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2023

## CASA for Exonerees: Advocating for The Wrongfully Convicted

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## INTRODUCTION

The biggest miscarriage of justice tends to get brushed under the rug by monetary compensation and a pat on the back from a judge before victims of the judicial system get sent on their way. Being wrongfully convicted takes away much more than a yearly income - it takes away years of someone's life. It affects mental health, causing trauma and potential PTSD. It rips apart families, takes away career opportunities, and ends relationships. <sup>1</sup> The state's compensatory damages are not enough to even begin to fix the lives that have been ruined by the system, nonetheless, help those wrongfully incarcerated begin to transition back to a "normal life."

However, as compensation is the least the State can do, why are the eligibility requirements for exonerees so difficult to comprehend? With various hurdles, approaching deadlines, and eligibility changing state-by-state, the process of filing a claim is almost impossible for the ordinary person to decipher. Without requesting a change in compensatory law, these exonerees deserve to be aided in the process of filing compensation claims at the bare minimum. Being forced to re-enter the judicial system in order to be compensated for a crime they have already proved they did not commit, paired with re-entering a society that has moved on without them, can be egregiously overwhelming. Released from prison and thrown into a new world, one filled with technological advancements never imagined and no instruction manual on where to begin, re-entry into society may be just as difficult as facing the judiciary. A voluntary advocacy program focused on helping exonerees re-enter society, by aiding them in filing

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<sup>1</sup> Audrey D. Koehler, Exonerated, Free, and Forgotten: How States Continue to Punish the Wrongfully Convicted Through Procedural Hoops and Inadequate Compensation, 58 WASHBURN L.J. 493, 495 (2019)(found that a "2003 survey of 50 exonerees discovered that more than half of the exonerees had no health insurance, almost as many were earning less than they did before going to prison, 39% had divorced during their incarceration and 30% lost custody of their children.")

compensation claims, standing by them throughout the judicial process, and helping them gain access to immediate needs such as mental health care and employment, is a solution that is not so far-fetched. Enter: CASA for exonerees.

The thesis of this paper focuses on the confusion that comes with compensation after wrongful conviction, paired with the complete lack of re-entry aid offered to those who have been exonerated. Because of these factors, a voluntary advocacy program focused on helping exonerees re-enter society, by aiding them in filing compensation claims and helping them find access to immediate needs, is a necessary solution. This paper begins with a brief history of freeing those wrongfully incarcerated. Part I explains the lack of compensation for exonerees, and how while the compensation system evolved, many exonerees' options remained extremely limited. Part II then discusses the different ways exonerees can go about filing for compensation and why state statutes are considered the best route, despite many states still not having these systems in place. This section essentially discusses the problem that are the difficulties that come with filing claims, and the numerous eligibility requirements that vary by each state.

Part III describes areas beyond compensation that exonerees often struggle with when being released. As mental health is evidently the most important factor, this section discusses the many ways exonerees face serious mental health problems, which affect their daily lives on the outside. This section also discusses the stigma associated with being incarcerated and how this affects employment and housing opportunities for exonerees.

The solution comes in Part III, where the advocacy program, CASA for exonerees is introduced. This section gives a background on what exactly CASA is, the founding, and how it has shaped the family court system while benefiting many children in foster care. This paper then explains how implementing this system for exonerees would potentially be a cure-all for many of

the problems exonerees face after release. The conclusion enforces the need for a system of advocates who can provide recommendations to judges, know exactly how to file compensation claims per state, and help to get these exonerees the help they need on the outside of the prison walls.

### **I. History of Freeing Those Wrongfully Incarcerated**

While the first exoneration was said to have occurred as far back as 1812, the United States has consistently wrongfully incarcerated innocent citizens of crimes they have not committed.<sup>2</sup> As the country has progressively implemented compensation for those who have been exonerated, the complicated avenues to receive these rewards are a struggle for many. From the lack of understanding eligibility requirements, filing before the differing state deadlines, and a complete lack of aid, the State takes almost no accountability for its wrongdoings of ruining a human's life.

#### **A. The Start of Freedom**

The citizens of the United States like to think of their country as a prominent leader, a nation to watch and follow. A leader maybe, though not always positively. An undisputed area this country is leading is the number of wrongful convictions, with over 2,400 people having been exonerated since 1989.<sup>3</sup> These exonerees have spent an average of 8.7 years in prison for crimes that they did not commit.<sup>4</sup> There are many factors that lead to wrongful convictions, ranging from mistaken eyewitness identifications, false confessions, police misconduct, flawed forensic science, and ineffective assistance of defense counsel.<sup>5</sup> Because of the disgusting errors

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<sup>2</sup> Sherman R. Moulton, The Boom Mystery/An Episode From the Judicial Annals of Vermont, Vermont Historical Society (1937)

<sup>3</sup> Andriana Moskovska, 33 Startling Wrongful Convictions Statistics (2021) <https://thehighcourt.co/wrongful-convictions-statistics/>

<sup>4</sup> Kayleigh E. McGlynn, Remedying Wrongful Convictions Through DNA Testing: Expanding Post-Conviction Litigants' Access to DNA Database Searches to Prove Innocence, 60 B.C.L. REV. 709, 713 (2019)

<sup>5</sup> Id.

by the State that have ripped people from their homes and placed them behind bars for crimes they did not commit, there has been an active push for reform.

The first proposal for a wrongful conviction compensation statute was brought in 1912, when Senator George Sutherland of Utah, introduced a bill for “Relief of Persons Erroneously Convicted.”<sup>6</sup> The bill was then drafted by a Law Librarian of the Library of Congress, Edwin Borchard, who was an early advocate for wrongful conviction compensation.<sup>7</sup> In the first sentence of the report, Borchard wrote, “in an age where social justice is the watchword of legislative reform, it is strange that society utterly disregards the plight of the innocent victim of unjust conviction or detention in criminal cases.”<sup>8</sup> While promising, the bill died in committee and no effort to pass another statute like it was proposed again until 1935.<sup>9</sup> However, a bill of this kind was not formerly passed until 1948, when the reorganization and recodification of Title 28 of the U.S. Code helped to change the structure of the compensation statute.<sup>10</sup> The bill provided specific requirements in which the petitioner must plead in order to obtain compensation, although the statute had a \$5,000 cap on all damages.<sup>11</sup>

This statute remained in place unchanged for over 50 years, until the Innocence Protection Act of 2000 was introduced, in order to amend the \$5,000 cap on damages.<sup>12</sup> Ultimately passed in 2004, Congress introduced legislation such as the Justice for All Act of

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<sup>6</sup> Jeffrey S. Gutman, Are Federal Exonerees Paid: Lessons For The Drafting And Interpretation of Wrongful Conviction Compensation Statutes, 69 CLEV. ST. L. REV. 219, 224 (2021)

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> Id.

