

EXONERATED BUT STILL CONFINED: SLAYER RULES PRESENT EXTRA OBSTACLES TO CRIMINALLY EXONERATED INDIVIDUALS

by Paige Foster*

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I. INTRODUCTION

In the early morning of June 5, 2005, Noura Jackson frantically called 911 to report that her mother, Jennifer, had been brutally murdered in her Memphis home.¹ Four years later, a court convicted Noura of second-degree murder in connection with her mother's death.² In the interim of her mother's murder and her conviction, Noura's aunts and uncles successfully sued her under Tennessee's "slayer statute" to prevent Noura from receiving her

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1. Emily Bazelon, *She Was Convicted of Killing Her Mother. Prosecutors Withheld the Evidence That Would Have Freed Her*, N.Y. TIMES (Aug. 1, 2017), <https://www.nytimes.com/2017/08/01/magazine/she-was-convicted-of-killing-her-mother-prosecutors-withheld-the-evidence-that-would-have-freed-her.html>, archived at <https://perma.cc/6T89-YJRK>.

2. *See id.*

mother's \$1.5 million estate.³ Noura was Jennifer's only child, and Noura's father had died years earlier, so Noura was entitled to the estate.⁴ Under Tennessee law, an interested party must show by a preponderance of the evidence that the "individual . . . feloniously and intentionally kill[ed] the decedent."⁵ A preponderance of the evidence standard requires the finder of fact to determine it is more likely than not that a fact is true.⁶

Tennessee law does not require a conviction to invoke the state's slayer statute, but Noura's second-degree murder conviction helped the relatives' case because it conclusively determined that she, in fact, killed her mother.⁷

In August of 2014, after spending nine years in prison, the Tennessee Supreme Court reversed Noura's conviction.⁸ Evidence of prosecutorial misconduct prompted a re-examination of her case, and Noura was exonerated of her mother's murder.⁹ After release from prison, Noura sued her family to recover some of the estate she lost during her murder trial.¹⁰ The parties settled in August 2017 for an undisclosed amount.¹¹

This comment will address the hypothetical legal consequences exonerees face after release from prison but having lost their inheritances through civil suits.¹² Often, the exonerees must sue the same families they want to re-connect with after prison.¹³ Many state compensation statutes for exonerees contain gaps and shortcomings and vary vastly from state to state.¹⁴ The first section of this comment will address the goals of the Innocence Project and the relief it provides for the wrongfully convicted.¹⁵ This section will specifically address exonerations for murder and what generally happens to property after incarceration.¹⁶ Next, an analysis of

3. *See id.*; TENN. CODE ANN. § 31-1-106 (West 2017).

4. Bazelon, *supra* note 1.

5. TENN. CODE ANN. § 31-1-106.

6. Kevin F. O'Malley, Jay E. Grenig & William C. Lee, *Preponderance of the Evidence*, 3B FED. JURY PRAC. & INSTR. § 163:41.

7. Bazelon, *supra* note 1; TENN. CODE ANN. § 31-1-106.

8. *See* Bazelon, *supra* note 1.

9. Janice Broach, *Noura Jackson Opens Trial to Receive Mother's Estate*, WMCACTIONNEWS5 (Sept. 8, 2016, 10:39 PM) <http://www.wmcactionnews5.com/story/33052887/noura-jackson-opens-trial-to-receive-mothers-estate>, archived at <https://perma.cc/34P9-CNCR>.

10. Glenn Ruppel & Alexa Valiente, *How a Woman Won Her Release from Prison Years After Being Convicted of Her Mother's Murder*, ABC NEWS (Mar. 23, 2017, 3:12 PM), <http://abcnews.go.com/US/woman-won-release-prison-years-convicted-mothers-murder/story?id=46313117>, archived at <https://perma.cc/VLZ9-YLYU>.

11. *See id.*

12. *See generally* Emily Bazelon, *She Was Convicted of Killing Her Mother. Prosecutors Withheld the Evidence That Would Have Freed Her*, N.Y. TIMES (Aug. 1, 2017) (exonerated woman sued her family for her lost inheritance).

13. *See id.*

14. Evan J. Mandery, et al., *Compensation Statutes and Post-Exoneration Offending*, 103 J. CRIM. L. & CRIMINOLOGY 553, 554 (2013), <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7450&context=jclc>, archived at <https://perma.cc/BU4P-654X>.

15. *See infra* Part II.

16. *See infra* Part II.

slayer statutes and requisite case law will demonstrate how each state addresses people who murder for inheritance.¹⁷ The wording of the statutes reflects a particular policy standpoint either in favor or against forfeiture of property.¹⁸ Each state approaches the treatment of slayers differently, including outright forfeiture, staying the proceeding, or prohibition of forfeiture altogether.¹⁹ Some states provide for a constructive trust remedy rather than a slayer statute.²⁰ Next, this comment will address the overlap of criminal exonerations and slayer statutes and the inevitable gaps that form when someone falls into both categories.²¹ Finally, five solutions provide alternative options for exoneree-beneficiaries.²²

II. INNOCENCE PROJECT

The Innocence Project facilitates the exoneration of wrongfully convicted individuals through transparent and objective analysis of DNA evidence, witness reliability measures, and other methods to correct errors that resulted in erroneous convictions.²³ The National Registry of Exonerations outlines the variety of crimes individuals were exonerated of and the types of evidence used to overturn their convictions.²⁴ Contrary to popular belief, the Innocence Project handles more than murder cases, such as rape and child abuse.²⁵ Often, official misconduct and mistaken identification place these types of cases in front of state supreme courts for review.²⁶

A. Property Rights of the Convicted and Incarcerated

Whether a court convicts a person of a misdemeanor or capital murder, individuals convicted of a crime keep title to their property.²⁷ Although he

17. *See infra* Part III.

