

SB 78: Criminal Procedure: Factual Innocence ***Frequently Asked Questions***

How does California’s compensation system for exonerees work?

- Though exonerees have already had their convictions overturned and are presumed innocent, they must pursue additional litigation in either the Superior Court or from the Victim Compensation Board (VCB) in order to receive compensation. Historically, the rules governing compensation proceedings in the Superior Court and the VCB were largely consistent. In both cases, the burden of proof was on exonerees to prove, by a preponderance of evidence, that they are factually innocent and thus entitled to compensation. In an effort to give exonerees a fighting chance, recent reforms shifted the burden of proof in the VCB – now the burden is on the Attorney General to prove to the VCB by clear and convincing evidence that the exoneree is not entitled to compensation. Unfortunately, however, the same reforms have not been enacted in the Superior Courts – there, the burden is still on exonerees to prove, by a preponderance of evidence, that they are factually innocent and deserve compensation.

What is a finding of factual innocence? How does it differ from the presumption of innocence afforded to all exonerees?

- Exoneration means that one’s conviction has been overturned and their presumption of innocence has been restored. Exoneration guarantees one’s release from prison, but it does not guarantee compensation for wrongful imprisonment. Even though an exoneree is *presumed innocent*, she must prove that she is *factually innocent* in order to receive compensation via the Superior Court. Under existing law, a person is considered factually innocent if they can prove that the crime with which they were charged was either not committed at all, or if committed, was not committed by them. If they are successful, the finding of factual innocence is binding on the VCB and they must recommend compensation.

Does California’s compensation system really need fixing? If so, what is the scale of the problem?

- California has exonerated over 200 wrongfully convicted people since 1989, with the average exoneree having spent over eight years in prison.¹ Of these exonerees, fewer than 40 percent have received any type of compensation for the years they spent behind bars.² This unfortunate reality boils down to the fact that California’s exoneree compensation system is unduly burdensome on those who have already had their convictions overturned and are legally presumed innocent in the eyes of the state. A study looking at data between 1997 and the first quarter of 2020 found that ninety-three exonerees managed to properly file for compensation in California. Not all exonerees managed to file for compensation in part because they do not have a right to counsel in their Superior Court or VCB

¹ Exonerations total by year: California, Nat’l Reg. Exonerations, (last visited Dec. 18, 2020), <https://www.law.umich.edu/special/exoneration/Pages/Exonerationsin-the-United-States-Map.aspx> (“The National Registry of Exonerations . . . provides detailed information about every known exoneration in the United States since 1989 — cases in which a person was wrongly convicted of a crime and later cleared of all the charges based on new evidence of innocence. The Registry also maintains a more limited database of known exonerations prior to 1989.”).

² Anthony Accurso, California Exonerees Not Quite Innocent Under the Law, Prison Legal News (April 1, 2020), <https://www.prisonlegalnews.org/news/2020/apr/1/california-exonerees-not-quite-innocent-under-law>

compensation litigation. Of those who did file for compensation, only forty-six claims (49%) have been granted, while forty-seven claims (51%) have been denied.³

Didn't SB 446, which passed in 2021, make the necessary fixes to California's compensation system for the wrongfully convicted? Why is additional legislation needed?

- SB 446 represented an important first step in perfecting California's exoneree compensation system. Before SB 446, the burden of proof was on exonerees to prove to the VCB that they were factually innocent. SB 446 shifted the burden to the Attorney General to object only to those claims in which the Attorney General's office believes the person should not be compensated. The Attorney General must now prove by clear and convincing evidence that the claimant is not entitled to compensation. Because the current system has not made the same changes to the Superior Court's compensation process, exonerees are incentivized to pursue their litigation only in the VCB, thus creating an unnecessary strain on the VCB and Attorney General's resources.

How does California's compensation system compare to those of other states?

- Thirty-six U.S. states, Washington D.C., and the federal government have compensation statutes which allow exonerees to receive compensation without additional litigation.⁴ In California, however, exonerees must go through a burdensome litigation process that often takes years in order to prove their factual innocence and receive compensation.⁵

If exonerees are compensated, how much do they get? How does this compare to national standards and other pertinent state costs?

- Exonerees in California are entitled to \$140 dollars a day. That's \$51,100 for every year behind bars. This is roughly equivalent to the federal standard to compensate those who are wrongfully convicted at a minimum of \$50,000 per year of incarceration. According to California's non-partisan Legislative Analyst's office, it costs the state \$106,131 to incarcerate someone for one year.⁶ California has paid out roughly \$26 million dollars over the last twenty-three years to indemnify exonerees, averaging out to a little over a \$1 million a year.⁷

³ Claims for Erroneously Convicted Persons (PC4900), California Victims Compensation Board (last visited June 19, 2020) [hereafter CalVCB], <https://web.archive.org/web/20200627225053/victims.ca.gov/board/pc4900.aspx>.

⁴ Kelly Shea Delvac, 'California Wrongful Incarceration Compensation Law' 16 (2021): 30.

⁵ 'What Does It Mean to Be Exonerated Of a Criminal Charge?', *How to Justice* (blog), 19 May 2021, <https://howtojustice.org/im-in-prison/court-filings/what-exonerated-of-a-charge-means/>; Maddy Gates, 'Compensation Should Always Be Available to the Wrongfully Convicted | Harvard Civil Rights-Civil Liberties Law Review', accessed 18 February 2022, <https://harvardcrcl.org/compensation-should-always-be-available-to-the-wrongfully-convicted/>.

⁶ 'California's Annual Costs to Incarcerate an Inmate in Prison', Legislative Analyst's Office, accessed 18 February 2022, https://lao.ca.gov/policyareas/cj/6_cj_inmatecost.

⁷ Claims for Erroneously Convicted Persons (PC4900), California Victims Compensation Board (last visited June 19, 2020) [hereafter CalVCB], <https://web.archive.org/web/20200627225053/victims.ca.gov/board/pc4900.aspx>.