

Fall 2015

Wrongfully Incarcerated and Never Fully Compensated: An Examination of Indiana's Failure to Indemnify Exonerated Inmates

Maryam A. Afshar
Valparaiso University Law School

Follow this and additional works at: <https://scholar.valpo.edu/vulr>



Part of the [Law Commons](#)

Recommended Citation

Maryam A. Afshar, *Wrongfully Incarcerated and Never Fully Compensated: An Examination of Indiana's Failure to Indemnify Exonerated Inmates*, 50 Val. U. L. Rev. 133 (2015).

Available at: <https://scholar.valpo.edu/vulr/vol50/iss1/5>

This Notes is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Valparaiso University Law Review by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.



Notes

WRONGFULLY INCARCERATED AND NEVER FULLY COMPENSATED: AN EXAMINATION OF INDIANA'S FAILURE TO INDEMNIFY EXONERATED INMATES

I. INTRODUCTION

“Not guilty,” two simple words that changed one man’s life forever.¹ David Camm, a former Indiana State Police officer, is overwhelmed with emotions after spending thirteen years wrongfully imprisoned for the murders of his wife and two children.² He is released from prison only to return to an empty house – no wife, no children.³ Loss, anger, loneliness, and pain were his only companions.⁴ Everything Camm worked for to maintain his livelihood, including his commendable reputation, career, and family were destroyed.⁵ From the moment he discovered his mutilated wife and children, through the endless trials and numerous false convictions, and through thirteen years of being wrongfully imprisoned, Camm has suffered unimaginable loss that continues to this day.⁶

¹ This scenario is a true story of a recent Indiana exoneree used to illustrate the issues presented in this Note. See Stephan Johnson, *Exclusive: David Camm Speaks to Local Reporter for First Time*, WDRB (Dec. 18, 2013, 4:28 AM), <http://www.wdrb.com/story/24244525/exclusive-david-camm-speaks-to-local-reporter-for-firsttime> [<http://perma.cc/U79H-MWWF>] (discussing Camm’s initial interview with a reporter upon being released from prison).

² See Richard Schlesinger, *Walking Free*, CBS NEWS (Aug. 2, 2014), <http://www.cbsnews.com/news/david-camm-walking-free/> [<http://perma.cc/U4F7-62Y5>] (detailing Camm’s journey through the numerous trials, thirteen years behind bars, and his life after exoneration).

³ See *id.* (exhibiting Camm’s former interviews where he discussed the horrific murder of his family and the tragic aftermath). Many exonerees do not even have a home to return to upon release from prison. See Meggan Smith, *Have We Abandoned the Innocent? Society’s Debt to the Wrongly Convicted*, 2 AM. U. CRIM. L. BRIEF 3, 3–6 (2007) (providing details of exonerees who are released from prison and forced to rely on their families for financial support and housing).

⁴ See Matt McCutcheon, *Six Months After Acquittal, David Camm Speaks Publicly for the First Time*, WTHR (Apr. 23, 2014), <http://www.wthr.com/story/25323831/2014/04/23/david-camm-gives-first-public-speech-at-indiana-state> [<http://perma.cc/2HT8-F7YW>] (presenting Camm’s post-exoneration experience and the hardships he continues to endure).

⁵ See Johnson, *supra* note 1 (elaborating on Camm’s life after serving thirteen years in prison for a crime he never committed).

⁶ See *id.* (covering Camm’s release from prison and the traumatic effect wrongful incarceration had on his life).

In October 2013, after tirelessly fighting to prove his innocence, Camm was exonerated and subsequently released from prison.⁷ Despite his release, Camm could not cope with the tragedy and injustice inflicted on him and his family.⁸ He told reporters, “You know, those people who say time heals all wounds and those clich[é]s? I don’t think anyone who says that has ever been through anything like this. Because I’m telling you that time doesn’t heal anything.”⁹ As a result of his wrongful incarceration, Camm filed a lawsuit against Floyd County, Indiana and various other

⁷ See Verified Complaint and Jury Demand at 36, *Camm v. Faith*, No. 14-123 (S.D. Ind. Oct. 24, 2014) [hereinafter Verified Complaint] (discussing Camm’s trials). The State of Indiana charged Camm with the murder of his family within three days of discovering them. See *Camm v. State*, 812 N.E.2d 1127, 1129–30 (Ind. Ct. App. 2004) (noting that the murders occurred on September 28, 2000, and Camm was charged on October 1, 2000). After his first trial in 2002, the jury returned a guilty verdict and sentenced Camm to 195 years in prison. *Id.* at 1130. Purported high velocity blood spatter on Camm’s t-shirt and his sexual encounters with numerous women were the main evidence used against him. *Id.* In 2004, the Indiana Court of Appeals reversed the three murder convictions, concluding that Camm was unfairly prejudiced when the State introduced evidence regarding his extramarital affairs. *Id.* at 1142. The court further stated that the jury would likely have found Camm not guilty if the improper evidence was prohibited. *Id.* at 1137. Following the reversal of Camm’s conviction, the State linked the DNA discovered on Camm’s car and on a sweatshirt left at the crime scene to Charles Boney. Schlesinger, *supra* note 2. Boney’s DNA was also discovered underneath Camm’s wife’s fingernails. See *id.* (discussing the type of evidence that ultimately linked Boney to the murders). Camm was charged a second time under the theory that his motive for the murders was to cover up his molestation of his daughter. See *Camm v. State*, 908 N.E.2d 215, 220 (Ind. 2009) (stating that an autopsy report revealed blunt force trauma to the daughter’s external genital region and the State’s expert testimony proposed that the daughter was sexually molested within twenty-four hours of her death). Boney was also charged as a co-conspirator. *Id.* During his second trial, the jury convicted Camm again and sentenced him to a term of life without parole. *Id.* In a separate trial, Boney was convicted of murdering Camm’s family and sentenced to 225 years in prison. *Boney v. State*, 880 N.E.2d 279, 286 (Ind. Ct. App. 2008). Camm then filed an appeal of his second conviction. *Camm*, 908 N.E.2d at 219. In 2009, the Indiana Supreme Court reversed Camm’s conviction, reasoning that the State failed to connect the daughter’s alleged injuries of molestation to Camm. *Id.* at 223, 237. Murder charges against Camm were re-filed and his third trial began in August 2013. Verified Complaint, *supra* note 7, at 36. In 2009, Camm entered a verified petition for appointment of a special prosecutor to remove Keith Henderson as the prosecutor due to a book he was trying to publish about Camm’s trials. *Id.* at 31. Henderson refused to step down, which lengthened Camm’s time in prison for another two years. *Id.* In 2011, the Indiana Supreme Court determined that Henderson had a conflict of interest due to his book regarding Camm’s trials. *Id.* at 31–32.

⁸ See Verified Complaint, *supra* note 7, at 47 (articulating that from the date of his arrest on October 1, 2000, until his ultimate exoneration on October 24, 2013, Camm fought hard to prove his innocence through the courts, while the true killer was free for nearly five years).

⁹ Johnson, *supra* note 1. See Smith, *supra* note 3, at 11 (demonstrating the struggles exonerees encounter when attempting to adjust back into the real world including psychological damage and trouble securing housing and employment).

individuals, seeking compensatory and punitive damages to be determined at trial.¹⁰

False convictions continue to plague the United States' criminal justice system.¹¹ The proliferation of exonerations since 1989, now over 1700, undermines the integrity of the criminal justice system.¹² In 2014, prisons released 125 innocent inmates, making it a record-breaking year for exonerations in the United States.¹³ Upon release, these individuals are

¹⁰ See Verified Complaint, *supra* note 7, at 49–50 (stating that Camm sought damages based on the following: “false detention and false imprisonment, deprivation of liberty, humiliation, mental and emotional distress, violations of his constitutional rights, and personal and physical injuries, including but not limited to pain and suffering, severe mental anguish, emotional distress, loss of family relationships, severe psychological damage, loss of educational opportunity, loss of professional opportunity, loss of income, infliction of physical illness, inadequate medical care, humiliation, indignities and embarrassment, degradation, permanent loss of natural psychological development, and restrictions on all forms of personal freedom including but not limited to diet, sleep, personal contact, educational opportunity, vocational opportunity, athletic opportunity, medical care, privacy, personal fulfillment, sexual activity, family relations, reading, television, movies, travel, enjoyment, and expression” solely because Indiana has not adopted a compensation statute for exonerates).

¹¹ See *About The Registry*, THE NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/About-Us.aspx> [<http://perma.cc/K4S9-BS48>] (presenting the Registry, which was created in 2012 and contains a collection of exonerations in the United States since 1989 to date).

¹² See *id.* (noting that as of January 30, 2016, 1733 individuals were exonerated and the numbers increase almost daily). Since the late 1980s, DNA analysis has assisted in identifying the true perpetrator and releasing innocent individuals. *Unvalidated or Improper Forensic Science*, INNOCENCE PROJECT, <http://www.innocenceproject.org/causes-wrongful-conviction/unvalidated-or-improper-forensic-science> [<http://perma.cc/JR29-ZYLN>] [hereinafter *Improper Forensic Science*]. Currently, all of the states have implemented the Combined DNA Index System (“CODIS”), which stores DNA profiles of convicted felons and matches them to future DNA samples to help solve crimes. *Maryland v. King*, 133 S. Ct. 1958, 1968 (2013). As a result, DNA technology has exonerated 329 innocent individuals in the United States. *The Cases: DNA Exoneree Profiles*, INNOCENCE PROJECT, http://www.innocenceproject.org/cases-false-imprisonment/front-page#c10=published&b_start=0&c4=Exonerated+by+DNA [<http://perma.cc/5ZKV-PH9X>]. The Innocence Project calculated that DNA proved the innocence of twenty death row inmates in twelve different states. *The Innocent and the Death Penalty*, INNOCENCE PROJECT, <http://www.innocenceproject.org/free-innocent/improve-the-law/the-innocent-and-the-death-penalty> [<http://perma.cc/2ZFD-YCH7>]. The DNA exoneree served an average of fourteen years in prison. *Exonerating The Innocent*, INNOCENCE PROJECT, <http://www.innocenceproject.org/free-innocent/exonerating-the-innocent/exonerating-the-innocent> [<http://perma.cc/MQT7-RZJD>]. It is difficult to calculate how many more innocent individuals are imprisoned, but scholars estimate that approximately 5000–10,000 false convictions occur each year in the United States and about 2000–4000 are prison sentences. James R. Acker et al., *Stepping Back – Moving Beyond Immediate Causes: Criminal Justice and Wrongful Convictions in Social Context*, in *EXAMINING WRONGFUL CONVICTIONS: STEPPING BACK, MOVING FORWARD* 3, 3 (Allison D. Redlich et al. eds., 2014).

¹³ See *Exonerations in 2014*, THE NAT'L REGISTRY OF EXONERATIONS 1 (Jan. 27, 2015), http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2014_rep

forced back into society to confront serious difficulties in every aspect of their lives, ranging from financial troubles to lacking access to medical care.¹⁴ Despite the growing number of exonerations, twenty states, including Indiana, currently lack a wrongful incarceration compensation statute.¹⁵ Given that society accepts the inherent possibility of erroneous convictions to maintain public safety, it should also take accountability for indemnifying exonerees when these errors do occur.¹⁶ To ensure that exonerees receive the critical resources needed to successfully reintegrate back into society, the Innocence Project recommends model legislation,

ort.pdf [http://perma.cc/N8ER-77R3] (discussing the number of exonerations in 2014). The next highest number of exonerations recorded was in 2013 and 2012, reporting ninety-one exonerations in both years. *Id.* Since 1973, more than 140 prisoners were released from death row in twenty-six states. *The Case Against the Death Penalty*, AMERICAN CIVIL LIBERTIES UNION (Dec. 11, 2012), <https://www.aclu.org/capital-punishment/case-against-death-penalty> [https://perma.cc/CHN2-N4ZD]. “There are now 154 exonerated death row survivors in the [United States].” *Meet Our Exoneree Members*, WITNESS TO INNOCENCE, <http://www.witnesstoinnocence.org/exonerees.html> [http://perma.cc/LL9P-CWDN]. Conviction Integrity Units (“CIUs”) in district attorneys’ offices have contributed to the increase of exonerations. Ned Resnikoff, *Record Number of Defendants Exonerated in 2014*, AL JAZEERA AM. (Jan. 27, 2015), <http://america.aljazeera.com/articles/2015/1/27/report-criminal-defendants-being-exonerated-in-record-numbers.html> [http://perma.cc/W3S8-EW8V]. CIUs are groups of prosecutors who verify whether past convictions are lawful. *Id.* The first CIU was created in 2008 and now there are fifteen nationwide. *Id.* In 2014, CIU’s assisted in exonerating forty-nine out of 125 exonerees in that year. *Id.* A study released in 2014 reviewed 7482 death sentences from 1973 to 2004 and revealed that 117 (1.6%) individuals in that sample were exonerated. Samuel R. Gross et al., *Rate of False Conviction of Criminal Defendants Who are Sentenced to Death*, 111 PROC. OF THE NAT’L ACAD. OF SCI. OF THE U.S. OF AM. 7230, 7231 (May 20, 2014). Using survival analysis, the study revealed that at least 4.1% (over 200) of death row inmates would have been exonerated if they indefinitely remained under the death sentence, indicating the disturbing reality that many innocent individuals are executed. *Id.* at 7230.

¹⁴ See Evan J. Mandery et al., *Compensation Statutes and Post-Exoneration Offending*, 103 J. CRIM. L. & CRIMINOLOGY 553, 555 (2013) (“People exiting prison need, but often do not have, physical and mental health care, education, food, housing, jobs, and a support network. In the absence of these resources, former prisoners often return to criminal behavior.”). Many of the challenges exonerees face when re-entering society is a result of spending such a long time in prison. *Id.* In fact, the average time innocent individuals spend incarcerated in the United States is approximately twelve and a half years. *Id.*

¹⁵ See *Compensating The Wrongly Convicted*, INNOCENCE PROJECT (June 4, 2015, 10:40 AM), <http://www.innocenceproject.org/free-innocent/improve-the-law/fact-sheets/compensating-the-wrongly-convicted> [http://perma.cc/38CZ-B836] [hereinafter *The Wrongly Convicted*] (presenting the following states that do not have a wrongful incarceration compensation statute: Alaska, Arizona, Arkansas, Delaware, Georgia, Hawaii, Idaho, Indiana, Kansas, Kentucky, Michigan, Nevada, New Mexico, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, and Wyoming).

¹⁶ See Edwin M. Borchard, *State Indemnity for Errors of Criminal Justice*, 52 ANNALS AM. ACAD. POL. & SOC. SCI. 108, 110 (1914) (stating that the wrongfully incarcerated individuals should not be subjected to all the costs of survival once released from prison; instead, the community as a whole should bear the costs).

which provides a practical foundation for Indiana to consider when adopting compensation legislation.¹⁷

This Note examines Indiana's liability for unjust incarcerations.¹⁸ First, Part II provides a background on exonerations, constitutional implications to improper confinement, and different states' approaches to rectifying wrongful incarcerations.¹⁹ Next, Part III analyzes the critical provisions for effective wrongful incarceration compensation legislation in Indiana.²⁰ Then, Part IV proposes a comprehensive compensation statute for erroneous incarcerations that Indiana should adopt.²¹ Finally, Part V concludes by emphasizing the importance of a compensation statute that supplies adequate reparations for the exonerees in Indiana.²²

II. BACKGROUND

When innocent individuals are falsely convicted, the injustice is three-fold – first is to the individual; next is to the victim of the crime; and finally

¹⁷ See generally *Model Legislation: An Act Concerning Claims for Wrongful Conviction and Imprisonment*, INNOCENCE PROJECT 1-9, <http://www.innocenceproject.org/free-innocent/improve-the-law/CompensationModelBill2015.pdf> [<http://perma.cc/6HGT-46RN>] [hereinafter *Model Legislation*] (proposing a model wrongful conviction and imprisonment compensation statute for states to consider). Innocence projects are organizations dedicated to exonerating wrongfully convicted individuals. See *About Us*, INNOCENCE PROJECT, <http://www.innocenceproject.org/about-innocence-project> [<http://perma.cc/T6CR-LWGS>] (discussing the exonerees who received the assistance of the Innocence Project). Innocence projects are also involved in post-exoneration assistance, education, outreach, lobbying, and policy reform. Steven A. Krieger, *Why Our Justice System Convicts Innocent People and the Challenges Faced by Innocence Projects Trying to Exonerate Them*, 14 NEW CRIM. L. REV. 333, 369 (2011).

¹⁸ See Elizabeth Griffiths & Michael Leo Owens, *Remedying Wrongful Convictions: Societal Obligation to Exonerees*, in EXAMINING WRONGFUL CONVICTIONS: STEPPING BACK, MOVING FORWARD 267, 278-79 (Allison D. Redlich et al. eds., 2014) (urging society to take on the obligation of providing exonerees with the support they need to reestablish their lives). The authors argue that “[a]pologies, social welfare benefits, employment, education, expungement of records, reforms of criminal justice procedures, and monetary compensation . . . would demonstrate substantial effort to fulfill societal obligations for their loss of liberty and opportunities due to wrongful conviction[.]” *Id.* at 268.

¹⁹ See *infra* Part II (explaining the exoneration process, methods of compensation, constitutional significance, Indiana exonerees, and compensation provisions adopted by other states).

²⁰ See *infra* Part III (examining provisions that address and provide the type of support exonerees need to effectively reintegrate back into society).

²¹ See *infra* Part IV (proposing an extensive compensation statute, which includes the essential tools innocent ex-prisoners need to transition back into society after experiencing the tragedy of being wrongfully incarcerated).

²² See *infra* Part V (providing an overview of the issues discussed throughout this Note and emphasizing the importance of implementing a compensation statute that provides the type of support exonerees need to regain normalcy).

138 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 50]

to society because a criminal remains embedded in the community.²³ Despite their established innocence, the challenges exonerees face when transitioning back into society are profound and their injuries are exacerbated when states fail to remedy them.²⁴ Although exonerees can never be made whole again, states have an obligation to restore their lives to the extent possible.²⁵ In an effort to compensate innocent individuals who suffer from the adversity of the criminal justice system, thirty-one states and the federal government have adopted varying forms of wrongful incarceration compensation legislation.²⁶

²³ See ABA CRIM. JUST. SEC. AD HOC INNOCENCE COMM., *ACHIEVING JUSTICE: FREEING THE INNOCENT, CONVICTING THE GUILTY* xxix (Paul Giannelli et al. eds., 2006) [hereinafter *ACHIEVING JUSTICE*] (creating policies to rectify the causes of false convictions); *Consequences of "Errors of Justice," INNOCENT IN PRISON PROJECT INT'L*, <http://www.iippi.org> [<https://perma.cc/MR6L-529S>] [hereinafter *PRISON PROJECT*] (discussing some of the consequences of wrongful imprisonment including: heightened crime because the real criminal is free, "precious lifetime is literally killed," mental state is affected, life in prison is dangerous, thus innocent individuals do not only suffer from wrongful imprisonment, but also from injuries and diseases as well). Marriages, families, and friends fall apart, children suffer from not having their parent(s) in their lives. *PRISON PROJECT*, *supra* note 23. Exonerees are more likely to face disenfranchisement and employment discrimination. *Id.*

²⁴ See *The Wrongly Convicted*, *supra* note 15 (detailing different ways that states can compensate exonerees which includes either a fixed sum or a range of recovery for each year spent in prison, access to services including "housing, food, psychological counseling, medical and dental care, job skills training, [and] education").

²⁵ See *id.* (discussing flaws in existing legislation, such as compensation via private bills that require exonerees to endure costly and demanding political campaigns and threatens to deny compensation to exonerees who deserve it, prohibiting compensation to those who entered into a guilty plea or false confession, denying additional remedy to individuals who can prove patent and intentional civil rights violations that resulted in their false convictions, and denying compensation to individuals who have an unrelated felony conviction on their record). Every life matters and a state should not wrongfully incarcerate an innocent individual and then fail to take accountability for their actions. See *The Wrongly Convicted*, *supra* note 15 ("Despite their proven innocence, the difficulty of reentering society is profound for the wrongfully convicted; the failure to compensate them adds insult to injury. Society has an obligation to promptly provide compassionate assistance to the wrongfully convicted[.]").

