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## Beyond Monetary Compensation: The Need for Comprehensive Services for the Wrongfully Convicted

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# BEYOND MONETARY COMPENSATION: THE NEED FOR COMPREHENSIVE SERVICES FOR THE WRONGFULLY CONVICTED

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**Abstract:** Twenty-two states, the District of Columbia, and the Federal Government currently have statutory mechanisms in place to provide compensation for wrongfully convicted individuals. Most of these statutes focus on the need for monetary compensation for individuals who have spent years in prison for crimes they did not commit. Only three of these statutes also provide meaningful post-release services. This is despite the fact that these programs are critical to address the unique reentry obstacles that face wrongfully convicted individuals and to ensure successful reintegration into society. This article examines the need for all states to provide meaningful post-release services to wrongfully convicted individuals. Focusing on the Massachusetts statute—the first compensation statute to include a meaningful services provision—the authors also assert that non-monetary “compensation” should include reentry services immediately upon release that are at least comparable to those received by parolees, but yet are tailored to the distinct needs of wrongfully convicted individuals.

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## INTRODUCTION

Over the past several years, there has been a considerable increase in the number of individuals who have been exonerated of the crimes for which they were wrongfully convicted.<sup>1</sup> This has included over 200 individuals since 1983 who have had their actual innocence demonstrated through DNA testing.<sup>2</sup> Despite the fact that individual states have played at least a substantial contributing role in each of these wrongful convictions,<sup>3</sup> currently fewer than half of the states in this country have any mechanism to provide compensation to these exonerates for the years they were wrongfully incarcerated.<sup>4</sup> Other authors

<sup>1</sup> Samuel R. Gross et al., *Exonerations in the United States 1989 Through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523, 527 (2005) (“The rate of exonerations has increased sharply over the fifteen-year period of this study, from an average of twelve a year from 1989 through 1994, to an average of forty-two a year since 2000.”).

<sup>2</sup> Innocence Project, News and Information: Fact Sheets, <http://www.innocenceproject.org/Content/351.php#> (last visited Jan. 28, 2008). To date, there have been 212 exonerations in the United States based on DNA testing. *Id.*

<sup>3</sup> As used in this article, the term “wrongful conviction” refers to the conviction of individuals who have either pled guilty to, or have been tried and found guilty of, criminal charges, who are in fact innocent. As used herein, the term does not refer to individuals who have committed crimes, but were convicted under constitutionally defective procedures. The authors also refer to “wrongfully convicted” individuals who have been released and “exonerates” interchangeably, although readers should note that in practice there may be legal distinctions between these two terms.

<sup>4</sup> Currently, twenty-two states, plus the District of Columbia, provide a mechanism for monetary (and, in some cases, other) compensation. These states are Alabama, California, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Missouri, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Tennessee, Texas, Vermont, Virginia, West Virginia, and Wisconsin. *See* ALA. STAT. §§ 29-2-150 to-165 (2001); CAL. PENAL CODE §§ 4900–4906 (West 2001); D.C. CODE §§ 2-421 to -425 (2007); 705 ILL. COMP. STAT. 505/8(c) (2004); IOWA CODE ANN. § 633A.1 (West 1997); LA. REV. STAT. ANN. § 15:572.8 (2005); ME. REV. STAT. ANN. tit. 14, § 8241 (1993); MD. CODE ANN., STATE FIN. & PROC. § 10-501 (West 2003); MASS. GEN. LAWS ch. 258D, § 5(A) (2004); MO. REV. STAT. § 650.055(9) (2005); MONT. CODE ANN. § 53-1-214 (2003); N.H. REV. STAT. ANN. §§ 541-B:13–:14 (2003); N.J. STAT. ANN. §§ 52:4C1–:4C6 (West 1997); N.Y. CT. CL. ACT § 8-b (McKinney 2007); N.C. GEN. STAT. §§ 148-82 to-84 (2001); OHIO REV. CODE ANN. §§ 2305.02, 2305.49, 2743.48 (LexisNexis 2003); OKLA. STAT. tit. 51, § 154 (2003); TENN. CODE ANN. § 9-8-307 (2007); TEX. CIV. PRAC. & REM. CODE ANN. § 103 (Vernon 2001); VT. STAT. ANN. tit. 13, § 5574 (2007); W. VA. CODE § 14-2-13a (1987); WIS. STAT. § 775.05 (1988). Montana’s compensation statute mandates that wrongfully convicted individuals are entitled to receive educational aid at the state’s expense (but no monetary compensation). MONT. CODE ANN. § 53-1-214 (2003). In addition, the federal government also provides compensation for wrongful conviction, with damages not to exceed \$100,000 per twelve-month period of incarceration for any plaintiff who was sentenced to death and \$50,000 for each twelve-month period for any other plaintiff. 28 U.S.C. § 2513(e) (2007).

have conducted comprehensive examinations of the obligation—if not legal, then at the very least moral—of every state to provide a statutory mechanism for the compensation of wrongfully convicted individuals.<sup>5</sup> As early as 1914, legal scholars in this country argued that just as all members of our society share a common interest in “maintaining the public peace by the prosecution of crime . . . the loss should be borne by the community as a whole and not by the injured individual alone.”<sup>6</sup> Scholars have also documented why state compensation statutes are necessary in light of the inadequacy of the other legal alternatives that are available for individuals who have been wrongfully convicted and later exonerated.<sup>7</sup> The two other primary legal avenues—bringing a lawsuit either in tort or under civil rights statutes, or drafting a private bill and attempting to have it introduced into the state legislature—are much more challenging, time-consuming, and expensive, and more often than not are unsuccessful.<sup>8</sup>

Even in the minority of states that *do* have compensation statutes, these mechanisms are excessively restrictive in identifying who will be compensated, and cap the amount of recovery at artificially low levels.<sup>9</sup>

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<sup>5</sup> See, e.g., Adele Bernhard, *Justice Still Fails: A Review of Recent Efforts to Compensate Individuals Who Have Been Unjustly Convicted and Later Exonerated*, 52 DRAKE L. REV. 703 (2004) [hereinafter Bernhard, *Justice Still Fails*] (criticizing states' inaction in creating generous compensation schemes); Adele Bernhard, *When Justice Fails: Indemnification for Unjust Conviction*, 6 U. CHI. L. SCH. ROUNDTABLE 73 (1999) (arguing that more states should enact comprehensive statutes).

<sup>6</sup> Edwin M. Borchard, *State Indemnity for Errors of Criminal Justice*, 52 ANNALS AM. ACAD. POL. & SOC. SCI. 108, 110 (1914) (noting that “practically every country in western Europe [has] elaborate statutes governing this subject” and questioning why the United States should “lag behind any longer”); see also Joseph H. King, Jr., *Compensation of Persons Erroneously Confined by the State*, 118 U. PA. L. REV. 1091, 1092 (1970) (arguing that “erroneous confinements are costs of operation to be borne by the system”); J.H. Wigmore, Editorial, *The Bill to Make Compensation to Persons Erroneously Convicted of Crime*, 3 J. AM. INST. CRIM. L. & CRIMINOLOGY 665, 665–67 (1913) (advocating the moral obligation to compensate the wrongfully convicted).

