

Bill as
Introduced

HB 247-FN - AS INTRODUCED

2013 SESSION

13-0652

04/09

HOUSE BILL **247-FN**

AN ACT increasing compensation for wrongful incarceration.

SPONSORS: Rep. Robertson, Ches 6; Rep. Sapareto, Rock 6; Rep. Christiansen, Hills 37;
Rep. Itse, Rock 10

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill provides that a person who is wrongfully incarcerated shall be eligible for compensation of \$20,000 per year of incarceration.

Explanation: Matter added to current law appears in **bold italics**.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT increasing compensation for wrongful incarceration.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Claims Against the State; Limitations on Claims and Actions. Amend RSA 541-B:14, II to
2 read as follows:

3 II. If a claim is filed against the state for time unjustly served in the state prison when a
4 person is found to be innocent of the crime for which he *or she* was convicted, such a claim shall be
5 limited to an award [~~not to exceed~~] *of \$20,000 per year of incarceration.*

6 2 Effective Date. This act shall take effect 60 days after its passage.

LBAO
13-0652
01/07/13

HB 247-FN - FISCAL NOTE

AN ACT increasing compensation for wrongful incarceration.

FISCAL IMPACT:

The Department of Justice states this bill, as introduced, may increase state expenditures by an indeterminable amount in FY 2013 and each year thereafter. There is no fiscal impact on county and local expenditures, or state, county, and local revenue.

METHODOLOGY:

The Department of Justice states this bill increases the amount for wrongful incarceration from an amount not to exceed \$20,000, to \$20,000 per year of wrongful incarceration. The Department states it would be responsible for defending the State against a claim of wrongful incarceration and would absorb any related costs in its budget. The Department indicates there have not been any payouts under this statute to date, therefore they are not able to determine the impact on state expenditures. If there is a payout related to this statute it would increase state general fund expenditures by an indeterminable amount.

Speakers

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 247

BILL TITLE: increasing compensation for wrongful incarceration.

DATE: January 29, 2013

LOB ROOM: 204 **Time Public Hearing Called to Order:** 10:00 am

Time Adjourned: 10:35 am

(please circle if present)

Committee Members: Reps. Pantelakos, Cushing, Ginsburg, Berube, Boisvert, Robertson, Grady, Burridge, Harriott-Gathright, Hirsch, O'Hearn, Charron, Fields, Villeneuve, Gagne, Vaillancourt, Warden, Parsons, Fesh and Tasker.

Bill Sponsors: Rep. Robertson, Ches 6; Rep. Sapareto, Rock 6; Rep. Christiansen, Hills 37; Rep. Itse, Rock 10

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. T. Robinson, sponsor, introduced and spoke to the bill.

***Tom Adams**, Concerned Citizens for Criminal Justice Reform - support
There has not ever been a claim made against the state for wrongful incarceration. Submitted a copy of Massachusetts statement. There is a potential of a claimant, but has not come forward.

***Chris Dornin**, Concerned Citizens for Criminal Justice Reform - support
Submitted testimony in written form.

***Peter Barse**, Concerned Citizens for Criminal Justice Reform - support
Submitted testimony in written form.

Respectfully submitted,



Rep. Gene P. Charron, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 247

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DATE: {Type HEARING DATE here}

LOB ROOM: 204 **Time Public Hearing Called to Order:** {Time} 10:00

Time Adjourned: {Time} 10:35

(please circle if present)

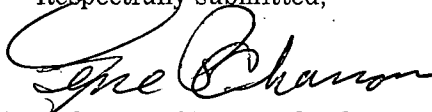
Committee Members: Reps. Pantelakos, Cushing, Ginsburg, Berube, Boisvert, Robertson, Grady, Burridge, Harriott-Gathright, Hirsch, O'Hearne, Charron, Fields, Villeneuve, Gagne, Vaillancourt, Warden, Parsons, Pesh and Tasker.

Bill Sponsors: Rep. Robertson, Ches 6; Rep. Sapareto, Rock 6; Rep. Christiansen, Hills 37; Rep. Itse, Rock 10

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Respectfully submitted,



Rep. Gene P. Charron, Clerk

HB-247

① 10:05 Sponsor Rep T. Robertson. explained

② 10:10 TOM ADAMS, "CONCERNED CITIZENS JUSTICE SUPPORTS" REFORM. WRITTEN TESTIMONY PROVIDED. THE HAS NOT ever been a claim made against the state for wrongful incarceration. COPY OF MASSACHUSETTS STATEMENT. THERE IS A POTENTIAL OF A CLAIMANT - BUT HAS NOT COME FORWARD.

③ 10:20 CHRIS DORWIN "CONCERNED CITIZENS FOR CRIMINAL JUSTICE" TESTIMONY PROVIDED IN WRITING.

