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# Pleading for Justice: Analyzing Ohio's Wrongful Conviction Compensation Statute and the Guilty Plea Disqualification Provision

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### Recommended Citation

Paige Betley, *Pleading for Justice: Analyzing Ohio's Wrongful Conviction Compensation Statute and the Guilty Plea Disqualification Provision*, 72 Clev. St. L. Rev. 753 (2024)  
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# **Pleading for Justice: Analyzing Ohio's Wrongful Conviction Compensation Statute and the Guilty Plea Disqualification Provision**

PAIGE BETLEY\*

## **ABSTRACT**

Innocent until proven guilty? For some who have walked through the criminal justice system, this American adage did not seem to ring true. The criminal justice system has produced many wrongful convictions, which is an unthinkable injustice. These individuals must then fight for compensation to get back on their feet in society after spending years, if not decades, unjustly behind bars. Ohio's wrongful conviction compensation statute perpetuates this injustice by categorically excluding exonerees who pled guilty to a crime they did not commit from receiving compensation from the State, with no exceptions. This Note critically analyzes the inherent harms from such an exclusion and proposes an amendment to Ohio's compensation statute that remedies these harms by giving the exoneree an opportunity to show *why* they pled guilty to a crime they did not commit. Ohio's abandonment of this guilty plea disqualification provision in the compensation statute would be one step in the direction of seeking justice for those who were presumed guilty until proven innocent.

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\* J.D. expected May of 2024. Thank you first and foremost to my parents and Kevin, who have always encouraged me in academics and in life. Thank you also to Sara Schiavoni, who introduced me to the topic of wrongful convictions and without whom I would not have gone to law school in the first place. Lastly, thank you to Brandon Stump and T.J. Robinson, who put in time and effort to make this Note the best that it could be.

## CONTENTS

I.	INTRODUCTION.....	755
II.	BACKGROUND.....	757
	A. <i>An Overview of Wrongful Convictions: Prevalence</i> .....	757
	B. <i>Common Causes and Contributing Factors to Wrongful Convictions</i> .....	759
	C. <i>The Phenomenon of False Guilty Pleas</i> .....	760
	D. <i>The Case for Compensation: Consequences and Toll of Being Wrongfully Convicted</i> .....	763
	E. <i>Available Options for Compensation</i> .....	764
	1. Compensation Path: Civil Litigation .....	764
	2. Compensation Path: Private Bills.....	765
	3. Compensation Path: State Compensation Statutes .....	766
	F. <i>Ohio's Compensation Statute: Basic Design and Component Parts</i> ....	767
III.	ANALYSIS .....	769
	A. <i>The Disqualification's Total Ban Provides No Flexibility or Exceptions</i> .....	770
	1. Judicial Recognition of the Statute's Plain Language .....	770
	2. Other State Statutes Have Rejected Total Disqualifications for Pleading Guilty.....	771
	3. Ohio's Bid for Loosening the Total Disqualification .....	772
	B. <i>The Disqualification's Rationale Contradicts the Reality of False Guilty Pleas</i> .....	773
	C. <i>The Disqualification Ignores the Prevalence of Plea Bargains in the Criminal Justice System</i> .....	775
IV.	PROPOSED AMENDMENT TO THE OHIO STATUTE: A MIDDLE-GROUND APPROACH PROVIDING CLAIMANTS AN OPPORTUNITY TO PROVE WHY THEY FALSELY PLED GUILTY .....	776
	A. <i>Implementing an Exception for Involuntary False Guilty Pleas Caused by Forces Beyond the Claimant's Control</i> .....	776
	B. <i>Rationale: A Modest, Middle-Ground Approach</i> .....	777
	1. This Proposed Solution Introduces Flexibility Into the Total Disqualification .....	777
	2. This Proposed Solution Still Retains Some Control in the State's Hands .....	778
V.	CONCLUSION.....	779

## I. INTRODUCTION

Do innocent people who plead guilty to a crime they did not commit deserve compensation from state governments as a wrongfully convicted person? An Illinois court wrongfully convicted seventeen-year-old Marcellius Bradford of kidnapping, rape, and murder after pleading guilty in exchange for a lesser sentence, eventually stating that police physically abused him and threatened the death penalty until he would plead guilty, and was later exonerated by DNA evidence.<sup>1</sup> A Maryland court wrongfully convicted Anthony Gray, an individual with a mental disability, of rape and murder after pleading guilty for a life sentence after police officers detained and interrogated him throughout the night, withholding food and sleep, and telling him he would “fry in the electric chair” if he did not plead guilty, and was later exonerated by DNA evidence.<sup>2</sup> A Nevada court wrongfully convicted eighteen-year-old Dwayne Jackson of robbery after pleading guilty for a four-year sentence after a forensic lab accidentally swapped his DNA evidence for another suspect’s, which incorrectly implicated Jackson as the perpetrator, and was later exonerated by the correct DNA.<sup>3</sup> Had these individuals pled guilty in Ohio despite their factual innocence, they would be disqualified from receiving statutory compensation from the government, no matter the egregious underlying circumstances.<sup>4</sup>

Ohio’s wrongful conviction compensation statute reads, “[t]he individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense . . . .”<sup>5</sup> This language excludes a subset of exonerees, like those in the cases above, from receiving compensation from the State, despite their factual innocence.

Compensation, often in the form of money or assistive services,<sup>6</sup> is an important stage of wrongful convictions both for the wrongfully convicted individual, to start building a life after prison, and for society, to begin repaying the individual for this grave injustice.<sup>7</sup> Although wrongfully convicted individuals have several paths to

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<sup>1</sup> Maurice Possley, *Marcellius Bradford*, NAT’L REGISTRY OF EXONERATIONS (Apr. 10, 2023), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3039>.

<sup>2</sup> Maurice Possley, *Anthony Gray*, NAT’L REGISTRY OF EXONERATIONS (Aug. 26, 2017), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3254>. The exact mental disability is unspecified in the record. *See id.*

<sup>3</sup> Maurice Possley, *Dwayne Jackson*, NAT’L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3821> (last visited Mar. 30, 2024).

<sup>4</sup> *See* OHIO REV. CODE ANN. § 2743.48(A)(2) (West 2024) (detailing statutory limitations).

<sup>5</sup> *Id.*

<sup>6</sup> *See generally Compensation Statutes: A National Overview*, INNOCENCE PROJECT (2017), [https://www.innocenceproject.org/wp-content/uploads/2017/09/Adeles\\_Compensation-Chart\\_Version-2017.pdf](https://www.innocenceproject.org/wp-content/uploads/2017/09/Adeles_Compensation-Chart_Version-2017.pdf).

<sup>7</sup> *See* Scott Connolly, *Righting the Wrongfully Convicted: How Kansas’s New Exoneree Compensation Statute Sets a Standard for the United States*, 93 ST. JOHN’S L. REV. 883, 903 (2019) (“As a society, we have a responsibility to confront the unfortunate and uncomfortable

pursue compensation, one common option is through state compensation statutes.<sup>8</sup> These statutes vary from state to state, but each statute generally allows a wrongfully convicted individual to submit a claim for compensation without having to prove fault on the part of the State.<sup>9</sup> Each statute has its own eligibility requirements, disqualifications, and processes for making these claims.<sup>10</sup> Pursuing compensation through a state compensation statute is typically the most successful option for a wrongfully convicted person because of the low cost<sup>11</sup> and lack of fault requirement<sup>12</sup>—but not all wrongfully convicted persons are eligible to pursue this option.<sup>13</sup>

State compensation statutes often include various disqualifications that prevent a wrongfully convicted person from receiving compensation under the statute.<sup>14</sup> Such disqualifications do further injustice to these innocent individuals, rather than help them to start building their life.<sup>15</sup> Specific to Ohio, the state compensation statute contains a significant disqualification: those who pled guilty to the offense are barred from receiving compensation under the statute.<sup>16</sup> There are no exceptions to this disqualification; rather, the compensation statute categorically excludes defendants who entered pleas of false guilt.<sup>17</sup>

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truth that our justice system has failed many of our citizens and to correct the wrongs inflicted upon innocent people through adequate and comprehensive compensation legislation.”).

<sup>8</sup> See Jeffrey S. Gutman, *An Empirical Reexamination of State Statutory Compensation for the Wrongfully Convicted*, 82 MO. L. REV. 369, 372 (2017).

<sup>9</sup> Jessica R. Loneragan, *Protecting the Innocent: A Model for Comprehensive, Individualized Compensation of the Exonerated*, 11 N.Y.U. J. LEGIS. & PUB. POL’Y 405, 410 (2008) (“[C]ompensation statutes provide compensation based on the fact of wrongful conviction rather than some wrongdoing by the state or the political clout of the exoneree or his advocates.”).

<sup>10</sup> Muhammad U. Faridi et al., *Undoing Time: A Proposal for Compensation for Wrongful Imprisonment for Innocent Individuals*, 34 W. NEW ENG. L. REV. 1, 7–8 (2012).

<sup>11</sup> See, e.g., Adele Bernhard, *Justice Still Fails: A Review of Recent Efforts to Compensate Individuals Who Have Been Unjustly Convicted and Later Exonerated*, 52 DRAKE L. REV. 703, 709–10 (2004) (discussing Larry David Holdren’s recovery under West Virginia’s compensation statute as preferable because he recovered quickly “without having to finance complicated litigation”).

<sup>12</sup> See *supra* text accompanying note 9.

<sup>13</sup> See Connolly, *supra* note 7, at 905–06.

<sup>14</sup> *Id.* (providing examples of state compensation statutes that have certain disqualifications for exonerees who were wrongfully convicted under specified circumstances).

<sup>15</sup> See *id.* at 904–05.

<sup>16</sup> OHIO REV. CODE ANN. § 2743.48(A)(2) (West 2024).