18. *See infra* Part III.

19. *See infra* Part III.

20. *See infra* Part III.

21. *See infra* Part IV.

22. *See infra* Part V.

23. *See Our Mission*, THE NATIONAL REGISTRY OF EXONERATIONS, <https://www.law.umich.edu/special/exoneration/Pages/about.aspx> (last visited Sept. 15, 2017), archived at <https://perma.cc/8F3G-RTTC>.

24. *See THE NATIONAL REGISTRY OF EXONERATIONS*, <https://www.law.umich.edu/special/exoneration/Pages/about.aspx> (last visited Sept. 15, 2017), archived at <https://perma.cc/4N35-QCVK>.

25. *See id.*

26. *See % Exonerations by Contributing Factor*, THE NATIONAL REGISTRY OF EXONERATIONS, <http://www.law.umich.edu/special/exoneration/Pages/ExonerationsContribFactorsByCrime.aspx> (last visited Oct. 20, 2017), archived at <https://perma.cc/HNT5-4RNG>.

27. *See generally* Dennis Dwyer, *What Happens to My Money If I Go to Jail or Prison?*, <https://www.dennisdwyerlaw.com/what-happens-to-my-money-if-i-go-to-jail-or-prison/> (last visited Jan. 19, 2018) (analyzing what happens to property after a person goes to prison), archived at <https://perma.cc/8HCL-3655>.

or she keeps title to the property, the prisoner relinquishes possession behind bars.²⁸ Often, defendants released on bail have time to sort out their property matters.²⁹ However, without financial resources or valuable assets, a person may never be able to resolve the disposition of his or her property, and the burden falls on the family.³⁰ Apart from federal drug convictions, the government may not take one's property without just compensation.³¹ Civil forfeiture is a much-debated topic, but society generally warns against such overreaching government actions.³²

However, some states created slayer statutes that allow forfeiture of inheritance gained through murdering a testator.³³ The Uniform Probate Code, adopted in sixteen states, outlines the types of killings that will result in forfeiture.³⁴ Here, forfeiture does not mean the property automatically escheats to the state.³⁵ Rather, the statute treats the convicted person as if he or she predeceased the victim, so the property distributes according to the will or the state's intestacy statute.³⁶ Some states, like Texas, prohibit forfeiture based on a criminal conviction as declared in the state constitution.³⁷ Even if the individual is convicted of the murder, no forfeiture occurs.³⁸ The only recourse for family members is to sue the murderer and receive possession of the property through a constructive trust.³⁹ Family members assert that the convicted individual should not receive the inheritance of the person he or she killed on the theory of unjust enrichment and common sense.⁴⁰

B. Wrongfully Convicted Lose Freedom and Inheritance

If some states do not require a criminal conviction to initiate forfeiture, then wrongfully convicted individuals will be especially disadvantaged.⁴¹ These innocent people are presumed to be killers and lose their inheritances

28. *See id.*

29. *See id.*

30. *See id.*

31. *See* 18 U.S.C. § 982 (2012).

32. *See* Sarah Stillman, *Taken*, THE NEW YORKER (Aug. 12, 2013) <https://www.newyorker.com/magazine/2013/08/12/taken>, archived at <https://perma.cc/F2P3-KFJV>.

33. *See* ARIZ. REV. STAT. ANN. § 14-2803 (West 2012); CAL. PROB. CODE § 250(a)(1) (West 2016).

34. UNIF. PROB. CODE § 2-803 (amended 2010).

35. *See generally id.* (stating that the estate passes as if the killer disclaimed his intestate share or predeceased the decedent).

36. Jeffrey G. Sherman, *Mercy Killing and the Right to Inherit*, 61 U. CIN. L. REV. 803, 851 (1993).

37. TEX. CONST. art. I, § 21.

38. *See In re Estate of Stafford*, 244 S.W.3d 368, 369–70 (Tex. App.—Beaumont Jan. 17, 2008, *no pet.*).

39. *Thompson v. Mayes*, 707 S.W.2d 951, 954–55 (Tex. App.—Eastland Apr. 3, 1986, *writ ref'd n.r.e.*).

40. *Id.* at 954.

41. *See generally* UNIF. PROB. CODE § 2-803(g) (amended 2010) (no conviction required to trigger the Slayer Statute).

and benefits based on faulty evidence or misconduct.⁴² The language of slayer statutes offers a low threshold for property forfeiture through a preponderance of the evidence standard.⁴³ After leaving prison, exonerees face an uphill battle to rebuild their lives.⁴⁴ In the case of Noura Jackson, Noura sued her family for an undisclosed amount.⁴⁵ Exonerees should have other options to regain their inheritances or life insurance benefits.⁴⁶ A solution should consider the sensitive interests of families who, at the time, justifiably sued under the slayer statute or plead a constructive trust.⁴⁷

III. BACKGROUND OF SLAYER STATUTES

The idea of the slayer statute rests on fundamental ideas of fairness, public policy, and common sense—a killer should not benefit from his or her evil deeds.⁴⁸ Forty-eight states have passed slayer statutes or similar legislation that prohibits killers from inheriting from their murder victims:

- Alabama – Title 43, chapter 8, article 9, section 253 of the Code of Alabama.⁴⁹
- Alaska – Title 13, chapter 12, section 803 of the Alaska Statutes.⁵⁰
- Arizona – Title 14, section 2803 of the Arizona Revised Statutes.⁵¹
- Arkansas – Title 18, chapter 4, section 204 of the Arkansas Code.⁵²
- California – Division 2, Part 7, section 250 of the California Probate Code.⁵³
- Colorado – Title 15, article 11, part 8, section 803 of the Colorado Revised Statutes.⁵⁴
- Connecticut – Title 45a, section 447 of the Connecticut General Statutes.⁵⁵
- Delaware – Title 12, section 2322 of the Delaware Code.⁵⁶

42. *See generally id.* (conviction creates conclusive presumption that he or she killed the decedent); Ruppel & Valiente, *supra* note 10.

