

Wrongful Conviction Compensation Governed By Mish-Mash Of State And Federal Laws

As of June 2005 eighteen states, the District of Columbia, and the federal government have statutes that provide compensation to a person who can establish that he or she was wrongfully convicted.

Those statutes are summarized in the chart on page 17. No two statutes are the same. They vary as to the qualification requirement for compensation, who makes the determination of eligibility, what proof standard is applied, who makes the determination of compensation, and how much can be awarded. There are also differences in the type of conviction that is eligible for compensation, the statute of limitations for filing a claim, and whether other considerations can affect the size of the compensation award (such as legal expenses, lost income, medical expenses, etc.)

The most striking dissimilarity is in the maximum possible award. They range from Montana's niggardly award of free tuition to any school in the state's university system - and then only to a person exonerated by DNA evidence - to the award of "fair and reasonable damages" by New York and West Virginia - with no statutory maximum. The District of Columbia also has no statutory maximum award, but punitive damages are excluded.

A legislative appropriation or a section 1983 federal civil rights lawsuit are the primary avenues available for a wrongfully convicted person in the 32 states that don't have a compensation statute. Although a suit can also be filed in state court, damages are typically limited by statute under the doctrine of sovereign immunity.

The proof of how effectively the wrongfully convicted are compensated in the real world is how they fair in actual cases. The chart on page 15 lists 74 awards of compensation in 2003 and 2004. Three people were awarded compensation by more than one jurisdiction, and the 46 Tulsa, Texas defendants were awarded a lump sum that was divided by a formula that took into account their conviction and the length of their time in custody.

The chart's most noticeable information is the discrepancy in the Average Yearly Compensation. It ranges from the \$8,000 per year awarded by the State of Illinois to three defendants sentenced to life in prison, to the \$1 million per year awarded a defendant sentenced to life in prison who sued the City of Chicago.

The 71 people awarded compensation were convicted in ten states, and they were awarded an average of \$165,398 for each of the 434 years they were wrongfully imprisoned. The average time from exoneration to a compensation award was over two years, although in one case - Albert Ramos - it was 11 years. The cases of Wilton Dedge (below), Ken Marsh (p. 16), and Michael Pardue (p. 20) are emblematic of the myriad of difficulties a wrongfully convicted person can face to obtain compensation.

Wilton Dedge Sues For 22 Years Wrongful Imprisonment

by JD Staff

Wilton Dedge was released in August 2004 after 22 years imprisonment for a rape a DNA test in 2004 excluded him from committing. Dedge was convicted in 1982 and sentenced to 30 years in prison, even though six alibi witnesses swore that when the rape occurred he was at a garage 45 minutes away. After his conviction was reversed, he was again wrongfully convicted after a retrial and sentenced to life in prison.

Almost six years ago *Justice:Denied* reported on Ellen Reasonover's dramatic release from 16 years of wrongful imprisonment. (See, Lone Juror Saves Innocent Good Samaritan From Death Sentence, *Justice:Denied*, Vol. 1, Issue 8).



Reasonover was convicted in 1983 of murdering 19-year-old James Buckley during a robbery of the Dellwood, Missouri gas station attendant. She was sentenced to life in prison without parole for 50 years, after coming within a single vote by her jurors of being sentenced to death. In August 1999 Reasonover's conviction was reversed by a federal judge who ruled her trial was "fundamentally unfair," and indicated that based on the evidence Reasonover was innocent. How and why was Reasonover in the situation of being wrongfully convicted of a murder she didn't commit?

In January 1983 Reasonover had been at a convenience store across the street from a Dellwood gas station getting change to wash her clothes at a nearby laundromat. Dellwood is in St Louis county, and near the city of St Louis. Later that night she saw on the news that the attendant at that gas station had been shot and killed during a robbery about the time she was at the store. Reasonover remembered seeing a car with two men in it leave the gas station, and she called the police to give them a description of the car as a possible lead. However instead of following up on Reasonover's report, the police focused on her as the murderer.

Reasonover's protestation's of innocence fell on the deaf ears of the police who built the case against her, the St Louis County prosecutors who charged her with first degree murder, and her jurors who after convicting her, voted 11 to 1 to sentence her to death. Reasonover was sentenced to life in prison and lost her direct appeal.

