

Legislative History for Connecticut Act

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THE CHAIR:

The Senate will come to order. Senator Looney.

SEN. LOONEY:

Yes, thank you, Mr. President. Before asking for action on the one additional item, would first like to move that all of the bills referred to various Committees earlier in the session today be transmitted immediately.

THE CHAIR:

Hearing and seeing no objection, so ordered, Sir.

SEN. LOONEY:

Thank you, Mr. President. And there's one additional item of business. Would ask for suspension to take up from Senate Agenda No. 3, under Business from the House, House Bill 6673, An Act Compensating James C. Tillman for his Wrongful Conviction and Incarceration. Would ask for suspension to take up that item.

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THE CHAIR:

Hearing and seeing no objection, so ordered, Sir.

SEN. LOONEY:

Yes, Mr. President, would ask that that item be called.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Calling from Senate Agenda No. 3, Business from the House, House Bill 6673, An Act Compensating James C. Tillman for his Wrongful Conviction and Incarceration, Favorable Report of the Committee on Appropriations.

THE CHAIR:

Senator McDonald.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

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THE CHAIR:

On acceptance and adoption, please proceed, Sir.

SEN. MCDONALD:

Thank you, Mr. President. Mr. President, this bill comes to us under extraordinary circumstances for the House, for an extraordinary man, and an extraordinarily sad situation that brings us here.

And before I begin explaining the bill, Mr. President, I would be remiss if I did not acknowledge that Mr. Tillman is in the gallery and joins us here today, and I'm very pleased that he and his friends have been able to bear with us as we work through our Calendar today and take up this piece of legislation.

Mr. President, the fact is that Mr. James Calvin Tillman was wrongfully convicted for a crime in 1989 that he never committed.

And while the State of Connecticut can never adequately compensate him for the loss of 18 years of his life, while he was in the custody of the

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Department of Corrections, we hope this evening to pay some small token to him that will let him know that the people of the State of Connecticut regret deeply what he had to suffer over the last 18 years.

And when you say 18 years, it's kind of impossible to imagine what happened in year one, year two, year three, and on and on and on, to somebody, who in the prime of his life did not have an opportunity to live for some of the most fruitful and happy years of one's life.

The fact is, Mr. President, that Mr. Tillman was convicted in a court by a jury of his peers, and yet the process failed him.

There was, no doubt, good intentions by the judge, by jurors, by prosecutors, by defense lawyers, by witnesses that came before the court, and yet the process failed.

I guess the good news, if there is any, is that we have come a long way since 1989, when Mr. Tillman

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was convicted. Our science is better. Our forensic lab is better. And I would like to think that our entire judicial process is better than it was then.

During his time in prison, Mr. Tillman moved from prison facility to prison facility. He was confined in Somers. He was confined in Cheshire. He was confined in MacDougall. He was confined in Northern. He was also confined in Garner.

And perhaps most sadly, he was confined in Wallins Ridge in Virginia from 2000 to 2002. That was another sad experience in the state's history of criminal justice.

Mr. President, during Mr. Tillman's time in prison, he also suffered an injury that required medical attention, and he received that medical attention at the University of Connecticut Health Center.

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And there is a claim that Mr. Tillman potentially has, relating to the care that he received at UConn Health Center.

But there is also a much bigger claim about his loss of economic life and the loss of life's joys and opportunities. And trying to quantify that is essentially impossible.

But with the help and assistance of a very dedicated staff of attorneys at Mr. Tillman's disposal, and I should acknowledge their work because it is being offered pro bono.

With their help and the help of a lot of other people, the Judiciary Committee Favorably Voted out a bill offering Mr. Tillman \$5 million in compensation for his potential claims against the state, against the University of Connecticut Health System, against the Hartford Police Department, and against, essentially, the entire world.

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He, like many of us, would like to put this chapter behind him so that he can look forward rather than back.

Mr. President, under this proposal, Mr. Tillman would receive the \$5 million in compensation in full and final settlement of all claims he might have, and he would execute a release of all parties, as prepared by the Attorney General.

Additionally, Mr. President, to the extent we are permitted under law, this \$5 million payment would be exempt from personal income taxes under state law. There would still be a requirement that he file his federal tax returns, and we can't address that here.

But to the extent this \$5 million could be subjected to state income tax, we are specifically exempting it.

And as I end, and I know other Members of the Circle want to comment, I want to pay a special debt of gratitude to the Innocence Project. Without these

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men and women, we would never have known that Mr. Tillman was wrongfully convicted.

And yet, I fear mightily the others who might be in our prisons wrongfully convicted. So to that end, Mr. President, there is another bill that will be coming out from the Judiciary Committee in future days of this session, where we seek to establish a taskforce to deal with situations like this.

It is the unhappy business we are charged with doing, but we will try as best we can to come up with a process because many states have such processes, and we will address how best to compensate individuals who are wrongfully convicted.

And we understand that we undertake this bill without having had the benefit of that process. And so what we do here today is, hopefully, just, but in some measure, it is arbitrary.

So I want to say that while we are glad to be able to compensate Mr. Tillman, the process and the

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dollars involved ought not to be construed by any Member of this Circle, or anybody in the future, as a precedent for how we are going to handle these issues and these claims.

We will ultimately pass legislation that will deal with that. But our business today is to deal with this sad story. And if I could beg the indulgence of the Circle, I would like Mr. Tillman to please rise and accept our debt of gratitude to him.

[APPLAUSE]

THE CHAIR:

Thank you, Senator McDonald. Will you remark?
Senator Kissel.

SEN. KISSEL:

Thank you so much, Mr. President. I stand in strong support of \$5 million for Mr. Tillman. Very rarely in this business, where we're trying to balance priorities and dole out the public treasure in a way that's so beneficial to so many folks in our state, do

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we have a chance, with pinpoint accuracy, to right a wrong.

You know, if you look at a statue of justice, justice is blind. And because justice is there, trying to very evenhandedly balance right from wrong and to try to come up with a correct decision.

But, clearly, our system broke down in a horrendous fashion 18 years ago. And I think that each and every constituent that I've talked to in my district about this case says, I wouldn't give up a year of my life, let alone 18 years of my life, for any amount of money.

Every day is a blessing. In our family, if somebody says, are you going on vacation this summer, or this or that or the other thing, it's always prefaced with the words, God willing, because death comes like a thief in the night.

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You never know when it's your last day. Now go back, and in retrospect, how much has the last 18 years of your lives meant for you?

I want to also add to the accommodations that Senator McDonald made, one to Attorney Gerard Smyth, my constituent, former Chief Public Defender of the State of Connecticut, and one of Mr. Tillman's chief advisors, and one of those individuals noted as working pro bono.

At the beginning of this session, he and I sat down, and he went over the facts of the case. And in my view, I don't really believe that the \$5 million was arrived at arbitrarily.

I think if one goes through it piece by piece by piece, one can build a substantial case that this is an eminently reasonable settlement in this particular matter.

It is my understanding from the public hearing that we had that the state's exposure is great.

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Indeed, there is precedent that when cases such as this, for improper incarceration, go to trial, that one can sort of put a value of \$1 million a year on those cases.

That means that this case, for Mr. Tillman, could easily be \$18 million or higher, depending on how the jury came in, and that doesn't even take into consideration the medical malpractice claim.

That the malpractice occurred to one of his Achilles tendons is my recollection, and it certainly caused him undue harm and ill effects, and that has a value as well.

I don't want to belabor the point, but I can tell you right now, I know that my constituents feel that this is the right thing to do. I believe it's the right thing to do.

In my heart of hearts, every time I've met Mr. Tillman, and when he came before us in the public

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hearing, what a gracious individual. What a kind person.

And what a reasonable person that is willing to accept this lump-sum settlement and is willing to go on with their life.

One last point, you know, as we're here debating this, it ought pass through the house, I believe unanimously, and my friend and colleague to my left, Senator DeFronzo, even pulled up recent reports on this matter.

And it was reported that Governor Rell said that she would be honored to sign this bill if it was placed on her desk. So it seems like almost everybody is on the same page.

There's a huge amount of exposure for the State of Connecticut, but we should not have to go through a legal analysis, as if we're claims adjusters. This is the right thing to do. It feels right. It is right.

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And, Mr. Tillman, I don't owe you a debt of gratitude. I owe you our apologies, and let's hope this never again happens in the State of Connecticut. Mr. President, I strongly support this bill.

THE CHAIR:

Thank you, Senator Kissel. Will you remark?

Senator Gomes.

SEN. GOMES:

I rise to give thanks to God. In our community, that's how every conversation or every speech usually winds up to be and always opens up with, giving honor to God for things that happen that are right.

I think of Mr. Tillman being convicted 18 years ago and being sent to prison for an offense that he never committed.

I tried to think of myself sitting there in a cell no bigger than I guess most of the people in this room have as a bathroom, where you cannot even walk

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from your living room to your kitchen and get a sandwich.

You can't even turn around and talk to your child. First of all, Mr. Tillman never had a chance to have children. The most fruitful part of his life was taken from him, 18 years.

And I give credit to Mr. Tillman, and he must give honor to God, and he must believe in God because I think he's the most gracious person, and a person without any bitterness about this.

And if it had happened to me, I would hate the world for the rest of my life. Therefore, my life would be ruined twice, once for being in jail for 18 years and then ruin my life for being that bitter for the rest of my life.

And I'm very happy that Mr. Tillman is not bitter and that he can continue with the rest of his life. I want to thank the Innocence Project. I want to thank Mr. Smyth for being his lawyer.

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I want to thank the individuals, 140 of them, down in the House, who saw fit to use their heart to vote with and not their pocketbooks, or worry about their pocketbooks.

I also want to thank the Members of the Senate. I don't know how this vote is going to turn out, but I think it should be unanimous.

I want to thank the people who sat in the caucus and some of the feelings and heart-wrenching situations, where everybody came together and figured that this money is nothing to pay Mr. Tillman for 18 years of his life.

I've been here for only less than two years, and I've seen some bills passed in here, some that didn't mean anything and cost a lot.

But the proudest moment I've ever seen the caucus in this Senate deal with was in the situation that Mr. Tillman is in. And I want to thank him, and I want to tell all of you I'm proud of you, and God is good.

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THE CHAIR:

Thank you, Senator Gomes. Will you remark? Will you remark further? Senator Crisco.

SEN. CRISCO:

Thank you, Mr. President. Very briefly, just want to associate myself with the remarks of my colleagues. But more importantly, I just want to commend Innocence Project for what they accomplished.

We read consistently every day about a lot of negative things that are going on in society. But when you hear about such a group of men and women that make up Innocence Project, you have a different perspective.

And I just think it's important that we recognize what they stand for and what they do. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator Crisco. Will you remark? Will you remark further on the bill? Senator Coleman.

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SEN. COLEMAN:

Thank you very much, Mr. President. Mr. President, I rise to express my strong support for the award of \$5 million to Mr. Tillman, and I do so for basically two reasons.

The first is I do believe, based upon the testimony I've heard as a Member of the Judiciary Committee, that the state in this situation is exposed to a considerable amount of legal liability.

But secondly, and more importantly, I think that as a matter of fairness and morality, compassion, equity, and justice, I think we would be doing the right thing by Mr. Tillman by voting in favor of this bill.

To my colleagues, I would say, as much as you perhaps hear me criticize our criminal justice system, the truth is I think it is, comparably speaking, one of the best in the world.

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While being one of the best, it is however not without its flaws. It is not perfect. And in this circumstance regarding Mr. Tillman, I think that a number of mistakes were probably made.

And Mr. Tillman paid for those mistakes with 18 years of his life, 18 years of incarceration. Regarding the process, I believe it's the case that Mr. Tillman's arrest started on the basis of an eyewitness identification by an alleged victim.

And there are questions concerning how suggestive that eyewitness identification was. There was also some indication that some police testimony and police reports may have been fabricated.

And comments and statements, incriminating in nature, may have been attributed to Mr. Tillman, which it wouldn't make any sense whatsoever for him to have said.

There were laboratory tests that were conducted, and there's questions about how comprehensive and how

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complete those laboratory tests were, in that there were items of clothing belonging to the alleged victim that had stains that were not completely tested.

If they had been tested, as we now know, they would have indicated Mr. Tillman's innocence even prior to trial.

There are questions about prosecutorial misconduct and exculpatory evidence that was not disclosed to the defense attorney by the state's prosecutors. And Mr. Tillman was represented by a public defender, a state employee.

And there are questions about the adequacy and the effectiveness of the representation that was provided to Mr. Tillman.

There was also reference, during this debate, that was made to a malpractice claim. While incarcerated, Mr. Tillman was injured, had surgery, sustained an infection, had follow-up treatment, and

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had to have corrective surgery because of mistakes that were made by one of the state's hospitals.

All of these factors combine to indicate, as others have already said, to indicate a breakdown, an egregious breakdown in our system of justice, all to the detriment of Mr. Tillman.

During the Committee process, the Judiciary Committee was provided information concerning a damages analysis that was put together by his legal team.

And it indicated that, among other things, that Mr. Tillman had claims for false imprisonment. He had claims for lost wages. He had claims for lost earning capacities.

If there is no settlement, if this bill is not passed, then there is likely to be litigation. And while the members of the Innocence Project and Mr. Tillman's legal team acted pro bono to win his freedom, such would not be the case if these issues

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were submitted to the court system and litigation was required.

All told, we're probably talking about, on all of those issues, much more than \$5 million, and so I do believe, as others have said before me, that \$5 million in this instance, being awarded to Mr. Tillman, would be a pretty good deal.

But better than a good deal for the state, it is the right thing to do, morally, ethically, and consistent with the ends of justice. It would be the right thing to do.

And so I urge the Members of this Senate to act in concert with the Members of the House and with what is anticipated to be the action of the Governor, and let's support this bill, and let's try to make a bad situation better, right a wrong, and do some justice for Mr. James Tillman. Thank you, Mr. President.

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Thanks, Senator Coleman. Will you remark?

Senator Capiello.

SEN. CAPIELLO:

Thank you, Mr. President. I also rise in support of this bill. As the Ranking Member of the Appropriations Committee, many of you know that I usually have a very difficult problem when we are dealing with any spending bills before our budget is passed.

But I think this is a unique situation that we are dealing with. And I don't often agree with my colleague, Senator Gomes, on many issues, but we agree on this issue, and we also agree that, as a Member of the Judiciary Committee, I was very impressed with Mr. Tillman and how gracious he was and how calm his demeanor is after having 18 years of his life taken away from him by this state.

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And although I do agree with Senator McDonald, we do need to have a process in place for any future claims, and we should work on that for next session.

But this case, right now, is before us, and I don't believe Mr. Tillman should have to wait another day to have us rectify, to the best of our abilities, what he's been put through in the State of Connecticut.

And may I remind people also that even though we would be awarding him \$5 million, he would pay no state taxes, but there would be a few million taken out for federal taxes. So he won't even be getting the full \$5 million that he deserves, frankly, because of our federal taxes.

So this doesn't even come close to what I think he deserves for having his 18 years stolen from him. I think to myself what would I have done, what I have done over the last 18 years, and what I've been very proud to have accomplished in my professional and

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personal life, and I couldn't imagine what he has gone through and what he's probably still going through and will go through for the rest of his life. So, Mr. President, I rise in support and urge my colleagues to do the same. Thank you.

THE CHAIR:

Thank you, Senator Cappiello. Will you remark? Will you remark further? Senator LeBeau.

SEN. LEBEAU:

Thank you, Mr. President. I guess I have the honor of having Mr. Tillman as my constituent, and I just want to very briefly say that what happened to him is incomprehensibly awful.

And what we do tonight, I'm not sure is justice, but it is our best attempt at it. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator LeBeau. Senator Harp.

SEN. HARP:

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Thank you, Mr. President. I too rise to support this bill and to say that when you consider that, for all Americans, one of our core values is the value of freedom, the value to express yourself in any way, to have life and liberty is at the core of who we are as a people.

So to deprive someone of that core American value for 18 years, I believe, is worth way more than \$5 million.

It's interesting to me, as an African-American woman who has looked at our history over the years and see that, in particular, African-American men and the whole concept of rape has defined us as a people.

If you think about the NAACP and when it first started, it started because of the problems, again, with African-American men and rape and the lynchings that occurred in the South.

And in many respects, I hearken back to that. I think that we're in a different place now, but the

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reality is that in 1989, what happened to Mr. Tillman is that we did not look at him and the crime as an individual.

We looked at, I believe, and thought about a lot of the stereotyping that goes on. And that is one of the reasons, I believe, that the system has failed this individual and that our system of justice, frankly, didn't work.

And if I think about where, for 18 years, having to face a jail cell click every night when I go to bed, having to face the dynamics of individuals in prison every day, having to face a healthcare crisis and having even the healthcare system fail for me, that it's a system of failures that, hopefully, we can say only happens very few times.

But thankfully, now that we have the Innocence Project, we'll be able to know, and hopefully remediate, some of these things that happen in the

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future, as we are doing today on behalf of Mr.
Tillman.

I'm going to say this, and I hope that it doesn't sound silly, but the City of New Haven and surrounding towns are reading a book through the Festival of Arts and Ideas, and the book is by Harper Lee, and it's called To Kill a Mockingbird.

And we're going to have a community discussion about rape, about murder, about disparity in the criminal justice system, and I'm going to ask each and every one of you, between now and the end of June, to read Harper Lee's book, to read about it in the context of where we are today and where we really need to go so that this core value that we all share, freedom, is something that becomes more of a reality throughout our very good, but yet imperfect, criminal justice system.

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Thank you, Senator Harp. Will you remark?

Senator McKinney.

SEN. MCKINNEY:

Thank you, Mr. President. Mr. President, I rise, obviously, in support of this measure. And I just wanted to say, because I know he's here, a thank you to Mr. Tillman.

What I have seen from this man, over the period when he was first before us, when the Governor made her speech, is quite remarkable.

And I want to thank him for what I see as a man who is not bitter, a man who has focused on the positive and not dwelled on the negative, and I think he has set an extraordinary example of what the human spirit can be about.

And I don't know whether any amount of money can make up for what he has lost, but I think what he has given us is something that's pretty special. Thank you, Mr. President.

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THE CHAIR:

Thank you, Senator McKinney. Senator Looney.

SEN. LOONEY:

Thank you, Mr. President. Rising in support of the bill. As many of our colleagues have said, this provision of \$5 million will not really adequately compensate Mr. Tillman for the loss of 18 years of his youth and young manhood.

Any of us who are over the age of 45, to think about what it would have been like to have our freedom curtailed for that period of between the ages of 26 and 44, and just the incomparable loss of that time and opportunity and richness of life's experience.

And what has happened to Mr. Tillman, and what we try, in our limited way, to make amends for by passing this bill, should be a cautionary note to all of us about our criminal justice system, which, as many of us said, is a good system, judged by worldwide standards, but it is still a fallible system.

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That means that we should approach any of its results always with humility and a recognition of the possibility of error.

And one of the key elements of this case, Mr. President, obviously is that Mr. Tillman's erroneous conviction was based, in significant part, and there were other factors, obviously, as Senator Coleman and Senator McDonald and others pointed out, but his conviction was based, in significant part, upon mistaken identification by a traumatized victim.

And this points out, again, another circumstance in which conventional wisdom is often wrong. Many people assume that a victim's testimony is necessarily accurate because a victim will be so focused in on the horror of the moment that the victim's recollection of everything about that incident will be sharp and clear and valid.

But many studies by criminologists and psychological studies have shown in recent years that

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that is often not the case, that the very trauma of the experience may skewer the victim's perception and leave the victim as not an accurate witness as to what happened, despite the conventional wisdom of people assuming the opposite.

And this is a striking lesson in point of that as a cautionary tale for all of us. In looking at the way in which we analyze evidence, analyze testimony, and look at the [inaudible] of victims.

So, again, it's an example of how we should be very cautious about the degree of power, the degree of finality in which we award any outcome in our criminal justice system.

And again, tonight, we are here, I think, to recognize that our capacity to make Mr. Tillman whole is very limited, but we are here to do what we can.

Thank you, Mr. President.

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Thank you, Senator Looney. Will you remark?
Will you remark further? Senator DeLuca.

SEN. DELUCA:

Thank you, Mr. President. By the many remarks here tonight, I believe this will be a unanimous vote, and I'm happy to be part of it.

We do many things in this Legislature that we feel are good for the people of Connecticut, I believe none more important than what we do here this evening.

To have someone in the early part of their life, just out of high school, to be taken in such a manner is incomprehensible to me. I think we can all just imagine what Mr. Tillman went through, but we can never experience it really. Only he can.

And I would also say that throughout this period too, he had the love of a family that had to also suffer with him.

And a few people mentioned, on that day in February, when he was in the gallery in the House, and

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the Governor mentioned, and he was there with his mother, and you could see the gentleness of both of them and the graciousness of them both being there.

You know, Senator said before that he would be bitter, and I think that's the first feeling that I think I would have, the same thing. I think that most people would have.

But I think Mr. Tillman and his family taught us there is another way, to be gracious, to put that behind you, and to move on.

And that's why I think that tonight, this being unanimous, that, to me, this will be one of the best votes and most important votes that I've made in a long time and that we can go home knowing that tonight, we did the right thing, the right thing. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator DeLuca. Will you remark?

Senator Williams.

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SEN. WILLIAMS:

Thank you, Mr. President. I rise to support the bill before us tonight. I'm reminded of three words, inequality, justice, and forgiveness.

In terms of inequality, it's a sobering reminder that although we have a tremendous system of justice, particular compared to other systems around the world, there is still inequality.

If you are poor and wrongfully accused of a serious crime, you cannot afford a dream team of defense lawyers. Is the standard the same for you? Will the outcome be the same for you?

As much as we have done to improve our system of justice over the years, it is still flawed, and this, again, is a sobering reminder of the inequality that still exists.

In terms of justice, it's an ideal that we strive to meet. It's a standard that we do not always meet. And our system of justice failed Mr. Tillman. As has

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been pointed out, he spent 18 years of his life in prison for a crime that he did not commit.

For those of us who are 44 years of age, or older, think back to when you were 26 years old. Think of those last 4 years of your 20's, what you did and what you learned.

Think of that decade that was the 30's and all that you did and experienced in your life, with your family and your friends, and the first 4 years of your 40's.

All those years, Mr. Tillman spent in prison for a crime he did not commit. How can we put a value on the time he lost, that part of his life that he lost?

What we will do today will not right that wrong, but it will be the best that we can do to make things right by Mr. Tillman, which brings me to the final word, forgiveness.

I think what is remarkable, and it has been said in a number of ways by various Senators here tonight,

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who have met Mr. Tillman and listened to Mr. Tillman, he is not bitter, and he has talked of forgiveness, forgiveness toward a system that wrongfully imprisoned him, and a desire on his part to move forward and to enjoy the years left that he has in his life.

There is something for all of us to learn, and there is something that we can all gain by having listened to Mr. Tillman and understanding his experience.

So as we vote on this bill here tonight, I would like to invite Mr. Tillman to come down to the Chamber and to shake the hands of these Members so that we may thank him for his graciousness and that we may let him know that we are so deeply sorry for the wrong that has been visited upon him. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator Williams. Will you remark? Will you remark further? If not, Mr. Clerk, will you please call the roll. The machine will be open.

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THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Have all Senators voted? If all Senators have voted, the machine will be closed. The Clerk will call the tally.

THE CLERK:

Motion is on passage of House Bill 6673.

Total number voting, 33; those necessary for passage, 17. Those voting "yea", 33; those voting "nay", 0. Those absent and not voting, 3.

THE CHAIR:

The bill passes.

[APPLAUSE]

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THE CHAIR:

Senator Looney.

SEN. LOONEY:

Yes, Mr. President, the final note on this item,
would move for suspension for immediate transmittal of
House Bill 6673 to the Governor.

THE CHAIR:

Seeing no objection, so ordered, Sir.

SEN. LOONEY:

Thank you, Mr. President.

[APPLAUSE]

THE CHAIR:

Senator Looney.

SEN. LOONEY:

Thank you, Mr. President. And certainly, to take
up any additional business this evening would be
anticlimactic, and we will not be doing so at this
point.

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HOUSE

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SPEAKER AMANN:

First of all, Ann. Ann, it's so great to see you. You look wonderful. We do miss you. And Lenny, you know, when I first walked in, you just like fit in there. I forgot that you left. You know, it's so great to see you and I hope you guys are enjoying yourself a little bit.

But more and more, we welcome you back, and we truly do miss your spirit and your personalities and please come to visit us more often. Ann Dandrow and Lenny Winkler. One more time, folks.

(APPLAUSE)

Will the Clerk please call Calendar Number 481.

CLERK:

On Page 32, Calendar Number 481, House Bill
Number 6673, AN ACT COMPENSATING JAMES C. TILLMAN FOR
HIS WRONGFUL CONVICTION AND INCARCERATION, Favorable
Report of the Committee on Appropriations.

SPEAKER AMANN:

Representative Green.

REP. GREEN: (1st)

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Thank you, Mr. Speaker. Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill.

SPEAKER AMANN:

The question is on acceptance of the Joint Committee's Favorable Report and passage of the Bill. Representative Green, will you remark, Sir?

REP. GREEN: (1st)

Yes, Mr. Speaker. Mr. Speaker, this piece of legislation is an act compensating James Tillman for his wrongful conviction and incarceration.

This Bill will require the Comptroller to pay Mr. James Calvin Tillman \$5 million as full and final settlement of all claims he has against the state and any political subdivision of the state, and any state, local officer, agent, employee or official arising out of or in any way related to his arrest, prosecution, conviction, and incarceration.

As we are aware, Mr. Tillman was incarcerated for over 18 plus years for an offense he did not commit. Mr. Tillman was released approximately June of '06,

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exonerated and found not guilty, and we are aware that he spent those years incarcerated wrongfully.

Mr. Tillman has filed, and is ready to file claims against the state, which I believe, and a number of us believe, would have the state award him way more than \$5 million.

Mr. Tillman has agreed to drop all claims and that this, in fact, will end this chapter in his life. We've had a number of discussions with a number of you and our colleagues about this. At this time we believe we are able and ready to commit to--

(GAVEL)

SPEAKER AMANN:

You know, this is about a gentleman that spent 18 years of his life in prison wrongfully. I'd just ask the Chamber, I know we're all busy, but if we could just keep it down a tad to Representative Green can proceed. Appreciate the cooperation. Representative Green, you may continue your remarks, Sir.

REP. GREEN: (1st)

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Thank you, Mr. Speaker, and I thank my colleagues for their respect and acknowledgment in keeping the noise down. Thank you.

As I was stating, Mr. Tillman got released in June of '06. It's been almost a year that he's been out of jail. He works as an office assistant. He works part time. He is now able to try to re-establish relationships with his mother.

While he was incarcerated he lost a brother, was unable to see his brother with his family through those services.

Mr. Tillman was incarcerated, became injured, received medical treatment from the state. Apparently there were some misdiagnosis and some treatment that was not done correctly. He is now permanently disabled or is disabled, and has a slight limp in his walk because of that injury.

If any of you have had the opportunity to meet Mr. Tillman, Mr. Tillman is a humble person. He is a respectful person. He has found faith in his belief

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that has guided him in this past year through June of '06 until now. It is amazing.

A number of us have had conversations about this gentleman, and I think we all wonder, could we be so kind and gentle and humble as we find this person.

I don't know if I could be Mr. Tillman today with what he had to go through. This person continues to thank his family, thank his God, thank his support staff, thank the Innocent Project.

He continues to thank those individuals that incarcerated him, and at least he respects that they were doing their job, and he holds no malice toward them.

I think if any of you have an opportunity to meet him today, and he is here today, that you're going to find like we all find, excuse me, Mr. Speaker, he did not deserve to be incarcerated for 18-1/2 years. Five million dollars is the least we can do. Thank you.

SPEAKER AMANN:

Thank you. Thank you, Representative. Would you care to remark further? Representative DelGobbo.

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REP. DELGOBBO: (70th)

Thank you, Mr. Speaker, and I don't think anybody could do a better job at this moment that what Representative Green mentioned in terms of describing the absolute strength and decency and example of hope that Mr. Tillman sort of gives to all of us when faced with horrific and horrific doesn't do it justice, circumstance.

And so I stand in support of the proposition before us. But we also know that this is sort of an extraordinary circumstance, and one of the things that came about, as I recall in some of the discussions about this issue were, God forbid, if circumstances of this type ever happen in the future, how would this General Assembly deal with an appropriate framework.

And I know that there were discussions in this particular case, and in asking a few questions, I in no way wish to demean or undervalue the purpose that's here before us today, but I do think we also as a matter of justice, owe it to everyone to give a better understanding of the consideration of how this number,

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if you could put any number on something like this,
how this number was arrived at.

I know that there were significant ongoing
discussions as to the issues in this case, and what
the potential values were, and would perhaps, through
you, Mr. Speaker, just ask the proponent to describe,
characterize those.

SPEAKER AMANN:

Please frame your question, Sir, and
Representative Green, please prepare yourself for a
question, Sir. You may proceed, Representative
DelGobbo.

