

Testimony of David R. Cameron

**Judiciary Committee Public Hearing
March 21, 2016**

Raised S.B. No. 460

An Act Concerning Compensation for Wrongful Incarceration

I am a professor of political science at Yale and a resident of Madison. I have a long-standing interest in issues related to criminal justice, have testified before this committee on several occasions in support of legislation designed to reduce the likelihood of wrongful convictions, and have served since 2011 as a member of the state's Eyewitness Identification Task Force. The views expressed here are mine and do not represent those of Yale or the task force.

I wish to register my support for Senate Bill No. 460, which would amend Section 54-102uu of the General Statutes in order to clarify the criteria for eligibility for compensation for wrongful incarceration and simplify and expedite the process by which the amount of such compensation is determined. While supporting the purpose of the bill, I wish to suggest several modifications I believe would improve the proposed legislation.

Eligibility:

Section 54-102uu(a) currently declares that a person is eligible to receive compensation for wrongful incarceration if the person was convicted of one or more crimes, of which the person was innocent, was sentenced and served part or all of the sentence, and the conviction was vacated or reversed and the complaint or information dismissed on grounds of innocence or on a ground consistent with innocence.

As you know, in January the Claims Commissioner awarded four men \$4.2 million each for damages resulting from their wrongful incarceration for a 1996 murder in New Haven. The men were convicted in three separate trials and given sentences ranging from 75 to 100 years. They were convicted largely on the basis of identifications by two men who were wounded in the shooting. In 2008, one of the four men appealed his conviction, claiming the state deprived him of a fair trial by failing to correct false testimony provided by one of the witnesses. The habeas judge rejected his appeal, concluding the state's failure to correct the false testimony was not material to the jury's decision. The man appealed and in 2011 the Appellate Court concluded there was a reasonable likelihood the false testimony could have affected the jury and ordered a new trial. In 2013, the Supreme Court affirmed the Appellate Court's decision. Soon thereafter, the state announced it would not retry the men and the charges against the four were dismissed.

It was not surprising the state decided not to retry the men. There was no physical or forensic evidence in the case other than a yellow jacket one of the men was said to have worn during the shooting and one of the men was wearing when he was arrested. The witness who

gave false testimony was killed in a shooting in 2008 and the other witness not only changed his identification of the shooters but gave highly inconsistent and contradictory testimony at the trials and by 2013 had been convicted several times on Federal drug charges. With one eyewitness dead, the other a convicted drug dealer whose testimony was inconsistent and contradictory, and no physical or forensic evidence linking the men to the crime, the state had little choice but to nolle the charges.

The men are, of course, innocent in the legal sense that, once the convictions were vacated, their right to be presumed innocent was reinstated. But they have not been proven to be actually innocent of the crime for which they were convicted because of clear and convincing evidence implicating one or more others in the shooting. For that reason, many observers believed they were not eligible for compensation. As far as I know, investigators have uncovered no evidence pointing to one or more others as the shooters, yet the Claims Commissioner concluded the men were innocent of the crime and the complaint was dismissed on a ground consistent with innocence, hence eligible for compensation for wrongful incarceration.

S.B. No. 460 stipulates that, in order to qualify for compensation, a person must be innocent of the crime and must, if the conviction is vacated or reversed and the complaint or information is dismissed either on grounds of innocence or a ground consistent with innocence, prove his actual innocence to the Claims Commissioner in a hearing unless the conviction was vacated or reversed and the complaint or information was dismissed on a ground citing negligence or misconduct by an officer, agent, employee or official of the state or any political subdivision of the state that contributed to the person's arrest, prosecution, conviction or incarceration without the court finding actual innocence providing the decision is final. But if the conviction was vacated and the complaint dismissed on a ground citing negligence or misconduct of an official without a court finding actual innocence and the person failed to prove actual innocence, paragraph (d)(3) stipulates that the award will be reduced by 50 per cent.

