INNOCENCE PROJECT
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Before the Connecticut General Assembly Judiciary Committee
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RE: S.B. 460

On behalf of the Innocence Project, thank you for the opportunity to submit testimony before the Connecticut Judiciary Committee. The Innocence Project is a national litigation and public policy organization dedicated to exonerating wrongfully convicted individuals through DNA testing and reforming the criminal justice system to reduce the likelihood of wrongful convictions.

Since its U.S. introduction, forensic DNA testing has proven the innocence of 337 people who had been wrongly convicted of serious crimes. The Innocence Project regards each DNA exoneration as an opportunity to review where the system fell short and identify factually supported policies and procedures to minimize the possibility that such errors will impair justice again in the future. We also regard it as a time to consider the reentry needs and appropriate compensation due to the victims of those errors who, innocent of the crime accused, were nonetheless stripped of their lives and liberty and forced to endure the misery of prison. Not only have DNA exonerations led to a growing public awareness of the possibility of wrongful conviction, but media accounts accompanying these exonerations have brought into stark relief those issues facing individuals who are attempting to reenter society following protracted incarceration.

This testimony will describe some of the impacts of incarceration on the wrongfully convicted, explain some of their extraordinary needs upon release, and voice our opposition to S.B. 460, which would restrict access to compensation to the wrongfully convicted who desperately need it, bar access to civil litigation, and not resolve concerns of lawmakers. This testimony will also recommend alternative approaches to Connecticut's compensation framework to address lawmakers' concerns.

Impact of Incarceration on the Wrongfully Convicted

Individuals who reenter society after lengthy prison sentences suffer from significant emotional, physical, and economic needs, and thus require as much support as they can get. According to a report by the Re-entry Policy Council, a bipartisan group comprised of leading elected officials, policymakers and practitioners working in state and local governments, barriers to successful reentry are profound. "Research shows that when people who are released from prison or jail return to the community, their job prospects are generally dim, their chances of finding their own place to live are bleak, and their health is typically poor."[1] Indeed, the National Institute of Justice – the research arm of the Department of Justice – has found that individuals reentering the free world frequently face a lack of adequate education and job skills, limited housing options, substance abuse issues, and mental health issues.[2]

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[1] *Report of the Re-Entry Policy Council: Charting the Safe and Successful Return of Prisoners to the Community.* Council of State Governments. Reentry Policy Council. New York: Council of State Governments. January 2005.

[2] "Offender Reentry," National Institute of Justice, available at http://www.nij.gov/topics/corrections/reentry/pages/welcome.aspx (last visited Dec. 10, 2015).

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Scholarship recognizes the well-established emotional and psychological harm wrought by incarceration. Institutionalization reaps profound psychological consequences for the incarcerated, from diminished decision-making capabilities to overwhelming distrust of others to psychological distancing. Prison culture demands the rejection of any behavior that might reveal any sort of emotional weakness or intimacy. As a result, the "emotional flatness" that an individual might have adopted in prison in the service of self-protection can be devastating to his social relationships upon release.[3] A 2007 New York Times expose tracked the experiences of those wrongfully convicted individuals proven innocent through DNA testing and found that most "have struggled to keep jobs, pay for health care, rebuild family ties and shed the psychological effects of years of questionable or wrongful imprisonment."[4]

Of course, all of these experiences are only compounded by one's knowledge that he has been wrongfully convicted and incarcerated.[5] A 2004 study that examined the psychological effects of wrongful conviction presented a series of clinical findings based on assessments of a sample of wrongfully convicted men. More than 75% of the sample group experienced enduring personality changes, defined as "personality change with characteristics that were not previously seen such as hostile or mistrustful attitude towards the world, social withdrawal, feelings of emptiness or hopelessness, a chronic feeling of threat, and estrangement."[6] Two-thirds of those assessed experienced post-traumatic stress disorder, and 90% evidenced some form of a psychiatric disorder.

As one might expect, nearly all of individuals interviewed experience incredible feelings of bitterness and "strong and unresolved feelings of loss."[7] These feelings of loss may exist because of grief and mourning over loved ones – often parents – who passed during the course of their incarceration. But, additionally, relationships with family members, including children, are often permanently fractured or destroyed.

The average prison stay of individuals exonerated through DNA testing is 14 years. During the course of those years, many of the exonerated missed out on educational and workforce development opportunities. They return to their communities feeling out of step, often unable to meet even basic professional expectations. They are often coping with seriously debilitating insecurities and a persistent feeling of "what might have been" in their professional lives.

