

HJ 36-1 Fact Sheet

I. Costs

➤ **National Landscape:**

- \$68,000 = Average compensation paid to U.S exonerees per yr of wrongful imprisonment.
- Some laws provide a fixed amount & others determine the amount on a case-by-case basis. The majority provide a fixed amount of at least \$50,000 per year of wrongful incarceration (18 states). More recent laws offer higher amounts:
 - D.C = \$200,000
 - Nevada= \$100,000
 - Texas= \$80,000
 - Colorado= \$70,000
 - Kansas= \$65,000

➤ **HJ 36 would provide \$60,000** per year of wrongful imprisonment.

- MT Median Family Income= **\$68,940** in 2018.¹
- MT Median Household Income= **\$55,328** in 2018.²

➤ **HJ 36 would save money for the state of Montana.**

- HJ 36 costs \$3.9 m for 7 exonerees.
- Federal civil lawsuits cost the State of Montana \$3.5 m for 1 exoneree & state faces 4 pending exoneree lawsuits.³
- Federal lawsuits in MT have cost a total of \$15.5m for 3 exonerees (*settlements were reached with the state and/or counties in the 3 cases*).

➤ **7 Montanans are potentially eligible under HJ 36**

- 14 Montana exonerations since 1989, according to the National Registry of Exonerations.⁴
- 7 could be eligible if they meet the requirements in HJ 36. 7 are ineligible because:
 - 2 were convicted but never sentenced.
 - 2 are serving life sentences for other crimes.
 - 3 would be entitled to \$0 w/civil offset (already received civil settlements > state compensation).

II. Will Courts Be Flooded w/Litigation?

- HJ 36 is a state civil lawsuit and judges already have the power to dismiss a frivolous lawsuit that on its face has no merit. Additionally, the defendant (e.g the state of Montana) can file a motion to dismiss a claim.
- HJ 36 is based on state compensation laws in Kansas and Nevada, which have experienced a minimal number of claims.

¹ Census ACS 1 year survey (2019 results will be available Sept 2020). <https://www.deptofnumbers.com/income/montana/> Median Family Income is the total income of all people who are related and living in a housing unit; income distribution is divided into two equal groups, half having income above that amount, and half having income below that amount.

² Id. Median Household Income is the total income of all people who occupy a housing unit regardless of relationship.

³ State of Montana reached a \$3.5m civil settlement with Jimmy Ray Bromgard in 2008. He filed a federal civil lawsuit against the state of Montana based on unconstitutional misconduct by a state laboratory employee.

⁴ National Registry of Exonerations. <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>

INNOCENCE PROJECT



Contact: Michelle Feldman, State Campaigns Director
516-557-6650/ mfeldman@innocenceproject.org

July 13, 2020

Re: Agreement on Revisions to HJ 36-1

Dear Law and Justice Interim Committee Members,

On July 9th, 2020 several Law and Justice Interim Committee (LIJC) members and stakeholders participated in a call to finalize revisions to HJ-36, establishing a compensation program for wrongfully convicted individuals.

The participants are listed below. In addition, the Attorney General's Office and Eric Bryson, Director of the Montana Association of Counties, were invited to participate but did not join.

- Representative Barry Usher, Chair
- Rep Kathy Kelker
- Rep. Rob Farris-Olsen
- Julianne Burkhardt, Staff Attorney
- Nanette Gilbertson, Montana County Attorneys' Association
- Cory Swanson, Montana County Attorneys' Association
- Marty Lambert, Montana County Attorneys' Association
- Michelle Feldman, Innocence Project
- David Herbst, Americans for Prosperity

The group was able to reach consensus on language, which LIJC staff has incorporated into the "HJ-36 Discussion Draft." This memo articulates the agreed upon revisions and two outstanding issues for the committee to consider.

The Innocence Project is grateful to LIJC and various stakeholders who were involved in months of discussion and collaboration on HJ-36. With the revisions articulated in this memo, the "HJ-36 Discussion Draft" would create a fair and fiscally responsible process for compensating innocent Montanans who were wrongfully imprisoned.

