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(Table) When Justice Fails: Indemnification for Unjust Conviction

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TABLE

WHEN JUSTICE FAILS: INDEMNIFICATION FOR UNJUST CONVICTION

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[The following table summarizes the statutes on indemnification for unjust conviction and imprisonment that Adele Bernhard discusses in her article *When Justice Fails*, 6 U Chi L Sch Roundtable 73. The table should have been appended to that article but was inadvertently left out. We publish it here for both its illumination of Professor Bernhard's article and its intrinsic interest. David Graver, *Editor-in-Chief*]

CA	State Statute	Conditions Precedent (besides imprisonment for unjust conviction)	Standard Of Proof	Who Decides	Time Limits For Filing	Maximum Awards	When Passed	Contributory
Cal Penal Code §§ 4900 to 4906	Pardon for innocence or being "innocent"		Not specified	State Board of Control makes a recommendation to the legislature	6 months after acquittal, pardon, or release and 4 months before new legislative meeting	10K	1941	Claimant must show he did not contribute to arrest or conviction

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MD	ME	IA	IL	DC	State Statute
Md Ann Code 78(A) § 16(A) Repeated 1999	14 Me Rev Stat Ann 8241-8244	Iowa Code Ann § 663A.1	Ill Rev Stat ch. 705 § 505/8	DC Code § 1-1221 to 1-1225	Conditions Precedent (besides imprisonment for unjust conviction)
Pardon on the ground that conviction was in error	Pardon for innocence	Conviction vacated or reversed & charges dismissed	Pardon for innocence	Pardon for innocence or conviction reversed or set aside on the ground that claimant is not guilty	Standard Of Proof
"Conclusive"	Clear & Convincing	Clear & Convincing	Preponderance of the evidence	Clear & Convincing	Who Decides
Board of Public Works	Superior Court	District Court for liability; State Appeal Board or Civil Ct. for damages	Court of Claims	Civil Court	Time Limits For Filing
Not specified	2 years from pardon	2 years		Available to any person released after 1979	Maximum Awards
actual damages	300K, no punitive damages	\$50 per day & lost wages up to \$25,000/yr & attorney's fees	5 yrs., 15K max, 14 yrs., 30K max, 14 yrs., 35K max, with COLA increase for each year since 1945	No maximum No punitive damages	When Passed
1963	1993	1997	1945	1981	Contributory
Nothing specified	Nothing specified	Claimant must not have plead guilty		Claimant must show that he did not commit any of the acts charged, or that his acts constituted no crime and that he did not, by his misconduct, bring about the prosecution, and he must not have plead guilty	

OH	NC	NY	NJ	NH	State
Ohio Rev Code Ann § 2305.02 & § 2743.48 Conviction vacated or reversed & charges dismissed	NC Gen Stat §§ 148-82 to 148-84 Pardon for innocence	NY Laws § 8-b Pardon or conviction reversed & charges dismissed on grounds consistent with Innocence or case tried to acquittal	NJ Stat Ann §§ 52:4C-1 to 4C-6 None	NH Stat § 541-B:14 "Found Innocent"	Statute Conditions Precedent (besides imprisonment for unjust conviction)
Preponderance of evidence; <i>Walden v. State</i> , 547 N.E.2d 962	Not specified	Clear & Convincing	Clear & Convincing	Board must find by majority vote that claim is "justified"	Standard Of Proof
Court of Common Pleas for liability; Court of Claims for damages	Industrial Commission makes a recommendation to the governor	Court of Claims	Superior Court	Board of Claims	Who Decides
2 years	5 years	2 years	2 years from release or pardon	3 years	Time Limits For Filing
25K/yr and lost wages, costs, and attorney's fees	10K/yr, max. of 150,000	No limit	Twice the amount of claimant's income in the year prior to incarceration or 20K per year of incarceration, whichever is greater	20K cap	Maximum Awards
1986	1947	1984	1997	1977	When Passed
Claimant must not have plead guilty	Nothing specified	Claimant did not commit any of the acts charged in the accusatory instrument or his acts did not constitute a crime	Claimant did not by his own conduct cause or bring about conviction	Nothing specified	Contributory

WI	WV	US (Fed)	TX	TN	State Statute
Wis Stat § 775.05	W Va Code § 14-2-13(a)	28 USC § 1495 & § 2513	Tex Code Ann § 103.001	Tenn Code Ann §9-8-108	State Statute
None specified besides proof of innocence	Pardon for innocence, or conviction reversed & either charges dismissed or acquittal on retrial	Pardon for innocence, or conviction reversed or set aside on ground that claimant is not guilty and found not guilty at new trial or rehearing	Pardon	"Exoneration" or pardon for innocence	Conditions Precedent (besides imprisonment for unjust conviction)
Clear & Convincing	Clear & Convincing	Not specified	Preponderance of evidence	Not specified	Standard Of Proof
Claims Board	Court of Claims	U.S. Court of Federal Claims	Court of Common Pleas for liability; Court of Claims for damages	Board of Claims	Who Decides
None specified	2 years after pardon or dismissal		2 years from pardon	1 year	Time Limits For Filing
5K/yr, max 25K but Board may petition legislature for additional funds	"fair and reasonable damages"	5K	Up to 25K for pain & suffer., 50K max.	Actual damages, no attorney's fees	Maximum Awards
1913	1987	1948	1965	1984	When Passed
Claimant did not contribute to or bring about conviction	Claimant did not contribute to or bring about conviction	Claimant did not commit acts charged and did not by misconduct or neglect cause prosecution	Claimant must not have plead guilty	Nothing specified	Contributory