²⁶ See *81% of Exonerated People Who Have Been Compensated Under State Laws Received Less Than the Federal Standard*, *New Innocence Project Report Shows*, INNOCENCE PROJECT (Dec. 2, 2009, 12:00 AM), http://www.innocenceproject.org/Content/81_of_Exonerated_People_Who_Have_Been_Compensated_Under_State_Laws_Received_Less_Than_the_Federal_Standard_New_Innocence_Project_Report_Shows.php# [<http://perma.cc/8GPV-ANKH>] [hereinafter *Innocence Project Report*] (listing the following states that have adopted a compensation statute: Alabama, California, Connecticut, District of Columbia, Florida, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, and Wisconsin. See also *Montana*, INNOCENCE PROJECT <http://www.innocenceproject.org/how-is-your-state-doing/MT> [<http://perma.cc/L3HG-LZKF>] (presenting Montana's compensation statute). Since 2013, three more states adopted a wrongful incarceration compensation legislation. See *Colorado*, INNOCENCE

Indiana has yet to address the problem with a satisfactory legislative solution.²⁷ In states that lack statutory compensation, exonerees may pursue either civil litigation or private legislation.²⁸ In order to fully understand the need for a compensation statute in Indiana, it is necessary to acknowledge the underlying issues of false convictions and the unlikelihood of success for exonerees who seek reparations through the current system.²⁹

Part II.A provides a background on exonerations and the options presently available to exonerees seeking compensation.³⁰ Next, Part II.B illustrates the consequences of wrongful incarceration on exonerees.³¹ Part II.C explains the constitutional implications accompanying false convictions.³² Then, Part II.D describes specific exonerations in Indiana and support services offered by the State that can be extended to innocent ex-prisoners.³³ Finally, Part II.E presents a variation of compensation provisions offered throughout the states.³⁴

PROJECT, <http://www.innocenceproject.org/how-is-your-state-doing/CO> [<https://perma.cc/2EHH-VNY8>] (presenting Colorado's compensation statute, which became effective in 2013); *Minnesota*, INNOCENCE PROJECT, <http://www.innocenceproject.org/how-is-your-state-doing/MN> [<https://perma.cc/XZA6-SLTZ>] (presenting Minnesota's compensation statute, which became effective in 2014); *Washington*, INNOCENCE PROJECT <http://www.innocenceproject.org/how-is-your-state-doing/WA> [<http://perma.cc/UG45-6ATP>] (presenting Washington's compensation statute, which became effective in 2013).

²⁷ See *Indiana*, INNOCENCE PROJECT, <http://www.innocenceproject.org/how-is-your-state-doing/IN> [<http://perma.cc/FUX9-6EVBJ>] (revealing that Indiana has not ratified a compensation statute).

²⁸ See *infra* Part II.A (explaining the different methods of exoneration and the limited alternatives for exonerees seeking compensation in states that fail to adopt a compensation statute). One of the alternate avenues for redress is civil litigation, which involves common law tort claims or civil rights claims under 42 U.S.C. § 1983. Griffiths & Owens, *supra* note 18, at 269. Another option for exonerees seeking indemnification, if the state allows it, would be private litigation, where the exoneree lobbies the legislature to pass a private compensation bill granting remuneration. *Id.*

²⁹ See *infra* Part II.A (providing a foundation of the issues related to exonerations, including common causes of false convictions, the exoneration process, and the general method of compensation offered to exonerees).

³⁰ See *infra* Part II.A (defining key terms and presenting the types of evidence used in trials that often lead to wrongful convictions as explained by The National Registry of Exonerations, an organization that takes wrongful conviction cases to the courts).

³¹ See *infra* Part II.B (explaining the overall effects of wrongful confinement on innocent individuals even after their release from prison and discussing the critical resources exonerees need to recuperate from the years of injustice they endured).

³² See *infra* Part II.C (presenting current United States' and Indiana's constitutional provisions for individuals charged of a crime and the course of actions offered to individuals when constitutional violations occur).

³³ See *infra* Part II.D (examining wrongful convictions in Indiana and the inadequacies among the awards provided to Indiana exonerees).

³⁴ See *infra* Part II.E (revealing the variety of exoneree compensation offered by other states).

140 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 50

A. Contextual Explanation: Exoneration and Current Methods of Compensation

The criminal justice system recognizes two forms of innocence—factual and legal innocence.³⁵ Factual innocence is the same as actual innocence in that the convicted individual did not truly commit the crime.³⁶ Legal innocence involves a procedural or legal violation that contributed to the false conviction.³⁷ Unjust convictions occur when the courts of law declare innocent individuals guilty of crimes.³⁸ The common causes of false convictions include: perjury or false accusations, official misconduct, eyewitness misidentification, false or misleading forensic evidence, and false confessions.³⁹

³⁵ See Krieger, *supra* note 17, at 367 (discussing the types of innocence and revealing that most innocence projects only accept cases of factual innocence).

³⁶ See *id.* (presenting an example of factual innocence where the individual was in another state at the time the crime was committed). Some states will deny a request for compensation, stipulating that the exoneree needs to prove himself “absolutely innocent.” See Yamiche Alcindor, *Many Wrongfully Convicted are Simply on Their Own*, USA TODAY (May 5, 2014, 12:00 PM), <http://www.wtsp.com/story/news/nation/2014/05/04/wrongfully-convicted-suffer-long-after-release/8480237/> [<http://perma.cc/V4FU-A865>] (providing an example from Wisconsin where an exoneree’s request for compensation was denied because he needed to prove he was absolutely innocent). The proposed statute in this Note only allows compensation to individuals who can prove they are factually innocent. See *infra* Part IV.A (stating that the exoneree must prove his innocence to be eligible for compensation).

³⁷ See Krieger, *supra* note 17, at 367 (providing examples of procedural violations, which can include instances where evidence should have been suppressed and legal innocence, which can include self-defense or consent). Valparaiso University Law School’s post-conviction clinic investigates and litigates claims pertaining to false convictions, unjust sentences, factual innocence, and procedural rights violations. *The Law Clinic*, VAL. U. L. SCH., <http://www.valpo.edu/law/current-students/law-clinic> [<http://perma.cc/GT2A-V97X>].

³⁸ See Acker et al., *supra* note 12, at 8 (indicating that prosecutors, defense attorneys, judges, and juries are all subject to the psychological, organizational, institutional, economic, and sociopolitical influence that can contribute to wrongful convictions).

³⁹ See % Exonerations By Contributing Factor, THE NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx> [<https://perma.cc/DE2A-63NR>] [hereinafter *Contributing Factor*] (providing a graph which details the contributing factors of false convictions); see also *The Causes of Wrongful Conviction*, INNOCENCE PROJECT, <http://www.innocenceproject.org/understand/> [<http://perma.cc/Y4KZ-NV54>] (presenting the common causes of DNA exonerations, which include: eyewitness misidentification, unvalidated or improper forensic science, false confessions or admissions, government misconduct, informants or snitches, and inadequate defense). The following percentages are updated as of January 30, 2016, and change almost daily. Perjury or false accusation is the leading cause of exonerations in the United States, with fifty-six percent of cases overturned. *Contributing Factor*, *supra* note 39. False accusation occurs when a person accuses an innocent individual of committing a crime. See *Glossary*, THE NAT’L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/glossary.aspx> [<http://perma.cc/V9X9-A6XX>]. Among exonerations in the specific crime categories, the rate of perjury or false accusation is highest in child sex abuse (eighty-

two percent) and homicide cases (sixty-three percent). *Contributing Factor, supra* note 39. Roughly thirty-six percent of sexual assault cases are overturned due to evidence of perjury or false accusations. *Id.*

When police officers, prosecutors, or other government officials misuse their authority or the judicial process in a way that contributed to a wrongful conviction, their behavior is construed as official misconduct. *Glossary, supra* note 39. Official misconduct accounts for forty-seven percent of the total exonerations. *Contributing Factor, supra* note 39. In many instances, these officials do not adhere to their obligations of ensuring justice, instead, they are more concerned with securing convictions. *Government Misconduct, INNOCENCE PROJECT, <http://www.innocenceproject.org/understand/Government-Misconduct.php> [<http://perma.cc/76WT-M576>].* Official misconduct is the most prevalent in homicide cases (sixty-four percent). *Contributing Factor, supra* note 39. In forty-two percent of child sex abuse exonerations and twenty-seven percent of sexual assault cases, evidence of official misconduct led to their release from prison. *Id.*

In some circumstances, individuals are convicted of a crime that never existed, either because an accident or a suicide was misinterpreted for a crime, or the crime was fabricated. *Glossary, supra* note 39. In other situations, false convictions occur because informants are encouraged to testify against the individual. *Informants, INNOCENCE PROJECT, <http://www.innocenceproject.org/understand/Snitches-Informants.php> [<http://perma.cc/6GCN-YWQM>].* In fifteen percent of wrongful conviction cases overturned through DNA testing, an informant testified against the defendant at the original trial. *Id.*

Unfortunately, memory is not a dependable recording device. Jacob L. Zerkle, *I Never Forget a Face: New Jersey Sets the Standard in Eyewitness Identification Reform*, 47 VAL. U. L. REV. 357, 365 (2012). A mistaken witness identification occurs when a witness incorrectly identifies an innocent individual as the person who committed the crime. *Glossary, supra* note 39. Mistaken witness identification accounts for thirty-two percent of the total exonerations. *Contributing Factor, supra* note 39. Seventy-five percent of convictions that resulted from eyewitness identification were overturned through DNA evidence. *Eyewitness Misidentification, INNOCENCE PROJECT, <http://www.innocenceproject.org/understand/Eyewitness-Misidentification.php> [<http://perma.cc/Z5HZ-34ZY>].* While eyewitness testimony is persuasive evidence, thirty years of social science research has proven that eyewitness identification is frequently inaccurate. *Id.* Poor police practices contribute to eyewitness misidentifications. See *ACHIEVING JUSTICE, supra* note 23, at xvii-xviii (revealing flaws in the eyewitness identification procedures including the administration of the photo lineup). The highest number of mistaken witness identification occurs in sexual assault convictions (seventy percent). *Contributing Factor, supra* note 39. Approximately twenty-four percent of homicide cases and sixteen percent of child sexual assault cases were overturned due to eyewitness error. *Id.*

False or misleading forensic evidence occurs when a forensic analyst or forensic expert presents evidence that was either based on unreliable methods; caused by errors in forensic testing; expressed with exaggerated confidence; or fraudulent. *Glossary, supra* note 39. False or misleading forensic evidence occurs in twenty-three percent of exonerations. See *Contributing Factor, supra* note 39 (showing the contributing factors for false imprisonment). Improper forensic evidence is the highest contributing factor for wrongful sexual assault convictions (thirty-two percent). *Id.* Approximately twenty-three percent of homicide exonerations and twenty-two percent of child sex abuse exonerations occurred as a result of false or misleading forensic evidence. *Id.*

A false confession ensues when an individual either made a dishonest declaration to authorities which was treated as a confession; the authorities asserted that the exoneree made that statement but the exoneree refused to admit it; or the authorities misconstrued the exoneree's statement to be an admission of guilt. *Glossary, supra* note 39. Approximately thirteen percent of innocent individuals were released from prison as a result of false

142 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 50]

An exoneration transpires after an individual is convicted of a crime and subsequently discharged based on new evidence of innocence.⁴⁰ The methods of exoneration can include a governor granting a complete pardon, an acquittal of the charges factually related to the criminal conviction, or a dismissal of the charges by a court or prosecutor.⁴¹ The

confessions. *Contributing Factor*, *supra* note 39. False confessions are most pervasive in homicide convictions (twenty-two percent). *Id.* False confessions were also the contributing factors in eight percent of sexual assault and child sex abuse convictions. *Id.*

Inadequate legal defense occurs when the defendant's lawyer at trial or on appeal provides markedly deficient representation. *Glossary*, *supra* note 39. The already limited resources of the criminal justice system generates a disservice to indigent defendants and the harm is elevated when ineffective, incapable, or overburdened defense lawyers are selected to represent them. *Inadequate Defense*, INNOCENCE PROJECT, <http://www.innocenceproject.org/causes-wrongful-conviction/inadequate-defense> [<http://perma.cc/JS7A-QUJK>]. These lawyers fail to properly investigate, call witnesses, or prepare for trial, which has historically led to a number of false convictions. *Id.* Inadequate legal defense is a contributing factor in roughly one of five exoneration cases. *Ineffective Lawyers*, EXONERATION PROJECT AT THE U. OF CHI., <http://www.exonerationproject.org/bad-lawyers> [<http://perma.cc/YR2K-KVWJ>]. Examining the common causes of false convictions illuminates the central issues and demonstrates a need for immediate reform in the criminal justice system. See JIM DWYER ET AL., ACTUAL INNOCENCE 255-59 (2000) (presenting a list of reforms in DNA testing, mistaken witness identification, false confessions, jailhouse snitches and informants, forensic fraud, junk science, prosecutorial and law enforcement misconduct, and inadequate defense attorneys to protect innocent defendants).

⁴⁰ See *Glossary*, *supra* note 39 (defining exoneration and exoneree). Most states provide convicted defendants with the opportunity to set aside their convictions on appeal. See Nancy J. King, *Judicial Review: Appeals and Postconviction Proceedings*, in EXAMINING WRONGFUL CONVICTIONS: STEPPING BACK, MOVING FORWARD 217, 218 (Allison D. Redlich et al. eds., 2014) (noting that appeals are essentially impractical for individuals who seek to overturn their conviction after entering a guilty plea). Every state offers all convicted defendants the opportunity for post-conviction review, which is "a judicial proceeding that allows a person to challenge his conviction using grounds that could not have been raised on direct appeal." *Id.* at 220. Every state also allows convicts to file a motion for a new trial based on new evidence; however, this option is not favorable to individuals who are wrongfully convicted because the evidence needed to prove their innocence, like witness recantations or scientific evidence, does not appear until after trial and with investigative cooperation. *Id.* at 218.

⁴¹ See *Glossary*, *supra* note 39 (detailing the different ways an individual can be exonerated). Factual innocence is not automatically established through an acquittal or dismissal. King, *supra* note 40, at 225. An acquittal essentially indicates that the evidence provided did not prove guilt "beyond a reasonable doubt." *Id.* An acquittal can be similar to probable guilt or that the defendant committed the offense, but lacked the required intent. *Id.* Similarly, a dismissal or pardon may be granted for reasons beyond innocence, which can include: challenges of retrying the defendant years after the crime took place, resource distribution, victim's request, or political strain. *Id.* The exoneration process usually commences with the innocent individual contacting an attorney or an innocence project through written or verbal communication. See BRANDON L. GARRETT, CONVICTING THE INNOCENT: WHERE CRIMINAL PROSECUTIONS GO WRONG 225 (2011) (stating that the majority of exonerees initially seek DNA testing); Krieger, *supra* note 17, at 367 (revealing that the average Innocence Project receives about 600 requests a year). The attorney will typically

individual who is falsely convicted and later relieved of all the legal consequences resulting in the conviction is identified as an exoneree.⁴²

Exonerees generally have four options when seeking reparation for wrongful incarceration: civil rights claim, tort claim, private compensation bill, or a compensation statute.⁴³ A civil rights suit involves an exoneree filing a claim under federal statute § 1983 and demonstrating a deprivation of constitutional rights resulting in their false conviction.⁴⁴ A common law tort claim requires a showing of fault on the government's

conduct investigations, which can involve "interviewing the requestor, searching for new DNA, testing existing DNA, interviewing people involved in the case (witnesses, experts, family members), obtaining trial transcripts and/or police reports, investigating the crime scene, and/or meeting with the requestor's prior counsel and/or prosecutor." Krieger, *supra* note 17, at 368. If there is enough evidence to prove factual innocence, the attorney will file a writ of habeas corpus to obtain discovery rights and an evidentiary hearing. *Id.* The writ of habeas corpus may be preceded by a motion to be appointed counsel in DNA cases, so the attorney can file a separate motion to obtain DNA testing before determining if a habeas motion is appropriate. *Id.* A writ of habeas corpus is "a writ employed to bring a person before a court, most frequently to ensure that the person's imprisonment or detention is not illegal." *Habeas Corpus*, BLACK'S LAW DICTIONARY 778 (9th ed. 2009). The attorney has the burden to prove that a reasonable jury would not convict their client by a preponderance of the evidence when considering the new evidence with the old evidence. Krieger, *supra* note 17, at 368-69 n.223. "If the court grants the writ, the [inmate] is officially exonerated." *Id.* If post-conviction DNA testing is requested and a judge orders a new trial or a governor grants a pardon, the exoneree receives an order from the court vacating their conviction. GARRETT, *supra* note 41, at 230. Prosecutors eventually join in the motions to vacate the convictions, but they can take months and even years to agree to exonerate an individual, despite DNA tests proving the inmates innocence. *Id.* This lengthy and costly appeals process leaves many innocent prisoners in a considerable amount of debt. Daniel S. Kahn, *Presumed Guilty until Proven Innocent: The Burden of Proof in Wrongful Conviction Claims under State Compensation Statutes*, 44 U. MICH. J.L. REFORM 123, 129 (2010).

⁴² See *Glossary*, *supra* note 39 (stating that a person can be released from the consequences of the crime because new evidence of innocence required the case to be reexamined).

⁴³ See Mandery et al., *supra* note 14, at 556 (listing the possible avenues for exonerees who seek wrongful incarceration compensation). See, e.g., *supra* note 10 and accompanying text (specifying the different tort claims Camm filed to seek relief for his wrongful incarceration); see also *infra* Part II.C (discussing civil rights claims that arise out of constitutional violations, which result in the wrongful incarceration). The availability of these avenues of compensation depends on each state. See *supra* note 26 and accompanying text (listing the states that have adopted a compensation statute). Most of the states place considerable barriers to recovery and if compensation is provided, it is usually inadequate. Mandery et al., *supra* note 14, at 554.

⁴⁴ 42 U.S.C. § 1983 (2012). Section 1983 states:

[D]eprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

Id.

end.⁴⁵ A private compensation bill requires exonerees to lobby their state legislatures for a private bill to recompense them.⁴⁶ Statutory compensation is enacted by state legislatures, which regulates government action regarding restitution to exonerees.⁴⁷

Scholars maintain that civil rights and tort claims are not feasible alternatives for exonerees because they mandate proof of official misconduct, which is either difficult to substantiate or non-existent.⁴⁸ The Innocence Project cautions exonerees who pursue a civil rights claim or a private bill, indicating that both options require a lengthy battle in court or through the legislature.⁴⁹ A private compensation bill is granted when the state legislature makes an exception for an individual to receive compensation, which requires an ongoing battle.⁵⁰ The American Bar

⁴⁵ See Griffiths & Owens, *supra* note 18, at 269 (“Successful claims often require the identification of a malicious criminal justice actor or action, recognized as the ‘cause’ of wrongful conviction.”).

⁴⁶ See Mandery et al., *supra* note 14, at 558 (revealing that the individual who is seeking compensation through a private bill usually needs a campaign manager and vigorous lobbying). Some states declared private bills as unconstitutional, while other states that do offer them do not have the sources to address the rising number of petitions filed by exonerees. *Id.*

⁴⁷ See Griffiths & Owens, *supra* note 18, at 270 (discussing the types of awards offered through statutory compensation). “Compensation statutes provide for either an administrative or judicial remedy.” *ACHIEVING JUSTICE*, *supra* note 23, at 113. Some states utilize existing agencies, while others use a process just for exonerations. *Id.* at 113–14. In several other states, the Court of Claims determines the compensation for exonerees. *Id.* at 114. Therefore, the best course of action for an exoneree seeking compensation is through an existing compensation legislation. Mandery et al., *supra* note 14, at 559. Scholars also argue that statutory compensation is a better approach than civil litigation and private legislation, in terms of fulfilling societal obligations for unjust convictions. Griffiths & Owens, *supra* note 18, at 275. Some states will adopt compensation statutes because exonerees encounter substantial difficulties when seeking compensation for damages through existing tort remedies. See N.Y. CT. OF CL. LAW § 8-b(1) (McKinney 2016) (“The legislature finds and declares that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that such persons should have an available avenue of redress over and above the existing tort remedies to seek compensation for damages.”).

