

Tennessee wrongfully imprisoned man for three decades, provided only \$75 compensation

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Lawrence McKinney was imprisoned by the state of Tennessee for 31 years for a rape and burglary he did not commit. Under Tennessee law, McKinney could be compensated \$1 million.

However, the Tennessee Parole Board has refused to grant him an exoneration hearing, and the only compensation he ever received was the paltry \$75 given to him when he was released from prison in 2009. McKinney has now been forced to bring his case before Republican Tennessee Governor Bill Haslam, whose office received the application for executive clemency on November 21.

McKinney was charged in October of 1977 with having raped a Memphis, Tennessee woman and burgling her apartment. Six months later, he and his codefendant were found guilty after the victim identified them in court as her attackers. McKinney, then 22 years old, was sentenced to 115 years in prison for the crime. In 2009, DNA evidence from the victim's bed sheets demonstrated that McKinney had not been present at the crime scene. He was then released from prison; the state issued him the \$75 and the crime was expunged from his record.

Tennessee is one of 31 states with compensation statutes for the wrongly accused. It is also one of many states that complicate the compensation process. McKinney was forced to go before the Tennessee Board of Probation and Parole to seek compensation and exoneration, even though he was released from prison and the crime had been expunged from his record. The board voted 7-0 to deny his exoneration in November.

Patsy Bruce, who sat on the parole board that denied his first exoneration hearing, has stated that she is not

convinced that McKinney is innocent, despite DNA to the contrary. She also claimed that the judge and the District Attorney failed to provide properly tested evidence to support McKinney's innocence.

In the United States DNA evidence was used to exonerate a wrongfully-convicted inmate for the first time in 1989. Since then, nearly 350 people, including McKinney, have been freed on the basis of DNA evidence.

The states, however, have been criminally remiss in responding to the life-changing implications of this technology. Nineteen states—Alaska, Arizona, Arkansas, Delaware, Georgia, Idaho, Indiana, Kansas, Kentucky, Michigan, Nevada, New Mexico, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, and Wyoming—have yet to enact statutes providing compensation for those exonerated of crimes.

In the 31 states where compensation laws do exist, the processes to obtain compensation can be prohibitively time consuming and expensive. In New York, an exoneree has only a two-year window to file civil cases against state and municipal governments to receive compensation. These cases can take years to adjudicate, as demonstrated by the ongoing case of Alan Newton.

In 2010, Newton successfully sued New York City for \$18.5 million after his exoneration. Newton had been convicted of rape, robbery, and assault in 1985 in a case that prosecutors had built around eyewitness testimony. He had requested DNA testing of evidence in 1994 and was denied; in 2006, after serving over 20 years in prison, he was finally released on the basis of such evidence.

The city appealed the judgment. In 2011, United States District Court Judge Shira Scheindlin set the judgment aside. Newton appealed Scheindlin's decision. In 2015, the United States Court of Appeals for the Second Circuit vacated Scheindlin's ruling and turned the case back over to her.

In March of this year, Scheindlin reduced the award to \$12 million, claiming that the previous amount was excessive. If Newton did not accept the reduced amount, Scheindlin said, he would have to suffer another trial. She also cited the fact that Newton had been accused of a separate rape, although he maintains his innocence and no judgment has been made.

In another case, David Ayers, a Cleveland, Ohio man, served 11 years for a murder he did not commit. He was exonerated by DNA evidence in 2011, and two years later, he sued the two Cleveland detectives—Michael Cipo and Denise Kovach—upon whose manufactured evidence he had been incarcerated. The city of Cleveland was originally named in the suit, but was removed before it went to trial. The appellate court judge in the case stated that there was sufficient “evidence that Detectives Cipo and Kovach conspired to violate [Ayers'] civil rights.” Ayers was awarded \$13.2 million by the jury.

Three months after the verdict in Ayers' favor was delivered, Cleveland Law Director Barbara Langhenry helped Kovach and Cipo obtain a bankruptcy attorney. The city contracted to pay the attorney \$1000 for each bankruptcy judgment, as well as the filing fee for the bankruptcies. The contract also stipulated that the attorney was required to obtain permission from the city's law department to undertake legal research into the cases, effectively discouraging the officers and the attorney from exploring alternatives to bankruptcy. Cipo died a few months after Cleveland contracted with the attorney. Kovach declared bankruptcy. Ayers, now over 80 years old, fights on for his compensation.

McKinney, Newton, and Ayers all live in states where statutes provide for compensation for those exonerated of crimes. In each case, though, state and municipal governments have exploited loopholes designed to reduce payment to those they have incarcerated or avoid payment altogether. In some states, someone who has lost years in prison on false murder charges can lose compensation if they are later convicted of another, unrelated crime. As evidenced in

McKinney's case, a parole board can decide that it is not satisfied with exonerating evidence that has already been recognized by courts.

Those exonerated of wrongful convictions spend, on average, 14-15 years in prison. They are released into a society that has changed drastically, after enduring the myriad stressors and threats inherent to prisons. Parents and other loved ones die during their incarceration.

There is no uniform provision that would allow those exonerated to secure housing, employment, health care, or counseling so they can re-enter society successfully. To the contrary, the governments that energetically and enthusiastically prosecuted and imprisoned them expend just as much energy to avoid paying for the damage they inflict upon these exonerees.



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