<sup>10</sup> Gutman, *supra* note 5 at 234. A bill was passed prior which was codified as 18 U.S.C. § 730, but the requirements were ambiguous and flawed. Because of this, the House confused the statute’s requirements, and it could not be recovered.

<sup>11</sup> *See id.* at 234.

<sup>12</sup> Id. This Act was created by Senator Patrick Leahy of Vermont, seeking to increase the amount of damages that could be awarded to a maximum of \$50,000 per year of incarceration and a max of \$100,000 per year for those sentenced to death.

2004.<sup>13</sup> The Act did significantly alter compensation caps federally, stating that “the amount of damages awarded shall not exceed \$100,000 for each 12-month period of incarceration of any plaintiff who was unjustly sentenced to death, and \$50,000 for each 12-month period of incarceration for any other plaintiff.”<sup>14</sup> The Justice for All Act included the Innocence Protection Act of 2004, which established federal post-conviction DNA testing, granted incentives for states to consider claims of actual innocence, and increase compensation in federal cases, while also encouraging states to enact compensation statutes.<sup>15</sup> Under the Act, if the DNA test showed that the individual was not the source of the DNA evidence at issue, the individual would be entitled to either a new trial or re-sentencing.<sup>16</sup> Because of non-profit organizations and programs focused on freeing those wrongfully incarcerated, people who have been wrongfully convicted have had new access to help.<sup>17</sup> The Innocence Project which began in 1992, started as a legal clinic at Cardozo Law and eventually helped to exonerate over 350 people, working with new DNA evidence.<sup>18</sup> The Exoneration Initiative on the other hand, is a not-for-profit organization that provides free legal assistance to wrongfully convicted people in New York, focusing on cases that lack DNA evidence.<sup>19</sup>

While new laws and organizations push to give back a voice to those who have had their rights stripped wrongfully by the State, the focus has often been put on release, without considering the question: what happens next?

## II. Difficulties with Compensation

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<sup>13</sup> Erin Tyler Brewster, When Have They Paid Enough? Taxability of Compensation Payments Made To Wrongfully Incarcerated Individuals, 64 SMU L. REV. 1405, 1408 (2011).

<sup>14</sup> Jeffrey S. Gutman, Are Federal Exonerees Paid: Lessons For The Drafting And Interpretation of Wrongful Conviction Compensation Statutes, 69 Clev. St. L. Rev. 219, 236 (2021)

<sup>15</sup> Brewster, *supra* note 12 at 1408.

<sup>16</sup> *See id.* at 1409.

<sup>17</sup> Steven A. Krieger, Why Our Justice System Convicts Innocent People, And The Challenges Faced by Innocence Projects Trying to Exonerate Them, 14 NEW CRIM. L. R., 333, 363 (2011).

<sup>18</sup> Id.

<sup>19</sup> The Exoneration Initiative, (2020). <https://www.exonerationinitiative.org/>

Citizens may assume that those who have been wrongfully convicted will automatically be compensated for the wrongs of the state, and that essentially this money will give those previously incarcerated a new start. The reality of the situation is much more complicated than an automatic check in the mail for millions of dollars. Once again, the burden is on the victim.

A. State v. Dedge

In 1981, Wilton Dedge was a twenty-year-old mechanic, living in New Smyrna Beach, Florida.<sup>20</sup> On the afternoon of December 8, Jane Smith entered her home about forty-seven miles south of where Wilton Dedge was working, when she was attacked by a man who had a razor knife.<sup>21</sup> The perpetrator brutally raped Ms. Smith, cutting her over 60 times during a 45-minute period.<sup>22</sup> After the perpetrator left, Ms. Smith went to the hospital for treatment and a rape kit.<sup>23</sup> Police searched for the man Ms. Smith described as a blonde with long hair who was about 6 feet tall and weighing around 200 pounds.<sup>24</sup> A few days after the crime, Ms. Smith and her sister stopped at a convenience store and Ms. Smith claimed that a man who was in there had looked like her attacker.<sup>25</sup> Her sister had believed that the man went to her elementary school and his name was “Walter Hedge.”<sup>26</sup> Based on this information, police arrested Wilton’s brother, Walter, who was later released when Ms. Smith identified Wilton Dedge in a photo lineup.<sup>27</sup> Although Dedge had proclaimed his innocence multiple times, had no criminal record,

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<sup>20</sup> Armen H. Merjian, Anatomy of A Wrongful Conviction: State v. Dedge And What It Tells Us About Our Flawed Criminal Justice System, 13 PENN LAW: LEGAL SCHOLARSHIP REPOSITORY 137, 140 (2010).

<sup>21</sup> See id. at 141.

<sup>22</sup> Id.

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id.

<sup>26</sup> Id.

