

Montana Exoneree Compensation Process

1. Determination of eligibility. Person files claim in district court. District court assesses whether person qualifies as “wrongfully convicted person” who is eligible for compensation based on whether person proves by a preponderance of the evidence.
 - a. He did not commit the felony and was not an accessory or accomplice to the acts that were the basis of the conviction.
 - b. A court reversed or vacated the conviction, and the prosecutor either dismissed the charges or retried the person and he was acquitted, or person was pardoned on grounds of innocence.
 - c. The basis for reversing or vacating the conviction was not legal error & was not inconsistent with innocence.

****NOTES**

- **Preponderance of evidence is used because it is the standard for prevailing on federal civil rights lawsuits related to wrongful convictions. In a federal civil rights lawsuit, the person must prove by “preponderance of evidence” the government entity committed intentional misconduct in violation of his/her civil rights that contributed to the wrongful conviction.**
 - **When a person’s conviction is vacated or overturned there is no legal declaration of “exoneration” or “innocence.” There are several avenues to overturn a wrongful conviction in Montana—the post-conviction DNA testing law, post-conviction relief law if there is new non-DNA evidence, federal habeas law, etc. The court would only declare that the person’s conviction is overturned or vacated based on the relevant statute. Because there are so many ways to overturn a wrongful conviction, and there is no formal court “exoneration” or “innocence” ruling, the compensation law sets up a process for the person to apply for a declaration that he or she is a “wrongfully convicted person”—based on presenting affirmative proof of innocence.**
2. Awards/Damages: If District Court determines claimant is “wrongfully convicted person” it issues a certificate of innocence and orders.
 - a. Monetary award:
 - i. For 1-10 yrs of imprisonment \$50k per year.
 - ii. For 11-20 yrs of imprisonment \$75k per year.
 - iii. For 21 or more yrs or imprisonment \$100k per year.
 - iv. \$25k per year on parole/sex offender registry.
 - b. Sealing records related to wrongful conviction.
 - c. Services
 - i. \$5k immediate payment.
 - ii. Payment of costs of state health insurance, reentry, counseling, higher education.
 - d. Discretionary:
 - i. Reasonable attorneys’ fees
 - ii. Reimbursement for restitution payments and medical expenses during imprisonment.
 3. Board of Examiners Pays Claim. The court should forward the certificate of innocence, along with the amount of monetary damages or other relief to the Board of Examiners, which shall pay the individual.