43. UNIF. PROB. CODE § 2-803(g) (amended 2010).

44. *Exonerated But Not Free: What Do We Owe the Wrongfully Convicted?*, PBS NEWSHOUR (Nov. 9, 2014, 4:00 PM) <http://www.pbs.org/newshour/bb/exonerated-free-toll-varied-justice-system-wrongfully-convicted/>, archived at <https://perma.cc/BH4M-HVLD>.

45. *See Broach, supra* note 9.

46. *See id.*

47. *See id.*

48. UNIF. PROB. CODE § 2-803(f) (amended 2010); *see also* Riggs v. Palmer, 22 N.E. 188 (N.Y. 1889) (standing for the proposition that state legislatures did not intend to “allow a public mischief or wrong”).

49. ALA. CODE § 43-8-253 (1975).

50. ALASKA STAT. ANN. § 13.12.803 (West 1996).

51. ARIZ. REV. STAT. ANN. § 14-2803.

52. ARK. CODE ANN. § 18-4-204 (West 2013).

53. CAL. PROB. CODE § 250(a)(1) (West 2015).

54. COLO. REV. STAT. ANN. § 15-11-803 (West 2011).

55. CONN. GEN. STAT. § 45a-447 (West 2016).

56. DEL. CODE ANN. tit. 12, § 2322 (West 1993).

- Florida – Section 732.802 of the Florida Statutes.⁵⁷
- Georgia – Title 53, chapter 1, section 5 of the Code of Georgia.⁵⁸
- Hawaii – Title 30a, chapter 560, article 2, section 803 of the Hawaii Revised Statutes.⁵⁹
- Idaho – Title 15, chapter 2, section 803 of the Idaho Code.⁶⁰
- Illinois – Chapter 755, act 5, article 2, section 6 of the Illinois Compiled Statutes.⁶¹
- Indiana – Title 29, article 1, chapter 2, section 12.1 of the Indiana Code.⁶²
- Iowa – Title 15, subtitle 4, chapter 633, section 535 of the Iowa Code.⁶³
- Kansas – Chapter 59, section 513 of the Kansas Statutes.⁶⁴
- Kentucky – Title 32, chapter 381, section 280 of the Kentucky Revised Statutes.⁶⁵
- Louisiana – Title 1, chapter 5, article 941 of the Louisiana Statutes.⁶⁶
- Maine – Title 18-a, section 2-803 of the Maine Revised Statutes.⁶⁷
- Maryland – Title 11, section 112 of the Maryland Trusts and Estates Code.⁶⁸
- Massachusetts – Chapter 265, section 46 of the Massachusetts General Laws.⁶⁹
- Michigan – Chapter 700, section 2803 of the Michigan Compiled Laws.⁷⁰
- Minnesota – Chapter 524, section 2-803 of the Minnesota Statutes.⁷¹
- Mississippi – Title 91, chapter 5, section 33 of the Mississippi Code.⁷²
- Montana – Title 72, section 2-813 of the Montana Code.⁷³
- Nebraska – Chapter 30, section 2354 of the Revised Statutes of Nebraska.⁷⁴

57. FLA. STAT. ANN. § 732.802 (West 1982).

58. GA. CODE ANN. § 53-1-5 (West 1996).

59. HAW. REV. STAT. ANN. § 560:2-803 (West 1997).

60. IDAHO CODE ANN. § 15-2-803 (West 1971).

61. 755 ILL. COMP. STAT. ANN. 5/2-6 (West 1990).