REP. DELGOBBO: (70th)

Thank you, Mr. Speaker. Mr. Speaker, I guess
simply put, I know that there were various issues in
this particular case that led to the judgment that the
Representative put the proposal before us.

And you described some of the circumstances that
Mr. Tillman, beyond the fact of his wrongful
conviction, some of the circumstances that this
gentleman had to face through his incarceration.

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But could you just enlighten us a little bit about how we came to this particular number that's before us today. Through you, Mr. Speaker.

SPEAKER AMANN:

Representative Green.

REP. GREEN: (1st)

Thank you, Mr. Speaker. Through you, Mr. Speaker, just for a little bit of reference and background, a number of states have a number of awards they've given based on similar situations.

Those awards have ranged from very little to over \$15 million, so there's been a range, just so that people can have a sense of, there's no real consistent figure here across states.

In looking at Mr. Tillman, there's five areas that we think at minimum, reaches the \$5 million. Mr. Tillman experienced loss of liberty and enjoyment of life.

Mr. Tillman was incarcerated wrongfully. He lost his liberty, his freedom. He could not enjoy his life during some of the fine time of his life. We believe

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that that value, at this point, is worth \$2 and a quarter million, \$2,250,000.

Mr. Tillman received a loss of income. If Mr. Tillman was able to work for almost 20 years, he would have earned income, he would have earned raises, he might have made investments. That loss of income, we believe, is worth \$1 million.

Loss of future earnings. Again, as I stated, investments, opportunities for promotions, opportunity maybe to go to school and advanced himself. He lost future earnings. We believe that is worth \$250,000.

He received an injury while he was incarcerated. Misdiagnosed or not misdiagnosed as much as the follow up treatment was not adequate, and some procedure that was done to him, the follow up medical procedure was not done correctly, and luckily when he did go back to the hospital, they were able to save his ankle and something that had happened to his foot. For his physical injury, we believe \$500,000.

And for mental pain and suffering, psychological injury and loss of relationships with his family, as I

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stated. He lost a brother. He was not able to engage in the proper grieving for the loss of his brother. We believe that's worth \$1 million, for a total of \$5 million. Thank you.

REP. DELGOBBO: (70th)

Thank you. Through you, Mr. Speaker, I thank the gentleman for that response.

SPEAKER AMANN:

Representative DelGobbo.

REP. DELGOBBO: (70th)

Thank you, and one final question that I had heard described. There are various ways of judging a circumstance like that, and that is, was the wrongful conviction simply the unfortunate kismet of human error that can inadvertently happen in the criminal justice system, meaning no malice, no failure, no obvious failure on the part of anybody involved. That would be sort of one end of the scale.

The other end of the scale would be circumstances where individuals, responsible individuals, whether it was the court itself, prosecutors, those involved in

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law enforcement, anywhere along that chain, or perhaps even counsel themselves were in some way purposeful or malicious in an attempt to wrongfully convict somebody.

My understanding is that neither end of those, that scale was representative in the circumstance before us.

In other words, not just the happenstance of justice that happened to make, come to the wrong conclusion, nor was it absolute and purposeful malicious intent to go after an individual and wrongfully convict them, but perhaps the inadvertent middle way where there were errors and omissions, and perhaps less than full due diligence on the part of certain officials to follow through on certain evidence or certain parts of this process that would have led to a different conclusion here.

I ask just for a clarification on that issue if my general description fits the gentleman's understanding of what might be described as the circumstances in this case. Through you, Mr. Speaker.

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SPEAKER AMANN:

Representative Green.

REP. GREEN: (1st)

Thank you, Mr. Speaker. Mr. Speaker, through you, in all due respect to my colleague, I would have a different analysis.

I would agree that there may not have been a malicious intent. Representative DelGobbo mentioned errors. He mentioned omissions. He mentioned some things that, depending on what really happened, might rise to the level of negligence on individuals, police department, medical personnel and other institutions in our state.

I'm not here to try to figure out what happened. I do know that, unfortunately, this gentleman professed his innocence from day one, was offered an opportunity to plea, which we know 95% of our cases are done in plea bargains. He's steadfast to his innocence.

He sought a public defender because of his income. I'm not sure if everything could have been

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done on his legal behalf. I don't know if everything could have been done at the time based on the current medical procedures and forensic procedures that we have.

In the information that I received and I've researched, I probably would have done some things different to try to make sure that this in fact was the person that was being charged, so I have a slightly different opinion as to what might have happened.

I do agree that it might not have been malicious with intent in that case. But I do believe that a person who professes his innocence, all opportunities should be exhausted before you fine him, and he was convicted.

He spent 18-1/2 years, and it's amazing, as I said earlier, this gentleman holds no malice toward any of those individuals who made the decisions at that time, and at this point, we would rather just move on, and it is not my intent to believe that this was done with any intent.

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REP. DELGOBBO: (70th)

Thank you.

SPEAKER AMANN:

Representative DelGobbo. I'm sorry, Sir.

REP. DELGOBBO: (70th)

That's okay, Sir. Thank you, Mr. Speaker, and I thank the gentleman. And first of all, I have no reason to refute the characterization of the good gentleman and how he characterized what did and didn't happen here.

I simply presented my understanding as a Member of this House what I heard in various Committees as sort of how an issue like this could be judged on sort of a scale of things, and because in my mind the issue before us, certainly Mr. Tillman's case, as was something that this Chamber knows, and the state now knows very well directly.

But then the only follow up questions were how did we arrive at this number, and I think the gentleman appropriately described that. I think that's a legitimate basis for us to understand.

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And then also to understand, I guess, the framework of the criminal justice system, what, how do we best sort of give a better understanding of this case in that context, and that may have had an impact on the level of award that Mr. Tillman may ultimately have been eligible for had he pursued any direct claims to the state, that my understanding is that this issue before us today would preclude.

I thank the gentleman for his answers. I appreciate that. As I said in the Appropriations Committee, I think our role here today is maybe to hearken back to an old name for this General Assembly when we were considered the General Court.

And in that role, perhaps we are providing an opportunity for some justice to a circumstance, and some redress to a circumstance that only this General Assembly can offer in this way and at this time.

And I thank the gentleman and all those who worked very, on all sides of the aisle, very diligently to properly consider not just this case

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individually, but the appropriate actions that the state could take. Thank you, Mr. Speaker.

SPEAKER AMANN:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. As I think is probably the case with virtually every person in the Chamber, I support this Bill.

But I thought it was important to explain a few things, especially given the issues Representative DelGobbo just raised, and maybe put some broader context on this issue.

I think we can be somewhat satisfied that this is the first time, at least in my 21 years in the Legislature that we've been confronted with the issue of an actually innocent person having been incarcerated for any period of time, let alone 18 years.

That may be because we have a relatively perfect system, although somehow I doubt that. I suspect that there may actually be some other innocent people in

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our state's prison system, and I hope that the newly established unit within the public defender's office, the Innocence Project, we'll be able to respond to requests for assistance from inmates who claim they are innocent, and as they have been doing in the recent past, trying to sort out the ones where they think there's a potential actual innocent situation.

And I think it's worth noting that there is an appropriation pending before us to actually fund the Innocence Project, which has operated within existing resources for the time being.

But I think given the success in the Tillman case, it's important that we ensure that that effort can continue on the theory that there probably are a few other actually innocent people who have been convicted of crimes, and who are currently in our state's prison system.

On the issue of the \$5 million. First of all, I support this. I think it's a fair settlement. But the Judiciary Committee did consider some of the questions Representative DelGobbo asked.

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And we debated in our Committee how it would be that we'd go about figuring out if this really was a fair number, and I can report to the House that over the past few weeks we've consulted with the Attorney General's office.

Keep in mind it would be the Attorney General who would represent the state in any lawsuit against the state for negligence or misconduct brought by, in this case, an actually innocent former inmate, to get a sense of whether or not \$5 million was in the range of a fair settlement in the matter.

And I can say, in essence, the answer to that question is yes. Now, figuring out what juries would award in this situation is a very imprecise science. It's hard to figure out what the range really is, but what is clear is \$5 million is at the high end of the mid-range. Let's put it that way.

So it's not off the chart under the circumstances. It's not unprecedented in the country. Other states, other state legislatures have dealt with similar problems, have come up with numbers comparable

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to this. So I don't think this is outside the norm at all.

I think it's also important to point out that aside from the fact that Mr. Tillman is actually innocent of the crime, and did actually spend 18 years in prison, and worth noting not only did he spend 18 years in prison, but it was 18 years in maximum security, 18 years having been convicted as a sex offender.

And I think those of you who know how the prison system works, understand that convicted sex offenders are at the bottom of the totem pole, even within the prison world.

So if you can just imagine for a moment what it must be like to know that you're innocent, to be incarcerated.

I believe he was sentenced to 40 years to serve, and to be 18 years into that sentence with no real prospect of getting out any time soon, and you are a convicted sex offender, how you'd be treated, the

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liberties you'd be deprived of, even within the prison system, is really unimaginable to most of us.

So that, by itself, probably warrants \$5 million, but it's worth considering there are other allegations that Mr. Tillman has.

They've been hinted at. I thought I'd put them out there so that you can understand why in many ways this is a good deal for the state to settle this for \$5 million today.

It is alleged that in the actual trial, evidence was presented before the jury, which was the result of analysis done at what was then the State Crime Lab. I think it was within the State Department of Health, and there's an allegation that the evidence that was presented at trial, there was significant errors.

If they were erroneous, then it would have been due to negligence on the part of the state, and if that is true, it would give rise to a claim, it could give rise to a claim of negligence against the state.

That could be presented to the Claims Commissioner. Theoretically, that could be presented

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in federal court under certain federal laws, and that could give rise to liability on the part of the state.

That's one claim that has been made that would be presented in court if we didn't resolve this in this way today.

And you can just imagine if a jury believed those allegations, and if a jury got to the point where they wanted to decide what was the fair compensation for 18 years incarceration due in part, in large part or in small part, but in part the negligence on the part of the state, you can imagine the numbers the jury could come up with, especially after seeing Mr. Tillman testify on the stand, as sympathetic as he is, as compelling as he is, as wonderful a guy as he has become notwithstanding this horrible experience he's been through.

I think \$5 million would be a low figure that a jury would come back with. Now, Mr. Tillman looking at this has to consider the same factors, and I think for him the idea of resolving this now for \$5 million, which is not an insignificant sum is worth it, even

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though it's possible three, four, five, six, seven years from now he might get a larger number if he were successful at trial, and if he survived all the appeals. So that by itself I think makes this a reasonable figure.

But we have to also add in a potential claim, which Mr. Tillman has, a potential claim against the state for negligence by the University of Connecticut Medical Center, which is responsible for providing healthcare to inmates. There is an allegation of medical malpractice.

It could still be timely filed against the state. It would go through the normal process, the Claims Commissioner, and then ultimately here to the Legislature, and then potentially to court.

And there's another example of, if in fact there was medical malpractice there, if in fact it got to a jury, if in fact the jury got to the point of considering damages in light of all of these other fact, the fact that Mr. Tillman was actually innocent and was incarcerated, therefore got this medical

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treatment. You can imagine the dimensions of that potential settlement.

So those two factors you have to keep in mind when you consider whether or not \$5 million is a fair number.

In the interest of being complete, I should also say there is one other potential allegation, and that is, one of the police officers involved testified at the trial to, this is an allegation, I'm not suggesting it's true, but it would be a potential claim in any lawsuits that were brought if this were not successful today.

There's a claim that one of the officers involved testified untruthfully at the trial regarding statements that Mr. Tillman made shortly after he was taken into custody.

Again, I'm not sure if that allegation is true or not, but it is an allegation that probably would be the subject of a lawsuit, and if a jury believed it, you can imagine what the potential settlement would be in that case.

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Now, other states have been presented with similar claims of persons who were wrongfully convicted and sent to prison and incarcerated for different periods of time. Different states have different mechanisms.

Some states do this. They decide on a fair number. They present it to the Legislature, and the Legislature either approves it or it doesn't, and in those cases the resolutions have involved multi-million-dollar awards from state legislatures, and several in particular, including Virginia, North Carolina, have in fact been in the multi-million dollar range, and I think it's important to keep that in mind.

Other states and the federal government have formulas for compensating persons who were wrongfully convicted and incarcerated, even though they were actually innocent, and different states have different formulas.

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It could be \$25,000 a year, it could be \$50,000 a year. There's a lot of if, ands or buts variables that go along with that.

Connecticut does not have such a formula. I think we should. There's another bill pending before the Senate with an alternative mechanism for providing compensation to Mr. Tillman but a second section of that bill authorizes the Commission on Wrongful Convictions to consider whether or not Connecticut should have such a formula, and report back to the Legislature next year.

I hope the Senate passes that bill, and I hope we take it up, too, because if nothing else, we ought to have a formula absent any allegation of negligence, where if someone actually was innocent, and if they actually were incarcerated, we should have some base line way to figure out what appropriate compensation would be that would avoid this process we're going through today.

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Mr. Tillman's case is an extraordinary case, and I certainly hope there's no other people in this category in our state's prison system.

But apart from compensating Mr. Tillman, in order to do real justice here, and Mr. Tillman himself has said this, we should ensure that our law enforcement community, our police, our prosecutors, our court system, our crime labs, are using best practices to ensure that innocent persons are not convicted of crimes in the future.

In this year and recent years, we have considered initiatives that would help accomplish that, for example, videotaping of custodial interrogations, changing the rules for photographic identifications.

There are many theories that are being propounded around the country about better ways of going about identifying suspects in crimes.

I think it's worth pointing out in this crime, Mr. Tillman was identified positively by the victim of the crime based on a photograph. In this particular case the victim was white, and Mr. Tillman is African-

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American, and it is a well established fact that cross racial photographic identifications by victims in criminal cases are, in fact, notoriously unreliable.

In fact, the studies indicate that more often those IDs are wrong. They're more often wrong than accurate.

And so, in this particular case that wasn't the only evidence presented against Mr. Tillman, but it certainly was the most compelling, where the victim is sitting there saying that's the guy who did it.

And so I think it's incumbent upon us to ensure that we do everything in our power to ensure this does not happen to anyone else.

And I think that's the way we can accomplish complete justice for Mr. Tillman, make sure that he can live out the rest of his life with dignity and in some relative comfort dealing with all the demons that one can imagine would still beset you after having spent 18 years in prison on these charges, but at the same time knowing that you, through your experience, made a difference for other people, and I think that

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ought to be our goal today, and I urge passage of this Bill, and I think I speak on behalf of everyone, and I'm sure all of you will say this publicly and privately.

We certainly wish Mr. Tillman the best of luck in the future and we congratulate him for his enormous courage in dealing with this ordeal.

SPEAKER AMANN:

Do you care to remark further? Representative Cafero.

REP. CAFERO: (142nd)

Thank you, Mr. Speaker. Ladies and gentlemen of the Chamber, the Broadway musical Rent starts its second act with a song entitled *Seasons of Love*. I will spare you singing the song, but I will share with you some of the lyrics.

It starts off 525,600 minutes, 525,000 moments so dear, 525,600 minutes, how do you measure a year? Before us is a Bill to compensate James C. Tillman who was incarcerated for over 18 years.

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We have said that figure and heard of this case for several months now, and I don't know if any of you have had this difficulty as I have, trying to fathom what that means.

The lost moments with your family. The missed sunsets and sunrises. Maybe the ball games or the recitals, or just those stupid moments where you kick back and watch TV or listen to music, or take a walk. Eighteen and a half years behind bars. Think about it. I can't even fathom it.

My eldest daughter is 21 years old. When Mr. Tillman went into jail, she was probably about two. If that was his daughter, I can't even imagine.

And I don't know whose fault it was, if there was fault, who was negligent, etc. I know we feel bad, and I've often said from this spot that state government does not have the luxury to be compassionate, but what we are all about is justice.

Is it justice to give Mr. Tillman \$5 million for eighteen years and four months of incarceration? I don't know. I don't know if that's the magic number.

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I know two things. James Tillman did eighteen years and four months in prison for a crime and James Tillman did not commit that crime. That we know for a fact.

There are a lot of bills that we consider in this Chamber, over 400, I believe, throughout the Legislature, maybe 4,000 that we read and write and debate and argue and toss out.

But this one for me, and I'm sure many of you is special, because it is an opportunity, in my opinion, for the state to give justice.

I stand in support of this Bill. I say to Mr. Tillman, God bless you, Sir, with a long and happy life, and if this compensation makes your life one iota better, good for you. Thank you, Mr. Speaker.

SPEAKER AMANN:

Thank you, Representative. Would you care to remark further? Representative Clemons.

REP. CLEMONS: (124th)

Thank you, Mr. Speaker. I'll be brief. I stand to support passage of this Bill, House Bill Number

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6673, and I'd like to thank Representative Green and Representative McCrory for introducing this Bill.

This Bill grants Mr. Tillman, wrongfully incarcerated 18 years of his life, the sum of \$5 million as settlement. While incarcerated, Mr. Tillman suffered many indignities, psychological and physical suffering.

While the value of the loss of freedom is incalculable, I think that this Legislative Body and the state as some compensation should pass this Bill for Mr. Tillman and his family, and I urge the Members of this Legislative Body to support this Bill. Thank you.

SPEAKER AMANN:

Thank you, Sir. Would you care to remark?
Representative Hamzy.

REP. HAMZY: (78th)

Thank you, Mr. Speaker. I'd like to preface my remarks by echoing all the comments that were made before me. By all accounts, Mr. Tillman is an outstanding person, kind-hearted, genuine. I believe

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all those to be true. And I also want to say that I strongly support the Bill before us.

And as the House Chairman of Judiciary said, he's been here for 21 years, and this is the first time that we have taken up a bill, he's taken up a bill similar to this one. This is my 13th year and this is the first time I can remember taking up a Bill like this.

And for that reason, I just have a few questions to pose, through you, Mr. Speaker, to the Chairman of the Judiciary Committee.

SPEAKER AMANN:

I'm sorry, Representative. Please frame your question, Sir, and Representative Green, please prepare yourself, Sir. I'm sorry, did you ask Representative Lawlor?

REP. HAMZY: (78th)

Yes.

SPEAKER AMANN:

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Sorry, Sir. Representative Lawlor, please prepare yourself for a question. Representative Hamzy.

REP. HAMZY: (78th)

Thank you, Mr. Speaker. Through you, obviously if there was a lawsuit to be brought against the state by Mr. Tillman, an award, I believe would be paid if there was some liability or negligence or culpability on the part of the state.

Just for the purposes of establishing a record, a legislative record on this, through you, Mr. Speaker, what would that liability or culpability, in your opinion be, Mr. Chairman?

SPEAKER AMANN:

Representative Lawlor.

REP. LAWLOR: (99th)

Well, thank you, Mr. Speaker. First of all, that's what I was attempting to explain earlier. Maybe I didn't do a good enough job, but I outlined the three allegations that I'm aware of, the allegations regarding potential negligence involving

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what was then the State Crime Lab, which is, I should underscore, I think at the time was in the Department of Health.

It's nothing like the current Crime Lab, and I believe it's fair to point out that at the time there was a good deal of controversy about the results obtained in that particular lab, so just for the record on that topic.

The second allegation is, and again, I'm not in any way passing judgment on the merits of these allegations. I'm just stating that they were outlined for us in the Judiciary Committee, and if you could prove them, you would establish liability, I believe.

That would be deliberate false testimony on the part of a Hartford police officer during the trial. That was an allegation regarding statements that Mr. Tillman supposedly made shortly after he was taken into custody, which seemed to corroborate the identification made by the victim.

And the third allegation regards nothing to do with the actual case but instead, that medical

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treatment provided to Mr. Tillman while he was an inmate, and under our current system, that treatment was provided by the University of Connecticut Health Center, and there's an allegation of medical malpractice.

Now, the merits of that allegation I couldn't pass judgment on. I can simply say that all three are claims, which they are prepared to make if, in fact, this legislation is not successful.

And I point out, I believe with the deliberate statements, well, an allegation that police deliberately lied on the stand and obtained a conviction could be brought into federal court.

The medical malpractice, I think, could only be brought to the State Claims Commissioner, unless there was some allegation that was done deliberately, but assuming it's ordinary negligence, I believe it would go to the Claims Commissioner.

I think he did file, the statute of limitations on that has not yet expired, and we've been informed that if this were not successful those, all of these

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lawsuits would be brought almost immediately,
especially in the next week or so.

And the third allegation about the Crime Lab, I'm not exactly sure how they would make that claim, but they seem to have a theory upon which they could succeed with that.

So those are the three potential allegations, and I think as people pointed out, if you could even, if you could get that to a jury, and you could get to a hearing on damages, the fact that he was actually incarcerated for 18 years would certainly be a fact that the jury would probably consider, and the exposure would be quite a bit more than \$5 million if that ever happened.

So, through you, Mr. Speaker, that's, those are the allegations I'm aware of.

SPEAKER AMANN:

Representative Hamzy.

REP. HAMZY: (78th)

Thank you, Mr. Speaker. I just want to reiterate, and just make clear. I believe we're

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establishing a precedent here, and the reason for my questions is to try to outline the reason why we're taking the action that we're taking today.

It's for those, it's in that context that I'd like to, you know, make the next questions a part of this record, and I appreciate Representative Lawlor outlining the allegations that are made, the allegations that are made that are the basis for a potential claim.

Through you, Mr. Speaker, I know that there was a breakdown of how the \$5 million has been allocated, and I also assume that there was a negotiation that had taken place.

Through you, Mr. Speaker, I know who represented Mr. Tillman. Can you tell me was it the Attorney General's Office or was it the State's Attorney's Office or who would be the party that would represent the state in those negotiations? Through you, Mr. Speaker.

SPEAKER AMANN:

Representative Lawlor.

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REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Well, in this particular matter there was no negotiation, strictly speaking. There was a claim presented, I mean there was a Bill introduced. There was a public hearing before the Judiciary Committee.

Mr. Tillman testified before the hearing. He was accompanied by one of his attorneys, Attorney Jerry Smythe. He does have other attorneys, and I think it's worth pointing out, by the way, that all of the attorneys who are representing Mr. Tillman are doing so on a pro bono basis. In other words, they're charging no fees whatsoever for their services.

So Mr. Smythe is representing him with regard to this particular issue about whether or not he'd be directly compensated by the General Assembly.

He is represented by another attorney whose name I forget on the medical malpractice action, and that attorney is prepared failing this action, to bring a claim against, I think he's already filed a notice of claim on Mr. Tillman's behalf, and will, in fact,

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bring the claim to the Claims Commissioner if this is not successful. It's Attorney Solak who represents him in that matter. And he's represented by Attorney Barry Scheck.

SPEAKER AMANN:

Yes.

REP. LAWLOR: (99th)

Right. I'm in trouble for forgetting his name, but Attorney Barry Scheck who is a nationally, internationally famous lawyer who specializes in these matters who is prepared to bring a claim on his behalf for the actual wrongful conviction based on negligence, and this would be the allegation regarding the State Crime Lab and the potential false testimony of a police officer.

I have spoken with Mr. Scheck. I have spoken with Attorney Scheck. I have spoken with Attorney Smythe. I've not spoken with Attorney Solak, but representation's been made on his behalf about the nature of the case they have, but each of them feels very confident that they have winners in those cases.

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As I said, they're not being compensated at all, and they're all supporting this particular Resolution today, but if it's not successful, they will bring actions against the state in state and federal court, and at the Claims Commissioner's office, and they're all formidable opponents, and we would certainly be opening the state to extraordinary liability.

And I just want to say because Representative Hamzy you mentioned this in your question, that we are setting a precedent, and we would be, in effect, and I think that's why I think we should also, during this Session, authorize the Advisory Commission on Wrongful Convictions to develop a recommendation for a formula to compensate wrongfully convicted persons who are incarcerated so that we don't have to go through this again.

Now, that's not to say that if there is a combination of an actually innocent person being convicted, and negligence on the part of the state they still couldn't sue us, whatever formula we establish, but rather than have the formula, every

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single time this happens you have to come to the
General Assembly.

I think it would be good to have a formula out
there for immediate compensation. If that's
satisfactory in a particular case, that would be the
end of it.

If not, of course they could come here or bring a
lawsuit, so I think this may actually be a unique
situation, an extraordinarily serious situation, but
nonetheless unique, and hopefully in the future we
won't have to go through this process. Through you,
Mr. Speaker.

SPEAKER AMANN:

Representative Hamzy.

REP. HAMZY: (78th)

Through you, Mr. Speaker, and Representative
Lawlor had anticipated a couple other questions I was
going to ask with regard to other potential claims.

I think, you know, we go through the process of
trying to establish best practices to hopefully

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eliminate, but also minimize mistakes that are made through our judicial system.

But as we all know, the judicial system, just like every other system that we have in this state is made up of humans. Humans are not perfect by any stretch of the imagination, and I believe, I also believe that there are other innocent people that are incarcerated currently.

But I also believe that there are other people who either plead guilty to a crime that they did not commit or were convicted of a crime and have already served a prison term for a crime that they did not commit.

And my next question is, how will those claims, or how do we intend those claims to be handled in the future, and Representative Lawlor did mention a wrongful conviction task force or agency. I'm sorry, I can't remember the name it was given.

But would we charge that commission with coming up with a process or a formula to deal with those people, as I mentioned, that either were wrongfully

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convicted, or plead to a crime that they did not
commit? Through you, Mr. Speaker.

SPEAKER AMANN:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Mr. Speaker. Well, that particular
commission already exists, so their charge at the
moment is to look at cases where people actually were
wrongfully convicted and recommend ways.

The theory behind that is it's analogous to the
National Transportation Safety Board. We're all
familiar about the plane crashes, a train wreck,
whatever, they go down and take a look at it, figure
out why it happened, make recommendations, how to
avoid this in the future.

Their recommendations aren't binding, but they're
pretty compelling, and the theory when the Legislature
created this, I think it was two years ago, maybe
three years ago, was that they could look at actual
cases of wrongful convictions, and then attempt to

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make recommendations for the future in terms of best practices, etc.

They're not specifically charged with coming up with a formula for compensating persons who were, in fact, wrongfully convicted and incarcerated.

The other bill, which is currently before the Senate would actually give them that authority, and if enacted, my sense is what they would do is look at what other states have in terms of formulas, try and recommend one that seems to fit our needs here in Connecticut, and then the Legislature could consider that next year and potentially establish a formula for compensation.

And states, the federal government has such a formula. A variety of states have such a formula. They're all very different from one another. Some have a flat rate per year. Others have sort of a range per year, depending on the circumstances.

Some of them take into account whether or not the person, the difference between being actually innocent of a discreet crime, and like completely innocent like

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Mr. Tillman is, just wrong place, wrong time, but didn't do anything wrong, you know, you have to factor those things in.

Some states factor in, some states provide for a lump sum payment. Other states for some type of annuity. Some states provide free college tuition for ex-inmates, you know.

There's a whole variety of options, and I think it would be a good idea to give that Commission the opportunity to look at them, think them through, come up with a recommendation and we can consider enacting such a formula for Connecticut.

It seems to have worked pretty well in other states. Most of the cases that would be in this category are not nearly as serious as this. They're relatively short periods of incarceration, relatively minor charges.

But once in a while, we read about a few of them in the paper just this past week. Other states finding guys been in jail for many, many years, in some cases on death row, and a few cases minutes away

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from execution turn out to be the wrong guy,
completely the wrong guy, actually innocent.

And so, we ought to have a system for dealing
with this. And the last thing I want to say on this
topic is, the main reason we're here today discussing
this is the extraordinary advancements in DNA
technology.

If the technology that exists today had existed
in 1988 when Mr. Tillman was charged, he would never
have been convicted. We know that for sure.

But there are many cases that don't involve DNA,
and only involve, for example, an eye-witness
testimony, and in this case, apparently the most, the
strongest testimony was that of the victim.

And I guess I should say, and I think we should
all say, that in these deliberations we're having
today, we have to respect the victim of this crime,
because there really was a crime. There really was a
sexual assault. It turns out someone else committed
it.

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And in understanding the tragedy of the Tillman case, we should also keep in mind that the actual perpetrator was never convicted of this crime, and may actually be still out there, may be victimizing other people.

And so it's a double tragedy, for Mr. Tillman, for the victim, and maybe even a triple tragedy for all of us who have been exposed to a true predator who has been out there all these years.

And so, aside from compensating Mr. Tillman, we have to make sure we don't make this mistake again in the future, and I think the whole of that is what we ought to do, and we can complete the job next year during our Session.

SPEAKER AMANN:

Representative Hamzy.

REP. HAMZY: (78th)

Thank you, Mr. Speaker. And I'd like to thank the House Chair for his responses, and also add my remarks and my well wishes to Mr. Tillman, and hopefully, this is some small measure to help him live

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the rest of his life in a somewhat comfortable
fashion.

Obviously, taking away 18 years of someone's
life, at least in my mind is not worth \$5 million, but
hopefully in some small respect, this will assist him
as he lives out his life, and I certainly want to add
my well wishes. Thank you, Mr. Speaker.

SPEAKER AMANN:

Thank you, Sir. Representative Boucher.