<sup>7</sup> See, e.g., Bernhard, *Justice Still Fails*, *supra* note 5, at 732–34 (documenting the legal hurdles a wrongfully convicted individual faced).

<sup>8</sup> See *id.*

<sup>9</sup> See, e.g., 705 ILL. COMP. STAT. 505/8(c) (2004). For instance, the Illinois compensation statute for unjust imprisonment requires that the imprisoned person receive a pardon from the Governor on the grounds of innocence, and the awards are capped at \$15,000 for five years or less, \$30,000 for imprisonment of five to fourteen years, and no more than \$35,000 for more than fourteen years imprisonment. *Id.* Under the New Hampshire statute, if a majority of the Board of Claims finds that the claimant is “innocent of the crime for which he was convicted” and that “the payment to a claimant is justified,” the claimant

Moreover, these statutes generally have not addressed the need for post-release services for exonerees, who encounter a host of unique and complicated long-term, non-monetary problems as a result of their wrongful incarceration, but are generally simply set free after years of imprisonment without any systemic assistance.<sup>10</sup>

In 2004, Massachusetts became the first state to create a compensation statute that provides a mechanism for post-incarceration services (through the state or otherwise) in addition to monetary compensation for wrongfully convicted individuals upon release.<sup>11</sup> The Massachusetts statute not only provides for monetary compensation up to \$500,000, but it also allows courts to grant, in their discretion, “state services that are reasonable and necessary to address any deficiencies in the individual’s physical and emotional condition” as a result of his or her erroneous “conviction and resulting incarceration.”<sup>12</sup> Exonerees are also entitled to a fifty percent tuition reduction at any state community college or university.<sup>13</sup>

This article will focus on the need for all states to provide meaningful services to wrongfully convicted individuals, both to compensate them for the non-monetary injuries they have suffered as a result of their incarceration, and to assist their successful reintegration into society. It will argue that monetary compensation is not enough, and will suggest why all states should embrace the spirit of the Massachusetts, Louisiana, and Vermont compensation statutes by also providing com-

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can receive a maximum of \$20,000, regardless of the number of years of wrongful imprisonment. N.H. REV. STAT. ANN. §§ 541-B:13–14 (2003).

<sup>10</sup> See, e.g., 705 ILL. COMP. STAT. 505/8(c) (2004) (failing to provide exonerees with post-release services).

<sup>11</sup> See MASS. GEN. LAWS ch. 258D, § 5(A) (2004). In 2005, Louisiana enacted a compensation statute that provides services such as job skills training for a year, medical and counseling services for three years, and state educational aid for five years. LA. REV. STAT. ANN. § 15:572.8 (2005). In addition, in 2007 Vermont passed a compensation statute that provides up to ten years of eligibility for the Vermont Health Access Plan using state-only funds, and compensation “for any reasonable reintegrative services and mental and physical health care costs incurred” between “the release from mistaken incarceration and the date of the award.” VT. STAT. ANN. tit. 13, § 5574 (2007). Like the Massachusetts statute, Louisiana and Vermont provide services to exonerees in addition to capped amounts of monetary compensation. See LA. REV. STAT. ANN. § 15:572.8 (2005); MASS. GEN. LAWS ch. 258D, § 5(A) (2004); VT. STAT. ANN. tit. 13, § 5574 (2007). In contrast, Montana provides post-release services, allowing for ten years of educational aid, but does not award any money to the exoneree. MONT. CODE ANN. § 53-1-214 (2003).

<sup>12</sup> MASS. GEN. LAWS ch. 258D, § 5(A) (2004).

<sup>13</sup> *Id.*

pensation in the form of services.<sup>14</sup> In addition, it will explain why states have an obligation to provide reentry services for wrongfully convicted individuals immediately upon release. Like other prisoners, for whom the most critical time periods for the transition to life outside of prison are the “moment of release” and the time period immediately following release,<sup>15</sup> an exoneree’s experience in the very first days, weeks, and months following release will strongly influence whether he or she is able to successfully reenter and reintegrate into society. Yet, ironically, these individuals generally are not even provided with the equivalent social services that are currently provided to individuals who were guilty of the crimes for which they were incarcerated. Because wrongfully convicted individuals generally are not “qualified” or appropriate for the post-release systems that are in place for parolees, exonerees likely will not receive any transitional services upon release at all. In addition, because of the time it takes to pursue their legal compensation claims, exonerees generally will not receive any monetary compensation until months or years after release. Given this, even if exonerees knew *how* to access necessary services upon release, they would lack the financial means to do so. Moreover, even if pre-release reentry planning assistance were available to exonerees (generally it is not), as a practical matter, exonerees generally have insufficient advance notice of their release to take advantage of these programs.

Part I of this article will address the reentry plight of wrongfully convicted individuals. As compared with the extensive analysis that has been conducted regarding the reentry issues of guilty prisoners upon release, the data that has been compiled regarding the effects of prison on the reintegration experiences of wrongfully convicted individuals is largely anecdotal. We know from these powerful accounts, however, that the impact of prison life on inmates who are in fact innocent of the crimes for which they have been convicted and imprisoned is, in at least some respects, even more detrimental. This article will provide examples of how the impact of prison in the most basic areas—psychological health, job opportunities, housing, and physical health—is further

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<sup>14</sup> See LA. REV. STAT. ANN. § 15:572.8 (2005); MASS. GEN. LAWS ch. 258D, § 5(A) (2004); VT. STAT. ANN. tit. 13, § 5574 (2007).

<sup>15</sup> JEREMY TRAVIS ET AL., FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY 18 (2001), available at [http://www.urban.org/UploadedPDF/from\\_prison\\_to\\_home.pdf](http://www.urban.org/UploadedPDF/from_prison_to_home.pdf).

compounded by the lack of appropriate pre- and post-release services for exonerees, as compared with other prisoners.

Part II of this article will examine the particularities of the Massachusetts compensation statute and discuss experience to date with its provisions, most specifically, the services component.<sup>16</sup> The Massachusetts statute's services provision is a meaningful step towards providing wrongfully convicted individuals with the services and support that are necessary to give these individuals a true chance at successful reentry into society, and should set the bar for other state compensation statutes.<sup>17</sup> In addition, however, states should recognize their responsibility to assist in a more comprehensive fashion with the reintegration of wrongfully convicted individuals, to provide reentry services immediately upon release, and to address reintegration issues in a manner that is specifically geared towards the distinctive obstacles that face wrongfully convicted individuals.