10:35 PETER BEARSE "CONCERNED CITIZENS" NOW WRITTEN TESTIMONY.

Testimony

2

FILE
1-29-2013

CITIZENS FOR CRIMINAL JUSTICE REFORM

Thomas L. Adams, Jr. Board Member
Concord, NH

January 29, 2013

Testimony regarding bill to increase limit of compensation for exonerees from wrongful conviction.

Current statute RSA 541 B 14, regarding the authority of the New Hampshire Board of Claims, reads

II. If a claim is filed against the state for time unjustly served in the state prison when a person is found to be innocent of the crime for which he was convicted, such a claim shall be limited to an award not to exceed \$20,000.

Since 1989, over 1,000 people have been exonerated from serious criminal convictions, according to a newly established National Registry of Exonerations. Only one of those was in New Hampshire, (2008), and that defendant has not applied for compensation under the statute.

Upon inquiry to the New Hampshire Board of Claims, no instances of requests for compensation pursuant to this statute have been identified.

Nonetheless, with a criminal justice system very similar to that of the Federal Government and the other 49 states, New Hampshire cannot assume that it is immune to the devastation wrought on an individual and his or her family for a wrongful conviction and the need to fairly compensate an exonerated person.

Compensation to the exonerees from wrongful conviction is based on the same concepts of fundamental fairness of all efforts to compensate for harm inflicted by the state. The primary goal is to make the wronged person whole, with compensation for lost wages during incarceration. This legislature should consider the adverse effect on an exoneree's physical and mental health, plus the loss of earnings. This is a similar standard that would be applied in liability cases. Consider that if a person were exonerated after 10 years in prison in NH, the payment of \$20,000 would amount to about \$5.50 for each day of wrongful imprisonment. The current poverty benchmark for an individual is about \$11,200 per year. This legislature should also consider both economic and psychological impact on the exoneree's family. In addition, the amount of available compensation for wrongful conviction does not compare favorably with the amounts available with other states and the federal government.

The current New Hampshire limit of \$20,000 applies in all cases regardless of the length of incarceration. This low limit is unreasonable in view of the current economy and the measurement of harm done to the wrongly convicted. Most other states compensate on an annual basis without a total limit. However, among those which do have limits, Maine's limit is \$300,000 and Massachusetts' limit is \$500,000.

The Federal Government compensation limit is \$50,000 per year. Four states (Alabama, Florida, Mississippi and North Carolina) compensate at that level, and Texas compensates up to \$80,000 per year. In New England, Vermont's compensation range is between \$30,000 - 60,000.

②

FILE
1-29-2013

http://www.cjpc.org/rest_other_states.htm

Where Massachusetts Fits among States in Compensation for the Wrongfully Convicted General Language

By Patrice Brymner, April 2004

Of the statutes I've looked at, New York has the best statement of legislative intent and the recognition of the difficulty faced by the wrongly convicted:

The legislature finds and declares that innocent persons who have been wrongly convicted of crimes; 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. The legislature intends by enactment of the provisions of this section that those innocent persons who can demonstrate by clear and convincing evidence that they were unjustly convicted and imprisoned be able to recover damages against the state. In light of the substantial burden of proof that must be carried by such persons, it is the intent of the legislature that the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this section, shall, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf.

Proof Requirements:

All states providing compensation for wrongful convictions require some proof of "actual innocence." I have not found any state other than Massachusetts requiring proof of no conduct that could have been charged as a crime. However, numerous states have other restrictions such as requiring a pardon from the governor or prohibiting an exonerated defendant who entered a guilty plea from receiving compensation later. It could well be that the "pardon" hurdle is as high or higher than the Mass requirement.

I have not found any mention of the 4th or 5th Amendment in any other state's statute. Rules of evidence and judicial procedure may be found elsewhere in state law, so I don't know how unusual the Massachusetts language is.

Compensation Amounts:

Levels of compensation vary widely from state to state. Although many fall somewhere between \$25,000 and \$50,000 per year of incarceration, New York puts no cap on the amount of monetary compensation, while New Hampshire limits it to a total of \$20,000. Under the compensation scheme for federal prisoners, the cap is \$5,000. A couple of states, such as Texas, offer counseling for some period, and Maryland can offer "additional compensation" and counseling at the court's discretion. Massachusetts is on the generous side with a \$500,000 cap and with education and other services provided by the state.

Time Limits:

Statute of limitations is two years in most states, but California allows only six months from the time of acquittal, pardon or reversal. The Massachusetts legislation would allow two years: three years

those convicted prior to enactment

Expungement of Record

I have not found any language in any state's statute offering an expungement of record. It may be that it's covered by the governor's pardon in states requiring pardons.