REP. BOUCHER: (143rd)

Thank you, Mr. Speaker. Mr. Speaker, much has
been bantered about, about the price tag of this
particular Bill, the \$5 million price tag, and it led
me to remember back when there was actually a study
done about how much does a person really need in this
world to live well, to be able to purchase anything
they wished or to have a good life.

And interestingly enough, although I'm sure this
Committee or the individuals negotiating this had no
idea about this study, the number actually was \$5
million, and it came to mind when we were asked about

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our support of this particular initiative, which most of us absolutely supported 100%.

My comments would be directed to Mr. Tillman to take that \$500 million, invest it wisely, so that he can get the full measure of that amount of money on a yearly basis, which many predict could be a \$500,000 salary, so to speak, to pay him going forward and still keep his original \$5 million.

So I thought that would be of interest to the House to know about previous research done in this particular area. Thank you, Mr. Speaker.

SPEAKER AMANN:

Thank you, Madam. Do you care to remark further?
Representative Dyson.

REP. DYSON: (94th)

Thank you, Mr. Speaker. Mr. Speaker, there are a few points that I wanted to make, and I understand the shortness of the hour and people would love to see us move on from talking about this issue, but however, I feel there are a few things I should point out.

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One, we are about the business of trying to quantify what 18 years means to someone, and I gather we have taken it upon ourselves to come up with the number of \$5 million, and that does it.

We can question that all we want, but there's no way we can ever recover 18 years of an individual's life that was done in an unjust fashion. We can't do that.

But let me just make an assumption here about a couple of things, and I want people to pay attention to it, if I might.

Even after he gets the money, unless there's something done to clear the record, he still has a record. And if somebody got something that's going to tell me differently here, he still has a record.

Now let me see, and I hope I'm wrong. But let me see what another step might be. Since it was a sexual offense, it might say something about what he has to do in terms of his reporting to the police.

Never mind that we have determined that he's innocent, is there a record out there somewhere? Yes,

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there is. Now let me tell you why there's a record out there some place. Now I have some notion it is.

Anyone arrested and convicted, either State Police, Judicial Department, has a record. When do they erase the record, and do they erase it before they sell it?

And everybody and their cousin know you get these ads all over the place about companies that are going to offer security who somehow have gotten their hands on some information, and they know who's been found guilty of whatever, and you want to tell me that this guy's name is not on that list?

That's already out there. Five million dollars doesn't change it. So I just want to point out here, we have an injustice that has taken place. We have tried to rectify it, and that's what we're doing.

That is commendable that we are doing it, but don't you assume that it's over for him. Don't you assume that it's over.

But let me also point out something else. This is a grand opportunity for this body to engage in

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debating an issue that we haven't debated, because God forbid he should have been on death row, an Innocent Project didn't come along, we wouldn't have to spend \$5 million because he wouldn't have been here to make the case.

This is a grand opportunity for us to rectify a wrong, and we are doing that, but it's a grand opportunity we should take up the notion of dealing with the issue of death penalty and abolishing it.

I don't know how many people read the *New York Times*. I read it this morning, and jumping out at me is [inaudible] on Page 1, handcuffs and all, tears running down his face, he had just been found innocent by the Innocent Project.

It is happening more frequently that we'd like for it to happen. It is happening more frequently than we'd like for it to happen. Yet it is happening, though because we are not perfect. We are not perfect.

And when we find ourselves imperfect, we ought to be about the business of correcting it, making it

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perfect. And again, I would say, this is a perfect opportunity for us to engage in abolishing the death penalty. Right now.

Of course, I know we can't put that on the table here today. But we jolly well ought not to leave this place until we do, because if we want to really be true to ourselves, we will make sure as best we can, to make the system as perfect as we can make it because we don't want anyone else having to go through something like this.

And I need to really check for myself and try to find out whether or not Mr. Tillman still has a record that will follow him, even though we're giving him \$5 million.

Is there still a record? Are there restrictions still placed on his movement? Are there restrictions that said where he can live, what he can do, and God forbid if they are there, and I suspect that they are, they're going to follow him the rest of his days and \$5 million is not going to change it.

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It's not going to change it. And we owe it to him and everybody who's had something like that happen to them, and for all those in the future, we owe it that we are to improve upon what it is that we do here in the name of justice.

And I must say that we had a press conference and the issue of the death sentence was brought up, and I commend the Speaker for making some positive comments about yeah, this was a time that we should take up the death penalty, at least some positive comments about the issue of abolishing death penalty, and I think we should. I really think we should.

But don't assume that Mr. Tillman's troubles are over. I don't think they are. I don't think they are, and I intend to support this, and I know that others in the Chamber are, and I would hope that everyone in their hearts would see to it that they would do this, and you have my gratitude for doing so. But don't assume it's over. Thank you.

SPEAKER AMANN:

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I thank you, Sir. Do you care to remark further?
Representative Hewett.

REP. HEWETT: (39th)

Thank you, Mr. Speaker. First of all, I want to
steer my comments to Representative Boucher to say
there was a \$500 million instead of \$5 million. I
wish it was, but that would really make his life a lot
more simpler.

I met Mr. Tillman a couple of months ago up here
in the General Assembly, and one thing that stood out
the most about him is his demeanor.

If just talking with him for five minutes, you'd
know that something is handling him, it's a high
power, something beyond our control. Mr. Tillman's
mother, which is a very kind lady, you know very
quickly where he got his demeanor from.

I've watched this case from day one when he was
exonerated from his crimes, and I don't know whose
fault it was. Right now, I wish that we could turn
back the hands of time and erase everything that has
happened, but we can't do that.

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So what we have to do now is make Mr. Tillman's life a little more easier as he goes on in his life, and take him out of the prison that he's in now, a financial prison, and we need to correct that. So I urge my colleagues to support this Bill. Thank you.

SPEAKER AMANN:

Thank you, Sir. Care to remark further?

Representative O'Neill.

REP. O'NEILL: (69th)

Thank you, Mr. Speaker. First off, I would like to respond to the former Chairman of the Appropriations Committee who spoke just before the last speaker, and it is my understanding that Mr. Tillman does not have a criminal record at this point in time with respect to the charges that led to his incarceration, because those charges have all been dismissed by an applicant, by a motion that was made in court and that motion was granted by the judge, and that all of the charges against him were dismissed, and so he has no criminal record.

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And because he has no criminal record as a sex offender, there would be no requirement for him to register with the Sex Offender Registry or any of those kinds of things or any restrictions or limitations on any jobs that he could apply for, or anything along those lines.

Now, however, in part because of the fame, which his case has generated, there are going to be newspaper accounts on the Internet for probably the rest of his life and our lives mentioning this event.

There's going to be a newspaper headline tomorrow. There will be TV coverage of this tomorrow and the next day, this event here, and so millions of people across the state and across this country will have known that he was at one time convicted, spent time in prison, and then was exonerated.

And of course the problem with this is that, I think Will Rogers said that a lie has a big advantage in that it's halfway around the world before the truth gets its boots on to pursue it.

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So there are always going to be those, I suppose, who view Mr. Tillman in a negative light, because they may not believe the DNA testing that exonerated him or that the court system decision in this case now is the correct one.

But as far as our official records, as far as our requirements as a state government, it is my understanding that Mr. Tillman has no obligations to do anything in terms of registrations, and that he has no criminal record with respect to these charges.

The second thing that I would like to point out, and that is that Mr. Tillman, we talk about the \$5 million, and I don't know how people feel about this.

The legislation began, as I understand it, makes the money that he's going to receive exempt from state income taxation, and so we will not, as a state, be collecting money from him for the taxes that might be due on a payment such as this.

But the federal government, over which we have no control in this legislation, makes no similar arrangements, and they, in fact, would impose a tax on

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at least a portion of the amount of money that we are about to award to him, at least I believe we are about to award it, and that at least a portion of that \$5 million will probably be claimed by the IRS to be taxable.

And so, he will not, in fact, receive the full \$5 million that we're talking about here today, but probably some lesser amount of money.

I've been assured that his attorneys are going to argue with the IRS that it should not be subject to taxation, but they don't know for sure whether they're going to prevail, and my impression is that in prior cases, that argument has not been accepted by the IRS in similar situations, so that Mr. Tillman will, in fact, be receiving perhaps a lesser amount.

And I'm not trying to guess right now what that amount will be, but probably less than the \$5 million that we're talking about right now.

I won't repeat what's been said previously other than to say it is very difficult to try to come up

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with a number here. This is a unique case involving a unique individual.

I think as much as anything else, it's not simply that we feel that a malfunction of the judicial system occurred.

Not that perjury was brought forward, not that evidence was manufactured in this case, it's not one of those really egregious cases, nor is it the other kind of case where every single thing that could have been done to try to find out what the truth was, was done, because a lot of things were not done.

The rape kit was not tested. Adequate testing, blood testing was not done, various evidence that could have been tested that might have tended to exonerate Mr. Tillman even at an earlier stage.

So this is one of those cases that falls into that middle category where mistakes of one kind or another were made by Mr. Tillman's attorneys, probably, by the State's Attorney, by the laboratory, and so forth.

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And that's going to probably be, I think, if we see other cases like this, where those cases will fall in that same middle category in most cases. At least I hope that they won't be on the ones in the area where there's malicious activity on the part of a prosecutor or police agency.

But one of the things that really is compelling about this case is Mr. Tillman in his personality, and in the way in which he has responded to this very bad hand that life has dealt him, and that he has presented to us an image, a person, a personality that really is what I guess we all wish that if the same thing were to happen to any of us, that we would be able to carry with us, that we would have the same fortitude to keep saying yes, we are innocent, and that we didn't commit these crimes.

And at the same time, the same good humor, the same grace, the same decency and dignity that Mr. Tillman has shown when he has presented himself to the Judiciary Committee and elsewhere that he has behaved

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with a tremendous amount of courage in the face of all
of this.

And perhaps as much as anything else, what is
compelling about this case is that courage and that
dignity that he has displayed.

And so while we cannot help but be making a kind
of precedent here, we are making a precedent for an
individual who I suspect we are not likely to see too
often in the future, or at least someone with this
kind of dignity, grace and courage. So I hope that
others will join me in supporting this. Thank you,
Mr. Speaker.

SPEAKER AMANN:

Thank you, Sir. Care to remark further?
Representative McCrory.

REP. MCCRORY: (7th)

Thank you, Mr. Speaker. Mr. Speaker, as I sat
here and listened to, I wouldn't want to call it a
debate, but a discussion centering around James
Tillman, I told myself that I wasn't going to say

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anything because I feel as though everyone understood the magnitude of this situation.

But there's an individual that has been left out of this conversation today, and that's James Tillman's mother. You know, in my opinion, Sunday we celebrated the most important holiday that we celebrate in this country, and that's Mother's Day.

And Sunday I went to church and I thought about what was going to happen this week, and I knew that this Bill was going to come up today, and I thought about my relationship with my mother. I thought about James' relationship with his mother, but in general, a relationship that mothers have with their sons.

Specifically, within our community, the bond that mothers and sons have. It said that mothers raise their daughters, but they protect their sons. And they protect their sons because they know what would and what could happen to them if they don't listen and follow their instructions.

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The sermon on Sunday talked about praises going up and more praises that go up, the more blessings come down.

And as I sat there and listened and I prayed for my mother, I looked to the right of me and it was that mother that was here this morning, and that mother was James Tillman's mother.

And I watched the tears that came down her face when the songs were being sung, and how passionate she was when the leader kept saying, as praises go up, blessings come down.

And I saw the tears in her face, how she had this bond, this inner strength, this belief that righteousness would swoop down and make a way out of no way, that if she just continued to believe in herself, the way she believed for 18 years, that her son was an innocent man.

How she believed when we as a society probably didn't believe at all because we believe in the criminal justice system when they put someone away, they did the right thing.

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And I know in the back of our mind that we laugh when we talk about people who are incarcerated, oh yeah, everyone's in jail [inaudible].

But how she believed in her son. But more importantly how she believed in a higher power that would make things just for her and her son.

And fortunately, there was a number of people in the State of Connecticut that believed that James was a free man, that believed in the words he said, but he believed in himself and he stayed by his convictions and said he didn't do it, and eventually, eventually, as those praises kept going up, the blessing finally came down.

And it makes us all, it gives us that belief that somehow if we just believe in ourselves, the right things will come true.

So I say, I guess I say to his mother, Mom, just hold on just a little more. Just hold on and keep on believing, because it won't be long now that a form of reparation will be provided to you and your family so that you can enjoy your blessings.

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Unfortunately, they had to come under these circumstances. But you can enjoy the blessings that will be bestowed upon you by leaders in this state that are sitting here, who will make a decision that will affect not only her, and not only her family, but her neighborhood and her community, a community that probably lost faith in our justice system.

A community that probably lost faith in a higher power. You know, the eyes of the entire State of Connecticut are watching this.

And not just in the State of Connecticut, because like was said earlier, this is happening all over the country, and you probably have the eyes of this country watching what's going to happen in the State of Connecticut.

What are they going to do to provide a sense of comfort, belief, that good things can't happen, that we can make a way out of no way. That we can remove the knife that was placed in James' back, and we can begin the healing process.

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You know, in conclusion, I know there might be some people who feel as though he doesn't deserve this, and I understand that. I understand that very well, and if you feel that way, vote that way.

But all those individuals who believe that we need to affirm the belief, I need you to tap that green button in front of you. Just tap it one time, because that will let everyone know that we affirm the fact that praises when they go up, blessings will come down.

There's a song we learned when we were young and go to Sunday school, and I can't sing, and I'm not going to try to sing for you. But I just want to recite some of the lyrics, and I'll sit down, because I know we want to get out of here.

And I guess, and I've been singing them since this morning, and it goes that you know, we don't get things placed on us that we can't handle in life, and I don't believe He brought us this far to leave us.

I feel no way tired, no way tired. We've come too far from where we started to turn back now. No

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one said the road would be easy, but we've come this far, and I don't believe He will bring us this far to leave us.

So with that said, my colleagues, again, tap that little green button. It says a whole lot to a whole lot of people. Thank you very much.

SPEAKER AMANN:

Okay, any further remarks? Will you remark further? Will you remark further on the Bill before us?

If not, staff and guests please come to the Well of the House. The Members please take your seat and the machine will be opened.

CLERK:

The House of Representatives is voting by Roll Call. Members to the Chamber. The House is voting by Roll Call. Members to the Chamber, please.

SPEAKER AMANN:

Have all the Members voted? Have all the Members voted? If all the Members have voted, please check

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the board to make sure your vote has been properly
cast.

If all the Members have voted, the machine will
be locked and the Clerk will take a tally. The Clerk
please announce the tally.

(APPLAUSE)

CLERK:

House Bill Number 6673.

Total Number Voting	148
Necessary for Passage	75
Those voting Yea	148
Those voting Nay	0
Those absent and not voting	3

SPEAKER AMANN:

The Bill passes. Representative Donovan.

REP. DONOVAN: (84th)

Mr. Speaker, I move for suspension of the Rules
for the immediate transmittal of the last item to the
Senate for further action.

SPEAKER AMANN:

Representative Cafero.

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REP. CAFERO: (142nd)

Mr. Speaker, there's no objection from this side of the aisle.

SPEAKER AMANN:

Thank you, Sir. Hearing no objection, it will be so ordered, then. Ladies and gentlemen, this is an extraordinary circumstance. It's not something we haven't done before, but it is proper to ask the Chamber, if I could ask Mr. Tillman and his Mom to come in and ask is there objection?

Is there objection? I thank the Chamber. Mr. Tillman and Mrs. Tillman, if you'd like to enter the Chamber.

(APPLAUSE)

I thank the Chamber for that, and I also thank the Chamber for your vote. You know, there's very rare opportunities we really can do something that's worthwhile, and I think it's one of these things that hopefully we'll always remember.

So I thank again to the Chamber, thank you, and to Mr. and Mrs. Tillman and also for James Tillman, we

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CHIEF STATE'S ATTY KEVIN KANE: Requiring people to secure their weapons in a manner to prevent them from falling into the wrong hands, yes.

SEN. GOMES: And that protects a child in the house. That protects the next person that gun is used on in a crime and so on and so forth.

Maybe we're in the wrong area, where you should be talking about securing weapons in the household, making that a law. Thank you.

REP. LAWLOR: Further questions? If not, thank you, Kevin. So we're about 20 minutes over the first hour of testimony.

So we'll switch now to the public portion, and we'll try and weave in the state and local officials as we go. So next are James Tillman and Attorney Smyth.

ATTY. GERARD SMYTH: Good afternoon, Representative SB1456 Lawlor and Members of the Committee. I am Attorney Gerard Smyth.

And I'm privileged to represent James Calvin Tillman, who I accompany here today to address the Committee in regard to House Bill 6673 which would provide compensation to James in the amount of \$5M dollars for the 18 years, four months, and 11 days that he spent incarcerated for a sexual assault and kidnapping that he did not commit.

I think you're all familiar with Mr. Tillman and his story. He was sentenced to 45 years in prison in 1989, and in June 2006, DNA results

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exonerated him and confirmed that he was not the perpetrator of the crime.

And in July of last year, all of the convictions were vacated, and the charges against him were dismissed.

We are here seeking just compensation for him for the years and the life experiences that he lost, for the mental torture that he endured, for the fact that for all those years he had no career.

He currently does not own a home. He has no family because he was locked up from age 26 to age 45.

We're seeking compensation for the physical injury and the poor medical care that he received while he was in prison, for the loss of income and future earnings, for the impact that his incarceration had on his family relationships, and particularly his mother, who visited him every week for 18 years.

And for essentially the loss of the prime years of his life. I will be addressing the particulars of the bill, and there is another bill, Senate Bill 1456 which I will comment on.

But before I do that, I would like for James to address the Committee himself and share his experience and his thoughts about this.

JAMES TILLMAN: Good evening, everyone. Thank you for having me here. Most of you all know my

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story. I've been locked up since 1988. And I was accused of rape and kidnapping.

And I felt like I was kidnapped. I felt like I was raped, and you know, it's difficult going into a prison system with a rape conviction. I mean, it's just difficult going into prison, period.

But when you go into prison, and you go into prison with a rape conviction, everyone looks at you like you're scum, like you're a piece of garbage.

I mean, you already have society looking at you like you're a piece of garbage, but when you get into the prison system, you also have to deal with that also.

But I endured. I filed [inaudible]. I filed everything, and few people helped me. Legal teams helped me. I had lawyers and some of everybody. And then I found my spiritual part. I found Christ, at which time I started praying.

And I started asking God, why did you let this happen to me? Why? Why am I in here for something I didn't do? I said I'm not trying to prove to everybody else, but you know and you're God.

And at which time I just broke down at the door of my cell. I started crying. I was tired of their food. I was tired of living in the cell. I was tired of just CO's telling me what to do. I was tired of being felt on.

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I was tired of just not being able to look at the sky, look through the windows when I want or go to MacDonal'd's or Burger King. I was just tired of everything. I was just tired of walking down the hallway with the brass, wearing that brown outfit.

I was tired of smelling my cellie after he used the bathroom. I had to smell that. I was just sick and tired of everything, and I just broke down at my door after 18 years.

And I didn't have nothing left, at which time, the next day, after I cried and after I just broke down, people were looking at me like I was crazy. But I just didn't have nothing left.

And then the next day, the Innocent Project came up to the prison. And when they came up to the prison, they said, James we've come to help you. And when they said, we came to help you, I said well, thank you, Lord, and I just broke down crying because I felt that I was forgotten about.

I felt that no one ever believed in me. I thought that I was going to die in prison because I was never going to plead guilty to a crime I didn't commit, and that's what I told the judge when I first got sentenced.

And I said I'll do 100 years before I plead guilty to this crime, and then the guy said, well, you should just give him 100 years. But

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instead, they gave me 45 years. They gave me half of that.

And I really thought I wasn't getting out. I really thought that I was just going to spend the rest of my life in prison, being convicted of the crime or rape that I didn't commit.

And at which time, I had enough strength, even though I didn't know whether I was going home or not, that gave me strength knowing that somebody cared enough to want to come help me and to want to just look into my case and just see whether I was the one, or whether I wasn't the one.

And it was the same public defenders that I had. It was like this public defender is helping me get out, at which time I just told him, it wasn't me. And I know they believed me. And they said they couldn't find the evidence.

And I said, well why couldn't you find the evidence? They said, well we just can't find it. And I said, well, you know, my case is still ongoing, so why isn't the evidence still secure? Why isn't it still where it's supposed to be because I'm still fighting? So why isn't anything available?

And then they finally located the evidence which they sent to a lab, and I got out, and here I am in front of you, everyone, now, and I have my freedom back. And I want to thank you.

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REP. LAWLOR: Is there anything else you want to say, Mr. Smyth?

ATTY. GERARD SMYTH: Yes, please, Representative Lawlor. House Bill 6673 would, as I said, would award James \$5 million, and I would like to make it clear that James' case in terms of the injuries and the damages that he has suffered is not worth \$5 million dollars. It's worth considerably more than \$5 million dollars.

And certainly, I think we'd all agree that no amount of money could repay him for what has been taken from him. But in cases like this that are litigated around the country, the typical award is in the range of a million dollars per year for each year of wrongful incarceration.

So we believe that James' case is worth at least \$18 million dollars. So the \$5 million dollars that is proposed by Representative Green, Representative McCrory and other cosponsors of the bill, is, in fact, a compromise or a settlement of any and all claims that James has against the State of Connecticut and its officials and against the City of Hartford and the Hartford police.

James does have the option to bring lawsuits. He does have council ready and able to file lawsuits if this method of compensating him is not ultimately passed by the Legislature.

But he really does not want to do that. He doesn't want to litigate. It would take years

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of litigation to bring lawsuits and have a trial.

And no doubt, there would be appeals and considerable delays in his receiving any compensation at all. He's been at liberty now for almost a year.

He currently works two jobs. He works at CREC, where he is an office assistant and also has been trained to do public speaking and is doing motivational speaking with students in both elementary, high school, middle school, college level students, and he intends to do some more of that.

And he also has a part-time job at a printing shop on Press Street in Hartford. But for a man who has been out of society for all those years, he shouldn't have to work two jobs to barely get by.

He really should be compensated so that he and his family can live a comfortable life. I would submit that he shouldn't have to work at all, although I think he wants to make a positive out of this negative that has occurred to him and does intend to continue with CREC.

But litigating this and having to wait years to receive compensation is not in his interest and I would submit, is really not in the State of Connecticut's interest either because the state does have considerable exposure here if lawsuits have to be filed.

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And the \$5 million dollar amount that is proposed in full settlement of all of these claims is really quite reasonable under the circumstances.

In terms of why should the Legislature compensate James, I think all of us have a moral obligation to do so. It was our legal institutions and our legal system that produced the grave injustice that was done to him.

And I think we as a society have a moral obligation to rectify that, and as I've said, I think this is not a no-fault case. It's not simply a case of an honest mistaken identification.

There were other misfeasance or malfeasance that took place having to do with police handling of the case, the State Health Services Department Laboratory's failure to test all of the biological evidence which I submit if they had done would have eliminated Mr. Tillman at the time as the perpetrator of the offense.

And so, there is fault and legal liability here, and so what's proposed, I think, is a reasonable resolution to the situation.

James is willing to waive any and all claims as is specified in the bill in return for a lump sum payment of \$5 million dollars.

There is precedent in Connecticut for compensating a wrongfully incarcerated person by a special act of the Legislature.

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Attorney Rick Taft was kind enough to do some research and found a special act in 1947 and a special act in 1951 when the Legislature provided monetary compensation to individuals who had been wrongfully incarcerated.

And so, I would request your support for this bill. There is another bill before you, that's Senate Bill 1456. This proposes to give James an initial payment of \$500,000 followed by unspecified annual payments for life based upon proceeds from the investment of the \$3.5 million dollars in unclaimed lottery prize money from February of 2007.

We appreciate the thought that went into coming up with that proposal, but frankly, it is not the method by which James would like to be compensated.

I think you can appreciate that after over 18 years of being completely controlled by the state, by the Department of Corrections, being told everything that he could or couldn't do, being told when to eat and when to sleep and where to live and not being able to make any decisions for himself.

That he would just like to get the money that he justly deserves and be able to control it himself, not to have it controlled further for the remainder of his life, use it wisely.

He does have financial investors, financial advisors who are working, will work with him, and I think it's the simplest and cleanest way to do it.

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So we strongly favor House Bill 6673. I don't want to rule out the possibility that he would waive his claims as would be required under House Bill 1456, but there are many shortcomings in that bill the way it's currently drafted.

And I did submit written testimony with some suggestions as to how that bill could be improved, which would include exempting the proceeds under that bill from the state income tax which is part of House Bill 6673.

But that language is not included in House Bill 1456. Also, specification of some type of a formula for determining what the amount of the annual payment would be.

Also a guarantee of a minimum of 25 years of annual payments for James or his heirs, if he doesn't survive that long. And then in addition, it's not clear under that bill as to who would own the \$3 million dollars that would be invested.

And we think that if that's the route that the Legislature chooses to go, then that money should be owned by James, not owned by the state, and he just gets the proceeds from the investment.

But as I say, we really strongly urge your support for House Bill 6673. Just a couple of other brief points to point out, \$5 million dollars in a lump sum sounds like a large amount of money.

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It is a large amount of money. On the other hand, James has earned it the hard way, and I want you to be aware that it is the position of IRS that any portion of that \$5 million dollars which is not designated as damages for physical injury would be considered income and would be taxable for federal purposes.

Now certainly, if that turns out to be the case, James, with a lot of help with lawyers who are working with him, would challenge the IRS, but it's hard to fight the IRS, and we have no guarantee that he wouldn't have to pay income tax on almost the whole \$5 million dollars, which at 35% is \$1.75 million dollars.

So considering that possible implication, the \$5 million dollar amount net to him would be less than it appears.

I do want you to know that all of the attorneys who are working with [Gap in testimony. Changing from Tape 1B to Tape 2A.]

--are working pro bono. That would include myself and attorneys at McCarter and English in Hartford as well as attorneys at Cochran, Newfeld, and Scheck in New York.

So there are no attorney fees that would be paid out of that \$5 million dollar settlement. And lastly, I think you will all recall that the Governor proposed a lump sum nontaxable payment to James of \$500,000.

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I just want you to know that the Governor is aware that James, with my assistance, is seeking more than the \$500,000 dollars.

Based on conversations with I have had with the Governor's legal council and based upon the Governor's public pronouncements since she made her very nice gesture, and I think very classy apology to James at the start of the session.

Those pronouncements indicate that she is amenable to a larger amount and I think would go along with whatever the Legislature decides. So I would respectfully request your support for House Bill 6673. Thank you.

REP. LAWLOR: Thank you, too, both of you. And I think, I know I speak on behalf of every member of this Committee and probably beyond that, every member of the Legislature. And I'm sure many of them will speak on their own behalf as well.

As the Governor said in her speech to open the Legislative Session, Mr. Tillman, we're very sorry for what happened to you. We are very sorry. And part of our obligation is to make it right for you.

And part of our obligation is to make sure this doesn't happen to anyone else, at least to the extent that we can control these things.

So that's our job. And I think there are so many questions members of this Committee would like to ask you today, not just about how

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you're doing and what your plans are for the future.

But I'm sure there are many insights we could obtain about our state's prison system and our state's criminal justice system from you because you're one of the few people who, unfortunately, has had a very up-close and personal look at the system and the way it runs.

And maybe in the future, today is not the day for that, that you can help us understand what's good and what's wrong with our prison system. Because it is always a focus of our attention, and I guess we have to assume that you were probably not the only innocent person in prison.

It's very difficult for us to know how many people were wrongfully convicted, either through negligence or just simple mistake.

But it is something we're very, very interested in. So I just felt it is very important to say those things to you at the outset.

And for Attorney Smyth, I just have some technical questions because many of my colleagues have asked these questions, so this is our best opportunity to have a full discussion about it.

You mentioned that Mr. Tillman has some legal remedies available to him. In other words, the Legislature could, just on its own, decide to grant some money. But beyond that, he could

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bring a lawsuit on his own behalf and claim that the state and others potentially owe him money for misconduct or negligence or whatever it is.

And so apart from the fact that he actually did spend 18+ years in prison, and apart from the fact that he actually is innocent, what other claims are there? And what can you tell us about those claims so we can help evaluate this request for \$5 million dollars?

ATTY. GERARD SMYTH: Okay. The attorneys who are representing him in connection with the civil claims are attorneys at the firm of Cochran, Newfeld, and Scheck in New York, and they do this type of litigation around the country.

They have filed notice with the City of Hartford of claims, federal claims, federal 1983 actions against the Hartford Police Department and individual police officers which could be brought in federal court.

Similar actions could be brought against state officials, particularly officials of the state, what was then the State Health Services Department Laboratory that did the serological, forensic testing in this case.

And potentially against other state officials that could be developed through depositions and further investigation. On Mr. Tillman's behalf, the law firm has also filed a notice of claim in the State Claims Commission.

So that would be a state claim. That seeks permission to sue the state and specifically the claim is against the Health Services Department Laboratory for their failure to test all of the biological evidence that was available to them at the time of the trial.