⁴⁸ See Griffiths & Owens, *supra* note 18, at 269 (concluding that exonerees’ low socioeconomic status makes it difficult to prove malicious criminal justice action, thus they rarely succeed in their civil rights or common law tort claims).

⁴⁹ See Stephanie Slifer, *How the Wrongfully Convicted are Compensated for Years Lost*, CBS NEWS (Mar. 27, 2014 6:33 AM), <http://www.cbsnews.com/news/how-the-wrongfully-convicted-are-compensated/> [<http://perma.cc/2S59-38Q6>] (discussing possible options for redress in states that lack statutory compensation). See *infra* Part II.B (describing a Wisconsin exoneree who had a bill pending in the state legislature to award him \$425,000 for his wrongful incarceration, however, he did not receive any compensation because he murdered a woman upon his release from prison).

⁵⁰ See Slifer, *supra* note 49 (revealing the disadvantage of pursuing a private compensation bill). The exoneree “must find a state representative to draft such legislation, introduce it,

Association (“ABA”) declared that compensation statutes are critical because other means of recourse are unlikely to yield compensation for exonerees.⁵¹ The post-conviction and reparation process presents constant hurdles for exonerees; however, exoneration and even compensation do not fully assuage the anguish of wrongful incarceration.⁵²

B. Life After Exoneration: The Struggle Continues

American history has shown that prisons neither rehabilitate nor deter future crimes.⁵³ A study conducted in 1971, known as “The Stanford Prison Experiment,” placed twenty-four healthy, intelligent, middle-class college males in a simulated prison environment to examine the behavioral and psychological effects of incarceration on individuals.⁵⁴

ensure its passage, and gain the governor’s signature[,]” which is very political and does not assure rational or dependable outcomes. ACHIEVING JUSTICE, *supra* note 23, at 112.

⁵¹ See ACHIEVING JUSTICE, *supra* note 23, at 112 (arguing that alternate approaches to compensation such as tort or civil rights lawsuits and private bills are “frought with difficulty”).

⁵² See *infra* Part II.B (discussing the negative effects of wrongful imprisonment on innocent individuals despite their release from prison). The Life After Exoneration Program (“LAEP”) assists exonerees in rebuilding their lives, while addressing the underlying causes of false convictions. See Leslie Scott, “It Never, Ever Ends”: *The Psychological Impact of Wrongful Conviction*, 5 AM. U. CRIM. L. BRIEF 10, 16–17 (2010) (stating that LAEP bolsters mentoring relationships and builds a network of wrongfully convicted people throughout the country by connecting recently released exonerees with those who have been released for some time). Massachusetts’ exoneree Neil Miller served ten years in prison for rape until DNA confirmed his innocence. *Id.* at 11. Once released, he said, “I feel like I am homeless. I am home, but I am not really home, because I do not know where home is.” *Id.* Like Miller, many exonerees spend so much time in prison that they become acclimated to the prison lifestyle and have trouble breaking free from it, even after their release from prison. *Id.* at 12. When Miller is overwhelmed in an unfamiliar social setting, he returns to his prison routines. *Id.* Michael Evans spent twenty-seven years wrongfully incarcerated in Illinois and upon his release, he would not open the doors on his own or take food from the refrigerator because he was restricted from doing those things while he was in prison. *Id.* at 12. Some exonerees admit wishing to return to prison because they became accustomed to that lifestyle, thus it was easier for them to handle. Scott, *supra* note 52, at 15.

⁵³ See Craig Haney et al., *A Study of Prisoners and Guards in a Simulated Prison*, NAVAL RESEARCH REV. 2 (Sept. 1973), <http://www.zimbardo.com/downloads/1973%20A%20Study%20of%20Prisoners%20and%20Guards,%20Naval%20Research%20Reviews.pdf> [<http://perma.cc/Y42V-YT9L>] (arguing that “the social institution of prison has continued to fail”). Spending time in prison can lead to “prisonization,” which means individuals will adapt to the prison setting by adopting the criminal values, techniques, and subcultures, which can lead to post-release aggression. Mandery et al., *supra* note 14, at 577.

⁵⁴ See Philip Zimbardo et al., *The Stanford Prison Experiment: A Simulation Study of the Psychology of Imprisonment*, 1–2 (Aug. 1971) http://web.stanford.edu/dept/spec_coll/uarch/exhibits/Narration.pdf [<https://perma.cc/GGK4-XAQ2>] (demonstrating the adverse effects of prison on normal and healthy individuals). Half of the subjects were assigned to be guards and the other half were prisoners. *Id.* at 2. The researchers replicated a prison environment to emulate a real prison setting in the basement of Stanford’s

Remarkably, the experiment exemplified a stark resemblance to a true prison setting.⁵⁵ The study exposed prisons as an institution that degrades humanity, pulverizes human dignity, and gives rise to barbaric behaviors.⁵⁶ Furthermore, the study demonstrated that a powerful social setting can induce good people to exhibit evil behaviors.⁵⁷

Exoneration provides individuals with their freedom, but it does not give them their life back.⁵⁸ In fact, exonerees suffer from varying types and degrees of mental illnesses, some of which include anxiety,

Psychology Department Building. *Id.* The prisoners were brought into jail consecutively and booked as they normally would in a real prison setting. *Id.* at 3. They were given dresses to wear as uniforms, which had their prison number on the back, a heavy chain was placed on their ankle, rubber sandals for their feet, and stocking caps to cover their hair. *Id.* The researchers gave the prisoners dresses rather than the traditional orange jumpsuit to replicate the humiliation and emasculation of real male prisoners during the booking process. *Id.* at 3. The guards were generally free to maintain order in the prison and demand respect from the prisoners. Zimbardo et al., *supra* note 54, at 4. By the second day of the study, the prisoners began to rebel by removing their caps, ripping off their numbers, and placing their beds against the cell door as barriers. *Id.* at 5. The guards also showed three different categories of behavior: some of the guards were tough but fair; others felt bad for the prisoners so they never punished them and did little favors for them; and the last group of guards took advantage of their power by becoming extremely hostile and humiliated or degraded the prisoners. *Id.* at 14. Eventually, the projected two-week experiment was discontinued after six days because it was no longer an experiment—the prisoners were withdrawing, becoming isolated, and displaying pathological behaviors, while some of the guards were acting sadistically. *Id.* at 16. Overall, the simulation demonstrated the way prisons dehumanize individuals by turning them into objects and making them feel defenseless and hopeless. *Id.* at 17.

⁵⁵ See Philip Zimbardo et al., *Chapter 11: Reflections on The Stanford Prison Experiment: Genesis, Transformation, Consequences* 8, 11 (2000), <http://www.prisonexp.org/pdf/blass.pdf> [<http://perma.cc/8YPR-ZPKV>] [hereinafter *Reflections*] (revealing that the experiment was terminated within six days because the men were behaving pathologically as either helpless prisoners or as ruthless guards, even though researchers spent a considerable amount of time to pick out normal and healthy college students). There were no differences among the sample selected at the beginning of the study. *Id.* at 8. However, “[i]n less than a week, there were no similarities among them; they had become totally different creatures.” *Id.*

⁵⁶ See *id.* at 13 (“Nothing is worse for the health of an individual or a society than to have millions of people who are without, social support, social worth, or social connections to their kin.”).

⁵⁷ See *id.* at 10 (revealing that good people can be negatively influenced to act irrational, self-destructive, and antisocial if placed in an environment where that type of behavior is socially accepted).

⁵⁸ See Scott, *supra* note 52, at 11, 13 (revealing that after losing years from their lives that they can never get back coupled with the permanent damage done to an individual’s soul and dignity, money, and even release from prison does not make a person whole again). Prisoners have no control over their lives while they are imprisoned and over time they become accustomed to it. *Id.* at 16. However, once released back into society, the lack of decision-making capabilities for exonerees while in prison becomes problematic as they are forced to make important decisions on their own. *Id.*

depression, phobias, paranoia, and post-traumatic stress disorder.⁵⁹ These individuals also display “signs of ‘estrangement, loss of capacity for intimacy, moodiness, inability to settle, loss of a sense of purpose and direction, and a pervasive attitude of mistrust toward the world.’”⁶⁰ Additionally, exonerees are released to precarious conditions filled with societal isolation, poverty, employment discrimination, and shattered relationships.⁶¹ Exonerees who spend many years in prison have trouble with real-world skills, such as driving, typing, and using a cell phone.⁶² Innocent individuals on death row confront a significantly distinct form of criminal punishment because they face the probability of being executed on any given day.⁶³ In addition to the trauma caused by unjust incarceration, death row prisoners also battle with anger and bitterness as they struggle to survive inside the prison walls.⁶⁴

⁵⁹ See *id.* at 14 (discussing the psychological impact of incarceration on innocent individuals); Kimberly J. Cook et al., *The Problem of Fit: Parolees, Exonerees, and Prisoner Reentry*, in EXAMINING WRONGFUL CONVICTIONS: STEPPING BACK, MOVING FORWARD 237, 237 (Allison D. Redlich et al. eds., 2014) (discussing the similar challenges exonerees and parolees face when released from prison, but noting that many states only offer support to parolees). Prisoners also have more medical and mental health problems than the general population due to the confined living conditions, drug use, poverty, and substance abuse. Scott, *supra* note 52, at 13. In many circumstances, states are not held accountable for the wrongful incarceration and therefore, they fail to provide exonerees with the necessary support they need to transition back into the real world. Cook et al., *supra* note 59, at 238.

⁶⁰ Scott, *supra* note 52, at 14. The horrors of the prison life do not discriminate between those wrongfully accused and actual offenders. Cook et al., *supra* note 59, at 239.

⁶¹ See Scott, *supra* note 52, at 10 (revealing the hardships, beyond the psychological effects, exonerees endure when released from the prison environment); Sara Rimer, *Life After Death Row*, N.Y. TIMES MAG. (Dec. 10, 2000), <http://partners.nytimes.com/library/magazine/home/20001210mag-deathrow.html> [<http://perma.cc/C3EC-GHT5>] (discussing the experiences of innocent individuals exonerated from death row, an experience that has completely destroyed their lives); ACHIEVING JUSTICE, *supra* note 23, at xxviii (“[I]ndividuals who have been wrongfully convicted often see their lives and families destroyed by their lengthy incarceration.”). Georgia exoneree Earl Charles said his wrongful conviction was a “scar” he always wore, despite his proven innocence. Scott, *supra* note 52, at 11. Charles eventually committed suicide because he was unable to adjust to life outside of prison. *Id.* Family members of war veterans and exonerees both say that the individual, either in the military or prison, returns with a diminished capacity for feelings. *Id.*

⁶² See Scott, *supra* note 52, at 11 (illustrating the detrimental effects of wrongful incarceration on specific exonerees). Many exonerees struggle with day-to-day tasks such as crossing the street, using appliances, and setting up bank accounts as a result of their incarceration. *Id.* at 15.

⁶³ See Cook et al., *supra* note 59, at 238–39 (stating that death row inmates are “‘expelled from humanity’ and not expected to return to society or recover from the pains of imprisonment”). The majority of these individuals are also lonely, bored, and endure habitual brutality as a result of being on death row. *Id.* at 239.

⁶⁴ See *id.* (discussing a Florida exoneree, Juan Melendez, who spent over seventeen years on death row and states the hardest part of being on death row was hearing about someone getting executed and wondering if he was next). Alfred Rivera, a North Carolina death row

The Life After Exoneration Program (“LAEP”) study confirmed that most exonerees have an immediate need for employment in order to regain a stable lifestyle.⁶⁵ Other research has also suggested employment as an integral component to successful reintegration.⁶⁶ In fact, exonerees are more likely to return to prison in states that do not provide them with the necessary support services for proper reintegration.⁶⁷ Due to their

exoneree, stated that “on death row, you truly die even before death, mentally. You have nothing to look forward to.” *Id.* Kirk Bloodsworth, the first death row DNA exoneree, was living in his truck as a result of his unemployment and subsequently suffered from a nervous breakdown. Scott, *supra* note 52, at 11. He was fired from his first job out of prison because he was labeled as an ex-convict, which negatively affected the business. *Id.* at 11–12. Bloodsworth also was unable to work in an environment that did not contain any windows because it brought back memories of his imprisonment. *Id.* at 12.

⁶⁵ See Scott, *supra* note 52, at 10 (surveying approximately sixty exonerees to determine the varying types of difficulties they face as a result of their wrongful incarceration); *Over 500 Exonerees: A Number That Keeps Growing Every Month*, LIFE AFTER EXONERATION PROGRAM, http://www.exonerated.org/index.php?option=com_content&view=article&id=94&Itemid=87 [<http://perma.cc/4B5A-BNBS>] (discussing a 2005 study conducted by the LAEP of sixty exonerees which revealed that fifty percent of exonerees relied on their family members for housing, sixty-six percent were not financially independent, thirty-three percent lost custody of their children due to their incarceration, and at least twenty-five percent suffered from post-traumatic stress disorder). Additionally, many exonerees earn less income after being released from prison than pre-incarceration. Smith, *supra* note 3, at 3.

⁶⁶ See Mandery et al., *supra* note 14, at 576–77 (indicating employment as an integral support service that prevents exonerees from committing future offenses).

⁶⁷ See *id.* at 554 (stating that although these exonerees are innocent despite the incarceration, they are still detrimentally effected because prison often acclimatizes them to criminal conduct). Using data set compiled from the Center on Wrongful Convictions at Northwestern University, in a sample of 118 exonerees, forty-five (38.1%) exonerees were convicted of at least one crime after they were released from prison and seventy-three (61.9%) did not commit any offense once exonerated. *Id.* at 570. Seventy-one exonerees in the group received some form of compensation. *Id.* at 571. The research revealed that compensation over \$500,000 considerably reduced post-exoneration offending but anything below that amount did not have a particular effect. *Id.* at 576. The false rape conviction of Wisconsin’s exoneree, Steven Avery, is a prime example of the detrimental effects of wrongful incarceration on innocent individuals. See Steven Avery, INNOCENCE PROJECT, <http://www.innocenceproject.org/cases-false-imprisonment/steven-avery> [<http://perma.cc/24XJ-NUZY>] [hereinafter *Avery*] (illustrating Avery’s exoneration where he served almost twenty years in prison for a crime he never committed, and then murdered a young woman two years after his release from prison). On July 29, 1985, Penny Ann Beersten was jogging outside when a man dragged her into a wooded area, raped her, and choked her unconscious. *Id.* Beersten was able to identify her attacker to the police and based on her description, the police showed her photographs of nine men. *Id.* From the photographs, she picked Avery as the man who raped her and Avery was arrested the next day. *Id.* Despite having presented sixteen alibi witnesses to prove he was nowhere near the crime scene, Avery was convicted and sentenced to thirty-two years in prison. *Id.* DNA technology eventually proved his innocence after he served eighteen years in prison. *Id.* In fact, the DNA profile matched a man who was serving a sixty-year sentence for a sexual assault that occurred after Beersten’s attack. *Avery, supra* note 67. Unfortunately, after his

experiences in prison coupled with the lack of support offered by many states, the majority of exonerees are dependent on relatives and friends until they are able to regain stability.⁶⁸

Exonerees and parolees confront similar complications in securing employment and housing, reforming relationships, battling psychological illnesses, and reconstructing families upon release from prison.⁶⁹ While most states supply parolees with job skill development, vocational training, housing, and employment, many exonerees are discharged without any support services that may be offered to parolees.⁷⁰ Lacking the basic necessities for survival elevates the obstacles exonerees endure upon release from prison and makes reintegration more difficult.⁷¹ Considering the unjust taking of an individual's liberty, the detrimental effects of such taking, and many states' failure to properly address the wrongdoing, the United States and Indiana's Constitution provides another perspective on the complications involving unjust incarcerations.⁷²

release from prison, Avery murdered a woman and was sentenced to life in prison. *Id.* During the time of his second conviction, a bill was pending in the Wisconsin State Legislature to award him \$425,000 in compensation for his initial wrongful incarceration; however, Avery did not receive the funds due to his subsequent murder conviction. *Steven Avery, THE NAT'L REGISTRY OF EXONERATIONS*, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3003> [<https://perma.cc/C5MD-UDXQ>].

⁶⁸ See *ACHIEVING JUSTICE*, *supra* note 23, at 118 (urging the government to take responsibility and provide exonerees with job and vocational training, mental health counseling, substance abuse programs, assistance in housing, and monetary compensation). As a result of the financial hardships exonerees endure upon release, the Innocence Project recommends, "If the court finds that the claimant was subjected to a lien pursuant to defense services rendered by the State to defend the client in connection with the criminal case that resulted in his wrongful conviction, the court shall extinguish said lien." *Model Legislation*, *supra* note 17, at 6.

⁶⁹ See Cook et al., *supra* note 59, at 237 ("[P]arolees emerge from prison with many shared practical and emotional hurdles to confront and overcome [as exonerees].").

⁷⁰ See *id.* at 237-38 (revealing that parolees are often required to report their activities to state officials and in some instances, their failure to report can result in re-imprisonment; while exonerees and the state often have no continuing obligation to one another).

⁷¹ See *supra* note 65 and accompanying text (revealing a study conducted by the LAEP that illustrated a critical need to provide support services to exonerees upon their release from prison).

⁷² See *infra* Part II.C (examining the significant provisions of the U.S. and Indiana's Constitution in relation to wrongful incarcerations).

C. *Miscarriage of Justice: Constitutional Significance*

This nation has long embraced the fundamental principle of law that all persons are innocent until proven guilty.⁷³ However, an undesirable consequence is attached to it—“some persons are innocent even though they have been proven guilty.”⁷⁴ The U.S. Constitution provides a series of protections for individuals who are suspected of a crime.⁷⁵ More specifically, it includes a restriction against unreasonable searches and seizures, a right to a speedy trial by an objective jury, a right to confrontation, a right to effective legal counsel, and a right to equal protection of the law.⁷⁶ Similarly, Indiana’s Constitution provides explicit safeguards for individuals accused of a crime.⁷⁷

⁷³ See Acker et al., *supra* note 12, at 3 (discussing the miscarriage of justice in relation to wrongful incarcerations). See, e.g., Coffin v. United States, 156 U.S. 432, 453 (1895) (“The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.”). The Court further states, “this presumption is an instrument of proof created by the law in favor of one accused, whereby his innocence is established until sufficient evidence is introduced to overcome the proof which the law has created.” *Id.* at 459.

⁷⁴ Acker et al., *supra* note 12, at 3. Despite the requirement of a jury to find guilt beyond a reasonable doubt to render a guilty verdict, wrongful convictions still occur. See Hannah Laqueur et al., *Wrongful Conviction, Policing, and the “Wars on Crime and Drugs,”* in EXAMINING WRONGFUL CONVICTIONS: STEPPING BACK, MOVING FORWARD 93, 93 (Allison D. Redlich et al. eds., 2014) (explaining the war on crime and drugs and how these wars changed American policing and contributed to wrongful convictions).

⁷⁵ See U.S. CONST. amend. IV (providing a protection “against unreasonable searches and seizures”); U.S. CONST. amend. V (“[N]or be deprived of life, liberty, or property, without due process of law”). The Sixth Amendment states:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

U.S. CONST. amend. VI; see also U.S. CONST. amend. XIV (“[N]or deny to any person within its jurisdiction the equal protection of the laws”).

⁷⁶ See *supra* note 75 and accompanying text (detailing the constitutional amendments that protect individuals charged with a crime).

⁷⁷ See IND. CONST. art I, § 11 (providing protections against unreasonable searches and seizures). Article I, Section 13 of the Indiana Constitution states:

In all criminal prosecutions, the accused shall have the right to a public trial, by an impartial jury, in the county in which the offense shall have been committed; to be heard by himself and counsel; to demand the nature and cause of the accusation against him, and to have a copy thereof; to meet the witnesses face to face, and to have compulsory process for obtaining witnesses in his favor.