There are, I believe, at least three problems with these criteria. First, the proposed criteria for eligibility retain the current requirement that the person must be innocent of the crime. One can easily imagine a situation in which, many years after the crime in question, the state might, after a conviction had been vacated, ask to have the complaint dismissed not on grounds of innocence or a ground consistent with innocence but because it had concluded it could not prove guilt beyond a reasonable doubt – perhaps because, as in the case described above, the conviction rested largely on the testimony of an eyewitness who was no longer available. Should the lack of availability of a key eyewitness for a new trial deprive a person who, after his conviction had been vacated, enjoys the presumption of innocence of compensation for his years of incarceration?

A second problem involves the requirement that, if the complaint is dismissed either on grounds of innocence or a ground consistent with innocence, the person must prove his actual innocence to the Claims Commissioner. Someone who has been incarcerated for years, perhaps decades, is highly unlikely to be able to prove his actual innocence, especially if doing so would require access to police reports and forensic evidence and perhaps an investigation in order to track down the person or persons who committed the crime. If a complaint is dismissed on

grounds of innocence or a ground consistent with innocence, should it not be the responsibility of the state, rather than the individual whose conviction has been vacated, to present clear and convincing evidence of the person's actual innocence to the Claims Commissioner?

A third problem involves the provision that, in the event the conviction was vacated and the complaint dismissed on a ground citing negligence or misconduct of an official, unless a court finds actual innocence and the person proves actual innocence to the Claims Commissioner the award will be reduced by 50 per cent. Is it fair that, in order for a person who was convicted and incarcerated because of the negligence or misconduct of those involved in the investigation and/or prosecution to receive full compensation, a court must find actual innocence and the person must prove actual innocence to the Claims Commissioner?

Determination of Compensation:

Over the past year, it became apparent that a large and growing backlog of claims had accumulated in the Claims Commissioner's office. One consequence brought to light last year by the office of the Attorney General was the failure to decide a number of claims in a sufficiently timely manner to avoid the filing of several lawsuits by claimants against the state. One example of the extent to which claims were being delayed was the announcement last month that Miguel Roman, who was wrongfully convicted of the murder of Carmen Lopez, had been awarded \$6 million. What was most notable about the award was not the amount but the fact that it occurred more than seven years after Roman was released from prison in December 2008, after conclusive DNA evidence that someone else had killed Carmen.

Those, such as the Innocence Project, who worry about compensation for those who have been wrongfully incarcerated emphasize the need to make the award expeditiously and to accompany it with provisions for health care, social services, job training and counseling. Both in terms of expediting the process by which compensation is awarded and providing assistance for health care, housing, social services and other pressing needs, the state's performance has been deficient.

While many attributed the delays to the Claims Commissioner, one of the contributing factors may have been the complicated process by which, according to Section 54-102uu(c), awards are determined. Persons seeking compensation are required to present evidence of the damages which can include, but are not limited to, claims for loss of liberty and enjoyment of life, loss of earnings, loss of earning capacity, loss of familial relationships, loss of reputation, physical pain and suffering, mental pain and suffering, attorney's fees and other expenses. It's no wonder it took Roman, who submitted his claim last September, almost seven years to prepare his claim.

S.B. 460 replaces some of the criteria in paragraph (c) with new ones such as the person's age, income, vocational training, and level of education at the time of conviction, the severity of the crime for which the person was convicted, whether the person spent time on death row, etc. But importantly, paragraph (d)(2) stipulates that the Claims Commissioner will award an amount based on the median state income of each year the person was incarcerated, adjusted for inflation, with a proviso that the award may be increased or decreased by 25 per cent based

on the factors presented in paragraph (c). The state median income, which is established by the U.S. Department of Health and Human Services and is used to determine income eligibility for various federal, state and local programs, was \$55,220 for a family of one and \$72,211 for a family of two last year. In 2014, the median household income was \$70,000 and the median family income was \$88,800.

A perusal of the compensation for wrongful incarceration in the 29 other states that provide such compensation indicates that most of them make use of much less complicated system than Connecticut, typically providing a fixed amount per year of incarceration, occasionally with a maximum cap. The use of the state median income as a baseline for determining the award represents an improvement, largely because it would enable the Claims Commissioner to make an award much more expeditiously. The process could, however, be expedited even more if the six factors in paragraph (c) of S.B. 460 were eliminated and the proposed legislation simply provided for a specific amount in the range of the figures mentioned above for each year of incarceration.