### I. REENTRY PLIGHT OF THE WRONGFULLY CONVICTED

In addition to financial problems they face after being released from prison, wrongfully convicted individuals also encounter a host of unique and complicated non-monetary obstacles upon their release.<sup>18</sup> To date, these issues have gone largely unaddressed by existing compensation mechanisms.<sup>19</sup> This is despite the fact that the impact of prison life on inmates who are actually innocent is even more detrimental than for other prisoners. While incarcerated individuals who are guilty face well-documented obstacles to successful reentry, wrongfully convicted individuals endure even more onerous circumstances

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<sup>16</sup> See MASS. GEN. LAWS ch. 258D, § 5(A) (2004). Unlike the Louisiana compensation statute, the Massachusetts statute does not limit an exonerated person's right to receive services to a certain pre-determined duration. See LA. REV. STAT. ANN. § 15:572.8(C)(3)(b) (2005) (limiting payment of "necessary medical and counseling services" to three years); MASS. GEN. LAWS ch. 258D, § 5(A) (2004). Rather, the court may order that Massachusetts exonerees receive necessary services based on evidence presented in each individual claimant's case. MASS. GEN. LAWS ch. 258D, § 5(A) (2004). As the Vermont statute only became effective very recently (in July 2007), there is not yet sufficient evidence from which the authors are able to fully examine the legislation's strengths and weaknesses. See VT. STAT. ANN. tit. 13, § 5574 (2007).

<sup>17</sup> See MASS. GEN. LAWS ch. 258D, § 5(A) (2004).

<sup>18</sup> See King, *supra* note 6, at 1097 (noting that persons recently released from prison have trouble finding employment).

<sup>19</sup> See Bernhard, *Justice Still Fails*, *supra* note 5, at 704-06.

upon release.<sup>20</sup> This part provides an overview of some of the detrimental impacts of incarceration on an individual's psychological health, job opportunities, housing, and physical health. It also identifies certain factors which suggest that the post-release experiences of exonerees in each of these areas are worse than that of other former prisoners.

In general, there are no state or federal systems in place to support the reentry of exonerees immediately upon release, and, ironically, most wrongfully convicted individuals are not even entitled to the social services that are provided to released convicts who were guilty.<sup>21</sup> In any event, the state systems that are in place for probationers or parolees are entirely inappropriate for wrongfully convicted individuals. Traditional reentry programs are premised on the notion that the participants committed crimes for which they were properly convicted and served their time.<sup>22</sup> In addition, these programs are focused on successful reintegration as a means of, among other things, curbing recidivism rates.<sup>23</sup> For exonerees, on the other hand, post-release services should be provided both as a means of ensuring successful reintegration *and* as part of an effort to "make whole" exonerees who have been injured by errors in the administration of the criminal justice system that led to their wrongful conviction. While the *categories* of problems that face wrongfully convicted individuals upon release—such as mental health problems, lack of education and job training, lack of suitable housing, and physical health problems—may be the same as those that face other former prisoners, the nature of the issues faced by wrongfully convicted individuals upon release are distinct and must be addressed in a way that is sensitive to their specific needs.

Moreover, although most wrongfully convicted individuals would likely qualify for public assistance, including access to housing, food

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<sup>20</sup> "Reentry," defined as "leaving prison and returning to society," carries with it a host of obstacles, both physical and mental, societal and personal. TRAVIS ET AL., *supra* note 15, at 1.

<sup>21</sup> See generally Shawn Armbrust, *When Money Isn't Enough: The Case for Holistic Compensation of the Wrongfully Convicted*, 41 AM. CRIM. L. REV. 157, 175–76 (2004) (recounting the experience of David Shepard, an exoneree who served eleven years in prison for a rape he did not commit and who was turned away from four agencies that served ex-offenders because of his innocence).

<sup>22</sup> See TRAVIS ET AL., *supra* note 15, at 14 (stating that parole boards have traditionally released prisoners who have rehabilitated themselves).

<sup>23</sup> *Id.* at 6–8.



stamps, and possibly job and vocational training, immediately upon release, most exonerees are unaware of these programs or their entitlement to such services, do not have the skills necessary to navigate these systems on their own, and may be too embarrassed to ask for help. While properly convicted individuals generally receive state-provided assistance in accessing appropriate public services and setting up reentry plans prior to their release, most wrongfully convicted individuals are simply, and often suddenly, set free.<sup>24</sup>

### A. *Psychological Impact of Incarceration*

*What has he suffered? . . . He is psychologically scarred for life. He will always suffer from the core symptoms of post-traumatic stress disorder. As well, he will always suffer from paranoia, depression and the obsessive desire to clear his name. His reputation as a murderer has affected him in every aspect of his life, from work to family relations. . . . His reputation as a murderer will follow him wherever he goes.*<sup>25</sup>

## 1. Prison Experience

Studies of the prison environment and its effects on those living within it demonstrate that, although each individual will react differently to incarceration, incarcerated persons generally suffer long-term consequences from having been subjected to pain, deprivation, and extremely atypical patterns and norms of living and interacting with others.<sup>26</sup> “Institutionalization” (also referred to as “prisonization”) is the process that occurs throughout the adjustment to life in prison, and is often used as shorthand for the negative psychological effects of imprisonment.<sup>27</sup> Through this process, prisoners develop a dependence

<sup>24</sup> See Interview with Lawyer Johnson, in Boston, Mass. (June 29, 2007) (on file with authors). Lawyer Johnson was initially sentenced to death and spent ten years in prison for a murder he did not commit in Massachusetts, before he was released in 1982. *Id.* He analogizes the release process to the experience of a freed slave. *Id.* “It is like setting a slave free without the means to be free: a mule, food, shelter or the means to build shelter, no means to remain free and survive.” *Id.*

<sup>25</sup> Elizabeth F. Loftus, *Memory in Canadian Courts of Law*, 44 CANADIAN PSYCHOL. 207, 207 (2003) (quoting Commissioner Peter Corey describing the post-exoneration life of Thomas Sophonow).

<sup>26</sup> CRAIG HANEY, *THE PSYCHOLOGICAL IMPACT OF INCARCERATION: IMPLICATIONS FOR POST-PRISON ADJUSTMENT* 79 (2002), available at [http://www.urban.org/UploadedPDF/410624\\_PsychologicalImpact.pdf](http://www.urban.org/UploadedPDF/410624_PsychologicalImpact.pdf).

<sup>27</sup> *Id.* at 80.

on institutional structures as a result of the very strict rules and limitations imposed in a prison environment.<sup>28</sup> The consequences of this process are often difficult to reverse after release from prison, particularly for those who have been incarcerated for long periods of time or since a young age.<sup>29</sup>

Prisons also have an informal inmate code to which prisoners must conform.<sup>30</sup> This culture typically discourages meaningful emotional expressions and any signs of vulnerability or weakness.<sup>31</sup> This “code” may promote a culture of hypermasculinity in male prisons “in which force and domination are glorified as essential components of personal identity.”<sup>32</sup> As a result, prisoners often develop “hypervigilance,” becoming distrustful of fellow inmates and causing some individuals to develop aggressive strategies to avoid victimization.<sup>33</sup> Due to the constant threat, actual and perceived, from other inmates and prison guards, prisoners also develop emotional control strategies.<sup>34</sup>

The prisonization process may cause some prisoners to withdraw socially, exhibiting behavior closely resembling that of people suffering from clinical depression.<sup>35</sup> Developing a flat affect and withdrawn behavior may help prisoners cope with prison life.<sup>36</sup> Prisoners describe a diminished sense of self-worth after living in a prison environment.<sup>37</sup> The deprivation of privacy rights, feelings of infantilization, and degradation may cause prisoners to internalize the stigma and “compromised social status” resulting from incarceration.<sup>38</sup>

Finally, the experience of incarceration may manifest as a form of post-traumatic stress in some prisoners.<sup>39</sup> According to the *Diagnostic and Statistical Manual of Mental Disorders*, symptoms of post-traumatic

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 80–81.