And then he also has council locally who is prepared to file a medical malpractice suit against the University of Connecticut Health Center and physicians there because while James was incarcerated, he ruptured his Achilles tendon which required surgery to repair the tendon.

And because of the manner in which the surgery was done and the postoperative care was administered, he suffered infection and considerable pain and some disability for almost a year before he was finally returned to the health center and was operated on again when they removed some foreign object from his ankle, and that cured the problem as of that point. So those are all legal actions that he could bring.

REP. LAWLOR: So you don't represent him on any of those individual actions?

ATTY. GERARD SMYTH: No. My role in representing James is limited to representing him here before the Legislature in connection with the bills that propose to give him compensation.

REP. LAWLOR: But I think you did just represent, and just to be clear about this, that whatever the merits of those various claims are, the

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claim against the health center for the medical procedures performed on Mr. Tillman after he was injured, the claims against, I guess it's the Health Department, for the mix up?

ATTY. GERARD SMYTH: At the time, it was called the Health Services Department Laboratory. I believe it's now the Department of Public Health, and it's their laboratory which is just off of Elm Street right here in Hartford.

It was not the State Forensic Laboratory under the Department of Public Safety. It was the Health Department.

REP. LAWLOR: But at least, there's an allegation that a mistake was made in the analysis done by the Health Services Department or whatever.

ATTY. GERARD SMYTH: In fact, the primary biological stain which was the seminal stain on the crotch of the victim's pantyhose was not tested.

REP. LAWLOR: But it ultimately was tested? Is that correct?

ATTY. GERARD SMYTH: It ultimately was tested, and the DNA test results confirm that the source of that seminal stain was not Mr. Tillman and was not the woman's husband. It was an unknown third party who was the perpetrator of this offense.

REP. LAWLOR: And so that mistake, there's a potential claim that that mistake was result of negligence and in part, led to Mr. Tillman

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being convicted during his trial for the sexual assault.

ATTY. GERARD SMYTH: Absolutely.

REP. LAWLOR: And then there's an additional claim you mentioned against the Hartford Police Department. And could you briefly--

ATTY. GERARD SMYTH: There are allegations with regard to the way that individual officers conducted the investigation.

And specifically with regard to a statement that one of the officers attributed to Mr. Tillman and testified to at trial which Mr. Tillman denies making and which he couldn't possibly have made knowing that he's not the perpetrator of the offense.

And there are also allegations with regard to the way the police treated the alibi witnesses and potentially manipulated the alibi witnesses.

REP. LAWLOR: So the claim there again, we don't have the ability to determine whether they're legitimate, whether they're true or not, but there at least is an allegation that the police officers involved in the investigation of the case said that Mr. Tillman made some incriminating statements, testified to that effect.

And there appears to be a fair amount of evidence that he could not have made those statements.

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But would it be fair to say that in the context of the trial, the eyewitness identification of Mr. Tillman's photograph, the victim's identification, there was some question about whether or not his blood type was consistent with what was found on the bodily fluids on the victim, right?

ATTY. GERARD SMYTH: Correct.

REP. LAWLOR: Which we subsequently know that it wasn't his fluid, but at the time, based on the testing they did, it could have been.

ATTY. GERARD SMYTH: Based on the extent of the testing they did, one of two stains could have been him, but they never tested the primary stain, which we know was not him.

And the other stain, which we knew at the time of the trial, was not him, they attributed to the woman's husband, and we now know that was from the perpetrator also.

REP. LAWLOR: And the attribution to the woman's husband, that was made by the state in prosecuting the case?

ATTY. GERARD SMYTH: That was the state's way of trying to explain that there were seminal stains on the victim's dress that were not consistent with Mr. Tillman.

And so their theory was they were consistent with the woman's husband from whom she was estranged and from whom she had last had sexual

relations a month before. And there was never any testimony that she was wearing that dress at the time.

REP. LAWLOR: So your statement is that taken together, that if, in fact, it is true that police officers testified to something that actually never happened, Mr. Tillman's statement, that was very incriminating in the context of the evidence that was presented in the trial?

ATTY. GERARD SMYTH: Yes.

REP. LAWLOR: You could argue that it corroborated the photo identification at--

ATTY. GERARD SMYTH: Right and the serological testimony.

REP. LAWLOR: So if the photo ID was a mistake, and the other two pieces of evidence were the result of somebody's negligence or willful misconduct, then all of that taken together certainly could have led to his conviction.

ATTY. GERARD SMYTH: Did lead to his conviction, and I would submit that had all of the serological testing been done at the time, that it would've eliminated Mr. Tillman because it was consistent with the seminal stains on the victim's dress.

And we know that there was a single perpetrator, and we know that her last sexual experience prior to the rape was a month before.

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REP. LAWLOR: And with regard to the medical procedure done once Mr. Tillman was an inmate, there's an allegation at least that there was medical malpractice involved and the physician involved was an employee of the state at the UConn Medical Center. Is that correct?

ATTY. GERARD SMYTH: Correct. Yes.

REP. LAWLOR: And do you know whether, has an expert been retained who has concluded there was in fact medical malpractice.

ATTY. GERARD SMYTH: James is represented by Attorney Mark Solak of Hartford, and he has consulted with an orthopedic physician and with an orthopedic nurse, and he has expert opinion to the effect that there was both medical and nursing malpractice.

REP. LAWLOR: So these are the potential claims above and beyond the simple fact, and I shouldn't say simple fact, but the basic fact that Mr. Tillman served 18 years and was innocent.

So in addition to that, there may be some negligence or willful misconduct, and there certainly may be some medical malpractice.

And so it's your testimony here today that the \$5 million dollar figure you've suggested, if that's what the Legislature approved, Mr. Tillman would waive any claims and relinquish any claims he has against any of those individuals.

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ATTY. GERARD SMYTH: Against the state or any of the state's agents which would/include the City of Hartford and employees of the city. And yes, so--

REP. LAWLOR: And UConn Health Center?

ATTY. GERARD SMYTH: And UConn Health Center. And I should also point out in terms of the claims, there was another very important piece of biological evidence that no one ever had tested.

And that was a rape kit that was done at the hospital where the woman was treated following the assault. Not the police, not the prosecutor, not the defense attorney ever asked for that rape kit to be tested.

REP. LAWLOR: All right. I forgot what the question was.

ATTY. GERARD SMYTH: At any rate, the language of the bill clearly sets out that he would have to sign a release and waive any and all claims which he is prepared to do.

REP. LAWLOR: And Mr. Tillman, apart from what I said before, I just wanted to emphasize one other thing. I just wanted to say thank you because you've continued to reach out to people and to preach to people from your very unique perspective here.

And I know you've given hope to quite a few people about a variety of things. And more

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than most people, you understand what it's like not to give up hope when all hope is apparently lost.

And I just wanted to thank you for doing that because it's an inspiration certainly to me and to a lot of people. It's a very important thing, I think, so. I know Senator Kissel has a question.

SEN. KISSEL: Thank you very much, Chairman Lawlor. First off, Attorney Smyth, you are a wonderful Chief Public Defender. I'm honored that you're one of my constituents and really an outstanding advocate for Mr. Tillman.

And Mr. Tillman, I would like to also be on record with Chairman Lawlor and the other folks in the Legislature to express my personal apologies for what took place.

You know, your story sort of says, there but for the grace of God go I, or anyone in this room or anyone in this state. And in the Bible, in the Book of Job, I think one of the earliest books in the Bible, no matter what you believe as far as religion, it is a tale that bad things can happen to a good person.

And sometimes we forget that. Sometimes we think that the system sort of always works or that, you know justice always prevails. And that is simply not the case.

On the merits of your claims as articulated, and for the record, Attorney Smyth met with me

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personally the very beginning of this session.
We went over this.

I don't want to speak specifically for the leadership of the Senate Republican Caucus, but I can tell you that I have discussed at length with my leadership the \$5 million dollar offer, and it was not badly received whatsoever.

In fact, many people feel very strongly that the state will rue the day that it does not accept your very generous offer to settle these claims.

And the way I look at it is that there are two grounds, the one that was very meticulously outlined by Chairman Lawlor that surely, if we were looking at this from an exposure perspective. Let's just say the state stood in the shoes of an insurer, I think there's tremendous amount of exposure should all of these matters go to trial.

It might be piecemeal. It might take a long time. There might be high hurdles to overcome to make the claim. But certainly, you have an extraordinarily sympathetic case.

And so no matter what the merits are, should a jury in any of these instances find that there is the requisite element of evidence to make your claim, then I think once they get to the damages, I think it's not unrealistic to think that on the wrongful incarceration alone for 18 years, that the award would be in excess of \$5 million dollars.

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And when you add on top of that the other problems regarding what occurred to you and the medical malpractice, I think that the exposure, while it may be no guarantee that you'd be ultimately successful on all of these separate suits, certainly that window, should you be able to get past that, I think the exposure to the various parties is huge.

That's a purely, sort of, scientific view of it, very dispassionate. But I think what's more compelling is, Attorney Smyth the way you phrased it, is that there's a moral obligation that we as a state have.

And when I've talked to Attorney Carlow and some other folks, Deborah Delcote Sullivan, Dana, other folks, Susan Storey from the Public Defender's Office, I would like to see that initiative move forward.

And I think we, as a state, especially with the advent of DNA evidence and other technology racing forward, that we need to go back and continue to make sure that we don't have folks behind bars wrongfully.

But also, I think, let me put it to you this way, there are a lot of projects and a lot of programs that this state funds that I don't often agree with. And we spend millions of dollars.

In particular, building edifices with the hope that someone will come or something will happen, and it's sort of a wing and a prayer.

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And sometimes it works, and sometimes it doesn't.

But in your instance, it is so abundantly clear to me that we need to do something to help you, to compensate you for this, that it strikes me that we have this strong moral obligation.

And I bet you if I went back to my constituents and I asked them person, by person, by person, I think I would be very hard pressed to find anyone that doesn't want to try to help you out.

So what's the magic number? Is it \$500,000? I think the Governor does deserve an awful lot of credit. I think that was a good faith thing to build into her budget address.

But it makes me feel even better about, not that I need to, but I feel very good that Governor Rell is open to amenable to do whatever the Legislature decides to do.

So this will come down to the final budget negotiations that hopefully get resolved by June 6. But I can say, from the folks in the Senate on my side of the aisle, I think we're with you.

And I think most of my colleagues that I've spoken to so far, and I have no doubt that my constituents are as well, and I actually think, and I'll conclude with this, I think you're being more than fair with the State of Connecticut by stating here publicly today that

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you would accept a lump sum \$5 million dollar settlement to resolve all of these claims.

And so, you do have my apologies. God forbid this happens any further. We need to make sure that nobody is behind bars inappropriately, unjustly, and I strongly support the Public Defender's office for continuing their efforts.

But I wanted to add as a part of the record, and I really appreciate how you've taken this. You don't hold it against, you know, you don't have any umbrage. The few times that I've seen you, you know, you're a good guy.

And I don't know if a lot of people could've gone through everything that you've gone through and be taking it as well as you are. So thank you, sir.

REP. LAWLOR: Further questions? Senator Meyer, then Senator Gomes.

SEN. MEYER: Mr. Tillman, I just want to let you know that your case and your name came up before this Committee earlier today in the context of a different bill.

We had a bill to expand the use of DNA evidence, to take it early, at the time somebody's arrested. And you have made a contribution by your unfortunate case to our DNA dialogue and our DNA legislation. And I just want to recognize that and thank you for it.

JAMES TILLMAN: Thank you.

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SEN. GOMES: First of all, I want to offer an apology for the State of Connecticut, but I feel like without the payment that you are requesting, the apology would be just a hollow attempt to justify what has been done to you.

I have to admit I have talked to you a few times, and I have to admit you have a strong constitution which I wouldn't have had if I'd been incarcerated for 18 years for something I hadn't done.

I listened to you testify on how you felt day by day, sitting in a cell, behind a locked door where you can't move no more than six or seven feet with a cellmate that you didn't pick.

It isn't like being married to somebody you picked to somebody you'd be married to, and you have to live with that for 45 years. That's what you were facing at that time.

I feel like your request from the state is a request that is very miniscule in comparison to what you've lost. And I see where I agree with Senator Kissel on many things that he spoke about.

And I don't see a big hurdle from the Senate in approving the amount of money that you're requesting. And if they do, I don't know of anybody at this time that would not react to the situation.

Only thing I differ from Senator Kissel is I hope there will not be any piecemeal or any

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hurdles. I want it to be commensurated with the negative attitude to incarcerate you which I conclude did not take long. Therefore, making restitution to you I hope does not take long.

And I want to say a person like you who has a positive attitude that is trying to turn what they would say take a lemon and turn it into lemonade because you're out there trying to do something that's constructive for other people who would probably wind up in the same situation that you were in.

I wish you all the luck in the world. I wish you a long life because you deserve it to make up for those 18 years that somebody took away from you. When somebody takes away the best years of your life, there is nothing that anybody can compensate you for.

Five million dollars, to me, if I were incarcerated for 18 years, I would consider a drop in the bucket. And if somebody were to offer me \$10 million dollars, you go and do 18 years, and I'll give you \$10 million dollars when you get out, I wouldn't trade 18 years for \$10 million dollars.

So I hope you get what's coming to you, and that's what you requested. I thank you for distaining.

REP. LAWLOR: Representative Green.

REP. GREEN: Thank you, Mr. Chair. Thank you, Mr. Tillman, Mr. Smyth for coming. First, let me

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offer my personal apologies and apologies, if I can, from the state for the humiliation and the injustices that you endured for 18+ years.

I want to thank you also because there are a number of individuals, and they may not be innocent in jail, but our system, our criminal justice system, from arrests to the course, to corrections, is a system that I think is flawed.

And I think your case proves a number of the flaws involved. Senator Meyers mentioned the DNA bill that we talked about recently, about those individuals who are being arrested, whether they should submit to DNA.

I would suspect that you did submit to DNA when you were arrested and charged, and it got you 45 years. So I don't know if that is the way to go without someone being convicted where we need to do DNA.

I do have a couple of questions, and then I do want to make a statement. For Mr. Smyth, I just want to be clear because I think a lot of people may not understand, various individuals who are working with Mr. Tillman and their motive, and I think you mentioned there would be no attorney fees paid for your services.

Can you be clear with me and on record as to whether or not there might be other financial compensation that are made to you for any other reasons?

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ATTY. GERARD SMYTH: No. I expect nothing, and I would accept nothing.

REP. GREEN: Thank you. I just want to be clear because some people might think that the public statement that you made, that there might be something else down the road. So I thank you for that clarification.

Mr. Tillman, I think earlier attorney from the Public Defender, Brian Carlow, mentioned that in 2002, you might have applied for the Innocence Project in 2002, and I think he said he got to it in 2006. Do you recall when you applied for the Innocence Project.

JAMES TILLMAN: I'm not sure on the exact year, but it could have been then. I'm not 100% sure of the year.

ATTY. GERARD SMYTH: The project didn't come into existence until late 2004 or mid 2005.

JAMES TILLMAN: I think I wrote to the Innocent Project. I was writing to numerous Innocent Projects. I think I wrote to the Innocent Project in New York. I think I wrote to the Innocent Project, the New England Innocent Project. I think throughout my time, I think I was writing to various Innocent Projects.

REP. GREEN: All right. Thank you. Because I think that sort of indicates why we need to look at having an Innocent Project here in Connecticut so we can examine that. Because probably at that time when you began, we did not have one.

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So you began to write. Now you also stated, Mr. Tillman, that you have gone through a number of other legal procedures, Habeas and other terms that you use.

And tell me, was there any positive indication that any state agency or that any judge, at any time did the state indicate to you that they were going to take a serious review of your case and that you'd get a chance to sort of reargue why you think your case should be reopened?

How open was the state when you wrote us about the Habeas and those kinds of things? Did we respond?

REP. GREEN: Well, I got response from my Habeas, and I got response from my appeals that I had filed. But I don't know, it just wasn't the same type of, you know, I mean just so much law, and you know, you don't have a lot of means in the jail, you know, to, you know, now you have computers now, you know, where prosecutors can go in the computer, and you know, and they can shepherdize.

And then you've got guys with the old worn-out law books and trying, you know, to show you different things, and then, you know, you don't know who to really trust, and you know, you don't know whether they're working with you or against you.

So, you know, it just seemed to me that it was like all down hill. Every letter I got was a disappointment. You know, every phone call was

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a disappointment. It was just disappointment after disappointment.

And the only hope that I had seen throughout my incarceration was when we first did the first DNA testing in I think it was 1990, right? Around 1990. Yeah, that's when I really felt that I was going to go home.

REP. GREEN: So I guess along with the, and I like the way you describe your feelings of being kidnapped and raped by what the state had done, in all of the requests that you made, your sense was that they were not very positive. They were not very encouraging.

And I think that we need to understand that even through your innocence and trying to make it even made aware, because I think that's the other thing that I think is some concern about the criminal justice system.

It is easy for us to label those offenders who have been convicted, that they have no validation or their cases or their concerns are not valid.

And I think it should bring to our attention that we need to take a closer look at more than just procedures, more than just responses. That sometimes just a form letter, but maybe look at the human factor of this.

So again, I think you've already heard how much we admire your stamina, your constitution, your character to bring you here today to speak before us.

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A couple more questions. My belief is justice delayed is justice denied. I cannot, am very uncomfortable, with any further delay of awarding you any compensation of at least \$5 million dollars.

I think we here in the Legislature have procedures. We do not have to wait to June 7. We do not have to wait to budget. Special acts, we can do special things. We can do emergency certifications.

Legislatively, I think that we can move this along as fast or as slow as we want. And to make it any further delay, to me, would just be more of the injustice.

Senator Kissel mentioned for justice to prevail. For justice to prevail is at least \$5 million dollars. Senator Gomes talked about what are our lives worth for 18 years, 18+ years. I don't know if any of us could put a figure on it.

And the conversations that I've had with my colleagues, I've tried not to encourage the debate of the amount of money because who can put a value on their lives.

A couple more questions to Attorney Smyth. Were all of the lawsuits that possibly could happen, are some of those in various stages of being filed, or are all the lawsuits being contingent on what happens here with this particular legislature?

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ATTY. GERARD SMYTH: A Notice of Claim as is required by statute was filed with the City of Hartford. A notice was filed in the State Claims Commission of the claims against the state because the Statute of Limitations is one year from the date that the claim accrues which would, in James' case, be when the charges were dismissed last July.

And nothing has been filed as yet in the medical malpractice suit. So the only things that have been filed are things that were required in order to preserve his rights. But full lawsuits have not been filed as yet.

REP. GREEN: Okay. It's interesting because yesterday we had at hearing some issues about certain kinds of claims and time limits with the Judicial Review Council, and the gentleman mentioned about 15 to 16 percent of cases are not even reviewed based on timetables.

So I just wanted to make sure that we don't get caught up in that because, again, I am very concerned. I do not believe that Mr. Tillman should go through any other legal processes.

I can't imagine what it would be like to be presented before Connecticut's legal system, whatever form that may take, to expect justice after receiving 45 years and doing 18+ years. I think it's insulting, to be honest, to have you have to do that.

ATTY. GERARD SMYTH: I would just add the clock is running on his claims, and so unless this is

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resolved in this session of the Legislature, those suits would be filed immediately.

REP. GREEN: Okay. Thank you for mentioning that. I'm not going to ask the other questions. There might be some other people that may want to make comments.

But I also want to say that you've been out now since last July, I believe, or June or July of last year. So it has been almost a year, and I think, again, as a state, we've known for now almost a year of this situation, a little before that that we actually did know about it.

So it has been a year. So I think if anybody were to think that we're rushing or that we need to take more time to resolve this, you have been out since June, almost a year, so I think people have to realize that.

And I think people have to also realize that you have a full-time job, a part-time job. You want to reach out to our young people by becoming a community speaker, a public speaker, to share your story.

So again, I would just, in getting to know you and getting to meet you, there again are some comments that some people may feel like is this some idea to get rich? Far from it. You've been out for a year. You're working. You've been denied the prime of your life.

And I would think that sometimes, we as a Legislature, the Governor mentioned in her opening speech, let's be bold. We know what

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the issues are. Let's just do this. Thank you, Mr. Tillman.

REP. LAWLOR: Further questions. Representative O'Neill.

REP. O'NEILL: Yes. Thank you. I have a few questions, mostly for Mr. Smyth, I think. Who represented Mr. Tillman at the criminal trial. Let me preface that by saying I've heard, I've seen Mr. Tillman on TV or you or the Governor's speech and so forth.

But I, when this was all going on, didn't really follow the case, that is to say the exoneration, that closely. So some of these questions may seem very basic. Was it the Public Defender's Office who represented him?

ATTY. GERARD SMYTH: At the time of his original conviction in 1989?

REP. O'NEILL: Yes.

ATTY. GERARD SMYTH: Yes, he was represented by an attorney from the Hartford Judicial District Public Defender's Office.

REP. O'NEILL: Okay. And all of these things that relate to the lack of evidence being properly processed, were they raised as issues at trial, do you know?

ATTY. GERARD SMYTH: Well, to some extent they were. For example, the defense brought in a witness from the Forensic Laboratory, the Department of Public Safety Forensic Laboratory, to testify

that the Health Services Department Laboratory should have tested the crotch of the pantyhose.

And also brought in a witness from either Hartford or St. Francis hospital to testify that a rape kit existed, but that it had not been tested.

What the defense attorney didn't do was independently request that testing be done himself. So I think there are lots of people who could have done the testing that wasn't done.

REP. O'NEILL: Because part of it is that, I'm wonder, since you are the head of the Public Defender's Office, would this have been considered some sort of a failure on the part of that attorney or is it just normal, don't ask for the kit because you're not really sure what it's going to reveal, so let sleeping dogs lie?

ATTY. GERARD SMYTH: Well, I wasn't the head of the Public Defender's Office at that time, but I mean, there's no conflict, I don't think. But the lawyers who are handling the civil claims have not as yet indicated that they would pursue any kind of a legal malpractice claim against the defense attorney.

I think that that possibility remains because of the fact that any and all of the things that the laboratory didn't do could've been done by the defense.

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REP. O'NEILL: And I assume all of these things were raised in the Habeas, well, were these things raised in the Habeas Corpus petition where you usually would allege ineffective assistance of council in a Habeas.

JAMES TILLMAN: Yes. I raised it on a Habeas in Rockville Court, and I had legal aide people, I raised the issue on DNA testing, and I also raised the issue at the beginning of the trial.

REP. O'NEILL: And I take it that the judge in the Habeas came to the conclusion that that wasn't sufficient basis for finding that there was ineffective assistance of council? I assume the Habeas was denied.

JAMES TILLMAN: The Habeas was denied, but the testing of the evidence was not denied. They did run a test on evidence, but they didn't run, like he said, I think they didn't run a complete test on the evidence.

ATTY. GERARD SMYTH: There was an attempt to do DNA testing during one of the Habeas Corpus proceedings, and the physical evidence was sent to a commercial DNA laboratory. And the results of that DNA resting were inconclusive, the reason being that the technology had not advanced to the point that it had by 2005, I'm sorry by 2006 when the testing was done, and they were able to do a DNA profile and conclude that it was not Mr. Tillman.

So no DNA was used at the time of the trial to procure the conviction. No DNA testing was

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done at that time, but they did use serology, which is determining blood type from a person's bodily fluids, and that's wherein the omissions occurred.

It is also not clear as to whether or not the rape kit could have been analyzed for DNA. There is some suggestion that it could have.

REP. O'NEILL: And the issue, or the question, about the police manipulating alibi witnesses or attributing statements to Mr. Tillman that he didn't make but which would've been apparently known to the perpetrator. So if he made a statement, then it makes him look very guilty because only the perpetrator would've known that.

Are these allegations that you're making or has someone finally acknowledged that in fact there was police misconduct of some sort.

ATTY. GERARD SMYTH: These are the allegations that would be included in a complaint if the federal civil rights action were filed by the law firm that's handling that. Excuse me, they have reviewed the police reports, the testimony, the transcript of the trial.

And based upon their analysis of the totality of the evidence, it is their conclusion that a single statement attributed to Mr. Tillman could not have been made by him.

REP. O'NEILL: Okay. So, I got it, I think. Basically, someone else analyzed the information with an eye towards possibly

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bringing a lawsuit, and they think they've got a good basis based on that. Okay.

ATTY. GERARD SMYTH: And we know that Mr. Tillman was not the perpetrator so--

REP. O'NEILL: And now we know that he couldn't have because he wasn't the perpetrator. Therefore, that statement had to have been false, kind of backed into it that way.

You indicated that in typical cases like this around the country, the amount of damages that are awarded is \$1 million dollars per year. Is there a like, you know, unjustly convicted persons reporter or innocence project? You know, some sort of collection of this information? Where does that come from?

ATTY. GERARD SMYTH: That figure comes from the Innocence Project, Barry Scheck and Peter Newfeld's Innocence Project at Cardozo's School of Law in New York which is the original Innocence Project.

And they also have a law firm with attorneys on staff who do litigation in this area, and that is what they have indicated to me is the typical award that they have received in cases that have been litigated.

REP. O'NEILL: And those are cases that have actually been tried? Or are those settlements or--?

ATTY. GERARD SMYTH: That's after trial.

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REP. O'NEILL: Yeah. Settlement would be less. And the \$5 million, it's a nice, round number. It doesn't divide easily by three. So it's not a number a lawyer would usually come up with. So how was that arrived at?

ATTY. GERARD SMYTH: Well, I actually did a lengthy memorandum. And I don't know if you received a copy of it, Representative O'Neill, but I do have copies here which I can provide to anyone who would like it.

But the way it breaks down is \$2 million, \$250,000 would be for loss of liberty and enjoyment of life which at 18 years is \$125,000 per year.

Loss of income \$1 million, and there is another person, Attorney Tim Fisher, is going to testify later on this afternoon who can comment on that figure, which I think is an accurate figure in terms of the minimum amount of income that James lost as a result of his incarceration.

And \$250,000 for loss of future earnings, \$500,000 for physical injury which would be the medical malpractice suit which we believe, if tried, would be worth somewhere between \$750,000 and \$1 million.

Then \$1 million for mental pain and suffering psychological injury and loss of familial relationships.

REP. O'NEILL: Okay. I think that is it. Thank you.

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REP. LAWLOR: Are there further questions. If not, oh, I'm sorry. Representative Hamzy.

REP. HAMZY: Thanks, Chairman. Mr. Tillman, thank you for being here. Gerry, good seeing you again.

ATTY. GERARD SMYTH: Likewise, Thank you.

REP. HAMZY: As I am thinking about this, it seems like there has been only one positive thing that has happened in this case in that you were finally released, Mr. Tillman.

And certainly, I think we're all happy about that and the fact that you were exonerated. I just have a couple questions.

With regard to the testimony that you presented, you cited potential claims against the Hartford Police Department, the State of Connecticut through the UConn Health Center as well as the predecessor to the Public Health Services Department.

As I understand it, Mr. Tillman, you were represented by the Public Defender's Office during this trial, during the original trial?

JAMES TILLMAN: Yes.

REP. HAMZY: Was there any thought given to bringing a claim against the Public Defender's Office for possible malpractice claim?

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REP. LAWLOR: Mr. Tillman, if you could just pull the microphone over so we can hear.

JAMES TILLMAN: Well, I thought of that, right. And I just, you know, a lot of times, there's a lot of legal stuff going on, and you know, I'm not a gift lawyer because if I was, I probably would've been out a long time ago.

But, you know, I followed a lead, and you know, a lot of lawyers gave me good advice, and you know, the people that are in my corner now are trustworthy. And you know, I take their advice on stuff to see where it leads.

And if I feel that someone has done something unjustly, then I feel they deserve, you know, to have their day just like someone felt I was unjustly, that I did something, and they gave me a day.

And you know, there are things we have to look into, you know, if we proceed.

ATTY. GERARD SMYTH: I don't think a legal malpractice claim against his defense attorney has been ruled out by the attorneys who would litigate it. We haven't specifically identified that as a claim, but I think it is something that really does have to be further evaluated. And of course, that would be a claim against the state also.

REP. HAMZY: I understand that. A couple things, and this is directed towards you, Gerry. With regard to these types of claims, I have been on this Committee, it is my 12th year in the

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Committee, and I don't remember any similar claim being made in the 12 years that I've been here. Has a similar [Gap in testimony. Changing from Tape 2A to Tape 2B.]

ATTY. GERARD SMYTH: --I don't recall either anyone being here, seeking compensation by special act of the Legislature. There was an exoneration of an individual by the name of Larry Miller following a Habeas Corpus proceeding.

And he did not seek compensation through the Legislature. He brought a lawsuit, and my understanding is he settled that lawsuit.

REP. HAMZY: With regard to these types of claims, I mean, I would assume, and I don't have any statistics, and I'm not sure if you would either.

But that there are a lot of people who go through the legal system who are tried by a jury of their peers and who are convicted of crimes that they did not commit.

