

MT Wrongful Convictions Cost: State Compensation Proposal v. Federal Civil Rights Lawsuits

MT Exoneree Federal Civil Rights Lawsuits = \$15.5 million for 4 awards/settlements; 3 lawsuits pending.

Proposed State Compensation Legislation: \$3.9 million for 7 exonerees

Who is Eligible? The Nat'l Registry lists **14 exonerations in Montana since 1989**. The Innocence Project estimates that **7 exonerees *might* be eligible** under the proposed compensation legislation, depending on their ability to meet the qualifications under the proposed legislation. The other 7 listed exonerees are ineligible because they 1) already received large civil awards/settlements that would entitle them to no state compensation w/the civil offset provision in the proposed legislation, 2) were not sentenced/did not serve prison time, 3) are currently in prison for other crimes.

Future Cost Estimates: Based on the rate of 14 exonerations over 31 years in Montana, future exonerations can be expected to occur every two years. The average length of wrongful imprisonment is 12 years, which would cost the state \$360,000 per year. However wrongful conviction rates are expected to decrease with the recent adoptions of preventative measures.

Citations: The **National Registry of Exonerations**, a project of the University of California, University of Michigan Law School and Michigan State University Law School, tracks every exoneration in the United States since 1989 (see <https://www.law.umich.edu/special/exoneration/Pages/about.aspx>). The federal civil rights lawsuit information is compiled by Jeffrey S. Gutman, a Professor of Clinical Law at the George Washington University Law School who tracks state compensation and civil litigation awards/settlements for every U.S. exoneration since 1989 based on the National Registry, PACERS and public court

Exoneree Name	Wrongful Conviction Crime	County	Year Convicted	Year Exonerated	Years Wrongfully Imprisoned	Amount Paid in Federal Civil Rights Lawsuits	Lawsuit Plaintiffs	State Compensation Under HJ 36 (\$60k per year)	Case Details	
						\$15,530,000		\$3,900,000		
1	Baker, Jeffrey	Child Sex Abuse	Lewis and Clark	2012	2017	5	No apparent filing	N/A	\$300,000	Convicted of sexually assaulting his girlfriend's 6-year-old daughter based on her claims. He was granted a new trial based on his trial attorney's failure to call medical experts who had concluded there was no evidence of sexual assault and emails suggesting that the mother had coerced the allegations. The prosecution dismissed the charges in 2017.

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2	Bradford, Ty	Assault	Gallatin	1999	2003	4	No apparent filing	N/A	\$240,000	Convicted of assaulting his girlfriend with a knife. After his conviction, several witnesses came forward to say that his girlfriend had admitted to making up the incident because she thought Bradford would force her to move out. In 2003 he was granted a new trial and acquitted based on the new witness's testimony. He sued his trial attorney for failing to
3	Burkhart, Richard	Murder	Cascade	2002	2017	15	PENDING. Filed April 4, 2019.	<u>Pending State of Montana, City of Great Falls, Cascade County</u>	\$900,000	Convicted of murder based on coerced testimony from his co-defendant, who received probation in exchange for his testimony. He was exonerated based on new evidence that the actual culprit had admitted to the crime and the co-
4	Crosby, Daniel	Child Sex Abuse	Missoula	2003	2008	5	No apparent filing	N/A	\$300,000	Convicted of raping his 10-year-old daughter based on her accusations, which she recanted at age 21, claiming that she was coerced by her mother into making the claim.
5	Eskew, Jasmine	Child Abuse	Cascade	2014	2017	3	No apparent filing	N/A	\$180,000	Police suspected that Eskew had caused her infant daughter to suffer from Shaken Baby Syndrome, which she confessed to after hours of coercive interrogation. She was convicted of felony child abuse despite evidence that her abusive boyfriend had been responsible for the baby's death. An appellate court ruled that the confession should not have been admitted and granted a

