



**Response to the Call for input:
OHCHR comprehensive study on human rights and the social reintegration of persons
released from detention and persons subjected to non-custodial measures, pursuant to
Human Rights Council resolution 57/9**

Submitted by The Advocates for Human Rights
a non-governmental organization in special consultative status with ECOSOC since 1996
Witness to Innocence
and
The World Coalition Against the Death Penalty

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The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law since its founding in 1983. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States. In 1991, The Advocates adopted a formal commitment to oppose the death penalty worldwide and organized a death penalty project to provide pro bono assistance on post-conviction appeals, as well as education and advocacy to end capital punishment. The Advocates currently holds a seat on the Steering Committee of the World Coalition against the Death Penalty

Witness to Innocence (WTI) is the only national organization in the United States composed of and led by exonerated death row survivors and their family members. The mission of WTI is to abolish the death penalty by empowering exonerated death row survivors and their loved ones to become effective leaders in the abolition movement. WTI actively challenges political leaders and the public to grapple with the reality of a fatally flawed criminal justice system that sends innocent people to death row. WTI also supports death row survivors and their loved ones as they confront the challenges of life after exoneration, providing social work and peer support services. WTI was founded 2003 by Sister Helen Prejean, internationally renowned anti-death penalty activist, author, and Nobel Prize nominee, and Ray Krone, the 100th person exonerated from death row in the United States. WTI began its program operation under the administrative and fiscal sponsorship of Sister Helen Prejean's Moratorium Campaign Education Fund. Two years later WTI moved to Philadelphia, Pennsylvania and launched their first visible national organizing campaign in September 2005. WTI has since become one of the most powerful and unique anti-death penalty organizations in the United States. WTI exoneree members have played an essential role in the abolition movement by sharing their stories with millions of people around the country and around the world. WTI has educated tens of thousands of Americans through speaking events at colleges, universities, professional associations, academic conferences, law schools, faith communities, K-

12 schools, and civic groups. WTI has testified before state legislatures, met with government officials and world leaders, and reached tens of millions of people worldwide through the media. WTI has shifted public opinion on the death penalty, playing an integral role in successful repeal campaigns in states across the country.

The World Coalition Against the Death Penalty (WCADP), an alliance of more than 150 NGOs, bar associations, local authorities, and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

This report incorporates first-hand information from death row exonerees (with their permission) about the human rights violations they have experienced in the United States.

Overview

1. In 2024, authorities in the United States exonerated three men from death row, bringing the total number of death row exonerations to 200 since 1973.¹ Juries and courts had wrongfully convicted and sentenced to death Daniel Gwynn, Kerry Max Cook, and Larry Roberts, and they spent 29, 46, and 41 years incarcerated, respectively, before their exonerations.²
2. Despite a collective 116 years of wrongful incarceration and time on death row, these three people, like many other death row exonerees, may never receive any state or federal compensation due to restrictive or non-existent compensation laws.³ And despite their innocence, death row exonerees like these three individuals have criminal records related to their false conviction that may never be cleared.⁴ At their release, the majority of death row exonerees have no money, housing, transportation, healthcare, or insurance.⁵
3. At present, legislation, programs by public-private partnerships, and other initiatives to bring death row exonerees justice—including compensation, record relief, and support toward rebuilding their lives—are limited in scope, capacity, and efficacy.
4. The policy and legislative reform recommendations below would provide all death row exonerees with access to basic human rights and justice after release.

Compensation for Death Row Exonerees

5. **U.S. Federal Legislation:** While U.S. federal statutes 28 U.S.C. §§ 1495⁶ and 2513⁷ provide mechanisms for federal death row exonerees to seek compensation,⁸ eligibility for compensation is far from guaranteed. To be eligible for any compensation, an exoneree must show proof of a “not guilty” finding of the presiding court or proof that he or she “did not commit any of the acts charged.”⁹ Notably, the statute does not typically cover

¹ *Three Exonerations Bring Total to 200*, Death Penalty Information Center, <https://deathpenaltyinfo.org/research/analysis/reports/year-end-reports/the-death-penalty-in-2024/innocence>.

² *Innocence Database*, Death Penalty Information Center, <https://deathpenaltyinfo.org/facts-and-research/data/innocence?year=2024>.

