



MEMORANDUM

TO: Tiffany Maclin, Governor's Office of Crime Control and Prevention, State of Maryland

DATE: September 19, 2017

RE: STATE TASK FORCES AND PROCEDURES RELATED TO ERRONEOUS CONVICTIONS AND IMPRISONMENT

The National Governors Association Center for Best Practices (NGA Center) received a request from **Maryland's** Governor's Office of Crime Control and Prevention related to erroneous convictions and imprisonment. Specifically, the state requested information on other states that have studied, researched, or implemented policies related to erroneous convictions. To meet this request, the NGA Center reviewed state task forces and policies related to erroneous or wrongful conviction. The following is a summary of those findings.

I. State Task Forces on Erroneous Convictions

A steady increase in exonerations in recent years, often stemming from new DNA-testing capabilities, has prompted states to review erroneous convictions within their criminal justice systems.¹ Several states have established task forces or commissions to examine policy changes that might prevent wrongful convictions in the future.

These bodies are typically created by legislatures and include judges, prosecutors, defense attorneys, members of law enforcement, legislators, executive branch officials, forensic experts, victim advocates, legal scholars, and/or other related representatives. Most task forces or commissions are established for a specific timeframe, and tasked with reviewing past cases of wrongful convictions, examining the current system in place, and developing recommendations for preventing these convictions from happening in the future.²

A. California Commission on the Fair Administration of Justice

The **California** Commission on the Fair Administration of Justice was created in 2004 by the legislature to: (1) study and review past cases that have resulted in wrongful

¹ According to the [National Registry of Exonerations](#), over 2,000 wrongfully convicted individuals have been exonerated for state and federal crimes since 1989 (with 166 exonerations seen in 2016 nationwide).

² State reports with recommended improvements can be accessed here: [California](#), [Connecticut](#), [Florida](#), [New York](#), [Pennsylvania](#), and [Texas](#).



executions or conviction of innocent persons; (2) examine ways of providing safeguards and making improvements in the way the criminal justice system functions; and (3) make recommendations and proposals designed to further ensure that the application and administration of criminal justice in **California** is just, fair, and accurate.³ A final report was submitted to the legislature in 2008, which included recommendations on how to address issues like eyewitness identification, false confessions, informant testimony, problems with scientific evidence, and attorney accountability.⁴

B. **Connecticut** Advisory Commission on Wrongful Convictions

The **Connecticut** Advisory Commission on Wrongful Convictions was created by statute in 2003.⁵ The statute was spurred by a wrongly incarcerated man who came before the legislature to seek relief.⁶ The commission investigated wrongful conviction cases to discover what went wrong and suggest how the problems discovered could be addressed.⁷ Its primary objective was to make recommendations that would reduce or eliminate the possibility of the conviction of an innocent person in **Connecticut**. A report was submitted to the legislature in 2009.⁸

C. **Florida** Innocence Commission

The **Florida** Innocence Commission was established in 2010 by the **Florida** Chief Justice to recommend solutions to the Supreme Court of **Florida** to eliminate or significantly reduce the causes for wrongful convictions.⁹ A final report was submitted in 2012 and included recommendations related to eyewitness identification, false confessions, law enforcement interrogation techniques, jailhouse informants, invalid scientific evidence, professional responsibility, and criminal justice funding.¹⁰

D. **New York** State Justice Task Force

On May 1, 2009, the Chief Judge of the State of **New York** created the **New York** State Justice Task Force to address wrongful convictions in the United States.¹¹ The current Chief Judge of **New York** has continued the task force, which now examines the causes of wrongful convictions and recommends changes to the criminal justice system to

³ http://www.leginfo.ca.gov/pub/03-04/bill/sen/sb_0001-0050/sr_44_bill_20040827_enrolled.pdf.

⁴ <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1000&context=ncippubs>.

⁵ <https://www.jud.ct.gov/Committees/wrongfulconviction/>.

⁶ Id.

⁷ Id.

