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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

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**Bill No:** SB 635                      **Hearing Date:** April 21, 2015  
**Author:** Nielsen  
**Version:** February 27, 2015  
**Urgency:** No                              **Fiscal:** No  
**Consultant:** JM

**Subject:** *Erroneous Conviction and Imprisonment: Compensation*

## HISTORY

**Source:** California Innocence Project

**Prior Legislation:** SB 618 (Leno) - Ch. 800, Stats. 2013  
AB 316 (Solorio) - Ch. 432, Stats. 2009  
AB 2937 (Solorio) - vetoed, 2008,  
AB 1799 (Baugh) - Ch. 630, Stats. 2000\

**Support:** American Civil Liberties Union; Legal Services for Prisoners with Children;  
California Public Defenders Association; California Attorneys for Criminal  
Justice

**Opposition:** None known

## PURPOSE

*The purpose of this bill is to raise the compensation for innocent persons who were wrongly convicted from \$100 per day to \$136.98, or \$50,000 per year, to reflect the effect of inflation on the amount originally set in 2000.*

*Existing law* includes procedures for the filing and hearing of a petition for a writ of habeas corpus, which allows a person to challenge his or her incarceration or related restraint as unlawful. (Pen. Code §§1474-1508.)

*Existing law* describes specific grounds for a writ of habeas corpus, including:

- False evidence that was material or substantially probative on the issue of guilt or punishment was introduced against the person at a trial or hearing related to the petitioner's incarceration.
- A person entered a guilty plea based on false physical evidence that the person entering the plea believed to be true.
- The specified grounds for a writ of habeas corpus do not limit any other valid grounds for the writ or other available remedies. (Pen. Code §1473.)

*Existing law* provides that a person who is no longer unlawfully imprisoned or restrained as a result of a criminal conviction may file a motion to vacate the judgment for the following reasons:

- Newly discovered evidence of fraud by a government official completely and conclusively undermines the prosecution's case and points unerringly to innocence.
- Newly discovered evidence that a government official testified falsely at trial and the testimony was substantially material and probative on the issue of guilt. (Pen. Code §1474.6.)

*Existing law* provides that any person who, having been convicted of a crime and imprisoned in the state prison, is granted a pardon by the Governor because the crime with which he or she was charged either did not occur; or if it did occur, was not committed by him or her; or who is innocent of the charges for either of the foregoing reasons, and who has served any part of the term for which imprisoned may present a claim against the State to the Victims Compensation and Government Claims Board (board) for the pecuniary injury sustained through the wrongful conviction and imprisonment. (Pen. Code § 4900.)

*Existing law* provides that an unlawfully imprisoned person (exonoree) shall be entitled to a recommendation by the board for compensation without a hearing under the following circumstances:

- A court in a contested habeas corpus proceeding or motion to vacate a judgment finds that the evidence unerringly points to the innocence of the exonoree. (Pen. Code § 1485.55, subd. (a).)
- The court grants a habeas corpus petition or motion to vacate judgment on any ground other than the evidence unerringly points to innocence and the petitioner proves by a preponderance of the evidence that he or she is innocent. (Pen Code § 1485.55, subds. (b)-(d).)
- A federal court in a habeas corpus matter grants the petitioner's motion for a finding of factual innocence. (Pen Code § 1485.55, subds. (b)-(d).)
- A court issues a certificate of innocence upon the stipulation by the prosecutor or a hearing. (Pen. Code §§ 861.8, 861.86 and 861.865.)

*Existing law* provides that factual findings, including witness credibility determinations, made by a court in a hearing on a habeas corpus petition, a motion to vacate a judgment or a petition for a certificate of factual innocence shall be binding on the board, the fact finder and the Attorney General in a proceeding to consider a claim filed by a person who alleges that he or she is entitled to compensation despite his or her innocence. (Pen. Code § 1485.5, subd. (c).)

