

AFTER INNOCENCE INSPIRES LAWMAKER

Bill would compensate those who are wrongfully convicted

Feb 11, 2007

By Associated Press

OLYMPIA, Wash. (AP) - Every day for more than five months, Jeff Schmieder walked hundreds of laps around the courtyard at the Regional Justice Center in Kent, where he was serving time for a first-degree rape that he did not commit.



"Walking was the only thing I had left. It just gave me a lot of time to think to myself, and get my head straight," said Schmieder, who was convicted in 1998 and faced more than 11 years in prison. "Everyone in there says they're not guilty, of course. But when you're really not, it does things to your mind that you can't even imagine."

Schmieder, 49, and another man, Mark Clark, were freed in 1999 after new evidence showed the alleged victim was in jail herself at the time she said she was attacked.

Under a measure lawmakers are considering this year, people like Schmieder would be compensated by the state for the years they lost behind bars. If passed, Washington would join 21 states, the District of Columbia and the federal government with similar laws on the books.

"When you're imprisoned you lose everything," said Rep. Joe McDermott, D-Seattle and sponsor of the bill. "We should have procedures in place to make someone who's been wrongfully convicted whole, in some small part."

McDermott's measure - which mirrors federal levels - would require the state to award a wrongly convicted person no less than \$50,000 for each year of imprisonment, including time spent awaiting trial. An additional \$50,000 would be awarded for each year on death row.

Additional mental and physical costs would be awarded, as well as damages for lost wages, job training and up to 10 years of health insurance from the state.

Someone who is released from prison after a wrongful conviction would have to file a claim for damages against the state in superior court. The claimant must show their conviction was reversed or vacated, and that they did not commit the crime they were

charged with. Once a judge or jury determines the claim is valid, they can award damages.

Supporters of compensation laws say the measure is the fair thing to do.

"To the extent that the government has to compensate you if it takes your property, it seems only fair that the government also compensates you when it's taken years of your life and your liberty," said Stephen Saloom, policy director at The Innocence Project, a New York-based legal center that seeks to uncover wrongful convictions.

McDermott said he was made aware of the challenges faced by those who have been wrongly convicted after seeing a documentary called "After Innocence," which followed the lives of people adjusting back to life after being exonerated by DNA evidence.

He showed lawmakers and staff the movie last year at the Capitol, and filed a similar bill last year, but it never received a hearing.

McDermott's bill was filed this week, and Rep. Pat Lantz, chairwoman of the House Judiciary Committee, said she would give the bill a hearing sometime this month.

"I'm very, very much interested in the concept," said Lantz, D-Gig Harbor. "If you stop and consider it for one moment, finding someone innocent requires more than an 'I'm sorry, here's a new pair of shoes for you, goodbye.' It's a major failure of the justice system."

Sen. Mike Carrell, a Lakewood Republican who sits on the Senate Human Services & Corrections and Judiciary committees, said he agrees with the idea of compensating those who are wrongly incarcerated, but said he thinks there's a better way to do it.

"When we wrong somebody, I think that we have to do what we can to make it as right as we possibly can," he said, but expressed concern about the \$50,000 "being one-size fits all" that a judge or jury can raise, but not lower.

"What is the appropriate amount?" he asked. "There is no discretion here."

Eric Ferrero, spokesman for The Innocence Project, said that to date, 194 people nationwide have been exonerated with DNA testing - of those, about 85 have been compensated in some way, though most were through civil lawsuits, not state compensation laws.

Just last month, a decorated Vietnam veteran who spent about 20 years in prison for a rape he did not commit received a full pardon from Dallas Gov. Rick Perry. Larry Fuller is one of 12 Dallas County men exonerated by DNA evidence since 2001, and one of 24 in Texas since 1989.

Also last month, a convicted rapist in Georgia and a man who was unjustly convicted of murder in New York but helped find the real killer from his prison cell were granted their freedom after DNA tests proved their innocence.

Since the nation's first DNA exoneration in 1989, there have been 26 defendants cleared in Illinois, 24 exonerations in Texas, 21 in New York, nine in California and six in Florida, Ferrero said.

Ferrero said his organization is working with lawmakers in Texas, Florida and Connecticut on compensation bills that have been introduced this year.

A study by Professor Sam Gross at the University of Michigan published last year found 340 exonerations, not all DNA-related, in the country between 1989 and 2003. Of those, four were in Washington state, including Schmieder's case.

In talking about his case, Schmieder cried when listing what he and his family endured during his imprisonment: his parents put up their home for his bail so that he didn't have to wait in jail before he was convicted; his teen daughter dropped out of high school because of the taunts at school; his infant granddaughter died and he wasn't able to help plan the funeral.

"Nobody knows what you go through, when all of a sudden everything in your life is gone," he said.

Schmieder doesn't work due to an injury he suffered before he went to jail. He's a single dad raising his 10-year-old son in Enumclaw, and he said he's barely getting by.

If passed, people who are wrongfully convicted would have three years to file a claim. But the measure would be retroactive, so Schmieder would have five years from the time the law took effect to apply for compensation.

He said that if the law is passed, it would help him pay the rent, and he could buy his son some new clothes.

"It's been beyond difficult," he said, crying. "You don't know what it means to have a little bit of hope all of a sudden."

The wrongful conviction measure is House Bill 2122.