

## Wrongful Incarceration Compensation

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### Issue

Summarize the wrongful incarceration compensation statutes in Connecticut and other states.

### Summary

Including Connecticut, 32 states and the District of Columbia (DC) have laws that provide monetary or non-monetary compensation to people wrongfully incarcerated (exonerees). In most of these states, exonerees must receive reintegration services, such as counseling, healthcare, employment training, and educational aid. (Montana provides only educational aid.) Also, many states provide compensation for reasonable attorney's fees and litigation costs. This report summarizes the monetary compensation provisions that establish how award amounts are determined and paid out.

In the states with exoneree compensation laws, the statutorily prescribed method for determining the amount of an award generally falls into one of three broad categories. Under these laws, the amount of the award is:

1. indexed to a median, average, or per capita income (three states, including Connecticut);
2. set at the discretion of a certifying entity (e.g., claims commissioner, judge, or board), with or without limits (DC and 14 states, including New York and Massachusetts); or
3. a specified dollar amount per year or per day of incarceration (14 states, including Texas and California).

Some state laws also specify the payout method (e.g., lump sum or installment payments) and the duration of the payout (e.g., 10-year annuity or until paid in full or death).

The 18 states that have no exoneree compensation statute are Alaska, Arizona, Arkansas, Delaware, Georgia, Idaho, Indiana, Kansas, Kentucky, Nevada, New Mexico, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, and Wyoming.

## **Determining Monetary Compensation Amount**

### ***Amount Indexed to Median, Average, or Per Capita Income***

Three states, Connecticut, Utah, and Virginia have laws that fall under this category.

*Connecticut.* Connecticut law requires the claims commissioner to award a claimant, for each year of incarceration, an amount equal to or up to twice the median household income for the state, as determined by the U. S. Department of Housing and Urban Development, adjusted for inflation using the consumer price index (CPI) for urban consumers. Under the law, this amount is prorated for any partial year the claimant served in incarceration.

The commissioner has the discretion to decrease or increase the award amount by 25% based on an assessment of relevant factors, including any of the following evidence that the claimant presents at the hearing:

1. his or her age, income, vocational training, and level of education at the time of conviction;
2. loss of familial relationships;
3. damage to reputation;
4. the severity of the crime for which he or she was convicted and whether he or she was under a death sentence;
5. whether he or she was required to register as a sex offender and the length of time registered; and
6. other damages arising from or related to the arrest, prosecution, conviction, and incarceration.

The legislature must review a compensation award if the claimant requests a review or the award exceeds \$20,000 ([CGS §§ 54-102uu](#), as amended by [PA 16-127](#)).

*Utah.* In Utah, for each year of incarceration up to 15 years, an exoneree must be awarded the monetary equivalent of the average annual nonagricultural payroll wage as determined by the Department of Workforce Services data at the time of his or her release from prison ([Utah Code § 78B-9-405](#)).

*Virginia.* Under Virginia law, if compensation is approved by the General Assembly, an exoneree must be compensated for each year of incarceration in an amount equal to 90% of the inflation-adjusted Virginia per capita personal income as reported by the U.S. Department of Commerce ([Va. Code § 8.01-195.11](#)).

### ***Amount Set At the Certifying Entity's Discretion***

In at least 14 states and DC, the certifying entity has discretion to determine the amount of an eligible exoneree's monetary award. Some states give broad discretion; others establish award minimums or maximums.

*Broad Discretion.* Three of these states (Maryland, New York, and West Virginia) and DC do not specify a minimum or maximum award amount. Maryland, New York, and West Virginia require fair and reasonable compensation. In DC, the judge has broad discretion ([Md. Code § 10-501](#), [N.Y. Ct. Cl. Act § 8-b](#), [W. Va. Code § 14-2-13a](#), and [D.C. Code § 2-423](#)).