With regard to precedent, how would those claims be handled going forward? I mean, would it be on a case-by-case basis? Would it be, you know, I'm--

ATTY. GERARD SMYTH: Senate Bill 1456, which is also before you, in Section 1, assigns responsibility to the Commission on Wrongful Convictions to do a report and make a recommendation to the General Assembly as to how individuals who are wrongfully convicted

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and exonerated should be compensated in the future.

And that could be by means of some type of compensation law that moving forward would cover people in situations like Mr. Tillman's. But of course, in his case, no such statute existed at the time of his exoneration. No such statute exists now.

And to require him to wait until the next session to see if something is passed would just further delay him receiving any compensation.

And so, I think he has to be treated uniquely as an individual case that took place when there was no provision expressly in the law for dealing with these situations.

But I do think the proposal to have the Wrongful Convictions Advisory Commissions make recommendations is a very good one.

REP. HAMZY: And you had mentioned in your testimony that none of the firms that are assisting Mr. Tillman with his claim before the General Assembly are being paid, that they're all working on a pro bono basis.

ATTY. GERARD SMYTH: Correct.

REP. HAMZY: Of the, let's say it is \$5 million dollars that is awarded, how much is owed to attorneys or legal fees that have been incurred?

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ATTY. GERARD SMYTH: Nothing that I'm aware of.

REP. LAWLOR: I point out that, Mr. Tillman, you are talking to your lawyer, which you have every right to do, but right in front of you is a live microphone. And you're broadcasting too, so. So if you want. Because these are--

JAMES TILLMAN: No. My attorney that I have for my injury, he had said that whatever, you know, that whatever comes out of this, that he wouldn't want anything, you know, if we put everything together, and he said that he wouldn't want anything.

ATTY. GERARD SMYTH: He has a contingency fee arrangement with the medical malpractice lawyer who has told me and James that he would not seek any fee if it is resolved legislatively.

REP. HAMZY: Thank you and thank you, Mr. Tillman.

JAMES TILLMAN: You're welcome.

REP. LAWLOR: Are there further questions? Senator Gomes.

SEN. GOMES: Now that they got to talking about the case a little bit, what happened or what is the status of the original alleged victim of this crime? Where is she? Has there been any contact made with her?

ATTY. GERARD SMYTH: Well, my understanding is that once the DNA test results were obtained, she was contacted by a Hartford State's Attorney's Office and informed, and she was in accord with

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taking whatever action was appropriate given the fact that the results showed that Mr. Tillman had not committed the offense.

So beyond that, we have had no contact with her. I think her privacy is being protected appropriately.

SEN. GOMES: Has a person or the alleged criminal that really performed this act, has he been apprehended?

ATTY. GERARD SMYTH: No. My understanding also is that the results of the DNA tests were put into the DNA databank, and it was run against whatever was in the bank, and there was no hit. So the person who did it is not apparently in the DNA databank.

SEN. GOMES: And the witness in the original trial, was that the victim herself or was that--

ATTY. GERARD SMYTH: Yes.

SEN. GOMES: It was the victim. One last question. Is there a Statute of Limitations that the alleged criminal performed the act, is there a Statute of Limitations at apprehending him?

ATTY. GERARD SMYTH: Well, normally, they have a five-year Statute of Limitations on a felony, but I don't know what the changes have been on sexual assault and whether there's a longer, the kidnapping charge actually, thank you James, is a Class A felony, and so that may still be prosecutable.

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SEN. GOMES: I guess one of these lawyers have to answer that.

ATTY. GERARD SMYTH: Yeah.

SEN. GOMES: Thank you, anyhow.

ATTY. GERARD SMYTH: I think that's a correct statement. I think there may not be a Statute of Limitations on the Class A felony, but I believe the Statute of Limitations in 1989, 1989, was it?

JAMES TILLMAN: Yeah, 89, 88.

ATTY. GERARD SMYTH: 1988 was probably five years for all of these. So on a sexual assault, the criminal Statute of Limitations has expired long ago.

REP. LAWLOR: Senator Coleman.

SEN. COLEMAN: Thank you, Mr. Chairman. Good afternoon, Mr. Tillman and Attorney Smyth.

JAMES TILLMAN: Good afternoon, Senator.

SEN. COLEMAN: I just wanted to take the brief opportunity to also express my apologies and my regrets that you had to endure the experience that you had to endure.

It undoubtedly has taken a great toll on you physically, psychologically, emotionally, and in many ways that perhaps we can't even imagine.

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And it just causes me to want to express that often times in the General Assembly, we worry about whether the public perceives us as being tough enough on crime.

But your case, I think, serves as a great reminder of many things, including that as we go about making criminal justice policy, that we ought to do so with great caution and that we ought to make every effort to balance the interests of the prosecution with the interests of the defense within the realm of the criminal justice proceedings.

I just wanted to commend you concerning your courage and your fortitude concerning all of the circumstances that you went through and also wanted to take a minute just to commend Attorney Smyth.

Many of my colleagues may not know that when I came out of law school, I worked in the Public Defender's system, and I had the good pleasure and good fortune to work in the same office as Attorney Smyth, and I, for a long time, have admired his principled advocacy and his talent and his ability.

It is no surprise at all to me that he is doing what he is doing at this moment, and he is doing what he has done throughout his career. As I said, I am a great admirer.

And the system ought to greatly appreciate all the contributions that you've made, Gerry, throughout your career in this criminal justice arena. So I just want to thank you for what

you've done. Also wanted to commend Mr. Tillman and his backbone, his mother, who I know, for all that she's contributed.

And I hope that not only the bill before us is successful within this process but that what you've had to experience will also be something that we, as policy makers, bear in mind whenever we're proceeding to make criminal justice public policy, and that your experience will just not be something that would be in vain. Thank you for being here.

JAMES TILLMAN: Thank you.

ATTY. GERARD SMYTH: And thank you, Senator. I appreciate your comments. Thank you.

REP. LAWLOR: Just to clarify, since people do watch these proceedings, and we're answering technical questions sometimes. On the Statute of Limitations issue, it is pointed out to me that we did in 2000 make a change for sexual assault cases based upon DNA evidence.

I believe notwithstanding that change that the Statute probably has expired for the 1988 case. However, what it does say is there is a 20-year Statute of Limitations for sexual assault prosecutions based on DNA evidence, and it is retroactive.

But under the Skakel case, I believe that where the Statute of Limitations had already expired, it can't be reactivated sort of, so it is an open question. But it appears as though the

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Statute of Limitations has expired for the sexual assault.

But who knows, maybe that's another case for the Supreme Case to decide, if a person is identified and prosecuted. So, there you go.

ATTY. GERARD SMYTH: Thank you.

REP. LAWLOR: Any further questions? Senator Roraback.

SEN. RORABACK: Thank you, Mr. Chairman. Just one question. There's talk of the possibility of malpractice on the part of the Public Defender's Office in the initial trial. And recognizing if that were so, that would require a claim against the state.

The question, the answer to which I don't know, would like to know, does the state carry malpractice insurance for its public defenders? So would it be a claim against an insurance carrier or would it be self-insured? How does that work?

ATTY. GERARD SMYTH: The answer is yes, the Division of Public Defender Services does have a malpractice insurance policy for its attorneys. I'm not certain what the status of that policy was. It's a claims-made policy, so--

SEN. RORABACK: So we'd be making a claim against today's, whatever policy is in effect today?

ATTY. GERARD SMYTH: I think so.

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SEN. RORABACK: And do you know what the limits of that policy may be?

ATTY. GERARD SMYTH: I don't know. Deborah Sullivan would be the person to--

SEN. RORABACK: Okay. To me, that seems like something that's germane or salient as this Committee deliberates because I don't think any of us would believe that Mr. Tillman isn't entitled to just compensation.

But if there's a way for that compensation to come from an insurance company, that's not a bad thing. And from Mr. Tillman's perspective, I would imagine as long as the compensation is his due makes its way to him, it's probably not of moment to him who bears the cost.

ATTY. GERARD SMYTH: I think, you know, if you want to go that direction, that means litigation because I don't think the insurance company is going to ante up money in June.

SEN. RORABACK: Well, okay, but--

ATTY. GERARD SMYTH: And his principle claim really, in my view, the strongest claim is against the Health Services Department Laboratory.

SEN. RORABACK: Sure, fair enough. I wouldn't want to deny the insurance company the opportunity to do the right thing. Thank you, Mr. Chairman.

JAMES TILLMAN: Excuse me.

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REP. LAWLOR: Mr. Tillman.

JAMES TILLMAN: Does the state have an insurance company?

SEN. RORABACK: Evidently they do. I just didn't know. That's why I was asking the question--

JAMES TILLMAN: Oh, I thought it was the same insurance company throughout the state.

SEN. RORABACK: I guess they have an insurance company that they might ask them for some money, and they might just give us some because if we demonstrated to them that--

JAMES TILLMAN: So the state has different insurance companies?

SEN. RORABACK: Evidently.

JAMES TILLMAN: Oh, okay.

SEN. RORABACK: Anyway, thank you.

JAMES TILLMAN: You're welcome.

REP. FOX: Thank you, Senator Roraback. Are there any other questions from Members of the Committee? Hearing none, thank you. Thank you, Mr. Smyth, Mr. Tillman.

JAMES TILLMAN: Thank you everyone.

REP. FOX: Next is Hartford Mayor Eddie Perez. No one is here for Mayor Perez? Then Mayor Fabrizi.

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REP. O'NEILL: Okay. So that even if someone tried to file off the VIN number they would still, but the serial number off of the pistol that they would, you would be able to retrieve that number unless, obviously, unless they went to an enormous amount of trouble, but just a simple, with a simple little file wouldn't really get it?

CHIEF JAMES STRILLACCI: That's correct. There are forensic processes to recover those. It may slow the identification of the gun, but it would not prevent it.

REP. O'NEILL: Okay.

REP. LAWLOR: Thank you, Mr. Chairman. Are there further questions? If not, thanks again, Chief.

CHIEF JAMES STRILLACCI: Thank you, Mr. Chairman.

REP. LAWLOR: It's back to the final person on the state list is Representative McCrory?

REP. MCCRORY: Good afternoon Members of the Judiciary Committee, Chairman, Ranking Members. SB 1456
SB 1240
Of course, you know my name is Representative McCrory and I'm here to testify on a couple of bills. Particular House Bill 6673 and, also I don't want to read each number, but every bill that deals with firearms, lost [inaudible] firearms.

Where shall I start? Get you the scenario. Sunday afternoon, March Madness, about

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[inaudible]. Myself and a colleague watching the Georgetown game. A great game.

The child comes in after playing outside in front of the yard with his buddy to eat dinner. The game is so good your colleague doesn't want to leave so you tell him to stay there until a commercial comes on.

A commercial comes on, you say goodbye to your colleague, he walks out the front door, he looks outside, there's five police officers, five police cruisers and an ambulance. He says, I can't leave. I say what do you mean, why you can't leave?

Walk to your front door, the next thing you realize a 17-year-old child was gunned down across the street from your front door in broad daylight.

The first thing that goes through your mind is, what if my son was still outside. The second thing that goes through your mind is how does this happen in a civilized society.

Witness said, another child was involved. They don't know who it was, but it definitely was another child. So you say how did that child get that weapon.

Well, in the City of Hartford there's no gun stores. As a matter of fact, in other little surrounding cities and towns that border the City of Hartford there's a gun store. So how did a child get the weapon to murder another child on a Sunday afternoon?

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Where did the gun come from? Well, he couldn't buy it himself, he's too young. He might even be a convicted felon. Where did he get the gun from? And society says, I don't know.

Gentleman and ladies, we have weapons of mass destruction that are circulating in cities and towns across this state every single day. We know it, what are we going to do about it.

Do we continue to place our head in the sand and say that, well, I'm a legal gun owner [inaudible]. This bill will stop me from buying guns.

You know what, I am a gun owner. As a matter of fact, I have two weapons. And I'm responsible and I believe in the constitutional right to bear arms. As a matter of fact, I think more people like me should become gun owners.

But what do we do to stop those individuals who sell guns to young children or sometimes trade them for drugs in our society that we still don't know where they come from either.

This bill will go a long way. In my opinion [inaudible] or just getting to the root of the problem. Do you know how easy it is? Let me explain to you how easy it is for a child to get a weapon of mass destruction.

I asked a 12-year-old how much will it cost to get a gun, \$200. That's a 12-year-old. Something is wrong with that picture. That's

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reality. You heard from police chiefs throughout the state, you heard from citizens.

Everyone is dealing with this problem. What are we going to do? Do we have the political will? I would hope so. Remember, I believe in the constitutional right to bear arms. We should have that. We need to protect the good guys, but we also should handle those who do wrong.

They come in, they open their trunks, they sell the weapons, and they go back to where they came from. We know the stories. Just yesterday on the news a wife purchased nine guns for her husband who's a convicted felon and gave it to him. Do we have any authority over that right now? I don't think so.

So, you know, I'll just leave that alone, that's my piece on that. Hopefully, it'll get through here. I'll do everything I can to help.

Secondly, oh real quickly on Senate Bill 1240, AN ACT CONCERNING EYEWITNESS IDENTIFICATION. Real quick, I've been here three years. Everybody still thinks I'm [inaudible]. Okay. That's a problem.

So whatever we can do to fix those who committed crimes and making sure the right person is incarcerated, I'm all for it. And that leads me to my other support of House Bill 6673.

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I'm going to be brief. I sat here for about an hour and a half and listened to the discussion about should Mr. Tillman [inaudible] be compensated or should he have to wait?

Who's responsible, should the insurance companies pay for it? This is my take on it. The insurance companies [inaudible] put him in jail. The State of Connecticut putting James Tillman in jail. The State of Connecticut is responsible.

I do not support House Bill 1456, at least Section 2, where it says to finance this ill will should come from individuals who play the lottery \$3.5 million.

What if we had \$10 million in the lottery will we discuss [inaudible] getting \$10 million? People that played the lottery didn't put them in jail. The State of Connecticut did this.

We have a half a billion-dollar surplus. We spend money around here like there's no tomorrow. Sometimes we can't even count for it all the time and we're going to argue over \$3.5 million or \$5 million. What price would you pay to stay in jail for 18 years?

Honestly, think about it. How much would someone have to pay you to stay in jail for 18 years? And not only that come to find out I got [inaudible].

I pulled my Achilles, just like James Tillman pulled his Achilles, and do you know how

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painful that is, being incarcerated hobbling around.

I think it was about six months they didn't even diagnose it correctly for 18 years. And we're arguing over \$3.5 million. Well we should ration them out a little bit right here and then give them a little bit over investment? No, no, no. No, that's not right.

It's over and done with. They gave him an opportunity to get back on his feet. He shouldn't have to go to another courthouse in the State of Connecticut.

As a matter of fact, he shouldn't have to argue his point anymore. You know what, the entire country is watching the State of Connecticut right now.

I got phone calls from people all over the country in regards to this case. They're watching the state of, the progressive State of Connecticut how are they going to correct a wrong.

And we waited this long. People are talking about wait. It's been almost a year. I think we should be ashamed of ourselves. I think we should move this as fast as we possibly can to show that we understand that we made an error and now we're going to fix that error.

Think about the impact that was made on his community when he was unjustly accused of the crime and thrown in jail. Think about all the other kids that live in that community who knew

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James and knew he wasn't that type of individual.

What kind of impact that had on them for the rest of their lives and what relationship that they will have with law enforcement. Now think about the impact, our decision to fairly compensate this man will have on at least his family and his dignity and his ability to move forward.

I rest my case. I don't have nothing else to say.

REP. LAWLOR: Thank you very much. Are there any questions? Thanks. Oh, I'm sorry, Senator Gomes has a question. Hold on. Time out. [Gap in testimony. Changing from Tape 3A to 3B.]

SEN. GOMES: --I'm one of those guys they call Ernie Hewett Doug all the time, so he gets on me about that. I told him one of you has to grow hair. That [inaudible] part, you know.

But, you represent Hartford am I right?

REP. MCCRORY: Capital City.

SEN. GOMES: And your statistics are known here because your police chief evidently he testified here?

REP. MCCRORY: I think he spoke earlier, yes.

SEN. GOMES: But, I just want to thank you for testifying because we needed somebody. We've

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been within the confines of this building. I work within the confines of this building that testify on what you have said about Tillman there should be no hesitation on that.

I'm glad to see that you're here on that issue, and I'm very sorry to hear about the 17-year-old that got killed in Hartford, and like you said, where do these guns come from. We don't have gun shops in our city.

Even like you said some of the dope, where does the dope come from. It comes from with out the city, so, but they both present a problem to us.

And then when kids can get guns that readily as you stated \$200 to buy a gun and a kid of 12 years old knows that it takes \$200 to buy a gun, and probably if you would have asked him where he probably could have told you where, you know.

REP. MCCRORY: Oh, yes, of course.

SEN. GOMES: So I want to thank you for coming to testify. I don't have to ask you the specific questions because of the fact that you know what happens in your city, as well as what happens in mine. I want to thank you anyhow.

REP. MCCRORY: All right.

SEN. GOMES: Thank you.

REP. LAWLOR: Are there further questions? If not, thank you. Next is Moira Buckley. Is Attorney

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DR. BRUCE DOUGLAS: Good afternoon. Good evening, I apologize. Good evening, Senator McDonald and Representative Lawlor, and Members of the Judiciary Committee.

My name is Bruce Douglas and I serve as the executive director of the Capital Region Education Council. And I'm here today to speak in support of House Bill 6673, AN ACT COMPENSATING JAMES C. TILLMAN FOR HIS WRONGFUL CONVICTION AND INCARCERATION.

I know an important part of your deliberations today concerns how James would have fared had he not been wrongfully imprisoned.

And I'm here to say that I strongly believe that James would have been a very successful man had not he been incarcerated. His contributions to our community would have been immeasurable.

In the time that I have known James he has impressed me greatly. I am not one to use [inaudible], and I found him to be a remarkable and inspirational individual.

He's a reliable man and he's a man of his word. He illustrates those attributes almost two decades ago by his refusal to plead guilty to a crime that he did not commit.

I also find him to be very humble, extremely spiritual, and moral. I understand that you had the opportunity to meet with him this afternoon, so I'm sure you know what I'm talking about.

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He started at [inaudible] as a part-time clerk after he was released from prison, and he's now a full-time employee. Ironically, he's in charge of fingerprinting.

His coworkers and visitors consider him a very detailed and oriented man. He's extremely pleasant, and he's conscientious and a motivated individual.

In addition to his regular duties, James is being prepared as a public speaker by our agency. As you know, James has been speaking publicly about faith and forgiveness since his release, and we are helping him get assignments addressing school children around the state.

During those talks, he discusses justice, injustice, and hope. He's making a very positive impact on the lives of many young people throughout this state and through this new program.

I mention this initiative because I believe it illustrates how James work ethic has allowed him to take advantage of the opportunities that have been presented to him.

I believe that if he had not been robbed years ago of the opportunity to pursue a career, he would be a leader in his field of choice. He has always made the most of the opportunities that has come his way.

James never had the chance to pursue his ambitions of having a career, a family. He

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lost the opportunity to be part of our community.

There may be critics who might point out the flaws in the minor [inaudible] of his youth, but as a teacher of 35 years, I know and I have seen countless young people turn their lives around and become very successful. This includes myself and possibly some of us in this room.

Given the chance, James would have served as a mentor, a coach, a teacher, a community leader, and a church leader. He would have been a force for good, and he would have touched lives and made our world a better place to live in as he is doing now.

I am urging you all to support this bill because we still owe him that opportunity. Thank you.

REP. LAWLOR: Thank you, Sir. Are there any questions? Representative Bye?

REP. BYE: Thank you, Mr. Chair. Welcome, Dr. Douglas, and I'm sure Ken Green and I both welcome you here. And I believe I'm speaking for both of us when I say that we appreciate you being here to testify on James Tillman's behalf.

And I know the first time I heard about this case long before it was a big deal was on WTIC and John Motley was on, and he talked about how you stepped up and before anyone knew about the case and it was a big deal thought that he

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deserved a chance for a job when he got out of prison.

And I remember driving to work and being very proud to work at Crack, which is my employer. But it also means a lot that you've come to tell us that you believe he'd be a, he deserves and he would have been a great success in his work life.

I also know last week he spoke to Hall High in West Hartford, and I heard from the teacher not soliciting the comment, but about what an incredible impact he had on that group of students at Hall.

So I just want to thank you for being here on behalf of Mr. Tillman. Thank you.

DR. BRUCE DOUGLAS: Thank you. Well, he is a remarkable individual and I'm humbled in his presence and he makes me reflect on my behavior everyday.

REP. LAWLOR: Are there questions? Representative Green?

REP. GREEN: Thank you, Dr. Douglas. Representative Bye and I appreciate you being here and as other Members of the Committee, and I will disclose that I also work for Crack [inaudible] Education Council. So Dr. Douglas is not only a boss, but a mentor and a friend to us as he allows us to do this, so we appreciate that.

A couple of questions just in terms of I like the idea that we have someone here that

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actually sees him day to day and works with him.

And I think sometimes we get lost and I was concerned earlier and I get concerned with people thinking, you know, is this a money grab, is this, you know, whatever.

Could you share with us maybe your thoughts on the character of this person? You mentioned some things, but I want to try to portray, you know, what is it really like to work with this person? Is this genuine?

DR. BRUCE DOUGLAS: That's an excellent question because when I first met James I was bold over by his lack of anger and lack of need for revenge, and his frustration with all that he gone through. And being a naturally skeptical person, I looked at him very carefully too.

And as I've come to know him, and I speak with him almost everyday, I have a need to touch base with him everyday because of my best interest, not his.

But as I've come to know him, I find him to be a really, a remarkable individual. I've never met anyone like him in my life, and I don't believe I'll meet another person like him in my life.

And so much so that I've arranged for a family get together with him so that my children will have the opportunity to meet someone like him. It's a once in a lifetime individual.

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REP. GREEN: And let me just ask you maybe your thoughts on, we sometimes debate up here this monetary figure, and some people say \$5 million dollars it sounds like a lot.

Have you ever thought about what the value of that kind of experience that he went through should be and just, you know, and maybe some openness do you think that's a fair value to offer him?

DR. BRUCE DOUGLAS: Well, I've thought about that a lot, not so much about the monetary value what 18 years means, and what those 18 years mean to me.

Those 18 years mean my four daughters. Those 18 years mean my marriage. Those 18 years mean my education and my doctoring. Those 18 years mean that I wouldn't be working at Crack.

It is just profound what 18 years would be taken out of that time of your life, certainly any time of life. But that time of your life is when you build your life, if you understand what I mean.

That's when you build a foundation upon which you're going to develop a family, you're going to contribute to your society, and you're going to emerge as a leader. No doubt in my mind that all of those things would have happened to him also.

But what is remarkable, again, is that he harbors no anger.

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REP. GREEN: Thank you.

REP. LAWLOR: Thanks. Other questions? If not,
thanks again, Dr. Douglas.

DR. BRUCE DOUGLAS: Thank you.

REP. LAWLOR: And as you've said several times
already, I think Mr. Tillman is an inspiration
to all of us in many ways, so thank you for
saying it one more time.

DR. BRUCE DOUGLAS: Thank you.

REP. LAWLOR: Dr. Campbell?

DR. BRENDAN CAMPBELL: The hour is late, so I will
be brief. My name is Brendan Campbell, I'm a
pediatric surgeon and the director of trauma at
Connecticut Children's Medical Center just down
the street, and I'm also a gun owner.

I have taken time away from my clinical
practice today to voice strong support for
House Bill 6901, AN ACT CONCERNING LOST OR
STOLEN FIREARMS.

As a trauma surgeon, I've taken the care of
many victims of gun violence and comforted many
parents who've lost children from gun related
injuries.

I believe that many of these firearm related
injuries and deaths could be prevented through
the enactment of common sense legislation such
as House Bill 6901.

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INNOCENCE PROJECT

Benjamin N. Cardozo School of Law, Yeshiva University

April 10, 2007

To: Members of the Connecticut Judiciary Committee
From: Amanda Melpolder, Policy Advocate

Re: Recording of Custodial Interrogations (SB 149 and HB 7364),
Compensation for the Wrongfully Convicted (HB 6673).

I am writing to express the Innocence Project's *support* for videotaping of custodial interrogations (HB 7364/SB 149) and compensation for the wrongfully convicted (HB 6673). This written testimony will address all three issues with additional support materials included in the accompanying packet.

The Innocence Project was established in 1992 at the Benjamin N. Cardozo School of Law in New York City to exonerate the innocent through post-conviction DNA testing. Since its introduction, forensic DNA testing has proven the innocence of 198 people who had been wrongly convicted of serious crimes.

The Innocence Project regards each exoneration as a learning opportunity, a chance to review where the system failed and identify factually-supported policies and procedures to minimize the possibility that such errors will impair justice again in the future.

RECORDING OF CUSTODIAL INTERROGATIONS

While it can be hard to understand why someone would falsely confess to a crime, psychological research has provided some answers – and 198 DNA exonerations nationwide have proven that the problem is more widespread than many people think. **In more than 25% of the wrongful convictions overturned with DNA evidence, defendants made false confessions, admissions or statements to law enforcement officials.** This problem affects people regardless of race, class, or creed. It obscures justice. And with a simple, affordable reform, this problem can be effectively addressed.

Electronically recording custodial interrogations from Miranda onward removes serious questions about the “confession” in question, by enabling the finder of fact to consider the most accurate presentation of the confession evidence at trial, thus narrowing the possibility of a wrongful conviction.

Electronic recording of interrogations will assure protections to the innocent, which in turn will allow law enforcement to focus its attention on the apprehension of the true culprit. Less than ideal interrogation procedures have contributed to or been the main factor in nearly one in five wrongful convictions of individuals later exonerated through DNA evidence. In each of these cases, the true perpetrator remained at large, able to commit additional crimes. The mandatory recording of interrogations is a reform whose time has come.

Barry C. Scheck, Esq. and Peter J. Neufeld, Esq., Directors Maddy deLone, Esq., Executive Director
100 Fifth Avenue, 3rd Floor • New York, NY 10011 • Tel: 212/364-5340 • Fax: 212/264-5341

Ancillary Benefits of Recording Interrogations

There are a number of ancillary benefits that can be achieved through the implementation of mandatory recording:

- A record of the interrogation can resolve disputes about the conduct of law enforcement officers—allegations of police misconduct can be disproven.
- Investigators will not have to focus upon writing up a meticulous account of the statements provided by the suspect, and may instead focus his attention on small details, such as subtle changes in the narrative, which he might have otherwise missed.
- Having a record of good interrogation techniques can be a useful training device for police departments, particularly as cases with distinctive characteristics come to light.
- Overburdened courts will welcome a huge reduction in defense motions to suppress unrecorded statements and confessions as well as pretrial and trial hearings focused upon establishing what transpired during the course of an interrogation.

Electronic recording of interrogations provides additional benefits to law enforcement. The production of an electronic recording creates a permanent record of original statements provided by suspects. The decision to record interrogations enhances public confidence in law enforcement, while reducing the number of citizen complaints against the police. If a shift in the investigative focus occurs later, law enforcement can easily refer back to the recording to yield additional details which may have been initially deemed irrelevant.

The presence of a recording removes the potential for disputes about how an officer conducted himself or treated a suspect. Electronic recordings protect innocent police officers and law enforcement agencies accused of coercing confessions. In the absence of a recording, the defense has ample opportunity to offer scenarios that seem plausible to fact-finders and can result in sizable settlements.

Recording of Interrogations Being Adopted by Law Enforcement Across the Country

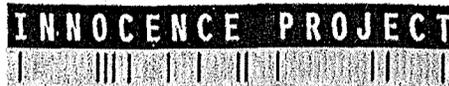
Legislative efforts are currently pending in Arizona, California, Florida, Georgia, Indiana, Iowa, Kansas, Maryland, Montana, Nebraska, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont and Virginia to mandate the recording of interrogations – as well as Connecticut.

The single best reform available to hinder the occurrence of false confessions, the mandatory electronic recording of interrogations, is being embraced by police departments around the country, now estimated at 500 law enforcement agencies in all 50 states.

In the summer of 2004, Thomas P. Sullivan, the former U.S. Attorney for the Northern District of Illinois, published a report detailing police experiences with the recording of custodial interrogations.

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Researchers interviewed officers in 238 law enforcement agencies which have implemented the reform in 38 states and concluded, **“virtually every officer with whom we spoke, having given custodial recordings a try, was enthusiastically in favor of the practice.”**¹

According to Mr. Sullivan’s research, **Bloomfield and Cheshire police departments have already adopted the practice of recording their interrogations.** The rest of the state should follow suit, taking the lead in instigating a reform whose innumerable benefits will undeniably bolster the investigations of criminal cases.

The states of Alaska, Minnesota, Maine, and the District of Columbia already require it in serious cases, and the same is done in large metropolitan cities such as Phoenix, AZ; Los Angeles, San Diego, San Francisco and San Jose, CA; Denver, CO; Portland, OR; Austin and Houston, TX.