⁸ https://www.jud.ct.gov/Committees/wrongfulconviction/WrongfulConvictionComm_Report.pdf.

⁹ <http://www.flcourts.org/core/fileparse.php/248/urlt/Innocence-Report-2012.pdf>.

¹⁰ Id.

¹¹ <http://www.nyjusticetaskforce.com/index.html>.



prevent such convictions.¹² The task force's membership includes judges, prosecutors, defense attorneys, members of law enforcement, legislators, executive branch officials, forensic experts, victim advocates and legal scholars from across the state.¹³ It has recommended expanding the **New York** State DNA databank, expanding post-conviction access to DNA testing and databank information, electronically recording custodial interrogations, implementing identification procedure best practices, expanding access to forensic case file materials, reforming criminal discovery,¹⁴ and using root cause analysis of prior incidents to prevent future wrongful convictions.¹⁴ Individual task force members have also been proactive in their respective roles in the criminal justice system in implementing new measures to safeguard against wrongful convictions.¹⁵

E. **North Carolina** Innocence Inquiry Commission

The **North Carolina** Innocence Inquiry Commission was created by the North Carolina General Assembly in 2006 and began operating in 2007.¹⁶ The commission is the first of its kind, as it is charged with providing an independent and balanced truth-seeking forum for credible post-conviction claims of innocence in **North Carolina**.¹⁷ The commission is made up of eight members selected by the Chief Justice of the **North Carolina** Supreme Court and the Chief Judge of the **North Carolina** Court of Appeals.¹⁸ The members include a superior court judge, a prosecuting attorney, a defense attorney, a victim advocate, a member of the public, a sheriff, and two discretionary members.¹⁹

The commission is separate from the appeals process, and is the first commission empowered to make determinations of innocence.²⁰ A person exonerated through the commission process is declared innocent and cannot be retried for the same crime. Since 2007, the commission has received 2,146 claims, closed 2,052 cases, and held ten hearings. Ten individuals have been exonerated because of the commission's investigations.²¹

F. **Pennsylvania** Advisory Committee on Wrongful Convictions

¹² Id.

¹³ <http://www.nyjusticetaskforce.com/2011.Fall.ABA.CriminalJusticeArticle.by.Lippman.pdf>.

¹⁴ <http://www.nyjusticetaskforce.com/recommendations.html>.

¹⁵ <http://www.nyjusticetaskforce.com/pdfs/2017JTF-AttorneyDisciplineReport.pdf>.

¹⁶ <http://innocencecommission-nc.gov/>.

¹⁷ Id.

¹⁸ <http://innocencecommission-nc.gov/commissioners/>.

¹⁹ Id.

²⁰ <http://innocencecommission-nc.gov/about/>.

²¹ Id.



In 2006, **Pennsylvania** established an advisory committee within its Joint State Government Commission to study the underlying causes of wrongful convictions.²² The goal of this committee was to explore the causes of wrongful conviction. It divided into subcommittees that focused on legal representation, investigation, redress, and forensic science.²³ The committee also reviewed cases in which innocent persons were wrongfully convicted and later exonerated to identify common causes of wrongful convictions. The committee then developed a series of policy and practice recommendations throughout various decision points in the criminal justice system. The committee's report includes recommendations on eyewitness identification, confessions, indigent defense services, informant testimony, prosecutorial practice, postconviction relief, redress, and scientific evidence.²⁴

G. **Texas** Timothy Cole Exoneration Review Commission

Texas established the Timothy Cole Exoneration Review Commission in 2015.²⁵ The commission was created to: (1) review cases in which an innocent defendant was convicted of a crime, and later exonerated; (2) consider the impact on the criminal justice system for potential solutions to reduce the occurrence of wrongful convictions; and (3) review and update the research and recommendations of the Timothy Cole Advisory Panel.²⁶ The commission submitted recommendations to the legislature on eyewitness identification, law enforcement officer training, and jury instruction. It also provided model policies adopted by local law enforcement.²⁷ The commission was dissolved on December 1, 2016.²⁸