Hopefully, LIJC will vote to introduce this bill in the 2021 legislative session.

Sincerely,

Michelle Feldman
Director of State Campaigns, Innocence Project

HJ-36 Agreed Upon Revisions/Outstanding Issues

This memo refers to the “HJ-36 Discussion Draft.” Next to each provision summary is the name of the group that suggested the revision.

I. Outstanding Issues

Barring v. offsetting civil lawsuits. (MCAA)

7/9/2020 Meeting: Agreement that federal civil rights lawsuits cannot be barred. Remaining question re: barring state civil lawsuits.

Jury v Judge Trial. (MCAA)

7/9/2020 Meeting: MCAA is debating internally judge v. jury trials. Rest of stakeholders are agnostic.

Page 2, Line 14-15: “(5) A claim for compensation filed under this section must be tried by a jury unless a jury trial is waived upon agreement of the parties.”

II. Agreed Upon Revisions

1. Eligibility requirements (Section 1). (MCAA)

7/9/2020 Meeting Agreed Upon Language:

Page 2, Line 18-28, Page 3, Lines 1-8

(5) The claimant shall prevail if they establish each of the following by a preponderance of the evidence:

(a) the claimant did not commit the crime or crimes for which the claimant was convicted; and did not aid, abet or act as an accomplice or accessory to a person who committed the acts that were the basis of the conviction, or commit a lesser offense necessarily included in the crime for which the claimant was convicted.

(b) the claimant did not commit perjury under 45-7-201, MCA, fabricate evidence, or by the claimant's own conduct cause or bring about the conviction. A confession or admission that is later found to be false or a guilty plea that is withdrawn does not constitute committing perjury, fabricating evidence or causing or bringing about the conviction under this subsection and 45-7-201, MCA does not apply;

(c) The claimant establishes that either of the following occurred:

(i) The claimant's conviction was reversed or vacated and either the claimant was not retried, and the charges were dismissed, or the claimant was retried and was found not guilty and the basis for reversing or vacating the conviction was not legal error unrelated to factual innocence; or

(ii) The claimant was pardoned by the Montana board of pardons and parole or the governor on the grounds that the claimant was innocent;

(6) The court, in exercising its discretion regarding the weight and admissibility of evidence submitted under this section may in the interest of justice give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by claimants, the state, or those acting on their behalf.

2. Clarify that the court, when considering the weight and admissibility of evidence, must consider difficulties of proof caused by passage of time, etc. for both state and claimant. (MCAA)

7/9/2020 Meeting Agreed Upon Language:

- Page 3, Line 8 (6) The court, in exercising its discretion regarding the weight and admissibility of evidence submitted under this section may in the interest of justice give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by claimants, **the state** or those acting on their behalf.

3. Clarifying the claim is against the state & the petition is filed in district court where judgement occurred. (MCAA)

7/9/2020 Meeting Agreed Upon Language:

- *Page 1, Line 19-20* “(1) A claimant may bring a civil action **against the state of Montana** in the **district court where the conviction originated.**
4. **Expeditious hearing; estates. (MCAA)**
7/9/2020 Meeting Agreed Upon Language:
- *Page 2, Lines 9-10* **(1) A claimant is entitled to a hearing in district court as expeditiously as possible after the filing of claim.**
 - *Page 2, Lines 16-17* **(4) If a claimant dies prior to filing or during pendency of a claim under this section, the person’s estate may file or maintain a claim pursuant to [section 1] through [section __].**
5. **DOJ Defending State. (MCAA)**
7/9/2020 Meeting Agreed Upon Language:
- *Page 2, Line 12-13* **(2) Any claim filed pursuant to [section 1] through [section __] must be served on the department of justice. The department must provide a defense for the state for claims under [section 1] through [section __].**
6. **Immunity (MCAA)**
7/9/2020 Meeting Agreed Upon Language: MCAA said this provision can be removed and replaced with a clarification that the state is responsible for all damages and individuals are not responsible for damages.
- *Page 4, Line 27-28* “**(3) No individual or political subdivision of the State of Montana is responsible to pay for damages, if any, and all damages must be paid solely by the State of Montana.**”
7. **Expungement. (MCAA)**
7/9/2020 Meeting Agreed Upon Language: Remove references to expungement of “federal” databases.
- *Page 3, Line 16:* (1) Upon entry of a certificate of innocence, the court shall order the associated convictions and arrest records expunged and purged from all applicable **state and federal** systems including both electronic and hard copy systems.”
 - *Page 4, Line 1-2* (3) The order of expungement shall also direct the department of justice to purge the conviction and arrest information from the criminal justice information system central repository **and all applicable databases.**
8. **Clarifying health insurance section. (LIJC)**
7/9/2020 Meeting Agreed Upon Language:
- *Page 5, Line 23.* (d) is entitled to **1 year of state-funded medical insurance.**
9. **Requiring at least 6 months of wrongful incarceration; clarifying “imprisonment.”. (LIJC)**
7/9/2020 Meeting Agreed Upon Language:
- *Page 1, Line 11* (2) "Imprisonment" means a term of confinement of **at least 6 months** in a **"correctional institution" as defined in 45-2-101, MCA.**
10. **Clarify that Department of Corrections is the entity that pays \$5,000 "start-up" money. (LIJC)**
7/9/2020 Meeting Agreed Upon Language:
- *Page 2, Lines 1-7.* (4) A claimant who meets the criteria in subsection (3) (1) and who intends to bring an action under [section 1] through [section __] shall receive a transition assistance grant of \$5,000 from the **department of corrections** within 30 days of their release from imprisonment.
 - (a) The claimant or claimant's counsel must verify by affidavit filed with the **department of corrections** that the person satisfies the requirements set forth in [section 3 2], under penalty of perjury.
 - (b) If the claimant fails to file a claim within the time period described in [section 3], or the claim is denied by the district court, the claimant shall reimburse the state in the amount of \$5,000 within 1 year.

11. Change filing deadline from two years to three years to be consistent with deadline for filing federal 1983 claim. (LIJC)

7/9/2020 Meeting Agreed Upon Language:

- **Page 1, Line 23 (c) filed within a period of three years after:**
 - (i) dismissal of the criminal charges against the claimant or finding of not guilty on retrial; or
 - (ii) the grant of a pardon to the claimant.
- **Page 2, Line 23-24 (2) A claimant convicted, imprisoned and released from custody before July 1, 2021, must commence an action under this section no later than July 1, 2024.**

12. Addressing current limit on state liabilities in tort. (LIJC)

7/9/2020 Meeting Agreed Upon Language:

- **Page 4, Line 26: (2) Compensation under [this act] is immune from the monetary limitation under 2-9-108, MCA.**

13. Adjusting damages for inflation & pro-rating awards. (LIJC)

7/9/2020 Meeting Agreed Upon Language:

- **Page 5, Line 7-11: (a) (i) On July 1 of each year the award is increased by an amount equal to the consumer price index increase, if any, for urban wage earners compiled by the bureau of labor statistics of the United States department of labor or its successor agency in the preceding calendar year.**
(ii) The amount for any partial year must be prorated in order to compensate only for the portion of such year when the claimant was incarcerated.

14. Ensure that damages are exempt from state income tax.

7/9/2020 Meeting: LIJC Staff Attorney reports that Montana follows federal income tax exemptions, so there is automatically no state taxation of awards.

III. Withdrawn Suggestions

1. The person was convicted of a felony crime **in this state and subsequently sentenced and placed under the commitment of the Department of Correction;** (MCAA)

Response: DOC sentences are limited to 5 years & do not include State Prison sentences; no exoneree has served a DOC sentence.

7/9/2020 Meeting: MCAA agreed to withdraw this suggested revision.