³ *Justice After Exoneration*, Witness To Innocence, <https://www.witnesstoinnocence.org/justice-after-exoneration>.

⁴ *Id.*

⁵ *Id.*

⁶ 28 U.S. Code § 1495, <https://www.law.cornell.edu/uscode/text/28/1495>.

⁷ 28 U.S. Code § 2513, <https://www.law.cornell.edu/uscode/text/28/2513>.

⁸ *Id.*

⁹ 28 U.S. Code § 1495, <https://www.law.cornell.edu/uscode/text/28/1495>.

ineffective assistance of counsel, *Brady* violations,¹⁰ prosecutorial or police misconduct, or the prosecution’s reliance on unreliable forensic evidence.¹¹

6. Thus, despite federal death row exonerees’ statutory right to seek compensation, the likelihood of success in receiving compensation is far from certain. As of 2021, only two of the 118 people listed in the National Registry of Exonerations had been awarded any compensation under the federal statute.¹² Moreover, exonerees may not know federal compensation is available to them and/or may lack the financial resources to bring a lawsuit, which is the only mechanism to seek such compensation.
7. U.S. State-level Legislation: While 39 U.S. states and Washington D.C. have enacted compensation statutes for death row exonerees,¹³ these statutes often require specific evidence for eligibility and thereby exclude, or otherwise limit access to, compensation for death row exonerees. As a result, these statutes provide little or no assistance to the vast majority of exonerees.
 - a) For example, Colorado Code § 13-65-103 permits exonerees to file a petition to receive monetary compensation.¹⁴ The statute also allows exonerees to receive tuition waivers, compensation for child support payments owed by the exonerees, and reasonable attorney fees for bringing a claim for compensation.¹⁵
 - b) To be eligible for compensation under the Colorado statute, however, an exoneree must obtain a Colorado district court’s determination that the exoneree is “actually innocent.”¹⁶ “Actual innocence” as defined by Colorado Code requires “clear and convincing evidence” of innocence and a court may not find “actual innocence” merely because the “evidence [is] legally insufficient” to support a criminal conviction.¹⁷

¹⁰ According to a U.S. Department of Justice case summary, “The *Brady* [v. Maryland] decision [in 1963] ruled that the defense has the right to examine all evidence that may be of an exculpatory nature. The prosecution will not only release evidence that the defendant might be guilty of a crime but also release all evidence that might show that the defendant is innocent as well.” *Police Officer Truthfulness and the Brady Decision*, Oct. 2003, U.S. Department of Justice, NCJRS Virtual Library, <https://www.ojp.gov/ncjrs/virtual-library/abstracts/police-officer-truthfulness-and-brady-decision>. In *Brady*, the Supreme Court held that suppression of such evidence violates the defendant’s right to due process when that evidence is material to the defendant’s guilt or to the defendant’s punishment. *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

¹¹ Jeffrey S. Gutman, *Are Federal Exonerees Paid?: Lessons for the Drafting and Interpretation of Wrongful Conviction Statutes*, 69 CLEV. ST. L. REV. 219, 244 (March 2021).

¹² *Id.* at 219.

¹³ Brandon L. Garret et al., *Compensating Exonerees in the United States*, Duke Law, 3 (December, 2024), <https://wcsj.law.duke.edu/wp-content/uploads/2024/12/ExonereeCompensationFactSheet.pdf>.

¹⁴ 2024 Colorado Revised Statutes Section 13-65-103(3), <https://law.justia.com/codes/colorado/title-13/judgments-and-executions/article-65/section-13-65-103/#:~:text=Section%2013%2D65%2D103%20%2D,damages%20awarded%20in%20civil%20actions.>

¹⁵ 2024 Colorado Revised Statutes Section 13-65-103(2)(e)(II), (IV).