Recording of interrogations is not just a “criminal defense” issue. While many police departments were initially skeptical of the requirement, their opinions changed after implementing the practice of recording. As veteran prosecutor Alan Harris of Minnesota says: “It’s the best thing we’ve ever had rammed down our throats.”

Many police and prosecutors have come to this conclusion because recorded interrogations provide the best evidence of a true confession and prevent attack on alleged “confessions” by criminal defense lawyers. **In short, electronically recording custodial interrogations is just good law enforcement.**

COMPENSATION FOR THE WRONGFULLY CONVICTED

An innocent person wrongly convicted of a crime is robbed of his freedom, his family and friendships, and his livelihood – in order to be subjected to the unique horror of prison. Through the nation’s 198 DNA exonerations that reentering society is profoundly the difficult for many exonerees, despite their proven innocence.

After being released from prison, the nightmare does not always end. With no money, housing, transportation, health services or insurance, and a criminal record that is rarely cleared despite innocence, the punishment lingers long after innocence has been proven. States have a responsibility to restore these innocents’ lives to the best of their abilities.

Along with Connecticut, Arizona, Florida, Georgia, Illinois, Michigan, New York, Rhode Island, Texas, Utah, Vermont, Virginia and Washington have introduced legislation to compensate the wrongfully convicted this year.

Only 21 states and the District of Columbia have compensation statutes of some form: Alabama, California, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Missouri, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Tennessee, Texas, Virginia, West Virginia and Wisconsin.

¹ Sullivan, Thomas, “Police Experiences with Recording Custodial Interrogations.” Report presented by Northwestern University School of Law’s Center on Wrongful Convictions, p. 6.

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By ensuring compensation to the wrongfully convicted, Connecticut would be taking an important step toward ensuring the justice of its criminal justice system.

Compensation Provides for the Needs for Every Exonoree

Although every exonoree's needs are different, there are some fundamental needs that every exonoree faces upon release from prison. Unlike a prisoner released on parole, in 29 states there is no assistance available through the state to help reintegrate the wrongfully incarcerated person back into society. The Innocence Project has found that exonorees need:

- Immediate Services
 - Financial support for basic necessities
 - Help securing affordable housing and medical/dental care
 - Assistance in the development of workforce skills
 - Psychological Services--Post-traumatic Stress Disorder is just one common issue faced by the recently released
 - Legal services to obtain public benefits, expunge criminal records, and regain custody of children
- Help Regaining Lost Time
 - Job counseling to overcome the loss of skills that would have otherwise been built and deficit in work/professional experience caused by wrongful conviction
 - Counseling services to repair damaged relationships and address the psychological strains of the wrongful conviction and prison experience
- Official Acknowledgement of a Wrongful Conviction
 - Public recognition of the harm inflicted upon the innocent fosters an exonoree's healing
 - A second injustice adds insult to injury. Society has an obligation to promptly address and compensate for the grave injustice it has caused

THANK YOU AND CONTACT INFORMATION

I thank you for the opportunity to speak to you about these important issues today. We believe that these are important reforms that will serve the interests of law enforcement, while promising the fair administration of justice. Should you have any additional questions about these issues, please do not hesitate to contact me at (212) 364-5973 or amelpolder@innocenceproject.org

March, 2007

INNOCENCE PROJECT

Benjamin N. Cardozo School of Law, Yeshiva University

THE RECORDING OF INTERROGATIONS - A RANGE OF COST ALTERNATIVES

An argument commonly made by those who oppose mandating the video recording of custodial interrogations is its costliness. Many point to expensive systems installed in jurisdictions like Illinois and the District of Columbia, estimated at \$1 million, as cost prohibitive. However, a number of cost-effective options are available for large, metropolitan cities and small, rural towns alike.

This piece will lay out a number of cost options, from the simplest variety to state-of-the-art systems.

A Low Budget Alternative

It is possible to comply with legislation that mandates the recording of interrogations at minimal cost. The figures below represent costs for one system; however, should an entire department or several at once opt to purchase such equipment, wholesale options are likely available.

The following represents a cost estimate for a system to outfit one department, offered at current retail prices¹

- Single digital camcorders now retail for \$199.99;
- An individual DVD can hold approximately 4.7-gigabites, on which 2 hours of studio quality (supergrade) footage can be recorded;
- An inexpensive DVD player retails for as low as \$49.99;
- A 600-gigabyte external hard drive [used to store all of the interrogations] can cost as little as \$279.99;

This ballpark figure is consistent with an estimate provided by a Special Committee on the Recordation of Custodial Interrogations submitted a report to New Jersey's Supreme Court, indicating that "**for under a thousand dollars** a video system can be installed recording onto VHS tape."²

A Mid-Range Alternative

Also possible is a mid-range alternative that offers a server which has the capacity to hold all archived interrogations, in addition to more recent ones.

Denver, CO, for instance, has a 25-room recordation system that contains individual work stations which receive data from the video camera and places it onto the hard drive. These interrogation videos are taken from the hard drive and burned onto a

¹ (Source: <http://www.bestbuy.com>)

² (Source: www.judiciary.state.nj.us/notices/reports/cookreport.pdf)

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CD. The total cost for all of the video rooms and work stations was \$175,000 (at \$7,000 per room). In addition, Denver purchased an \$11,000 mainframe computer to store all of its interrogations over time. According to officials, this was less challenging than warehousing all of the individual interrogation DVD's.

State-of-the-Art Integrated Recordation System

Some jurisdictions, such as Illinois, have installed integrated systems, which allow all investigators within a particular department to view live and stored interviews. Such a system also permits investigators to embed typed notes onto already-recorded interrogations, which serves as a valuable investigative tool. In such an integrated system, all investigators can watch and retrieve interviews from all computers and from any desktop in the stationhouse. In this way, investigators can collaborate on cases and build upon the ideas and premises of others working on a case.

Such a system which integrates four different rooms with the capacity for real-time note-taking is \$40,000. However, for a one-room system that does not allow system connectivity, the cost is \$8,000. While this version is less expensive than the fully – integrated system, it still allows investigators to continually view interrogations and burn them onto CDs.³

³ (Source: Word Systems: <http://www.wsystems.com/>)

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April 2007

INNOCENCE PROJECT

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FALSE CONFESSIONS & RECORDING OF CUSTODIAL INTERROGATIONS

How Could Someone Confess to a Crime One Didn't Commit?

Many of the nation's 198 wrongful convictions overturned by DNA evidence involved some form of a false confession. Yet it's virtually impossible to fathom why a person would wrongly confess to a crime he or she did not commit. Researchers who study this phenomenon have determined that the following factors contribute to or cause false confessions:

- Real or perceived intimidation of the suspect by law enforcement
- Use of force by law enforcement during the interrogation, or perceived threat of force
- Compromised reasoning ability of the suspect, due to exhaustion, stress, hunger, substance use, and, in some cases, mental limitations, or limited education
- Devious interrogation techniques, such as untrue statements about the presence of incriminating evidence
- Fear, on the part of the suspect, that failure to confess will yield a harsher punishment

How to Prevent "False Confessions" Leading to Wrongful Convictions

- **The entire interrogation, including the Miranda warning and a subsequent waiver (if there is one), leading up to a confession should be electronically recorded.** This is simply the only way to create an objective record of what transpired during the course of the interrogation process.
- In cases where law enforcement failed to make a recording, at minimum, a mandatory instruction should be given to the jury, directing them to disregard the confession if they believe it was coerced. Ideally, the judge should suppress "confessions" that were not recorded or improperly recorded so that they are not heard by jurors.
- The practice of recording of interrogations can be implemented in one of three ways:
 - 1) Via legislation
 - 2) By action of the highest court in a particular jurisdiction
 - 3) Through adoption of policies by individual police departments

An important note about **videotaping interrogations** is that it is only a reform when the video camera is either focused upon both the interrogator *and* the suspect or when focused solely upon the interrogator. Research indicates that when the video camera is fixed only upon the suspect, the problem of false confession is exacerbated, prompting jurors to disregard the appearance of the interrogator and conclude that the confession was given freely.

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Do States Legislate the Electronic Recording of Interrogations?

To date, Illinois, Maine, New Mexico, and the District of Columbia have enacted legislation requiring the recording of custodial interrogations. State supreme courts have taken action in Alaska, Massachusetts, Minnesota, New Hampshire, New Jersey and Wisconsin.

Over 500 jurisdictions have voluntarily adopted recording policies.

Electronic Recording of Interrogations: A Boon to Both the Innocent and to Law Enforcement

The mandated electronic recording of the entire interrogation process protects the innocent, ensures the admissibility of legitimate confessions, and helps law enforcement defend against allegations of coercion.

Electronic Recording of Interrogations Helps the Innocent by:

- Creating a record of the entire interrogation, including the interaction leading up to the confession;
- Ensuring that the suspect's rights are protected in the interrogation process; and
- Creating a deterrent against improper or coercive techniques that might be employed absent the presence of a recording device.

Electronic Recording of Interrogations Assists Law Enforcement by:

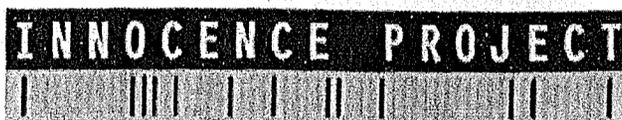
- Preventing disputes about how an officer conducted himself or treated a suspect;
- Creating a record of statements made by the suspect, making it difficult for a defendant to change an account of events originally provided to law enforcement;
- Permitting officers to concentrate on the interview, rather than being distracted by copious note-taking during the course of the interrogation;
- Capturing subtle details that may be lost if unrecorded, which helps law enforcement better investigate the crime; and
- Enhancing public confidence in law enforcement, while reducing the number of citizen complaints against the police.

Case in Point: Chris Ochoa, Texas Exonerated

In 1988, a woman was raped and murdered at an Austin, Texas Pizza Hut restaurant where she worked. Based on a hunch that the crime was committed by a Pizza Hut employee with a master key, police began questioning employees of the chain restaurant. Chris Ochoa and his roommate, Richard Danziger, worked at a different Austin area Pizza Hut, but became the main suspects when they were observed drinking beer and appearing to toast the victim. Mr. Ochoa and Mr. Danziger were subsequently convicted of the crime. Both convictions grew out of a false confession by Mr. Ochoa. It was later discovered that his confession was coerced and that interrogators had threatened him with the death penalty. Years after their convictions, letters detailing the crime were sent to the police, to then-Governor George W. Bush's office, and the District Attorney's Office. The author of the letters, Achim Marino, had apparently undergone a religious conversion while in prison on three other convictions, and felt obligated to confess to the Pizza Hut rape/murder. The DNA evidence from the original crime scene was retested. It exculpated both Mr. Ochoa and Mr. Danziger, while implicating Mr. Marino. Had Mr. Ochoa's initial "confession" been taped, jurors, at the subsequent trial, would have had an opportunity to assess the circumstances under which his confession was made.

November 2006

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COMPENSATING THE WRONGFULLY CONVICTED

The Punishment Continues After Incarceration

An innocent person wrongly convicted of a crime is robbed of his freedom, his family and friendships, and his livelihood – in order to be subjected to the unique horror of prison. Unfortunately, the nightmare does not end there. With no money, housing, transportation, health services or insurance, and a criminal record that is rarely cleared despite innocence, the punishment lingers long after innocence has been proven. States have a responsibility to restore these innocents' lives to the best of their abilities.

Why Should a State Compensate the Wrongfully Convicted?

Despite their proven innocence, the difficulty of reentering society is profound for exonerees.

Need for Immediate Services

- ✓ Financial support for basic necessities
- ✓ Help securing affordable housing and medical/dental care
- ✓ Assistance in the development of workforce skills
- ✓ Psychological Services--Post-traumatic Stress Disorder is just one common issue faced by the recently released
- ✓ Legal services to obtain public benefits, expunge criminal records, and regain custody of children

Help Regaining Lost Time

- ✓ Job counseling to overcome the loss of skills that would have otherwise been built and deficit in work/professional experience caused by wrongful conviction
- ✓ Counseling services to repair damaged relationships and address the psychological strains of the wrongful conviction and prison experience

Official Acknowledgement of a Wrongful Conviction

- ✓ Public recognition of the harm inflicted upon the innocent fosters an exoneree's healing
- ✓ A second injustice adds insult to injury. Society has an obligation to promptly address and compensate for the grave injustice it has caused

**** 29 STATES DO NOT HAVE COMPENSATION STATUTES ****

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Which States Have Compensation Statutes?

The following twenty-one states, and the District of Columbia, have compensation statutes of some form:

Alabama	Maryland	New York	Virginia
California	Massachusetts	North Carolina	West Virginia
Illinois	Missouri	Ohio	Wisconsin
Iowa	Montana	Oklahoma	
Louisiana	New Hampshire	Tennessee	
Maine	New Jersey	Texas	

What Can Be Done to Ensure Fair Compensation In Every State?

By ensuring compensation to the wrongfully convicted, states take an important step toward ensuring the justice of its criminal justice system.

- States that do not have compensation statutes must pass them.
- States that have compensation statutes must reexamine them to ensure they make compensation attainable and adequate for the wrongfully convicted.
- Statutes should include either a fixed sum or a range of recovery for each year spent in prison. President George W. Bush endorsed Congress's recommended amount of **\$50,000 per year, with an additional \$50,000 for each year spent on death row.**
- Some statutes contain provisions that make compensation contingent on the premise that the exoneree did not "contribute" to his wrongful conviction. By doing so, states avoid restitution to exonerees coerced into confessing to a crime. *Statutes should not contain provisions that require exonerees to prove that they did not "contribute" to their wrongful conviction.*
- Statutes should include the immediate provision of re-entry funds and access to the job training, educational, health and other services needed to foster the successful rebuilding of exonerees' lives.

Case in Point: Compensation in Florida

In 2004, Floridian Wilton Dedge was exonerated after having been forced to spend 22 years in prison for a rape and burglary that he did not commit. Upon his release from wrongful imprisonment, however, Mr. Dedge was entitled to absolutely nothing from the state of Florida. Mr. Dedge's lawsuit against the state was dismissed by the trial court. His only alternative to the courts was to seek a private compensation bill from the legislature, which, despite public outcry over the injustice he had suffered, initially refused to pass the "private bill" necessary to compensate him.

These processes themselves are a big part of the problem – having to convince the legislature of the need for compensation makes compensation a political issue, and successfully suing in court presents a new set of legal and financial obstacles to the wrongfully convicted - when compensation should be a simple issue of justice. And there's simply no question that when an innocent person has had his life stripped from him only to endure the horror of prison, justice demands that the individual be compensated for the harm suffered. While a private bill compensating Mr. Dedge finally passed in a later special session, it took extraordinary advocacy work to get it. States should adequately and promptly provide justice and restoration to the wrongfully convicted through a standard, navigable, and just process.

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INNOCENCE PROJECT



Benjamin N. Cardozo School of Law, Yeshiva University

A Restitution Package for the Innocent **The Immediate Assistance Necessary**

Every wrongfully convicted person requires immediate assistance to rebuild the life he has lost. Each state should ensure that it has a process in place to provide an immediate 'restitution package' to exonerated individuals upon release from prison. While this is no substitute for monetary compensation, the provision of immediate services is absolutely necessary and each state is encouraged to think creatively about how to partner with other government agencies and community-based organizations to ensure this is accomplished.

Because an innocent person's prison term does not result from criminal activity, upon release, the exonerated individual is excluded from traditional reentry services that are offered by each state's correctional and parole systems. Paradoxically, proven innocence works against one's ability to obtain services that are offered to ex-offenders.

Despite his innocence, an exoneree is still subjected to the unique horror of the prison experience and deserves a range of re-integrative services. To ensure a smoother reentry for the exonerated, the Innocence Project recommends, at a bare minimum, that every state explore the range of services that can be offered free of charge to the innocent post-release through its already established social service, public works, and education systems:

Emergency Subsistence

Exonerees should receive immediate access to subsistence and personal care services that are traditionally offered by state parole divisions. These services include but are not limited to cash, clothing and transportation assistance, counseling, parenting education, and other essential support services.

Housing

According to the Re-entry Policy Council, the presence of housing has been shown to be the foundation of engagement in a range of services aimed at successful reintegration into society. Absent strong family ties and available resources, exonerees struggle to obtain affordable housing following their release. At minimum, emergency slots in public housing should be made available to exonerees immediately upon release. Housing provision is a crucial service that leads to participation in other needed services.

Transportation

Successful reintegration requires visits to doctors, counselors, job training seminars, classes, visits to family, etc. Exonerees should be provided with transportation vouchers, allowing them to travel free of charge on public transportation.

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Education

For those exonerees interested in pursuing higher education upon release, the State University system should be compelled to offer free tuition.

Medical Care and Mental Health Services

Recovering from a harrowing prison experience is compounded by the weight of a wrongful conviction. Each state is encouraged to coordinate with its statewide Department of Health or Department of Mental Health to ensure the provision of medical and mental health services for exonerees. Ideally these services are community-based so that they are easily accessible.

Legal Assistance

Once exonerees are freed from prison on the basis of innocence, their wrongful convictions are not automatically removed from their criminal records. Background checks that reveal their prior convictions become a huge impediment as they seek employment and housing. The criminal records of the wrongfully convicted should be immediately expunged and exonerees should receive legal assistance in expediting this process. Exonerees require other ongoing legal services for a host of issues, from bankruptcy to child custody. Each state should assure that partnerships are established with lawyers who can provide pro bono services for the exonerated upon release from prison.

Workforce Development

Typically, parole divisions designate specialized parole officers to facilitate post-incarceration workforce development. Exonerees are no less deserving of professional development services, from resume-writing to vocational and job training. Further, states are encouraged to approach workforce development for exonerees creatively. This might entail partnering with small business bureaus or other city agencies to identify services that will best suit a post-release population. Exonerees might be offered the same computer classes available to municipal employees or individuals in welfare-to-work programs. Other opportunities for assistance might include employment referrals, connections to child care programs for working parents, and referrals to other human service agencies.

Specialized Services

Many states' parole systems recognize that some parolees have special needs. For those exonerees with special needs, ideally identified pre-release by re-entry professionals, intensive parole services should be offered. These services might include: self-sufficiency workshops; substance abuse; mental health; intensive counseling; parenting classes; anger management; etc.

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CHAPTER 9

COMPENSATION FOR THE WRONGFULLY CONVICTED¹

RESOLUTION

RESOLVED, That the American Bar Association urges federal, state, local and territorial jurisdictions to enact statutes to adequately compensate persons who have been convicted and incarcerated for crimes they did not commit.

FURTHER RESOLVED, The American Bar Association urges jurisdictions to consider the following factors in drafting a compensation statute:

A. Conditions Precedent:

1. Statutes should require claimants to have been incarcerated as the result of a conviction;
2. Claimants must be able to show that their convictions were vacated or pardoned on a ground demonstrating actual innocence, which for this purpose requires that the claimant did not commit the crime, or the crime did not occur;
3. The claimant's own misconduct should not have substantially contributed to the conviction. A false confession or guilty plea does not automatically bar recovery.

B. The size of the award:

1. The award should be in proportion to the time served;

¹ The ABA House of Delegates adopted Resolution 108A at its 2005 midyear meeting. This chapter is based on the report submitted by the Ad Hoc Innocence Committee. The report was written by Myrna Raeder and Dino Amoroso.

Chapter 9: Compensation for the Wrongfully Convicted

2. The award should be based upon economic loss;
 3. The award should include non-economic losses, such as pain and suffering, humiliation, loss of consortium, and loss of reputation; and
 4. Claimants are eligible for compensation only if, but for this conviction, the claimant would not have been incarcerated. The government should have the burden of demonstrating that the claimant would have otherwise been incarcerated.
- C. A successful claimant shall be entitled to receive reasonable attorneys fees in connection with establishing the claim of actual innocence.
- D. Judgment should include relief from all governmental obligations incurred as a result of the trial, conviction and incarceration of the claimant, and restoration of all rights lost as a result thereof.
- E. The court or executive authority that releases an individual based on actual innocence should give that person notice of the statutory compensation scheme.
1. Any suit must be brought within one year of notice;
 2. If the claimant was not given notice, suit must be commenced within two years after exoneration is final or after the adoption of a compensation statute.
- F. Jurisdictions should assist the innocent to reenter the community.
1. Assistance should be provided that is at least equivalent to that available to individuals on probation or parole;
 2. The erroneous judgment of conviction should be expunged from the innocent's criminal record.

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A FAIR DEAL FOR MR. TILLMAN Hartford Courant (Connecticut) February 25,

FOCUS - 6 of 155 DOCUMENTS

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February 25, 2007 Sunday
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SECTION: COMMENTARY; Pg. C2

LENGTH: 414 words

HEADLINE: A FAIR DEAL FOR MR. TILLMAN

BODY:

James Calvin Tillman has been to hell and back. He deserves to be compensated fairly.

He was convicted in 1989 of kidnapping and sexually assaulting a woman in Hartford, but exonerated last summer when DNA tests proved he could not have committed the crime.

It isn't possible to make up for more than 18 years he spent behind bars during the time when most men his age were establishing careers and families and buying homes. He was mistreated by other inmates because he was wrongly labeled a rapist. Mr. Tillman spent seven months of his imprisonment in Wallens Ridge, Va., where the state of Connecticut farmed out prisoners to save money. Mr. Tillman's mother, his staunchest ally, could not visit him there.

Later, after Mr. Tillman was returned and incarcerated in Cheshire Correctional Institute, he ruptured an Achilles tendon. He developed an infection and suffered for a year before it was properly treated.

In prison he was subjected to humiliation and, as he puts it with a remarkable lack of anger, he felt as if he were entombed while alive. Surely, the state of Connecticut owes him.

Gov. M. Jodi Rell offered him \$500,000 with no strings attached. He wants \$5 million in exchange for dropping any legal challenges. That's the deal a group of defense attorneys working pro bono on Mr. Tillman's behalf and other Good Samaritans think is fair, based on awards given in other states. The benchmark for litigated awards in such cases is about \$1 million for each year of false incarceration.

Connecticut has no guidelines for restoring a man's stolen life. Mr. Tillman's lawyers want legislators to compensate him by special act rather than force Mr. Tillman to fight for it in the courts, a process that could take years. Why should he be put through the ringer again?

This deal would allow Mr. Tillman financial security and a chance at a new life. It would also save the state a bundle in legal fees. His goal is to help young people in trouble with the law by offering himself as a living example of the power of faith and hope.

Here's how the proposal breaks down: \$2.25 million for loss of liberty and enjoyment of life; \$1 million for loss of income; \$250,000 for loss of future earnings because he will essentially be starting from scratch; \$500,000 for physical injury and \$1 million for mental pain and suffering, psychological injury and loss of familial relationships.

Think that's too much? Legislators must ask themselves if they'd give up their freedom for any price.

LOAD-DATE: February 27, 2007

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TESTIMONY OF GERARD A. SMYTH, ESQ.
ON BEHALF OF JAMES C. TILLMAN CONCERNING SB 1456,
*AN ACT CONCERNING THE COMPENSATION OF PERSONS WRONGFULLY
CONVICTED AND INCARCERATED*

Judiciary Committee
April 10, 2007

Section (2) of SB 1456 would compensate James C. Tillman for his wrongful conviction in 1989 of kidnapping and sexual assault, and for the 18 years, 4 months and 11 days that he was incarcerated for a crime that he did not commit. In June 2006 DNA test results exonerated Mr. Tillman, leading to his release from prison and the dismissal of all of his charges.

SB 1456 proposes to pay Mr. Tillman an initial payment of \$500,000, followed by annual payments of an unspecified amount for the remainder of his life. The initial payment would come from unclaimed lottery prize funds of \$3.5 million, and the annual payments would be funded by investing the balance of the unclaimed prize funds in a manner to ensure annual payments to Mr. Tillman for life.

Another bill currently before this committee, HB 6673, *An Act Compensating James C. Tillman for his Wrongful Conviction and Incarceration* proposes alternatively to award Mr. Tillman a one time, lump sum payment of \$5 million in full satisfaction of any and all claims that Mr. Tillman has against the State of Connecticut and any of its agents, employees or officials. In separate testimony submitted today, I have urged the Committee's support for HB 6673 and expressed Mr. Tillman's preference for a single, lump sum payment of \$5 million, which would enable him, in consultation with his financial advisors, to make his own decisions as to how to best use and invest his money. After 18 years of having his entire life controlled by others, he understandably would like to be in full control of his own life and decisions.

If, however, it is the judgment of this Committee and the General Assembly that Mr. Tillman should be compensated in accordance with the method set forth in SB 1456, then I would request the following amendments to the bill as written:

1. *Addition of the language that is included in HB 6673, which provides that "[a]ny payment received pursuant to this act shall be exempt from the tax imposed under chapter 229 of the general statutes". This would exempt such payments from state income tax.*
2. *Specification of a formula for determining the amount of the annual payment to Mr. Tillman, including a minimum annual amount. As written the bill provides for annual payments for life, but is silent as to how the amount of the payments would be determined by the State Treasurer. In order for Mr. Tillman to make an informed decision as to whether to accept such payments*

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in full satisfaction of his claims against the state and its agents, as provided in Sec. 2(b), he would have to know what the approximate amount of the annual payments would be.

3. *Guarantee of a minimum of 25 years of annual payments to Mr. Tillman or his heirs, executors or assigns.* This would address the inequity that would arise if Mr. Tillman were to die before he received fair compensation for the injury that he has suffered.

In conclusion, I would respectfully urge the Judiciary Committee's support for fair and just compensation for James Tillman by a special act of the legislature, preferably in accordance with HB 6673. Thank you.

007954



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**TESTIMONY OF
BRIAN S. CARLOW
DEPUTY CHIEF PUBLIC DEFENDER**

JUDICIARY COMMITTEE PUBLIC HEARING

April 10, 2007

Senate Bill No. 1456, An Act Concerning the Compensation of Persons Wrongfully Convicted and Incarcerated and House Bill No. 6673, An Act Compensating James C. Tillman for His Wrongful Conviction and Incarceration.

The Office of Chief Public Defender strongly supports Senate Bill No. 1456 (Raised) An Act Concerning the Compensation of Persons Wrongfully Convicted and Incarcerated and House Bill No. 6673, An Act Compensating James C. Tillman for His Wrongful Conviction and Incarceration. While the Office of Chief Public Defender certainly supports an award of monetary compensation for Mr. Tillman and any other person in a similar situation, we do not represent Mr. Tillman with respect to any claims for compensation he may make and have not advocated for him on this issue. Accordingly, we take no position as to what "just" compensation would be. At the same time, however, we do have some insight into the issues that a wrongly incarcerated person may face upon release and we ask that strong consideration be given to providing such a person with support services that are necessary to ease the transition from an incarcerated life to freedom.

While this is not an exhaustive list, some issues for which supportive services should be provided are:

1. housing;
2. job training;
3. living expenses;
4. health benefits; and,
5. a support network, including, mental health counseling and treatment.

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Some of these may not be necessary in every case, but they should be available in every case if such supportive services are needed. As Mr. Tillman's case has demonstrated, even if there is to be monetary compensation in a case, it may well be that such compensation is not immediately forthcoming. Thus, you could have a person released after an extended wrongful incarceration who has no money, no job, no health benefits and no support network. These are needs that should be immediately addressed to help ensure a successful and smooth transition as possible.

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TESTIMONY OF GERARD A. SMYTH, ESQ.
ON BEHALF OF JAMES C. TILLMAN
IN SUPPORT OF HB 6673,
*AN ACT COMPENSATING JAMES C. TILLMAN FOR HIS WRONGFUL
CONVICTION AND INCARCERATION*

SB1456

Judiciary Committee
April 10, 2007

On behalf of my client, James C. Tillman, I respectfully request the Committee's support for HB 6673, which would compensate Mr. Tillman in the amount of \$5 million for his wrongful conviction in 1989 of kidnapping and sexual assault, and for the 18 years, 4 months and 11 days that he was incarcerated for a crime that he did not commit. In June 2006 DNA test results exonerated Mr. Tillman, leading to his release from prison and the dismissal of all of his charges.

The amount of compensation proposed is both fair and reasonable under the circumstances, and the bill provides that this amount would be in full settlement of any and all claims that Mr. Tillman has against the state or any of its agents, its employees or its officials. This would include claims against the State and several of its employees for actions contributing to his wrongful conviction, against the City of Hartford and members of the Hartford Police Department, and against the UConn Health Center and its medical personnel for malpractice in its treatment of Mr. Tillman for an injury that he sustained while incarcerated.

One of the most significant of Mr. Tillman's legal claims involves the failure of the State Health Department laboratory to test all of the biological evidence that was available to them at the time of Mr. Tillman's trial and the misleading expert testimony that it provided to the jury based upon inadequate forensic testing. If all of the available evidence had been tested in 1989, Mr. Tillman would have been excluded as the perpetrator of the crime, as he subsequently was by DNA evidence.

The damages to which the State and its agents are exposed are far in excess of the \$5 million amount proposed in the bill. In cases of wrongful conviction and incarceration that have been litigated around the country, the typical award is in the range of \$1 million per year, for each year of wrongful imprisonment. In Mr. Tillman's case this would amount to at least \$18 million. While no amount of monetary compensation can ever repay him for the years of his life that he lost, Mr. Tillman is desirous of settling these claims and moving forward with his life, rather than litigate.