<sup>27</sup> Id.



and an alibi, Dedge was tried and convicted of burglary, two counts of sexual battery, and aggravated assault and was sentenced to two concurrent life sentences.<sup>28</sup>

As abhorrent as the crime was, the court's handling of Dedge's case was all the more disturbing. Wilton Dedge continuously fought for his freedom, finally being taken under the wing of the Innocence Project.<sup>29</sup> In 1997, Dedge filed a motion pursuant to Florida Rule of Criminal Procedure 3.850 seeking DNA testing.<sup>30</sup> The trial court denied the motion as time-barred, and the Court of Appeals affirmed.<sup>31</sup> Dedge then filed a motion for release of evidence for DNA testing, which was granted, and when the test results were received, Dedge filed a rule 3.850 motion, arguing that the results of the tests were newly discovered evidence and established that he was not guilty of the crimes he was committed of.<sup>32</sup> While Florida had recently enacted a new Criminal Procedure rule allowing for DNA testing, Dedge's motion for DNA testing was found to not comply with the requirements of 3.850, forcing him to file a new motion under the new rule.<sup>33</sup> After unprofessional arguments between the State attorney's and Dedge's team, the State finally requested a test of the semen left at the scene, and the evidence officially proved conclusively that Dedge was not the rapist.<sup>34</sup>

Although Dedge was finally "free," after twenty-two years of wrongful incarceration, he was provided nothing upon release.<sup>35</sup> Fighting for his physical freedom was only Dedge's first battle, as his fight for compensation proved to be just as trying.<sup>36</sup> At the time, Florida had no law

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<sup>28</sup> See *id.* at 142.

<sup>29</sup> *Dedge v. State*, 832 So. 2d 835 (2002).

<sup>30</sup> *Id.* at 836.

<sup>31</sup> *Id.*

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

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

<sup>34</sup> Merijan, *supra* note 19 at 153.

<sup>35</sup> *Id.* at 161.

<sup>36</sup> *Id.*

for compensating wrongfully convicted individuals.<sup>37</sup> Dedge however had faith on his side and was able to secure Special Counsel on a pro bono basis.<sup>38</sup> Dedge’s counsel, Sandy D’Alemberte, assessed the value of Dedge’s claim and presented his report to state officials, seeking a total of \$4.9 million in compensation for the economic losses together with the “loss of liberty.”<sup>39</sup> However, Florida’s Speaker of the House at the time suggested that Dedge should file suit rather than seek compensation from the Legislature.<sup>40</sup> In 2005, a House Committee recommended that the State offer Dedge no more than \$200,000, and the Legislature ended its session without authorizing any money for Dedge.<sup>41</sup> When Dedge’s attorney next filed suit against the State, he claimed that the “failure to provide any remedy would violate the Constitution,” as Dedge had his liberty taken.<sup>42</sup> Again, the case was dismissed, with Judge Gary ruling that “the State of Florida enjoyed sovereign immunity from such lawsuits.”<sup>43</sup>

Finally, when the Legislature returned to session, several lawmakers sponsored a bill to provide Dedge with two million dollars, along with free tuition at the State university.<sup>44</sup> This bill was officially passed by the Legislature and signed by Governor Bush in 2005, with no mention however of Dedge’s years in court after exoneration, fighting for his compensatory damages.<sup>45</sup> Dedge had luck on his side towards the end, securing prominent counsel and receiving public support throughout Florida. Unfortunately, most exonerees are not as lucky or well connected.

#### B. Filing a Compensation Claim

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<sup>37</sup> Id.

<sup>38</sup> Id. at 162.

<sup>39</sup> Id.

<sup>40</sup> Id. at 163.

<sup>41</sup> Id.

<sup>42</sup> Id. at 164.

<sup>43</sup> Id.

<sup>44</sup> Id.

<sup>45</sup> Id.

The dictionary definition of compensation is, “money, awarded to someone as a recompense for loss, injury or suffering.”<sup>46</sup> With this definition in mind, wrongful imprisonment of an innocent person has been called, “the most serious deprivation of individual liberty that a society may impose.”<sup>47</sup> As a society we would think that being convicted of a crime one did not commit would be the utmost injury one could face. However, under the common law a person who has been wrongfully convicted could not recover any damages from the state that had imprisoned them.<sup>48</sup> Because of this detrimental situation, the federal government, the District of Columbia, and now 38 states have compensation statutes of some type.<sup>49</sup> While the statutes may differ, the purpose of them all is to “provide redress to innocent persons who prove that they were unjustly convicted and imprisoned.”<sup>50</sup>

Unfortunately, filing a compensation claim in the correct state is extremely perplexing. Despite this, state compensation statutes are viewed as the best of the other alternative methods of redress.<sup>51</sup> In every state, exonerees must enter the legal system if they wish to gain any compensation, with most filing a lawsuit against the state in order to trigger the claim.<sup>52</sup> Exonerees can receive compensation in three ways: by relying on state statutes; through lawsuits; or through a private bill.<sup>53</sup>

#### i. Legislation

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<sup>46</sup> *Definition of Compensation*, *Oxford Dictionary* (2010).

<sup>47</sup> Deborah F. Buckman, *Construction and Application of State Statutes Providing Compensation for Wrongful Conviction and Incarceration*, 53 A.L.R. 6<sup>TH</sup> 305, 1 (2022)

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

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

<sup>50</sup> *Id.*

<sup>51</sup> Jeffrey Gutman, *An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted*, 82 MO. L. REV. 369, 371 (2017)

<sup>52</sup> Deborah Mostaghel, *Wrongfully Incarcerated, Randomly Compensated-How to Fund Wrongful Conviction Compensation Statutes*, 44 IND. L. REV. 503, 510 (2011).

<sup>53</sup> Simon Cole, *Compensation for Exonerees*, NRE: COMPENSATIONFOR EXONEREES 1, 1 (2017)

Unlike Dedge, the private bill is a route few go down, as a person has to lobby his state legislature to pass a private bill that would then dispense money from the state treasury to the lobbying individual as a remedy for being wrongly convicted.<sup>54</sup> In order to succeed, an individual would need to have proper connections in order to find a state legislator to sponsor the bill and enlist support for it.<sup>55</sup> Even assuming a private bill does pass, awards are not always very significant.<sup>56</sup> This path is also extremely long, as it is considered the “slowest form of legislation to pass.”<sup>57</sup> For example, it took twenty years for the “Florida legislature to pass legislation for the entitlement of equitable relief of two wrongly convicted men.”<sup>58</sup>

## ii. Lawsuit

An exoneree can also choose to bring a federal civil rights lawsuit against the municipality and the police, under 42 U.S.C. §1983.<sup>59</sup> Before filing this suit however, a plaintiff must satisfy the requirements of §2513, The Unjust Conviction and Imprisonment Act.<sup>60</sup> The Act has two basic categories of requirements: (a)(1) requires that “the plaintiff use the court record or a certificate to show that the conviction was reversed; he was found not guilty in a new trial; or he was pardoned on the ground of innocence.”<sup>61</sup> Under (a)(2), “the plaintiff must not have committed any of the acts with which he was charged, and his own misconduct must not have brought about the prosecution.”<sup>62</sup> Only after these requirements have been met can the exoneree bring a claim under §1983, which center around issues that “may lead to a deprivation of civil

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<sup>54</sup> Mostaghel, *supra* note 52 at 511.