<sup>30</sup> *Id.* at 82.

<sup>31</sup> HANEY, *supra* note 26, at 83.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 81.

<sup>35</sup> *Id.* at 82.

<sup>36</sup> *See* HANEY, *supra* note 26, at 82.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

stress may include difficulty sleeping due to recurrent nightmares, hypervigilance, irritability or anger, and difficulty concentrating.<sup>40</sup>

For exonerees, the psychological impact of imprisonment is further compounded by the fact of having been incarcerated for crimes that they did not commit.<sup>41</sup> In 1984, Dennis Maher, who was then a sergeant in the U.S. Army, was wrongfully convicted of two rapes (one in Lowell, Massachusetts, and one in Ayer, Massachusetts) and one assault with intent to rape (in Lowell), based on mistaken victim identifications, and sentenced to life in prison.<sup>42</sup> Maher was exonerated in 2003 through DNA testing, after spending nineteen years in prison.<sup>43</sup> Maher recounts countless nights in which he has been tormented by nightmares of prison.<sup>44</sup> Beyond the memories of prison, Maher has the added fear of being wrongfully convicted again.<sup>45</sup>

Maher also identifies institutionalization as one of the most serious psychological effects of prison he experienced and observed during his wrongful incarceration.<sup>46</sup> According to Maher, inmates—even those who are innocent of the crimes for which they were convicted—who enter prison young or without a well-formed identity are most susceptible to the effects of institutionalization.<sup>47</sup> Maher credits the regimented life he led before conviction as an army sergeant, his strong familial relationships, and the job he held in the staff grill at the Treatment Center of the Old Colony Correctional Center in Bridgewater, Massachusetts, where he was incarcerated, with minimizing some of the effects of institutionalization.<sup>48</sup> Because of his job as a cook and the hours it required, Maher was not “locked into every count” and, thus maintained a schedule and responsibilities similar to those of people on the outside.<sup>49</sup>

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<sup>40</sup> AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS, 309.81 (4th ed. 1994).

<sup>41</sup> See Interview with Dennis Maher, in Boston, Mass. (June 26, 2007) (on file with authors).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> Interview with Dennis Maher, *supra* note 41.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

## 2. Upon Release

Release from prison is not always a joyous occasion, as it is often accompanied by feelings of anxiety about such things as family, employment, and finances.<sup>50</sup> Studies of prisoner reentry have concluded that the “moment of release,” and the hours and days immediately following release, are critical to the transition to life outside of prison.<sup>51</sup> It has been suggested that policy reforms addressing the anxieties attendant to release from prison for properly convicted individuals could “reduce the risk of recidivism . . . and improve the odds of successful reintegration after release.”<sup>52</sup> Adjusting to life outside of prison is made even more difficult when former prisoners are stigmatized and ostracized by their communities.<sup>53</sup>

The abruptness with which exonerees are released only compounds the trauma that comes along with the drastic change of reentering society.<sup>54</sup> While parolees and inmates who have served out their sentences expect release and are provided with reentry services in advance to prepare for it, exonerees are often released suddenly upon a judicial decision in their favor.<sup>55</sup> According to exoneree Lawyer Johnson, who was wrongfully convicted of murder, after fighting for years to prove his innocence and secure his release, living outside of prison was at times so difficult that he would commit minor offenses, like shoplifting, in order to spend the night in prison when he was feeling particularly overwhelmed with life on the outside.<sup>56</sup>

During his years in prison, Johnson had developed a strategy of isolation as a coping mechanism—what Johnson calls his “wall.”<sup>57</sup> Learning to depend on himself alone was a way to survive and to shield himself from the violence of prison and anger of being wrongfully convicted.<sup>58</sup> Release was akin to being thrown from one extreme to another—from a strictly enforced structure and complete lack of freedom

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<sup>50</sup> TRAVIS ET AL., *supra* note 15, at 18.

<sup>51</sup> *Id.*

<sup>52</sup> *Id.* at 19.

<sup>53</sup> DINA R. ROSE & TODD R. CLEAR, INCARCERATION, REENTRY AND SOCIAL CAPITAL: SOCIAL NETWORKS IN THE BALANCE 10 (2002).

<sup>54</sup> See Interview with Lawyer Johnson, *supra* note 24.

<sup>55</sup> See *id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

and privacy in prison, to no structure, total freedom, and true isolation on the outside.<sup>59</sup> When released, Johnson “took the wall” with him—this wall of distrust and of fear that the horror of wrongful conviction could happen again.<sup>60</sup>

Once out of prison, without the proper support, Johnson remembered prison as an environment in which he knew how to function, a place to “reboot”—despite the horrors that came along with it.<sup>61</sup> Tragically, Johnson had developed a serious drug habit while in prison, a habit that he did not have before his wrongful conviction.<sup>62</sup> Thus, petty crime after his release both helped to support his drug addiction and provided him with the occasional reprieve from the unstructured world he had grown to distrust and fear.<sup>63</sup>

Johnson is not alone in his post-exoneration experience. For example, Neil Miller was convicted in 1990 in Boston, Massachusetts for aggravated rape, based almost entirely on the eyewitness testimony of the victim.<sup>64</sup> He was exonerated in 2000 through DNA testing.<sup>65</sup> Miller tells a similar story, not only about the pressure and shock of release, but of the anger attendant to having served nine-and-a-half years for a crime he did not commit:

There are days that I am so angry and get so nervous being on the train around a bunch of people that I wish I could go upstairs to my cell, close my door, and lock in. That is what I used to do whenever things got too hectic and did not make me feel right. I was so used to being able to close the cell door.<sup>66</sup>

### B. *Employment*

Prisoners, as a group, have lower levels of education and literacy than the rest of the population. For instance, according to a 2003 Bureau of Justice Statistics report, only thirteen percent of the prison and jail population had any post-secondary education, as compared to forty-

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<sup>59</sup> Interview with Lawyer Johnson, *supra* note 24.

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Neil Miller, *Reflections of the Wrongly Convicted*, 35 NEW ENG. L. REV. 615, 619 (2001).

<sup>65</sup> *Id.* at 615.

<sup>66</sup> *Id.* at 620.

eight percent of the general population.<sup>67</sup> Such educational deficiencies, particularly when combined with minimal or no prior or recent work experience that results from long periods of incarceration, make attaining meaningful employment particularly difficult for prisoners upon release.<sup>68</sup> Compounding these factors is the fact that employers are hesitant to hire employees with criminal records.<sup>69</sup>

Many states offer work-release programs to help prepare prisoners for the transition to work upon release.<sup>70</sup> In Massachusetts, for instance, inmates become eligible for a work-release program up to eighteen

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<sup>67</sup> CAROLINE WOLF HARLOW, BUREAU OF JUSTICE STATISTICS, EDUCATION AND CORRECTIONAL POPULATIONS 1 (2003), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ecp.pdf>.