The losses endured by Mr. Tillman as a result of this injustice are considerable, and include the loss of liberty and enjoyment of life from age 26 to 45, the prime years of his life. He also endured mental suffering, psychological damage, and physical injury. In addition, he lost wages, has had his future earning capacity significantly reduced, and suffered a loss of familial relationships, including the fact that he was prevented from marrying, raising a family and owning a home.

007957

In addition to whatever legal liability that the State has, I believe that we as a society have a moral obligation to compensate Mr. Tillman, since it was our own court system and legal institutions that produced this grave injustice. It is now approaching one year since Mr. Tillman was released, and he has received nothing to compensate him for what he lost. In order to live and make ends meet, Mr. Tillman has been working 2 jobs for most of the time since his release. If he is forced to litigate his claims, it will only result in a further delay in his receiving any monetary compensation for what he has suffered. Considerable time has passed since his release and he continues to struggle financially.

While the amount proposed is substantial, you should also be aware that it is the position of the IRS that any compensation that Mr. Tillman or others like him receives for anything other than "physical injury" is income for federal tax purposes and would be taxable at a rate of 35%. While Mr. Tillman would contest this with the IRS, there is a strong possibility that he would have to pay federal income taxes on the award of up to \$1.75 million. The bill does provide that the award would be exempt for state income tax purposes.

In addition to HB 6673, there is another bill before the committee which proposes an alternative method for compensating Mr. Tillman. SB 1456 provides for an initial payment to Mr. Tillman of \$500,000, followed by annual payments of an unspecified amount for the duration of his life. I have submitted separate testimony in regard to SB 1456. However, as between the two methods of compensation, Mr. Tillman strongly prefers the one time, lump sum payment provided by HB 6673, which would enable him, in consultation with his financial advisors, to make his own decisions as to how to invest and use his money. After 18 years of having his entire life controlled by others, he understandably would like to be in full control of his own life and decisions.

While passage of this bill is in Mr. Tillman's interest, it would also be in the State of Connecticut's best interest. The cost of litigation alone would be considerable to the state, as well as the amount of any potential jury verdict. I would respectfully urge you to rectify the wrong that was done to Mr. Tillman by voting to approve this bill. Thank you.

007958

Testimony
Submitted to the
Judiciary Committee

April 10, 2007

HB 6673, AN ACT COMPENSATING JAMES C. TILLMAN FOR HIS WRONGFUL
CONVICTION AND INCARCERATION

Good afternoon Senator McDonald, Representative Lawlor and members of the Judiciary committee.

My name is Dr. Bruce E. Douglas, executive director of the Capitol Region Education Council. I am here today to speak in support of House Bill 6673, an act compensating James Tillman for his wrongful conviction and incarceration.

I know an important part of your deliberations concerns how James would have fared had he not been wrongfully imprisoned. I am here to say that I strongly believe that James would have been a very successful man had he not been incarcerated. His contributions to the community would have been immeasurable.

In the short time I have known James, he has impressed me greatly. I have found him to be remarkable and inspirational. He is reliable, and a man of his word. He illustrated that attribute almost two decades ago by his refusal to plead guilty to a crime he did not commit. I also find him to be very humble, extremely spiritual, and moral.

He started at CREC as a part-time file clerk. He is now employed full-time, also serving as a fingerprinting technician. His co-workers and visitors consider him very detailed oriented and extremely pleasant. He is a conscientious and motivated individual.

In addition to his regular duties, James is being prepared as a public speaker by our agency. As many of you know, James has been speaking publicly about faith and forgiveness since his release. We are helping him get assignments addressing schoolchildren all around the state. During those talks, he discusses justice, injustice, and hope. He is making a very positive impact on the lives of many children through this new program.

007959

I mention this initiative because I believe it illustrates how James' work ethic has allowed him taken advantage of the opportunities presented to him. I believe that if he had not been robbed years ago of the opportunity to pursue a career, he would be a leader in his field of choice. He has always made the most of the opportunities that have come his way.

James never had the chance to pursue his ambitions of having a career and a family; he lost the opportunity to be a part of our community. There may be critics who might point to his flaws and the minor skirmishes of his youth. But as a teacher of 35 years, I have seen countless young people turn their lives around and become very successful – that includes myself, and many of us in this room.

Given the chance, James would have served as a mentor, a coach, a teacher, a community and church leader. He would have been a force for good. He would have touched lives and made our world a better place as he is doing now. I am urging you all to support this bill because we still owe him that opportunity.

Thank you.

007960



**Testimony of Timothy S. Fisher
Judiciary Committee Public Hearing
April 10, 2007**

HB 6673

**AN ACT COMPENSATING
JAMES C. TILLMAN
FOR HIS WRONGFUL CONVICTION AND
INCARCERATION**

BALTIMORE

BOSTON

HARTFORD

NEW YORK

NEWARK

PHILADELPHIA

STAMFORD

WILMINGTON

**HOUSE BILL 6673: AN ACT COMPENSATING JAMES C. TILLMAN
FOR HIS WRONGFUL CONVICTION AND INCARCERATION**

OVERVIEW

James Tillman is innocent of all crimes with which he was charged, however, he spent the prime of his young adult life imprisoned. HB 6673 will grant Mr. Tillman \$5 million as compensation for over 18 years imprisonment for crime he did not commit. This paper provides background information regarding the conduct by State officials that led to the conviction, factors bearing on his legal rights to damages, and the basis for the \$5 million damages figure.

I. JAMES TILLMAN'S DNA EXONERATION

In 2006, newly available DNA testing on semen from the clothing worn by the rape victim conclusively determined that the semen found did not come from James Tillman and thus that James Tillman was actually innocent of the crime for which he had spent 18 years in prison.

II. STATE RESPONSIBILITY FOR THE WRONGFUL CONVICTION

In 1988, Mr. Tillman was arrested, tried and convicted for rape of a woman he had never met. The crime occurred at night, making identification difficult, and forensic evidence which should have excluded Mr. Tillman was improperly used at trial to inculcate him. State Health Department officers fabricated evidence and failed to disclose exculpatory evidence concerning the testing conducted and the results therefrom. Further, the arresting police officer falsified inculpatory statements by Mr. Tillman and fabricated and failed to provide exculpatory evidence regarding two alibi witnesses, causing Mr. Tillman's wrongful conviction. Thus the City of Hartford faces liability in addition to that of the State.

A. Health Department

One key leading to Mr. Tillman's wrongful conviction was the false reporting of serological testing results by the Chief Toxicologist for the State of Connecticut, Sanders Hawkins (since retired), who worked at the State Health Department Laboratory. Hawkins reported in his pretrial reports and his testimony at trial that the lab conducted serological testing on stains on the victim's clothing and that one of the stains contained semen from an individual who, like Tillman, did not secrete blood markers in his semen. Hawkins's report placed Tillman within a group of only 20% of the population who could have committed the rape. This reporting was false, contrary to the evidence and the most basic principles of serological testing. Based on DNA testing and all of the testimony at trial, it is now clear that this stain actually came from a blood type B-secretor. Mr. Hawkins either misstated the lab's results or was completely incompetent and recklessly presented as scientific opinion that which he should have known had no basis. Had Hawkins accurately tested and reported the results at the time of trial, Mr. Tillman would have been cleared of this crime in 1988.

Officials at the State Health Department Laboratory misapplied known serological testing standards, resulting in incorrect test results. Based on information and belief, the conduct of Mr.

Hawkins in Mr. Tillman's case was not an isolated incident, but rather a pattern of misconduct of this examiner will emerge upon scrutiny of other of his actions during this general time period.

B. City of Hartford Police Department

A City of Hartford police officer, Stephen Kummick (since retired) arrested Mr. Tillman charging him with a brutal rape, during which the victim's face was severely beaten. In order to strengthen a questionable witness identification, Officer Kummick prepared a police report that included false information about Mr. Tillman's statements when arrested. Specifically, Officer Kummick recorded that when arrested, before he had heard any details of the allegations against him, Mr. Tillman stated, "I didn't hit no woman." Mr. Tillman has always denied making this statement. Based upon the DNA exoneration, we know now that Mr. Tillman could not have made this statement, because he did not commit, and was not present for this single assailant crime. Officer Kummick used that alleged statement to suggest that Mr. Tillman, at the time of his arrest, volunteered information that only the perpetrator of the crime would have known and to suggest that Mr. Tillman unwittingly inculpated himself in the commission of the crime. This evidence was a focus at trial and in arguments to the jury and was a cause of Mr. Tillman's conviction.

Officer Kummick fabricated evidence and failed to provide exculpatory evidence concerning with two alibi witnesses provided information regarding Mr. Tillman's actual whereabouts at the time this crime took place. These falsifications of evidence as well as the misconduct by the State Health Department each proximately caused Mr. Tillman's improper conviction.

II. Mr. Tillman's Legal Claims

The compensation proposed in House Bill 6673 would be in lieu of Mr. Tillman's assertion of claims against the State and the City of Hartford for his wrongful conviction. All of Mr. Tillman's claims rely on the invalidation of his conviction.

A. §1983 claim

Mr. Tillman has a federal court claim against Connecticut and the City of Hartford officials, along with a claim against the City of Hartford directly. Mr. Tillman has a strong "pattern and practice claim" against the City of Hartford for failing to properly train and supervise its police officials and a claim that Hartford Police had a pattern and practice of fabricating evidence and withholding exculpatory evidence as demonstrated by the multiple violations in this case. The State and the City will have to defend the direct claims and both entities will be obligated to indemnify their officials and pay the costs of their defense. To prove his federal claim he need only show recklessness that tended to lead to his conviction. The facts in this case demonstrate intentional misconduct. The known facts are sufficient to get to a jury. Most juries rule in favor of innocent persons who have been incarcerated due to misconduct by police or other officials.

B. State Tort claims

Mr. Tillman also has claims against the State itself for malicious prosecution and wrongful imprisonment. To prevail on these claims he need only establish show actions intended to lead

to his conviction, taken without probable cause. Those include the fabrications and concealment of exculpatory evidence detailed above.

C. Statute of Limitations

The Statute of Limitations on Mr. Tillman's federal claims under 42 USC §1983 does not start to run until the wrongful conviction is vacated, because an element of each of Mr. Tillman's claims is the invalidation of his conviction. The United States Supreme Court has issued this as a clear rule and it is followed throughout the country. The Court has explained that its rule "delays what would otherwise be the accrual date of a tort action until the setting aside of an extant conviction..." Wallace v. Kato, ___ US ___, 127 S. Ct. 1091, 1097-98 (2007) (affirming Heck v. Humphrey, 512 U.S. 477 (1994)). Mr. Tillman's conviction was not set aside until June 2006. His rights accrued at that point.

The Statute of Limitations on Mr. Tillman's state law claims will arguably be tolled under state law doctrines. To toll the running of the limitation period he will show that both Health Department representatives and the police took steps to conceal their actions. Their statements kept Mr. Tillman and his attorney, and the Court itself, from recognizing the bias in the lab tests, and from being able to prove the police officer's falsification of testimony.

D. Sovereign Immunity

The federal 1983 claim may proceed in federal court without regard to any sovereign immunity. The state law claims may proceed before the Claims Commissioner, and Mr. Tillman will seek permission from either the commissioner or the Legislature to bring that action, if HB 6673 is not passed.

III. Damages Analysis

A. False Imprisonment Damages

The main element of Mr. Tillman's damages is the personal suffering of being forced to live in prison for over 18 years of his life. Mr. Tillman's imprisonment deprived him of personal liberty, enjoyment of life and relationships with family and friends and caused him mental pain, suffering and permanent psychological damage. While, it is difficult to determine adequate compensation for such severe losses, jury verdicts in these sorts of wrongful incarceration cases generally are in the range of \$1 million per year of imprisonment. The bulk of the proposed funds compensate Mr. Tillman for damages stemming from these harms.

B. Economic Analysis

Mr. Tillman was gainfully employed before his arrest and imprisonment, and the lost years of his life caused him to lose wages he would have earned and also impaired his earning capacity for the future. The attached spreadsheets display a summary of the present value of Mr. Tillman's lost wages. The requested compensation also allocates \$250,000 as compensation for Mr. Tillman's lost future earnings.

C. Medical Malpractice Action

Mr. Tillman injured his leg while in prison and received improper medical care from the University of Connecticut Health Center. He suffered chronic infection for almost an entire year, endured considerable pain from both the infection and the improper follow-up treatment, risked the loss of his leg, required additional surgery, had to walk with a cane, and is still affected by results of the negligent treatment. Orthopedic and nursing experts who have reviewed Mr. Tillman's medical history have provided opinions that the care he received was negligent and constitutes medical malpractice. If litigated, anticipated damages for this claim are between \$750,000 and \$1,000,000. The requested compensation allocates \$500,000 as compensation for Mr. Tillman's physical injury.

D. Legal Fees

A team of attorneys has assembled to assist Mr. Tillman in his efforts to obtain compensation for his wrongful incarceration. Attorneys from the law firms of Cochran, Neufeld & Scheck and McCarter & English LLP, among others, have offer assistance to Mr. Tillman *pro bono* in connection with advising him regarding the process of obtaining state compensation and his legal options. Should this process fail, Mr. Tillman will file a § 1983 suit against the State and City officials. In that event, the State and City would incur substantial legal fees in defending the suit. In addition, if Mr. Tillman prevails on his §1983 claim, the State would be required to pay the legal fees expenses of Mr. Tillman's attorneys, who will no longer be working *pro bono*. Plaintiff's fees and expenses in a case of this magnitude could easily exceed \$2 million.

IV. Compensation by Private Act

A private act to compensate Mr. Tillman is authorized by precedent established in Connecticut Special Act 512 (1947), Connecticut Special Act 343 (1951), Connecticut Special Act 267 (1951) and Connecticut Special Act 244 (1951), which all provided compensation from the State to wrongfully convicted or incarcerated individuals. The \$5 million that House Bill 6673 would grant Mr. Tillman could, by statutory language, be exempted from state tax.

Compensation by private act is in the State's interests. First, Mr. Tillman would likely recover many times more than \$5 million by pursuing his legal claims. Second, the State has no other mechanism to compensate him, and any general compensation statute, if adopted, would not have a agency system in place for months, if not a year or more, and such a delay is completely unfair to him. Third, the private act enables the Legislature to have the benefit of predictability and control over the resulting amount rather than risk the outcome of litigation. Fourth, in spite of his experience Mr. Tillman has not dwelt on the conduct of those responsible for his ordeal and instead has dedicated much of his life to teaching and speaking to youth at risk and others who can learn from his experience. This private act will enable him to continue with that mission. Forcing him into litigation against the State, in contrast, would require both him and the State to focus energies on blame for long-ago wrongful acts rather than positive steps for the future.

Exhibit 1a
Present Value of Lost Adjusted Compensation for James Tillman Including Fringe Benefits:
Average U.S. Income for High School Graduates

Assumptions:
 Interest Rate¹ 10.0%
 Fringe Benefits as a % of Earnings² 11.6%
 Risk of Unemployment 3.0%

Year	Lost Earnings ³	Tax Rate	After-Tax Earnings	Fringe Benefits	After-Tax Compensation Including Fringe Benefits	After-Tax Compensation Including Fringe Benefits Adjusted for Unemployment Risk	Present Value (as of July 2006)
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]
1988	21,481	15.00%	18,259	2,492	20,751	20,128	56,359
1989	23,736	15.00%	20,176	2,753	22,929	22,241	60,051
1990	24,038	15.00%	20,432	2,788	23,221	22,524	58,563
1991	24,045	15.00%	20,438	2,789	23,227	22,531	56,327
1992	24,441	15.00%	20,775	2,835	23,610	22,902	54,964
1993	25,532	15.00%	21,702	2,962	24,664	23,924	55,025
1994	26,363	15.00%	22,409	3,058	25,467	24,703	54,346
1995	27,440	15.00%	23,324	3,183	26,507	25,712	53,995
1996	27,349	15.00%	23,247	3,172	26,419	25,627	51,253
1997	34,790	15.00%	29,572	4,036	33,607	32,599	61,938
1998	34,786	15.00%	29,568	4,035	33,603	32,595	58,671
1999	34,151	15.00%	29,028	3,962	32,990	32,000	54,400
2000	38,150	15.00%	32,428	4,425	36,853	35,747	57,196
2001	39,535	15.00%	33,605	4,586	38,191	37,045	55,568
2002	40,301	15.00%	34,256	4,675	38,931	37,763	52,868
2003	40,885	15.00%	34,752	4,743	39,495	38,310	49,803
2004	42,391	15.00%	36,032	4,917	40,950	39,721	47,665
2005	42,133	15.00%	35,813	4,887	40,700	39,479	43,427
2006	21,067	15.00%	17,907	2,444	20,350	19,740	19,740
					Present Value of Award as of July 2006		\$ 1,002,159
					Present Value of Award as of April 2007		\$ 1,076,419

Notes:
 1. 10 percent interest rate comes from Conn. Gen. Stat. § 37-3a.
 2. Fringe Benefit data is taken from the U.S. Chamber of Commerce Small Business Center website. According to this source, medical benefits account for 11.6 percent of employer payrolls. Considering that medical benefits are typically just one component of fringe benefits, this is a conservative figure.
 3. Earnings data are from the U.S. Census for full-time male High School graduates.

007966

Exhibit 1b
Present Value of Lost Adjusted Earnings for James Tillman:
Average U.S. Income for High School Graduates

Assumptions:
 Interest Rate¹ 10.0%
 Risk of Unemployment 3.0%

Year [1]	Lost Earnings ² [2]	Tax Rate [3]	After-Tax Earnings [4]	After-Tax Earnings Adjusted for Unemployment Risk [5]	Present Value (as of July 2006) [6]
1988	21,481	15.00%	18,259	17,711	49,591
1989	23,736	15.00%	20,176	19,570	52,840
1990	24,038	15.00%	20,432	19,819	51,530
1991	24,045	15.00%	20,438	19,825	49,563
1992	24,441	15.00%	20,775	20,152	48,364
1993	25,532	15.00%	21,702	21,051	48,418
1994	26,363	15.00%	22,409	21,736	47,820
1995	27,440	15.00%	23,324	22,624	47,511
1996	27,349	15.00%	23,247	22,549	45,099
1997	34,790	15.00%	29,572	28,684	54,500
1998	34,786	15.00%	29,568	28,681	51,626
1999	34,151	15.00%	29,028	28,157	47,868
2000	38,150	15.00%	32,428	31,455	50,327
2001	39,535	15.00%	33,605	32,597	48,895
2002	40,301	15.00%	34,256	33,228	46,519
2003	40,885	15.00%	34,752	33,710	43,823
2004	42,391	15.00%	36,032	34,951	41,942
2005	42,133	15.00%	35,813	34,739	38,213
2006	21,067	15.00%	17,907	17,369	17,369
Present Value of Award as of July 2006 \$					881,817
Present Value of Award as of April 2007 \$					947,159

Notes:
 1. 10 percent interest rate comes from Conn. Gen. Stat. § 37-3a.
 2. Earnings data are from U.S. Census for full-time male High School graduates.

007967

Exhibit 1c
Present Value of Future Lost Adjusted Earnings for James Tillman:
Average U.S. Income for High School Graduates

Assumptions:
 After-Tax Discount Rate¹ 4.4%
 Earnings Growth Rate² 3.0%

Year [1]	Earnings Continuation [2]	Actual Earnings Projection ³ [3]	Lost Earnings [4]	Tax Rate [5]	After-Tax Earnings Difference [6]	Present Value (as of July 2006) [7]
2006	21,067	10,894	10,173	15%	8,647	8,462
2007	48,021	24,833	23,188	15%	19,710	18,472
2008	49,461	25,578	23,884	15%	20,301	18,221
2009	50,945	26,345	24,600	15%	20,910	17,973
2010	52,473	27,135	25,338	15%	21,537	17,728
2011	54,048	27,949	26,098	15%	22,184	17,487
2012	55,669	28,788	26,881	15%	22,849	17,249
2013	57,339	29,651	27,688	15%	23,535	17,015
2014	59,059	30,541	28,518	15%	24,241	16,783
2015	60,831	31,457	29,374	15%	24,968	16,555
2016	62,656	32,401	30,255	15%	25,717	16,330
2017	65,268	33,752	31,516	15%	26,789	16,291
2018	67,226	34,764	32,462	15%	27,593	16,069
2019	69,243	35,807	33,436	15%	28,420	15,851
2020	71,320	36,881	34,439	15%	29,273	15,635
2021	73,460	37,988	35,472	15%	30,151	15,423
2022	75,664	39,127	36,536	15%	31,056	15,213
2023	38,967	20,151	18,816	15%	15,994	7,503
Present Value of Award as of July 2006						\$ 284,259
Present Value of Award as of April 2007						\$ 293,632

- Notes:
1. After-Tax Discount Rate is a tax-adjusted figure taken from the 2009-2013 Five-Year Average 10-Year Treasury Note from Blue Chip Economic Indicators, Vol. 32, No. 3, March 10, 2007.
 2. Earnings Growth Rate is taken from the 2009-2013 Five-Year Average Real GDP growth from Blue Chip Economic Indicators, Vol. 32, No. 3, March 10, 2007.
 3. Actual Earnings Projection uses current earnings data from James Tillman.

007968

Exhibit 2a
Present Value of Lost Adjusted Compensation for James Tillman Including Fringe Benefits:
Average U.S. Income for Associate Degree Holders

Assumptions:
 Interest Rate¹ 10.0%
 Fringe Benefits as a % of Earnings² 11.6%
 Risk of Unemployment 3.0%

Year	Lost Earnings ³	Tax Rate	After-Tax Earnings	Fringe Benefits	After-Tax Compensation Including Fringe Benefits	After-Tax Compensation Adjusted for Unemployment Risk	Present Value (as of July 2006)
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]
1988	21,481	15.00%	18,259	2,492	20,751	20,128	56,359
1989	23,736	15.00%	20,176	2,753	22,929	22,241	60,051
1990	24,038	15.00%	20,432	2,788	23,221	22,524	58,563
1991	24,045	15.00%	20,438	2,789	23,227	22,531	56,327
1992	29,671	15.00%	25,220	3,442	28,662	27,802	66,726
1993	31,355	15.00%	26,652	3,637	30,289	29,380	67,575
1994	31,400	15.00%	26,690	3,642	30,332	29,422	64,729
1995	31,097	15.00%	26,432	3,607	30,040	29,139	61,191
1996	34,854	15.00%	29,626	4,043	33,669	32,659	65,318
1997	42,968	15.00%	36,523	4,984	41,507	40,262	76,498
1998	46,537	15.00%	39,556	5,398	44,955	43,606	78,491
1999	45,108	15.00%	38,342	5,233	43,574	42,267	71,854
2000	48,389	15.00%	41,131	5,613	46,744	45,341	72,546
2001	49,061	15.00%	41,702	5,691	47,393	45,971	68,957
2002	52,679	15.00%	44,777	6,111	50,888	49,361	69,106
2003	50,832	15.00%	43,207	5,897	49,104	47,631	61,920
2004	51,448	15.00%	43,731	5,968	49,699	48,208	57,849
2005	54,914	15.00%	46,677	6,370	53,047	51,456	56,601
2006	27,457	15.00%	23,338	3,185	26,523	25,728	25,728
					Present Value of Award as of July 2006		\$ 1,196,387
					Present Value of Award as of April 2007		\$ 1,285,039

Notes:
 1. 10 percent interest rate comes from Conn. Gen. Stat. § 37-3a.
 2. Fringe Benefit data is taken from the U.S. Chamber of Commerce Small Business Center website. According to this source, medical benefits account for 11.6 percent of employer payrolls. Considering that medical benefits are typically just one component of fringe benefits, this is a conservative figure.
 3. Earnings data are from U.S. Census for full-time male High School graduates, and full-time male holders of an Associate Degree. I understand that James Tillman began taking college courses in prison in 1990. Thus, beginning in 1992, his Lost Earnings figure switches from the High School level to the Associate Degree level.

007969

Exhibit 2b
Present Value of Lost Adjusted Earnings for James Tillman:
Average U.S. Income for Associate Degree Holders

Assumptions:
 Interest Rate¹ 10.0%
 Risk of Unemployment 3.0%

Year	Lost Earnings ²	Tax Rate	After-Tax Earnings	After-Tax Earnings Adjusted for Unemployment Risk	Present Value (as of July 2006)
[1]	[2]	[3]	[4]	[5]	[6]
1988	21,481	15.00%	18,259	17,711	49,591
1989	23,736	15.00%	20,176	19,570	52,840
1990	24,038	15.00%	20,432	19,819	51,530
1991	24,045	15.00%	20,438	19,825	49,563
1992	29,671	15.00%	25,220	24,464	58,713
1993	31,355	15.00%	26,652	25,852	59,460
1994	31,400	15.00%	26,690	25,889	56,956
1995	31,097	15.00%	26,432	25,639	53,843
1996	34,854	15.00%	29,626	28,737	57,474
1997	42,968	15.00%	36,523	35,427	67,312
1998	46,537	15.00%	39,556	38,370	69,066
1999	45,108	15.00%	38,342	37,192	63,226
2000	48,389	15.00%	41,131	39,897	63,835
2001	49,061	15.00%	41,702	40,451	60,676
2002	52,679	15.00%	44,777	43,434	60,807
2003	50,832	15.00%	43,207	41,911	54,484
2004	51,448	15.00%	43,731	42,419	50,903
2005	54,914	15.00%	46,677	45,277	49,804
2006	27,457	15.00%	23,338	22,638	22,638

Present Value of Award as of July 2006 \$ 1,052,721
 Present Value of Award as of April 2007 \$ 1,130,728

- Notes:
 1. 10 percent interest rate comes from Conn. Gen. Stat. § 37-3a.
 2. Earnings data are from U.S. Census for full-time male High School graduates, and full-time male holders of an Associate Degree. I understand that James Tillman began taking college courses in prison in 1990. Thus, beginning in 1992, his Lost Earnings figure switches from the High School level to the Associate Degree level.

007970

Exhibit 2c
Present Value of Future Lost Adjusted Earnings for James Tillman:
Average U.S. Income for Associate Degree Holders

Assumptions:
 After-Tax Discount Rate¹ 4.4%
 Earnings Growth Rate² 3.0%

Year [1]	Earnings Continuation [2]	Actual Earnings Projection ³ [3]	Lost Earnings [4]	Tax Rate [5]	After-Tax Earnings Difference [6]	Present Value (as of July 2006) [7]
2006	27,457	10,894	16,563	15%	14,079	13,777
2007	59,014	24,833	34,181	15%	29,054	27,229
2008	60,784	25,578	35,207	15%	29,926	26,859
2009	62,608	26,345	36,263	15%	30,823	26,493
2010	64,486	27,135	37,351	15%	31,748	26,133
2011	66,421	27,949	38,471	15%	32,701	25,778
2012	68,413	28,788	39,625	15%	33,682	25,427
2013	70,466	29,651	40,814	15%	34,692	25,081
2014	72,580	30,541	42,039	15%	35,733	25,081
2015	74,757	31,457	43,300	15%	36,805	24,404
2016	77,000	32,401	44,599	15%	37,909	24,072
2017	80,210	33,752	46,458	15%	39,489	24,014
2018	82,616	34,764	47,852	15%	40,674	23,688
2019	85,094	35,807	49,287	15%	41,894	23,365
2020	87,647	36,881	50,766	15%	43,151	23,048
2021	90,277	37,988	52,289	15%	44,445	22,734
2022	92,985	39,127	53,857	15%	45,779	22,425
2023	47,887	20,151	27,737	15%	23,576	11,060
					Present Value of Award as of July 2006 \$	420,328
					Present Value of Award as of April 2007 \$	434,186

Notes:
 1. After-Tax Discount Rate is a tax-adjusted figure taken from the 2009-2013 Five-Year Average 10-Year Treasury Note from Blue Chip Economic Indicators, Vol. 32, No. 3, March 10, 2007.
 2. Earnings Growth Rate is taken from the 2009-2013 Five-Year Average Real GDP growth from Blue Chip Economic Indicators, Vol. 32, No. 3, March 10, 2007.
 3. Actual Earnings Projection uses current earnings data from James Tillman.