62. IND. CODE § 29-1-2-12.1 (West 1984).

63. IOWA CODE ANN. § 633.535 (West 2017).

64. KAN. STAT. ANN. § 59-513 (West 1995).

65. KY. REV. STAT. ANN. § 381.280 (West 2012).

66. LA. CIV. CODE ANN. art. 941 (1999).

67. ME. REV. STAT. ANN. tit.18-a, § 2-803 (1981).

68. MD. CODE ANN. EST. & TRUSTS § 11-112 (West 2013).

69. MASS. GEN. LAWS ANN. ch. 265, § 46 (West 2002).

70. MICH. COMP. LAWS ANN. § 700.2803 (West 2016).

71. MINN. STAT. § 524.2-803 (West 2013).

72. MISS. CODE ANN. § 91-5-33 (West 2017).

73. MONT. CODE ANN. § 72-2-813 (West 1995).

74. NEB. REV. STAT. ANN. § 30-2354 (West 2013).

- Nevada – Title 3, chapter 41B, section 200 of the Nevada Revised Statutes.⁷⁵
- New Jersey – Title 3b, chapter 7, section 1.1 of the New Jersey Statutes.⁷⁶
- New Mexico – Chapter 45, article 2, section 803 of the New Mexico Statutes.⁷⁷
- North Carolina – Chapter 31A, section 4 of the North Carolina General Statutes.⁷⁸
- North Dakota – Title 30.1, article 2, chapter 30.1-10, section 3 of the North Dakota Century Code.⁷⁹
- Ohio – Title 21, chapter 2105, section 19 of the Ohio Revised Code.⁸⁰
- Oklahoma – Title 84, chapter 4, section 231 of the Oklahoma Statutes.⁸¹
- Oregon – Title 12, chapter 112, section 505 of the Oregon Revised Statutes.⁸²
- Pennsylvania – Title 20, sections 8802 through 8815 of the Pennsylvania Statutes and Consolidated Statutes.⁸³
- Rhode Island – Title 33, chapter 1.1, section 4 of the General Laws of Rhode Island.⁸⁴
- South Carolina – Title 62, article 2, section 803 of the Code of Laws of South Carolina.⁸⁵
- South Dakota – Chapter 29A-2, section 803 of the South Dakota Codified Laws.⁸⁶
- Tennessee – Title 31, chapter 1, section 106 of the Tennessee Code.⁸⁷
- Utah – Title 75, chapter 2, section 803 of the Utah Code.⁸⁸
- Vermont – Title 14, chapter 42, section 322 of the Vermont Statutes.⁸⁹
- Virginia – Title 64.2, section 2501 of the Code of Virginia.⁹⁰
- Washington – Title 11, section 11.84.020 of the Revised Code of Washington.⁹¹

75. NEV. REV. STAT. ANN. § 41B.200 (West 1999).

76. N.J. STAT. ANN. § 38:7-11 (West 2006).

77. N.M. STAT. ANN. § 45-2-803 (West 2012).

78. N.C. GEN. STAT. ANN. § 31A-4 (West 1997).

79. N.D. CENT. CODE ANN. § 30.1-10-03 (West 1973).

80. OHIO REV. CODE ANN. § 2105.19 (West 1975).

81. OKLA. STAT. ANN. tit. 85, § 231 (West 2015).

82. OR. REV. STAT. ANN. § 112.505 (West 2005).

83. 20 PA. STAT. AND CONS. STAT. ANN. §§ 8802–8815 (West 1972).

84. 33 R.I. GEN. LAWS ANN. § 31-1.1-4 (West 1962).

85. S.C. CODE ANN. § 62-2-803 (2014).

86. S.D. CODIFIED LAWS § 29A-2-803 (1995).

87. TENN. CODE ANN. § 31-1-106 (West 2017).

88. UTAH CODE ANN. § 75-2-803 (West 1998).

89. VT. STAT. ANN. tit. 14, § 322 (West 2009).

90. VA. CODE ANN. § 64.2-2501 (West 2012).

91. WASH. REV. CODE ANN. § 11.84.020 (West 2009).

- West Virginia – Chapter 42, article 4, section 2 of the Code of West Virginia.⁹²
- Wisconsin – Chapter 854, section 14 of the Wisconsin Statutes.⁹³
- Wyoming – Title 2, chapter 14, section 101 of the Wyoming Statutes.⁹⁴

The following states do not have a slayer statute, but address the issue in case law or their constitution:

- Missouri – *Lee v. Aylward*.⁹⁵
- New Hampshire – *Kelley v. State*.⁹⁶
- New York – *In re Estates of Covert*.⁹⁷
- Texas – Article 1, Section 21 of the Texas Constitution prohibits forfeiture, unless the murderer is the beneficiary of the victim's life insurance policy.⁹⁸

Each jurisdiction describes the requirements, procedure, and consequences differently, but all discourage killing loved ones for inheritance and life insurance.⁹⁹ Civil and automatic forfeiture, which does not require an action of a court, is a complex and controversial area of the law that varies from state to state.¹⁰⁰ In the estate law context, instead of forfeiting property to the government, the court forces individuals to forfeit property to interested parties.¹⁰¹ An interested party or parties must file a civil suit under the slayer statute against the presumed killer to proceed in collecting the benefits of the will or life insurance policy.¹⁰² Without a civil suit, the convicted killer presumably receives the benefits of the victim.¹⁰³ Some states, like Texas, allow a murderer to receive the victim's inheritance, but not life insurance.¹⁰⁴ These cases most often occur when the relationship is a close familial or blood relation, like parent-child or husband-wife, because

92. W. VA. CODE ANN. § 42-4-2 (West 2017).

93. WIS. STAT. ANN. § 854.14 (West 2017).

94. WYO. STAT. ANN. § 2-14-101 (West 1980).

95. *Lee v. Aylward*, 790 S.W.2d 462, 463 (Mo. 1990).

96. *Kelley v. State*, 196 A.2d 68, 69 (N.H. 1963).

97. *In re Estates of Covert*, 279 A.D.2d 48, 50 (N.Y. App. Div. 2000); *see also* *Riggs v. Palmer*, 22 N.E. 188 (N.Y. 1889).

98. TEX. CONST. art. I, § 21; TEX. INS. CODE ANN. § 1103.151 (West 2014).

99. Caryl A. Yzenbaard, George Gleason Bogert & George Taylor Bogert, § 478. *Property Acquired by Killing Another*, LAW OF TRUSTS AND TRUSTEES (June 2017).

100. Jason Snead, *An Overview of Recent State-Level Forfeiture Reforms*, THE HERITAGE FOUNDATION (Aug. 23, 2016), <http://www.heritage.org/crime-and-justice/report/overview-recent-state-level-forfeiture-reforms>, archived at <https://perma.cc/54F9-J89Q>.

101. *See* *Bounds v. Caudle*, 560 S.W.2d 925, 925 (Tex. 1977).