Compensation for Erroneous Convictions – Approaches in Other States

The following three charts, taken together, outline a number of concerns that 18 other states, the federal government and the District of Columbia have considered in constructing legislation intended to provide relief to those individuals who have been wrongfully incarcerated. These concerns divide the concerns into **Eligibility** factors, **Trial or Proceeding** factors, and **Compensation** factors.

State Legislation for Erroneous (or Wrongful) Convictions:

				misdemeanor against the state; and c) Claimant must be imprisoned solely due the wrongful conviction.	
CA	<u>Cal Penal Code §§ 4900 to 4906</u>	(2000)	Pardon - For innocence	Claimant must show he did not contribute to arrest or conviction.	Felony conviction with incarceration
DC	<u>DC Code § 2-421 - 2-425</u>	1981	Pardon - For innocence; Judicial Relief - Conviction reversed or set aside on the ground that claimant is not guilty	a) Claimant must not have plead guilty (unless pursuant to North Carolina v. Alford, 400 U.S. 25 (1970)) and b) Claimant must prove that he did not, by his misconduct, bring about the prosecution.	Convicted with incarceration
IA	<u>Iowa Code Ann § 663A.1</u>	1997	Judicial Relief - Conviction dismissed, vacated or reversed	a) Claimant must not have plead guilty; and b) Claimant must have been incarcerated solely due to the wrongful conviction.	Aggravated misdemeanor or felony conviction with incarceration
IL	<u>Ill Rev Stat Ch. 705 § 505/8</u>	1945	Pardon - For innocence	Not addressed	Not addressed
MA	<u>M.G.L. Ch. 258D</u>	2004	Pardon - For innocence; Judicial Relief - Conviction vacated or reversed, dismissed charges, or "not guilty" verdict at new trial	a) Claimant must not have plead guilty (unless nullified or withdrawn), b) must have been imprisoned solely due to the wrongful conviction, and c) can not be reasonably connected by the facts to a lesser crime.	Felony conviction with incarceration sentences of 1 yr or greater
MD	<u>MD State Fin. & Proc. § 10-501</u>	1963	Pardon - On the ground that conviction was in error	Not addressed	Convicted, sentenced, and confined

ME	<u>14 Me Rev Stat Ann 8241-8244</u>	1993	Pardon - For innocence	Not addressed	Incarcerated
MT	<u>Mont. Code Ann. § 53-1-214</u>	2003	Other - Exonerated by post-conviction DNA testing.	Not addressed	Felony conviction with incarceration
NC	<u>NC Gen Stat §§ 148-82 to 148-84</u>	1947 (2001)	Pardon - For innocence	Not addressed	Felony conviction with incarceration in state prison
NH	<u>NH Stat § 541-B:14</u>	1977	Other - "Found innocent"	Not addressed	Convicted and incarcerated in state prison
NJ	<u>NJ Stat Ann §§52:4C-1 to 4C-6</u>	1997		a) Claimant did not by his own conduct cause or bring about conviction; b) Claimant must have been incarcerated solely due to the wrongful conviction.	Incarcerated
NY	<u>NY Ct. of Claims Act § 8-b</u>	1984	Pardon - For innocence; Judicial Relief - Conviction reversed & charges dismissed on grounds consistent with innocence, case tried to acquittal, or statute on which the wrongful conviction was based violated either the US constitution or the NY Constitution.	Claimant did not by his own conduct cause or bring about conviction.	Felony or misdemeanor convictions with incarceration

OH	<u>Ohio Rev Code Ann</u> § 2305.02 & § 2743.48	(2003)	Judicial Relief - Conviction vacated or reversed & charges dismissed, because either an error in procedure resulted in the individual's release or it was determined by a court of common pleas that the offense of which the individual was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.	Claimant must not have plead guilty	Felony conviction with incarceration
OK	<u>51 Okl. St.</u> § 154	2004	Pardon - For innocence; Judicial Relief - Conviction vacated and charges dismissed on the basis of "actual innocence" of the crime for which the claimant was sentenced.	a) Claimant must not have plead guilty, and b) must have been imprisoned solely as a result of the wrongful conviction.	Felony with incarceration
TN	<u>Tenn Code Ann</u> §9-8-108 (a)(7) §40-27-109	1984 (2004)	Pardon - For innocence; Other - "Exoneration"	Claimant must not have willfully and intentionally committed an act or engaged in conduct that directly resulted in or contributed to the wrongful conviction.	Incarceration
TX	<u>Tex Code Ann</u> § 103	(2001)	Pardon - For innocence; Judicial Relief - On the basis of innocence.	Claimant must not have plead guilty.	Incarceration
WI	<u>Wis Stat</u> § 775.05	1913 (1987)	Other - Innocent of Crime	Claimant did not by his or her act or failure to act contribute to bring about the conviction and imprisonment	Convicted with incarceration