Id. § 13.

Despite the constitutional provisions protecting the accused, the number of innocent individuals released from prison continually rise, increasing claims against the federal and state government.⁷⁸ Exonerees may file a civil action against the federal government under § 1983 for constitutional violations.⁷⁹ Alternatively, exonerees can file tort claims against the state government, such as malicious prosecution and false imprisonment.⁸⁰ However, the government actors, including prosecutors and judges, are secured by absolute immunity in circumstances where a legal right has been violated.⁸¹ Police officers are similarly shielded by qualified immunity.⁸² Nevertheless, many exonerees pursue claims against the state seeking reparations for their unjust incarcerations, and the cases in Indiana further illustrate the issues pertaining to such an approach.⁸³

D. Indiana: Wrongful Incarcerations and Limited Compensation

Since 1989, twenty-four individuals have been exonerated in Indiana and the numbers are steadily increasing.⁸⁴ The amount of time these

⁷⁸ See *supra* note 39 and accompanying text (elaborating on the common causes of false convictions in the United States and that most of the causes do not necessarily trigger a constitutional violation); *supra* note 13 and accompanying text (revealing that 2014 had the highest record of exonerations reported in a single year).

⁷⁹ 42 U.S.C. § 1983 (2012); see *supra* note 48 and accompanying text (indicating the limited likelihood of success for exonerees filing civil rights claims).

⁸⁰ Mandery et al., *supra* note 14, at 556. See *supra* note 45 and accompanying text (explaining the requirements to succeed in common law tort claims).

⁸¹ See Mandery et al., *supra* note 14, at 557 (indicating that absolute immunity is unconditional, making it difficult for exonerees in instances where a constitutional right was violated). Indiana also provides governmental immunity for police officers and prosecutors acting within the scope of their employment. IND. CODE § 34-13-3-3 (2016). In *Julian v. Hanna*, the court held that the prisoner was entitled to bring a § 1983 malicious prosecution claim because Indiana law provided an inadequate remedy. 732 F.3d 842, 848 (7th Cir. 2013). The court additionally noted, “A state cannot be permitted to create blanket immunities from federal suits for violations of federal law (such as the Fourteenth Amendment’s due process clause), as Indiana has done in this case.” *Id.*

⁸² See Mandery et al., *supra* note 14, at 557–58 (stating that qualified immunity shields government actors from liability unless they knowingly violated the law). Therefore, the exoneree is unable to recover in instances where the government made a mistake or neglected to exercise due care in avoiding the mistake. *Id.* at 558.

⁸³ See *infra* Part II.D (examining specific exonerations in Indiana, their outcome, and support services currently in place that could assist exonerees in regaining a stable lifestyle).

⁸⁴ *About the Registry*, *supra* note 11; *Indiana Victims of the State*, VICTIMS OF THE STATE, <http://www.victimsofthestate.org/IN/> [<http://perma.cc/B276-H49X>] [hereinafter VICTIMS OF THE STATE] (discussing five additional exonerations in Indiana). The general causes of wrongful convictions in Indiana are similar to those in the United States: perjury or false accusation, official misconduct, mistaken witness identification, false or misleading forensic evidence, false confessions, and inadequate legal defense. See *Browse Cases*, THE NAT’L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/>

innocent individuals served in prison spanned from two years to twenty-seven years.⁸⁵ Their sentences ranged from a minimum of two years to a maximum of life in prison, and two exonerated inmates were serving time on death row.⁸⁶ In an effort to combat the issues of wrongful convictions, Indiana's Supreme Court promulgated a new rule mandating that law enforcement agencies record interrogations beginning in 2011.⁸⁷ The purpose of the law is to assist police officers, prosecutors, courts, and juries in their quest for accuracy, fairness, and due process of the law.⁸⁸ Additionally, the State reduced its forensic backlog of cases that needed DNA testing in hopes of solving more crimes.⁸⁹ The State endeavors to

Pages/detailist.aspx [https://perma.cc/Z5QH-CVMY] (listing the specific exonerees in Indiana and the contributing factors that led to their unjust convictions). The types of crimes for which these individuals were falsely convicted consisted of sexual assault, forgery, child sex abuse, murder, armed robbery, attempted murder, and passing counterfeit money. *Id.* Since 2012, five innocent individuals were released from Indiana's prisons, the highest number ever reported in the State. *Id.*

⁸⁵ See *Browse Cases*, *supra* note 84 (detailing information pertaining to each exoneree including: the state of imprisonment, the conviction year, exoneration year, sentence, and the charged crime).

⁸⁶ See *id.* (specifying the prison sentence for each exoneree); VICTIMS OF THE STATE, *supra* note 84 (stating that Nancy Botts was sentenced to two to fourteen years in prison for a wrongful forgery conviction). Ralph Lobaugh and Charles Smith were the two exonerated death row inmates in Indiana. See *Browse Cases*, *supra* note 84 (stating that Charles Smith was sentenced to death on a wrongful murder conviction); Ralph Lobaugh, VICTIMS OF THE STATE, <http://www.victimsofthestate.org/IN/Lobaugh.html> [http://perma.cc/Q29D-PGMB] (explaining Ralph Lobaugh's death row exoneration). Charles Smith was falsely convicted of murder and felony murder and the jury returned a death verdict. *Smith v. State*, 547 N.E.2d 817, 818 (Ind. 1989). In 1989, Indiana Supreme Court overturned his conviction, stating that he received ineffective assistance of counsel. *Id.* at 822. David Camm was wrongfully convicted and sentenced to serve a life term for the murders of his wife and two young children. See *supra* note 7 and accompanying text (describing the trials that led to Camm's unjust conviction).

⁸⁷ See *Indiana Court Recording of Interrogations*, INNOCENCE PROJECT (Sept. 16, 2009), <http://www.innocenceproject.org/news-events-exonerations/indiana-court-orders-recording-of-interrogations> [http://perma.cc/DU8J-YWJK] [hereinafter *Indiana Court*] (stating that evidence regarding interrogations will only be admissible in court if it is recorded); IND. R. EVID. 617 (listing a few exceptions where unrecorded interrogations can be admitted in court).

⁸⁸ See *Indiana Court*, *supra* note 87 (indicating that an audio-video recording is an invaluable tool for law enforcement, courts, and citizens because it secures the voice, facial expressions, and body language of the suspect and the interrogator). The recordings can also help determine whether guilty pleas were coerced and whether police presented suspects with the necessary warnings. *Id.*

⁸⁹ See *Indiana Police Cut Down DNA Backlog*, INNOCENCE PROJECT (July 7, 2012), <http://www.innocenceproject.org/news-events-exonerations/indiana-police-cut-down-dna-backlog> [https://perma.cc/9G3Y-ELQJ] (revealing that nearly 1000 cases needed DNA testing and that number is down to 389 as of December 2011). A bigger lab in Indianapolis, new technology, and employing more biologists contributed to the reduction in DNA backlog. *Id.*

resolve the principal issues precipitating wrongful convictions, however, it fails to address the issues of post-exoneration and rectifying such wrongdoing.⁹⁰ In fact, among the individuals that have been exonerated in Indiana, only six received monetary compensation.⁹¹

Ralph Jacobs and Christopher Smith both filed a lawsuit against the City of Newcastle, Henry County, and the State of Indiana, alleging that the police wrongfully coerced their confessions resulting in their false murder convictions.⁹² After serving two years of their sentences, Jacobs received a settlement of \$435,000 and Smith received \$605,000.⁹³ In 2008, a jury awarded Larry Mayes \$9 million dollars in a wrongful conviction lawsuit against the City of Hammond and its law enforcement officials, after he served nineteen years of his sentence.⁹⁴ Mayes' case eventually settled on appeal for 4.5 million dollars.⁹⁵ After serving eight years as an

⁹⁰ See *supra* note 15 and accompanying text (listing Indiana as one of the twenty states that lack a statutory compensation scheme); *infra* Part IV.A (presenting a statute for Indiana to implement); *infra* Part IV.B (addressing commentary associated with adopting a compensation statute in Indiana). See also Michael W. Hoskins, *Rising Number of Exonerees Reflects Flaws in the Justice System*, IND. LAWYER (Sept. 2, 2009), <http://www.theindianalawyer.com/rising-number-of-exonerees-reflects-flaws-in-justice-system/PARAMS/article/24009#news> [<http://perma.cc/KKZ2-HJ77>] [hereinafter Hoskins, *Rising*] (describing the rise of exonerations in Indiana and the State's lack of effort in seeking to address the issue).

⁹¹ See *infra* Part II.D (detailing the exonerees in Indiana and the monetary award secured by only six exonerees).

⁹² See *Ralph A. Jacobs, Jr., THE NAT'L REGISTRY OF EXONERATIONS*, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3321> [<http://perma.cc/S4FS-RJRJ>] [hereinafter *Jacobs*] (revealing that the two men were mildly intellectually disabled and the police were able to obtain confessions from both individuals). Jacobs and Smith ultimately pleaded guilty after being convinced by the police to enter a guilty plea and were sentenced to eight and thirty-eight years, respectively. *Id.*

⁹³ See *id.* (confirming that physical evidence linked another man, Jerry Thompson, to the murder for which Jacobs and Smith were convicted). As a result, the trial court dismissed the charges against Jacobs and Smith, and released them from prison in 1993. *Id.*

⁹⁴ See *Mayes v. City of Hammond*, 631 F. Supp. 2d 1082, 1084 (N.D. Ind. 2008) (stating that the jury returned a verdict in favor of Mayes for nine million dollars). See also *Larry Mayes, THE NAT'L REGISTRY OF EXONERATIONS*, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3415> [<http://perma.cc/8FUX-VME7>] [hereinafter *Mayes*] (discussing the incident leading up to Mayes conviction and exoneration). Mayes was convicted of sexual assault, robbery, and kidnapping, and was sentenced to eighty years in prison after multiple victims identified him as the perpetrator. *Id.* He was convicted in 1982 and exonerated in 2001 after DNA testing excluded him as the assailant. *Id.* Mayes served nineteen years of his sentence before he was released. *Id.*

⁹⁵ See *Mayes*, 631 F. Supp. 2d at 1084 (presenting Mayes' civil rights complaint). It took Mayes seven years to settle his federal civil rights suit against the City of Hammond. Michael Hoskins, *After Exoneration*, IND. LAWYER (Oct. 1, 2008), <http://www.theindianalawyer.com/after-exoneration/PARAMS/article/24010> [<http://perma.cc/8Q4D-AXZB>]. When asked about his time in prison, Mayes said, "You can't ever make up for that time, but you can enjoy what time you have left." *Id.*

154 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 50]

innocent man behind bars in Indiana, Christopher Parish filed a wrongful conviction lawsuit against the City of Elkhart and the lead investigator on his case.⁹⁶ In 2010, a civil jury awarded him \$78,125 in damages and \$191,000 in attorney's fees.⁹⁷ Parish appealed the judgment, arguing that the award was inadequate and eventually settled for 4.9 million dollars.⁹⁸ In 2012, Brian Neiryck filed a federal civil rights lawsuit against St. Joseph County, Indiana, which was settled for \$100,000 in 2014.⁹⁹ In 2015, Billy Julian settled his wrongful incarceration claim against Frankton Police Department and Madison County Sheriff's Department for 3 million dollars.¹⁰⁰ Nevertheless, many wrongful incarceration claims

⁹⁶ See Jennifer Nelson, *Court Orders New Trial on Damages Owed to Wrongfully Convicted Man*, IND. LAWYER (Dec. 20, 2012), <http://www.theindianalawyer.com/court-orders-new-trial-on-damages-owed-to-wrongfully-convicted-man/PARAMS/article/30381> [<http://perma.cc/7QDC-GBNR>] (discussing Parish's claim for his wrongful conviction). Multiple witnesses identified Parish from a photo lineup as the man who acted as an accomplice to an armed robbery. *Christopher Parish*, THE NAT'L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3524> [<http://perma.cc/4RW5-G2YS>] [hereinafter *Parish*]. He was convicted in 1998 at the age of twenty-one and sentenced to thirty years in prison. *Id.* In 2002, Parish filed a petition for post-conviction relief, which was amended in 2004, and presented evidence proving that his attorney failed to properly investigate his case. *Id.* Some of the evidence revealed that the victim was shot in a parking lot and not in the apartment as stipulated during his trial, and DNA tests on a hat in the apartment where the shooting took place matched a man who was already serving time in prison for attempted murder. *Id.* In 2005, the Indiana Court of Appeals recognized that Parish received ineffective assistance of counsel and set aside the verdict and ordered a new trial. *Id.* The charges against Parish were eventually dismissed. *Id.*

⁹⁷ See *Parish v. City of Elkhart*, 702 F.3d 997, 1003 (7th Cir. 2012) (confirming that the damages awarded to Parish were inadequate and remanded the case for a new trial to determine proper damages); *Parish*, *supra* note 96 (detailing Parish's trial and revealing his initial award was granted on October 27, 2010).

⁹⁸ See Jeff Parrott, *Former Elkhart Man's Wrongful Imprisonment Triggers \$4.9 Million Payout, A Fight Among Insurance Companies*, THE ELKHART TRUTH (Nov. 19, 2014, 6:00PM), <http://www.elkharttruth.com/news/crime-fire-courts/2014/11/19/Former-Elkhart-man-s-wrongful-imprisonment-triggers-4-9-million-payout-a-fight-among-insurance-companies.html> [<http://perma.cc/XY2A-C97J>] (revealing that the City's insurance carrier ended up paying the settlement). When asked about his life after being released from prison, Parish stated that, "No one would trade money for a lost decade of their lives." *Id.*

⁹⁹ *Brian Neiryck*, THE NAT'L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4632> [<http://perma.cc/JC3G-PDR3>]. In January 2003, Neiryck was convicted of sexually assaulting his son and sentenced to thirty years in prison. *Id.* In May 2011, Neiryck's conviction was vacated because his attorney failed to provide him with adequate representation. *Id.* The prosecutor filed a notice of appeal, but later withdrew and dismissed Neiryck's charges in June 2012. *Id.*

¹⁰⁰ *Billy Julian*, THE NAT'L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4735> [<http://perma.cc/Y2ML-BWZ6>]. Julian was wrongfully convicted of arson and burglary on March 15, 2004 and sentenced to fifteen years in prison. *Id.* Julian was released on bond from prison in 2006 until the prosecutor dismissed his case in 2010. *Id.* In 2011, Julian filed a federal civil rights lawsuit

remain pending in the court system, while other exonerees were denied restitution altogether.¹⁰¹ For instance, the United States Court of Appeals

against the Frankton Police Department, Madison County Sheriff's Department, and three officers for framing and concealing evidence. *Id.*

¹⁰¹ See *James Hill*, THE NAT'L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4329> [<http://perma.cc/9W9D-KADA>] (revealing that James Hill's federal civil rights lawsuit remains pending as of December 2013). Hill was falsely convicted of sexual assault, robbery, and kidnapping with Mayes, but was tried separately and sentenced to thirty-five years in prison at the age of seventeen. *Id.* He was released on parole in May 1998, after serving sixteen years in jail. *Id.* After finding out about Mayes' exoneration in 2005, Hill filed a post-conviction motion to vacate his conviction, claiming that the prosecution withheld evidence. *Id.* A Lake County Circuit Judge granted his petition and ordered a new trial on October 6, 2009. *Id.* The District Attorney's Office subsequently dismissed the charges. *Id.*

Walter Goudy was wrongfully convicted of murder, attempted murder, attempted carjacking, and attempted robbery and sentenced to 110 years in prison after a witness identified him as one of the gunmen from a photo lineup. *Walter Goudy*, THE NAT'L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4016> [<http://perma.cc/57JJ-PPL3>] [hereinafter *Goudy*]. After serving seventeen years of his sentence, the Madison County Prosecutor dismissed the charges against Goudy. *Id.* Three weeks later, Goudy filed a federal wrongful conviction lawsuit against Cummings, Napier, the City of Anderson, and the State of Indiana. *Id.* The U.S. District Court in Indiana permitted Goudy to pursue his state cause of action for malicious prosecution against the City defendants. *Goudy v. Cummings*, No. 1:12-cv-00161-SEB-TAB, 2014 WL 234189 *2 (S.D. Ind. Jan. 21, 2014).

David Camm, a recent Indiana exoneree, filed a notice of claim against Floyd County, Indiana and numerous other defendants in October 2014 seeking compensation for thirteen years of his wrongful incarceration. See *supra* note 7 and accompanying text (detailing Camm's trials); *supra* note 10 and accompanying text (specifying the claims Camm filed against the State and numerous individuals, which remain pending).

Lana Canen was charged with murder after her fingerprint matched a plastic pill container in the victim's apartment and a neighbor indicated that Canen made some incriminating statements. *Lana Canen*, THE NAT'L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4047> [<http://perma.cc/P9LU-THKS>] [hereinafter *Canen*]. Canen was unjustly convicted and sentenced to fifty-five years in prison. *Id.* Years later, a different expert analyzed the fingerprint and found there was no match between Canen's print and the one found at the scene of the crime. *Id.* The former neighbor who initially stated that Canen made incriminating statements also recanted her testimony. *Id.* Canen's conviction was vacated, the charge was dismissed, and she was released from prison after serving seven years of her sentence. *Id.* In January 2014, Canen filed a lawsuit, which remains pending, seeking redress against detectives who made the erroneous fingerprint identification leading to her wrongful conviction. *Id.* Canen states that she has never received any redress for a mistake that seized eight years of her life. Ted Land, *Lana Canen Shares Lessons with Notre Dame Class: Wrongly Convicted of Murder, She Explains Human Consequences of Inaccurate Investigations*, WSBT (Oct. 7, 2013, 11:32 PM), <http://www.wsb.com/news/local/1ana-canen-shares-lessons-with-notre-dame-class/22325114> [<http://perma.cc/NPZ3-Y39K>].

Kristine Bunch unjustly spent seventeen years of her life in Indiana's prison for arson and murder of her three-year old son who died in a mobile home. *Rob Warden: Convicted of Murder by Arson – But the Fire Was Accidental*, NORTHWESTERN L. CTR. ON WRONGFUL CONVICTIONS, <http://www.law.northwestern.edu/legalclinic/wrongfulconvictions/>

for the Seventh Circuit dismissed Richard Alexander's wrongful conviction lawsuit against the City of South Bend, despite him serving three years in prison.¹⁰² Additionally, Dwayne Scruggs was never compensated for the false conviction that stole seventeen years of his life, however, his record was expunged a year after his release.¹⁰³

The State of Indiana is equipped with the necessary tools to assist exonerees in successfully transitioning back into society.¹⁰⁴ Financial burdens are limited as the majority of damages awarded in Indiana are subject to a cap.¹⁰⁵ Most claims in the State are restricted to a two-year

exonerations/in/kristine-bunch.html [http://perma.cc/Y46N-C9VJ]. Two experts testified during her trial, confirming that the fire was intentional and the jury subsequently convicted her of arson and murder. *Id.* The Indiana Court of Appeals reversed her conviction and granted her a new trial. *See* Bunch v. State, 964 N.E.2d 274, 304 (Ind. Ct. App. 2012) (evaluating post-conviction relief for wrongful conviction in Indiana). Bunch filed a complaint on March 18, 2014 seeking compensation for violation of due process, malicious prosecution, and deprivation of her constitutional rights. Complaint at 10-12, Bunch v. Frank, No. 1:14-cv-00438-WTL-DKL (S.D. Ind. Mar. 18, 2014).

¹⁰² *See* Richard Alexander, THE NAT'L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=2990> [http://perma.cc/XJ2J-X468] (discussing Alexander's false conviction of two sexual assaults, robbery, burglary/unlawful entry, and theft after the victims positively identified him as the assailant). He was sentenced to seventy years in prison and served three years until DNA proved his innocence. *Id.* In 2006, Alexander filed a federal wrongful conviction lawsuit under § 1983 deprivation of civil rights, and § 1985 conspiracy to interfere with civil rights, against the City of South Bend, but the court granted summary judgment in favor of the City because Alexander was unable to prove any misconduct on behalf of the police officers. Alexander v. City of South Bend, 433 F.3d 550, 558 (7th Cir. 2006).