<sup>17</sup> See *Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 19 (“Under the plain language of R.C. 2743.48(A)(2), a person who has pled guilty to an offense is not eligible to be declared a wrongfully imprisoned individual. We are to presume that all guilty

The disqualification for exonerees who pled guilty in Ohio's compensation statute is flawed because this provision (1) fails to provide necessary flexibility for claimants by excluding any exceptions to the disqualification, (2) disregards the reality of involuntary false guilty pleas, and (3) ignores the prevalence of plea bargaining in the criminal justice system. The Ohio General Assembly should revisit this statute and introduce an amendment that provides a process whereby claimants can present evidence that they falsely pled guilty due to improper, external factors, which would restore eligibility for compensation under the statute.

Part II of this Note provides background on the basics of wrongful convictions, explains the phenomenon of false guilty pleas, illustrates the long-lasting consequences of being wrongfully convicted, and offers an overview of available compensation options, with specific focus on Ohio. Part III critically analyzes the practical flaws inherent in Ohio's disqualification of individuals who pled guilty. First, the disqualification deprives claimants of essential flexibility by making the rule a total bar to compensation. Additionally, the disqualification fails to recognize the existence of involuntary false guilty pleas. Further, the disqualification provision ignores the role that plea bargains play in the criminal justice system. Lastly, Part IV proposes an amendment to the compensation statute that allows wrongfully imprisoned claimants who pled guilty to receive compensation under certain circumstances. Exonerees undoubtedly deserve fair compensation after everything has been unjustly taken away from them.

## II. BACKGROUND

### A. *An Overview of Wrongful Convictions: Prevalence*

Exonerations are an increasingly common occurrence in the American criminal justice system.<sup>18</sup> Since 1989, the National Registry of Exonerations has recorded 3,494 exonerations nationwide, with 110 of those exonerations occurring in Ohio (as of the writing of this Note).<sup>19</sup> Further, Cuyahoga County, home of Cleveland, is ranked tenth in the United States for counties with the highest levels of recorded wrongful convictions with twenty-six total to date—almost a third of Ohio's total

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pleas, even those that are later vacated, are included because the statute itself provides no exception . . .”).

<sup>18</sup> An important point to note is that the terms “wrongful conviction” and “exoneration” have distinct meanings. A wrongfully convicted person is any innocent person who has been convicted of a crime they did not commit, whether recognized yet by the State or not. *See* Halle Ostoyich, *Wrongful Convictions: The Facts*, W. VA. UNIV. (Oct. 2, 2020), <https://wvinnocenceproject.law.wvu.edu/innocence-project-blog/our-voices/2020/10/02/wrongful-convictions-the-facts>. An exoneree is someone who has been officially cleared of the conviction by a court based on new evidence of innocence. *Research Resources*, INNOCENCE PROJECT, <https://innocenceproject.org/research-resources/> (last visited Mar. 30, 2024). For the sake of ease, this Note will use the terms interchangeably to generally refer to any innocent person wrongly convicted of a crime seeking compensation.

<sup>19</sup> Dustin Cabral, *Exonerations by State*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx> (last visited Apr. 2, 2024).

count of wrongful convictions.<sup>20</sup> These statistics only represent those wrongful convictions that have been officially discovered and recorded. The total number of people convicted of crimes they did not commit is unknown, as many have died before proving their innocence or are still waiting in prison now for help.<sup>21</sup>

Advances in technology have revolutionized DNA testing and forensic investigation.<sup>22</sup> This, in turn, has fueled the rise in exonerations from wrongful convictions.<sup>23</sup> The first DNA exoneration took place in 1988, exonerating Gary Dotson for a rape after spending more than a decade behind bars.<sup>24</sup> Since then, DNA testing has exculpated tens of thousands of prime suspects that police wrongfully identified and pursued, who would otherwise be at a risk for wrongful conviction without DNA testing.<sup>25</sup> Even though DNA evidence is not always recoverable from a crime scene,<sup>26</sup> the National Registry of Exonerations reports that 593 total individuals have been exonerated from DNA testing since 1989 (as of the writing of this Note).<sup>27</sup>

In addition to the evolution of DNA testing, exonerations have steadily risen over the years because of organizations dedicated solely to pursuing and litigating claims of innocence.<sup>28</sup> For example, the Innocence Project focuses on claims of innocence across the country.<sup>29</sup> Other organizations, such as the Ohio Innocence Project, have a

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<sup>20</sup> *Top Ten Counties*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/Top-Ten-Counties.aspx> (last visited Mar. 30, 2024).

<sup>21</sup> Samuel R. Gross et al., *Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death*, 111 PROC. NAT'L ACAD. SCI. 7230, 7230 (2014) (“[T]he great majority of innocent defendants remain undetected. The rate of such errors is often described as a ‘dark figure’—an important measure of the performance of the criminal justice system that is not merely unknown but unknowable.”).

<sup>22</sup> See generally BARRY SCHECK ET AL., ACTUAL INNOCENCE 39–40 (2000) (detailing the discovery and implementation of DNA testing into the criminal justice system).

<sup>23</sup> See *id.*

<sup>24</sup> *Id.*

<sup>25</sup> *DNA Exonerations in the United States*, INNOCENCE PROJECT, <https://innocenceproject.org/dna-exonerations-in-the-united-states/> (last visited Mar. 30, 2024).

<sup>26</sup> Eric M. Freedman, *Earl Washington's Ordeal*, 29 HOFSTRA L. REV. 1089, 1108 (2001) (“Testable DNA samples exist in only a small fraction of cases . . .”).

<sup>27</sup> *Exonerations by Year: DNA and Non-DNA*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/Exoneration-by-Year.aspx> (last visited Apr. 2, 2024).

<sup>28</sup> See 2022 Annual Report, NAT'L REGISTRY OF EXONERATIONS 3 (May 8, 2023), <https://www.law.umich.edu/special/exoneration/Documents/NRE%20Annual%20Report%202022.pdf>.

<sup>29</sup> See generally *Restoring Freedom*, INNOCENCE PROJECT, <https://innocenceproject.org/exonerate/> (last visited Mar. 30, 2024).

more local focus in fighting wrongful convictions.<sup>30</sup> The battle against wrongful convictions is only just beginning and will continue to expand as technology and awareness evolve. Accordingly, Ohio's compensation statute should be amended to equitably handle new understandings of wrongful convictions.

*B. Common Causes and Contributing Factors to Wrongful Convictions*

As criminal justice scholars and practitioners learned more about the prevalence of wrongful convictions, they also discovered the most common contributing factors to this injustice.<sup>31</sup> Currently, the most common contributing factor among recorded exonerations is perjury/false accusation, occurring in 64% of all exonerations.<sup>32</sup> This contributing factor involves a person (commonly a prisoner seeking a trade for their own sentence) who deliberately commits perjury under oath that incriminates the exoneree.<sup>33</sup> The second most common contributing factor to wrongful convictions is official misconduct, which occurred in 60% of all recorded cases.<sup>34</sup> Additionally, ineffective assistance of counsel can be a significant contributing factor to a wrongful conviction.<sup>35</sup> Despite the noble work of the public defender's office, ineffective assistance of counsel usually affects indigent defendants assigned public defenders who are overworked and understaffed.<sup>36</sup> Three other common contributing factors of wrongful convictions include mistaken witness identification (present in 27% of all cases),<sup>37</sup> false or misleading forensic science (present in 25% of all cases),<sup>38</sup> and false confessions (present in 13% of all cases).<sup>39</sup> Taken together, these contributing factors

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<sup>30</sup> See Bob Cesca, *Mark Godsey Is an American Superhero: He Gets Innocent People Out of Prison*, SALON (Sept. 24, 2017, 8:00 AM), <https://www.salon.com/2017/09/24/mark-godsey-is-an-american-superhero-he-gets-innocent-people-out-of-prison/>.

<sup>31</sup> See generally 2022 Annual Report, *supra* note 28, at 9.

<sup>32</sup> *Exonerations by Contributing Factors*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx> (last visited Apr. 2, 2024). These percentages are current as of the writing of this Note but continually change as the National Registry of Exonerations continues to report new exonerations.

<sup>33</sup> See, e.g., SCHECK ET AL., *supra* note 22, at 165–86.

<sup>34</sup> *Exonerations by Contributing Factors*, *supra* note 32.

<sup>35</sup> *Ineffective Lawyers*, EXONERATION PROJECT, <https://www.exonerationproject.org/issues/ineffective-lawyers> (last visited Mar. 30, 2024).

<sup>36</sup> See EMILY M. WEST, COURT FINDINGS OF INEFFECTIVE ASSISTANCE OF COUNSEL CLAIMS IN POST-CONVICTION APPEALS AMONG THE FIRST 255 DNA EXONERATION CASES 1 (2010) (speaking of government-created public defender offices, “the lack of national standards for creating and funding such a system has left most states with inadequate, underfunded systems. This problem has led to overburdened and sometimes incompetent defense lawyers . . .”).

<sup>37</sup> *Exonerations by Contributing Factors*, *supra* note 32.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*



often combine in a single case, making the chance of wrongful conviction more likely.<sup>40</sup>

### C. *The Phenomenon of False Guilty Pleas*

A false guilty plea may seem contradictory by its nature.<sup>41</sup> People have a hard time imagining why anyone would plead guilty to a crime they did not commit. Yet, a false guilty plea should not be viewed in isolation from its surrounding circumstances; rather, the key to accepting the phenomenon of false guilty pleas is to understand the factors that lead people to accept a guilty plea bargain for a crime they did not commit.