¹⁶ *Id.*

¹⁷ 2024 Colorado Revised Statutes Section 13-65-101 – Definitions, [Colorado Revised Statutes Section 13-65-101 \(2024\) - Definitions :: 2024 Colorado Revised Statutes :: U.S. Codes and Statutes :: U.S. Law :: Justia](#) (“(I) His or her conviction was the result of a miscarriage of justice; (II) He or she presented reliable evidence that he or she was

- c) Similarly, a Connecticut exoneree may file suit for monetary compensation under CT Gen Stat § 54-102uu.¹⁸ The statute allows exonerees to receive payment for expenses of employment training and counseling, and tuition and fees at any constituent unit of the state system of higher education.¹⁹
 - d) As in Colorado, however, to receive compensation under the Connecticut statute, an exoneree has the burden of establishing that he or she meets all eligibility requirements, and those requirements can present an insurmountable barrier for death row exonerees.²⁰
8. In other words, a death row exoneree who was wrongfully convicted, incarcerated, and served time on death row for a crime they did not commit may either be ineligible for compensation under the state compensation statutes, or may face too many obstacles, including the lack of financial support or access to litigation counsel, to obtain this compensation.
 9. Although the coauthors have been unable to find data specific to death row exonerees, a 2019 study of 1,572 wrongfully convicted and incarcerated exonerees living in states with a compensation statute found that only 828 (or less than 53%) exonerees filed compensation claims.²¹ Of the 828 claims, only 609, or about 73.5% were granted, despite exoneration and release.²² Only 38.7% of wrongfully convicted and incarcerated individuals who were exonerated from their convictions received any compensation.

Record Relief (i.e., expungement, sealing of records, or other relief) for Death Row Exonerees

10. Even after exoneration and release from prison, death row exonerees' criminal records are not automatically cleared, regardless of innocence.²³

factually innocent of any participation in the crime at issue; (III) He or she did not solicit, pursuant to 18-2-301, C.R.S., the commission of the crime at issue or any crime factually related to the crime at issue; (IV) He or she did not conspire, pursuant to 18-2-202, C.R.S., to commit the crime at issue or any crime factually related to the crime at issue; (V) He or she did not act as a complicitor, pursuant to 18-1-603, C.R.S., in the commission of the crime at issue or any crime factually related to the crime at issue; (VI) He or she did not act as an accessory, pursuant to 18-8-105, C.R.S., in the commission of the crime at issue or any crime factually related to the crime at issue; and (VII) He or she did not attempt to commit, pursuant to 18-2-101, C.R.S., the crime at issue or any crime factually related to the crime at issue.”)

¹⁸ CT Gen Stat § 54-102uu(d)(2)(A) & (B), [https://casetext.com/statute/general-statutes-of-connecticut/title-54-criminal-procedure/chapter-961-trial-and-proceedings-after-conviction/part-iic-post-conviction-remedies/section-54-102uu-compensation-for-wrongful-incarceration#:~:text=Section%2054%2D102uu%20%2D%20Compensation%20for%20wrongful%20incarceration%20\(a\),all%20or%20part%20of%20such](https://casetext.com/statute/general-statutes-of-connecticut/title-54-criminal-procedure/chapter-961-trial-and-proceedings-after-conviction/part-iic-post-conviction-remedies/section-54-102uu-compensation-for-wrongful-incarceration#:~:text=Section%2054%2D102uu%20%2D%20Compensation%20for%20wrongful%20incarceration%20(a),all%20or%20part%20of%20such)

¹⁹ CT Gen Stat § 54-102uu(e).

²⁰ CT Gen Stat § 54-102uu(b).

²¹ Jeffrey S. Gutman et al., *Why is Mississippi the Best the Best State in Which to be Exonerated? An Empirical Evaluation of State Statutory and Civil Compensation for the Wrongfully Convicted*, 11 Ne. U. L. REV., 694, 745-46 (2019), [7d44d-vol.11no.2full2019.pdf](https://www.witnesstoinnocence.org/justice-after-exoneration).

²² *Id.* at 745.

²³ *Witness To Innocence's Compensation Campaign*, <https://www.witnesstoinnocence.org/justice-after-exoneration>.