¹⁰³ *See* Dwayne D. Shruggs, THE NAT'L REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3625> [http://perma.cc/6XWH-GUF2] (explaining Shruggs' unjust conviction of sexual assault and robbery). Shruggs was convicted in 1986 after the victim identified him as her attacker. *Id.* In 1993, the court allowed DNA testing from Shruggs and compared it to the evidence collected from the case, which ultimately proved Shruggs' innocence. *Id.* The court subsequently vacated his conviction and released him from prison after seven years of incarceration. *Id.* Shruggs' record was expunged in 1994, nearly a year before his death in May 1995. *Id.*

¹⁰⁴ *See* *infra* Part III.D (recommending support services for exonerees and mechanisms of providing them with such support); *infra* Part IV.A (proposing a statute for Indiana, which utilizes programs already implemented by the State and remains consistent in terms of its limitations).

¹⁰⁵ *See, e.g.,* IND. CODE § 34-18-14-3 (2016) (stating that medical malpractice is subject to a cap of "[o]ne million two hundred fifty thousand dollars (\$1,250,000) if the act of malpractice occurs after June 30, 1999"); IND. CODE § 34-51-3-4 (subjecting punitive damages to a cap of three times the amount of compensatory damages awarded in the case or fifty thousand dollars). Although exoneree compensation should not be capped, as advocated by the Innocence Project, nearly all of the monetary damages awarded in Indiana are subject to a cap, thus, the proposed compensation statute concedes to the likelihood of an imposed statutory limitation. *See* *infra* Part IV.A (recommending monetary damages to be limited to two million dollars).

statute of limitation, and the civil appeal procedures guidelines are relatively standard.¹⁰⁶ The Indiana Department of Corrections provides necessary support services to parolees and the State also offers Section 8 and subsidized housing to low-income individuals.¹⁰⁷ Additionally, Indiana's Family and Social Services Administration ("FSSA") implemented programs to foster independent, healthy, and constructive lives for Indiana residents.¹⁰⁸ The inconsistencies arising from the State's failure to adopt a statutory compensation scheme is problematic; however, existing support services could easily be extended to exonerees.¹⁰⁹ In fact, many states began authorizing compensation legislation in an effort to remedy the injury sustained by innocent ex-prisoners.¹¹⁰

¹⁰⁶ See, e.g., IND. CODE § 34-11-2-3 (mandating that claims be presented within two years if pertaining to professional services); IND. CODE § 34-11-2-4 (providing a two year statute of limitation for injury to persons or property); IND. CODE § 34-18-7-1 (indicating a two year limitation in bringing medical malpractice claims); IND. CODE § 34-20-3-1 (revealing a two year statute of limitation for product liability or strict liability in tort claims); IND. CODE § 34-23-1-1 (requiring wrongful death actions to be commenced within two years of the injury). Since the majority of the statute of limitations for claims in Indiana is two years, the proposed statute also recommends a two-year limitation for bringing a wrongful incarceration claim. See *infra* Part IV.A (suggesting claims to be commenced within two years from the effective date of the statute or the exonerees release from custody). The appeals process in Indiana allows up to thirty days after the judgment for an appeal to be filed. IND. CODE § 22-9-8-1; see IND. CODE § 22-9-8-2 (discussing the required contents of a record for an appeal); IND. CODE § 22-9-8-3 (stating that an individual can file an appeal only if they have exhausted all of the administrative remedies available to them). The Innocence Project also recommends that compensation claims should be heard by the state's civil court or other administrative structure that handles comparable compensation claims. *Model Legislation*, *supra* note 17, at 2.

¹⁰⁷ See *Programs and Re-entry*, IND. DEP'T OF CORR., <http://www.in.gov/idoc/3264.htm> [<http://perma.cc/F2K2-WP9P>] (offering support such as education, health care, pre-release services, re-entry services, and youth services for individuals incarcerated as adults); see also *Section 8/Subsidized Housing*, IND. HOUS. & CMTY. DEV. AUTH., <http://www.in.gov/ihcda/2333.htm#Vouchers> [<http://perma.cc/Z5E6-E2PF>] (discussing Section 8 housing information and application procedures for obtaining immediate services from the State).

¹⁰⁸ See *FSSA Mission and Vision*, FAMILY AND SOC. SERV. ADMIN., <http://www.in.gov/fssa/4839.htm> [<http://perma.cc/8SGY-JLE6>] (presenting the FSSA's mission which is "to develop, finance and compassionately administer programs to provide healthcare and other social services to Hoosiers in need in order to enable them to achieve healthy, self-sufficient and productive lives").

¹⁰⁹ See *infra* Part IV.A (proposing a compensation statute for Indiana to implement, which provides the necessary support services for exonerees).

¹¹⁰ See *infra* Part II.E (illuminating the differences in the types of awards offered to exonerees among the states).

E. *Indemnifying Wrongful Incarcerations: State Statutory Provisions for Post-Conviction Relief*

Many scholars criticize existing wrongful incarceration compensation statutes because of their variance and insufficiency.¹¹¹ As a result, the ABA and Innocence Project presented model reforms to encourage states to adopt comprehensive compensation legislation.¹¹² Many legal scholars and wrongful conviction policy advocates favor statutory reparation despite its inadequacy because it is most likely to promote intrastate fairness in compensating exonerees.¹¹³

Many state statutes require proof of factual innocence in order to be eligible for compensation.¹¹⁴ The innocence is usually proven either by a preponderance of the evidence or by a clear and convincing standard.¹¹⁵

¹¹¹ See Cook et al., *supra* note 59, at 238 (“[C]ompensation statutes are widely varied, grossly inadequate, and often even non-existent.”); Griffiths & Owens, *supra* note 18, at 270 (reporting that many states offer payments, sometimes nontaxable, based on specified dollar amounts for each year the individual was wrongfully incarcerated). In addition to monetary compensation, some states offer job training, psychotherapy, medical coverage, educational benefits, and reimbursement of legal expenses associated with the exoneration. Griffiths & Owens, *supra* note 18, at 270.

¹¹² See Mandery et al., *supra* note 14, at 561 (proposing legislative reforms that include physical and psychological services in addition to an increase in the awards currently offered to exonerees); ACHIEVING JUSTICE, *supra* note 23, at 109–19 (presenting reforms in compensation statutes to address the challenges faced by exonerees); *Model Legislation*, *supra* note 17 (presenting model compensation legislation proposed by the Innocence Project to consider).

¹¹³ See Griffiths & Owens, *supra* note 18, at 270 (indicating that statutory compensation is preferred over civil suits and private legislation because it is more likely to provide compensation to exonerees); see also *supra* notes 43–51 (elaborating on different methods of compensation and their limitations).

¹¹⁴ See, e.g., FLA. STAT. ANN. § 961.03(1)(a)(1) (West 2016) (stating that substantial evidence of actual innocence must exist to be eligible for compensation); 705 ILL. COMP. STAT. 505/8(c) (2016) (requiring a pardon from the governor issued on the ground of innocence or a certificate of innocence); see also *supra* notes 35–37 and accompanying text (discussing the difference between factual and legal innocence). The Innocence Project also proposes a provision that allows exonerees to recover if their conviction relied on a statute or other accusatory instrument that violated the U.S. or the state Constitution. *Model Legislation*, *supra* note 17, at 3. The ABA states that compensation is generally available to exonerees who can prove that they were: convicted of a crime, served all or part of the sentence, exonerated, and innocent of that crime. ACHIEVING JUSTICE, *supra* note 23, at 114.

¹¹⁵ See *infra* Part IV.A (requiring a lower standard of proof to show that the individual did not commit the crime(s) for which he was convicted). Proof by a preponderance of the evidence means that more than fifty percent of the evidence demonstrates that the exoneree was wrongfully convicted. *Preponderance of the Evidence*, LEGAL INFO. INST., http://www.law.cornell.edu/wex/preponderance_of_the_evidence [https://perma.cc/WQX4-YEAK]. Preponderance of the evidence is the burden of proof in civil trials. *Id.* For a clear and convincing standard of review, an exoneree must prove that it is substantially more likely than not that the individual was wrongfully convicted. *Clear and Convincing Evidence*, LEGAL INFO. INST., http://www.law.cornell.edu/wex/clear_and_convincing_

Some states prohibit compensation for individuals who contribute to their false conviction either by entering a guilty plea, false confession, or *nolo contendere*, while other states have no such restriction in place.¹¹⁶ Monetary compensation among the states that have adopted a statute range from \$5000 to \$80,000 for each year an individual spends wrongfully imprisoned.¹¹⁷ Some states place a cap on the total financial compensation

evidence [<https://perma.cc/MT59-GKDN>]. The ABA argues that “[w]hile most statutes require proof of innocence by ‘clear and convincing’ evidence, given the variety of ways that innocence may be established, it is open to debate whether any standard higher than that required in the typical civil case (preponderance of evidence) is necessary.” ACHIEVING JUSTICE, *supra* note 23, at 115. Some states require the preponderance of the evidence standard, while others have a heightened standard of clear and convincing evidence to prove their innocence and to obtain compensation. Compare CONN. GEN. STAT. ANN. § 54-102uu(c) (West 2016) (requiring a preponderance of the evidence standard to be eligible for support and to receive compensation), and MINN. STAT. § 590.04 (2015) (stating that burden of proof must be established by a fair preponderance of the evidence), with FLA. STAT. ANN. § 961.03(7)(a)(1) (West 2015) (necessitating clear and convincing standard for eligibility and compensation), and N.Y. CT. CL. LAW § 8-b(1) (McKinney 2015) (requiring proof of clear and convincing evidence to bring a claim for wrongful incarceration and to obtain compensation). The Innocence Project proposes a preponderance of the evidence standard to obtain judgment for the wrongful conviction. *Model Legislation, supra* note 17, at 2.

¹¹⁶ See, e.g., FLA. STAT. ANN. § 961.04(2) (West 2015) (stating that the exoneree is not eligible for compensation if he pled guilty or *nolo contendere*); N.Y. CT. CL. LAW § 8-b(4) (McKinney 2015) (permitting compensation if “he did not by his own conduct cause or bring about his conviction”); WIS. STAT. ANN. § 775.05(4) (West 2015) (allowing compensation if “he or she did not by his or her act or failure to act contribute to bring about the conviction and imprisonment for which he or she seeks compensation”). Connecticut’s statute allows compensation to individuals even if they contributed to their false conviction, only if they can prove they were innocent of the crime for which they served time in prison and that their conviction was vacated, reversed, or the case was dismissed due to a finding of actual innocence. CONN. GEN. STAT. ANN. § 54-102uu (West 2015). Minnesota’s statute allows the court to consider the claimant’s conduct that could have contributed to bringing about their false conviction; however, it specifies that a false confession or guilty plea does not constitute bringing about the claimant’s conviction. MINN. STAT. § 590.11 (2015). A *nolo contendere* plea means the individual neither admits nor denies his guilt. *Nolo plea*, BLACK’S LAW DICTIONARY 1269 (9th ed. 2009). According to the Bureau of Justice Statistics, approximately ninety-five percent of 75,573 cases were disposed by a guilty plea in 2003. Lindsey Devers, *Plea and Charge Bargaining*, BUREAU OF JUSTICE ASSISTANCE U.S. DEP’T OF JUSTICE 1 (Jan. 24, 2011), <https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf> [<https://perma.cc/5532-4QEG>].

¹¹⁷ See, e.g., 28 U.S.C. § 2513(e) (2012) (awarding exonerees \$50,000 for each year wrongfully incarcerated); FLA. STAT. ANN. § 961.06(1)(a) (West 2016) (offering \$50,000 for each year of wrongful incarceration, adjusted for inflation); 705 ILL. COMP. STAT. 505/8(c) (2016) (limiting monetary compensation to the years spent wrongfully imprisoned: maximum of \$85,350 for individuals who spent five years or less in prison; maximum of \$170,000 if the wrongful incarceration exceeded five years but less than fourteen; and a maximum award of \$199,150 if the wrongful incarceration exceeded fourteen years); N.Y. CT. OF CL. LAW § 8-b(6) (McKinney 2016) (requiring a sum of money that “fairly and reasonably” compensates the exoneree); TEX. CIV. PRAC. & REM. CODE ANN § 103.052(a)(1) (West 2016) (offering \$80,000 multiplied by each year served wrongfully imprisoned, expressed as a fraction for partial

160 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 50]

allotted, while others do not limit such recovery.¹¹⁸ A supplementary award for time spent on death row, parole, probation, or as a registered sex offender is offered by many states.¹¹⁹

In addition to monetary compensation, some states offer support and re-integrative assistance to exonerees.¹²⁰ These services include, but are not limited to: physical and mental health care, counseling, education, employment skills development, and vocational training.¹²¹ Because some of these services do not become available until years after exoneration, the

years); WIS. STAT. ANN. § 775.05(4) (West 2015) (noting that Wisconsin offers monetary compensation that is no greater than \$5000 per year of wrongful imprisonment, not to exceed \$25,000). The Innocence Project recommends states to provide at least \$62,500 (reflecting inflation from the date of enactment) for each year a person spends wrongfully imprisoned and the award should not be subject to cap, treated as gross income, or taxed. *Model Legislation*, *supra* note 17, at 4-6. If compensated, eighty-one percent of exonerees receive less than the federal standard. *Innocence Project Report*, *supra* note 26.

¹¹⁸ Compare FLA. STAT. ANN. § 961.06(1)(e) (West 2015) (offering a maximum of \$2,000,000 in monetary compensation), and 705 ILL. COMP. STAT. 505/8(c) (2016) (limiting compensation to \$199,150), and WIS. STAT. ANN. § 775.05(4) (West 2015) (placing a cap on the monetary award to \$25,000), with TEX. CIV. PRAC. & REM. CODE ANN. § 103.052(a)(1) (West 2016) (placing no restriction on the total amount of monetary award for exonerees). According to a report conducted in 2012 by the Vera Institute of Justice, Indiana spent an average of \$14,823 annually to house one inmate. *The Price of Prisons Indiana: What Incarceration Costs Taxpayers*, THE VERA INST. OF JUST. (Jan. 2012), <http://www.vera.org/files/price-of-prisons-indiana-fact-sheet.pdf> [<http://perma.cc/5MRY-A43N>] [hereinafter VERA INSTITUTE]. The Innocence Project suggests that expenses incurred to house prisoners should not offset the total damages awards available to exonerees. *Model Legislation*, *supra* note 17, at 6.

¹¹⁹ See, e.g., 28 U.S.C. § 2513(e) (2012) (awarding exonerees additional compensation not to exceed \$100,000 for each year on death row); MINN. STAT. § 611.365 (2015) (giving at least an additional \$25,000 for each year served on supervised release and sex offender registry, to be prorated for partial years); TEX. CIV. PRAC. & REM. CODE ANN. § 103.052(b) (West 2016) (providing an additional \$25,000 multiplied by the number of years served either on parole or as a registered sex offender, expressed as a fraction for partial years); WASH. REV. CODE § 4.100.060(5)(a)-(b) (2015) (offering an additional \$50,000 for each year on death row and \$25,000 for each year spent on parole, community custody, or on a sex offender registry). The Innocence Project recommends an additional \$62,500 for each year a person was on death row and at least \$31,000 for each year served on parole, probation, or as a registered sex offender, to be pro-rated for portions of the years served. *Model Legislation*, *supra* note 17, at 4.

¹²⁰ See, e.g., CONN. GEN. STAT. ANN. § 54-102uu(e) (West 2016) (offering counseling services in addition to monetary compensation); MINN. STAT. ANN. § 611.365(4) (West 2015) (granting tuition reimbursement for successful completion of each semester, or employment skills and development training); TEX. GOV'T CODE ANN. § 501.102(b)(1) (West 2016) (providing life-skills, job, and vocational training for as long as they are beneficial to the exoneree). The Innocence Project advocates immediate psychological services and "long-term assistance to help exonerees regain lost time through on-going counseling aimed at repairing damaged relationships and addressing the psychological strains of the wrongful conviction and prison experience." Scott, *supra* note 52, at 17. LAEP and the Innocence Project furnish exonerees with access to counseling services. *Id.* at 16.

¹²¹ See Scott, *supra* note 52, at 17-18 (depicting the types of support services offered by many states).

Innocence Project recommends immediate services for exonerees.¹²² Finally, many states provide record expungements for innocent ex-prisoners, which assists them in securing employment and rebuilding their lives.¹²³

The injustice suffered by innocent ex-prisoners is everlasting and Indiana's current method of redress is failing.¹²⁴ Despite the constitutional safeguards, the frequency of exonerations is on the rise.¹²⁵ Indiana owes a civic debt to its exonerees for unjustly taking their freedom and should repair their injury by adopting a statute that provides the tools exonerees need to begin restoring their lives.¹²⁶

III. ANALYSIS

The upsurge of wrongful convictions indicates a need for an immediate systematic reform.¹²⁷ The current redress methods are inadequate, and exonerees rarely prevail in securing compensation.¹²⁸

¹²² See *Model Legislation*, *supra* note 17, at 9 (suggesting states to provide immediate services such as: housing, education, vocational training, transportation, monetary assistance, re-integrative services, along with mental, physical, and dental care).

¹²³ See, e.g., FLA. STAT. ANN. § 961.06(1)(e) (West 2015) (waiving the expungement fee and requiring an immediate expungement of the criminal record arising from the wrongful arrest, conviction, and incarceration); 735 ILL. COMP. STAT. 5/2-702(h) (West 2016) (stating that the court will enter a certificate of innocence and an order expunging and sealing the record as soon as the claimant is entitled to judgment, and a copy of the order is mailed to the exoneree). The Innocence Project provides a drafter's note for states to incorporate an expungement provision to eradicate the false conviction from the exonerees record. *Model Legislation*, *supra* note 17, at 6–7.

¹²⁴ See *supra* notes 43–51 and accompanying text (discussing the methods of compensation for exonerees and their disadvantages); *supra* Part II.B (illustrating the detrimental effects of incarceration on individuals); *supra* Part II.E (describing the variety of compensation offered by different states).

¹²⁵ See *supra* Part II.C (exhibiting the constitutional implications related to wrongful incarceration).

¹²⁶ See *infra* Part IV.A (presenting a model statute for Indiana that provides the services exonerees need to begin rebuilding their lives).

¹²⁷ See *Model Legislation*, INNOCENCE PROJECT, <http://www.innocenceproject.org/free-innocent/improve-the-law/model-legislation#sthash.IRVH2gdk.dpuf> [<http://perma.cc/56L6-DDPT>] (indicating that a reform is needed in the criminal justice system to protect the innocent and strengthen the work of law enforcement and prosecutors); *supra* note 13 and accompanying text (stating that the highest number of exonerations ever recorded in the United States was in 2014). As the number of exonerations increase, society's obligation to exonerees also increases. See Griffiths & Owens, *supra* note 18, at 267 (stating that society should be held accountable for the unjust taking of exonerees' freedom, regardless of mistake).

¹²⁸ Mandery et al., *supra* note 14, at 556–57. Seeing that the contributing factors of false convictions do not typically encroach upon a constitutional right, difficulty surfaces when exonerees have to prove a constitutional violation occurred as a result of their wrongful conviction. See *supra* note 39 and accompanying text (displaying the common contributing

Indiana's lack of a statutory compensation scheme heightens the burden of exonerees seeking redress in the State.¹²⁹ The State is in a much better position than defendants to prevent wrongful convictions, thus, it should be held accountable for its mistakes.¹³⁰ Indiana's legislature should look to the Innocence Project's recommended model legislation as a starting point for drafting a state compensation statute.¹³¹ In addition to developing a workable compensation arrangement, the State must also address the underlying causes of false convictions to prevent the systemic failures perpetuating the abundance of wrongful convictions.¹³²

factors of false convictions and the number of exonerations that resulted from each factor); *supra* Part II.C (explaining the possible constitutional violations with respect to wrongful convictions). If exonerees are awarded compensation, it is limited to money and does not offer the support services needed to properly reintegrate back into society. *See supra* Part II.B (discussing the effects of incarceration on individuals and the resources needed, in addition to money, to successfully transition back into society).

