

Senate Judiciary Hearing on Senate Bill 1584

Written Testimony of Janis C. Puracal, Executive Director, Forensic Justice Project

February 6, 2022

Thank you for the opportunity to present testimony on Senate Bill 1584 regarding compensation for wrongful convictions. We appreciate the Committee's willingness to consider this bill that would serve the critical purpose of providing just compensation to individuals who were wrongly convicted and incarcerated for crimes that they did not commit.

Since this bill came up last session (in 2021), we have been working hard with the Department of Justice to improve the language of the bill. Through that work, we have reached agreed-upon language with DOJ, and we are grateful to have DOJ's support for the bill. We are also grateful to have the support of District Attorneys Mike Schmidt and John Hummel, along with a long list of sponsors and stakeholders.

I offer the following testimony in support of the bill based on my work with incarcerated individuals who are fighting wrongful conviction and those who are still fighting to rebuild their lives after exoneration.

A. Background of the Forensic Justice Project

The use of faulty forensics (like bite mark analysis or microscopic hair analysis) is one of the leading causes of wrongful conviction. The Forensic Justice Project ("FJP") is a nonprofit organization that was created in Oregon to challenge the use of faulty forensic evidence and to find helpful forensic evidence. We work at all stages of the criminal process from pre-trial through post-conviction. Our mission is to prevent wrongful convictions before they happen and correct them after they happen. To that end, we focus on getting good science into the courtroom and bad science out of the courtroom.

B. Wrongful Convictions Happen Around the Country, including in Oregon

As of February 7, 2022, there have been more than 2,946 exonerations around the country, which accounts for more than 25,600 years lost in our prison system.¹ That is 2,946 men and women who were innocent, but incarcerated and taken from their families. Some of those men and women spent decades behind bars before they were finally released. There are new exonerations each week, and recent years have set record numbers of exonerations around the country.²

¹ The National Registry of Exonerations,
<http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx>.

² *Id.*, <http://www.law.umich.edu/special/exoneration/Pages/Exoneration-by-Year.aspx>.



C. The Trauma of Wrongful Conviction

Although we measure a wrongful conviction by the number of years lost in prison, that number does not accurately capture the full impact of a wrongful conviction.

Besides the obvious impact of losing one's job and earning capacity, individuals often spend years being intimidated, harassed, and tormented by false accusations. Families are destroyed as the accused is subjected to public humiliation in the courtroom and in the media. Those who have children miss out on birthdays, holidays, first days of school, and every other highlight of parenting a young child.

The ripple effects for family members are no less severe. I came to this work because my older brother, Jason, was wrongfully convicted, and I experienced first-hand the pain of watching as someone you love is slowly dehumanized. I have also watched Jason struggle for years to rebuild a life for himself and his family since his exoneration.

The fight is not over just because the person walks out of prison.

D. State of the Law in Oregon

There have been 23 exonerations in Oregon since 1991.³ And yet, Oregon is one of only 13 states that *do not* have a law to compensate a person after wrongful conviction. Washington and California have had compensation statutes for years, and Idaho just passed a statute last year. The number of states *without* a compensation statute is getting smaller and smaller each year as more states pass these laws.

Unlike these other states, Oregon exonerees' only path for justice is through civil suits, many of which are dismissed because of procedural bars, like the statute of ultimate repose,⁴ or because of laws that provide immunity for police and prosecutors, even if misconduct is intentional. The current process can be expensive, time-consuming, and re-traumatizing for exonerees.

SB 1584 will provide exonerees with another path to the financial security they need to rebuild their lives and recover from the traumatic experience of being wrongly accused, convicted, and incarcerated.

The more efficient procedure under SB 1584 is particularly important for exonerees because many of them have already been subjected to years of post-conviction litigation and appeals to vacate the wrongful criminal conviction. The National Registry of Exonerations has calculated the average length of incarceration for individuals in the database, and for all races and all crimes, exonerees spent, on average, 8.9 years

³ *Id.*, <http://www.law.umich.edu/special/exoneration/Pages/detailist.aspx>.

⁴ ORS 12.115(1) (prevents an individual for bringing suit more than ten years after a negligent act or omission).

incarcerated before exoneration.⁵ The impact of race is also a factor: “Black exonerees spent an average of 10.7 years in prison, about 45% more than white exonerees, who averaged 7.4 years.”⁶

E. SB 1584

The goal of SB 1584 is to ensure just compensation for those who have been wrongly convicted. The language of the bill will bring Oregon in line with states like Kansas and Montana, which have passed statutes that provide an efficient and effective process to compensate exonerees.

SB 1584 creates a streamlined procedure that will work well for exonerees and the State. The bill includes several key provisions, such as:

- clarifying that the State is the defendant and will be represented by DOJ;
- requiring basic litigation protections like application of the Rules of Civil Procedure and the Rules of Evidence; and
- requiring proof by a “preponderance of the evidence,” which is consistent with the standard for other civil cases.

The bill, furthermore, makes explicit that having a nonunanimous conviction overturned is not enough. The exoneree must prove that he/she/they did not commit the crime. The bill was written to compensate individuals who are *factually* innocent.

The work by DOJ and others on the language of SB 1584 has created a much better bill, and we support it. We remain available to assist the Committee.

Thank you.

Sincerely,



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⁵ The National Registry of Exonerations, *Milestone: Exonerated Defendants Spent 20,000 Years in Prison*, at 2,
<https://www.law.umich.edu/special/exoneration/Documents/NRE.20000.Years.Report.pdf>.

⁶ *Id.* at 3.