<sup>68</sup> HARRY J. HOLZER ET AL., EMPLOYMENT BARRIERS FACING EX-OFFENDERS 7 (2003), available at [http://www.urban.org/UploadedPDF/410855\\_holzer.pdf](http://www.urban.org/UploadedPDF/410855_holzer.pdf).

<sup>69</sup> *Id.* at 8.

<sup>70</sup> States vary in their commitment to transition, and due to the large number of prisoners being released each year, some states have begun to experiment with different programs to assist in the release process. In fact, during the 2004 State of the Union address, President George W. Bush recommended committing \$300 million over four years for funding of programs focusing on reentry issues—an initiative that received bipartisan support and seems to have inspired action by state legislatures, as well. See Michael Pinard, *An Integrated Perspective on the Collateral Consequences of Criminal Convictions and Reentry Issues Faced by Formerly Incarcerated Individuals*, 86 B.U. L. REV. 623, 649 (2006) (citing President George W. Bush, State of the Union Address (Jan. 20, 2004), available at <http://www.whitehouse.gov/news/releases/2004/01/20040120-7.html>).

The pre-release center in Montgomery County, Maryland, organizes meetings between inmates and parole and probation officers during incarceration so that plans can be developed before the critical moments of release. MARTA NELSON & JENNIFER TRONE, WHY PLANNING FOR RELEASE MATTERS 2 (2000), available at [http://vera.org/publication\\_pdf/\\_for\\_release.pdf](http://vera.org/publication_pdf/_for_release.pdf). The center offers many other services, including family counseling, to prepare inmates for release. *Id.* A secure transitional facility was created in 1996 by the Maryland Department of Correction to which some prisoners may move eighteen months before release. *Id.* The facility provides vocational training, domestic relations classes, sessions with victims to discuss the impact of crime, job readiness training, and psychological counseling. *Id.*

Similarly, Texas developed a state program called the Serious and Violent Offender Reentry Initiative Program “designed to reduce recidivism by better preparing and assisting offenders . . . to successfully reenter their communities.” Tex. Dep’t of Criminal Justice, Serious and Violent Offender Reentry Initiative Program, <http://www.tdcj.state.tx.us/pgm&svcs/pgms&svcs-serious-offender-pgm.htm> (last visited Jan. 2, 2008). The program consists of two phases: phase I involves in-cell training with programming provided on a computer six to seven months before release covering anger management, substance abuse, employment, and more; phase II starts upon release into supervision and continues the care. *Id.* In order to be eligible, inmates must have, among other things, a minimum of ten months before release. *Id.*

months before scheduled release.<sup>71</sup> The inmate will work full-time during this period.<sup>72</sup> After certain deductions, the earned income is placed into the inmate's account and turned over to him or her upon release.<sup>73</sup> In addition to state services, there are non-profit organizations in Massachusetts that have contracts with state government agencies to provide work preparation assistance to ex-offenders.<sup>74</sup> For example, Span, Inc., in conjunction with the Massachusetts Department of Correction, Parole Board, and the Board of Probation, offers work readiness classes and reintegration counseling to former inmates.<sup>75</sup>

Exonerees, however, may not have the benefit of preparation for release while in prison, and so are unlikely to have the opportunity to participate in work-release or other programs geared towards reentry. For them, the process is often unpredictable and the release experience abrupt. As a result, the wrongfully convicted are generally left without even the benefits provided by the states to the properly convicted who have served out their sentences. Even after exoneration and release, most exonerees' criminal records are not automatically expunged and, thus, continue to reflect the wrongful conviction and remain visible to potential employers.<sup>76</sup> Ironically, then, exonerees do not receive the work preparation assistance provided to ex-offenders or the advantage of having a clean criminal record. Even where a state compensation statute does provide for the expungement or sealing of records, there will still be a significant gap in the exoneree's employment history that will require explanation.<sup>77</sup>

Dennis Maher expresses frustration at the lack of support for exonerees at the critical moment of release.<sup>78</sup> When first exonerated,

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<sup>71</sup> H.I.R.E. Resources and Assistance, [http://www.hirenetwork.org/admin/clearinghouse.php?state\\_id=MA](http://www.hirenetwork.org/admin/clearinghouse.php?state_id=MA) (last visited Jan. 2, 2008).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *See id.* (listing several non-profit agencies that prepare ex-offenders to work).

<sup>75</sup> Commonwealth of Massachusetts, Citizens' Guide to State Services, <http://www.sec.state.ma.us/cis/ciscig/f/f24f28.htm> (last visited Jan. 2, 2008).

<sup>76</sup> *See, e.g.*, Hearing on H.B. 1053, H.B. 1543, H.B. 1569, and H.R. 255 Before H. Comm. on the Judiciary, 2007–2008 Leg., 91–93 (Pa. 2007) (statement of Andrew Hoover, Legislative Assistant, Am. Civil Liberties Union of Pa.) (expressing outrage that Pennsylvania did not automatically expunge the criminal records of exonerated individuals).

<sup>77</sup> *See, e.g.*, MASS. GEN. LAWS ch. 258D § 5(A) (2004) (providing, after a separate hearing, that persons exonerated in Massachusetts may have records of their erroneous conviction expunged or sealed).

<sup>78</sup> Interview with Dennis Maher, *supra* note 41.

Maher recalls, he did not receive many of the services provided to parolees.<sup>79</sup> However, Maher had one advantage that many exonerees do not—he had received vocational training during high school and then worked as a mechanic in the military.<sup>80</sup> Upon release, he was able to get a job as a mechanic with a reputable company that took him in, understood his story, and has since embraced his cause.<sup>81</sup> Unfortunately, this story is rare among exonerees, many of whom leave prison with little or seriously interrupted work history and without marketable job skills.

### C. *Housing*

Like finding employment, finding housing frequently presents challenges for the recently released. For recently released prisoners who have the option to live with relatives, the effort to find housing can be delayed. However, returning to a family home, in the same neighborhood with the same connections that one had before entering prison, may not be the optimal situation for a successful reentry. Generally, prisoners without post-release housing plans receive assistance from the State as a component of their reentry planning program. For instance, in Massachusetts, inmates without plans for post-release housing are referred to housing specialists at the Reentry Services Division of the Massachusetts Department of Correction six months before scheduled release.<sup>82</sup> Specialists will conduct initial assessments and then develop housing plans for the inmates, considering housing preferences and potential barriers to housing, as well as the community-based services that may be needed by the individuals.<sup>83</sup> Former inmates move into their housing immediately upon release and are guided by housing specialists for up to six-months during the stabilization period.<sup>84</sup> During this time, specialists will conduct home visits and mediate the landlord-tenant relationships when necessary.<sup>85</sup>

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<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> Mass. Executive Office of Pub. Safety, Reentry Housing Program Overview, *available at* <http://www.mass.gov/?pageID=eopshomepage&L=1&L0=Home&sid=Eeops> (follow “Prisons” hyperlink under “Law Enforcement & Criminal Justice”; then follow “Reentry & Reintegration” hyperlink; then follow “Reentry Housing Program Overview” hyperlink) (last visited Jan. 2, 2008).