¹²⁹ *See* Scott, *supra* note 52, at 19 (revealing that in states where exonerees do not receive compensation, those individuals have more difficulty overcoming their mental health problems). Compensation statutes enable exonerees to live productive lives. Mandery et al., *supra* note 14, at 564. In states where a compensation statute is non-existent, courts struggle to provide exonerees with adequate compensation, causing further inconsistencies in their awards and elevating their struggles. *See infra* Part IV.A (suggesting manageable guidelines for a compensation statute that court can follow); *supra* Part II.D (evidencing the disparities among the awards granted to exonerees in a state that lacks a compensation statute); *supra* Part II.E (discussing the compensation awards offered by other states).

¹³⁰ *See* Mandery et al., *supra* note 14, at 564 n.58 (arguing that prosecutors and jurors should also pay a portion of the exoneree compensation for contributing to the wrongful conviction).

¹³¹ *See infra* Part IV.A (using the compensation statute proposed by the Innocence Project as a foundation for the statute Indiana should adopt). The Innocence Project cautions that "state laws vary greatly and there are important concerns to be addressed under each state law." *Model Legislation*, *supra* note 17 at 6-7.

¹³² *See supra* note 39 (explaining the contributing factors that give rise to false convictions in the United States). The ABA has proposed reforms to address the underlying causes of false convictions in the United States. *See* ACHIEVING JUSTICE, *supra* note 23, at 100-07 (proposing reforms in prosecution practices such as: sufficient funding for the prosecutors' offices, manageable workloads, procedures for evaluating cases, and preserving evidence for a reasonable period of time). Scholars have also argued that the prosecutor's job should be to seek justice not victory. David Luban, *The Conscience of a Prosecutor*, 45 VAL. U. L. REV. 1, 20 (2010). One of the reasons for the increasing numbers of false convictions is because of the difference in power between the state and the defendant, which scholars call the power theory. *Id.* at 20-21. The state is in a better position than the accused because it has the resources to flip witnesses and generate plea bargains, while the defendants usually have attorneys that are overworked and have very little to no capacity to investigate the case. *Id.* The other reason is the sovereignty theory, where the prosecutors have an obligation to govern justly and impartially. *Id.* at 21.

To address the issues involving false confessions, the ABA suggests that all law enforcement agencies videotape their interrogations and if videotaping is not feasible, then audiotaping would be the next best option. ACHIEVING JUSTICE, *supra* note 23, at xvii. The ABA also encourages states to implement legislation that requires taping of interrogations, offer state funding, and sanctions for noncompliance. *Id.*

Part III.A establishes why the model statute proposed by the Innocence Project should be the foundation from which Indiana's statute is constructed.¹³³ Part III.B analyzes the rigid eligibility requirements for exonerees to obtain compensation.¹³⁴ Part III.C advocates a cap on the total monetary damages.¹³⁵ Part III.D demonstrates the necessity of re-entry and re-integrative services for innocent ex-prisoners.¹³⁶ Part III.E

The ABA's eyewitness identification reform involves implementing guidelines for conducting lineups and photo spreads to improve their accuracy. *Id.* at xviii. It also recommends training on nonsuggestive techniques for interviewing witnesses and constructing a method for enforcing and updating the proper interviewing guidelines. *Id.* The ABA suggests that photo lineups should include double-blind procedures, in which the detectives conducting the lineup are unaware of the identity of the suspect and informs the witness that the suspect may not be in the lineup, therefore, the witness is not obligated to select a person from the photo spread. *Id.* at xix. Other reforms to photo line ups include: foils (provides a higher number of photographs for which the witness is to select the suspect), sequential procedures (showing the witness one photo at a time as opposed to a number of them altogether), and videotaping the line ups (to allow the judge and jurors to see whether the witness was affected by exterior forces when selecting the suspect). *Id.* at xix-xx.

To address the issues pertaining to forensic evidence, the ABA recommends that crime labs and medical examiner offices should be standardized. *ACHIEVING JUSTICE, supra* note 23, at xxii. The ABA suggests funding the labs and requiring accreditation of the labs and offices as well as certification of the individual examiners. *Id.* at xxii-xxiii. The ABA also suggests a requirement for appointing defense experts for indigent defendants because forensic evidence is crucial in these types of cases. *Id.* at xxiii. The ABA also proposes forensic science training for all attorneys at a low cost so that lawyers are knowledgeable in the relevant area of law. *Id.*

Because of the number of false convictions that arise from jailhouse informants, the ABA recommends that defendants should not be prosecuted solely on evidence pertaining to uncorroborated jailhouse informant testimony. *Id.* at xxiv. Additionally, the ABA suggests that federal, state, and local governments should guarantee "high quality" defense attorneys in serious criminal cases because of the greater potential of penalties for serious crimes and the danger of allowing the real criminal to roam free in the community. *Id.* at xxv.

To address issues with investigative policies and personnel, the ABA recommends adequate training and disciplinary procedures to ensure investigative personnel are properly equipped and held accountable for their actions. *ACHIEVING JUSTICE, supra* note 23, at xxvi. With respect to the forensic labs, the ABA urges improved training and accountability measures for police officers, and accurate collections and storage of evidence through funding mechanisms. *Id.*

¹³³ See *infra* Part III.A (discussing the monetary and support services suggested by the Innocence Project, which are suitable for compensating exonerees in Indiana).

¹³⁴ See *infra* Part III.B (analyzing the stipulations that should be in place for exonerees to receive a judgment in their favor).

¹³⁵ See *infra* Part III.C (suggesting a restriction on the total amount of money awarded to exonerees in Indiana).

¹³⁶ See *infra* Part III.D (proposing immediate support services for exonerees to help them successfully transition back into society).

argues the need for an expungement provision eradicating exonerees' erroneous conviction record.¹³⁷

A. *The Model Statute Proposed by The Innocence Project Provides a Solid Foundation for Indiana to Build Upon*

The Innocence Project is intimately acquainted with the pain and difficulties exonerees face when released back into society and as a result, formed a series of recommendations for states to indemnify these innocent individuals.¹³⁸ Its model legislation provides monetary compensation and support services to exonerees, generating consistent and just outcomes.¹³⁹ However, the suggested proposal is imperfect.¹⁴⁰

First, the legislation proposed by the Innocence Project allows compensation for individuals who entered into a guilty plea or false confession.¹⁴¹ This element is problematic because by professing guilt to a crime that one did not commit, the individual contributes to their false conviction and thus, should be held accountable for such actions.¹⁴² False confessions are among the major causes of unjust convictions, thus, the exoneree should be entitled to compensation only in circumstances where

¹³⁷ See *infra* Part III.E (demonstrating the importance of expunging the false conviction from the innocent individual's criminal records).

¹³⁸ See *About Us*, *supra* note 17 (revealing that the Innocence Project is a national organization that is committed to exonerating innocent people through DNA testing and reforming legislation). The Innocence Project provides details of individual exonerations involving DNA, offers reforms to current practices, and supplies detailed information of each state's approach in addressing the issue of unjust incarceration. *Our Work*, INNOCENCE PROJECT, <http://www.innocenceproject.org/free-innocent> [<http://perma.cc/RH5H-YSMJ>].

¹³⁹ See *Model Legislation*, *supra* note 17, at 4, 9 (presenting the model legislation recommended by the Innocence Project, which provides the necessary support for exonerees).

¹⁴⁰ See *infra* Part III.A-E (analyzing important provisions needed for Indiana's compensation statute); *infra* Part IV.A (presenting the proposed compensation statute for Indiana, which provides monetary compensation and additional support for exonerees).

¹⁴¹ See *Model Legislation*, *supra* note 17, at 3 (stating that an exoneree can obtain compensation if "[h]e did not commit or suborn perjury, or fabricate evidence to cause or bring about his conviction. However, neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit constitutes bringing about his own conviction under this Act"); *infra* Part III.B (arguing a need for rigid eligibility standards that do not allow compensation for voluntary conduct that resulted in the individual's false conviction).

¹⁴² See *ACHIEVING JUSTICE*, *supra* note 23, at 11 (indicating that false confessions can deceive police, prosecutors, defense attorneys, judges, and juries into focusing the case on the innocent suspect, which often leads to the false convictions). Scholars argue that the consequence of a guilty plea is waiving the right to appeal the false conviction. King, *supra* note 40, at 218. Once an individual enters into a guilty plea, the courts generally will not listen to any arguments showing that he was coerced, a witness lied to the police, or that the forensic evidence was erroneous. *Id.*

the guilty plea or admission is involuntary or coerced.¹⁴³ Next, the model legislation asks courts to consider economic and non-economic damages when rendering monetary compensation and does not provide a cap, which, in turn, could lead the State into a financial deficit.¹⁴⁴ The same amount of money should be offered for each year the exoneree served wrongfully incarcerated, subject to a cap.¹⁴⁵ This approach avoids the lengthy case-by-case litigation and generates consistency among the awards provided to the exonerees.¹⁴⁶

The Innocence Project also recommends a variety of services that should be available for exonerees; however, this Note only focuses on the support services necessary for successful reintegration.¹⁴⁷ Finally, the Innocence Project's model legislation does not contain an actual expungement provision, but rather advises states that such an arrangement should be implemented.¹⁴⁸ The expungement of the false

¹⁴³ See ACHIEVING JUSTICE, *supra* note 23, at 11 (revealing that about twenty-five percent of wrongful convictions consisted of false confessions); *infra* Part III.B (allowing compensation for individuals who did not voluntarily bring about their false conviction). People generate false confessions for a multitude of reasons including: duress, coercion, intoxication, diminished capacity, mental impairment, ignorance of the law, fear of violence, the actual infliction of harm, the threat of a harsh sentence, and/or misunderstanding the situation. *False Confessions*, INNOCENCE PROJECT, <http://www.innocenceproject.org/understand/False-Confessions.php> [<http://perma.cc/3LP5-STT8>]. The burden should lie on the exoneree to prove that the guilty plea or false confession was involuntary. See *infra* Part IV.A (presenting a compensation statute for Indiana that restricts eligibility to individuals who did not voluntarily contribute to their false conviction).

¹⁴⁴ See *Model Legislation*, *supra* note 17, at 4-5 (recommending exonerees to be compensated for each year they served wrongfully incarcerated). The Innocence Project also suggests that the states should consider economic damages, which can include lost wages, costs associated with the criminal defense and efforts to prove innocence, medical, and dental expenses. *Id.* at 4. The non-economic damages suggested by the Innocence Project include physical injuries, sickness, non-physical injuries, or sickness due to the wrongful incarceration. *Id.*

¹⁴⁵ See *supra* note 103 and accompanying text (revealing that the majority of damages awards in Indiana are subject to a cap). Consistency in awarding exonerees is important and the award should only be increased due to the number of years spent wrongfully incarcerated, on death row, parole, probation, or as a registered sex offender. See *supra* note 117 and accompanying text (providing examples from different states that award additional monetary compensation to innocent individuals who served time on death row, parole, probation, or as a registered sex offender).

¹⁴⁶ See *infra* Part IV.A (presenting a compensation statute for Indiana that provides clear and consistent guidelines, and are not subject to the court's discretion). The purpose of statutory compensation is to provide explicit guidelines for the courts to follow. *Infra* Part IV.A.

¹⁴⁷ See *Model Legislation*, *supra* note 17, at 4-5 (suggesting that support for children should also be provided); *infra* Part III.D (discussing the critical support services needed for exonerees, which includes physical and mental health care, counseling, tuition reimbursement, vocational and employment skills training).

¹⁴⁸ See *Model Legislation*, *supra* note 17, at 6-7 ("Because a criminal record can prevent a wrongfully convicted person from rebuilding a successful life, every state should include an

criminal record is critical because it can determine whether or not the exoneree secures employment to effectively transition back into society.¹⁴⁹ Despite these amendments, the Innocence Project's model legislation offers the most meticulous proposal, particularly in its eligibility requirements, and therefore, provides a solid foundation for Indiana's wrongful incarceration compensation statute.¹⁵⁰

B. Indiana's Statute Should Establish Rigid Eligibility Requirements

A statute that provides reparations to individuals who can prove that they have been wrongfully incarcerated and actually innocent of the charges is the best proposition for recovery.¹⁵¹ Therefore, the proposed statute for Indiana should limit compensation to individuals who can prove their factual innocence by a preponderance of the evidence.¹⁵² Any higher burden than the recommended standard is unnecessary because it would require the exonerees to endure another lengthy litigation despite already having proven their actual innocence.¹⁵³

expungement and/or sealing provision."); *infra* Part III.E (demonstrating the need for the State to expunge exonerees false conviction from their records).

¹⁴⁹ See *infra* Part III.E (discussing the importance of an expungement provision in the proposed compensation statute). See also *supra* notes 65-68 and accompanying text (revealing the significance of obtaining employment for exonerees, and the consequences of unemployment after release from prison).

¹⁵⁰ See *Model Legislation*, *supra* note 17 (presenting the Innocence Project's model legislation, which provides relevant sections including eligibility requirements, presentation of the claim, judgment and award, time limitation, right of appeal, and eligibility for immediate services); *infra* Part III.B (discussing the qualifications that should be implemented to successfully obtain compensation).

¹⁵¹ See *ACHIEVING JUSTICE*, *supra* note 23, at 113 (recommending the compensation statutes be designed to ensure that only actual innocent individuals recover, and to accelerate the procedure from exoneration to compensation).

¹⁵² See *infra* Part IV.A (specifying eligibility for compensation. "[C]onsistent with actual innocence" has a broad interpretation to it, but in this context, it means that the individual did not commit the crime and there is no indication of the defendant's guilt in relation to the crime. *ACHIEVING JUSTICE*, *supra* note 23, at 115. In circumstances where the individual is released due to a procedural or legal violation, that person is not considered "actually innocent[.]" and therefore, unable to recover under the proposed statute. *Id.* There are occasions where an individual will be exonerated on one charge but still lawfully imprisoned because of another valid conviction. *Id.* at 117. The ABA rightfully suggests that individuals who are serving consecutive charges even if one of the charges is held to be invalid should not be compensated. *Id.* Further, the ABA states that "[t]he causation requirement that a claimant must have been incarcerated as a result of the conviction eliminates potential claims by those incarcerated for other crimes during the same period that they were serving a sentence due to the wrongful conviction." *Id.* at 114. See *infra* Part IV.A (presenting a model statute that allows the courts to dismiss the claim if sufficient facts are not proven by a preponderance of the evidence).

¹⁵³ See, e.g., *supra* notes 7-8 and accompanying text (explaining the thirteen years and three trials Camm endured to prove his innocence); *supra* note 113 and accompanying text

Criminal justice reform advocates chastise the plethora of plea bargains, saying too much power rests in the hands of prosecutors who attempt to siphon guilty pleas.¹⁵⁴ Other scholars argue that people who plead guilty or were coerced into confessing should not be restricted under these statutes.¹⁵⁵ The ABA also reports that innocent individuals plead guilty in exchange for shorter sentences, therefore, the plea bargain should not automatically preclude recovery.¹⁵⁶ Despite these remonstrations, including a provision that prevents individuals from recovering if they voluntarily contributed to their false conviction through a guilty plea, admission, or confession, limits recovery.¹⁵⁷ Just as the state is held accountable for its actions by providing compensation, exonerees also need to be held responsible for their conduct that resulted in the false conviction.¹⁵⁸ The proposed statute for Indiana should include a provision that states: “He did not by his own voluntary conduct, cause or bring about his conviction.”¹⁵⁹ The term “voluntary” is paramount because, as

(discussing states that have adopted a clear and convincing standard as well as states that have adopted a preponderance of the evidence standard for compensation eligibility). A stringent standard of clear and convincing evidence is unwarranted because it places a higher burden on exonerees to prove they were actually innocent notwithstanding the exoneration. See N.Y. CT. CL. LAW § 8-b(5) (McKinney 2016) (mandating a clear and convincing evidence standard); WIS. STAT. ANN. § 775.05(3) (West 2015) (requesting clear and convincing evidence as the standard of proof).

¹⁵⁴ See Resnikoff, *supra* note 13 (“At least [ninety percent] of criminal cases in the United States result in a guilty plea.”).

¹⁵⁵ Slifer, *supra* note 49. Bruce Barket, an attorney who represented an exoneree stated that compensation is critical and he is shocked that there would be any arguments against it. *Id.* He said, “They can’t just pick up where they left off. They lost careers, jobs, families, the ability to build a career. Their lives were, in essence, destroyed.” *Id.*

¹⁵⁶ See ACHIEVING JUSTICE, *supra* note 23, at 116 (indicating that plea bargains generally avoid a lengthier sentence if the individual were convicted after trial). The ABA cautions that care should be taken when prohibiting recovery to individuals whose behavior contributed to their conviction. *Id.* at 115. The ABA further argues that false confessions should not bar recovery because it could have been coerced or unreliable due to police misconduct. *Id.* at 115–16. This concern is especially important in circumstances where the defendant is an adolescent or mentally impaired. *Id.* at 116.

¹⁵⁷ See N.Y. CT. CL. LAW § 8-b(4) (declining compensation to individuals who contributed by his conduct to his false conviction); WIS. STAT. ANN. § 775.05(4) (limiting eligibility by preventing those who contributed to their false conviction from receiving compensation). Contributing to their false conviction is not limited to a confession, admission, or guilty plea. See also *infra* Part IV.A (allowing compensation for individuals who did not voluntarily cause or bring about his conviction).

¹⁵⁸ See *Contributing Factor*, *supra* note 39 (revealing that 221 of 1733 exonerees falsely confessed to a crime). Often times, the false confession led to their conviction. See *supra* note 142 and accompanying text (discussing the consequences of entering into a guilty plea, which often leads to the false conviction and bars future recovery).

¹⁵⁹ See *infra* Part IV.A (presenting a statute that limits compensation for individuals who voluntarily contributed to their false conviction). Most state statutes do not allow compensation to exonerees who plead guilty or generated a false confession, but it is

168 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 50]

previously mentioned, these acts are not always voluntary and are often obtained through coercion, torture, and other unjust mechanisms.¹⁶⁰ Therefore, in circumstances where the false admission of guilt was involuntary, exonerees should be entitled to compensation.¹⁶¹

C. *Indiana's Statute is Likely to Consider a Cap on the Monetary Compensation*

Monetary awards are extended in almost every state that has adopted a compensation statute.¹⁶² The Innocence Project and the ABA recommend that states should consider economic and non-economic damages when determining the amount of money offered to exonerees.¹⁶³ Critics argue that placing restrictions on the total amount of money offered to the exonerees leaves the individuals who spent the most time in prison at a severe disadvantage.¹⁶⁴ However, state funds are not unlimited.¹⁶⁵

important to understand that these acts are not always voluntary and thus, should be remitted. See *supra* note 143 and accompanying text (providing the reasons why people typically generate false admissions).

¹⁶⁰ See *supra* note 143 and accompanying text (listing circumstances where individuals will admit to crimes they never committed). Prohibiting compensation to individuals who have contributed to their unjust convictions denies justice to those who were coerced, explicitly or implicitly, into confessing or pleading guilty to crimes they did not commit. *The Wrongly Convicted*, *supra* note 15.

¹⁶¹ See *supra* note 143 and accompanying text (stating that the burden should be on the exoneree to prove their confession or guilty plea was involuntary). Some examples of involuntary admission include duress, coercion, and mental impairment. *Id.*

¹⁶² Griffiths & Owens, *supra* note 18, at 271. Compensation awards should not be unreasonable. ACHIEVING JUSTICE, *supra* note 23, at 116. "[L]arger awards, and provision for attorney's fees, will not only ensure that wrongly convicted are adequately and fairly compensated for their loss, but will ensure that claimants can find counsel to assist them to pursue indemnification." *Id.* See also *Innocence Project Report*, *supra* note 26 (describing the monetary compensation provided by each state that has adopted an exoneree compensation statute).