11. For example, there is no general U.S. federal expungement statute, and the inherent authority of U.S. federal courts to grant record relief is limited.²⁴
12. Among the 50 U.S. states and Washington D.C., provision of record relief (e.g., expungement, sealing) varies greatly.²⁵ For example, only 17 states have any laws authorizing automatic expungement or sealing of adult non-conviction records.²⁶ Only 7 states with the death penalty (California, Kentucky, Nebraska, North Carolina, Pennsylvania, South Carolina, Utah) are among the 17. In contrast, in more restrictive states such as Florida, people with certain prior convictions are ineligible for record relief for non-conviction records.²⁷ Death row exonerees' right to record relief after exoneration thus depends on state statute and is rarely automatic or certain. Death row exonerees' access to expungement is also limited by lack of financial resources and access to counsel to pursue such relief. Exonerees' inability to expunge their criminal records may have a debilitating effect on their ability to secure stable housing and employment.

Programs, Public-Private Partnerships Providing Assistance to Death Row Exonerees

13. Witness To Innocence (WTI), the first and only organization directed exclusively to exonerated death row survivors in the United States, provides a national network of peer support for death row exonerees through the DREAMS Project (Death Row Exonerated Assistance, Mentoring, and Support).²⁸ The DREAMS Project also assists exonerees with access to education, employment, housing, medical services, and social welfare services.²⁹
14. WTI has documented the results of its programs, including its DREAMS Project, including success in attainment of shelter, mental health services, medical treatment, financial stability, and credentialing necessary for employment. The DREAMS Project has served approximately 55 people, including 49 death row exonerees and 6 family members throughout the United States.³⁰
15. WTI also uses a variety of strategies to educate policymakers and the public on the needs of death row exonerees upon release: direct engagement with lawmakers and criminal legal professionals throughout the United States; exoneree speaking engagements; information

²⁴ *State-by-state information*, Restoration of Rights Project, <https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-judicial-expungement-sealing-and-set-aside/>.

²⁵ *Id.*

²⁶ *Id.*

²⁷ §943.059, Court-ordered sealing of criminal history records, http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0900-0999/0943/Sections/0943.059.html.

²⁸ <https://www.witnesstoinnocence.org/the-dreams-project>

²⁹ <https://www.witnesstoinnocence.org/the-dreams-project>

³⁰ WTI application to the SC Ministry Foundation for 2024 to 2025 grant year.

on the WTI website³¹; and highlighting the stories of exonerees in traditional and social media.³²

Policy and Legislative Reform Recommendations

16. The federal and state governments should enact legislation to provide death row exonerees at least the same benefits and services that probation and parole programs provide to formerly incarcerated individuals who were not on death row and who served their terms without exoneration, with a focus on providing, at a minimum, assistance in obtaining housing, employment, health insurance, and access to healthcare.
17. The federal and state governments should enact legislation to ensure that each death row exoneree receives:
 - a. An assigned advocate to help with navigating the process for financial compensation for wrongful conviction and incarceration, as well as record relief, upon release;
 - b. An assigned social worker/advocate to help with life skills and adapting to life changes when released from incarceration;
 - c. Free lifetime healthcare (including mental health services) immediately after release;
 - d. Free housing immediately after release;
 - e. Employment resources;
 - f. Groceries, including food and necessities, up until the exoneree secures employment; and
 - g. A government-issued form of identification (e.g., driver's license, Social Security Card) on release.
18. The federal and state governments should enact legislation to ensure that family members of each death row exoneree are offered free therapy and counseling.
19. All jurisdictions should adopt laws to ensure that death row exonerees receive automatic record relief (e.g., expungement, sealing) upon exoneration and release.
20. All jurisdictions should adopt or amend compensation laws to ensure that in any proceeding on a petition or claim for compensation, the government bears the evidentiary burden to prove ineligibility for compensation (rather than the death row exoneree bearing the burden of proving eligibility).
21. Federal authorities should amend benefits laws to provide exonerees with social security benefits for the time that the exoneree could have worked while incarcerated and for loss of earning potential due to incarceration. The law may base loss of earning potential on a

³¹ Witness to Innocence, <https://www.witnesstoinnocence.org/>.

³² *Justice After Exoneration*, Witness To Innocence, <https://www.witnesstoinnocence.org/justice-after-exoneration>

typical trajectory of a career held by or pursued by the exoneree prior to the wrongful conviction.

22. Federal and state authorities should amended laws to ensure that any compensation that an exoneree is awarded related to unlawful conviction, incarceration, and time on death row does not affect eligibility for income-based state or federal benefits, including access to food stamps.