2. **A claimant shall not prevail on a claim brought pursuant to this section if the state shows by a preponderance of the evidence that a claimant pled guilty with the specific intent to protect another party from prosecution for the underlying conviction that forms the basis for the claim.** (MCAA)

Response: Concerns about a person “taking the fall” for someone else is already addressed in subsection (d). There are too many problematic scenarios with this provision. What if the real perp confesses and then the state offers leniency if the perp testifies that the claimant pled guilty to protect the perp? What if a parent pleads to a crime to protect an innocent child who is facing wrongful conviction?

7/9/2020 Meeting: MCAA agreed to withdraw this suggested revision.

3. **Claimant shall notify state before filing the claim and give state 120 days to respond, as required under MT ST-2-9-108.** (Rep. Farris Olsen)

Page 2, Lines 11-12 If a claimant meets the requirements in [section 1] the claimant may file a claim for compensation **in the manner described in 2-9-301.** The claim must be:

7/9/2020 Meeting: Rep Farris Olsen agreed to withdraw this suggested revision.

Weiss, Rachel

From: Mark French <french_mark18@yahoo.com>
Sent: Sunday, September 13, 2020 5:00 PM
To: Weiss, Rachel
Subject: [EXTERNAL] Proposed Bill Draft HJ 36 Law and Justice Committee

Rachel,

Committee and Staff

I would like to make comment on the proposed Bill Draft.

I was arrested atop Logan Pass in Glacier Park 7/7/18.

It was a mistaken identity. The true perp was Nathan Mark French.

I was taken to jail and processed like a criminal.

The full narrative is to follow, but I want to make a couple requests for this bill.

1. Public apology

I requested to the JP in Anaconda that I receive a public apology since I serve in my employment in a public setting and I was currently running for public office. I was assured that would happen. The judge told me he would write a letter and I could publish it. He lied to me. He never followed through with his promise. I reminded him and never heard from him again. A public apology must be included in the bill.

2. Compensation

I understand the Rangers and the Justice Court is immune. This is troubling. I am not immune in my professional lab work. Rangers carry guns. Judges alter lives with their decisions.

I am not asking for the immunity to be dropped for a judge. However the restitution to the victim (me) needs to be such that it hurts and the officials in the wrong feel the pressure from their departments and their superiors.

I as the victim need to be able to tell a more satisfying story to the public when they ask, well that is horrible, how were you compensated. Currently I say I was not. Not only that, I am still in the red. \$5k would be a good start.

I am emailing this now to meet the 5pm deadline. I will follow with the full narrative for those who wish to take the time and read it.

Mark French

8682 Hwy 200

Plains, Montana 59859

406-360-1284

Weiss, Rachel

From: Pascal Redfern <grpvn@aol.com>
Sent: Sunday, September 13, 2020 11:08 AM
To: Weiss, Rachel
Subject: [EXTERNAL] Written Comments
Attachments: Remarks and Suggestions to Law and Justice Interim Committee.docx

Rachel, I am attaching written comments/suggestions to the proposed bill/draft HJ 36. As you can see, my proposals is almost 180 degrees from what is being proposed. Furthermore, I am trying to prevent these types of injuries to individuals who are victimized by the state while your bill tries to compensate.

Will you be handing out a hard copy of my remarks (almost 10 pages) all ALL committee members? Notice I have put some of the amendments/changes/proposals in red to highlight them, so you would need to print out from a color printer.

My understanding that if my remarks are given to you prior to 5:00 p.m. today that these remarks will be given to all committee members in advance of the meeting. Does that mean today? Does that mean you will email the remarks to the members as I assume many of them will be online?

Please advise that you received this email, and that you will provide copies to all members. Sometimes unknown emails go to spam. Also let me know if you cannot open the document for some reason.

Respectfully,

Pascal Redfern, 406-493-5728

Law and Justice Interim Committee
P.O. Box 201706
Helena, MT 59620-1706

From: Pascal Redfern, 4212 Edward Ave, Missoula, MT 59804, Ph 493-5728

RE: Proposed Bill Draft HJ-36

Committee and Staff Attorneys:

Introduction

I have looked at the proposed bill (HJ 36) for the upcoming Legislative 2021 Session and I must say I am extremely disappointed. Many of you might say this is just a start and amendments can be proposed during the session to make this bill better. I do not share this optimism. The fact that individuals have been wrongly arrested, convicted and imprisoned in Montana (and throughout the country) is undisputed. The National Registry of Exoneration lists at least 14 Montana exonerations since 1989. The Registry further states 7 of these were due in part to official misconduct and two were due to mistaken witness identification. This problem is nationwide as the Registry lists 2640 exonerations since 1989. Of course, this does not include those who fail to get their convictions overturned but still maintain their innocence.

