

**Testimony Supporting Senate Bill 336**  
**Michelle Feldman, the Innocence Project**  
**Senate Judiciary Committee Hearing**  
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My name is Michelle Feldman and I am a policy advocate at the Innocence Project, a national organization that works to exonerate the wrongfully convicted and to prevent and address the harms of wrongful conviction. We work in collaboration with our local partners, including the Midwest Innocence Project, which exonerates the innocent here in Kansas.

Thanks to the work of this committee, Kansas has taken major steps to prevent wrongful convictions in recent years. The legislature has enacted laws requiring written eyewitness identification policies and recording of suspect interrogations, which addresses two of the leading contributing factors to wrongful convictions.

Now the Senate Judiciary Committee is taking another critical step with Senate Bill 336, which provides compensation for innocent Kansans who have been wrongfully imprisoned. This is excellent legislation that is urgently needed. In the past three years, Floyd Bledsoe, Lamonte McIntyre and Richard Jones all had their wrongful convictions overturned in Kansas. They were released from prison with nothing to restart their lives because Kansas is one of only 18 states without a law to compensate the wrongfully convicted.

Floyd and Richard each served 16 years and Lamonte spent 23 years behind bars for crimes they did not commit. All three were at the prime of their lives when the state unjustly took their freedom. Floyd and Richard were in their early twenties and each had young children who were forced to grow up without them. Lamonte was only 17 years old when he was taken from his family, and his dreams of going away to college were ripped away.

Not only did the state take away their youth, but also it deprived them of their economic potential. All three men are now age 41, a time when most people have careers, savings and assets. Floyd, Lamonte and Richard are now forced to start working towards these milestones at midlife. Floyd and also Lamonte's mother spent thousands of dollars in legal fees for cases that never should have been. When these men were released from prison they had nothing. After so many years of suffering behind bars, they are barely able to make ends meet and must rely on the charity of others just to cover basic necessities.

Ironically, these innocent men would have gotten more from the state of Kansas had they actually committed the crimes. Upon completion of their sentences, they would have received \$100 in gate money. They would have been able to sign up for employment and money management classes and mentorship programs. In addition, employers would be incentivized to hire them with tax credits. However, being innocent means they are ineligible for these benefits and receive no assistance from the state to help them reenter society.

Without a state compensation law, the only option for Floyd, Lamonte and Richard to obtain financial redress is to file a federal civil rights lawsuit against the local government entities that contributed to their wrongful convictions. This isn't an ideal option for anyone. Exonerees have to meet a very high burden of proving that their cases involved official misconduct. It often takes years of litigation before any money is paid. Taxpayers are ultimately left to pick up the tab for these lawsuits, as they did when Riley County agreed to a \$7.5 million civil settlement in 2010 for the wrongful conviction of Eddie Lowery.

This legislation would put Kansas squarely in the mainstream of what other states have already enacted. Now that 32 states, Washington D.C. and the federal government have enacted these statutes, we have the benefit of knowing which provisions have worked and which fell short, forcing some states to fix them. This proposal reflects the best of what other states have done. The strengths of Senate Bill 336 includes:

- **Provides \$80,000 per year of wrongful incarceration:** This is in line with the wrongful conviction compensation law in Texas, which has effectively provided exonerees with the financial resources they need to rebuild their lives. In addition, the legislation allows for non-monetary awards such as vocational training, tuition, housing assistance and health insurance.
- **Provides certificates of innocence and expungement** of the wrongful conviction from the innocent person's criminal records to ensure that exonerees do not have to suffer collateral consequences such as barriers to employment, housing and obtaining loans.
- **Protects taxpayers with an offset provision** that would reduce state compensation payments by any amount awarded through civil lawsuits. If the exoneree is awarded state compensation and then wins a civil lawsuit, the exoneree would have to reimburse the state for the difference. Conversely, if the exoneree wins a civil award and then applies for state compensation, the amount of the state compensation award would be subtracted by the amount the exoneree received in the civil award.
- **Sets up a simple structure for exonerees to obtain compensation:** Exonerees would file a claim in district court and must prove they were incarcerated for a felony that they did not commit and other factors. If the district court finds the criteria are met, it will grant an award that will be paid for through the state tort claims finances, which funds of other types of civil judgments and settlements against the state and state employees.

There are two minor amendments to the legislation that appear to be drafting errors.

1. *Page 2, Line 18.* Section (e)(1)(A) references (d)(2); it should reference **(e)(2)**.
2. *Page 3, line 10.* Section (f)(2) should mirror (f)(1), to read: "If subsection (f)(1) does not apply and if, after the time of the judgment entry referred to in subsection (e), the claimant wins a monetary award against the state or any political subdivision thereof in a civil action related to the same subject, the claimant shall reimburse the state for the sum of money paid under the judgment entry referred to in subsection (e), **less any sums paid to attorneys or for costs in litigating the other civil action.**"

By providing a consistent payment for each year the innocent person spent behind bars or under state supervision, this legislation is the best option for the wrongfully convicted and taxpayers. Exonerees will be able to receive more immediate financial assistance, rather than hoping to win a civil award that can take years to resolve. Taxpayers will be responsible for a fixed amount of state compensation, reducing the risk that they will be liable for unlimited civil awards from juries.

Passing this legislation in its current form would be the best solution for providing support for the wrongfully convicted to reestablish their lives, and to protect the interest of taxpayers. Thank you to the committee for introducing this bill, and we hope the current version will become law.