WV	<u>W Va Code § 14-2-13(a)</u>	1987	Pardon - For innocence; Judicial Relief - Conviction reversed & either charges dismissed or acquittal on retrial or statute under which the claimant was convicted violated either the US Constitution or the WV Constitution.	a) Claimant did not contribute to or bring about conviction; and b) Claimant's acts or omissions did not constitute a misdemeanor or felony.	Arrest or conviction with incarceration
Notes:					
1	This table is based on a similar table created by Adele Bernhard (Associate Professor of Law, Pace University School of Law) in her article "When Justice Fails: Indemnification For Unjust Conviction," 6 U Chi L Sch Roundtable 73. (Last updated September 9, 2004.)				
	http://www.innocenceproject.org/docs/Bernhard_Compensation_Chart.pdf				
2	"Pardon for innocence" means the persons imprisoned must receive a pardon from the governor stating that such pardon is issued on the ground of innocence of the crime for which they were imprisoned.				

State Legislation
for Erroneous (or
Wrongful)
Convictions:

Structure of Trial (or Hearing)

Prepared by Greg Larkin¹ for the Criminal Justice Policy Coalition, Mar. 2005

St.	Statute	Who Decides	Standard Of Proof	Trial (or Hearing) Additional Required Proof of Innocence	Rules on Evidence	Time Limits For Filing
AL	<u>Code of Alabama §29-2-150 through 165</u>	Verification by State Division of Risk Management; Judgment by the Committee on Compensation for Wrongful	Not addressed	Not addressed	Not addressed	2 years

Incarceration;
and
Appropriation
by Legislature.

CA	<u>Cal Penal Code §§ 4900 to 4906</u>	State Board of Control makes a rec. to the legislature	Not addressed	Claimant must prove the fact that the crime with which he was charged was either not committed at all, or, if committed, was not committed by the Claimant.	Not addressed	6 months after acquittal, pardon, or release and 4 months before new legislative meeting
DC	<u>DC Code § 2-421 - 2-425</u>	Civil Court	Clear & Convincing	Claimant must show that he did not commit any of the acts charged, or that his acts constituted no crime the max. penalty for which would equal or exceed his incarceration period.	Not addressed	Available to any person released after 1979
IA	<u>Iowa Code Ann § 663A.1</u>	District Court for liability; State Appeal Board or Civil Ct. for damages	Clear & Convincing	Evidence must prove either was not committed at all, or, if committed, was not committed by	Not addressed	2 years

					the Claimant (or lesser charge).	
IL	<u>Ill Rev Stat</u> <u>Ch. 705 §</u> <u>505/8</u>	Court of Claims	Preponderance of the evidence ²	Not addressed	Not addressed	≤5 yrs., 15K max, ≤14 yrs., 30K max, >14 yrs., 35K max, with CPI increase for each year since 1996
MA	<u>M.G.L.</u> <u>Ch. 258D</u>	Civil Court	Clear & Convincing	Not addressed	Can not be excluded based on 4th, 5th, and 6th Amendment to the US Constitution and Article 12 or 14 of Part the First of the Mass. Constitution.	2 years
MD	<u>MD State</u> <u>Fin. & Proc.</u> <u>§ 10-501</u>	Board of Public Works	“Conclusive”	Not addressed	Not addressed	Not specified
ME	<u>14 Me Rev</u> <u>Stat Ann</u> <u>8241-8244</u>	Superior Court	Clear & Convincing	Innocent of the crime for which the person was convicted.	Not addressed	2 years
MT	<u>Mont. Code</u> <u>Ann.</u> <u>§ 53-1-214</u>	Appropriated by the legislature and authorized by Dep. of Corrections	DNA testing	Not addressed	Not addressed	10 years

NC	<u>NC Gen Stat</u> <u>§§ 148-82 to</u> <u>148-84</u>	Industrial Commission, but subject to judicial review	"Vindicated in connection with alleged offense"	Not addressed	At the hearing the claimant may introduce evidence in the form of affidavits or testimony to support the claim, and the Attorney General may introduce counter affidavits or testimony in refutation.	5 years
NH	<u>NH Stat</u> <u>§ 541-B:14</u>	Board of Claims	Board must find by majority vote that claim is "justified"	Not addressed	The board shall not be bound by common law or statutory rules of evidence, but may admit all testimony having a reasonable probative value. It may exclude evidence which is in the opinion of the board immaterial, irrelevant or unduly repetitious.	3 years
NJ	<u>NJ Stat Ann</u> <u>§§ 52:4C-1</u> <u>to 4C-6</u>	Superior Court	Clear & Convincing	Did not commit the crime for which he was	Not addressed	2 years