H. **Wisconsin** Avery Task Force

In September 2005, **Wisconsin** Representative Mark Gundrum and then-Governor Jim Doyle introduced legislation designed to improve the accuracy and efficiency of **Wisconsin's** criminal justice system.²⁹ After the exoneration of Steven Avery, a wrongly convicted man represented by the Innocence Project, the Avery Task Force was created to examine the causes of similar wrongful convictions and other ways that the criminal

²²

<http://innocenceprojectpa.org/ways-support-innocent/advocates/act4innocents-campaign-page/pennsylvania-s-advisory-committee-on-wrongful-convictions/>.

²³ http://innocenceprojectpa.org/wp-content/uploads/2016/05/9-15-11_rpt_-_Wrongful_Convictions.pdf.

²⁴ Id.

²⁵ <http://www.txcourts.gov/media/1436589/tcerc-final-report-december-9-2016.pdf>.

²⁶ Id.

²⁷ Id.

²⁸ <http://www.txcourts.gov/organizations/policy-funding/timothy-cole-exoneration-review-commission/>.

²⁹ <http://law.wisc.edu/fjr/clinical/ip/policy.html>.



justice system could be improved.³⁰ The task force included legislators, judges, prosecutors, defense attorneys, police and sheriffs, academics, and a victim advocate. The task force's final report recommended electronic recording of interrogations, eyewitness identification reform, clarifying language on DNA testing and preservation, and changing the statute of limitations.³¹

II. State Wrongful Conviction Statutes and Procedures

In 2004, Congress passed the Justice for All Act, which guarantees \$50,000 for individuals exonerated of federal crimes for every year spent in prison and \$100,000 for every year spent on death row.³² States, however, have differing laws to determine who is eligible to receive compensation, what compensation (if any) is available, and the period in which an individual is required to file a petition for compensation after an exoneration has occurred.

There are 32 states that have laws authorizing compensation to persons who have been exonerated for crimes they did not commit.³³ Eligibility for compensation varies based on the classification or type of crime, the amount of time following the exoneration, and period of incarceration. Most of these states require that the person be convicted of a felony and serve at least a portion of their sentence.

Compensation levels are different across the states. Many states set compensation levels per year or per day of incarceration. For example, **Alabama** provides that eligible persons are entitled to at least \$50,000 per year of wrongful imprisonment. **Missouri** requires that persons be compensated \$50 per day for each day of wrongful incarceration, but not more than \$36,500 per year.³⁴ Other states set a minimum or maximum threshold of total compensation. **Maine** statute states that persons may be compensated up to \$300,000 in total.³⁵

Few states set no threshold amounts and leave the amount of compensation up to a designated body. For example, **New York** provides that the court of claims determine an

³⁰<http://www.wisbar.org/NewsPublications/WisconsinLawyer/Pages/Article.aspx?Volume=78&Issue=7&ArticleID=823>.

³¹ <http://docs.legis.wisconsin.gov/2005/related/acts/60>.

³² <https://www.congress.gov/108/plaws/publ405/PLAW-108publ405.htm>.

³³ States with no compensation statute: Alaska, Arizona, Arkansas, Delaware, Georgia, Idaho, Indiana, Kansas, Kentucky, Nevada, New Mexico, North Dakota, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, and Wyoming.
(<https://www.innocenceproject.org/compensating-wrongly-convicted/>).

³⁴ Code of Ala. Sec. 29-2-150 and 650.058 R.S.Mo.

³⁵ M.R.S. §8241.



amount that is fair.³⁶ Elsewhere, states also offer services as a part of their erroneous compensation package. **North Carolina** allows individuals to obtain \$50,000 per year of wrongful imprisonment, up to a maximum of \$750,000, but also offers job skills training for one year and tuition and fees for any public **North Carolina** community college.³⁷

³⁶ NY CLS Ct C Act § 8-b.

³⁷ N.C. Gen. Stat. 148-82 et seq.