*Set Minimum.* Alabama and Minnesota specify minimum monetary damages, as follows:

1. Alabama - \$50,000 for each year wrongfully incarcerated ([Ala. Code § 29-2-159](#))
2. Minnesota - \$50,000 for each year of wrongful incarceration and \$25,000 for each year on supervised release or as a registered sex offender ([Minn. Stat. § 611.365](#))

*Set Maximum.* Seven states specify maximum award amounts per claim, claimant, conviction, or in total as follows:

1. Maine - \$300,000 per claimant per conviction ([Me. Rev. Stat. tit. 14 § 8242](#))
2. Massachusetts - \$500,000 total ([Mass. Gen. laws ch. 258D § 5](#))
3. Nebraska - \$500,000 per claimant per occurrence ([Neb. Rev. Stat. § 29-4604](#))
4. New Hampshire - \$20,000 per claim ([N.H. Rev. Stat. § 541-B:14](#))
5. Oklahoma - \$175,000 per claim ([Okla. Stat. tit. 51 § 154](#))
6. Tennessee - \$1 million total ([Tenn. Code § 9-8-108](#))
7. Wisconsin - \$25,000 per claimant ([Wis. Stat. § 775.05](#))

*Set Maximum Adjusted for Inflation Based on Years Served.* In Illinois, the specified maximum award amount, which is adjusted annually for any increase in the CPI, is based on the number of years a person served wrongfully, as follows:

1. Up to five years - \$85,350
2. Between five and 14 years - \$170,000
3. More than 14 years - \$199,150 ([705 Ill. Comp. Stat. 505/8](#))

*Set Range (Set Minimum and Maximum).* In Vermont, the court has the discretion to set monetary damage that ranges from a minimum of \$30,000 to a maximum of \$60,000 for each year of wrongful incarceration, plus lost wages ([Vt. Stat. Ann. tit. 13 § 5574](#)).

### ***Specified Dollar Amount per Year or Per Day of Incarceration***

As shown in Table 1, 11 states specify in statute the amount that must be awarded for each year of wrongful incarceration. Colorado, Texas, and Washington also have additional amounts for periods served on death row, on parole, or as a registered sex offender. Florida, Louisiana, Mississippi, and North Carolina set aggregate maximums. Hawaii allows an additional amount in extraordinary circumstances. These laws generally provide for a prorated amount for partial years served.

**Table 1: States with Specified Amount per Year of Incarceration**

<b>State (Citation)</b>	<b>Amount for Each Year Wrongfully Incarcerated</b>
Colorado ( <a href="#">Colo. Rev. Stat. § 13-65-103</a> )	\$70,000 each year wrongfully incarcerated and an additional \$50,000 each year on death row; and \$25,000 each year served on parole, on probation, or as a registered sex offender
Florida ( <a href="#">Fla. Stat. § 961.06</a> )	\$50,000 (up to a maximum of \$2 million)
Hawaii ( <a href="#">Haw. Rev. Stat. § 661B-3</a> )	\$50,000 each year of confinement (plus an additional compensation up to \$100,000 in extraordinary circumstances)
Louisiana ( <a href="#">La. Rev. Stat. § 15:572.8</a> )	\$25,000 (up to a maximum of \$250,000)
Michigan ( <a href="#">Mich. Comp. Laws § 691.1755</a> ) Effective: March 29, 2017	\$50,000 each year served in prison
Mississippi ( <a href="#">Miss. Code § 11-44-7</a> )	\$50,000 (up to a maximum of \$500,000)
New Jersey ( <a href="#">N.J. Stat. § 52:4C-5</a> )	\$50,000 or twice the claimant's income in the year prior to incarceration, whichever is greater
North Carolina ( <a href="#">N.C. Gen. Stat. § 148-84</a> )	\$50,000 (including time in custody; up to a maximum of \$750,000)
Ohio ( <a href="#">Ohio Rev. Code § 2743.48</a> )	\$40,330 or amount as adjusted by the state auditor (plus any directly related lost wages, salary, or other earned income)

Table 1 (continued)

<b>State (Citation)</b>	<b>Amount for Each Year Wrongfully Incarcerated</b>
Texas ( <a href="#">Tex. Civ. Prac. Rem. Code § 103.052</a> )	\$80,000 each year served in prison \$25,000 each year served on parole or as a registered sex offender
Washington ( <a href="#">Wash. Rev. Code § 4.100.060</a> )	\$50,000 each year wrongfully incarcerated (including time spent awaiting trial) and an additional \$50,000 each year on death row; and \$25,000 each year served on parole, community custody, or as a registered sex offender

Three states (California, Iowa, and Missouri) specify in statute the amount that must be awarded for each day the person was wrongfully incarcerated (as shown in Table 2).