				convicted.		
NY	<u>NY Ct. of Claims Act § 8-b</u>	Court of Claims	Clear & Convincing	Claimant did not commit any of the acts charged in the accusatory instrument or his acts did not constitute a crime.	Not addressed	2 years
OH	<u>Ohio Rev Code Ann § 2305.02 & § 2743.48</u>	Court of Common Pleas for liability; Court of Claims for damages	Preponderance of evidence ³	Not addressed	Not addressed	2 years after finding by Court of Common Pleas
OK	<u>51 Okl. St. § 154</u>	State Civil Court	Clear & Convincing	Not addressed	Not addressed	No time limit
TN	<u>Tenn Code Ann § 9-8-108 (a)(7) § 40-27-109</u>	Board of Claims	Not addressed	Not addressed	Not addressed	1 year
TX	<u>Tex Code Ann § 103</u>	Administrative claim with comptroller or civil suit (but not both)	Preponderance of evidence	Not addressed	Only evidence from trial and pardon	3 years
WI	<u>Wis Stat § 775.05</u>	Claims Board	Clear & Convincing	Not addressed	Not addressed	None specified
WV	<u>W Va Code § 14-2-13(a)</u>	Court of Claims	Clear & Convincing	Not addressed	Not addressed	2 years

Notes:

1 This table is based on a similar table created by Adele Bernhard (Associate Professor of Law, Pace University School of Law) in her article "When Justice Fails: Indemnification For Unjust Conviction," 6 U Chi L Sch Roundtable 73. (Last updated September 9, 2004.)

http://www.innocenceproject.org/docs/Bernhard_Compensation_Chart.pdf

2 Not in law. Based on Court of Claims Rule.

Not in law. Courts ruled by preponderance of evidence
(Walden v. State, 547 N.E.2d 962)

State Legislation for Erroneous (or Wrongful) Convictions:					
Compensation					
Prepared by Greg Larkin ¹ for the Criminal Justice Policy Coalition, Mar. 2005					
Compensation					
St.	Statute	Orig. Enact. (Amend.)	Maximum Awards	Factors to Consider	Expunge-ment
AL	<u>Code of Alabama §29-2-150 through 165</u>	2001	Minimum of \$50,000 for each year of incarceration, but Committee can recommend a greater award to the legislature	Not addressed	Not addressed
CA	<u>Cal Penal Code §§ 4900 to 4906</u>	(2000)	\$100 per day of incarceration	Not addressed	Not addressed
DC	<u>DC Code § 2-421 - 2-425</u>	1981	No maximum. (No punitive damages)	Not addressed	Not addressed
IA	<u>Iowa Code Ann § 663A.1</u>	1997	\$50 per day & lost wages up to \$25,000/yr & attorney's fees	Not addressed	Not addressed
IL	<u>Ill Rev Stat Ch. 705 § 505/8</u>	1945	Not addressed	Not addressed	Not addressed
MA	<u>M.G.L. Ch. 258D</u>	2004	Fair and reasonable damages - \$500,000 (no punitive or exemplary damages)	Lost wages, circumstances of trial and proceedings, length and conditions of incarceration, and other factors deemed appropriate.	Yes (w/ hearing)
MD	<u>MD State Fin. & Proc. § 10-501</u>	1963	Actual damages and reasonable amount for counseling	Not addressed	Not addressed

updated September 9, 2004.)		
http://www.innocenceproject.org/docs/Bernhard_Compensation_Chart.pdf		