¹⁶³ ACHIEVING JUSTICE, *supra* note 23, at 116. According to the ABA, non-economic losses could include: pain and suffering, humiliation, loss of consortium, and loss of reputation; while economic losses consist of lost wages, costs expended for trials, and medical expenses such as psychological counseling after release from prison. *Id.* The condition of the imprisonment, such as death row, should also be a factor that increases the amount of compensation. *Id.* The ABA states exonerees should not be entitled to punitive damages. *Id.* Some states include a certain amount of recovery for each day or year of wrongful imprisonment, which the ABA argues is a mechanical approach that restricts recovery. *Id.*

¹⁶⁴ *Making Up for Lost Time: What the Wrongfully Convicted Endure and How to Provide Fair Compensation*, INNOCENCE PROJECT 15, http://www.innocenceproject.org/files/imported/innocence_project_compensation_report-6.pdf [<http://perma.cc/3SD3-VERS>]. The average DNA exoneree in the United States spends between thirteen to as many as thirty-one years wrongfully imprisoned. *Id.* at 3. The ABA also states that if a cap is placed, it should be consistent with other existing caps in the state. ACHIEVING JUSTICE, *supra* note 23, at 116.

¹⁶⁵ See *infra* Part IV.B (addressing the concerns of taxpayer dollars to fund the compensation awards).

Some state compensation statutes are outdated, providing meager amounts of money while others are relatively generous.¹⁶⁶ Counterintuitively, other state statutes are too ambiguous and unduly discretionary, which results in disparate outcomes for individuals in similar circumstances.¹⁶⁷ The level of disparity among the awards is heightened when the courts have the discretion to determine what they believe to be adequate compensation for each individual, which leads to a poor system overall.¹⁶⁸ In the absence of a statutory compensation scheme, exonerees seeking redress for their unjust incarceration often file tort claims requesting exorbitant amounts of money, putting the state in a position to disperse more money in the end.¹⁶⁹

To combat the issues of monetary restrictions, Indiana should offer equitable compensation to exonerees.¹⁷⁰ More specifically, the State should provide \$62,500 for each year the individual spent wrongfully incarcerated and an additional \$62,500 for each year spent on death row, to be pro-rated for partial years.¹⁷¹ An additional award of \$31,000 should be given for each year the exoneree served on parole, probation, or as a registered sex offender.¹⁷² The cap for the wrongful incarceration compensation should be set at \$2 million due to other existing caps in the State.¹⁷³ The current legal standard and process are overly burdensome and those who have already suffered need immediate assistance.¹⁷⁴

¹⁶⁶ See *supra* note 115 and accompanying text (listing the monetary compensation offered by specific states).

¹⁶⁷ See 705 ILL. COMP. STAT. 505/8(c) (West 2016) (providing a range of monetary compensation for the courts to award exonerees, which is based on the number of years the exoneree spent wrongfully imprisoned); N.Y. CT. OF CL. LAW § 8-b(6) (McKinney 2016) (allowing the court to award compensation that they consider fair and reasonable).

¹⁶⁸ See *supra* part II.D (discussing the inconsistency in damages awards when courts are granted broad discretion).

¹⁶⁹ See *supra* note 10 and accompanying text (listing the causes of actions for which David Camm is seeking damages to be determined at trial); *supra* Part II.D (examining the discrepancies among the exoneree compensation in Indiana).

¹⁷⁰ See *infra* Part IV.A (providing \$62,500 for each year wrongfully incarcerated with additional compensation for time served on death row, parole, probation, or as a registered sex offender).

¹⁷¹ *Model Legislation*, *supra* note 17, at 4; see *infra* Part IV.A (proposing that Indiana adopt the monetary recommendations offered by the Innocence Project).

¹⁷² *Model Legislation*, *supra* note 17, at 4; see *infra* Part IV.A (implementing the Innocence Project's suggestions to provide additional post-exoneration awards to Indiana exonerees).

¹⁷³ See *supra* note 105 and accompanying text (indicating that most of the damages awards in Indiana are subject to a cap, therefore wrongful incarceration compensation should be consistent with the State's standard); ACHIEVING JUSTICE, *supra* note 23, at 116 (suggesting that if a cap is in place, it should be consistent with other caps in the state).

¹⁷⁴ See *supra* Part II.B (discussing the struggles exonerees endure after being released back into society).

170 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 50

Providing exonerees with adequate relief can help to reestablish their lives.¹⁷⁵

D. Indiana's Statute Should Provide Immediate Re-entry and Reintegration Services

The Stanford Prison experiment exemplifies a powerful illustration of the adverse effect of prisons on average, healthy, human beings.¹⁷⁶ Individuals who spent a considerable number of years in prison cannot easily readjust to the outside world without assistance.¹⁷⁷ Therefore, in addition to providing monetary compensation, Indiana should also provide immediate support services to its exonerees.¹⁷⁸

The support services should include assistance with job and vocational training, placement services, and reimbursement for any tuition and fees paid for each semester successfully completed by the claimant in an educational program.¹⁷⁹ Assistance should also be offered for mental health such as post-traumatic stress, counseling, physical and emotional services.¹⁸⁰ Support services are especially important because

¹⁷⁵ See *supra* Part IV.A (providing a statute that includes the necessary compensation for exonerees upon release from prison).

¹⁷⁶ See *supra* notes 54–57 (revealing that even though it was an experiment (it was not conducted in an actual prison, and used healthy college educated males) the men's behavior drastically changed for the worse and only within six days, causing researchers to terminate what was supposed to be a two-week long study).

¹⁷⁷ ACHIEVING JUSTICE, *supra* note 23, at 118. See *supra* Part II.B (discussing life after exoneration and the effects of wrongful incarcerations on exonerees); see also Scott, *supra* note 52, at 15 (discussing the problems exonerees face with excessive spending and budgeting).

¹⁷⁸ ACHIEVING JUSTICE, *supra* note 23, at 118. Instead of providing lump sums of money to exonerees, a better solution would be to provide support services and medical expenses, which would better allocate the needs of the exoneree and help them rebuild a stable life. *Id.* “Unlike probationers or parolees, who may have assistance in navigating access to public services or benefit from reentry plans, the newly released innocent person is simply set free.” *Id.* at 118. Experts indicate that if a state statute is enacted, it takes approximately three to seven years for exonerees to receive some form of compensation. Alcindor, *supra* note 36. Therefore, Indiana needs to establish a platform that will address the issues exonerees face and ensure successful reentry following their immediate release into society. See *supra* Part III.D (analyzing support services needed for successful reintegration).

¹⁷⁹ See ACHIEVING JUSTICE, *supra* note 23, at 118 (providing the ABA's recommendations to offer services such as job and vocational training, mental health counseling, substance abuse programs, assistance in obtaining housing or food stamps, and a monetary stipend). The proposed statute also recommends that the state's probation department or a department that addresses mental health services provide these services for exonerees. *Id.*

¹⁸⁰ See Scott, *supra* note 52, at 13 (arguing that “counseling and psychotherapy and treatments are helpful”). John Wilson, a professor of psychology, studies the psychological impact of wrongful imprisonment and states:

I believe that the injuries from a wrongful conviction and incarceration are permanent. I think they're permanent scars. And even though counseling and psychotherapy and treatments are helpful, I don't think

most exonerees have trouble budgeting and accrue large amounts of debts.¹⁸¹ The goal of providing support services is to assist exonerees in becoming self-sufficient again.¹⁸² In states like Indiana, that do not have a compensation statute, exonerees have a more difficult time confronting their mental health problems because they have very few alternatives.¹⁸³

Indiana should bear these costs because exonerees are released into society traumatized by the injustice and forced to depend on family or friends solely because of a mistake made by the State.¹⁸⁴ The statute's purpose is to provide exonerees with immediate compensation, but in circumstances where it is not possible, the statute includes a section for immediate services.¹⁸⁵ Because parolees are provided with support upon release in Indiana, the forms of assistance are already accessible and can be extended to exonerees.¹⁸⁶ Indiana's Section 8 Housing Program provides low-income individuals with assistance in securing housing.¹⁸⁷ Additionally, Indiana's Family and Social Services Administration is in the best position to determine eligibility for immediate services because it provides employment opportunities and services to Indiana residents that seek to live productive lives.¹⁸⁸ Since there are programs in place to assist parolees and low-income individuals in Indiana, extending these programs to exonerees would be a seamless process and would help

you can undo the permanent damage to the soul of the person, to their sense of self, to their sense of dignity.

Id. Wilson asserts that more mental health professionals should be trained to treat exonerated individuals and these specialists should be available through public agencies. *Id.* at 14.

¹⁸¹ *Id.* at 15. Limiting the amount of money exonerees spend does not fall on the state, rather, a compensation scheme that provides support services would help ensure that the resources are beneficial to the exonerate. *Id.* at 18.

¹⁸² See *supra* note 62 and accompanying text (revealing specific instances where exonerees struggle to do everyday tasks).

¹⁸³ See *supra* part II.A (discussing the limitations for the current methods of compensation).

¹⁸⁴ See *supra* note 179 and accompanying text (presenting the ABA's recommendation of services that the states should provide to the exonerate).

¹⁸⁵ See *infra* Part IV.A (allowing up to three years of immediate services for exonerees, which includes housing, education, vocational training, monetary services, and health care).

¹⁸⁶ See *supra* note 107 and accompanying text (presenting the services offered by Indiana's Department of Corrections, which, if extended to exonerees would be an efficient way for Indiana to provide them with adequate and timely compensation).

¹⁸⁷ See *supra* Section 8/*Subsidized Housing*, *supra* note 107 (stating that Section 8 housing in Indiana helps offset the cost of construction and rehabilitation).

¹⁸⁸ See *supra* note 108 and accompanying text (indicating that Indiana's Family and Social Services Administration can provide the best outlet for exonerees because it already deals with the issues exonerees face upon release from prison).

172 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 50

alleviate some of the hardships exonerees face when transitioning back into society.¹⁸⁹

E. *Indiana's Statute Should Expunge the Exoneree's False Conviction Record*

Many states do not automatically expunge criminal records, causing exonerees to be continuously confronted with the stigma of a criminal record despite their proven innocence, which impacts their mental health and makes it even more difficult to reintegrate into society.¹⁹⁰ Nevertheless, even if the states expunge the false criminal records, it does not erase the reality of what exonerees endure in their daily lives.¹⁹¹ Some states, however, offer an automatic expungement as soon as the individual is declared innocent and Indiana should follow suit.¹⁹²

The ABA states that an exoneree should be treated as if the conviction had never occurred for the purposes of any collateral sanctions or discretionary disqualification.¹⁹³ Scholars reveal that lacking fundamental skills to accomplish daily tasks and requiring a disclosure of the false conviction are two key components that hinder exonerees' ability to secure employment and live productive lives.¹⁹⁴ Furthermore, scholars specify that difficulty with record expungement and the inability to attain a job further exacerbates exonerees' mental illnesses.¹⁹⁵

Indiana must certify the expungement of false convictions because those that have established their innocence still struggle to obtain

¹⁸⁹ See *supra* notes 107-08 (discussing the State programs currently in place, which could also provide exonerees with the assistance they need).

¹⁹⁰ Scott, *supra* note 52, at 10. Exonerees are not entitled to continue working at the job they had prior to their arrest and when applying for new jobs, they must disclose their arrest and/or conviction, despite their proven innocence, which makes securing a job that much more difficult and consequently elevates any existing psychological problems the exoneree may have. *Id.* All the while, parolees are provided with free job placement, temporary housing, and counseling. *Id.* at 12.

¹⁹¹ *Id.* at 16.

¹⁹² See FLA. STAT. § 961.06(1)(e) (2016) (taking immediate action to expunge the criminal record and waiving any fees associated to the record expungement); 735 ILL. COMP. STAT 5/2-702(b) (2016) (offering automatic expungement of the criminal record and mailing a copy to the exoneree to confirm the record expungement).

¹⁹³ ACHIEVING JUSTICE, *supra* note 23, at 119. The ABA recommends that procedures should be implemented to automatically expunge the criminal conviction and the innocent individual should be allowed to petition for expungement if the conviction remains on the record. *Id.* If needed, a provision should be incorporated to say that the individual is entitled to respond in the negative when asked under penalty of perjury if he has ever been convicted of a crime. *Id.*

¹⁹⁴ See also *supra* Part II.B (introducing the effect of wrongful incarceration on exonerees and their need to secure employment once released from prison).

¹⁹⁵ See Scott, *supra* note 52, at 10 (emphasizing the importance of record expungement for exonerees).

employment or professional licenses.¹⁹⁶ The false conviction should automatically be removed from the court and police records upon exoneration.¹⁹⁷ Record expungement is critical because it severely impacts exonerees' ability to rebuild a successful life.¹⁹⁸ Therefore, Indiana should provide monetary compensation, immediate support services, and record expungement for exonerees to ensure successful reintegration.¹⁹⁹

IV. CONTRIBUTION

Indiana's failure to adopt an exoneree compensation statute provides courts with inordinate discretion and restrains exonerees to ineffective remedies.²⁰⁰ The lack of a compensation statute is callous and the need for a state law in Indiana is overwhelmingly clear.²⁰¹ Indiana's legislature should adopt a compensation statute that conspicuously outlines a path for the courts to follow and is consistent in its application.²⁰² Additionally, the statute should provide exonerees with the critical support they need to alleviate some of the difficulties they encounter when released back into society.²⁰³ The following proposed statute addresses the inadequacies in the model legislation suggested by the Innocence Project, and furnishes the courts with concrete guidelines while procuring timely and adequate support for exonerees.²⁰⁴ Part IV.A proposes a compensation statute for Indiana that provides the resources exonerees need for successful reintegration.²⁰⁵ Part IV.B discusses commentary associated with this

¹⁹⁶ ACHIEVING JUSTICE, *supra* note 23, at 119 (revealing that the criminal record can affect exonerees' ability to secure housing and other public benefits).

¹⁹⁷ See *infra* Part IV.A (proposing state action to immediately expunge the criminal record upon exoneration).

¹⁹⁸ *Model Legislation*, *supra* note 17, at 6.

¹⁹⁹ See *supra* Part III.A-E (analyzing the need for critical provisions in Indiana's compensation statute, including a strict eligibility requirement, cap on damages, support services, and record expungement); *supra* Part III.E (examining the importance of an effective expungement provision in the compensation statute Indiana should adopt).

²⁰⁰ See Scott, *supra* note 52, at 19 ("A majority of states have no statutory compensation scheme in place, and the wrongfully convicted in those states will bear a tougher burden to overcome their mental health problems upon release as there are few alternative routes to receiving compensation.").

²⁰¹ See *supra* Part II.D (revealing the inconsistencies among the awards granted to Indiana exonerees).

²⁰² See *infra* Part IV.A (presenting a comprehensive compensation statute for Indiana to enact).

²⁰³ See *supra* Part III.A (evaluating the financial and support services that should be provided to exonerees upon their release from prison).

²⁰⁴ See *supra* Part III.A-E (examining the necessary provisions for Indiana's compensation statute).

²⁰⁵ See *infra* Part IV.A (proposing an exoneree compensation statute for Indiana, which contains the necessary tools for successful reintegration after incarceration).

phenomenon and addresses possible apprehensions affiliated with adopting a state compensation statute.²⁰⁶

A. *Proposed Wrongful Incarceration Statute for Indiana*

Utilizing the model statute recommended by the Innocence Project and integrating pivotal provisions from different state statutes, the proposed statute aims to limit court discretion, while consistently providing exonerees with the relief they need.²⁰⁷ Although compensation statutes among the states vary in scope and application, the proposed statute targets the tribulations innocent individuals face upon release from prison and provides a precise and feasible standard for the courts to follow.²⁰⁸ A case-by-case analysis naturally encourages constant litigation, which can be challenging, expensive, and time consuming.²⁰⁹ The objective of the proposed statute is to eliminate this archaic approach altogether.²¹⁰ The statute should appear as follows:

COMPENSATION FOR WRONGFUL INCARCERATION²¹¹

SECTION 1. ~~4. ELIGIBILITY FOR COMPENSATION JUDGMENT AND AWARD~~

A. In order to obtain a judgment in his or her favor, claimant must prove by a preponderance of the evidence that:

1. Claimant was convicted of one or more crimes and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

²⁰⁶ See *infra* Part IV.B (assessing some of the concerns regarding the implementation of a state compensation statute).

²⁰⁷ See *infra* Part IV.A (providing important components of an adequate exoneree compensation statute because some states provide too much compensation, while others do not provide enough).

²⁰⁸ See *infra* Part IV.A (presenting a compensation statute that directly addresses and provides services for the obstacles exonerees face once released back into society).

²⁰⁹ See *supra* notes 43–51 (explaining the problems in the current methods of compensation, which includes inconsistency, cost, and time).

²¹⁰ See ACHIEVING JUSTICE, *supra* note 23, at 112 (stating that compensation statutes are needed because the other options generate little success for exonerees). With scientific advancements on the rise, government officials will be better equipped to combat the issues resonating with our criminal justice system and the compensation statute will have to be tailored to remain consistent with the changing times. See *Improper Forensic Science*, *supra* note 12 (discussing the advantages of DNA in helping to resolve crimes).

²¹¹ The proposed italicized amendments are the contributions of the author. The text that has not been italicized represents the language as it appears in the model statute proposed by the Innocence Project. See *generally Model Legislation*, *supra* note 17 (exhibiting a practical foundation for Indiana's model compensation statute).

- a. Claimant has been pardoned for the crime or crimes for which claimant was sentenced and which are the grounds for the complaint; or
- b. Claimant's judgment of conviction was reversed or vacated, and:
 - i. The accusatory instrument was dismissed; or
 - ii. If a new trial was ordered, either claimant was found not guilty at the new trial or claimant was not retried and the accusatory instrument was dismissed, provided that:
 - a. The judgment of conviction was reversed or vacated, or the accusatory instrument was dismissed on grounds not inconsistent with innocence; or
 - b. The statute, or application thereof, on which the accusatory instrument was based violated the Constitution of the United States or the *State of Indiana*. ~~{State};~~ and
2. Claimant did not commit any of the crimes charged in the accusatory instrument, or the acts or omissions charged in the accusatory instrument did not constitute a crime; and
3. *Claimant did not by his or her own voluntary conduct, cause or bring about his or her conviction; and*
- ~~3. He did not commit or suborn perjury, or fabricate evidence to cause or bring about his conviction. However, neither a confession or admission later found to be false, nor a guilty plea to a crime the claimant did not commit constitutes bringing about his own conviction under this Act.~~
4. *Claimant's claim is not time-barred by the provisions of Section 5 of this Statute.*

B.C. If the court finds after reading the claim that the claimant has not alleged sufficient facts to succeed at trial, it shall dismiss the claim, either on its own motion or on the State's motion.