*Existing law* provides that where the district attorney of Attorney stipulates to or does not contest the factual allegations underlying one or more of the grounds for granting a writ of habeas corpus or motion to vacate a judgment, the facts underlying the courts ruling or order shall be binding on the board, the fact finder and the Attorney General in a proceeding to consider a claim filed by a person who alleges that he or she is entitled to compensation despite his or her innocence. (Pen. Code § 1485.5, subd. (a).)

*Existing law* requires a district attorney to notify the Attorney General before stipulating to facts that will be basis for granting a habeas corpus petition or motion to vacate a judgment. (Pen. Code § 1485.5, subd. (b).)

*Existing law* provides that an innocent person who has served an executed felony sentence in a jail may be entitled to compensation. (Pen. Code § 4900.)

*Existing law* provides that the Attorney General shall have 60 days to respond to a claim for compensation filed with the board, and that extensions of time may be granted for good cause.

*Existing law* provides that the board shall deny a claim for compensation if the board finds by a preponderance of the evidence that the claimant pled guilty with the specific intent to shield another from prosecution in the underlying conviction for which the claimant seeks compensation. (Pen. Code § 4903, subd. (c).)

*This bill* raises the daily compensation rate for an exonoree from \$100 to \$136.98, but not to exceed \$50,000 per year for each full year of incarceration.

### RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past eight years, this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In February of this year the administration reported that as "of February 11, 2015, 112,993 inmates were housed in the State's 34 adult institutions, which amounts to 136.6% of design bed capacity, and 8,828 inmates were housed in out-of-state facilities. This current population is now below the court-ordered reduction to 137.5% of design bed capacity." (Defendants' February 2015 Status Report In Response To February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).

While significant gains have been made in reducing the prison population, the state now must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14). The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

## COMMENTS

### 1. Need for This Bill

According to the author:

Senate Bill 635 is a long overdue effort to help address perhaps the greatest nightmare that can occur in the American justice system: the wrongful conviction and incarceration of an innocent person. This bill would modestly increase the amount an exonerated person receives in restitution compensation, which has not been adjusted for inflation in nearly two decades.

Following release, exonerees are faced with the overwhelming task of reintegrating back into society. While even rightfully convicted parolees receive a nominal amount of cash and counseling that facilitate their re-entry into the public, the fully exonerated are given very limited resources.

In 2000, the Legislature passed AB 1799 (Baugh) with overwhelming support. The bill increased potential compensation for wrongful incarceration from a maximum of \$10,000 to a sum of \$100 per day spent incarcerated. That level of compensation remains unchanged 15 years later.

As a former chairman of the Board of Prison Terms, I have seen many people who deserve to spend the rest of their lives behind bars because of their vicious crimes against society. However, in cases where an innocent person has been wrongly incarcerated, we have a responsibility to acknowledge that our system is not perfect and they deserve compensation to get their lives back in order.

SB 635 increases the amount of compensation that an exoneree can receive following the finding of his or her factual innocence. Recompense would be \$136.98 per day spent incarcerated. According to the Bureau of Labor Statistics, this increase corresponds to inflation.

## **2. Author's Proposed Amendment to Include Jail Custody Pending Trial and Sentencing in the Calculation of an Exonorees Compensation.**

The author has informed committee staff of his intention to amend the bill to *“include any time spent in custody, including in county jail, that is considered to be part of the term of incarceration”* in the calculation of an exonoree's compensation. When a person is charged with a serious crime, bail is typically set in a high amount. If the person cannot afford bail, he or she remains in jail through the trial process. At the time of sentencing, the jail custody time attributable to the case for which the defendant is being sentenced is essentially made part of the person's sentence.

The time an innocent person spends in custody during the trial process is clearly a time of extreme anxiety, as he or she faces a long prison term for a crime he or she did not commit. The person would not typically be involved in any programs and would often be transported from his or her cell to court and back. Arguably, whatever harm is suffered by a person who is wrongly imprisoned extends to the time in jail custody prior to sentencing.