<sup>55</sup> *Id.*

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

<sup>57</sup> Michael Leo Owens, Uneven Reparations for Wrongful Convictions: Examining the State Politics of Statutory Compensation Legislation, 75 ALB. L. REV. 1282, 1297 (2012).

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

<sup>59</sup> Mostaghel, *supra* note 52 at 512.

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

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

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

rights.”<sup>63</sup> While this may seem like a promising method of redress, it is found that usually a plaintiff trying to bring a §1983 claim does not satisfy the threshold requirements.<sup>64</sup> In her article, Mostaghel discusses that the threshold requirements hurt a potential plaintiff because a wrongfully incarcerated prisoner “cannot bring a §1983 lawsuit while they pursue a state remedy.”<sup>65</sup> Because the exoneree must wait until the state actions have ended, this adds years to the potential redress he deserves.<sup>66</sup>

In some jurisdictions, an exoneree may instead file a suit against the state.<sup>67</sup> Civil litigation requires “the wrongly convicted to bring suits against the state, as well as criminal justice institutions, such as prosecutors’ offices and police departments.”<sup>68</sup> However, this may be a serious battle for exonerees as they must hire a lawyer and the process can take years, just for prosecutors to sometimes oppose the compensation.<sup>69</sup> Angel Gonzalez, who was exonerated by DNA evidence after spending 23 years in prison for a crime he did not commit, was awarded a little over \$200,000 by the Illinois Court of Claims.<sup>70</sup> Although Gonzalez did everything right, the court was experiencing budget issues and his compensation was “indefinitely delayed.”<sup>71</sup> This left Gonzalez with no reward, although he had been unable to find employment, rent an apartment or obtain health care.<sup>72</sup>

### iii. State Compensatory Clauses

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<sup>63</sup> Id.

<sup>64</sup> Id.

<sup>65</sup> Id. at 513.

<sup>66</sup> Id.

<sup>67</sup> Audrey D. Koehler, Exonerated, Free, and Forgotten: How States Continue to Punish the Wrongfully Convicted Through Procedural Hoops and Inadequate Compensation, 58 WASHBURN L.J. 493, 500 (2019).

<sup>68</sup> Owens, *supra* note 57 at 1296.

<sup>69</sup> Koehler, *supra* note 65 at 520.

<sup>70</sup> Id. at 520.

<sup>71</sup> Id.

<sup>72</sup> Id.

“A wrongful imprisonment statute is not designed to compensate a claimant for a tort actually committed by the state, but rather views the state as the most appropriate party to assume liability for an unjust conviction.”<sup>73</sup> While these compensation statutes are being implemented in more states than ever before, just about all of the statutes “limit redress to a certain category of individuals.”<sup>74</sup> While many requirements differ by state, the elements of a prima facie case are similar under most of these statutes.<sup>75</sup> Essentially, the claimant must have been convicted of a criminal offense, which is defined as “any offense for which an individual would be imprisoned.”<sup>76</sup> The claimant must have actually served time in a state prison, which does not include pretrial detention in local jails.<sup>77</sup> However, some states like Massachusetts require that the claimant has served no less than one year in prison.<sup>78</sup> Most importantly, the claimant must be innocent of the crime charged.<sup>79</sup> A claimant here bears the burden of proof to establish innocence, though a lawyer does not have to be provided by the state.<sup>80</sup> The goal of this requirement is to “ensure that the claimant is actually innocent, despite being found innocent and previously exonerated.”<sup>81</sup> This calls for an official act declaring a defendant not guilty of a crime for which they had previously been convicted.”<sup>82</sup>

While the premise of what a claimant must do in order to win is similar in each state, most states vary on eligibility, time limits for filing, contributory provisions, and maximum

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<sup>73</sup> Buckman, *supra* note 47 at 2.

<sup>74</sup> Daniel S. Kahn, Presumed Guilty Until Proven Innocent: The Burden of Proof in Wrongful Conviction Claims Under State Compensation Statutes, 44 U. MICH. J.L. REFORM 123, 137 (2010)

<sup>75</sup> Buckman, *supra* note 47 at 2.

<sup>76</sup> Id.

<sup>77</sup> Id.

<sup>78</sup> Kahn, *supra* note 65 at 137; Kahn discusses how most states will not allow a claimant to sue under the statute if they were serving time in prison concurrently for another offense for which they were guilty of, or if the claimant is serving time in prison for another crime later.

<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> Id.

<sup>82</sup> Mostaghel, *supra* note 52 at 519.

awards.<sup>83</sup> In many states, such as Alabama and Iowa, in order for someone to bring a successful claim their conviction must be vacated or reversed and the charges must be dismissed on grounds consistent with innocence.<sup>84</sup> In others however, including California and Maine, a person must have been pardoned for innocence, or there has been a declaration of factual innocence.<sup>85</sup> Even more ominous, states such as New Hampshire, just require a claimant to have been “found innocent,” to bring a claim.<sup>86</sup> The time frames also differ, excluding many who were still imprisoned during the 90 days they had to file their claim in some states.<sup>87</sup> In Minnesota, a claimant has 2 years to file their claim but is not allowed to file it within 60 days of being exonerated.<sup>88</sup>

Beyond eligibility, while some states require a Superior Court to decide the claim, some are reviewed by the Board of Claims, while a few have a Commission make a recommendation to the Governor.<sup>89</sup> With four states permitting a claimant to only seek relief if that person has been pardoned by the governor, the standard set is extremely high and likely unreachable for many.<sup>90</sup> It is rare that a governor has the time to investigate every case of wrongful conviction, making pardons very uncommon.<sup>91</sup> This type of relief is usually granted to those who are able to gain extreme publicity or can attract a following of support from their communities.<sup>92</sup> Another requirement that limits redress, comes from states that will only compensate citizens who have

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<sup>83</sup> Figure 1: Compensation Statutes: A National Overview (2018). Available From: [https://www.law.umich.edu/special/exoneration/Documents/CompensationByState\\_InnocenceProject.pdf](https://www.law.umich.edu/special/exoneration/Documents/CompensationByState_InnocenceProject.pdf)

<sup>84</sup> Id.