The most common circumstances that contribute to an individual's decision to falsely plead guilty each revolve around that individual's feeling of being trapped in the system.<sup>42</sup> First, a person may falsely plead guilty because of excessive pressure exerted by the prosecutor to get the case over with and move on with their heavy caseload.<sup>43</sup> Prosecutorial pressure often takes the form of stacking more severe charges and lengthier sentences if the defendant declines a plea bargain and decides to go to trial.<sup>44</sup> A defendant faced with a four-year prison sentence in exchange for a guilty plea compared to a potential twenty-year sentence risked at trial may succumb to this pressure—even despite their innocence.<sup>45</sup>

Another factor that may pressure an innocent individual to falsely plead guilty is the cost and effort of a criminal trial compared with the relative ease of taking a plea bargain and moving forward.<sup>46</sup> Additionally, innocent people may decide to falsely plead guilty because of their inability to retain defense counsel who adequately

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<sup>40</sup> Robert Dunham, *DPIC Analysis: Causes of Wrongful Convictions*, DEATH PENALTY INFO. CTR. (May 31, 2017), <https://deathpenaltyinfo.org/stories/dpic-analysis-causes-of-wrongful-convictions> (representing, in graphical form, how several factors can co-exist in one case).

<sup>41</sup> In fact, the Federal Rules of Criminal Procedure require courts to “address the defendant personally in open court and determine that the plea is voluntary” before accepting a guilty plea. FED. R. CRIM. P. 11(b)(2). Despite this legal standard, innocent defendants still plead guilty because they feel that they have no other choice. *Why Would an Innocent Person Take a Plea Deal?*, WHITE L. PLLC, <https://www.whitelawpllc.com/blog/why-would-an-innocent-person-take-a-plea-deal/> (last visited Mar. 30, 2024); *see also infra* text accompanying notes 42–51.

<sup>42</sup> *See NYCLA Justice Center Task Force: Solving the Problem of Innocent People Pleading Guilty*, 40 PACE L. REV. 1, 6–8 (2020) (detailing examples of “institutional forces” that can prompt an innocent individual to plead guilty).

<sup>43</sup> *Id.* at 3 (explaining that an innocent person's decision to plead guilty is heavily influenced by “systematic pressure for speed and efficiency of case processing”).

<sup>44</sup> *See id.* at 7 (explaining that prosecutors have “the ability to threaten more severe charges if a defendant declines a plea offer”).

<sup>45</sup> *See Guilty Pleas and False Confessions*, NAT'L REGISTRY OF EXONERATIONS 1 (Nov. 24, 2015), <https://www.law.umich.edu/special/exoneration/Documents/NRE.Guilty.Plea.Article4.pdf> (“Defendants face immense system wide pressure to take pleas and most succumb.”).

<sup>46</sup> *See NYCLA Justice Center Task Force, supra* note 42, at 7.

manages and informs them throughout the plea bargaining and trial process.<sup>47</sup> Typically, defendants in this situation are lower income and simply do not have the necessary guidance from counsel to help them navigate the complex criminal justice system to make an informed decision.<sup>48</sup> Lastly, the pretrial detention system creates incentives for innocent people to plead guilty.<sup>49</sup> For misdemeanor cases in particular, pretrial detention can cause a defendant to accrue most of their expected sentence while awaiting trial.<sup>50</sup> This pretrial system incentivizes innocent defendants to plead guilty simply to reduce their interaction with the criminal justice system.<sup>51</sup> In sum, defendants encounter pressure to accept a guilty plea bargain at every stage of the criminal justice system, regardless of their actual guilt or innocence.

False guilty pleas themselves are not considered a contributing factor to wrongful convictions; rather, the circumstances set out above demonstrate how false guilty pleas are a *result* of the same factors that contribute to wrongful convictions, such as official misconduct, ineffective assistance of counsel, and false confessions. A point of distinction between false guilty pleas and false confessions is necessary to fully understand the role that false guilty pleas play in wrongful convictions. While related, false confessions and false guilty pleas are distinct.<sup>52</sup> On one hand, false confessions are simply one piece of evidence that the prosecution can use toward proving their case.<sup>53</sup> On the other hand, a false guilty plea immediately results in a conviction as an

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<sup>47</sup> See *id.* at 7–8 (discussing that criminal defendants “may decide that entering a guilty plea . . . is better than being caught in a stressful situation about which they have little understanding and over which they perceive they have little or no control”).

<sup>48</sup> See *id.*

<sup>49</sup> See Paul Heaton, *The Expansive Reach of Pretrial Detention*, 98 N.C. L. REV. 369, 373 (2020) (critically examining the current pretrial detention system and bail decisions, including their impact on innocent defendants caught in the criminal justice system). I have had the opportunity to experience this stage of the criminal justice system first-hand. While partnering with the Cuyahoga County Public Defender’s office for a bail advocacy clinic, I interviewed clients detained pre-trial in the County jail because they were unable to afford their set bond. In my experience, most clients expressed to me their wishes to get the case over with as soon as possible through a plea bargain simply to get released, citing the poor conditions of the County jail, regardless of what they did or did not do pertaining to the pending charges. See Kaitlin Durbin, *Former Inmates, Staff Share Stories of Life Inside the Cuyahoga County Jail*, CLEVELAND.COM (Oct. 16, 2022, 5:20 AM), <https://www.cleveland.com/news/2022/10/former-inmates-staff-share-stories-of-life-inside-the-cuyahoga-county-jail.html> (“‘It doesn’t matter if you’re in there for jaywalking, public intoxication, DUI, or murder. It doesn’t matter. You’re being treated like you are Anthony Sowell,’ [former inmate] said, referring to the serial killer and rapist more commonly known as the Cleveland Strangler. ‘That’s just their default. Treat everybody like they’re a monster.’”).

<sup>50</sup> See Heaton, *supra* note 49.

<sup>51</sup> *Id.*

<sup>52</sup> *Guilty Pleas and False Confessions*, *supra* note 45.

<sup>53</sup> *Id.*

agreement between both parties to enter a judgment of guilt.<sup>54</sup> Although both involve the defendant's admission of guilt, a false guilty plea hurts the innocent defendant more because the wrongful conviction directly results from the false guilty plea.<sup>55</sup>

Even though the circumstances set out above demonstrate why a person might plead guilty to a crime they did not commit, there is still a question as to whether false guilty pleas are an appreciable issue. False guilty pleas may seem like a rare occurrence, but the American criminal justice system is built around plea bargaining—inviting innumerable opportunities for false guilty pleas.<sup>56</sup> Approximately 95% of criminal cases are resolved by guilty plea bargains, with slight variation from year to year.<sup>57</sup> In fact, 98.3% of federal criminal cases in 2021 were resolved by plea bargains—a staggering total.<sup>58</sup> Lower estimates of false guilty pleas approximate that anywhere between 2–8% of currently convicted felons falsely pled guilty.<sup>59</sup> As of 2017, the Innocence Project reports that approximately 11% of their DNA exoneration cases involved false guilty pleas.<sup>60</sup> Although estimates of false guilty pleas are not exact, the prevalence of plea bargains in the criminal justice system as a whole, together with the inherent pressures that defendants face throughout the plea bargain phase, raise alarm and indicate that this phenomenon is indeed an appreciable problem worthy of attention.

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<sup>54</sup> *Id.*

<sup>55</sup> And yet, the Ohio compensation statute does not preclude exonerees who falsely confessed from receiving compensation. *See* OHIO REV. CODE ANN. § 2743.48 (West 2024). Only those exonerees who pled guilty are singled out. *See id.* To illustrate this faulty legislation drafting, take the case of Ottis Toole and Henry Lee Lucas. *See* Mark Oliver, *Henry Lee Lucas: The Depraved Serial Killer Who Confessed to Hundreds of Murders*, ALL THAT'S INTERESTING (Nov. 6, 2021), <https://allthatsinteresting.com/henry-lee-lucas-ottis-toole>. Named “The Confession Killers,” Lucas and Toole raped and killed an unknown number of victims, often engaging in cannibalism after the fact. *Id.* Once apprehended by police, they falsely confessed to over six hundred murders that they did not actually commit. *Id.* Assuming that Toole and Lucas otherwise satisfied Ohio's requirements under the compensation statute, they would be entitled to compensation for the wrongful convictions of which they falsely confessed. Meanwhile, an individual like Anthony Gray, mentioned in Part I, who falsely pled guilty after police interrogated him throughout the night, withholding food and threatening that he would “fry in the electric chair,” would be ineligible for compensation under Ohio's statute. *See supra* note 2 and accompanying text.

<sup>56</sup> *See* Kelsey S. Henderson & Lora M. Levett, *Investigating Predictors of True and False Guilty Pleas*, 42(5) L. & HUM. BEHAV. 427, 428 (2018) (discussing the role that plea bargaining plays in the American criminal justice system).

<sup>57</sup> *See id.*

<sup>58</sup> GLENN R. SCHMITT & LINDSEY JERALDS, FISCAL YEAR 2021: OVERVIEW OF FEDERAL CRIMINAL CASES 8 (2022).

<sup>59</sup> Jed S. Rakoff, *Why Innocent People Plead Guilty*, N.Y. REV. (Nov. 20, 2014), <https://www.nybooks.com/articles/2014/11/20/why-innocent-people-plead-guilty/>.

<sup>60</sup> *Innocence Project and Members of Innocence Network Launch Guilty Plea Campaign*, INNOCENCE PROJECT (Jan. 23, 2017), <https://innocenceproject.org/guilty-plea-campaign-announcement/>.

D. *The Case for Compensation: Consequences and Toll of Being Wrongfully Convicted*

Whether rightfully or wrongfully convicted of a crime, spending time in prison leaves long-lasting consequences on that individual.<sup>61</sup> The greater injustice is that—on top of being falsely imprisoned—wrongfully convicted individuals are facing the same reentry problems as rightfully convicted felons.<sup>62</sup> In fact, individuals who were rightfully convicted of a crime oftentimes receive *more* re-entry assistance than wrongfully convicted individuals.<sup>63</sup> Therefore, flexible and comprehensive compensation options are crucial for an exoneree’s journey in rebuilding their life post-release.