It should be clear to everyone justice is not served or meted out when a person spends day, months, and years in prison for a crime he or she did not commit. Interestingly nowhere in the Montana Constitution and the statutes of Montana is justice defined. The Constitution states under Article II, Section 16 under Administration of Justice the following:

Courts of Justice shall be open to every person, and speeding remedy afforded for every person, property or character. . . . (later in the same section) right and justice shall be administrated without sale, denial or delay.

In Section 28 under Criminal Justice Policy we read:

(1) Laws for the punishment of crime shall be founded on the principles of prevention, reformation, public safety and restitution of victims.

In the Montana Victims' Rights Law in 46-24-103 we read the following:

The attorney general shall ensure that victims and witnesses of crime receive fair and proper treatment in the criminal justice system.

None of the language stated above addresses those individuals who have been victimized by the state by being wrongfully arrested, convicted and imprisoned. Yet these individuals are truly "*victims*". Victim is defined in the Montana Code, 46-18-243 but nowhere do you see included in the definitions one who has had his or her liberty infringed or taken away by being wrongly convicted, arrested and imprisoned by the state.

As I finish this introduction, I want to add two more issues. First, let us go back to the concept of justice. In your proposed bill, justice is nowhere mentioned! **Frederic Bastiat**, over a hundred and seventy years ago, stated it is imprecise to say that law should *create* justice. He said, "It ought to be stated that the purpose of the law is to prevent *injustice* from reigning . . . Justice is achieved only when injustice is *absent*." However, we see that injustice has reigned, for the law (due process), did not *prevent*

injustice to the many individuals wrongfully convicted in this state and elsewhere. So the best we can do is recognize the injustice of those wrongly arrested, convicted and imprisoned; try to prevent it, and compensate those who have been injured by state. Secondly, your proposed bill only deals with compensation, it does not address ways of *preventing* someone from being wrongfully arrested, convicted and imprisoned. While compensation is needed, it is best to save the taxpayers money by not allowing these injuries to occur at all!! Finally, the committee seems to be unaware that bills were introduced in the past Legislative Session addressing compensation and the why of these wrongful arrests, convictions and imprisonments. HB 442 by Joe Read and HB 641 both dealt with these issues and both died in committee. I will spend the rest of this paper on why do judges, prosecutors, and juries get it so wrong and how to prevent it.

Wrongful Due Process

In the book of Exodus, we read in 23:7:

Have nothing to do with a false charge and do not put an innocent or honest person to death for I will not acquit the guilty (NIV)

We clearly infer from this passage that there should be a process that is fair and just (we see this careful due process in Deuteronomy 19:15-21 and we see how serious a false charge was to be considered in ancient Israel), before you even charge a person and God will ultimately not acquit the guilty. Those individuals who have been exonerated both here in Montana and elsewhere have had a process that not only violated this biblical

principle but also common law and a Supreme Court decision. Blackstone stated in his **Commentaries** the following:

It is better that ten guilty persons escape than one innocent suffer.

This principle was further stated and expanded upon by the **U.S. Supreme Court in Coffin et al., U.S. 156 (1895)** who stated that this principle goes back to at least ancient Roman law and the Bible.