SECTION 2 3. PRESENTATION OF CLAIM

All claims of wrongful conviction and imprisonment shall be presented to and heard by *Indiana's the state's civil court. or the state's other appropriate administrative structure that handles similar compensation claims.*

SECTION 3 4: JUDGMENT AND AWARD

A. B. If the court finds that the claimant was wrongfully convicted and incarcerated pursuant to Section 1 4, subsection A of this *Statute Act*, the court shall award:

1. Damages for the physical injury of wrongful conviction and incarceration, which shall be:

a. ~~Not less than~~ \$62,500 for each year of incarceration, with an additional \$62,500 for each year served on death row. This amount shall reflect inflation from the date of enactment as adjusted by the State auditor and partial years the claimant served.

b. *An additional award of* ~~Not less than~~ \$31,000 shall be given for each year served either on parole, probation or as a registered sex offender, to be prorated for partial years served.

c. *Total monetary compensation awarded may not exceed two million dollars (\$2,000,000).*

2. Physical and mental health care, including counseling, for the life of the claimant through *Indiana's* ~~the state~~ employees' health care system, to be offset by any amount provided through claimant's employers during that time period;

3. Reimbursement for any tuition and fees paid for *each semester successfully completed by the claimant in an educational program or* ~~the education of the claimant and any biological children that were conceived prior to his incarceration for the wrongful conviction at any community college or other unit of the [State] public university system, including any necessary assistance to meet the criteria required therefor, or a mutually agreed upon~~ vocational program; and employment skills development training;

4. ~~5.~~ Compensation for any reasonable costs incurred by claimant, *between his release from wrongful incarceration and the date of his award, for immediate services secured upon exonerated and release,* including housing, transportation and subsistence, re-integrative services and mental and physical health care costs; ~~incurred by claimant for the time period between claimant's release from wrongful incarceration and the date of claimant's award;~~ and

5. ~~6.~~ Reasonable attorney's fees for bringing a claim under this *Statute Act* calculated at ten percent of the damage award plus expenses;
- a. These fees, exclusive of expenses, shall not exceed \$75,000, as adjusted by the Sstate auditor to account for inflation from the date of enactment; and
 - b. These fees shall not be deducted from the compensation due claimant; nor is counsel entitled to receive additional fees from the client.
- C. The damage award shall not be subject to:
- ~~1. Any cap applicable to private parties in civil lawsuits;~~
 1. 2. Any taxes, except for those portions of the judgment awarded as attorney's fees for bringing a claim under this *Statute Act*; or
 2. ~~3.~~ Treatment as gross income to a claimant under the provisions of *Indiana's taxation code*. [~~the State's taxation code~~].
- D. The acceptance by a claimant of any such award, compromise or settlement shall be *reduced to writing and is final and exclusive, except when procured by fraud.*
- ~~1. Be reduced to writing; and~~
 - ~~2. Except when procured by fraud, be final and conclusive on the claimant.~~
- E. Any future damages awarded to the claimant resulting from an action by the claimant against any unit of government within *Indiana* [~~State~~] by reason of the same subject shall be offset by the damage award received under this *Statute Act*.
- F. The damage award shall not be offset by any expenses incurred by the Sstate or any political subdivision of the Sstate, including, but not limited to: *expenses incurred to feed, clothe, provide any service, or secure claimant's custody.*
- ~~1. Expenses incurred:~~
 - ~~a. To secure the claimant's custody; or~~
 - ~~b. To feed, clothe or provide medical services for said claimant; or~~
 - ~~2. The value of any services or reduction in fees for services, or the value thereof to be provided to the claimant that may be awarded to the claimant pursuant to this Act.~~
- G. If the court finds that the claimant was subjected to a lien pursuant to defense services rendered by the State to defend the client in connection with the criminal case that resulted

in the wrongful conviction, the court shall extinguish said lien.

SECTION 4. EXPUNGEMENT OF CRIMINAL RECORD

A. *If the court finds that the [claimant] is entitled to a judgment, it shall enter a Certificate of Innocence finding that the [claimant] was innocent of all offenses for which he or she was incarcerated.*

B. *Immediate action shall be taken to administratively expunge the claimant's criminal record arising from his or her wrongful arrest, conviction, and incarceration.*

C. *Upon entry of the order of expungement, the [circuit court] clerk shall promptly mail a copy of the order to the person whose records were expunged and sealed.*

D. *All fees for this process shall be waived.*

SECTION 5. ~~6.~~ TIME LIMITATIONS

A. An action for compensation brought by a wrongfully convicted person under the provisions of this *Statute Act* shall be commenced within ~~two~~ *three* years after ~~either the grant of a pardon or the grant of judicial relief and the satisfaction of any other conditions described in Section 1, subsection A of this Statute; or Section 2 of this Act;~~ provided, however, that any action by the State challenging or appealing the grant of said judicial relief shall toll said ~~two~~ *three*-year period.

B. Persons convicted, incarcerated and released from custody prior to the effective date of this *Statute Act* shall commence an action under this *Statute Act* within ~~two~~ *three* years of said effective date.

C. ~~B.~~ Notwithstanding any other provision of law, failure to file any applicable Notice of Claim shall not bar filing of a claim under this *Statute. Act*.

SECTION 6 ~~7.~~ RIGHT OF APPEAL

Any party is entitled to the rights of appeal afforded to parties in a civil action following a decision on such motions as set forth in *Indiana Code Sections: 22-9-8-1, 22-9-8-2, and 22-9-8-3. sections XX of said XXX of the [State] code.*

SECTION 7. ~~8.~~ ELIGIBILITY FOR IMMEDIATE SERVICES

A. Any person *wrongfully* convicted and subsequently imprisoned *pursuant to Section 1, subsection A of this Statute*

~~for one or more crimes for which either he or she is pardoned on grounds not inconsistent with innocence, or the conviction(s) are reversed or vacated on the basis of newly discovered evidence, and either the charges are dismissed or he or she is subsequently re-tried and acquitted, shall receive up to three years of immediate services needed upon release and for successful return to society, including but not limited to: housing, which may include authorizing the prioritization of the wrongfully convicted as a category in Indiana's [State's] Section 8 Housing Choice Vouchers program; secondary or higher education; vocational training; transportation; subsistence monetary assistance; assistance in obtaining government identification documentation; re-integrative services; and mental and physical, and dental health care.~~

B. The need for these services shall be determined through a review by the appropriate staff at the *Family and Social Services Administration* ~~Department of Social Services [or [State's] relevant agency]~~, and provided by the appropriate ~~Sstate~~ entities, or contractors thereof.²¹²

²¹² See *Model Legislation*, *supra* note 17, at 1 (including a section on legislative intent, which is excluded here because it is discussed throughout this Note). The statement of claim for compensation proposed by the Innocence Project has also been omitted, however, an “eligibility for compensation” section is provided, which was taken from the Innocence Project. *Id.* at 1-3. The language from Section 1.A.3 was taken from New York’s current statute. See N.Y. CT. OF CL. LAW § 8-b(5)(d) (McKinney 2016) (“He did not by his own conduct cause or bring about his conviction”); *supra* notes 156-60 (discussing the importance of holding innocent ex-prisoners accountable for their voluntary actions that resulted in their wrongful incarceration). The language in Section 1.A.4 and 1.B were taken from the Innocence Project. *Model Legislation*, *supra* note 17, at 2. The language in Section 3.A.1.c was taken from Florida’s statute. See FLA. STAT. ANN. § 961.06(1)(e) (2016) (“The total compensation awarded . . . may not exceed \$2 million”); *supra* Part III.C (analyzing the need for a cap on the total monetary award allotted to exonerees). The language regarding compensation for counseling in Section 3.A.2 was taken from Connecticut’s statute. See CONN. GEN. STAT. ANN. § 54-102uu(e) (West 2015) (“Claims Commissioner may order payment for the expenses of . . . counseling”). Section 3.A.3 language regarding tuition reimbursement was taken from Minnesota’s statute. See MINN. STAT. ANN. § 611.365(4) (West 2015) (“[R]eimbursement for any tuition and fees paid for each semester successfully completed by the claimant in an educational program”). Compensation for children’s education expenses and child support is omitted because it is beyond the scope of this Note. *Model Legislation*, *supra* note 17, at 4-5. The author of this Amendment has stricken the drafters’ note presented by the Innocence Project, which suggests a need for an expungement of the criminal record and/or a seal provision, and replaced it with a thorough expungement section. *Model Legislation*, *supra* note 17, at 6-7. Language from Illinois’ and Florida’s statute were taken to create Section 4. See *supra* Part III.E (illustrating the importance of expunging innocent ex-prisoners’ criminal records). Language from Section 4.A and 4.C were taken from Illinois’ compensation statute. See 735 ILL. COMP. STAT. 5/2-702(h) (West 2016) (“If the

B. Commentary

Although releasing innocent individuals from prison may be seen as progress for many, each false conviction represents a tragic failure of our justice system.²¹³ Indiana falls behind nationally because of its decision to disregard the opportunity to ratify a wrongful incarceration compensation statute.²¹⁴ The absence of compensation for exonerees exacerbates their condition because by exonerating the individual, the State acknowledges fault, but in denying compensation, it is unwilling to remedy its mistake.²¹⁵ Legislative action needs to be taken to provide an operative remedy for exonerees.²¹⁶ Whether it is one life or one hundred lives, every life matters and seizing the liberty of innocent individuals cannot be justified.

court finds that the petitioner is entitled to a judgment, it shall enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated[,]" and "upon entry of the order of expungement, the clerk of the circuit court shall promptly mail a copy of the order to the person whose records were expunged and sealed."). Language from Section 4.B and 4.D were taken from Florida's statute. See FLA. STAT. ANN. § 961.06(1)(e) (West 2016) ("[I]mmediately take all action necessary to administratively expunge the claimant's criminal record arising from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. All fees for this process shall be waived."). The Innocence Project proposes a section on notice, which is not included here because it is not the focal point of this Note. *Model Legislation*, *supra* note 17, at 7-8. The statute of limitations for the majority of claims in Indiana is two years; therefore for consistency purposes, the time limitation presented in Section 5 for filing a compensation claim is limited to two years. See *supra* note 106 and accompanying text (detailing the types of claims that have a two-year limitation). The language in Section 6 is consistent with Indiana Code chapter eight on appeals and exhaustion of administrative remedies. See *supra* note 106 and accompanying text (describing the appeals process in Indiana). The language in Section 7 suggests that Indiana's Section 8 Housing Choice Voucher Program is in the best position for providing exonerees with housing opportunities. See *supra* note 107 and accompanying text (introducing the services offered to low-income individuals). Additionally, Indiana's Family and Social Services Administration have the necessary resources that exonerees' need to successfully reintegrate back into society. See *supra* note 108 and accompanying text (revealing FSSA's mission of providing services to individuals to help them achieve self-sufficient and productive lives).

²¹³ See *supra* notes 12-13 and accompanying text (revealing that over 1700 individuals have been exonerated in the United States and 2014 was a record breaking year with 125 exonerations).

²¹⁴ See *Hoskins, Rising*, *supra* note 90 (indicating that the potential for wrongful convictions in Indiana are expanding).

²¹⁵ See *supra* Part II.B (illustrating the effects of false imprisonment on individuals even after being released from prison).

²¹⁶ See *supra* Part IV.A (proposing model compensation legislation for Indiana). A state cannot reasonably expect an exoneree to survive without any assistance after being incarcerated for half of their lives, with no money and no place to go. See *supra* Part II.B (discussing a whole new set of struggles exonerees encounter once released from prison).

The firm guidelines in the proposed statute will facilitate a quicker compensation process and abate discrepancies in the awards amongst the exonerated in Indiana.²¹⁷ Because the current avenues of compensation are inadequate and fail to provide clear or consistent standards, the proposed statute seeks to eliminate these irregularities.²¹⁸ The recommended statute for Indiana is invaluable because it provides the courts with strict guidelines and maintains consistency in its application and outcome.²¹⁹ The awards available to exonerees are clearly articulated in the statute; therefore, the impact of judicial resources and the time taken to go through the motions of each individual case are minimized.²²⁰ Additionally, the proposed statute provides an outlet for exonerees to get the appropriate support they need and deserve.²²¹

²¹⁷ See *supra* Part IV.A (proposing an Indiana model compensation statute). Courts cannot consume a lot of time to hear these cases, provide support services, and get money in the exonerees' pockets as quickly as possible, thus eliminating potential discrepancies amongst the awards given to exonerees, unless one individual spent more time wrongfully incarcerated, is the best approach. See *supra* Part IV.A (introducing an award of \$62,500 for each year of incarceration, with an additional \$62,500 for each year served on death row). Indiana needs to implement a statute to limit court discretion and eliminate inconsistencies, especially because exonerees' only options consist of seeking a private compensation bill or filing a tort or a civil action suit against the State, which often times are unsuccessful. See *supra* notes 43–46 (explaining the limited options of redress available to exonerees when pursuing a claim for wrongful incarceration).

²¹⁸ See *supra* note 10 and accompanying text (revealing the numerous types of claims Camm filed because the State lacks a compensation statute). The lack of an existing compensation legislation for exonerees in Indiana places exonerees in a position to file tort or civil claims which, if successful, would end up costing the State a lot more money in the long run. Therefore, implementing a compensation statute that places a cap on damages, would benefit the State and its exonerees. See *supra* Part III.C (proposing a cap on total damages allotted to Indiana exonerees). The current methods of compensation do not provide feasible options for exonerees because the likelihood of prevailing in such lawsuits are highly unlikely and they do not provide the crucial support services needed for reintegration. See *ACHIEVING JUSTICE*, *supra* note 23, at 112 (revealing that statutory compensation is the best avenue for exonerees seeking indemnification).

²¹⁹ See *supra* Part IV.A (proposing a model statute for Indiana, which provides consistency and avoids overcompensating some exonerees while undercompensating others).

²²⁰ See *supra* Part II.B and accompanying text (illustrating the struggles exonerees face upon release). The benefits of a compensation statute is essentially threefold: (1) a statute providing clear guidelines benefits the state by limiting the amount of damages an exoneree is able to obtain; but also (2) provides the courts with a necessary tool to assess damages; and (3) helps to rebuild the life for exonerees; therefore, the importance of a compensation statute should not be minimized. See *supra* Part III.A–D (analyzing the critical components needed in an effective exoneree compensation statute).

²²¹ See *supra* Part IV.A (proposing a compensation statute for Indiana so the State can take accountability for its mistakes and providing proper compensation to exonerees is the first step). The statute should also produce a deterrent factor that would trigger the courts and prosecutors to be more careful when prosecuting future defendants.

Although the model statute provides a starting point for the courts, the statute itself is likely to change in the future due to technology and the evolving law.²²² As a result, there are some concerns and criticisms that need to be addressed.²²³ One of the main apprehensions with implementing a state compensation statute concerns taxpayer dollars being expended to finance the awards.²²⁴ This concern is admittedly legitimate, however, exonerees still have a remedy at law, where they can—and frequently do—file lawsuits against the state with numerous claims relating to their wrongful incarceration.²²⁵ In these instances, some exonerees receive more money than what a majority of states would normally allow, and the money is still apportioned from taxpayer dollars.²²⁶ Therefore, the State should adopt a compensation scheme that features the type and amount of awards offered to exonerees, and while it is not ideal, placing a cap on the total monetary compensation available to each exoneree will limit recovery.²²⁷ Additionally, funneling costs to support services instead of providing a lump sum payment to exonerees also reduces the upfront costs to the state and allocates the money to better and much more effective use.²²⁸ Since the number of exonerations in

²²² See DWYER ET AL., *supra* note 39, at 244–45 (discussing the advancement of scientific technology and its tremendous assistance in combating crimes and overall benefit to the criminal justice system). However, forensic techniques that can be properly authenticated such as blood typing are sometimes conducted incorrectly or portrayed inaccurately in trial. *Improper Forensic Science*, *supra* note 12.

²²³ See *supra* note 15 and accompanying text (listing Indiana as one of the states that has not adopted an exoneree compensation statute). Unfortunately, Indiana does not provide legislative history in terms of whether a state compensation statute was ever proposed, considered, or rejected; therefore, we are left to speculate the possibilities as to why a compensation statute in Indiana has not been adopted.

²²⁴ See VERA INSTITUTE, *supra* note 118 (housing a prisoner in Indiana cost the State \$14,823 per year in 2012).

²²⁵ See *supra* note 10 (listing the damages Camm is seeking for his false incarceration because Indiana failed to adopt a compensation statute).

²²⁶ See, e.g., *supra* Part II.D (revealing the discrepancies in the monetary awards provided to exonerees in Indiana, which range from \$100,000 to \$4.9 million). In states that do not have a compensation scheme in place, exonerees are generally able to file lawsuits seeking exorbitant amount of money for the injustice they endured. See, e.g., *supra* note 10 (presenting the types of damages Camm is seeking as a result of his wrongful incarceration).

²²⁷ See *supra* Part IV.A (presenting a compensation statute for Indiana, which places a cap on the total damages to \$2 million).

²²⁸ See Scott, *supra* note 52, at 15 (elucidating budgeting issues exonerees face, which would be especially problematic if they received lump sum awards). One argument asserts that Congress does not provide support services in its compensation statute, nor did it amend it, so that suggests that there is no need to provide exonerees with support services upon release. See 28 U.S.C. § 2513 (2012) (offering only monetary compensation to exonerees). It is not fair to assume that Congress was aware of the impact wrongful incarceration had on individuals and therefore Congress' lack of action is not a stamp of approval for not granting support services to exonerees.

Indiana is comparatively low to other states, the wrongful incarceration cases can be easily handled.

This discussion leads to the next concern, where critics argue that the relatively small number of wrongful incarcerations in Indiana indicates a statute is unnecessary. This argument begs the response that one wrongful conviction of an innocent, law-abiding citizen is a constitutional rights violation, and consequently cannot be justified. Indiana's rate of exonerations in the recent years is the highest the State has ever seen and is projected to increase with modern technology. Exonerees must be compensated for a mistake that took, and continues to take their livelihood.²²⁹ Indiana needs to be held accountable for its actions in order to prevent this injustice from reoccurring in the future – providing redress for the exonerees is a start.²³⁰

V. CONCLUSION

While fighting back tears, Camm said, "There are times when it is uncomfortable, but it is a process and I haven't done anything wrong. I didn't do anything wrong, I know that, so I can continue to walk with my head up. . . There's no closure. It never ends. . . Time doesn't heal. It just becomes a part of you."²³¹ Camm's story is a single illustration of what life after exoneration entails in a state that does not provide financial assistance or support services to their exonerees.²³² If Indiana had a compensation statute in place for wrongfully imprisoned individuals, Camm's claim would have been easily managed, preventing lengthy litigation, while providing him with immediate and vital support.

History has shown that releasing a higher number of wrongfully convicted individuals from prison will ultimately result in more claims against the state. Indiana has a moral and ethical duty to protect its citizens and its current method is failing. When the State fails to protect the freedom of innocent individuals, it not only reveals the flaws of our criminal justice system, but also allows the real criminals to remain in our

²²⁹ See *supra* Part II.B (exhibiting the adverse effects of prisons on individuals even after exoneration); *supra* Part II.D (revealing the issues resulting from a lack of a compensation statute in Indiana).

²³⁰ See *supra* note 15 and accompanying text (listing the states that have not adopted an exoneree compensation statute). Deterrents are crucial and if states are not held accountable, the increasing numbers of wrongful convictions are inevitable. See *supra* note 132 and accompanying text (discussing the reforms proposed by the ABA to reduce the number of wrongful convictions that take place in the United States).

²³¹ McCutcheon, *supra* note 4.

²³² See *id.* (interviewing Camm six months after his release from prison). Upon his release, Camm filed a claim against Floyd County, Indiana and numerous other defendants, seeking compensation for his wrongful incarceration. See Verified Complaint, *supra* note 7, at 73.

184 VALPARAISO UNIVERSITY LAW REVIEW [Vol. 50

community.²³³ Given the rise of exonerations and its high probability of increasing in the near future, Indiana's legislatures must address these issues now. "Only with a comprehensive compensation program and a criminal justice system that is held accountable, will wrongfully convicted individuals truly find some solace."²³⁴ The fact that it is impossible to entirely compensate an individual for their loss of freedom does not excuse the State of its duty to remedy the injustice inflicted on exonerees.²³⁵ Indiana must adopt the proposed statute to alleviate the burden placed on the courts, but more importantly, to prevent cases tantamount to *Camm's* in the future.

Maryam A. Afshar*

²³³ See PRISON PROJECT, *supra* note 23 (stating that more crimes will occur because the real criminal is out on the streets, while an innocent individual is serving time for a crime he never committed).

²³⁴ Scott, *supra* note 52, at 19.

²³⁵ Smith, *supra* note 3, at 12.

* J.D. Candidate, Valparaiso University Law School, 2016; B.A., Political Science and Psychology, DePaul University, 2012. A special thank you to my mother, my father, my sister Ambar Afshar-Andrade, and my brothers Adeel Afshar and Arsalan Afshar for being my strongest supporters. Thank you Professor David E. Vandercoy for helping me solidify my Note and challenging me along the way. This Note is dedicated to my dear friend Wilberto Mendoza, may he rest in peace, and also to the innocent individuals who have suffered and continue to suffer from the adversity of the criminal justice system. May they truly find solace.