In addition to the psychological, emotional, and economic harms, the exonerated typically face serious medical issues upon release. Research shows that the strain and trauma of prison life yields a higher incidence of medical problems for the incarcerated as compared to the general population. For instance, the health of fifty-year-old prisoner has been found, on average, to be similar to that of the average sixty-year-old in the free world.[8] Of course, prison life also increases exposure to communicable and serious diseases, including HIV and Hepatitis B and C, many of which require long-term and comprehensive healthcare upon release. Medical care provided to prisoners is notoriously poor, exacerbating existing conditions and leaving

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[3] Ibid.

[4] Roberts, Janet and Elizabeth Stanton. "A Long Road Back After Exoneration, and Justice is Slow to Make Amends." New York Times, November 25, 2007.

[5] *See* Scott, Leslie. "It Never, Ever Ends": The Psychological Impact of Wrongful Conviction " American University Criminal Law Brief 5, no. 2 (2010):10-22.

[6] Grounds, A. 2004, Psychological Consequences of Wrongful Conviction and Imprisonment. *Canadian Journal of Criminology and Criminal Justice.* 46(2): 165-183.

[7] Ibid.

[8] Joan Petersilia, *When Prisoners Return to Communities: Political, Economic, and Social Consequences, 65 Fed. Probation 3, 5 (2001).*

others untreated. Prison rape is also prevalent, with some experts estimating that more than 40% of the prison population has been victimized.[9] As such, the medical and mental health problems facings individuals upon release are enormous. Correspondingly, the expenses associated with treatment for such mental and physical health issues, finding suitable housing, and providing for basic sustenance quickly add up.

The costs associated with reentering society are extremely onerous. This is particularly true for the wrongly convicted, who, as described above, are often indigent and are experiencing a unique trauma. Tragically, they have paid another's significant debt to society. While it is impossible to give back an innocent person the years he or she lost, it is crucial that we provide a path to try to make them as whole as possible, so that they can develop into the members of society they were intending to become.

Rethinking Connecticut's Framework for Compensating the Wrongfully Convicted Requires Consultation with Key Stakeholders

The Innocence Project welcomes an examination into the policies and structures that determine how an innocent individual who has been wrongly incarcerated may be properly compensated by the state. However, rather than rushing to file hasty legislation, the state owes the wrongfully convicted – who have suffered one of the greatest harms imaginable – serious consideration into how to provide compassionate assistance to help them start their lives and reintegrate into mainstream society. To do so adequately requires participation from key stakeholders from all corners of the criminal justice system, including defense organizations, civil litigators, social workers, all branches of government, and exonerees themselves.

S.B. 460 was introduced on Wednesday March 16th and set for hearing before the Judiciary Committee on Monday March 21st. To our knowledge, neither the exonerees nor any of the advocates, organizations or stakeholders that routinely work with exonerees were consulted in developing this bill. There has not been sufficient time for these entities to convene to properly consider the breadth and scope of exonerees' needs or the best ways to provide equitable, reasonable compensation that is in the interest of justice. S.B. 460, however, promises - on its face - to provide drastically lower compensation to the actually innocent and we cannot support it in its present form. We urge the Judiciary Committee to table the current proposal until the relevant people and organizations have had ample opportunity to provide input. Of course, the Innocence Project and other partners stand ready to work with lawmakers develop workable solutions to the current compensation framework.

S.B. 460 Does Not Provide Sufficient Compensation for the Wrongfully Convicted and Does Not Address Lawmaker Concerns

S.B. 460 significantly restricts exoneree compensation by keying it to the "median state income of each year such person was incarcerated." It is unclear from the face of the bill whether this refers to the median household income (which is currently about $65,000) or the median per capita income (which is currently about $39,000). As explained above, those who have experienced lengthy incarcerations, particularly the innocent, have extraordinary needs upon release. The totality of the harm they have experienced is impossible to quantify. A compensation scheme that is based solely on the median income might provide some restitution for wages that could have been earned, however, it does not take into consideration either all

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[9] Christine A. Saum et al., *Sex in Prison: Exploring the Myths and Realities,* 75 PRISON *i.* 413, 414 (1995).

that was lost by an exonerated person and, by extension, what will never be recouped, or all of the other damages and costs an exoneree must endure, some of which are detailed above. While the bill allows the Claims Commissioner to "increase or decrease the award amount by twenty-five percent," an increase of that amount would still provide woefully insufficient compensation to exonerees.

Across the country, states are revisiting their compensation statutes to *increase* the amount of compensation provided to innocent people who are wrongfully incarcerated. They are increasing the amount of monetary compensation they provide, plus adding provisions for immediate access to social services, education, healthcare, and other needs. S.B. 460 would be unwisely ignoring national trends by reducing and strictly limiting the amount of monetary compensation an innocent person could receive, particularly when compared to what the state has provided for innocent exonerees in the past.