In 1993 Centurion Ministries (the nation's oldest innocence project) responded to Reasonover's plea for help by taking up the cause of finding new evidence to prove she did not receive a constitutionally fair trial. In 1993 and 1994 Centurion's staff investigator, Paul Henderson, interviewed 94 people who might have information helpful to Reasonover. One of those people mentioned hearing an audio tape recording with Reasonover on it, that was made at the Dellwood police station immediately after her arrest in 1983. The tape had been referred to by the prosecution during Reasonover's direct appeal. The lawyer working with Centurion requested, and was provided with a copy of the tape by the St. Louis County District Attorney. It was a 58-minute recording of Reasonover and her boyfriend, Stanley White, who had been arrested at the same time as her. Left in a room together but unaware they were being recorded, Reasonover and Stanley denied 20 times in 58 minutes that they were involved in the murder and openly wondered why they had been arrested. That conversation would have been unlikely if they had killed James Buckley - since they would have been expected to spend their time alone to formulate or rehearse their alibi story. Stanley was released after his arrest without being charged.

Florida doesn't have a wrongful conviction compensation statute, so in January 2005 it was announced that several state senators would sponsor a special-claims bill awarding Dedge \$4.9 million for lost wages, wrongful imprisonment and costs incurred by his family and lawyers.

In February state Rep. David Simmons filed a claims bill in the House that would provide Dedge with "modest" restitution of less than \$1 million. Simmons said, "We're not in the business of providing a lottery to someone who's been wrongfully convicted."

However the legislature adjourned in May without passing a bill compensating Dedge.

On May 27, 2005 a lawsuit was filed in the Brevard County Circuit Court that named the State of Florida and state Dept. Of Corrections Secretary James Crosby Jr. as defendants, and

Ellen Reasonover Awarded \$7.5 Million Compensation For 16 Years Wrongful Imprisonment

By Hans Sherrer

The contents of the tape corroborated Reasonover's statement to the police that she called the police to provide information she thought might help track down Buckley's killers. Although it was discoverable exculpatory evidence, her prosecutors did not turn it over to her trial and appellate lawyers.

Centurion Ministries also found evidence discrediting the two jailhouse informants the prosecution relied on to convince the jurors of Reasonover's guilt. Although both informants claimed to have heard her confess, one was proven to have lied for the prosecution, and the truthfulness of the other was seriously cast in doubt because she only testified after Reasonover's prosecutors bribed her with a sweetheart deal.

In reversing Reasonover's conviction, U.S. District Judge Jean Hamilton ruled that if the jurors had heard the concealed tape recording and the evidence discrediting the prosecution's two star jailhouse informants, there is a reasonable probability that they would have agreed with Reasonover's claim of innocence and found her not guilty.

In 2001 Reasonover filed a multi-million dollar federal civil rights lawsuit against the city of Dellwood, lead police investigator Dan Chapman, St. Louis County, lead prosecutor Steven H. Goldman, and several other officers. In 2003, U.S. District Court Judge Carol Jackson dismissed the claims against all the defendants except the city of Dellwood and Chapman, who is now the city's police chief. In dismissing the claims against prosecutor Goldman, who is now a St. Louis County judge, Jackson wrote, "A prosecutor is entitled to absolute immunity against allegations that he withheld or suppressed favorable evidence."¹

Although they denied any wrongdoing, in September 2004 the city of Dellwood and Police Chief Chapman settled Reasonover's claims against them for \$7.5 million. James Buckley might agree that it is a fitting end to the unconscionable mistreatment by law enforcement authorities of the one person in the world who cared enough to act as a Good Samaritan by calling the police to provide a lead that might have led to the capture of his killers. To this day James Buckley's killers have been given a free pass because the Dellwood police and the St. Louis County District Attorney's Office took the easy way out by framing an innocent woman for the tragic snuffing out of his life at nineteen years old.

Endnotes:

¹ Reasonover Gets \$7.5 Million in Suit, William C. Lhotka (staff), *St. Louis Post-Dispatch*, September 16, 2004.

Sources: Reasonover Gets \$7.5 Million in Suit, William C. Lhotka (staff), *St. Louis Post-Dispatch*, September 16, 2004

Lone Juror Saves Innocent Good Samaritan From Death Sentence, Hans Sherrer, *Justice Denied*, Vol. 1, Issue 8.

Dedge and his parents, Walter and Mary Dedge, as plaintiffs. Although the lawsuit does not ask for a specific dollar amount, legal awards are limited under Florida's sovereign immunity law to \$100,000 per person and \$200,000 per claim.

Sandy D'Alemberte, a former president of Florida State University who is handling Dedge's case pro bono, said that Dedge's imprisonment was "all the more cruel" because Dedge had first sought DNA testing of crime scene evidence in 1988. However Dedge's prosecutors had fought against the DNA tests. Dedge's lawsuit states that if the state had agreed to the testing, it would have resulted in him being saved from "16 additional years in prison, saved the state from the expense of imprisoning an innocent man and the expense of extensive litigation the state undertook to prevent the testing."

Source: Senate to Look at Compensation for Wrongly Convicted, Jackie Hallifax, *Florida Today*, February 19, 2005.
Wrongfully Convicted Man Sues Florida, AP story, *Tallahassee Democrat*, May 29, 2005.