<sup>83</sup> *Id.*

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*



Securing long-term housing is often even more challenging for exonerees. Without advance notice of upcoming release, exonerees generally do not receive the benefits of services like the ones provided by the Reentry Services Division of the Massachusetts Department of Correction.<sup>86</sup> Moreover, because their criminal records are not automatically expunged upon exoneration, they will most likely be unable to secure affordable housing on their own.<sup>87</sup> Immediately upon release, exonerees who do not have family or friends to stay with are forced to seek housing at a homeless shelter.

#### D. *Physical Health*

##### 1. Prison Effects

Serious, life-threatening diseases are significantly more prevalent among the prison population than among the general population in the United States.<sup>88</sup> According to the Department of Justice, as of the end of 2004, the rate of confirmed AIDS diagnoses in prison (both federal and state) was more than three times that of the general population.<sup>89</sup> The statistics are similar for tuberculosis (TB) and hepatitis C. Approximately two percent of the American population is infected with hepatitis C, a viral disease that attacks the liver and is spread through infected blood.<sup>90</sup> In stark contrast to that statistic, it is estimated that approximately thirty percent of the residents of correctional institutions are infected with the disease.<sup>91</sup> Though only 0.7% of the United States population was incarcerated in prisons and jails in 2003, 3.2% of

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<sup>86</sup> See *id.* (summarizing the services the Executive Office of Public Safety provides to incarcerated individuals who are able to anticipate and plan for their release).

<sup>87</sup> See Caterina Gouvis Roman & Jeremy Travis, *Where Will I Sleep Tomorrow? Housing, Homelessness and the Returning Prisoner*, 17 HOUSING POL'Y DEBATE 389, 397 (2006). Released prisoners may not be eligible for subsidized housing because of laws prohibiting persons convicted of certain crimes from receiving subsidized housing. *Id.*

<sup>88</sup> See U.S. DEP'T OF JUSTICE, HIV IN PRISONS 5 (2004), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/hivp04.pdf> (noting the prevalence of HIV in prisons).

<sup>89</sup> *Id.*

<sup>90</sup> Ctrs. for Disease Control & Prevention, Viral Hepatitis C, [http://www.cdc.gov/Ncidod/diseases/hepatitis/c/plan/HCV\\_infection.htm](http://www.cdc.gov/Ncidod/diseases/hepatitis/c/plan/HCV_infection.htm) (last visited Jan. 2, 2008).

<sup>91</sup> U.S. DEP'T OF JUSTICE, HEPATITIS TESTING AND TREATMENT IN STATE PRISONS 1 (2004), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/htsp.pdf> (reporting statistics about incarcerated individuals with hepatitis C).

the nation's TB cases occurred in prisoners.<sup>92</sup> The close living quarters and overcrowding of correctional facilities contribute to the risk of transmission of TB.<sup>93</sup>

## 2. Upon Release

Prisoners generally receive assistance from the State in determining whether they are eligible for public medical assistance upon release and in applying for these benefits, as part of a comprehensive reentry plan. For instance, in Massachusetts, inmates are provided with assistance applying for health insurance within sixty days of their scheduled release through the Department of Correction's MassHealth Initiative.<sup>94</sup> "The goal of the Department of Correction is to have everyone who is eligible to have a MassHealth card in their hand upon release."<sup>95</sup> A correctional program officer will work with an inmate to fill out a MassHealth application and, after it is screened for accuracy, will ensure that it is sent to the MassHealth Central Processing Unit.<sup>96</sup> The Reentry Services Division tracks and monitors the application from start to finish.<sup>97</sup>

Despite the fact that many exonerees are released with significant medical issues as a result of having been incarcerated, and without any means of obtaining health care, these reentry services are not routinely provided to exonerees. Instead, it is incumbent upon each exoneree to navigate the system and determine how to apply for and receive public assistance benefits on his or her own. Without this assistance, exonerees

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<sup>92</sup> Jessica R. MacNeil et al., *An Unanswered Health Disparity: Tuberculosis Among Correctional Inmates, 1993 Through 2003*, 95 AM. J. PUB. HEALTH 1800, 1800 (2005).

<sup>93</sup> *Id.*

<sup>94</sup> Mass. Executive Office of Pub. Safety, How MassHealth Cases Are Processed, <http://www.mass.gov/?pageID=eopshomepage&L=1&L0=Home&sid=Ecops> (follow "Prisons" hyperlink under "Law Enforcement & Criminal Justice"; then follow "Reentry & Reintegration" hyperlink; then follow "How MassHealth Cases are Processed" hyperlink) (last visited Jan. 2, 2008).

<sup>95</sup> Mass. Executive Office of Pub. Safety, DOC Goal Concerning MassHealth, <http://www.mass.gov/?pageID=eopshomepage&L=1&L0=Home&sid=Ecops> (follow "Prisons" hyperlink under "Law Enforcement & Criminal Justice"; then follow "Reentry & Reintegration" hyperlink; then follow "DOC Goal Concerning MassHealth" hyperlink) (last visited Jan. 2, 2008).

<sup>96</sup> Mass. Executive Office of Pub. Safety, How MassHealth Cases Are Processed, *supra* note 94.

<sup>97</sup> *Id.*

without significant support from friends, relatives, or attorneys are unlikely to access the medical care needed upon release from prison.

## II. STATUTORY COMPENSATION IN MASSACHUSETTS

### A. Overview

To date, most of the compensation mechanisms for wrongfully convicted individuals, as well as the debates regarding justification for compensating exonerees, have focused on their entitlement to financial compensation. Existing state compensation statutes vary widely with respect to their mechanisms for recovery, the amount of compensation they provide, and the legal standard that must be applied to determine whether an individual is entitled to recovery, as well as who has authority over the claims.<sup>98</sup> For the most part, state compensation statutes provide for either an administrative or judicial remedy. Massachusetts was the first state with a statutory mechanism entitling exonerees to meaningful services as a component of their compensation award, *in addition to* the statutorily mandated maximum monetary compensation.<sup>99</sup>

According to local practitioners who have represented several of the individuals who have received awards under the Massachusetts statute, the most significant shortcoming relates to the practical implications of contemplating post-release services as part of a judicial judgment.<sup>100</sup> While the need for reentry services for exonerees—like the

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<sup>98</sup> For instance, the New Hampshire statute caps an exoneree's potential recovery at \$20,000, *see* N.H. REV. STAT. ANN. § 541-B:14 (2003), the Tennessee statute authorizes an award up to \$1,000,000, *see* TENN. CODE. ANN. § 9-8-307 (2004), while the New York statute does not put a dollar limit on damages, stating only that if the claimant is successful the court will award an amount of damages it "determines will fairly and reasonably compensate" the claimant. N.Y. CT. CL. ACT § 8-b (McKinney 2007).