Let me give an example of wrongful due process with a case here in Montana. Richard Raugust of Trout Creek was convicted in 1998 of killing Joseph Tash and spent 18 years in prison. In November of 2015, his conviction was overturned by Judge Wheelis due in part to evidence being withheld. The state eventually dropped their appeal of this ruling, Sanders County went on to drop the charges and Raugust has sued the State and Sanders County. The errors of due process in this case are numerous but the comments by the jury foreperson, Mary Harker, in this case speak volumes. The Flathead Beacon in 2015 contacted Mary Harker and reported her comments. She stated the jury was not convinced of Raugust's guilt (they were deadlocked for 10 hours) but capitulated after the judge instructed that that a new trial would be too costly (judicial economy) for the state and county to bear. She stated the following:

The instructions given to us by the judge did not leave me with the belief I could disagree with the rest of the jury (it appears it was 11 - 1), the way the judge put it, it seemed like a lost cause. . . . This has been on my mind and on my heart ever since that jury service, she continued. It rises up and troubles me in the night. I was shocked at the way it ended and thought it was a miscarriage of justice.

It should trouble her; it should trouble all of us. Additionally, there is no accountability for the prosecutor, the judge or the jury for this injustice. While there were numerous due process errors, most importantly, the conscience of this particular juror was violated, the most sacred of all property rights.

What were the numerous due process errors in this case? They were:

(1) The testimony of one witness (the state relies heavily on the testimony of one witness to prosecute - violating both eternal principles of justice and the Constitution. They base it on 26-2-301 MCA).

(2) Misconduct by the prosecutor (suppression of evidence)

(3) Misconduct by the jury

(4) Misconduct by the judge who pushed judicial economy rather than true justice.

(5) Misconduct by the Montana Supreme Court (the court had at least two opportunities to give Raugust justice but viewed the evidence in the light most favorable to the state; thereby violating Blackstone's maxim). There is no statute nor any constitutional provisions which asserts whenever an appeal is taken by any court from a conviction the court must look at the evidence in the light most favorable to the state. This is legislation from the bench.

SOLUTIONS

While HJ 36 tries to at least compensate for wrongful convictions it fails to properly define individuals so wronged by the state for the definitions presented in Section One removes the emotional appeal of this

injustice. It is better to define individuals who have been wrongfully convicted, arrested and charged as a “victim”. I will present further definitions in this section which will address this appeal. Secondly, the bill has it backwards concerning who should file the claim. I consider it absurd when someone has been victimized by the state in a wrongful arrest, wrongful conviction, wrongful imprisonment, that victim has to file the claim. It should be the state. Finally, I present suggestions in my Conclusions for this proposed bill or in another bill which would help *prevent* wrongful convictions!

Section One (any insertions after a deletion will be in red)

(1) Under Claimant, I would delete (a) and edit (2) by inserting new (a) and (b) (c) and new subsection (3):

(a) the state or any subdivision who has falsely arrested, falsely charged and convicted; therefore falsely imprisoning anyone for misdemeanor or felony crime that the person did not commit.

(b) the “victim” shall not be currently serving a term of imprisonment.

(c) the “victim” (see subsection (3) shall also be able to file any additional claims that the state fails to address including unconstitutional actions by the state and its subdivisions.

(2) “Imprisonment” means a term of confinement of at least one day in a correctional institution as defined in 45-2-101. Any part of a day is considered a day for this section.

(3) “Victim” means any individual who has been wrongfully arrested, charged, convicted and imprisoned by the state or its subdivisions.

Section Two

Subsection 2 (1) (2) (3) (4) is amended and (5) is added to state:

The claimant shall bring a civil action for the “victim” in the district court in which the conviction originated. In (1) (b), the word “claimant” is changed to victim. In (1) (c) (i) and (ii) the term claimant is changed to victim. In (2) (3) and (4) claimant is changed to victim. In (2) the victim will only bring additional action in accordance with Section One (1) (c). (4) (a) is changed to reflect that the “victim” must receive a transition assistance of \$5,000.00 from the Department of Corrections within 30 days of their release from the state prison. Any assistance for being imprisoned in a county jail wrongfully for a day, weeks, or months shall be proportioned to the time served and come out of this \$5,000.00.

(5) The Department of Justice will collect and provide to the victim a completed record concerning all documents relating to the wrongful arrest, conviction, and imprisonment of the victim. If for some reason, the Department will not file a claim, the victim will take the record and file a Writ of Mandamus to the District Court asking the court to force the Department to file a claim under the threat of contempt of court.

