

Problems with Current California Law Regarding Compensation for the Exonerated

Existing statutory law (Pen. Code secs. 4900-4906) provides a mechanism for a person convicted of a felony, imprisoned as a result, and subsequently exonerated, to initiate a claim for compensation from the state. The claim is heard by the Victim Compensation and Government Claims Board (a state administrative body), with the Attorney General representing the financial interests of the state. (Pen. Code sec. 4903.) The claim must be filed within 6 months of the individual's release from prison. (Pen. Code sec. 4901.) If the claim is granted, the individual is awarded \$100 per day of "incarceration served subsequent to the claimant's conviction." (Pen. Code sec. 4904.)

The devil is in the details.

Confusion over the definition of "factual innocence"

Under the current statutory scheme, in order to qualify for compensation, the individual must prove that he did not commit the offense, and also that he did not contribute in any culpable way to his own arrest or conviction. (Pen. Code secs. 4903, 4904, 4905.)

This is not the same definition of factual innocence contained within another existing statute, Pen. Code sec. 851.8. The language of that statute permits a defendant's arrest record to be expunged if "the court finds that no reasonable cause exists to believe that the arrestee committed the crime for which the arrest was made" (Pen. Code sec. 851.8, subsecs. (a), (b),(c), and (e)) OR, regardless of a lack of probable cause, if the District Attorney concurs in the request. (Pen. Code sec. 851.8(d).)

Thus under existing law, a person found factually innocent pursuant to sec. 851.8, may not be deemed innocent *enough* to receive compensation from the state under secs. 4900 et seq.

Missing from current law is a single simple statutory mechanism for a person released from prison-- because a court has recognized either that no crime was committed or that he has no criminal culpability for the crime-- to be declared innocent, released from the penalties and disabilities associated with his wrongful conviction, AND compensated for his wrongful incarceration. This gap in the law has caused confusion for exonerated persons and resulted in the unjust denial of compensation to persons who are factually innocent and have been deemed so by a court.

Burden on exonerated person to comply with separate statutes

Winning release of a convicted person due to new DNA evidence or the presentation of other new evidence sufficient to convince a court that a person has been wrongfully incarcerated is a relatively rare occurrence. When such a person is released, a Judge of the Superior Court, rather than an administrative body such as the Victim Compensation and Government Claims Board, is in the best position to determine his "factual innocence." At a hearing pursuant to a noticed petition for a finding of factual innocence,

both the District Attorney and the Attorney General can contest the defendant's petition. The petitioner must prove by a preponderance of the evidence either that no offense was committed or that he or she did not commit the offense. A uniform definition for "factual innocence" throughout the Penal Code would be useful. Amending section 851.8 to make clear that the label "factual innocence" should only apply to those who have no criminal culpability would be an improvement over existing law.

Additionally, once a person has won a finding of factual innocence from the Superior Court, compensation should be automatic. Current practice under secs. 4900 et seq is for the Attorney General's office to conduct an often time-consuming investigation. The Superior Court in the jurisdiction where the case originated is in the best position to determine questions of fact regarding the petitioner's claim of factual innocence, as well as damages. And as long as compensation is tied to number of days of wrongful incarceration suffered by the petitioner, the Court is also in the best position to determine that figure. Thus, if a Superior Court's finding of factual innocence were deemed sufficient to trigger compensation, there would be no need for a State administrative body to conduct its own duplicative investigation into the facts surrounding the crime and the amount of State money due to the factually innocent individual.

Extension of time to file for compensation

Current law provides that a claim must be filed within 6 months of the individual's release from wrongful incarceration. (Pen.Code sec.4901). Even if the entire statutory scheme is not changed, in light of the difficulties facing a person released from unjust imprisonment, at the very least this time period should be extended. Two years is a more realistic time frame. That two year period should begin to run from the latest of the following events: the date of release; the date of the pardon or the final judgment setting aside the conviction; or the effective date of the new legislation.

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