15 Barbara Street | Jamaica Plain, MA 02130 | Tel: 617-390-5397 | info@cjpc.org

Updated on 4/21/10

ME	<u>14 Me Rev Stat Ann</u> <u>§ 8241-8244</u>	1993	\$300,000 (no punitive or exemplary damages)	Not addressed	Not addressed
MT	<u>Mont. Code Ann.</u> <u>§ 53-1-214</u>	2003	Provides educational aid	Not addressed	Yes (elsewhere)
NC	<u>NC Gen Stat</u> <u>§§ 148-82 to 148-84</u>	1947 (2001)	\$20,000 per year with Max of \$500,000	Not addressed	Not addressed
NH	<u>NH Stat</u> <u>§ 541-B:14</u>	1977	\$20,000	Not addressed	Not addressed
NJ	<u>NJ Stat Ann</u> <u>§§ 52:4C-1 to 4C-6</u>	1997	2x claimant's income in the year prior to incarceration or 20K per year of incarceration, whichever is greater	Not addressed	Not addressed
NY	<u>NY Ct. of Claims Act</u> <u>§ 8-b</u>	1984	Fair and reasonable damages	Not addressed	Not addressed
OH	<u>Ohio Rev Code Ann</u> <u>§ 2305.02 & § 2743.48</u>	(2003)	\$40,330 per yr and lost wages, prison costs, and attorney's fees	Not addressed	Not addressed
OK	<u>51 Okl. St.</u> <u>§ 154</u>	2004	\$175,000 (no punitive or exemplary damages)	Not addressed	Not addressed
TN	<u>Tenn Code Ann</u> <u>§ 9-8-108 (a)(7)</u> <u>§ 40-27-109</u>	1984 (2004)	\$1,000,000	Relevant factors including the person's physical and mental suffering and loss of earnings	Yes (automatic w/ grant of exoneration)
TX	<u>Tex Code Ann</u> <u>§ 103</u>	(2001)	25K per year to a max of \$500,000; One free year of counseling if mutually agreed by Dep. of Mental Health	Legal expenses; lost wages; and medical expenses (including counseling)	Not addressed
WI	<u>Wis Stat</u> <u>§ 775.05</u>	1913 (1987)	\$5,000/yr, max \$25,000 but Board may petition legislature for additional funds	Not addressed	Not addressed
WV	<u>W Va Code</u> <u>§ 14-2-13(a)</u>	1987	Fair and reasonable damages	Not addressed	Not addressed
Notes:					

1 This table is based on a similar table created by Adele Bernhard (Associate Professor of Law, Pace University School of Law) in her article "When Justice Fails: Indemnification For Unjust Conviction," 6 U Chi L Sch Roundtable 73. (Last

CITIZENS FOR CRIMINAL JUSTICE REFORM

Testimony on HB 247

by Chris Dornin, founder, CCJR, 603-620-7946

This bill would give those wrongfully imprisoned in our state as much as \$20,000 for each year they have spent behind bars. Current state law caps such compensation at \$20,000 in all.

A newly established National Registry of Exonerations reveals that over a thousand Americans have been indisputably exonerated since 1989 from serious criminal convictions. Only one of those confirmed injustices happened New Hampshire, five years ago, and the defendant has never applied for compensation. The New Hampshire Board of Claims, in fact, reports that nobody has ever sought compensation here for wrongful incarceration. But with a criminal justice system very similar to that of the Federal Government and the other 49 states, New Hampshire cannot assume it is immune to the problem of wrongful conviction and the need to fairly compensate those harmed by it.

The primary goal of the law should be to make the wronged person whole, with suitable compensation for lost wages, safety, peace of mind, time with loved ones and other chances to pursue happiness. The low limit in New Hampshire is unreasonable in view of the current economy and the huge demonstrable of harm done to the wrongly convicted.

Most other states compensate on an annual basis without a total limit. Among those which do have limits, the cap is \$300,000 in Maine and \$500,000 in Massachusetts. A ranking of all states by the Innocence Project in 2004 placed New Hampshire last in compensation for those who have lived in a surreal place among real criminals.

The federal compensation limit is \$50,000 per year. Four states- Alabama, Florida, Mississippi and North Carolina- compensate at that level. Notoriously tough-on-crime Texas pays \$80,000 per year. Vermont's compensation range is between \$30,000 and \$60,000 per year.

From the National Registry of Exonerations

<http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3105>

Wrongfully convicted person: Roland Chretien

In June 2003, a woman claimed that Ronald Chretien, the owner of a Plainstow, New Hampshire motorcycle shop, had choked her and forced her to perform oral sex at the shop. Chretien claimed that the sex was consensual. At trial, the victim was asked if she had ever falsely accused another man of sexual assault and she said she had not. Chretien's lawyer was not allowed to pursue that line of questioning further. In January 2005, after a bench trial, Chretien was convicted of sexual assault and sentenced to 6-to-12 years in prison.

After his appeals in state courts failed, Chretien filed a federal habeas corpus petition and was granted an evidentiary hearing. At the hearing, the victim admitted that she had in fact falsely accused another man of choking her and forcing her to perform oral sex in the past. In July 2008, a United States District Court judge granted Chretien's habeas corpus petition, vacating his conviction and ordering a new trial. In September 2008, the New Hampshire Attorney General's Office announced that they would not appeal the court's ruling, and in October 2008 all charges against Chretien were dropped.

- Stephanie Denzel

CITIZENS FOR CRIMINAL JUSTICE REFORM

Control room log reveals a gladiator school

By Chris Dornin, founder, Citizens for Criminal Justice Reform, 620-7946

The average citizen knows little about the inside of a prison and the folks who live there, except that they probably deserve the place. The Legislative Budget Assistant did a performance audit of the Corrections system in 1992 that gives a harrowing glimpse of that secret world.

The study published 18 pages of verbatim control room log book entries from July and August of 1991. It deleted names of employees and inmates from the public record as a matter of safety. Here is what that culture looked like. It is much the same today.