<sup>85</sup> Id.

<sup>86</sup> Id.

<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> Id.

<sup>90</sup> Kahn, *supra* note 65 at 139.

<sup>91</sup> Id.

<sup>92</sup> Id.

been exonerated by DNA evidence.<sup>93</sup> As Kahn discusses, there are a ton of cases that do not even involve DNA-testable evidence, automatically preventing wrongfully convicted individuals from receiving the compensation they deserve.<sup>94</sup>

Because of the differing requirements of each state, Jeffrey Gutman found that only about 38% of exonerees in states with compensation statutes do not file a claim.<sup>95</sup> Florida has an extremely high non-filing percentage, which could potentially be due to the states' statutory bar on compensation for people who committed a felony prior to the wrongful conviction.<sup>96</sup> Gutman also found that Maryland and Tennessee have high non-filing rates, as both states compensation is permitted only if the governor issues a pardon.<sup>97</sup> Because states did not have compensation statutes implemented for years, many people did not file when they were implemented simply because they did not learn about the statutes.<sup>98</sup> This seems to be relatively common, as states that have more recently enacted compensation statutes, such as Colorado, Minnesota and Washington, have high non-filing rates.<sup>99</sup> In Gutman's opinion, states like Louisiana and Mississippi, which have some of the lowest non-filing rates, have potentially criminal and civil attorneys experienced in wrongful conviction matters that are aided by "an active Innocence Project and robust media attention to wrongful convictions."<sup>100</sup>

### **III. Issues Beyond Monetary Compensation**

Facing time behind bars for a crime that you did not commit is the substance of a true nightmare. The mental pressures in prison are commonly discussed, but the issues exonerees are

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<sup>93</sup> Id.

<sup>94</sup> Id.

<sup>95</sup> Gutman, *supra* note 51 at 396.

<sup>96</sup> Id.

<sup>97</sup> Id.; as does Maine.

<sup>98</sup> Id. at 397.

<sup>99</sup> Id.

<sup>100</sup> Id.



faced with once released into a new life is not spoken about as often. Incarceration itself “has immediate and long-term effects on health,” making reentry into society another hurdle to face.<sup>101</sup> Despite the burden placed on these exonerees who have already been at war with the system for years, these statutes continue to ignore the vast injuries suffered while incarcerated, “overlooking the needs many exonerees have for social, vocational, medical, and educational services.”<sup>102</sup> On top of social stigmas, difficulty finding employment, technological advancements and a lack of support and structure, many exonerees are not prepared to face what is on the outside of the prison walls they were wrongly behind to begin with.<sup>103</sup>

#### A. Mental Health

After being exonerated, victims of the system must reintegrate into society and “face poverty, employment and societal discrimination, and broken relationships.”<sup>104</sup> In an interview with Frontline, John Wilson, a professor of psychology at Cleveland State University who studies the psychological impact of wrongful imprisonment, explained the mental toll these imprisonments take on those victimized by the system.<sup>105</sup> Wilson found that many who have been wrongfully incarcerated are different than those who have committed crimes, which makes jail time much more difficult for them to endure.<sup>106</sup> Many of these exonerees no longer know what a “normal life” is, so how is it possible for them to be expected to live out one? Wilson finds that once you are treated as a criminal, you assume a criminal identity.<sup>107</sup> In order to survive life behind bars, exonerees soon become entrapped in a “jail-house routine,” and the

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<sup>101</sup> Lily Goldberg, Obstacles and Barriers After Exoneration, 83 ALB. L. REV. 829, 843 (2016).

<sup>102</sup> Gutman, *supra* note 51 at 372.

<sup>103</sup> Id.

<sup>104</sup> Leslie Scott, “It Never, Ever Ends:” The Psychological Impact of Wrongful Conviction, 5 CRIM. L. BRIEF 10, 10 (2010)

<sup>105</sup> See Interview With John Wilson [by Frontline] (2002). Available From: <https://www.pbs.org/wgbh/pages/frontline/shows/burden/interviews/wilson.html>

<sup>106</sup> Id.

<sup>107</sup> Id.

criminal identity becomes part of who they are.<sup>108</sup> Wilson poetically describes these exonerees as not being a victim of a terrorist attack or a natural disaster, but they are instead “victims of a system of justice that has created an injustice which took away more of their life.”<sup>109</sup>

Although there has not been a plethora of empirical research on the psychological effects of wrongful convictions, there is long-standing clinical recognition that traumatic events can lead to severe and complex psychological reactions.<sup>110</sup> Professor Grounds decided to hold clinical studies in the United Kingdom in order to examine the mental effects of being wrongfully convicted.<sup>111</sup> Grounds assessed thirteen men released on appeal, ten of whom had been wrongfully convicted of murder, and three who had been convicted of other offenses.<sup>112</sup> What was most evident in these clinical studies was that after release, these men had changed in personality “in ways that caused distress to themselves and their families.”<sup>113</sup> Grounds found that the men were withdrawn and marked features of “estrangement, loss of capacity for intimacy, moodiness, inability to settle, loss of a sense of purpose and direction, and a pervasive attitude of mistrust toward the world.”<sup>114</sup> Grounds held that a majority of the men met the diagnostic criteria for PTSD, with symptoms that tend to relate to specific events of extreme threat or violence following arrest or in prison.<sup>115</sup> Grounds described one man being so fearful on visits to his hometown where the crime had occurred that he had always disguised himself before returning.<sup>116</sup> Other than PTSD, almost all of the men had suffered from depressive episodes,

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<sup>108</sup> Id.

<sup>109</sup> Id.