007971

Exhibit 3a
Present Value of Lost Adjusted Compensation for James Tillman Including Fringe Benefits:
Average CT Income for High School Graduates

Assumptions:
 Interest Rate¹ 10.0%
 Fringe Benefits as a % of Earnings² 11.6%
 Risk of Unemployment 3.0%

Year	Lost Earnings ³	Tax Rate	After-Tax Earnings	Fringe Benefits	After-Tax Compensation Including Fringe Benefits	After-Tax Compensation Including Fringe Benefits Adjusted for Unemployment Risk	Present Value (as of July 2006)
[1]	[2]	[3]	[4]	[5]	[6]	[7]	[8]
1988	27,055	15.00%	22,997	3,138	26,135	25,351	70,984
1989	29,895	15.00%	25,411	3,468	28,879	28,013	75,634
1990	30,276	15.00%	25,734	3,512	29,246	28,369	73,759
1991	30,284	15.00%	25,742	3,513	29,255	28,377	70,943
1992	30,783	15.00%	26,166	3,571	29,737	28,845	69,227
1993	32,157	15.00%	27,334	3,730	31,064	30,132	69,304
1994	33,204	15.00%	28,223	3,852	32,075	31,113	68,448
1995	34,560	15.00%	29,376	4,009	33,385	32,384	68,006
1996	34,446	15.00%	29,279	3,996	33,275	32,276	64,553
1997	43,818	15.00%	37,245	5,083	42,328	41,058	78,010
1998	43,813	15.00%	37,241	5,082	42,323	41,053	73,896
1999	43,036	15.00%	36,580	4,992	41,572	40,325	68,553
2000	48,329	15.00%	41,080	5,606	46,686	45,285	72,457
2001	50,510	15.00%	42,933	5,859	48,792	47,329	70,993
2002	50,802	15.00%	43,182	5,893	49,075	47,603	66,644
2003	51,421	15.00%	43,708	5,965	49,673	48,182	62,637
2004	53,827	15.00%	45,753	6,244	51,997	50,437	60,525
2005	53,564	15.00%	45,529	6,213	51,743	50,190	55,209
2006	26,782	15.00%	22,765	3,107	25,871	25,095	25,095
					Present Value of Award as of July 2006		\$ 1,264,877
					Present Value of Award as of April 2007		\$ 1,358,504

Notes:
 1. 10 percent interest rate comes from Conn. Gen. Stat. § 37-3a.
 2. Fringe Benefit data is taken from the U.S. Chamber of Commerce Small Business Center website. According to this source, medical benefits account for 11.6 percent of earnings data are from the U.S. Census for full-time male High School graduates. The data are then adjusted upward using Bureau of Economic Analysis data to account for the difference in average U.S. and Connecticut earnings.

007972

Exhibit 3b
Present Value of Lost Adjusted Earnings for James Tillman:
Average CT Income for High School Graduates

Assumptions:
 Interest Rate¹ 10.0%
 Risk of Unemployment 3.0%

Year [1]	Lost Earnings ² [2]	Tax Rate [3]	After-Tax Earnings [4]	After-Tax Earnings Adjusted for Unemployment Risk [5]	Present Value (as of July 2006) [6]
1988	27,055	15.00%	22,997	22,307	62,460
1989	29,895	15.00%	25,411	24,649	66,551
1990	30,276	15.00%	25,734	24,962	64,902
1991	30,284	15.00%	25,742	24,970	62,424
1992	30,783	15.00%	26,166	25,381	60,914
1993	32,157	15.00%	27,334	26,514	60,982
1994	33,204	15.00%	28,223	27,377	60,229
1995	34,560	15.00%	29,376	28,495	59,840
1996	34,446	15.00%	29,279	28,401	56,801
1997	43,818	15.00%	37,245	36,128	68,643
1998	43,813	15.00%	37,241	36,124	65,022
1999	43,036	15.00%	36,580	35,483	60,321
2000	48,329	15.00%	41,080	39,847	63,756
2001	50,510	15.00%	42,933	41,645	62,468
2002	50,802	15.00%	43,182	41,887	58,641
2003	51,421	15.00%	43,708	42,397	55,115
2004	53,827	15.00%	45,753	44,381	53,257
2005	53,564	15.00%	45,529	44,163	48,580
2006	26,782	15.00%	22,765	22,082	22,082
					Present Value of Award as of July 2006 \$ 1,112,987
					Present Value of Award as of April 2007 \$ 1,195,459

Notes:
 1. 10 percent interest rate comes from Conn. Gen. Stat. § 37-3a.
 2. Earnings data are from the U.S. Census for full-time male High School graduates. The data are then adjusted upward using Bureau of Economic Analysis data to account for the difference in average U.S. and Connecticut

007973

Exhibit 3c
Present Value of Future Lost Adjusted Earnings for James Tillman:
Average CT Income for High School Graduates

Assumptions:
 After-Tax Discount Rate¹ 4.4%
 Earnings Growth Rate² 3.0%

Year [1]	Earnings Continuation [2]	Actual Earnings Projection ³ [3]	Lost Earnings [4]	Tax Rate [5]	After-Tax Earnings Difference [6]	Present Value (as of July 2006) [7]
2006	26,782	10,894	15,888	15%	13,505	13,216
2007	61,049	24,833	36,216	15%	30,784	28,850
2008	62,880	25,578	37,303	15%	31,707	28,458
2009	64,767	26,345	38,422	15%	32,658	28,071
2010	66,710	27,135	39,574	15%	33,638	27,689
2011	68,711	27,949	40,761	15%	34,647	27,312
2012	70,772	28,788	41,984	15%	35,687	26,941
2013	72,895	29,651	43,244	15%	36,757	26,575
2014	75,082	30,541	44,541	15%	37,860	26,213
2015	77,335	31,457	45,877	15%	38,996	25,857
2016	79,655	32,401	47,254	15%	40,166	25,505
2017	82,975	33,752	49,224	15%	41,840	25,444
2018	85,465	34,764	50,700	15%	43,095	25,098
2019	88,028	35,807	52,221	15%	44,388	24,756
2020	90,669	36,881	53,788	15%	45,720	24,420
2021	93,389	37,988	55,402	15%	47,091	24,088
2022	96,191	39,127	57,064	15%	48,504	23,760
2023	49,538	20,151	29,388	15%	24,980	11,718

Present Value of Award as of July 2006 \$ 443,969
 Present Value of Award as of April 2007 \$ 458,607

- Notes:
1. After-Tax Discount Rate is a tax-adjusted figure taken from the 2009-2013 Five-Year Average 10-Year Treasury Note from Blue Chip Economic Indicators, Vol. 32, No. 3, March 10, 2007.
 2. Earnings Growth Rate is taken from the 2009-2013 Five-Year Average Real GDP growth from Blue Chip Economic Indicators, Vol. 32, No. 3, March 10, 2007.
 3. Actual Earnings Projection uses current earnings data from James Tillman.

007974

Exhibit 4a
Present Value of Lost Adjusted Compensation for James Tillman Including Fringe Benefits:
Average CT Income for Associate Degree Holders

Assumptions:
 Interest Rate¹ 10.0%
 Fringe Benefits as a % of Earnings² 11.6%
 Risk of Unemployment 3.0%

Year [1]	Lost Earnings ³ [2]	Tax Rate [3]	After-Tax Earnings [4]	Fringe Benefits [5]	After-Tax Compensation Including Fringe Benefits [6]	After-Tax Compensation Including Fringe Benefits Adjusted for Unemployment Risk [7]	Present Value (as of July 2006) [8]
1988	27,055	15.00%	22,997	3,138	26,135	25,351	70,984
1989	29,895	15.00%	25,411	3,468	28,879	28,013	75,534
1990	30,276	15.00%	25,734	3,512	29,246	28,369	73,759
1991	30,284	15.00%	25,742	3,513	29,255	28,377	70,943
1992	37,370	15.00%	31,765	4,335	36,100	35,017	84,040
1993	39,491	15.00%	33,568	4,581	38,149	37,004	85,110
1994	39,548	15.00%	33,616	4,588	38,203	37,057	81,526
1995	39,166	15.00%	33,291	4,543	37,835	36,700	77,069
1996	43,898	15.00%	37,314	5,092	42,406	41,134	82,267
1997	54,118	15.00%	46,000	6,278	52,278	50,710	96,348
1998	58,613	15.00%	49,821	6,799	56,620	54,922	98,859
1999	56,843	15.00%	48,317	6,594	54,910	53,263	90,547
2000	61,300	15.00%	52,105	7,111	59,216	57,440	91,903
2001	62,680	15.00%	53,278	7,271	60,549	58,733	88,099
2002	66,406	15.00%	56,445	7,703	64,148	62,223	87,113
2003	63,931	15.00%	54,342	7,416	61,758	59,905	77,876
2004	65,328	15.00%	55,529	7,578	63,107	61,213	73,456
2005	69,812	15.00%	59,340	8,098	67,439	65,415	71,957
2006	34,906	15.00%	29,670	4,049	33,719	32,708	32,708
					Present Value of Award as of July 2006 \$		1,510,199
					Present Value of Award as of April 2007 \$		1,522,104

Notes:
 1. 10 percent interest rate comes from Conn. Gen. Stat. § 37-3a.
 2. Fringe Benefit data is taken from the U.S. Chamber of Commerce Small Business Center website. According to this source, medical benefits account for 11.6 percent of employer payrolls. Considering that medical benefits are typically just one component of fringe benefits, this is a conservative figure.
 3. Earnings data are from U.S. Census for full-time male High School graduates, and full-time male holders of an Associate Degree. I understand that James Tillman began taking college courses in prison in 1990. Thus, beginning in 1992, his Lost Earnings figure switches from the High School level to the Associate Degree level. The earnings data are then adjusted upward using Bureau of Economic Analysis data to account for the difference in average U.S. and Connecticut earnings.

007975

Exhibit 4b
Present Value of Lost Adjusted Earnings for James Tillman:
Average CT Income for Associate Degree Holders

Assumptions:
 Interest Rate¹ 10.0%
 Risk of Unemployment 3.0%

Year [1]	Lost Earnings ² [2]	Tax Rate [3]	After-Tax Earnings [4]	After-Tax Earnings Adjusted for Unemployment Risk [5]	Present Value (as of July 2006) [6]
1988	27,055	15.00%	22,997	22,307	62,460
1989	29,895	15.00%	25,411	24,649	66,551
1990	30,276	15.00%	25,734	24,962	64,902
1991	30,284	15.00%	25,742	24,970	62,424
1992	37,370	15.00%	31,765	30,812	73,949
1993	39,491	15.00%	33,568	32,561	74,889
1994	39,548	15.00%	33,616	32,607	71,736
1995	39,166	15.00%	33,291	32,293	67,815
1996	43,898	15.00%	37,314	36,194	72,388
1997	54,118	15.00%	46,000	44,620	84,778
1998	58,613	15.00%	49,821	48,326	86,988
1999	56,843	15.00%	48,317	46,867	79,674
2000	61,300	15.00%	52,105	50,542	80,867
2001	62,680	15.00%	53,278	51,680	77,520
2002	66,406	15.00%	56,445	54,751	76,652
2003	63,931	15.00%	54,342	52,711	68,525
2004	65,328	15.00%	55,529	53,863	64,635
2005	69,812	15.00%	59,340	57,560	63,316
2006	34,906	15.00%	29,670	28,780	28,780
			Present Value of Award as of July 2006		\$ 1,328,850
			Present Value of Award as of April 2007		\$ 1,427,317

Notes:
 1. 10 percent interest rate comes from Conn. Gen. Stat. § 37-3a.
 2. Earnings data are from U.S. Census for full-time male High School graduates, and full-time male holders of an Associate Degree. I understand that James Tillman began taking college courses in prison in 1990. Thus, beginning in 1992, his Lost Earnings figure switches from the High School level to the Associate Degree level. The earnings data are then adjusted upward using Bureau of Economic Analysis data to account for the difference in average U.S. and

007976

Exhibit 4c
Present Value of Future Lost Adjusted Earnings for James Tillman:
Average CT Income for Associate Degree Holders

Assumptions:
 After-Tax Discount Rate¹ 4.4%
 Earnings Growth Rate² 3.0%

Year	Earnings Continuation	Actual Earnings Projection ³	Lost Earnings	Tax Rate	After-Tax Earnings Difference	Present Value (as of July 2006)
[1]	[2]	[3]	[4]	[5]	[6]	[7]
2006	34,906	10,894	24,012	15%	20,410	19,974.
2007	75,024	24,833	50,192	15%	42,663	39,983
2008	77,275	25,578	51,697	15%	43,943	39,439
2009	79,593	26,345	53,248	15%	45,261	38,903
2010	81,981	27,135	54,846	15%	46,619	38,374
2011	84,441	27,949	56,491	15%	48,018	37,852
2012	86,974	28,788	58,186	15%	49,458	37,337
2013	89,583	29,651	59,932	15%	50,942	36,830
2014	92,270	30,541	61,729	15%	52,470	36,329
2015	95,039	31,457	63,581	15%	54,044	35,835
2016	97,890	32,401	65,489	15%	55,665	35,347
2017	101,970	33,752	68,219	15%	57,986	35,262
2018	105,030	34,764	70,265	15%	59,726	34,783
2019	108,181	35,807	72,373	15%	61,517	34,310
2020	111,426	36,881	74,545	15%	63,363	33,843
2021	114,769	37,988	76,781	15%	65,264	33,383
2022	118,212	39,127	79,084	15%	67,222	32,929
2023	60,879	20,151	40,728	15%	34,619	16,241

Present Value of Award as of July 2006 \$ 616,953
 Present Value of Award as of April 2007 \$ 637,294

Notes:
 1. After-Tax Discount Rate is a tax-adjusted figure taken from the 2009-2013 Five-Year Average 10-Year Treasury Note from Blue Chip Economic Indicators, Vol. 32, No. 3, March 10, 2007.
 2. Earnings Growth Rate is taken from the 2009-2013 Five-Year Average Real GDP growth from Blue Chip Economic Indicators, Vol. 32, No. 3, March 10, 2007.
 3. Actual Earnings Projection uses current earnings data from James Tillman.

007977

Exhibit 5
Summary of Present Value of Losses as of April 2007

James Tillman Base Case Scenario - Assumes Average U.S. Income for High School Graduates	
Present Value of Past Lost Compensation, Including Fringe Benefits	\$ 1,076,419
Present Value of Past Lost Earnings, no Fringe Benefits	\$ 947,159
Present Value of Lost Future Earnings	\$ 293,632
Total With Fringe	\$ 1,370,050
Total No Fringe	\$ 1,240,791

James Tillman Scenario 2 - Assumes Average U.S. Income for Associate Degree Holders	
Present Value of Past Lost Compensation, Including Fringe Benefits	\$ 1,286,039
Present Value of Past Lost Earnings, no Fringe Benefits	\$ 1,130,728
Present Value of Lost Future Earnings	\$ 434,186
Total With Fringe	\$ 1,719,225
Total No Fringe	\$ 1,564,914

James Tillman Scenario 3 - Assumes Average CT Income for High School Graduates	
Present Value of Past Lost Compensation, Including Fringe Benefits	\$ 1,358,604
Present Value of Past Lost Earnings, no Fringe Benefits	\$ 1,195,459
Present Value of Lost Future Earnings	\$ 458,607
Total With Fringe	\$ 1,817,210
Total No Fringe	\$ 1,654,065

James Tillman Scenario 4 - Assumes Average CT Income for Associate Degree Holders	
Present Value of Past Lost Compensation, Including Fringe Benefits	\$ 1,622,104
Present Value of Past Lost Earnings, no Fringe Benefits	\$ 1,427,317
Present Value of Lost Future Earnings	\$ 637,294
Total With Fringe	\$ 2,259,398
Total No Fringe	\$ 2,064,611

007978

EXPERT REPORT ON ECONOMIC LOSS – JAMES CALVIN TILLMAN

Evan S. Schouten
April 9, 2007

HB6673

I. QUALIFICATIONS

1. I am a Vice President at CRA International, Inc. (CRA), an internationally-recognized economics, finance, and business consulting firm. I have an undergraduate degree in Economics from Wellesley College and a graduate degree in Economics from the University of Chicago. I was on the faculty at Lake Forest College for six years, where I taught courses in microeconomics, industrial organization, and finance. My specialties include microeconomics, industrial organization, finance, and labor economics.

2. I have served as an expert witness or consultant on numerous personal injury, wrongful death, employment discrimination, and product liability matters. My analyses in these matters have focused primarily on lost economic compensation, medical costs, and lost household services. As a witness, I have testified on behalf of both plaintiffs and defendants. In addition, Shepard's McGraw Hill published a software program I coauthored that calculates economic losses in personal injury and wrongful death matters.

3. In 2002, I was awarded the Amicus Award, conferred by the Association of Trial Lawyers of America, for providing key economic and financial analysis to "Trial Lawyers Care," an organization founded in response to the events of September 11, 2001. Attached as Exhibit 1 is my curriculum vitae.

II. ASSIGNMENT

4. I have been asked by counsel for James Tillman to assess the total economic loss sustained by Mr. Tillman as a result of his wrongful incarceration. As the State of Connecticut has now acknowledged, Mr. Tillman was convicted in 1989 of a kidnapping and sexual assault that he did not commit. Despite his innocence, Mr. Tillman spent eighteen years in jail. Although no amount of money can compensate James Tillman for his loss, in this report, I provide a conservative estimate of the economic loss that Mr. Tillman has suffered as a result of his wrongful incarceration.

5. In the course of my analysis, I, and/or members of my staff operating under my supervision and direction, have reviewed various documentation concerning James Tillman,

including but not limited to: Mr. Tillman's background and employment history, data from various federal and state government agencies, projections compiled by Blue Chip Indicators, and various other relevant documents.

6. Neither CRA nor I has any financial interest in the outcome of this matter. Indeed, the firm and I have provided all of our services on a pro bono basis.

III. BACKGROUND AND EMPLOYMENT HISTORY

7. James Tillman was born in Thomasville, Georgia on August 28, 1961. He moved to Connecticut when he was in second grade. He attended Northwest Jones Elementary School, Louis Fox and Quirk Middle Schools, Hartford High School, and AI Prince Tech and the Board of Education's "Work Places" program (where he attended school ½ of the day and worked at Travelers Insurance for ½ of the day). Mr. Tillman finished high school in 1979, believing that he had met all of the requirements for a diploma. In fact, he was one credit shy of graduation. When he learned of this fact (while he was awaiting his trial), he completed the additional credit and was awarded a high school diploma by the Hartford Board of Education.

8. In 1979, Mr. Tillman joined the CT Army National Guard and went to Ft. Leonard Wood, MO for basic training. However, Mr. Tillman had a difficult time adjusting to the military. He was discharged under honorable conditions through the Training Discharge Program. Following his discharge, Mr. Tillman returned to Connecticut. He secured the first in a series of jobs that he held up until the time of his arrest. Mr. Tillman worked for Wakenhut Security Group as a security guard at the Hartford Civic Center; at Scott Oldsmobile and Hoffman Motors in Avon, preparing cars for delivery; at Jefferson House in Newington as an employee in the maintenance department; at the Martin Luther King housing project (Norris Graves Agency) as an assistant superintendent; at Bob's, Middletown; and as a dishwasher at a restaurant. At times, Mr. Tillman held two jobs simultaneously. At the time of his arrest, Mr. Tillman was employed at Mr. Auto Wash in East Hartford. He lived with his mother in public housing from the time he first came to Connecticut until his wrongful incarceration.

9. Today, Mr. Tillman is employed as an Office Assistant at Capitol Region Education Council (CREC), working full-time (37 ½ hours). In addition, he is employed part-

time at Alpha Printing on Pratt St. in Hartford, working up to 10 hours per week in the afternoons after CREC. Hoping to share his experience, Mr. Tillman is also currently training to become a public speaker.

10. At the time of his wrongful incarceration, Mr. Tillman was relatively new to the workforce. As such, it is difficult to know precisely what his ultimate occupation might have been. However, it is evident both from Mr. Tillman's prior, though limited, employment history and from his current work efforts that he is a man who intended to work full time throughout his worklife. Both before and after his incarceration, he has been employed on a continuous basis, often working at two jobs.

11. Moreover, Mr. Tillman consistently has been interested in furthering his education, a fact that I find relevant in thinking about Mr. Tillman's economic losses. As noted above, upon learning that he had not earned a high school degree, even though he was awaiting trial, Mr. Tillman completed the remaining requirements and was granted his high school diploma. Moreover, despite the fact that he expected to spend 45 years in prison, Mr. Tillman continued his education, earning 30 college credits.

IV. ANALYSIS

12. In calculating economic loss, the goal is to make Mr. Tillman "whole" – that is to say, place him in a position that he would have occupied but-for his wrongful incarceration. To accomplish this, one must determine the difference between what Mr. Tillman would have earned in the *but for* world (a world where Mr. Tillman did not spend 18 years in jail) and what he is expected to earn in the actual world (a world where he did spend 18 years in jail). Mr. Tillman's economic losses include both the earnings that he did not receive during his 18-year incarceration and the reduced future earnings that he will earn during the period after his incarceration until he retires.

13. Based on my calculations, as detailed below, it is my opinion that the total economic loss due to James Tillman is at least \$1.2 million. A reasonable, yet still

conservative, calculation yields a total economic loss of \$2.3 million.¹ The two values differ in the assumptions that are made with respect to: (i) whether Mr. Tillman's earnings profile would have been similar to that of a high school graduate or to that of an individual with an Associate Degree; (ii) whether Mr. Tillman would have received fringe benefits during his worklife; and (iii) whether Mr. Tillman's earnings would have reflected the earnings premium that most Connecticut workers earn in comparison to the U.S. as a whole.

A. LOST COMPENSATION

14. Mr. Tillman was 26 years old at the time of his arrest. It is my understanding that by all accounts he was in good health prior to his incarceration. Had Mr. Tillman not spent 18 years incarcerated, there is no basis to assume that he would not have experienced a normal worklife expectancy. A 44 year-old active African-American man has a worklife expectancy of 17 years.²

I Past Lost Compensation

15. To estimate Mr. Tillman's lost compensation from 1988 to date, in my base case scenario, I assume that his earnings would have been equal to that of the average high school educated male working full-time in the U.S. who was the same age as Mr. Tillman. In different scenarios, I vary my assumptions regarding Mr. Tillman's education and whether his earnings are adjusted to account for the premium that Connecticut workers earned compared to their U.S. counterparts.

16. Exhibit 1a details this base case scenario. Relying on data provided by the Department of Census concerning average historical earnings, I assume that had Mr. Tillman

¹ Exhibit 5 summarizes my calculations of the present value of the economic loss suffered by Mr. Tillman. This range does not include any taxes that Mr. Tillman might have to pay on his award. If Mr. Tillman is required to pay federal taxes on the award provided to him, then the award should be grossed up to account for taxes. The after-tax present value ranges from \$1.6 million to \$2.6 million.

² James Ciecka, Thomas Donley and Jerry Goldman, "A Markov Process Model for Work-Life Expectancies Based on Labor Market Activity in 1997-1998," *Journal of Legal Economics* (Winter 1999-2000), pp. 34-68.

not been incarcerated in 1988 his annual earnings would have been \$23,434 and that his earnings would have increased to approximately \$42,000 by 2006 (see Column 2).³

17. For each year, I assume that Mr. Tillman's effective combined federal, state, and local income tax rates would have been 15%.⁴ I thus reduce Mr. Tillman's before-tax earnings by this tax rate in order to calculate his after-tax earnings (see columns 3 and 4). I further reduce Mr. Tillman's annual earnings by 3 percent to account for the possibility of unemployment (see column 7).

18. In addition to salary, most employees receive fringe benefits. Typically, fringe benefits include medical benefits, payments toward a 401(k) or pension plan, as well as other types of non-salary benefits. In my base case scenario, I assume that in the *but for* world, Mr. Tillman would have received fringe benefits equal to 11.6% (see column 5 and 6).⁵ This figure represents the amount that the average employer pays in medical benefits as a percentage of total payroll, and is thus very conservative.⁶

19. Finally, to account for the time value of money, I increase each year's lost compensation by the simple interest rate of 10%. I base my choice of interest rate on Connecticut statutory law.

³ In another scenario, I assume that beginning in 1992 Mr. Tillman's *but for* salary would have increased to that of the average full-time male with an Associate Degree who was the same age as Mr. Tillman. I base this assumption on the fact that even though he was incarcerated; Mr. Tillman chose to continue his education. According to the Department of Census, in 1992, the average 30 year old full-time male with an Associate Degree in the U.S. earned \$29,671. In 2006, the average full-time 44 year old male with an Associate Degree earned \$54,914. My analysis for this scenario is shown in Exhibits 2a and 2b.

⁴ I base my assumption on a study that Special Master Kenneth Feinberg conducted to determine effective tax rates by earnings for those who perished on September 11th.

⁵ According to the U.S. Chamber of Commerce Small Business Center website, medical benefits account for 11.6 percent of the average employer's payroll. To the extent that medical benefits are typically just one component of fringe benefits, this is a conservative figure.

⁶ I also present an alternative scenario where I assume that Mr. Tillman has suffered no lost fringe benefits as a result of his wrongful incarceration (see Exhibit 1b). In this scenario, I assume, for the sake of argument only, that the medical care that Mr. Tillman received while incarcerated was identical to medical care that he would have received through private employer-sponsored insurance.

I note, however, that Mr. Tillman has filed a Complaint concerning the medical care that he received while in jail. To the extent that this Complaint is accurate, this fact likely implies that the medical care that Mr. Tillman received in jail was not equal to the care that he otherwise would have received.

20. In my base case scenario (where I assume that Mr. Tillman would have earned a salary and fringe benefits equal to that of a full-time male with a high school degree) I find that the value as of April 2007 of the past lost compensation equals \$1,076,419 (see Exhibit 1a)⁷

ii. Future Lost Compensation

21. Despite the fact that Mr. Tillman is now employed (working at two different jobs), he will continue to suffer economic losses. This is due to the fact that even though he has been exonerated, Mr. Tillman's actual current and future earnings are likely to be significantly less than the compensation that he would have been paid in the *but for* world where he had not been incarcerated for 18 years. Simply put, Mr. Tillman has lost 18 years of job experience, and he will not be as valuable to an employer as he would have been had he acquired the skills that an employee learns over the course of 18 years of working.

22. Exhibit 1c provides the details of my calculations of the present value of Mr. Tillman's lost future earnings for the base case scenario (where I assume that Mr. Tillman would have earned the salary of a full time worker with a high school degree). For each year from 2006, when Mr. Tillman was released from jail, until the time that he is expected to retire in 2023,⁸ I calculate the difference between the amount that Mr. Tillman was likely to earn had he not been wrongfully imprisoned (column B) and the amount that he is expected to earn in the actual world (column C).⁹ This difference ranges between \$10,173 for the six-month period in 2006 to \$36,536 in 2022, Mr. Tillman's last full year in the workforce.

23. For each year, I reduce the difference between Mr. Tillman's *but for* and actual earnings by 15%, the assumed tax rate. I then discount losses using the after tax rate of

⁷ Assuming, for the sake of argument only, that he has suffered no lost fringe benefits, the value of his past lost compensation is \$947,159 (see Exhibit 1b). If I assume that Mr. Tillman would have earned an Associate Degree, his past lost compensations is \$1,285,039 (see Exhibit 2a). This amount equals \$1,130,728 if I ignore fringe benefits (see Exhibit 2b).

⁸ James Ciecka, Thomas Donley and Jerry Goldman, "A Markov Process Model for Work-Life Expectancies Based on Labor Market Activity in 1997-1998," *Journal of Legal Economics* (Winter 1999-2000), pp. 34-68.

⁹ In 2006, Mr. Tillman's earned \$10 per hour for 37.5 hours at CREC and \$11 per hour for 4 hours per week at Alpha Printing. This is equivalent to an annual salary of \$21,788 or \$10,894 for six months.

4.4%.¹⁰ In the base case scenario, the present value of Mr. Tillman's future economic losses is \$293,632.¹¹

B. OTHER CONSIDERATIONS

24. As noted above, Connecticut salaries are significantly higher than the average salary for the U.S. as a whole. Given that Mr. Tillman had lived nearly all of his life in Connecticut and that his mother and siblings live in Connecticut, it is reasonable to assume that Mr. Tillman would also have spent his worklife in Connecticut.

25. Exhibits 3 and 4 are similar to Exhibits 1 and 2 except that they adjust for the fact that Connecticut salaries are higher than salaries for the U.S. as a whole. In Exhibit 3a through 3c, I assume that Mr. Tillman would have earned the average salary of a full time male high school graduate living in Connecticut. Including lost fringe benefits, Mr. Tillman's past lost compensation equals \$1,358,604. The present value of his future lost compensation equals \$458,607. In Exhibit 4a through 4c, I assume that Mr. Tillman earned the average salary of a full time male worker with an Associate Degree. Including lost fringe benefits, Mr. Tillman's past lost compensation equals \$1,622,104. The present value of his future lost compensation equals \$637,294.

26. Throughout my analysis, to be conservative, I have excluded any losses Mr. Tillman has likely suffered as a result of the fact that his pension will likely be much lower in the actual world than it would have been in the *but for* world. I have also ignored any economic losses resulting from lost household contributions.

V. CONCLUSION

27. Based on my calculations, it is my opinion that the total economic loss that James Tillman has suffered as a result of his wrongful incarceration is between \$1.2 million and \$2.3 million (See Exhibit 5). In my opinion, I believe this range to be a conservative estimate.

¹⁰ This is equivalent to a before tax rate of 5.2%.

¹¹ If I assume instead that in the *but for* world Mr. Tillman would have earned the equivalent of the full time male with an Associate Degree, the present value of his future economic losses is \$434,186.