The other changes to Section 2 shall be consistent with viewing the claimant as the state and the wrongly convicted, arrested or imprisoned as the victim.

Sections 3 through 9

Section 3 (1) is amended by inserting “victim” so it would read that “A claimant and the victim is entitled to a hearing in district court as expeditiously as possible after filing a claim for compensation”.

Section 3(2) is amended to read “that there is no defense by the state for a person wrongfully convicted if charges have been dropped, the conviction has been set aside by a judge, or pardoned”.

The rest of the sections need to be consistent with the above and will be further amended to address the following sentences in this paragraph. All that needs to be decided is the amount of compensation, the facts so stated that led to the wrongful arrest, conviction and imprisonment. A jury will decide the amount of compensation and if the victim was unjustly arrested convicted, and imprisoned due to misconduct by the state and its agents. The jury will also decide if actions were unconstitutional as alleged by the victim. Furthermore a transparent registry will be created by the Board of Crime Control dealing with those falsely arrested, wrongfully convicted and wrongfully imprisoned. Any victim shall file, when so treated by the state, with the Board of Crime Control the action wrongfully taken by affidavit. The Board of Crime Control shall accept the affidavit and will investigate the affidavit of the victim. If affidavit is found to be true, the victim will be put on the list. The list will include the county, the prosecutor, and the judge who victimized the individual. Such a list will be published by the Board and also given to every session of the State Legislature.

Sections 3 – 9 are further amended to state the following:

A certificate of innocence shall state the evidence looked on by the district court shall be viewed in the light most favorable to the victim.

The District Court shall consider as strong evidence that the victim is innocent if the county attorney has dropped all charges or refuses to re-try the victim.

Furthermore, the certificate of innocence shall state that the victim is innocent because the state could not show both from the preponderance of the evidence and proof beyond a reasonable doubt that the victim was guilty of the crime. While this is a civil matter, the standard used to convict the victim was “beyond a reasonable doubt”. Reasonable doubt means that there is a serious misgiving as to the guilty verdict given to the victim.

All the sections will be amended to reflect the above so stated.

Conclusion

There are many other statutes that need to be amended or written to prevent wrongful arrests and convictions. I list the following suggestions:

1. A person has the right to challenge the arresting officer that he is arresting the wrong person by asking if the warrant has a picture and correct address of the person arrested.
2. 26-2-301 MCA needs to be amended to read “The direct evidence of one witness who is entitled to **some** credit is sufficient **to assert** any fact except for perjury and treason. **Such assertion shall be viewed by the jury with suspicion if the assertion is not strongly corroborated.**
3. Judges shall not be allowed to pressure juries due to judicial economy or hardship to the county or the state.

4. During voir dire of juries, if there is any possible presumption of guilt towards the defendant due to the charge, defendants will be allowed to dismiss due to cause, judges are not allowed to convince the juror to remain.
5. As part of any jury instructions, it must be stated a juror has the right to follow his/her conscience.
6. Beyond a reasonable doubt is further defined as “serious misgivings as to the proof of the guilt of the defendant”.
7. The constitution and any historical documents that provide color in closing remarks shall be allowed to the defendant without penalty.
8. That the defendant shall have the right to give the final rebuttal in closing arguments to the jury. So it would be prosecutor first, then defendant, then prosecutor and finally defendant. Many trials have produced guilty verdicts to the prosecutors giving final remarks and ironically, some have been reversed due to the lack of prejudicial remark given in final rebuttal. If the defendant had time to rebut the final remarks, then many trials would not be reversed due to a technicality.
9. Accountability must be addressed concerning all individuals involved in the wrongful arrest, conviction and imprisonment of individuals. Juries must provide that accountability when they judge the amount of compensation. This will provide a healthy check on zealous prosecutors and judges.
10. Finally, in any appeal from a lesser court to the Supreme Court in a criminal matter, a statute needs to be written that orders the Court to always look at the evidence in the light most favorable to the defendant.