SHOULD THE AUTHOR'S PROPOSED AMENDMENT TO INCLUDE JAIL CUSTODY TIME ATTRIBUTABLE TO THE CHARGES FOR WHICH AN EXONOREE WAS WRONGLY IMPRISONED BE INCLUDED IN THE CALCULATION OF THE EXONOREE'S COMPENSATION?

## **3. Statutory Compensation for a “Pecuniary Injury” suffered by an Exonoree and the Experiences of Exonorees after Release.**

Existing law states that an innocent person who has been wrongly imprisoned is entitled to compensation for his or her "pecuniary injury." The term "pecuniary injury" appears to be an unfortunate and unsound description of the unique harm suffered by innocent persons who are wrongly imprisoned. Pecuniary injury would best be applied to a commercial dispute or a tort for negligence that results in loss of income or financial position. Strict application of the term would allow little or no compensation to a person who was initially imprisoned at a young age - before he or she had an opportunity to develop earning power - and then held for decades.<sup>1</sup> A person who served substantially less time in prison, but who lost income from an established career, could receive much greater compensation. Further, if compensation is measured by pecuniary injury, imprisonment of a person with a high income should require the state to pay substantially more than the current limit of \$100 per day of imprisonment.

Perhaps the only comparable harm to that suffered by a person who was unjustly imprisoned is that experienced by somebody who was kidnapped and held against her or his will for many years. A kidnapped person might have been subject to physical or sexual abuse not experienced by an exonoree. However, an exonoree experienced years of being considered - perhaps even by loved ones - as a perpetrator of a heinous crime.

An exonerated person is released into a society that is very unlike the society they left when he or she was initially imprisoned. They must learn to provide the requirements of daily living after being held in a rigid, institutional structure where they occupied the lowest level.

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<sup>1</sup> In a recent case, an exonoree was denied compensation because he had been homeless and unemployed at the time of his arrest and conviction. Thus, the board concluded, he suffered no pecuniary injury.

An article by Ariel Levy about exonorees in the April 13, 2015 issue of the New Yorker profiles a number of exonorees. The title of the article – *The Price of a Life* – illustrates the difficulty of adequately or accurately describing the harm suffered by an innocent person who served a lengthy prison term.<sup>2</sup> The histories and struggles of the exonorees are often remarkably similar. Most cases involved law enforcement investigations in which the detectives and officers concluded that the eventual exonoree was guilty and built a case to match that conclusion. In many cases, heinous serial crimes had gone unsolved and pressure to solve the crimes built in the community. The most disturbing cases involved confessions that were secured by particularly abusive interrogation, or where it appears that evidence was manufactured or planted to conform the evidence to the assumptions of investigators.

Virtually all the exonorees profiled in the article suffered from post-traumatic-stress-disorder (PTSD). They often developed an overwhelming sense of helplessness while imprisoned. Upon release, they typically had no marketable job skills and few or no resources. They had to depend on others for the basic necessities of life. As noted by the author, exonorees are not eligible for the services provided to parolees – housing, job placement and drug treatment, for example. Many exonorees have never used a computer, let alone the Internet. One exonoree was extremely puzzled about why “everyone was walking around holding their heads like they had an earache.” He knew nothing about cell phones.

#### **4. Compensation for Exonorees is not Consistent across the United States**

Statutory compensation for exonorees varies widely. The New Yorker article reported that Missouri gives exonorees \$50 per day of incarceration. Wisconsin pays no more than \$25,000. There are caps of \$500,000 in Massachusetts, \$300,000 in Maine and \$2 million in Florida. Compensation in a lawsuit for violation of civil rights is typically much higher than statutory payments, but cities, counties and states often fight the suits and appeal judgments, delaying payment for many years. Prosecutors and government officials may continue to claim that exonoree is guilty, even after innocence is conclusively established.

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<sup>2</sup> <http://www.newyorker.com/magazine/2015/04/13/the-price-of-a-life>