<sup>99</sup> *See* MASS. GEN. LAWS ch. 258D, § 5(A) (2004).

<sup>100</sup> Interview with Robert Feldman, Partner, Birnbaum & Godkin, LLP, Boston, Mass. (June 27, 2007) (on file with authors); Interview with Howard Friedman, Attorney, The Offices of Howard Friedman, P.C., in Boston, Mass. (June 8, 2007) (on file with authors). As of August, 2007, nine exonerees had received awards under the Massachusetts compensation statute: Stephen Cowans, Donnell Johnson, Lawyer Johnson, Dennis Maher, Neil Miller, Marvin Mitchell, Marlon Passley, Eric Sarsfield, and Eduardo Velazquez. E-mail from Peter Sacks, Massachusetts Deputy Chief Attorney General, to Anna Froneberger, NEIP Paralegal (Aug. 10, 2007, 11:57:00 EST); E-mail from Peter Sacks, Massachusetts Deputy Chief Attorney General, to Anna Froneberger, NEIP Paralegal & Jennifer Chunias, Partner, Goodwin Proctor LLP (Aug. 10, 2007, 15:04:00 EST). At least twenty-two claims have been filed since the statute was enacted, and many are still pending. *Id.* Of the nine exonerees who have received awards to date, approximately three have received services

need for reentry services for other prisoners—is immediate, it may take many months or years to file and adjudicate a claimant’s entitlement to compensation. Other cited problems include the fact that any services awarded under the statute are to be provided exclusively by the State, and are limited to services that are currently provided by the State. As a result, the unique psychological and other needs of exonerees are likely to be unmet.

### B. *The Massachusetts Compensation Statute*

Pursuant to chapter 258D of the Massachusetts General Laws, a claimant may bring an action against the Commonwealth for an “erroneous” felony conviction, provided that the claimant has (1) received a full written pardon on the basis of innocence, or (2) been granted certain specified judicial relief (set forth below), and provided that, at the time of filing the compensation action, no criminal proceeding is pending or can be brought against the individual for any act associated with the felony conviction.<sup>101</sup> The specified judicial relief that would qualify a claimant to seek relief is either (a) the judgment of the conviction is vacated, reversed, and the indictment or complaint was dismissed, or (b) at a new trial the claimant was found not guilty or not retried or the case against the claimant was abandoned (*nolle prosequi*) with the accusatory instrument dismissed.<sup>102</sup> If the claimant meets these requirements, he is entitled to bring an action against the State in the superior courts.<sup>103</sup>

At trial, the claimant has the burden of proving by “clear and convincing evidence” that he qualifies as an erroneously convicted person as set forth above.<sup>104</sup> The claimant is required to attach certified copies of the *mittimus* that shows his or her sentence to incarceration, and the pardon or certified copies of the records from the judicial action relating to his release.<sup>105</sup>

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pursuant to the statute. *Id.* Some of the other six exonerees who have not yet followed up their initial request for services, but whose cases are still open, may also ultimately receive services through their statutory compensation award. *Id.*

<sup>101</sup> MASS. GEN. LAWS ch. 258D, § 1(B) (2004).

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*; see also § 3 (requiring claimants to bring their claims in the county where the they were convicted or in Suffolk County).

<sup>104</sup> § 1(C)(i).

<sup>105</sup> § 1(B).

Also, the claimant must not have pled guilty to the felony for which he was convicted,<sup>106</sup> must not have been serving any concurrent time for another crime,<sup>107</sup> and must prove that he did not commit the felony charged (or any other felony arising out of or reasonably connected) or any lesser included offenses.<sup>108</sup> The claimant has the right to prove all these facts at a jury trial with relaxed standards of evidence relating to issues such as any difference of proof caused by passage of time, death, or unavailability of witnesses.<sup>109</sup> Should the Governor revoke the pardon, the case is immediately dismissed.<sup>110</sup> Service of process must be made on the Attorney General's office; the Attorney General then decides whether to oppose the claim.<sup>111</sup> The Attorney General is also granted authority to arbitrate or settle the claim, but any settlement greater than \$80,000 needs approval by the Secretary of Administration and Finance.<sup>112</sup> However, settlement precludes other claims against the Commonwealth.<sup>113</sup>

If the claimant wins a verdict by meeting the burden of proof for the various elements, the claimant is entitled to compensation.<sup>114</sup> The court or jury can consider any factors "deemed appropriate under the circumstances in order to fairly and reasonably compensate the claimant," including but not limited to the income he would have earned, the particular circumstances of his trial and other proceedings and the length and conditions under which he was incarcerated, with a limit of \$500,000 and no punitive damages.<sup>115</sup>

In addition to monetary damages, the court may also require the Commonwealth to provide services to the claimant that are "reasonable and necessary to address any deficiencies in the individual's physical and emotional condition that are shown to be directly related to the individual erroneous felony conviction."<sup>116</sup> To receive these services,

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<sup>106</sup> § 1(C)(iii).

<sup>107</sup> MASS. GEN. LAWS ch. 258D, § 2 (2004) (denying claimants compensation for any part of the sentence served concurrently with another crime).

<sup>108</sup> § 1(C)(iv).

<sup>109</sup> § 1(F).

<sup>110</sup> § 2.

<sup>111</sup> § 4.

<sup>112</sup> *Id.*

<sup>113</sup> MASS. GEN. LAWS ch. 258D, § 4 (2004). In the fall of 2007, the first case to proceed to trial under Chapter 258D resulted in a mistrial.

<sup>114</sup> § 5(A).

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

the claimant must specifically plead the nature of the services required and the agencies in the Commonwealth that will provide them in the original complaint and prove the need for them at trial.<sup>117</sup> An exoneree's psychological or physiological issues relating to the individual's experience while in prison (generally set forth in a separate affidavit that counsel may then seek to have impounded) may be considered in relation to damages and to necessary services.<sup>118</sup>

The court may also include a fifty percent tuition reduction at any state community college or university in the Commonwealth in the judgment.<sup>119</sup> It is unclear whether the court can order the individual admitted to an educational institution, or whether the statute is intended to provide only for tuition assistance once the individual has been admitted.<sup>120</sup> The Massachusetts statute also provides, after a separate hearing on the matter, for the expungement or sealing of records directly pertaining to the erroneous conviction.<sup>121</sup>

### C. *Experiences With the Massachusetts Statute*

Through the inclusion of a services component in its compensation statute, Massachusetts has implicitly recognized that the "loss [that] . . . should be borne by the community as a whole and not by the injured individual alone" is not limited solely to monetary damages.<sup>122</sup> Rather, it is the obligation of the states to attempt to make exonerees "whole" by also providing access to meaningful services to address the negative impacts of wrongful imprisonment on every aspect of their lives. In this regard, the Massachusetts statute should serve as a model for other states.<sup>123</sup>

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<sup>117</sup> *Id.*

<sup>118</sup> *See id.* (giving the court or jury broad discretion to consider any factors they deem relevant in awarding damages and services).

<sup>119</sup> MASS. GEN. LAWS ch. 258D, § 5(A) (2004).