<sup>110</sup> Adrian T. Grounds, Understanding the Effects of Wrongful Imprisonment, 32 CRIME & JUST. 1, 11 (2005)

<sup>111</sup> Id. at 18.

<sup>112</sup> Id. at 22.

<sup>113</sup> Id. at 23.

<sup>114</sup> Id.

<sup>115</sup> Id.

<sup>116</sup> Id.

while one had panic disorder and another had a paranoid psychotic episode.<sup>117</sup> Focusing in depth on the stresses specifically associated with being wrongfully convicted, several of the men had to cope with unsuccessful appeals before the final referral that led to their release, and many were alone and isolated in their claims of innocence.<sup>118</sup>

i. *Gonzalez v. State of New York*

While not a deciding factor in compensation claims, courts around the nation have taken into consideration the psychological effects on exonerees.<sup>119</sup> In the case of *Gonzalez v. State of New York*, Gonzalez had been wrongfully convicted of a murder charge and sentenced to 15 years in prison while maintaining his innocence.<sup>120</sup> After serving five years in a maximum-security prison, he was released.<sup>121</sup> When bringing a compensation claim, Gonzalez had Dr. Drob, a clinical and forensic psychologist, testify concerning the psychological injuries and distress Gonzalez suffered during his imprisonment and after his release.<sup>122</sup> Dr. Drob testified that in general, released inmates suffer from feelings of isolation, personal estrangement, and mistrust of others.<sup>123</sup> Many former inmates develop a phobic response to the environment around them.<sup>124</sup> A loss of a sense of self and autonomy are common, while a learned helplessness sets in.<sup>125</sup> Drob stated that the impact of incarceration is enhanced for those who are wrongfully convicted, which results in a disconnect with reality.<sup>126</sup> Specifically, Gonzalez experienced severe levels of depression after being released.<sup>127</sup> He felt stigmatized and marked as a “person

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<sup>117</sup> *Id.* at 25.

<sup>118</sup> *Id.* at 27.

<sup>119</sup> *Gonzalez v. State of New York*, NY. Misc. Lexis 6570, 2 (2009).

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.* at 17.

<sup>123</sup> *Id.* at 18.

<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 20.

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

who spent many years in prison,” which led to a low motivation level and mistrust of others.<sup>128</sup> Because of his many years behind bars, Gonzalez felt that people had “moved on with their lives and that he had just passed by,” pushing him to become withdrawn, isolated, and asocial.<sup>129</sup> Dr. Drob asserted that this wrongful imprisonment had affected every aspect of Gonzales’ life.<sup>130</sup> While the Court found in favor of Gonzalez and awarded him compensatory damages, this did not solve the bigger problem at hand: the mental anguish of Gonzalez that he will have to live with for the rest of his life, without re-entry aid or free mental health care.

#### B. Stigma Affecting Future Opportunities

Coupled with mental health issues, it is also possible that these exonerees would be facing a “double stigma” because of the nature of having a mental health disorder and a criminal history.<sup>131</sup> The Life After Exoneration Program has stated that employment after exoneration is “the most dire need upon re-entry to society.”<sup>132</sup> While the Program found that 1/3 of 60 exonerees were financially dependent on friends and family upon release, employment opportunities for those recently exonerated go beyond the scope of income.<sup>133</sup> Research has suggested that employment is an “integral component to successful reintegration”, finding that exonerees in states who have the necessary support services for proper reintegration are less likely to return to prison.<sup>134</sup> Unfortunately, these exonerees have a difficult time getting access to a job because of their incarceration.<sup>135</sup> Whether wrongfully incarcerated or not, a study

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<sup>128</sup> Id.

<sup>129</sup> Id.

<sup>130</sup> Id. at 22. The Doctor also talks states that because Gonzalez was incarcerated at the age of 19, a formative year, the years he would normally experience social, sexual, and occupational tasks and hurdles, were instead spent in prison, this resulted in a lack of proper preparation for Gonzalez’ life as an independent and mature adult.<sup>130</sup>

<sup>131</sup> Goldberg, *supra* note 92 at 844.

<sup>132</sup> Scott, *supra* note 95 at 10.

<sup>133</sup> Id.

<sup>134</sup> Maryam A. Afshar, Wrongfully Incarcerated and Never Fully Compensated: An Examination of Indiana’s Failure to Indemnify Exonerated Inmates, 50 VAL. U.L. REV. 133, 148 (2015).

<sup>135</sup> Id.

discussed in Pager’s article, researching 350 employers, found that having a criminal record reduced the likelihood of receiving a job callback by 50%.<sup>136</sup> Research has also suggested that exonerated individuals may still experience the same employment discrimination as an offender who is actually guilty of the same crime.<sup>137</sup>

A significant reason exonerees may still face employment discrimination is because of their inability to purge their record post-exoneration.<sup>138</sup> A study discussed in Goldberg’s article, followed researchers who had tracked the behavior of 118 exonerees after being released.<sup>139</sup> The study found that whether an exonerated individual’s record was purged was “a significant predictor of post-exoneration offending.”<sup>140</sup> Because of this, a record that has not been purged makes it more difficult in securing employment because it may be associated with “higher levels of offending.”<sup>141</sup> On top of not being able to secure employment, it has also been found that an individual who spends “a significant amount of time incarcerated, lacks the ability to build retirement funds.”<sup>142</sup> Because social security requirements include having individuals work “for at least 10 years at a job that excises a contribution into a retirement fund,” this makes it “almost impossible for many exonerees to build a retirement plan.”<sup>143</sup>

On top of financial barriers while dealing with mental health trauma, it has been found that individuals who have been exonerated are still viewed and treated differently in society.<sup>144</sup> In a study taken of a group of people, which Goldberg discusses in her article, results found that there was an “contemptuous prejudice towards wrongfully convicted persons compared to

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<sup>136</sup> Devah Pager, The Mark of A Criminal Record, 108 A.J.S 5, 5, (2003).

<sup>137</sup> Goldberg, *supra* note 92 at 844.

<sup>138</sup> Id. at 846.

<sup>139</sup> Id.

<sup>140</sup> Id.

<sup>141</sup> Id. at 847.

<sup>142</sup> Id.

<sup>143</sup> Id.

