* violation is similarly challenging. Proving a coerced confession usually requires a videotaped interrogation,⁴⁷ which is not required in Pennsylvania.⁴⁸ Additionally, *Brady* violations require the plaintiff to show that the prosecutor's failure to turn over material to the defense would have changed the outcome of the case. If the wrongful conviction was the result of more than one mistake, this standard could bar a claim.⁴⁹

Immunity creates another barrier to § 1983 claims. Under *Imbler v. Pachtman*, to ensure prosecutors are not chilled or distracted by liability suits that might hamper the operation of the criminal justice system, prosecutors have absolute immunity when performing actions within their prosecutorial duty.⁵⁰ This immunity creates an often insurmountable barrier to obtaining compensation for the wrongfully convicted. Even when an exoneratee can show a prosecutor intentionally withheld evidence he knew was exculpatory, there is still not a claim under Section 1983.⁵¹

Under Pennsylvania state law, a malicious prosecution claim requires the plaintiff to show that the proceedings were initiated with malice, the initiator lacked probable cause, and the proceedings terminated in favor of the plaintiff.⁵² While malice may be inferred from a lack of probable cause,⁵³ if probable cause existed, evidence of malice is irrelevant and the claim will fail.⁵⁴ It is not difficult to prove probable cause as it requires only a "reasonable ground of suspicion supported by circumstances sufficient to warrant that an ordinary prudent person in the same situation could believe a party is guilty of the offense charged."⁵⁵ Probable cause may exist even if the information on which the arrest was based was incorrect.⁵⁶

⁴⁶ See *Connick v. Thompson*, 563 U.S. 51 (2011) which held that a district attorney's office may not be held liable under §1983 for failure to train its prosecutors based on a single Brady violation.

⁴⁷ Armburst, *supra* note 18, at 165.

⁴⁸ See Peter Vaira, *One way to Prevent Wrongful Convictions*, Philly.com, April 11, 2011. This practice is now changing and more jurisdictions are now videotaping interrogations.

⁴⁹ Armburst, *supra* note 18, at 166.

⁵⁰ *Imbler v. Pachtman*, 424 U.S. 409, 427 (1976).

⁵¹ *Thompson*, 563 U.S. 51 (2001).

⁵² *Kelley v. Gen. Teamsters, Chauffeurs & Helpers, Local Union*, 544 A.2d 940, 941 (1988).

⁵³ *Id.*

⁵⁴ *Manley v. Fitzgerald*, 997 A.2d 1235, 1239 (Pa. Commw. Ct. 2010)

⁵⁵ *Turano v. Hunt*, 631 A.2d 822, 8245(Pa. Commw. Ct. 1993)

⁵⁶ Armburst, *supra* note 18, at 165.



A claim for false arrest is even more difficult to prove. It requires the plaintiff to demonstrate that the “process used for the arrest was void on its face . . . it is not enough that the charges were unjustified.”⁵⁷

Ineffective Assistance of Counsel

In 27% of Pennsylvania wrongful convictions, the defense counsel provided subpar to outright incompetent representation.⁵⁸ However, claims for damages based upon negligent representation, like those against state actors, face significant hurdles.

The standard for proving a negligent representation claim is high. To establish a malpractice claim, the plaintiff must show 1) an attorney-client relationship existed; 2) the attorney failed to exercise ordinary skill and knowledge; and 3) the attorney’s negligence was the proximate cause of the damages to the plaintiff.⁵⁹ This standard is often referred to as requiring proof of a “case within a case,”⁶⁰ meaning that it requires the complainant to show that but for the attorney’s actions they would have won the case.⁶¹ Moreover, a negligent representation claim has two-year statute of limitations.⁶² As, on average, a wrongfully incarcerated individual will have spent 10 years in prison before being exonerated, the statute of limitations will have run long before the wrongfully convicted victim is released and able to bring suit.

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Many of these barriers protect the public good. Prosecutorial and witness immunity are necessary for the criminal justice system to function effectively and efficiently. Statutory compensation would preserve these necessary protections, while also recognizing the need to compensate the victims of wrongful incarceration for the harm they suffered.

⁵⁷ *Lynch v. Johnston*, 463 A.2d. 87, 89 (Pa. Commw. Ct. 1983).

⁵⁸ Lopez, *supra* note 37, at 688. See also The National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?FilterClear=1&View={b8342ae7-6520-4a32-8a06-4b326208baf8}&SortField=State&SortDir=Asc&FilterField1=State&FilterValue1=Pennsylvania&FilterField2=Contributing%5F%0020%5FFactors%5F%0020&FilterValue2=Inadequate%20Legal%20Defense> (last accessed May 30, 2017).

⁵⁹ *Sokolky v. Eidelman*, 93 A.2d. 858, 862 (Pa. Super. Ct. 2014).

⁶⁰ *Epstein v. Sault Ewing, LLP*, 7 A.3d 303, 313 (Pa. Super. Ct. 2010).

⁶¹ *Id.*

⁶² 42 Pa. Cons. Stat. Ann. § 5524 (West)



More importantly, statutory compensation moves the conversation away from culpability of government agents, focusing instead on the need for the state to redress any harm caused in the course of the necessary implementation of its responsibilities.⁶³

BENEFITS OF STATUTORY COMPENSATION

Statutory compensation provides equitable and readily available compensation for the wrongfully convicted regardless of means, political interests and political tides. It recognizes that innocent mistakes may lead to a wrongful conviction and that, despite the lack of malice, the harm caused is real and requires a remedy. Additionally, it does not require a “scouring of the record,” or a search for police or prosecutorial misconduct and a labeling of blame, as existing remedies like civil suits do.⁶⁴ Similarly, legislative compensation preserves the immunity of state actors, avoiding any chilling effect on actors attempting to discharge their duties that may result from a lawsuit or similar culpability based remedies.

Statutory compensation also allows for a more predictable budgeting of state funds in a manner that civil suits and private legislation do not.⁶⁵ History has shown that fears of a flood of claims and payouts are unwarranted. In New York, for instance, only six of sixty-two claims were paid out between 1984 and 1999, despite the liberal structure of the state’s compensation statute. West Virginia, with a similarly liberal statute, paid out only two claims between 1987 and 1999.⁶⁶ Statutory compensation, therefore, provides a fair and accessible remedy to the wrongfully convicted without threatening the state budget.⁶⁷

The Pennsylvania Innocence Project supports legislation providing compensation for the wrongfully convicted in Pennsylvania. When we enact that law, Pennsylvania will join the 32 other states that have made a commitment to the fair administration of justice by assisting those victimized by the criminal justice system.

⁶³ See King, *supra* note 32, at 1096 (“The culpability of the agent causing the confinement does not alter the essential injury of the innocent prisoner: the fact and extent of the injury should be of controlling significance rather than the degree of fault of the government agent. Not the agent but the government itself, justifying the mistaken exertion of power over the individual, should redress the injury.”).

⁶⁴ *Id.* at 700.

⁶⁵ *Id.* at 705.

⁶⁶ *Id.* at 720.

⁶⁷ *Id.*