7/26/91, 1300 hrs. A Hancock Building inmate was taken to the Infirmary with abrasions to his left leg, right arm, a gash to his scalp, fat lip and abrasions to the knuckles. The inmate claimed he fell out of bed. He was taken to Concord Hospital, treated for the head wound and returned to the prison. Approx. 1745 hrs. the inmate approached a corrections officer stating he was not going back to his cell, he wanted to go to SHU (protective custody unit). The inmate was informed he would have to give a statement as to why he wanted to go to SHU and he would have to name names. The inmate refused to give names and was given a direct order to return to his cell. The inmate stated, "Alright, I'll go back to my pod" and something to the effect there will be trouble or words. At approx. 1920 hrs. a corrections officer saw the inmate while making rounds and the inmate stated to the officer that he was all set, and he will make the best of what happened. The inmate still claims to have fallen out of bed.

7/26/91, 1353 hrs. A Dorm inmate was PAR'd (written up) to SHU pending PC (protective custody) review. Inmate alleges his life is in danger because of statements he made against inmates when he was at (location deleted). Also, a unit manager received informant information that the inmate was in danger. A corrections officer of the Investigations Unit received a phone call from the inmate's sister stating she had received three phone calls from him stating he was in danger.

7/30/91, 2230 hrs. A shank measuring 5 inches long and constructed out of a finger nail file melted into the end of a BIC pen was found in a SHU inmates (sic) cell. Disciplinary report initiated.

8/4/91, 1723 hrs. HNK-Bldg. Inmate was PAR'd to SHU pending Mental Health review and placed on suicide watch. The inmate received information from his brother that his girlfriend was shot to death. The inmate was emotionally upset and talking about suicide. He was placed on K-tier dayroom on suicide watch.

8/5/91, 1620 hrs. Received a PAR slip indicating a (unit deleted) inmate was moved to (unit deleted) pending a PC (protective custody) review board. Information received indicates the inmate is being threatened because of information he provided authorities when an inmate in (unit deleted) stabbed another inmate in (unit and date deleted).

8/7/91, 0849 hrs. Two SHU inmates were seen fighting on K tier by a Control Room Officer. The officer radioed a lieutenant of this. The lieutenant and a corrections officer responded to K tier. Upon entering K tier, one inmate was observed with an 8 inch shank in one hand and a laundry bag with a speaker in it in the other hand. The inmates were still fighting and were ordered to stop fighting. The lieutenant ordered the inmate to drop the weapons. The inmate complied. At this time two additional corrections officers responded to K tier. One officer handcuffed an inmate and escorted him to the Prison Infirmary. The other inmate was escorted to his cell and locked in. The weapons were secured. The inmate asked for medical attention and was escorted to the infirmary. He was treated for a bruised shoulder and returned to SHU. The other inmate was taken to Concord Hospital and treated for a collapsed lung and possible kidney puncture. He sustained 8 puncture wounds during this altercation with the other inmate. Investigation to follow. Disciplinary Reports initiated.

8/21/91, 0930 hrs. This unit received information from a corrections officer that flammable liquids from the Auto Body Shop were taken to CCU (Closed Custody Unit) by inmates. The officer said a CI (confidential informant) told him the flammable liquids were already in CCU and that there was going to be trouble. (Officers soon found a Creamora container of gasoline.)

8/24/91, 1640 hrs. SHU inmate was stabbed repeatedly on A tier in SHU. Inmate was taken to Concord Hospital and underwent surgery. The inmate was stabbed between 30 and 40 times in his upper torso and back. The inmate was admitted to the hospital intensive care unit in critical condition. As of 0705 hrs. on 8/26/91, the inmate is still critical and remains in a coma. Investigation continues by State Police and Prison Investigators. (The inmate died 8/26.)

8/24/91, 2043 hrs. SHU inmate was found dead in his cell. An autopsy performed on the inmate on 8/25/91 determined the inmate died of asphyxiation by strangulation. Investigation continues by State Police and Prison Investigators.

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 247

BILL TITLE: increasing compensation for wrongful incarceration.

DATE: February 19, 2013

LOB ROOM: 204

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Retain (Please circle one.)

Moved by Rep. Robertson

Seconded by Rep. Tasker

Vote: 10-9 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retain (Please circle one.)

Moved by Rep.

Seconded by Rep.

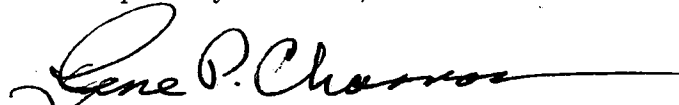
Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: {Type VOTE} *NO*

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,


Rep. Gene P. Charron, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 247

BILL TITLE: increasing compensation for wrongful incarceration.