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6	Marble, Cody	Child Sex Abuse	Missoula	2002	2017	15	PENDING. Jan 2019 filed lawsuit against Missoula County, sheriff's office and district attorney's office. Still in litigation.	<u>Pending Missoula County</u> , Missoula County Sheriffs & County Attorney's Office.	\$900,000	In juvenile detention on a marijuana possession conviction, other inmates concocted a plan to reduce their own sentences by lying about Marble raping one of them. In subsequent years the alleged victim and other alleged witnesses admitted they had lied and prison staff testified that Marble had been railroaded. In 2017, Marble was granted a new trial and Missoula County Attorney Kirsten Pabst promptly dismissed the charges, having already concluded that his conviction "lacks integrity and in the interests of doing justice, it must
7	Raugust, Richard	Murder	Sanders	1998	2016	18	PENDING \$97 million lawsuit vs State of Montana. In May 2019, Raugust sent letter to MT Division of Risk Management asking for \$97m for his wrongful imprisonment, which the division denied. Raugust has now filed a federal civil rights lawsuit against the State of Montana,	<u>Pending State of Montana, Saunders County</u> , individual officers.	\$1,080,000	Raugust was convicted of setting his friend's trailer on fire in Trout Creek in 1997. However, attorneys proved key testimony from a sheriff's deputy, implicating a different man as the killer, was never given to the jury. A judge ruled that the withheld evidence supported Raugust's alibi and ordered a new trial. The county attorney then dismissed the charges
Ineligible Under Proposed Legislation										
1	Bauer, Chester	Sexual Assault	Silver Bow	1983	1997	14	\$30,000	Court filings unavailable.	Ineligible bc he is currently in prison serving a life sentence for other crimes.	Convicted of rape based on false expert testimony about hair and blood evidence. DNA exonerated him of the crime, but he is serving a life sentence for other crimes and would not qualify for compensation.

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2	Bromgard, Jimmy Ray	Child Sex Abuse	Yellowstone	1987	2002	14	\$3,500,000	State of Montana settled his federal civil rights lawsuit for \$3.5m in 2008.	\$0 bc of the civil offset provision (his civil award exceeds state compensation he would be eligible for).	Wrongfully convicted of raping an 8-year-old girl based on eyewitness misidentification and misleading testimony about hair evidence from a state expert. DNA testing proved his innocence, and years later revealed the identity of the actual
3	Ehrlich, Casey	Sexual Assault	Yellowstone	2015	2016	0	No apparent filing	N/A	Ineligible bc he was exonerated prior to sentencing.	Arrested for sexual assault of a former girlfriend. Shortly after his conviction, she told her counselor that the sexual assault never happened. The charges were dismissed and he would be ineligible for compensation because he was never sentenced.
4	Jenkins, Paul	Murder	Lewis and Clark	1995	2018	23	\$6,000,000	Ravalli County agreed to \$6m settlement. Lawsuits are pending against State, Lewis & Clark & Jefferson counties. (State's share of payments TBA)	\$0 bc of the civil offset provision (his civil award exceeds state compensation he would be eligible for).	Jenkins & Freddie Joe Lawrence were convicted of kidnapping and murdering Donna Meagher in 1999 based on incentivized and coerced testimony. After the convictions, the nephew of a man named David Nelson reported that Nelson had confessed to the killing, and DNA evidence from a rope at the crime scene matched to Nelson. Based on this evidence, Jenkins and Lawrence were exonerated in 2018.

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5	Kordonowy, Paul	Sexual Assault	Richland	1990	2003	13	No apparent filing		Ineligible bc he was concurrently sentenced for another rape conviction for which he has not been exonerated.	After pleading guilty to rape in another case, he was wrongfully convicted of a second rape based on incorrect testimony from a state hair and blood serology expert. DNA testing proved he didn't commit the crime, but would be ineligible for compensation because he was concurrently serving the sentence for the other rape.
6	Lawrence, Freddie Joe	Murder	Lewis and Clark	1995	2018	23	\$6,000,000	<u>Ravalli County</u> agreed to \$6m settlement. Lawsuits are pending against <u>State, Lewis & Clark & Jefferson counties.</u> (State's share of payments TBA)	\$0 bc of the civil offset provision (his civil award exceeds state compensation he would be eligible for).	Jenkins & Freddie Joe Lawrence were convicted of kidnapping and murdering Donna Meagher in in 1999 based on incentivized and coerced testimony. After the convictions, the nephew of a man named David Nelson reported that Nelson had confessed to the killing, and DNA evidence from a rope at the crime scene matched to Nelson.
7	Morse, Barney	Sexual Assault	Deer Lodge	2013	2015	0 (he was almost immediately granted a new trial & was out on bond until his	No apparent filing	N/A	Ineligible bc he was released on bail almost immediately after sentencing, thus served no prison time for wrongful conviction.	Convicted of sexually assaulting his girlfriend's adult daughter based on her claims. After his conviction she recanted the allegations and urged the district attorney to drop the charges.