102. *See* Bazelon, *supra* note 1.

103. *In re Estate of Kissinger*, 206 P.3d 665, 229 (Wash. 2009) (“Most jurisdictions now agree that the better rule is to allow the civil courts to litigate the issue of culpability”).

104. TEX. EST. CODE ANN. § 201.058 (West 2014).

most people leave their property to their closest loved ones in wills.¹⁰⁵ Moreover, close family members often inherit through intestacy.¹⁰⁶

Most statutes only require a felonious or intentional killing to trigger the slayer statute.¹⁰⁷ However, the statutes do not require a conviction.¹⁰⁸ A conviction merely creates a presumption that the individual killed the decedent.¹⁰⁹ Thus, an individual may be acquitted, but his or her family may sue for the victim's inheritance through a preponderance of the evidence standard.¹¹⁰ The types of property and the consequences of the statute vary by jurisdiction.¹¹¹ The following subsections outline the historical development of slayer statutes and how some jurisdictions address this issue.¹¹²

A. Common Law

In common law England, a slayer could not inherit from his or her victim under a number of equitable theories.¹¹³ All real and personal property escheated to the Crown following any type of conviction.¹¹⁴ The Founding Fathers rejected forfeiture, or attainder, and abolished it in the Constitution.¹¹⁵ Without attainder, the question remained if a murderer could inherit from their victim.¹¹⁶ Some judges observed the inherent problem in this construction of inheritance statutes and devised an equitable theory from common law that no person should profit from their wrongs.¹¹⁷ Over the years, state legislatures developed slayer statutes that sought to fill in gaps in the law that allowed murderers to profit from their crimes.¹¹⁸

105. Kerri Anne Renzulli, *Half of Americans Don't Have a Will. Here's How to Fix That for Your Family*, TIME MONEY (Nov. 30, 2016), <http://time.com/money/4581727/estate-planning-inheritance-leave-money-will/>, archived at <https://perma.cc/R3LG-Y296>.

106. *Id.*

107. Kevin Spencer, *What to Know About the "Slayer Statute" a/k/a the "Killer Laws"*, SPENCER LAW (Oct. 17, 2016), <http://www.spencerlawpc.com/blog/what-to-know-about-the-slayer-statute-aka-the-killer-laws/>, archived at <https://perma.cc/W4HG-R2KC>.

108. *Id.*

109. Jefferson Grubbs, *What Does O.J. Simpson's Civil Trial Verdict Mean? "Liable" Does Not Mean Guilty*, BUSTLE (Apr. 5, 2016), <https://www.bustle.com/articles/152048-what-does-oj-simpsons-civil-trial-verdict-mean-liable-does-not-mean-guilty>, archived at <https://perma.cc/A6E1-5XJ6>.

110. *Id.*

111. See ARIZ. REV. STAT. ANN. § 14-2803 (West 2012); CAL. PROB. CODE § 250(a)(1) (West 2016), MD. EST. & TRUSTS CODE § 11-112 (West 2013); TENN. CODE ANN. § 31-1-106 (West 2017).

112. See *infra* Parts A–B.

113. Carla Spivack, *Killers Shouldn't Inherit from Their Victims—Or Should They?*, 48 GA. L. REV. 145, 152 (2013).

114. *Id.* at 153.

115. *Id.* at 152.

116. *Id.* at 153.

117. *Id.*

118. *Id.* at 154.

B. Each State Takes a Different Approach

States approach the slayer problem differently.¹¹⁹ While sixteen states adopted the Uniform Probate Code formulation, others implement different wording or lack a statute addressing this issue.¹²⁰ Texas and New Hampshire are two of these states, and both address the issue in case law without a codified slayer statute.¹²¹

1. Forfeiture of Estate

According to the Uniform Probate Code, a conviction for an intentional and felonious killing triggers the consequences of the slayer statute.¹²² If the jury convicts the defendant, the analysis ends—the court concludes the person feloniously or intentionally brought about the death of the decedent.¹²³ Without a conviction, the court must find by a preponderance of the evidence that the person feloniously or intentionally brought about the death of the decedent.¹²⁴ As a result, the person forfeits all benefits under the statute and is treated as if that person disclaimed his or her intestate share.¹²⁵

Arizona adopted the Uniform Probate Code and expresses the beneficiary's loss as a forfeiture.¹²⁶ The language of the Arizona statute reads, “[a] person who feloniously and intentionally kills the decedent forfeits all benefits under this chapter with respect to the decedent's estate.”¹²⁷ Not only does the disqualified person not inherit from the decedent, but the disqualified person is also prohibited from acting in a representative or fiduciary capacity.¹²⁸ The statute treats the disqualified individual as if he or she predeceased the decedent, and the next beneficiaries in line will receive the disqualified individual's proportionate shares.¹²⁹

In *Castro v. Ballesteros-Suarez*, a widow was suspected of murdering her husband.¹³⁰ She was the beneficiary of her husband's life insurance policy.¹³¹ The insurance company filed an interpleader and requested that the court determine the rightful beneficiary of the policy because the widow was

119. *Id.* at 169.

120. *Uniform Probate Code*, LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/uniform/probate> (last visited Jan. 21, 2018), archived at <https://perma.cc/CVB6-LXTK>.

121. *See* *Kelley v. State*, 196 A.2d 68, 70 (N.H. 1963); *Bounds v. Caudle*, 560 S.W.2d 925, 925 (Tex. 1977).