DATE: ~~{Type DATE}~~ 2-19-13

LOB ROOM: 204

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep. *Robinson*

Seconded by Rep. *Fisher*

Vote: *10-9* (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: {Type VOTE} *YES-NO*

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Gene P. Charron, Clerk

*10-9
REGULAR
CALL*



2013 SESSION

CRIMINAL JUSTICE AND PUBLIC SAFETY

Bill #: HB 347 Title: _____

PH Date: 1/1 Exec Session Date: 2/19/13

Motion: OIP Amendment #: _____

MEMBER	YEAS	NAYS
Pantelakos, Laura C, Chairman		<input checked="" type="checkbox"/>
Cushing, Robert R, V Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Berube, Roger R	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Robertson, Timothy N	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Burrige, Delmar D		<input checked="" type="checkbox"/>
Ginsburg, Philip E	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Boisvert, Ronald R		<input checked="" type="checkbox"/>
Grady, Brenda E	<input checked="" type="checkbox"/>	
Harriott-Gathright, Linda	<input checked="" type="checkbox"/>	
Hirsch, Geoffrey D	<input checked="" type="checkbox"/>	
O'Hearne, Andrew S		<input checked="" type="checkbox"/>
Charron, Gene P, Clerk		<input checked="" type="checkbox"/>
Fields, Dennis H	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Fesh, Robert M	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Villeneuve, Moe	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Gagne, Larry G	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Parsons, Robbie L	<input checked="" type="checkbox"/>	
Tasker, Kyle J	<input checked="" type="checkbox"/>	
Warden, Mark	<input checked="" type="checkbox"/>	
Vaillancourt, Steve	<input checked="" type="checkbox"/>	
TOTAL VOTE:	13	29

*Circled check marks
is the actual votes.*

Committee Report

REGULAR CALENDAR

February 20, 2013

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on CRIMINAL JUSTICE AND PUBLIC

SAFETY to which was referred HB 247-FN,

AN ACT increasing compensation for wrongful

incarceration, Having considered the same, report the

same with the recommendation that the bill **OUGHT TO**

PASS.

Rep. Kyle J Tasker

FOR THE COMMITTEE

Original: House Clerk

Cc: Committee Bill File

COMMITTEE REPORT

Committee:	CRIMINAL JUSTICE AND PUBLIC SAFETY
Bill Number:	HB 247-FN
Title:	increasing compensation for wrongful incarceration,
Date:	February 20, 2013
Consent Calendar:	NO
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

This bill would raise the compensation for the extremely rare case of wrongful incarceration from a maximum of \$20,000 total to 20,000\$ for each year of wrongful incarceration. The committee feels because only one case of wrongful conviction was brought to our attention the financial burden will not be significant. The amended dollar figure is much more reasonable and realistic and fair compensation has the potential to forestall potentially disastrous law suits.

Vote 10-9.

Rep. Kyle J Tasker
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

HB 247-FN, increasing compensation for wrongful incarceration, OUGHT TO PASS.

Rep. Kyle J Tasker for CRIMINAL JUSTICE AND PUBLIC SAFETY. This bill would raise the compensation for the extremely rare case of wrongful incarceration from a maximum of \$20,000 total to 20,000\$ for each year of wrongful incarceration. The committee feels because only one case of wrongful conviction was brought to our attention the financial burden will not be significant. The amended dollar figure is much more reasonable and realistic and fair compensation has the potential to forestall potentially disastrous law suits. **Vote 10-9.**

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

CRIMINAL JUSTICE AND PUBLIC SAFETY

MAJORITY REPORT

HB 247, increasing compensation for wrongful incarceration.

RECOMMENDATION: OUGHT TO PASS

VOTE: 10-9

This bill would raise the compensation for the extremely rare case of wrongful incarceration from a maximum of \$20,000 total to 20,000\$ for each year of wrongful incarceration. The committee feels because only one case of wrongful conviction was brought to our attention the financial burden will not be significant. The amended dollar figure is much more reasonable and realistic and fair compensation has the potential to forestall potentially disastrous law suits.

Rep. Kyle J. Tasker

Rep. Laura Bartelakos

COMMITTEE REPORT

COMMITTEE:

Criminal Justice & Public Safety

BILL NUMBER:

HB 247

TITLE:

Increasing Compensation for Wrongful Incarceration

DATE:

2/19/13

CONSENT CALENDAR:

YES

NO

OUGHT TO PASS

OUGHT TO PASS W/ AMENDMENT

INEXPEDIENT TO LEGISLATE

INTERIM STUDY (Available only 2nd year of biennium)

Amendment No.

STATEMENT OF INTENT:

Multiple horizontal lines for writing the statement of intent.

COMMITTEE VOTE:

10-9

Rep. Laura Rautava

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. *Justin N. Roberts*
For the Committee