Of the 3,494 total recorded exonerations nationwide, the average amount of years that exonerees lost behind bars were 9.1 years per case.<sup>64</sup> In nine years, an individual’s life can be quickly upended financially, emotionally, and physically in prison. In a survey of fifty-nine wrongfully incarcerated individuals, psychologists found that 80% of the respondents reported experiencing at least one physical or sexual assault while in prison.<sup>65</sup> Moreover, half of the respondents reported mental health symptoms associated with PTSD.<sup>66</sup> In addition to mental and physical tolls of spending time in prison, a wrongfully convicted individual also faces financial hurdles when trying to reintegrate into society.<sup>67</sup> For example, an innocent person may have exhausted whatever money they had before entering prison by funding their legal team throughout the appeals process.<sup>68</sup> Furthermore, upon release, exonerees are uncompetitive in the job market because of the years spent in prison that deprived

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<sup>61</sup> See *infra* text accompanying notes 64–71.

<sup>62</sup> See *infra* text accompanying notes 64–71.

<sup>63</sup> See, e.g., SCHECK ET AL., *supra* note 22, at 223–29 (describing exoneree David Shephard’s struggle being disqualified for post-conviction assistance programs aimed to help prisoners reenter society because he was not technically considered an ex-convict after being exonerated).

<sup>64</sup> Cabral, *supra* note 19.

<sup>65</sup> Jeff Kukucka, *The Psychological Impact of Wrongful Imprisonment*, PSYCH. TODAY (July 7, 2022), <https://www.psychologytoday.com/us/blog/reasonable-doubt/202207/the-psychological-impact-wrongful-imprisonment>.

<sup>66</sup> *Id.* The psychological drain of being wrongfully convicted and facing the challenges of reentering society upon release even pushes some exonerees to commit suicide. See, e.g., Nila Bala, *Not Guilty—But Not Free*, R ST. (June 19, 2018), <https://www.rstreet.org/commentary/not-guilty-but-not-free/>.

<sup>67</sup> See, e.g., Daniel S. Kahn, *Presumed Guilty Until Proven Innocent: The Burden of Proof in Wrongful Conviction Claims Under State Compensation Statutes*, 44 U. MICH. J.L. REFORM 123, 129 (2010).

<sup>68</sup> *Id.* (“Many spend tens, if not hundreds, of thousands of dollars funding their appeal, leaving them in substantial debt.”).

them of essential job experience and potentially of education, depending on the age when they were convicted.<sup>69</sup>

Lastly, wrongful convictions wreak havoc on an exoneree's family situation. Some wrongfully incarcerated individuals may lose connection with family members while in prison, missing out on births, deaths, and many other milestones.<sup>70</sup> Further, for those innocent individuals who are fortunate enough to maintain familial support while incarcerated, the financial burdens of appealing their case can be passed on to family members who are fighting for their loved one's innocence.<sup>71</sup> Compensation attempts to aid an exoneree in their reintegration back into society. Consequently, methods of obtaining compensation must be easily accessible and affordable to all exonerees.

#### *E. Available Options for Compensation*

Despite the injustice of a wrongful conviction and that person's battle to be released, an exoneree's struggles do not end upon their first taste of freedom. Rather, exonerees must then fight for fair and adequate compensation to remedy the injustice and begin building their lives. Typically, wrongfully convicted individuals have three options in pursuing compensation: civil litigation, private bills, and state compensation statutes.<sup>72</sup>

##### *1. Compensation Path: Civil Litigation*

Civil litigation commonly takes the form of civil rights lawsuits filed by the innocent individual against the state, city, or government officials involved with the wrongful conviction.<sup>73</sup> The individual may base the claim on malicious prosecution, fabrication of evidence, or any other applicable basis under the civil rights statute.<sup>74</sup> One major obstacle in civil litigation that often bars an innocent individual from succeeding is the "fault requirement," which requires the plaintiff to prove that the city or government official was at fault for causing the wrongful conviction.<sup>75</sup> Many wrongful convictions do not arise from government misconduct, such as those

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<sup>69</sup> See *id.*

<sup>70</sup> See, e.g., Jarrett M. Adams, *Workers and Innocent Families Pay the Price for Wrongful Convictions. I Know Because This Happened to Me*, MARKET WATCH (Oct. 20, 2021, 7:20 AM), <https://www.marketwatch.com/story/u-s-taxpayers-and-innocent-americans-are-paying-the-price-for-wrongful-convictions-i-know-because-this-happened-to-me-11634683488>.

<sup>71</sup> See, e.g., *id.*

<sup>72</sup> See Jason Paul Bailey, *Paying the Price for Injustice: The Case for Enacting a Wrongful Conviction Compensation Statute in Arkansas*, 2015 ARK. L. NOTES 1814, ¶¶ 22–37 (2015).

<sup>73</sup> See *id.* ¶ 24 ("Pursuant to [42 U.S.C.] Section 1983, a wrongfully convicted individual might pursue claims for false imprisonment, malicious prosecution, fabrication of evidence, suppression of exculpatory evidence, and coerced confessions.").

<sup>74</sup> *Id.*

<sup>75</sup> See *Compensation for Exonerees*, UNIV. MICH. L. SCH., <https://www.law.umich.edu/special/exoneration/Documents/Compensation%20Primer-%20Final.pdf> (last visited Mar. 30, 2024).

involving eyewitness misidentification or jailhouse informants, making the fault requirement impossible to satisfy for these exonerees.<sup>76</sup> Further, another significant obstacle in a civil rights lawsuit for wrongfully convicted individuals is overcoming the protection of qualified immunity afforded to the government.<sup>77</sup>

The upside to civil litigation is that the awards tend to be much higher than those received under the other compensation options.<sup>78</sup> For example, Laurese Glover, Eugene Johnson, and Derrick Wheatt, collectively known as the “East Cleveland Three,” each won \$5 million from a jury verdict in 2018 after suing the city of East Cleveland for their wrongful murder convictions.<sup>79</sup> Unfortunately, the city of East Cleveland has yet to pay any of that amount and likely will never be able to do so because of the city’s already-existing financial burdens.<sup>80</sup> Although civil litigation is the compensation option most likely to produce a high monetary award, exonerees face significant hurdles to actually obtain any money at all.

## 2. Compensation Path: Private Bills

The second option that an exoneree can pursue for compensation is private legislation.<sup>81</sup> This option takes the form of a private bill introduced in a state’s legislature that provides monetary support and, ideally, assistive services to a single individual for their wrongful conviction.<sup>82</sup> For example, in early 2022, the Virginia

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<sup>76</sup> Kahn, *supra* note 67, at 132.

<sup>77</sup> See Bailey, *supra* note 72, ¶ 25 (“In short, these doctrines establish for prosecutors [sic] absolute immunity from civil suit damages under Section 1983.”). Qualified immunity protects state actors from civil liability for misconduct unless they violated “clearly established law.” Jay R. Schweikert, *Qualified Immunity: A Legal, Practical, and Moral Failure*, CATO INST. 2 (Sept. 14, 2020), <https://www.cato.org/sites/cato.org/files/2020-09/pa-901-update.pdf>. In application, this standard requires plaintiffs to show “not just a clear legal rule but a prior case with functionally identical facts” to prove the civil rights violation. *Id.*

<sup>78</sup> Bailey, *supra* note 72, ¶ 31.

<sup>79</sup> Eric Heisig, *Three East Cleveland Men Each Awarded \$5 Million for Wrongful Murder Convictions*, CLEVELAND.COM (Nov. 16, 2018, 7:20 AM), <https://www.cleveland.com/court-justice/2018/11/three-east-cleveland-men-each-awarded-5-million-for-wrongful-murder-convictions.html>; see also Colin Kalmbacher, *‘Always Have Been Innocent’: Ohio Man Awarded \$45M After Investigators Suppressed Evidence That Led to False Conviction and 24-Year Imprisonment*, L. & CRIME (Nov. 23, 2022, 12:30 PM), <https://lawandcrime.com/lawsuit/always-have-been-innocent-ohio-man-awarded-45m-after-investigators-suppressed-evidence-that-led-to-false-conviction-and-24-year-imprisonment/> (discussing a \$45 million civil litigation verdict for Ohio exoneree Dean Gillispie, which is the largest verdict in Ohio history for police misconduct).

<sup>80</sup> See Heisig, *supra* note 79.

<sup>81</sup> See Bailey, *supra* note 72, ¶ 33.

<sup>82</sup> *Id.* Another, less common type of private bill does not directly grant a compensation sum to the individual but, rather, specifically waives state immunity in a tort suit by the individual. See *McClain v. State*, 172 Ohio St.3d 213, 2022-Ohio-4722, 2223 N.E.3d 361, ¶ 31 (DeWine, J., concurring). Essentially, this type of private bill grants the individual permission to sue the

General Assembly approved individual private bills for six exonerees pardoned by the Virginia governor.<sup>83</sup> Collectively, the General Assembly granted \$6.25 million to these six individuals for their wrongful convictions.<sup>84</sup> In addition to the difficulty in garnering enough votes for the bill to pass and become effective, this compensation option requires the wrongfully convicted individual to have sufficient political ties to get such a bill before the legislature in the first place.<sup>85</sup> Likely, exonerees will not have these essential political ties, making the success of this option dependent upon the volume of media attention that the exoneree's story garners in the public sentiment.<sup>86</sup> As a result, private bills are usually the least successful option for compensation.<sup>87</sup>

### 3. Compensation Path: State Compensation Statutes

The final option for compensation that a wrongfully convicted individual can pursue is state compensation statutes.<sup>88</sup> These statutes are enacted by the state's legislature, granting specified compensation to individuals who qualify under the statute's requirements.<sup>89</sup> Currently, thirty-eight states, the District of Columbia, and

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State for compensation without having to hurdle the qualified immunity obstacle. *See id.*; *see, e.g.*, An Act for the Relief of Morris Seely, 37 Ohio Laws 220 (1839).