122. UNIF. PROB. CODE § 2-803(f).

123. *Id.*

124. *Id.*

125. *Id.*

126. ARIZ. REV. STAT. ANN. § 14-2803 (West 2012).

127. *See id.*

128. *See id.*

129. *See id.*

130. *Castro v. Ballesteros-Suarez*, 213 P.3d 197, 199 (Ct. App. 2009).

131. *Id.*

both the beneficiary and murder suspect.¹³² The Arizona slayer statute applied without a conviction to prevent the widow from collecting the life insurance.¹³³ Without direct evidence, circumstantial evidence was sufficient to show that she was responsible for the death of her husband by a preponderance of the evidence.¹³⁴

The California Probate Code disqualifies a person who feloniously and intentionally kills a decedent from receiving a long list of the decedent's property, interests, or other benefits if the person feloniously and intentionally kills the decedent.¹³⁵ This statute highlights the state's interest in protecting certain types of property.¹³⁶ In probate, the code treats the killer as "dead" in the eyes of the law.¹³⁷ In other words, the slayer is treated as if he or she predeceased the decedent.¹³⁸ In a recent case, the victim's child was next in line to inherit, so the interpleader funds were deposited into an account, and the court later ordered the life insurance company to pay out as if the murderous husband predeceased the wife.¹³⁹

Another case, *People v. Jessee*, discusses California's slayer statute in detail.¹⁴⁰ A jury convicted a woman of conspiring to murder her husband.¹⁴¹ Her conviction fell squarely within California's slayer statute.¹⁴² The statute expressly provides that a convicted murderer may not receive any portion of the victim's estate either through a will or intestacy.¹⁴³ As a direct result of the statute's forfeiture language, the defendant disclaimed the life insurance benefits.¹⁴⁴

Tennessee law similarly indicates that a slayer forfeits all benefits of the decedents.¹⁴⁵ Under this statute, Noura Jackson's family initiated a civil suit while Noura was on trial for her mother's murder.¹⁴⁶ The family had every right to initiate a suit against Noura because she was the only child of the victim and would receive her mother's \$1.5 million estate.¹⁴⁷ Noura was on trial for her mother's murder, but Tennessee does not require a conviction for Noura's aunts and uncles to prevail under the slayer statute.¹⁴⁸ The relatives must only prove by a preponderance of the evidence that Noura feloniously

132. *Id.* at 206.

133. *Id.* at 199.

134. *Id.* at 203.

135. CAL. PROB. CODE § 250(a)(1) (West 2016).

136. *See id.*

137. *See id.*

138. CAL. PROB. CODE § 250(b)(1) (West 2016).

139. *Sidorov v. Transamerica Life Ins. Co.*, 2017 WL 2911676 at *1 (E.D. Cal. July 7, 2017).

140. *See People v. Jessee*, 222 Cal. App. 4th 501, 507–08 (Cal. Ct. App. 2013).

141. *See id.* at 503.

142. *See id.*

143. *See id.*

144. *See id.* at 510.

145. TENN. CODE ANN. § 31-1-106 (West 2017).

146. *See Bazelon, supra* note 1.

147. TENN. CODE ANN. § 31-1-106 (West 2017).

148. *See id.*

and intentionally brought about the death of her mother.¹⁴⁹ The relatives successfully met their burden and stripped Noura of her mother's \$1.5 million estate.¹⁵⁰

2. *Staying the Proceeding*

Maryland requires a final judgment before resolving a civil suit against a disqualified person.¹⁵¹ As a trade-off to staying the final judgment in the criminal matter, the family must wait.¹⁵² According to the Maryland slayer statute, the interested parties assert their rights, but the proceeding will be stayed pending a final judgment in the criminal case.¹⁵³ This provision provides an opportunity to postpone the civil case until the resolution of the criminal case.¹⁵⁴

A beneficiary may become disqualified even if he or she is not charged with murder, but rather if the beneficiary conspired to kill the decedent.¹⁵⁵ Relative to other states' slayer statutes, Maryland's is considered a harsh rule that is also reflected in the state's case law.¹⁵⁶ Maryland's statute is particularly harsh because it incorporates "corruption of blood" language, prohibiting decedents of the murderer from inheriting.¹⁵⁷ In a civil proceeding, a final conviction for murder is conclusive for purposes of the statute.¹⁵⁸ The "conclusive" language illustrates the strong public policy to prevent an individual from recovering from the victim-testator.¹⁵⁹

Despite the harsh nature of the statute, an individual may overcome the presumption against him.¹⁶⁰ A person may seek declaratory relief if the court finds that he or she was in fact not a disqualified individual following review.¹⁶¹ The statute also provides for "other relief," but provides little specificity about the meaning of that phrase.¹⁶²

149. *See id.*

150. *See Bazon, supra* note 1.

151. MD. CODE ANN. EST. & TRUSTS § 11-112 (West 2013) (On request of a party in a civil proceeding in which a person is alleged to be a disqualified person, the civil proceeding shall be stayed pending a final judgment in a case in which the alleged disqualified person is criminally charged with feloniously and intentionally killing, conspiring to kill, or procuring the killing of the decedent). *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. Minia E. Bremenstul, Comment, *Victim's in Life, Victims in Death—Keeping Burial Rights Out of the Hands of Slayers*, 74 LA. L. REV. 213, 221 n. 51 (2013).

157. *See Chase v. Jenifer*, 150 A.2d 251, 257 (Md. 1959) (*citing Price v. Hitaffer*, 165 A. 470 (Md. 1933)).

158. *See* MD. CODE ANN. EST. & TRUSTS § 11-112 (West 2013).