Table 2: States with Specified Amount per Day of Incarceration

<b>State (Citation)</b>	<b>Amount for Each Day Wrongfully Incarcerated</b>
California ( <a href="#">Cal. Penal Code § 4904</a> )	\$140 (including time in custody)
Iowa ( <a href="#">Iowa Code § 663A.1</a> )	\$50 (plus lost wages up to \$25,000 per year)
Missouri ( <a href="#">Mo. Rev. Stat. § 650.058</a> )	\$50

## Monetary Compensation Payout

Some states specify the payout method of the exoneree's monetary award and the duration of the payout (see Table 3).

Alabama, Maryland, Massachusetts, Michigan, Texas, and Washington allow lump sum or installment payments. Virginia law allocates a percentage of the award that must be paid in a lump sum and the remainder in installments. Most states that use the installment payment method typically do so until the award is paid in full. In the states that do installment payments through a fixed annuity, the beneficiaries of the annuity receive continued disbursements when the exoneree dies. In Alabama and Texas the exoneree's estate is eligible to receive any remaining compensation after his or her death. In Tennessee, if there is no surviving spouse or minor child the disbursements end when the exoneree dies.

**Table 3: Payout Methods and Duration**

<b>State (Citation)</b>	<b>Payout Method and Duration</b>
Alabama ( <a href="#">Ala. Code § 29-2-160</a> )	Lump sum or installments until paid in full (payment to estate upon death)
Florida ( <a href="#">Fla. Stat. § 961.06</a> )	Installments (10-year annuity) - payments to annuity beneficiaries upon death
Louisiana ( <a href="#">La. Rev. Stat. § 15:572.8</a> )	Installments - \$25,000 per year (annuity with survivors' benefits if the award is more than \$100,000)
Maryland ( <a href="#">Md. Code § 10-501</a> )	Lump sum or installments
Massachusetts ( <a href="#">Mass. Gen. laws ch. 258D § 5</a> )	Lump sum or installments (fixed annuity)
Michigan ( <a href="#">Mich. Comp. Laws § 691.1755</a> ) Effective: March 29, 2017	Lump sum or multiple payments (court's discretion) If multiple payments, then as follows: 20% - lump sum initially 80% - installments (10-year maximum)
Mississippi ( <a href="#">Miss. Code § 11-44-7</a> )	Installments - \$50,000 per year until paid in full (state may purchase annuity)
Missouri ( <a href="#">Mo. Rev. Stat. § 650.058</a> )	Annual installments until paid in full or death (\$36,000 maximum per fiscal year)
New Jersey ( <a href="#">N.J. Stat. § 52:4C-5</a> )	Lump sum or installments (maximum 20-year annuity allowed if it is in the claimant's best interest and the damages exceed \$1 million)
Tennessee ( <a href="#">Tenn. Code § 9-8-108</a> )	Monthly installments based on life expectancy until paid in full or death, at which time payment goes to surviving spouse or minor children only
Texas ( <a href="#">Tex. Civ. Prac. Rem. Code §§ 103.052, et. seq. and 103.001</a> )	Lump sum or installments (annuity) (heirs, legal representatives, and estate are entitled to lump-sum disbursement when the exoneree dies or receives a posthumous award)
Virginia ( <a href="#">Va. Code § 8.01-195.11</a> )	20% - lump sum initially 80% - installments (25-year annuity)
Washington ( <a href="#">Wash. Rev. Code § 4.100.060</a> )	Lump sum payment on the claimant's behalf to the Department of Social and Health Services for disbursement of any child support owed by the claimant during incarceration

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