<sup>144</sup> Id.

average individuals.”<sup>145</sup> The study found that those had been wrongfully convicted were “subjected to more negative stereotypes and emotions.”<sup>146</sup> While participants of the study did report feeling more pity for exonerees, it did not result in “more support or assistance for that individual.”<sup>147</sup>

#### **IV. A New System of Advocates**

Other than monetary compensation, currently only nineteen states offer non-monetary services for exonerees.<sup>148</sup> Fourteen states offer some form of tuition or educational assistance, nine offer assistance with medical expenses, and twelve offer counseling.<sup>149</sup> While moving in a progressive direction, only six states offer some type of reentry service, with only three offering housing assistance.<sup>150</sup> There are currently no state or federal systems in place to support the re-entry of exonerees immediately upon release, despite the desperate need.<sup>151</sup> Like those who have been wrongfully incarcerated and then exonerated, thrown around in a system that they don’t fully comprehend, children going through the family court system can likely relate. With family courts around the nation utilizing the CASA framework, pairing advocates with children in the foster care system, it is interesting to think of the successes that can be had if a similar system was applied to those who have been recently exonerated, focusing on immediate needs, aiding with filing compensation claims, and ultimate help with re-entry into society.

##### **A. Background of CASA**

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<sup>145</sup> Id. Participants were assigned to complete surveys which would show their attitudes and potential discrimination toward people who had been wrongfully convicted of a crime, actual offenders, and just people in general as a control group.

<sup>146</sup> Id.

<sup>147</sup> Id. at 849.

<sup>148</sup> Id. at 836.

<sup>149</sup> Id.

<sup>150</sup> Id. Only the state of California has been found to offer immediate assistance to exonerees in order to help them re-enter society.

<sup>151</sup> Jennifer L. Chunias, Beyond Monetary Compensation: The Need for Comprehensive Services for The Wrongfully Convicted, 28 B.C. THIRD WORLD L.J.105, 111 (2008).

In 1974, the federal Child Abuse Treatment and Prevention Act made it mandatory that children in dependency proceedings be assigned guardians ad litem to represent their best interests in court.<sup>152</sup> These guardians can be an attorney, but more recently have been a trained volunteer who investigates the case, monitors its progress and represents the child in court.<sup>153</sup> Court Appointed Special Advocates, or “CASA” volunteers, are to obtain a firsthand understanding of the situation and needs of the child in a current family court case, in order to make recommendations to the court concerning the child’s best interests.<sup>154</sup>

The start of the CASA volunteer began in Seattle, Washington, when Judge Soukup was frustrated with the lack of available information about the children whose futures he was deciding.<sup>155</sup> This program then set out components for appointing an advocate for the child, in which the judge appoints a well-trained volunteer to represent the best interests of the child in court.<sup>156</sup> This program was then expanded with the Victims of Child Abuse Act of 1990, which stated that “a court-appointed special advocate shall be available to every victim of child abuse or neglect in the United States that needs such an advocate.”<sup>157</sup> While the system continues to grow, CASA programs were found in 54% of the 3,144 counties in the United States in 2004.<sup>158</sup> A study done by Clarke, found that children who have CASA support do as well or better than those represented solely by an attorney.<sup>159</sup> Importantly, the involvement of CASA volunteers was

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<sup>152</sup> Devon Young Clarke, Trends and Developments in the Juvenile Court: A Systematic Review of the Impact of Court Appointed Special Advocates, 5 J. CENTER FOR FAM. CHILD. & CTS. 109, 110 (2004).

<sup>153</sup> Id.

<sup>154</sup> Id.

<sup>155</sup> Id.

<sup>156</sup> Id.

<sup>157</sup> Id. at 111.

<sup>158</sup> Id.

<sup>159</sup> Id. at 122.

found to improve the representation of the child and highlighted that children with CASA support tend to be less likely to re-enter the foster-care system once their cases are dismissed.<sup>160</sup>

Though voluntary, CASA advocates must complete 36 hours of training, go through required background checks, and complete fingerprinting in order to be considered.<sup>161</sup> The typical volunteer fills out an application and is then scheduled for a face-to-face interview with the CASA office.<sup>162</sup> Although differing by state, an applicant must be at least twenty-one years old, and must be “a mature individual that has the time and ability to become a child advocate.”<sup>163</sup> In New Jersey, upon completion of the training, an advocate is sworn in by a judge and assigned a case.<sup>164</sup> While the family court system may have a lot of children in need, a CASA volunteer usually remains on a case for a minimum of one year and supervises only one to three cases at a time.<sup>165</sup> After being assigned a case, a CASA gets to know the child client by reading the case files, meeting all the parties involved, and beginning to dig deeper into the child’s situation.<sup>166</sup>

Beyond the court room, CASA volunteers have been able to get deeper into the lives of children in the system, reaching out a welcoming hand and listening to those who feel they don’t have a voice in the matter. In response, children have taken hold of these hands and allowed the advocates to stand by their side - to trust them enough to speak for their best interests. While we have seen these promising programs work so well in family court, it seems possible to expand

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<sup>160</sup> Id.

<sup>161</sup> CASA: Court Appointed Special Advocates for Children (2022). Available at: <https://www.casamsc.org/make-an-impact/volunteer/>

<sup>162</sup> Laurie K. Adams, CASA: A Child’s Voice in Court, 29 CREIGHTON L. REV. 1467, 1474 (1996).

<sup>163</sup> Id.

<sup>164</sup> CASA: Court Appointed Special Advocates for Children (2022). Available at: <https://www.casamsc.org/make-an-impact/volunteer/>

<sup>165</sup> Adams, *supra* note 156 at 1471.

<sup>166</sup> Id.



their services to others in need by having advocates help voice the best interests of others who may have had their own silenced.

B. “CASA: For Exonerees”

Our country has recently seen many kinds of organizations created to help those who have been wrongfully incarcerated. While these programs have assisted astronomically in freeing those convicted from the suffocating prison system, there has yet to be a program created to help these exonerees navigate through life after the judge removes the shackles. Are these newly freed citizens really “free” if they are continuously trapped by the confines of society with little to no guidance? Perhaps, exoneration is only half of the solution.