<sup>83</sup> *See* Mike Fox, *Innocence Project at UVA Law Helps Obtain \$6.25 Million in Compensation for Clients, Proposes Reforms*, UNIV. VA. SCH. L. (May 3, 2022), <https://www.law.virginia.edu/news/202205/innocence-project-uva-law-helps-obtain-625-million-compensation-clients-proposes>.

<sup>84</sup> *See* An Act for the Relief of Lamar Barnes, H.B. 1255, 2022 Gen. Assemb., Reg. Sess. (Va. 2022) (granting \$1,076,115 in compensation for wrongful incarceration); An Act for the Relief of Joseph Carter, H.B. 383, 2022 Gen. Assemb., Reg. Sess. (Va. 2022) (granting \$1,483,342 in compensation for wrongful incarceration); An Act for the Relief of Bobbie James Morman, Jr., H.B. 385, 2022 Gen. Assemb., Reg. Sess. (Va. 2022) (granting \$1,247,973 in compensation for wrongful incarceration); An Act for the Relief of Emerson Eugene Stevens, H.B. 394, 2022 Gen. Assemb., Reg. Sess. (Va. 2022) (granting \$1,699,274 in compensation for wrongful incarceration); An Act for the Relief of Jervon Michael Tillman, H.B. 1358, 2022 Gen. Assemb., Reg. Sess. (Va. 2022) (granting \$408,205 in compensation for wrongful incarceration); An Act for the Relief of Eric Weakley, H.B. 1254, 2022 Gen. Assemb., Reg. Sess. (Va. 2022) (granting \$343,232 in compensation for wrongful incarceration).

<sup>85</sup> Bailey, *supra* note 72, ¶ 34 ("Lobbying the legislature to pass a compensation statute is particularly problematic for the vast majority of exonerees."). Indeed, the six exonerees granted compensation through private bills by the Virginia General Assembly had assistance from the Innocence Project at the University of Virginia Law School to effectively lobby the legislature for compensation. *See* Fox, *supra* note 83.

<sup>86</sup> Bailey, *supra* note 72, ¶ 34.

<sup>87</sup> Lonergan, *supra* note 9, at 408 ("This approach has a very low success rate, mostly benefiting those exonerees who are well-connected or whose cases generated a great deal of political attention.").

<sup>88</sup> Bailey, *supra* note 72, ¶ 35.

<sup>89</sup> Lonergan, *supra* note 9, at 409.

the federal government have enacted their own compensation statute.<sup>90</sup> Compensation statutes are considered to be the easiest option for pursuing compensation because of the low cost<sup>91</sup> and no fault aspect.<sup>92</sup> Unlike civil litigation, the claimant under a state compensation statute is not required to show any fault on the part of the State in contributing to the wrongful conviction.<sup>93</sup> Rather, compensation is based on the fact of actual innocence, regardless of the contributing factors.<sup>94</sup> Therefore, a typical compensation statute simply requires judicial recognition of the individual's actual innocence in order to qualify for compensation.<sup>95</sup> Each state compensation statute varies in terms of eligibility requirements, disqualifications, and amount recoverable.<sup>96</sup> Because state compensation statutes are the simplest and most cost-effective way for an exoneree to obtain compensation, these statutes should be flexible enough for every wrongfully convicted individual to access.

F. *Ohio's Compensation Statute: Basic Design and Component Parts*

Ohio took the step toward compensating innocent individuals in 1986<sup>97</sup> by enacting Ohio Revised Code Section 2743.48.<sup>98</sup> Ohio's compensation statute sets out a two-step process for claimants seeking recovery,<sup>99</sup> characterized by Ohio courts as a "special proceeding."<sup>100</sup> The first step requires the wrongfully convicted individual

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<sup>90</sup> Chloe Clifford, *Pennsylvania State Representative Introduces Bill for Conviction Compensation*, JURIS MAG. (May 7, 2023), <https://sites.law.duq.edu/juris/2023/05/07/pennsylvania-state-representative-introduces-bill-for-wrongful-conviction-compensation/>.

<sup>91</sup> See Bernhard, *supra* note 11.

<sup>92</sup> Lonergan, *supra* note 9.

<sup>93</sup> See *id.*

<sup>94</sup> See *id.* ("Statutes acknowledge the reality that some wrongful convictions result from honest mistakes . . .").

<sup>95</sup> *Id.*

<sup>96</sup> Faridi et al., *supra* note 10.

<sup>97</sup> Karen A. Davis, *Ohio's Wrongful Imprisonment Statute: Making It Easier to Compensate the Innocent, Exonerated, and Deserving*, 50 U. TOL. L. REV. 335, 336 (2019).

<sup>98</sup> OHIO REV. CODE ANN. § 2743.48 (West 2024). The Ohio General Assembly designed this statute to replace the former practice of compensating exonerees by "ad hoc moral claims [private] legislation." *Doss v. State*, 135 Ohio St.3d 211, 2012-Ohio-5678, 985 N.E.2d 1229, ¶ 10.

<sup>99</sup> *Doss*, 2012-Ohio-5678 at ¶10, 985 N.E.2d at 1232.

<sup>100</sup> See *McClain v. State*, 172 Ohio St.3d 213, 2022-Ohio-4722, 2223 N.E.3d 361, ¶ 29 (DeWine, J., concurring). A special proceeding is "one that is specially created by statute and that prior to 1853 was not denoted as an action at law or a suit in equity." *Id.* (citing *State ex rel. O'Malley v. Russo*, 156 Ohio St.3d 548, 2019-Ohio-1698, 130 N.E.3d 256, ¶ 21).



to obtain a declaration of actual innocence from a Court of Common Pleas.<sup>101</sup> Proof that a court vacated or reversed the conviction alone is insufficient; rather, the claimant must prove by a preponderance of the evidence that they are factually innocent.<sup>102</sup> The second step then requires the individual to file a claim for compensation in a Court of Claims, which evaluates the claim based on the eligibility requirements in the statute and authorizes or denies compensation.<sup>103</sup> Ohio's compensation statute entitles successful claimants to several types of compensation: \$40,330 per year of imprisonment, any lost wages, salary, or income associated with the wrongful conviction, and any court costs accrued in connection with the criminal proceedings.<sup>104</sup> Ohio's compensation statute tries to provide those who have been wrongfully convicted with some means to begin building their life again.<sup>105</sup>

Unfortunately, Ohio's compensation statute does not reach *all* wrongfully convicted individuals. The statute's language requires that "[t]he individual was found guilty of, but did not plead guilty to, the particular charge . . . ."<sup>106</sup> Cloaked behind seemingly innocent wording is a significant disqualification for those exonerees who pled guilty. The statute's language provides no exception to this hardline disqualification,<sup>107</sup> and the Ohio Supreme Court has affirmed the statute's plain language as including anyone who has pled guilty, no matter the underlying

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101 *Exoneree Compensation in Ohio*, INNOCENCE PROJECT, <https://innocenceproject.org/policies/exoneree-compensation-in-ohio/> (last visited Mar. 19, 2024); see also *McClain*, 2022-Ohio-4722 at ¶ 8, 223 N.E.3d at 384. To qualify under the first step of the process and obtain a declaration of innocence, the claimant must satisfy five elements set out in Ohio Revised Code Section 2743.48(A): 1) "The individual was charged with a violation of a section of the Revised Code . . . and the violation charged was an aggravated felony, felony, or misdemeanor."; 2) "The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense . . . ."; 3) "The individual was sentenced to an indefinite or definite term of imprisonment . . . ."; 4) "The individual's conviction was vacated, dismissed, or reversed on appeal and all of the following apply: a) No criminal proceeding is pending against the individual for any act associated with that conviction, b) The prosecuting attorney . . . within one year . . . has not sought any further appeal . . . , c) The prosecuting attorney . . . within one year . . . has not brought a criminal proceeding against the individual for any act associated with that conviction . . . ."; 5) "[A]n error in procedure was discovered that occurred prior to, during, or after sentencing, that involved a violation of the Brady Rule . . . or it was determined . . . that the offense of which the individual was found guilty . . . was not committed by the individual or that no offense was committed by any person." *Id.* at ¶ 9, 223 N.E.3d at 364–65 (citing OHIO REV. CODE ANN. § 2743.48(A)).

102 *Walden v. State*, 47 Ohio St.3d 47, 53, 547 N.E.2d 962, 968 (holding that, to recover compensation, a claimant must prove his actual innocence by a preponderance of the evidence); Lonergan, *supra* note 9, at 415.

103 *Exoneree Compensation in Ohio*, *supra* note 101.

104 OHIO REV. CODE ANN. § 2743.48(E)(2) (West 2024).

105 See generally *id.*

106 *Id.* § 2743.48(A)(2).

107 *Id.*

circumstances.<sup>108</sup> Thus, even though the individuals disqualified under this provision are determined factually innocent, like all other exonerees, Ohio denies compensation to them without even considering the factors that might have contributed to the false guilty plea.<sup>109</sup> The rationale for such a disqualification is that, because the nature of a guilty plea is the admission of fault for the criminal act, the individual is seen as causing or contributing to their own wrongful conviction and undeserving of compensation from the State.<sup>110</sup> This troublesome provision in Ohio's compensation statute isolates a subset of exonerees without even providing them an opportunity to show *why* they pled guilty to a crime they did not commit.

### III. ANALYSIS

With the prevalence of false guilty pleas in wrongful convictions,<sup>111</sup> the disqualification provision in Ohio's compensation statute has significant implications for these exonerees' ability to start building their lives after their wrongful convictions. The Ohio General Assembly's decision to include this troublesome provision demonstrates a confusing choice to aid some exonerees, but not others, for no justifiable reason. Rather than facilitating justice where justice originally failed, Ohio's compensation statute leaves exonerees who pled guilty with very few options to obtain compensation. Namely, these exonerees are barred from utilizing the simplest option for compensation and must pursue either civil litigation or private bills, which are the least convenient compensation options.<sup>112</sup> Thus, Ohio's compensation statute in its current form perpetuates injustice for those who deserve help the most.