<sup>120</sup> *See id.*

<sup>121</sup> *Id.* As previously noted, the wrongfully convicted still face the problem of having to explain significant gaps of time in their employment and life histories. Exonerees who have already been compensated under the state compensation statute also report that their records will not be expunged as long as they have a federal civil rights case relating to their wrongful conviction pending. Interview with Lawyer Johnson, *supra* note 24; Interview with Dennis Maher, *supra* note 41. It is often the case that exonerees will pursue recovery in both forums.

<sup>122</sup> *See* § 5(A); Borchard, *supra* note 6, at 110.

<sup>123</sup> *See* § 5(A).

That being said, according to local attorneys who have represented several of the individuals who have received awards under the Massachusetts statute, there are still some shortcomings relating to the services component that need to be addressed. The most significant inadequacy relates to the practical implications of addressing the need for post-release services solely as a component of a judicial judgment or award.<sup>124</sup> Attorney Howard Friedman, a civil rights attorney who has represented several of the exonerees who have received compensation under the Massachusetts statute, suggests that it is critical that exonerees also receive assistance from the State *immediately* upon release.<sup>125</sup> As with other prisoners, it is this initial reentry period that is most likely to determine whether an individual is going to be able to successfully reintegrate into society.<sup>126</sup> But practically speaking, it may take months or years for an exoneree's statutory compensation claim (including a claim for services to address specifically pleaded physical or emotional deficiencies) to make its way through the legal system to resolution.<sup>127</sup> In the meantime, exonerees generally do not receive the benefit of state-sponsored reentry services that, for parolees, may begin before release and continue after reentry into society.<sup>128</sup> Exoneree services should include job and vocational training, mental health counseling, substance abuse programs, and assistance in obtaining housing and food stamps.<sup>129</sup>

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<sup>124</sup> Interview with Howard Friedman, *supra* note 100.

<sup>125</sup> *Id.* Mr. Friedman, of the Offices of Howard Friedman, P.C. in Boston, Massachusetts, has been a civil rights attorney for over thirty years, focusing much of his practice on police misconduct cases. *Id.* He has represented several of the exonerees who have received awards under the Massachusetts statute in connection with their state compensation cases, and also represents exonerees in connection with federal civil rights lawsuits relating to their wrongful convictions. *Id.*

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> The Massachusetts Department of Correction, in collaboration with the Massachusetts Parole Board, has established a Regional Reentry Initiative. "The goal is to provide links to the community especially in the areas of housing, mental health counseling, substance abuse counseling, and employment." Mass. Executive Office of Pub. Safety, Regional Reentry Center Initiative, <http://www.mass.gov/?pageID=copshomepage&L=1&L0=Home&sid=Ecops> (follow "Prisons" hyperlink under "Law Enforcement & Criminal Justice"; then follow "Reentry & Reintegration" hyperlink; then follow "Regional Reentry Centers" hyperlink; then follow "Regional Reentry Center Initiative" hyperlink) (last visited Jan. 2, 2008).

<sup>129</sup> Although not technically a "service," reentry assistance for exonerees should also include a monetary stipend adequate enough to tide them over for the first few months after their release.

Unfortunately, simply making the reentry services that are already in place for parolees available for exonerees is not a viable solution. Prisoner reentry programs are largely inappropriate for individuals who are actually innocent of the crimes for which they were imprisoned, because the programs are generally premised on the notion that participants were guilty of the crimes for which they were imprisoned. These programs are also often reminiscent of prison in their structured rules and strict curfews, which are presumably intended to increase the likelihood that parolees will not recidivate. Programs that are reminiscent of a prison environment are not appropriate for exonerees who were not properly incarcerated in the first place. Rather than being thrown back into an environment akin to prison, exonerees need a support system to assist them in developing the skills and trust necessary to lead fulfilled lives.

In addition, although exonerees experience many of the same symptoms of “institutionalization” and other detrimental impacts of prison as other inmates, many of an exoneree’s needs and issues are completely distinct. Hence, so as not to inflict further injury upon the wrongfully convicted by forcing them into programs that are inappropriate and only serve to remind them of the strictures of prison life, reentry services for exonerees must be sensitive to the particular reintegration issues and obstacles that face this population.

A related problem is the fact that the Massachusetts statute requires that any services that are “awarded” to a claimant must be provided by the State.<sup>130</sup> Likewise, the Commonwealth’s obligation to provide services to exonerees is limited to services that are already currently available, regardless of whether that leaves an exoneree’s particular needs unmet.<sup>131</sup>

Attorney Friedman also suggests that many of the services that will ultimately be “awarded” to exonerees through the compensation statute may be services that they are already entitled to through state public assistance programs unrelated to incarceration.<sup>132</sup> But without satisfactory reentry services from the State, most exonerees do not know how to access this assistance upon release.<sup>133</sup>

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<sup>130</sup> See MASS. GEN. LAWS ch. 258D, § 5(A) (2004).

<sup>131</sup> See *id.*

<sup>132</sup> Interview with Howard Friedman, *supra* note 100.

<sup>133</sup> *Id.* For instance, although Dennis Maher and Lawyer Johnson were without income, health insurance, or housing of their own upon release, neither of them had any idea what



Attorney Friedman and Attorney Robert Feldman, another local attorney who has represented several of the individuals who have received or are seeking compensation under the Massachusetts statute, agree that currently there are not appropriate structures in place to facilitate the provision of appropriate reentry services.<sup>134</sup> One solution would be for the Commonwealth to designate an exoneree case worker who would work directly with each exoneree from the moment of release, conduct a detailed intake interview, and locate appropriate services for each exoneree. This person could be someone who is employed by the Massachusetts Department of Public Health or some other agency, and should be someone who is familiar with and could navigate the available systems and deal with exonerees' needs on a case-by-case basis.

### CONCLUSION

Wrongfully convicted individuals can never fully recover for the years they spent behind bars for crimes they did not commit. They should, nonetheless, be provided with reasonable monetary *and* non-monetary compensation by the State that was responsible for the administration of the criminal justice system that wrongfully imprisoned them. Non-monetary "compensation" should include reentry planning services immediately prior to and upon release that are at least comparable to those received by other prisoners upon release, but yet are sensitive and tailored to the distinct needs of exonerees. States should also provide wrongfully convicted individuals with long-term physiological, psychological, and other services necessary to address the detrimental impacts of imprisonment. These services are required to address the unique obstacles that wrongfully convicted individuals face upon reentry to life outside of prison, and to give them the tools they need to enable them to successfully reintegrate into society.

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public assistance programs they might be eligible for or how to apply. Interview with Lawyer Johnson, *supra* note 24; Interview with Dennis Maher, *supra* note 41.

<sup>134</sup> Interview with Robert Feldman, *supra* note 100; Interview with Howard Friedman, *supra* note 100. Attorney Robert Feldman is a partner at Birnbaum & Godkin, LLP in Boston, Massachusetts. He has represented several of the exonerees who have received awards under the Massachusetts statute in connection with their state compensation cases, and also represents exonerees in connection with federal civil rights lawsuits relating to their wrongful convictions.