While more and more victims of the system are exonerated due to technological advancements, there are an influx of citizens grappling with the difficulties waiting for them outside of the prison walls.<sup>167</sup> When released from prison based on a crime that was committed, the recently released may have a parole officer to check in with, a permanent address to write down, a job requirement to fulfill, clean drug tests to maintain, all in order to stay away from re-arrest.<sup>168</sup> Being a parolee is definitely not the best-case scenario, but it was implemented with promise: the promise to have these citizens function in society.<sup>169</sup> While parole requirements would be completely unsuitable for an exoneree, this does not mean that different services can’t be provided to these individuals to make them aware of the same public assistance made aware to probationers and parolees.<sup>170</sup>

i. Filing for Compensation

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<sup>167</sup> Audrey D. Koehler, Exonerated, Free, and Forgotten: How States Continue to Punish the Wrongfully Convicted Through Procedural Hoops and Inadequate Compensation, 58 WASHBURN L.J. 493, 500 (2019)

<sup>168</sup> Jennifer L. Chunias, Beyond Monetary Compensation: The Need for Comprehensive Services For The Wrongfully Convicted, 28 B.C. THIRD WORLD L.J. 105, 111 (2008).

<sup>169</sup> Id.

<sup>170</sup> Id.

The goal of an advocate in this program would be to aid exonerees in re-entering society. While this would include potentially helping exonerees find affordable housing, showing them how to open a bank account, or going with them to set up their new cell phone, the number one priority would be making sure the exoneree has properly filed for compensation. The system would be set up like any other, mandating volunteers who have the time and energy to go through background checks and training. Like in CASA, an applicant here must also be at least 21 years old and have the time to dedicate to their exoneree.<sup>171</sup> A potential volunteer must submit a written application and participate in personal interviews before being selected.<sup>172</sup>

The training mandated in this program would consist of some background of the criminal court system, rather than family court, providing volunteers with insight on the struggles these exonerees face both in and outside of the judicial system. Like in CASA, where trainers explain to volunteers how to respond to children or their families in case-by-case situations, CASA for exonerees would focus on how to respond to potential hardships the individuals may face and how to correctly support them in these situations. Most importantly, each advocate would be trained in their specific state on how exactly to file a compensation claim, the time restraints, the eligibility requirements, and so on. Because many statutes differ in the requirements for the level of proof required for compensation as well, with some requiring proof of actual innocence, it is understandable that this may be a difficult concept for the ordinary lay person.<sup>173</sup> To deal with the difficulties of sorting out the exoneree's eligibility, like in CASA, this organization would provide a “mentor” who would be able to assist new advocates when determining if their exoneree is eligible and walking them through the process. Like in CASA, where attorneys are

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<sup>171</sup> CASA: Court Appointed Special Advocates for Children (2022). Available at: <https://www.casamsc.org/make-an-impact/volunteer/>

<sup>172</sup> Id.

<sup>173</sup> Goldberg, *supra* note 91 at 838.

guest speakers for some training sessions, trainings here would invite law professors or potential judges in order to explain the system in depth to the class.

## ii. Recommendation System

Despite CASA advocates being appointed to a child who is currently going through a family court case, CASA for exonerees would provide a voice for those both in society and the courtroom. Because filing a claim forces exonerees to put themselves back into the system, advocates would be able to stand by their side, along with their legal team, if they acquire one. Like in CASA cases, an advocate just adds to the child's list of resources and helps provide the court with cardinal insight and a different perspective.<sup>174</sup> Volunteers apart of CASA are required to write a "report of recommendations," in which the advocate writes what they have observed and learned "while acting as the Judge's eyes and ears," and then recommending to the court what they believe are in the best interests of the child.<sup>175</sup> The Judge then considers this information when preparing for hearings and ordering services and actions that affect the child.<sup>176</sup> The report then becomes part of the official court record and is said to help "build CASA's reputation as an objective, thoughtful, and trustworthy source."<sup>177</sup> In order to make a proper report, a CASA must collect notes and meet with their appointed-child, and then a week before the court date the CASA is to submit the report so the judge can read it before the actual appearance.<sup>178</sup> The recommendations are extremely important as they help the judge to see what would really be in the best interest of the child from the advocate's perspective.<sup>179</sup> Like in CASA, it would be beneficial for exonerees to have their advocate maintain a report for the

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<sup>174</sup> CapitalCity CASA: Writing Your Court Report. (2021) Available at: <https://capitalcitycasa.org/wp-content/uploads/2019/12/Court-Report-Writing-Presentation.pdf>

<sup>175</sup> Id.

<sup>176</sup> Id.

<sup>177</sup> Id.

<sup>178</sup> Id.

<sup>179</sup> Id.

judge or the board who is to review the claims. These recommendations would apply to the state statute at hand. For example, if the statute allows for free tuition and the potential for higher education, and the exoneree is interested in getting a degree, the CASA will have the ability to recommend the judge to seriously consider these aspects because of the exoneree's interests.

### iii. Beyond the Judicial System

The purpose of the advocate in this program would exceed just helping re-integrate those who have been wrongfully convicted back into society, it would give these exonerees a shoulder to lean on while they get on their feet. CASA for exonerees advocates would potentially help these individuals find employment opportunities, search for postings of affordable housing, make sure they are taking care of their mental health, assist with basic technology and most importantly: be there for them. Unlike CASA, this advocacy program is more personal. CASA makes it clear in their standards not to become too attached to these children in order to maintain a neutral perspective, but exonerees require a different type of relationship. Many of these exonerees have had their past relationships with family and friends hindered by their jail time and face extreme loneliness. If anything, one of the biggest goals for the CASA for exonerees advocate would be to make these individuals feel supported.

While other advocacy programs have begun to reach out to exonerees, attempting to coordinate them with access to health care or document their experiences, CASA volunteers would be personally advocating for the exonerees both in and outside of court.

## **V. Conclusion**

Although compensating the exonerated remains an extreme problem to combat, along with helping exonerees re-enter society and live a meaningful life despite the brutal hindrance

they have endured, an advocacy program may begin to heal the wounds inflicted by the State.

CASA for exonerees is here to start the healing.