Ohio's disqualification for pleading guilty is problematic for three practical reasons. First, the provision's total ban for those exonerees who falsely pled guilty provides no flexibility or exceptions for the exoneree to demonstrate that improper, external forces caused the false guilty plea. Rather, they are immediately denied relief, no matter the circumstances. Exonerees who pled guilty due to external pressures from prosecutors or public defenders still deserve compensation from the State, as there is no meaningful distinction from other exonerees. After all, these exonerees have already been determined factually innocent. Second, the disqualification's rationale that the exoneree caused their own wrongful conviction (and, therefore, does not deserve state compensation) contradicts the reality of false guilty pleas. Oftentimes,

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<sup>108</sup> *Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 19 ("Under the plain language of R.C. 2743.48(A)(2), a person who has pled guilty to an offense is not eligible to be declared a wrongfully imprisoned individual. We are to presume that all guilty pleas, even those that are later vacated, are included because the statute itself provides no exception . . .").

<sup>109</sup> See generally OHIO REV. CODE ANN. § 2743.48(E)(2) (West 2024).

<sup>110</sup> See Robert J. Norris, *Assessing Compensation Statutes for the Wrongly Convicted*, 23(3) CRIM. JUST. POL'Y REV. 352, 368 (2012) ("Among the most interesting and common disqualifications are those that restrict compensation for individuals who are seen to have contributed to their own convictions.").

<sup>111</sup> See discussion *supra* Part II.C.

<sup>112</sup> See discussion *supra* Part II.E.

an innocent individual will enter a guilty plea involuntarily for reasons of self-preservation or inducement.<sup>113</sup> Recall that Part I set forth several examples, including Marcellus Bradford, who pled guilty to avoid the police's threats of the death penalty despite his innocence.<sup>114</sup> The statute's rationale that the individual caused their own wrongful conviction oversimplifies this phenomenon. Third, the disqualification provision ignores the central role that plea bargains play in the criminal justice system.<sup>115</sup> Even though almost all criminal cases end in a plea bargain due to institutional pressures,<sup>116</sup> Ohio's current statute turns a blind eye to this glaring fact.

Compensating exonerees for the time they wrongfully spent incarcerated for a crime they did not commit is an important societal interest to remedy injustice. In pursuit of this interest, compensation statutes that disqualify a claimant for pleading guilty must recognize the reality of false guilty pleas and provide exonerees the flexibility to demonstrate *why* they decided to falsely plead guilty. Some states that have provisions dealing with guilty pleas have already added features to account for these considerations<sup>117</sup>—but some have not, including Ohio. Thus, Ohio's total disqualification for pleading guilty should no longer be part of the statute.

The Ohio General Assembly should re-evaluate the compensation statute and institute a solution that better accounts for the phenomenon of false guilty pleas. One such solution, set forth in this Note, addresses the issues with the current statute and proposes an exception to Ohio's disqualification for pleading guilty. This solution allows the claimant to present evidence to a reviewing judge which proves that external forces ultimately led to the wrongful conviction.

A. *The Disqualification's Total Ban Provides No Flexibility or Exceptions*

1. *Judicial Recognition of the Statute's Plain Language*

The language in Ohio's compensation statute requires that "[t]he individual was found guilty of, but did not plead guilty to, the particular charge . . . ."<sup>118</sup> The rest of the statute does not expand on nor explain this opening language.<sup>119</sup> Moreover, there are no explicit exceptions to this disqualification in the statute,<sup>120</sup> leading to the conclusion that no circumstances surrounding a false guilty plea are exempt. In fact, the Ohio Supreme Court has indeed adopted this conclusion; the statute's plain

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<sup>113</sup> See discussion *supra* Part II.C.

<sup>114</sup> See Possley, *supra* note 1.

<sup>115</sup> See Mary Patrice Brown & Stevan E. Bunnell, *Negotiating Justice: Prosecutorial Perspectives on Federal Plea Bargaining in the District of Columbia*, 43 AM. CRIM. L. REV. 1063, 1063–64 (2006).

<sup>116</sup> See NYCLA Justice Center Task Force, *supra* note 42, at 5.

<sup>117</sup> See *infra* Part III.A.3.

<sup>118</sup> OHIO REV. CODE ANN. § 2743.48(A)(2) (West 2024).

<sup>119</sup> See generally *id.*

<sup>120</sup> See generally *id.*

language precludes compensation for all forms of guilty pleas.<sup>121</sup> In *Dunbar v. State*, Lang Dunbar argued that Ohio's disqualification for those who pled guilty should not prohibit him from being considered a wrongfully convicted individual because his guilty plea to abduction was later vacated after an appeals court reversed his conviction.<sup>122</sup> The Ohio Supreme Court concluded that the statute's conclusive, plain language creates a presumption that all guilty pleas are included because "the statute itself provides no exception . . . ."<sup>123</sup> Lastly, the court declined to craft their own exception, which ultimately "belongs within the purview of the General Assembly."<sup>124</sup> This strict interpretation of the compensation statute has been followed as recently as 2021.<sup>125</sup> Therefore, the Ohio General Assembly has the only power to alter this troubling aspect of the compensation statute, but it has failed to do so.<sup>126</sup>

The total disqualification ignores the fact-intensive and shocking nature of wrongful conviction stories. No matter whether the guilty plea is vacated or voided on appeal, the statute bars compensation with no exception.<sup>127</sup> Most stories of wrongful convictions are complex and involve many different contributing factors,<sup>128</sup> which the total disqualification does not consider. Rather than examine the reasons *why* an exoneree might have pled guilty to a crime they did not commit, Ohio's statute assumes that the individual entered a freely voluntary plea bargain, which is often not the case.<sup>129</sup> Wrongful conviction stories require flexibility and an opportunity to explain the facts because of their shocking nature. In a system that promotes "innocent until proven guilty," those who were presumed guilty until proven innocent at least deserve an opportunity to explain their circumstances, which Ohio does not provide.

## 2. Other State Statutes Have Rejected Total Disqualifications for Pleading Guilty

While some state compensation statutes contain total disqualifications for pleading guilty, including Ohio, other states have addressed this issue and adjusted their compensation statutes to reflect fundamental fairness.<sup>130</sup> For example, Kansas and

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<sup>121</sup> *Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 19–20.

<sup>122</sup> *See id.* at ¶ 13, 992 N.E.2d at 1115.

<sup>123</sup> *Id.* at ¶ 19, 992 N.E.2d at 1116.

<sup>124</sup> *Id.*

<sup>125</sup> *See, e.g., Walker v. State*, 8th Dist. Cuyahoga No. 109450, 2021-Ohio-843 (applying a strict interpretation of Ohio Revised Code Section 2743.48(A)(2)).

<sup>126</sup> The most recent revision to O.R.C. § 2743.48 in 2019 did not address or alter the guilty plea disqualification. H.B. 411, 132d Gen. Assemb., Reg. Sess. (Ohio 2019).

<sup>127</sup> *See Dunbar*, 2013-Ohio-2163 at ¶ 20, 992 N.E.2d at 1117.

<sup>128</sup> *See generally Exonerations by Contributing Factors, supra* note 32.

<sup>129</sup> *See supra* text accompanying notes 41–51.

<sup>130</sup> *See Compensation Statutes: A National Overview*, NAT'L REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Documents/Compensation%20Statutes%20A>

Rhode Island have both adopted a disqualification for the “claimant’s own conduct causing or bringing about the conviction” but recognize a broad exception that “neither a confession nor admission later found to be false or a guilty plea shall constitute . . . causing or bringing about the conviction.”<sup>131</sup> This language attempts to cover false guilty pleas caused by any external circumstances.

Nebraska takes a similar but more restricted approach: the statute creates a narrow exception that “a guilty plea, a confession, or an admission, coerced by law enforcement and later found to be false does not constitute bringing about claimant’s own conviction . . . .”<sup>132</sup> Although not a total ban for pleading guilty, Nebraska only exempts those false guilty pleas coerced by law enforcement.<sup>133</sup> This exception is a notable improvement from a total ban but still isolates some exonerees who falsely pled guilty for reasons beyond law enforcement.

Both California and Idaho take an opposite approach by disqualifying one specific circumstance of a guilty plea and allowing recovery under all other circumstances, in contrast to Nebraska that only *excuses* one set of circumstances.<sup>134</sup> Under California and Idaho’s compensation statutes, a claimant cannot prevail “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 . . . .”<sup>135</sup> Besides this specific set of circumstances, a claimant could still prevail if they pled guilty. This approach allows the State to determine which set of circumstances deem an individual undeserving of compensation and allows all others to be compensated.

Yet another example is Massachusetts’ compensation statute which disqualifies those who have pled guilty but creates a general exception if “such plea was withdrawn, vacated, or nullified by operation of law.”<sup>136</sup> The above examples demonstrate that state legislatures have begun to recognize the problem that total disqualifications for pleading guilty pose for exonerees. The Ohio General Assembly should follow the lead of other states that have attempted to find a fair balance in constructing a provision dealing with false guilty pleas.

### 3. Ohio’s Bid for Loosening the Total Disqualification

Despite the fact that the Ohio Supreme Court has settled the application of the plain language in the statute for pleading guilty as of 2013,<sup>137</sup> the Fourth District Court

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%20National%20Overview.pdf (June 2, 2022) (detailing the specific characteristics of every state compensation statute enacted to date).

<sup>131</sup> KAN. STAT. ANN. § 60-5004 (West 2024); R. I. GEN. LAWS ANN. § 12-33-4 (West 2024).

<sup>132</sup> NEB. REV. STAT. ANN. § 29-4603 (West 2024).

<sup>133</sup> *Id.*

<sup>134</sup> *Id.*; *see also* IDAHO CODE ANN. § 6-3502 (West 2024); CAL. PENAL CODE § 4903 (West 2024).