159. *See id.*

160. *See id.*

161. *See id.*

162. *See id.*

3. No Forfeiture: Court Imposes Constructive Trust

At common law, individuals and their decedents could not inherit property if they were convicted of a heinous crime at common law.¹⁶³ “Corruption of blood” is now prohibited under the Texas Constitution.¹⁶⁴ Article 1, section 21 of the Texas Constitution states, “no conviction shall work corruption of blood, or forfeiture of estate.”¹⁶⁵ The state’s strong policy against forfeiture creates barriers for individuals to lose property based solely on a criminal conviction.¹⁶⁶ The corruption of blood language appears in the Texas Estates Code with a carved out exception.¹⁶⁷ A person must forfeit his or her life insurance benefits if he or she is convicted of willfully bringing about the death of the testator.¹⁶⁸ Despite the strict language of the statute, a beneficiary may lose inheritance through a constructive trust remedy.¹⁶⁹

The explicit rejection of the corruption of blood must be reconciled with preventing a murderous beneficiary from recovering the estate of the testator.¹⁷⁰ Texas courts prohibit killers from receiving life insurance but allow them to inherit from a will.¹⁷¹ However, courts create constructive trusts to balance the interests of surviving beneficiaries with murderers’ constitutional rights.¹⁷²

In a Texas Supreme Court case, *Bounds v. Caudle*, Dr. Bounds was convicted of negligent homicide of his wife.¹⁷³ His stepchildren sued him for wrongful death, and the Court imposed a constructive trust to transfer the property from Dr. Bounds to the remaining beneficiaries.¹⁷⁴ To prevent unjust enrichment, the Court took an equitable approach whereby the murderer maintains legal title to the inherited property, but title is held in a constructive trust that compels him to surrender possession to the beneficiaries.¹⁷⁵ The trust transfers equitable title to the beneficiaries of the trust.¹⁷⁶ The public policy behind unjust enrichment prevents killing for profit, an unconscionable mode of acquisition.¹⁷⁷ The judge in the *Bounds*

163. David F. Johnson & Joseph R. Regan, *Texas Fiduciary Litigation Update: 2015-2016*, WINSTEAD, P.C. <http://www.txfiduciaryliterator.com/files./2016/09-2016-Fiduciary-Litigation-Update.pdf> (last visited Oct. 19, 2017), archived at <https://perma.cc/HY53-95A8>.

164. TEX. CONST. art. I, § 21.

165. *Id.*

166. *See Arredondo v. Dugger*, 347 S.W.3d 757, 765 (Tex. App.—Dallas May 31, 2011, pet. granted).

167. TEX. EST. CODE ANN. § 201.058 (West 2014).

168. *Id.*

169. *Bounds v. Caudle*, 560 S.W.2d 925, 925 (Tex. 1977).

170. *See id.*

171. *See* TEX. INS. CODE ANN. § 1103.151 (West 2003).

172. *See generally* *Bounds*, 560 S.W.2d at 928 (the court creates a constructive trust to pass title from the killer to the rightful heirs).

173. *Id.* at 925.

174. *Id.*

175. *See Parks v. Dumas*, 321 S.W.2d 653, 655 (Tex. App.—Fort Worth Feb. 13, 1959, no writ).

176. *Bounds*, 560 S.W.2d at 928.

177. *See Parks*, 321 S.W.2d at 655.

probate proceedings created a constructive trust in favor of the children over the deceased's property, which would have passed to Dr. Bounds had he not murdered his wife.¹⁷⁸ These types of wrongful death suits suspend the strong public policy behind maintaining family unity because willful or intentional torts often disrupt the domestic unit anyway.¹⁷⁹

Another Texas case, *In re Huffhines*, involved a husband who shot his wife and turned the gun on himself.¹⁸⁰ The husband and wife had a joint bank account together, and the deceased wife's sister asked the court to exclude the husband's heirs from acquiring the assets.¹⁸¹ The court held that the victim's estate must "plead for the imposition of a constructive trust over the property to be inherited by the murderer."¹⁸² Although there is a general proposition that a spouse may not inherit from the other spouse he killed, an interested party must still assert the constructive trust remedy.¹⁸³

In *In re Stafford*, the Beaumont Court of Appeals sought to designate a beneficiary for a murdered policy holder.¹⁸⁴ Her husband was convicted of her murder and forfeited his right to his wife's life insurance policy outright.¹⁸⁵ This case reiterates that probate actions are the vehicle in which interested parties can gain an inheritance from a beneficiary who procured the death of the insured.¹⁸⁶ The law does not require a final judgment.¹⁸⁷ This action may occur while the individual is appealing the murder conviction.¹⁸⁸

New Hampshire lacks a slayer statute.¹⁸⁹ Like Texas, New Hampshire courts impose constructive trusts.¹⁹⁰ In *Kelley v. State*, the court convicted a husband for the second-degree murder of his wife.¹⁹¹ For interested parties, like the deceased's family, to prevail in a constructive trust, they must prove unjust enrichment from the victim's estate.¹⁹² The husband prevailed because he proved he contributed more financially to the marriage.¹⁹³ This case demonstrates that the constructive trust remedy may fail if no unjust enrichment follows the disposition of the victim's property.¹⁹⁴

178. Bounds, 560 S.W.2d at 928.

179. *Id.* at 927.

180. *In re Huffhines*, 2016 WL 1714171 at *1 (Tex. App.—Fort Worth Apr. 28, 2016, pet. denied).

181. *Id.*

182. *See id.* at *7.