Indeed, all of us want to help those who are innocent. Nobly, the state intends to provide compassionate assistance to the innocent while ensuring that the guilty do not benefit from the compensation framework. However, S.B. 460 would fail in that mission in that it would deny the innocent with the assistance that was contemplated when the original compensation law was passed.. Under this bill, the innocent will suffer, while those who might be guilty but are released because of negligence or misconduct will receive compensation. Additionally, the bill uses two different standards – "actual innocence" and "grounds consistent with innocence" – to determine eligibility for compensation. This redefinition of eligibility is confusing and redundant, and provides little guidance as to what one must present in order to be eligible. The bill would drastically reduce the awards given to the state deems "actually innocent," and would provide compensation to those who cannot meet the onerous double standard of "actual innocence" and "grounds consistent with innocence," but have a claim of negligence or misconduct.

Additionally, the bill would bar claimants who receive compensation from seeking additional damages through civil litigation. The current law explicitly provides that claimants are not prohibited from filing civil lawsuits against the state. But, S.B. 460 removes that provision and instead provides an outright bar on any claims against the state. Forcing individuals to waive their right to file federal civil rights claims is in itself a potential constitutional violation. If statutory compensation is insufficient and there are claims of misconduct or negligence, individuals have a right to seek damages for that misconduct to determine if it led to denial of constitutional rights. Prohibiting access to the courts would lead to protracted litigation on the constitutionality issue, and would lead to a flood of litigation, as those with misconduct claims would surely opt to file civil rights lawsuits rather than accept meager sums from the Claims Commissioner and waive their rights to sue.

Recommendation: Provide Legislative Review and Offset Litigation Damages

One of the main recent concerns of lawmakers is that the legislature has no say in the amount of compensation awarded under the current law. While lawmakers have input in other sorts of claims granted by the Claims Commissioner, they are left out of the process when it comes to wrongful convictions. Instead of restructuring the language around who is innocent and drastically lowering the amount of compensation given to innocent exonerees, lawmakers should consider a simpler amendment that would create an opportunity for legislative review. Such an amendment could read:

> (f) After the Claims Commissioner determines an award amount for a claimant, the General Assembly Judiciary Committee shall have 30 days from the date of the award decision to review the decision. If the Judiciary Committee decides that the awarded amount is not in

the interest of justice, it may adjust the amount.

This would give the committee sufficient time and opportunity to review awards and give them the authority to adjust awards.

Additionally, rather than barring litigation, which as noted above, is likely unconstitutional, lawmakers should consider an offset provision to prevent so-called "double recovery." Under such a provision, on the rare occasion that a litigant receives a large sum of damages on a civil rights claim, such damages would be offset by the amount of compensation received under the compensation statute. Such a provision could read:

> ~~(g)~~ (h) Nothing in this section shall be construed to prevent such a person from pursuing any other action or remedy at law or in equity that such person may have against the state and any political subdivision of the state and any officer, agent, employee or official thereof arising out of such wrongful conviction and incarceration. Any damages collected by such action shall be lessened by any amount of compensation awarded by the Claims Commissioner pursuant to this Act.

This would ensure that individuals will not be recovering twice, as the damages received from litigation will be beyond any compensation received under the statute.

In the alternative, we urge lawmakers to convene a task force or working group of experts and interested parties to study relevant questions facing the state and issue recommendations to all branches of government on the issue of compensation for the wrongfully convicted. Some issues to be studied shall include:

- The proper office/body to determine compensation amounts for exonerees who are actually innocent, and whether having one Claims Commissioner is sufficient or advisable.
- The process by which one submits a claim for compensation, and the standards by which such claims are evaluated.
- Whether rights to appeal should exist for the State and the petitioner.
- Ensuring that only the innocent receive compensation.
- Grounds for eligibility for compensation.
- Definition of "grounds consistent with innocence" that should be considered when evaluating claims for compensation.
- Ensuring appropriate monetary compensation.
- The role that any of the three branches of government should play in evaluating such claims.
- Additional social services, including transitional services the state should provide to exonerees.

This working group would allow for thoughtful discussion about the needs of exonerees, the real limits of the state in meeting all of those needs, and the roles of the different branches of government in providing some sense of justice for the wrongfully convicted and incarcerated. It would be tasked with issuing recommendations for workable legislative solutions addressing exoneree needs and lawmaker concerns.

Conclusion

Stakeholders from all corners of the criminal justice system – from advocates to police to prosecutors – agree that the wrongly convicted deserve to be compensated for their lost years. The victims of criminal justice system error deserve strong support from the government that harmed them – however inadvertently – to return them to where they could have been in life but for their wrongful conviction, and to compensate them for the horror they endured. The Innocence Project urges the Judiciary Committee to instead consider the amendments described in this submission, assuming they address the concerns raised by the proponents of S.B. 460, or instead table S.B. 460 and consult with relevant entities, organizations and individuals to develop a solution that would meet both the needs of exonerated and the state.

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