<sup>135</sup> IDAHO CODE ANN. § 6-3502 (West 2024); CAL. PENAL CODE § 4903 (West 2024).

<sup>136</sup> MASS. GEN. LAWS. ANN. ch. 258D, § 1 (West 2024).

<sup>137</sup> *See Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 19–20.

of Appeals of Ohio has previously called for a different interpretation.<sup>138</sup> In 2006, the court argued that the statute's language should be read liberally, not narrowly.<sup>139</sup> Dealing with a wrongfully convicted claimant who pled guilty after his counsel failed to inform him of exculpatory gunshot residue that identified another suspect,<sup>140</sup> the court of appeals allowed his claim for compensation to proceed despite his guilty plea.<sup>141</sup> The narrow interpretation of the statute's ambiguous language concerning a guilty plea "would thwart the remedial goals of the statute."<sup>142</sup> In contrast, adopting a more liberal reading of the ambiguous language "address[es] the particularly egregious wrong of imprisoning an individual not only wrongfully but also unconstitutionally."<sup>143</sup>

Because the Ohio Supreme Court adopted a narrow interpretation in *Dunbar v. State*,<sup>144</sup> lower courts in Ohio must abide by the high court's decision as binding precedent. Yet, the rationale for the liberal interpretation is sound and should inform an amendment to the compensation statute. In fact, Ohio law directs courts to construe remedial statutes liberally "in order to promote their object and assist the parties in obtaining justice."<sup>145</sup> Under the guidance of this law, the Ohio Supreme Court itself has previously interpreted remedial statutes liberally, one example being an Ohio law governing qualifications for holding an elected office position.<sup>146</sup>

The Ohio Supreme Court's decision to interpret some remedial laws liberally, but not the wrongful conviction compensation statute, is unclear and contradictory. The purpose of compensation is to remedy an injustice and help exonerees start building a life, but the current statute and adopted interpretation unjustly disregard an isolated group of exonerees.

#### B. *The Disqualification's Rationale Contradicts the Reality of False Guilty Pleas*

The rationale that an exoneree is at fault for bringing about their own wrongful conviction by pleading guilty is at odds with the reality of false guilty pleas. Oftentimes, as explained above, an individual falsely pleads guilty due to external

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<sup>138</sup> See *State v. Moore*, 165 Ohio App.3d 538, 2006-Ohio-114, 847 N.E.2d 452, ¶ 23 (4th Dist.).

<sup>139</sup> *Id.* at ¶ 20, 847 N.E.2d at 456 (holding that the wrongfully convicted claimant could recover compensation under Ohio's statute despite originally pleading guilty to murder because "remedial laws . . . shall be liberally construed in order to promote their object and assist the parties in obtaining justice").

<sup>140</sup> *Id.* at ¶ 2, 847 N.E.2d at 454.

<sup>141</sup> *Id.* at ¶ 24, 847 N.E.2d at 457.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

<sup>144</sup> *Dunbar v. State*, 136 Ohio St.3d 181, 2013-Ohio-2163, 992 N.E.2d 1111, ¶ 19–20.

<sup>145</sup> OHIO REV. CODE ANN. § 1.11 (West 2024).

<sup>146</sup> *State ex rel. Gains v. Rossi*, 86 Ohio St.3d 620, 621, 716 N.E.2d 204.

factors, such as malicious prosecution or ineffective defense counsel, so the individual is not truly at fault in any meaningful sense.<sup>147</sup> Grouping together all exonerees who pled guilty as being at fault for their wrongful conviction ignores the underlying reasons why an innocent individual decides to enter a guilty plea in the first place.<sup>148</sup> Accordingly, compensation statutes should draw a clear distinction between those exonerees who involuntarily pled guilty—because they had no other choice—and those who truly did so voluntarily.

The phenomenon of false guilty pleas has gained momentum in the innocence movement nationwide, with organizations advocating not only against wrongful convictions but also raising awareness of false guilty pleas.<sup>149</sup> One such movement, named “#GuiltyPleaProblem,” identifies yet another issue with false guilty pleas beyond the original conviction.<sup>150</sup> The case of Raymond Tempest illustrates how false guilty pleas do not “occur just at the front end of the system.”<sup>151</sup> After twenty-four years in prison, a Rhode Island judge reversed Tempest’s conviction of second-degree murder based on the police’s failure to turn over exculpatory evidence demonstrating his innocence.<sup>152</sup> Prosecutors indicated their intention to retry Tempest for the same crime, despite the lack of any credible evidence.<sup>153</sup> Rather than risk another trial after spending twenty-four grueling years in prison and gambling with the freedom he worked so hard to gain back, Tempest agreed to enter an Alford plea with the prosecution.<sup>154</sup> In exchange, the prosecutors agreed not to retry him.<sup>155</sup>

Although this plea agreement ensured Tempest’s freedom, his criminal record ends with a conviction rather than a clean record.<sup>156</sup> The prosecutors’ threats to retry Tempest essentially coerced him into doing anything to move forward with his life—

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<sup>147</sup> See discussion *supra* Part II.C.

<sup>148</sup> See *supra* Part II.C.

<sup>149</sup> See generally *Why Do Innocent People Plead Guilty to Crimes They Didn’t Commit?*, #GUILTYPLEAPROBLEM, <https://guiltypleaproblem.org/#about> (last visited Mar. 31, 2024).

<sup>150</sup> See *id.* (illustrating how a wrongfully convicted person may enter a plea bargain to avoid returning to prison when a prosecutor intends to retry their case after a judge has reversed the original conviction).

<sup>151</sup> *Id.*

<sup>152</sup> *Guilty Plea Series: The Case of Raymond Tempest*, INNOCENCE PROJECT (Oct. 17, 2017), <https://innocenceproject.org/guilty-plea-series-the-case-of-raymond-tempest/>.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.* An Alford plea is “a guilty plea entered by the criminal defendant who does not admit guilt but nevertheless pleads guilty as part of a plea bargain.” *Alford plea*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/Alford%20plea> (last visited Mar. 31, 2024). Essentially, a defendant who enters an Alford plea takes a plea bargain but maintains their innocence.

<sup>155</sup> *Guilty Plea Series: The Case of Raymond Tempest*, *supra* note 152.

<sup>156</sup> *Id.*

even entering a plea bargain despite his innocence.<sup>157</sup> Tempest's Alford plea satisfied the prosecutors by ensuring that the crime did not go unsolved and allowed Tempest to leave prison. Yet, this situation is not a win-win.

In Ohio, Tempest would be ineligible for compensation because of the plea bargain.<sup>158</sup> Although he did not originally plead guilty to the crime, the case ultimately resolved through a plea bargain, despite the prosecutor's misconduct during the proceedings and threat of retrial.<sup>159</sup> Tempest's case demonstrates how false guilty pleas exist not only in the beginning stages, but also the ending stages, of a criminal proceeding. The Ohio compensation statute's rationale, that individuals who pled guilty caused their own wrongful conviction, is over-simplistic. Not only do exonerees plead guilty because of institutional pressures to avoid trial, but exonerees who have already paid their time may enter a plea bargain simply to ensure that they do not have to return to prison. Individuals who involuntarily plead guilty at any stage deserve compensation, which Ohio's current compensation statute refuses to recognize.

C. *The Disqualification Ignores the Prevalence of Plea Bargains in the Criminal Justice System*

Because plea bargaining is the main mechanism by which criminal cases are resolved,<sup>160</sup> the Ohio wrongful conviction compensation statute should not turn a blind eye to this facet of the system. Rather, the compensation statute should confront the reality of the criminal justice system by explicitly addressing the possibility of falsely pleading guilty. From year to year, scholars estimate that approximately 90–95% of cases in both federal and state courts are resolved through a plea bargain.<sup>161</sup> In 2021, 98.3% of the criminal cases in federal court were resolved through plea bargaining.<sup>162</sup> Plea bargains are used as the main method for resolving cases because of the cost and time-saving efficiency that they offer prosecutors.<sup>163</sup> Rather than “wasting” judicial resources by sending every case to trial, plea bargains keep the criminal justice system from collapsing under pressures of demand.<sup>164</sup>

Undoubtedly, the plea bargaining system is important and would likely hinder the criminal justice system if removed completely.<sup>165</sup> But, this system is built on

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<sup>157</sup> *See id.*

<sup>158</sup> *See supra* Part III.A.1.

<sup>159</sup> *See Guilty Plea Series: The Case of Raymond Tempest, supra* note 152.

<sup>160</sup> *See supra* Part II.C.

<sup>161</sup> LINDSEY DEVERS, PLEA AND CHARGE BARGAINING: RESEARCH SUMMARY 1 (2011).

<sup>162</sup> SCHMITT & JERALDS, *supra* note 58.

<sup>163</sup> *See* RAM SUBRAMANIAN ET AL., IN THE SHADOWS: A REVIEW OF THE RESEARCH ON PLEA BARGAINING iii (2020).

<sup>164</sup> *Id.* (“Scholars in recent years have suggested that the criminal legal system could be brought to a halt by a mass refusal to plead guilty.”).

<sup>165</sup> *See id.* Even back in 1970, U.S. Supreme Court Chief Justice Warren Burger estimated that “a 10 percent reduction in guilty pleas would require doubling the amount of judicial capacity in the system.” *Id.* For an opposing viewpoint, see DEVERS, *supra* note 161. Opponents



prosecutorial discretion, giving prosecutors extreme leverage to coerce defendants into accepting a guilty plea, regardless of whether they want to go to trial or not and regardless of whether they are guilty or innocent.<sup>166</sup> This fact of the criminal justice system is so well-established that former Supreme Court Justice Anthony Kennedy once wrote in a majority opinion that “the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant.”<sup>167</sup> In that case, the Court decided that criminal defendants have a constitutional right to effective counsel during plea negotiations under the Sixth Amendment.<sup>168</sup> Therefore, even the United States Supreme Court recognizes the possibility of extreme error in plea bargaining, not only from prosecutorial misconduct but also ineffective assistance of counsel.<sup>169</sup> Given the fact that plea bargains are the norm—not the exception—Ohio’s decision to discard claimants who pled guilty is a refusal to confront the reality of the criminal justice system.<sup>170</sup> The compensation statute should explicitly address and provide for the possibility of involuntary false guilty pleas.

IV. PROPOSED AMENDMENT TO THE OHIO STATUTE: A MIDDLE-GROUND APPROACH PROVIDING CLAIMANTS AN OPPORTUNITY TO PROVE WHY THEY FALSELY PLED GUILTY

A. *Implementing an Exception for Involuntary False Guilty Pleas Caused by Forces Beyond the Claimant’s Control*

The proposed solution set forth in this Note takes the total disqualification for pleading guilty and suggests an exception that focuses on the voluntariness of the false guilty plea, rather than simply rejecting each claimant without looking at the underlying circumstances. First, the reviewing judge in the Court of Common Pleas where the claim was filed would flag those cases that involved a guilty plea—rather than simply reject the claim. Next, the claimant would be given an opportunity to present the judge with evidence that they did not enter the guilty plea voluntarily. The claimant would need to present evidence that an underlying force or pressure essentially left them with no meaningful choice but to falsely accept the guilty plea.

This evidence could include proof that the prosecutor or police used coercive tactics to pressure the claimant. For example, Anthony Gray’s case involved such

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of the plea bargaining system argue that a reduction in plea bargains, or a total abolition of the system, would reduce the number of people going through the criminal justice system because prosecutorial budgets would only allow prosecution of those cases with strong enough evidence to convict, therefore reducing the number of innocent people pursued on weak evidence. *Id.*

<sup>166</sup> Clark Neily, *Prisons Are Packed Because Prosecutors Are Coercing Plea Deals. And, Yes, It’s Totally Legal*, CATO INST. (Aug. 8, 2019), <https://www.cato.org/commentary/prisons-are-packed-because-prosecutors-are-coercing-plea-deals-yes-its-totally-legal>.

<sup>167</sup> *Missouri v. Frye*, 566 U.S. 134, 144 (2012).

<sup>168</sup> *See id.*; *see also* Adam Liptak, *Justices’ Ruling Expands Rights of Accused in Plea Bargains*, N.Y. TIMES (March 21, 2012), <https://www.nytimes.com/2012/03/22/us/supreme-court-says-defendants-have-right-to-good-lawyers.html>.

<sup>169</sup> *See Frye*, 566 U.S. at 144.

<sup>170</sup> *See DEVERS*, *supra* note 161, at 3.

facts, where police detained and interrogated this mentally disabled individual, withholding food and sleep, until he would plead guilty.<sup>171</sup> Sufficient evidence could also include proof that the defense attorney did not adequately inform their client of the consequences of pleading guilty, constituting ineffective assistance of counsel. After hearing this evidence, the reviewing judge would determine whether the claimant has proven by a preponderance of the evidence that they involuntarily pled guilty. Those claimants whom the judge determines to have entered an involuntary or unknowingly false guilty plea would still be eligible for compensation, whereas those individuals whom the judge determines to have entered the plea by their own volition with no outside pressures would still be disqualified from compensation under Ohio's statute. No other state has implemented this exact process, making this proposal a novel approach to state compensation statutes.

In response to the potential counterargument that a judge is a biased party in reviewing the evidence, another option would be for Ohio to establish a review system resembling juries. The jury would essentially act in the judge's role of hearing and weighing the evidence from the claimant who pled guilty. The important difference is that this added layer provides extra protection against institutional bias, which is a root of wrongful conviction in the first place. Ideally, the jury would be composed of individuals with no prior experience with the case to approach each one with a neutral mindset to fairly evaluate the evidence. The members of the jury would make a final determination as to whether the individual entered the guilty plea involuntary or unknowingly, given the facts presented.<sup>172</sup> Because the members of the jury are completely disassociated from the case and are not judicial officials, such as a judge or prosecutor, the claimant would have a fairer chance of presenting their case to neutral-minded listeners.

*B. Rationale: A Modest, Middle-Ground Approach*

1. This Proposed Solution Introduces Flexibility Into the Total Disqualification

Total disqualification provisions for exonerees who pled guilty do not consider the underlying circumstances of the wrongful conviction. Rather, claimants are barred by the simple fact that they pled guilty. The proposed exception outlined above introduces an aspect of flexibility into the statute by giving claimants the opportunity to present evidence of the underlying circumstances surrounding the guilty plea. Often, this type of evidence that the claimant can offer, such as prosecutorial misconduct, is uncovered by the claimant's lawyers who helped them get released from prison in the first place. So, this burden of proof is not too harsh on an individual who already has little resources to work with in the first place. By incorporating greater flexibility, the statute would recognize the reality that false guilty pleas often result from forces

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<sup>171</sup> See Possley, *supra* note 2.

<sup>172</sup> An additional option, instead of a jury system, is to simply ensure that the reviewing judge is not the same judge who handled the criminal case in the first place. Although this option does not provide as much insulation from potential institutional bias as the jury system would, this option attempts to preserve judicial resources by avoiding creation of an entirely new step in the process.

beyond the claimant's control. The shocking facts involved in a wrongful conviction case warrant subjective, human understanding rather than objective, hardline rules.

In addition, this proposed solution acknowledges the presence of involuntary false guilty pleas and the role that plea bargains play in the criminal justice system. Ohio's current statute does not recognize the fact that many false guilty pleas result from external pressures<sup>173</sup>—not the individual's own voluntary, willing choice. The current statute also ignores the prevalence of plea bargains in the criminal justice system.<sup>174</sup> The approach proposed above identifies these shortcomings in the current statute by affording the claimant the flexibility to show that they did not, in fact, cause their own wrongful conviction. If the claimant can show that the facts of their case do not fit with the statute's rationale (i.e., causing their own wrongful conviction), that individual should still be eligible for statutory compensation. Moreover, this added flexibility recognizes the fact that plea bargains are the norm in the American criminal justice system—not the exception—and must be confronted.

## 2. This Proposed Solution Still Retains Some Control in the State's Hands

This proposed middle-ground solution attempts to find a compromise, rather than eliminating the disqualification altogether in the current statute. As a practical matter, such a drastic change might face pushback from the Ohio General Assembly, who instituted the total ban in the first place. Proposing an elimination of the disqualification altogether is an ideal, yet impractical, approach. The proposed solution attempts to offer a compromise with the current statute. Moreover, because the State of Ohio enacted the statute and provides the compensation, the government should retain some control over exactly who qualifies. A total ban gives the government too much control over who is eligible for compensation, so this proposed solution puts some of that control in the hands of the claimant. In this respect, the reviewing judge can look closely at the underlying circumstances and determine who truly deserves compensation by involuntarily pleading guilty.

On the other hand, this approach still allows the State to deny compensation to individuals who entered a false guilty plea knowingly and voluntarily. Individuals falling into this category may have falsely pled guilty with improper, ulterior motives to deceive the State. As previously discussed, California and Idaho's approach reflects this type of wrongful conviction.<sup>175</sup> Those statutes bar a claimant from compensation if the State proves "that a claimant pled guilty with the specific intent to protect another party from prosecution . . . ."<sup>176</sup> Undoubtedly, exonerees who falsely pled guilty cannot be categorized into one group. Some involuntarily plead guilty because of misconduct or improper forces, while others knowingly plead guilty for ulterior motives,<sup>177</sup> as recognized by California and Idaho's statutes. Therefore, the middle-

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<sup>173</sup> See discussion *supra* Part II.C.

<sup>174</sup> See *Guilty Pleas and False Confessions*, *supra* note 45.

<sup>175</sup> See discussion *supra* Part III.A.2.

<sup>176</sup> See *supra* note 135 and accompanying text.

<sup>177</sup> See Lonergan, *supra* note 9, at 417–18 ("False confessions and guilty pleas should bar recovery only if . . . the claimant intended . . . to impede the investigation, prevent another individual from being charged with the crime, or otherwise manipulate the police.").

ground solution advanced here addresses this issue and divides control between the claimant and the State, allowing the reviewing judge to weigh the evidence and achieve justice for both parties.

## V. CONCLUSION

Wrongful convictions are a clear mark of the shortcomings embedded in the American criminal justice system. Wrongful incarceration works a grave injustice on an innocent individual. One small step toward redemption is compensating their wrongfully wasted time in prison. This includes defendants who entered a plea of false guilt. As such, compensation options should be easily accessible and broadly applicable to ensure that some exonerees are not forgotten simply because of technicalities. Ohio's current compensation statute falls short for those exonerees who pled guilty by instituting a total ban against compensation. This current statutory formulation fails to provide essential flexibility and discretion to determine whether the exoneree truly entered the guilty plea knowingly and voluntarily. Further, the total disqualification disregards the reliable proof that false guilty pleas exist and often result from improper third-party conduct, outside of the individual's control. Lastly, as plea bargaining is the main mechanism by which most criminal cases are resolved today, Ohio's statute refuses to confront the reality of the criminal justice system by discarding all plea bargains under all circumstances.

The Ohio General Assembly should revisit the compensation statute to address this shortcoming for those who pled guilty. One solution is to add a middle-ground approach into the statute that allows a claimant to demonstrate to a trier of fact *why* they pled guilty. The trier of fact would weigh the evidence presented and determine whether the claimant pled guilty due to underlying, improper pressures. Those claimants who are deemed to have pled guilty involuntarily should still be eligible for compensation under the statute. This proposed solution takes a practical, middle-ground approach to remedying the current all-out ban, rather than simply eliminating the disqualification altogether. Amending the current statute to remedy the disqualification for pleading guilty would be one step in the right direction to restore justice for the innocent in Ohio.