183. *Id.*

184. *In re Stafford*, 244 S.W.3d 368, 369 (Tex. App.—Beaumont Jan. 17, 2017, no pet.).

185. *Id.*

186. *See id.* at 370.

187. *See id.*

188. *See id.* at 369.

189. Jeffrey G. Sherman, *Mercy Killing and the Right to Inherit*, 61 U. CIN. L. REV. 803, 805 (1993).

190. *See Kelley v. State*, 196 A.2d 68, 69 (N.H. 1963).

191. *Id.*

192. *Id.* at 71.

193. *Id.*

194. *Id.*

IV. OVERLAP OF TWO SYSTEMS

After the court exonerates a person of his or her crime, the issue of the lost inheritance remains.¹⁹⁵ The civil and criminal realms of the law remain separate, but now the presumption of feloniously causing the death of the decedent becomes erroneous due to DNA evidence or other exonerating evidence.¹⁹⁶ This situation highlights the flaws within two systems: compensation statutes and slayer statutes.¹⁹⁷ In most states, compensation statutes for exonerees are grossly inadequate, and slayer statutes do not account for the possibility of exonerated individuals to regain inheritances or life insurance benefits.¹⁹⁸

The interest in keeping inheritance and other benefits out of the hands of murderers must be squared with the rights of exonerated individuals who were stripped of inheritance after they were accused of murder.¹⁹⁹ A person finally proves his or her innocence, yet the battle continues.²⁰⁰ The person may wish to recover the lost inheritance he or she forfeited.²⁰¹ Like Noura Jackson, exonerees who sue their families may not obtain the justice they seek.²⁰² While exonerees attempt to rebuild their lives, they must simultaneously face their families in court to fight for what they lost.²⁰³ Most states already face challenges of compensating the wrongfully convicted.²⁰⁴ No state has a plan for exonerees who lost inheritances or life insurance other than suing the families.²⁰⁵

A. *Compensating Exonerees*

When a person is exonerated of a crime through DNA evidence, he or she gains freedom but is beholden to the state's compensation statutes.²⁰⁶

195. See generally *NRE: Compensation for Exonerees*, THE NATIONAL REGISTRY OF EXONERATIONS (Sept. 11, 2017), <http://www.law.umich.edu/special/exoneration/Documents/Compensation%20for%20Exonerees%20Primer.pdf> (exonerees continue to be shafted by society through inadequate compensation statutes), archived at <https://perma.cc/SZA7-TH7P>.

196. See generally Ion Meyn, *The Unbearable Lightness of Criminal Procedure*, 42 AM. J. CRIM. L. 39, 41 (2014) (highlighting the different consequences of the criminal and civil systems in United States jurisprudence).

197. See *id.*

198. See *81% of Exonerated People Who Have Been Compensated Under State Laws Received Less than the Federal Standard, New Innocence Project Report Shows*, INNOCENCE PROJECT (Dec. 2, 2009), <https://www.innocenceproject.org/81-of-exonerated-people-who-have-been-compensated-under-state-laws-received-less-than-the-federal-standard-new-innocence-project-report-shows/>, archived at <https://perma.cc/3C76-PHZ6>.

199. See Bazelon, *supra* note 1.

200. See *id.*

201. Ruppel & Valiente, *supra* note 10.

202. Bazelon, *supra* note 1.

203. See *id.*

204. See generally THE NATIONAL REGISTRY OF EXONERATIONS, *supra* note 195.

205. See Broach, *supra* note 9.

206. THE NATIONAL REGISTRY OF EXONERATIONS, *supra* note 195.

Among jurisdictions, the range of possible payment schemes varies widely.²⁰⁷ Florida allows \$50,000 per year of wrongful incarceration with a maximum of \$2 million payout, while California provides a maximum of \$100 per day in prison in its statute.²⁰⁸ The disparity between statutes demonstrates a lack of unity among states regarding how to treat the wrongfully convicted.²⁰⁹ The compensation process often takes years.²¹⁰ While nothing can make up for the years spent in prison, states should reexamine their compensation statutes and take the first step of rebuilding lost lives.²¹¹

B. Facing the Harshness of Slayer Statutes

Slayer statutes provide harsh consequences despite low standards of burden.²¹² In a civil proceeding deciding the disposition of the decedent's estate, a family member or interested party must assert the slayer statute and prove by a preponderance of the evidence that the individual is criminally responsible for, or brought about the death of the decedent.²¹³ Most states require that the killing be felonious or intentional.²¹⁴ Some jurisdictions, like the District of Columbia, include negligent killings in their slayer statutes.²¹⁵ Even if a court overturns the murder conviction, a reversal does not affect the civil judgment.²¹⁶

V. SOLUTIONS

Aside from suing their families for lost inheritance, exonerees should be able to exercise more tenable and cost-effective methods of compensation.²¹⁷ While compensation statutes may only cover part of the solution, the state

207. THE NATIONAL REGISTRY OF EXONERATIONS, *supra* note 195.

208. THE NATIONAL REGISTRY OF EXONERATIONS, *supra* note 195; *see also Wrongful conviction compensation statutes*, CNN, <http://www.cnn.com/interactive/2012/03/us/table.wrongful.convictions> (last visited Feb. 6, 2018), archived at <https://perma.cc/H6R3-32JH>.

209. *Compensating the Wrongfully Convicted*, INNOCENCE PROJECT, <https://www.innocenceproject.org/compensating-wrongly-convicted/> (last visited Jan 21, 2018), archived at <https://perma.cc/HC7W-BLZU>.

210. THE NATIONAL REGISTRY OF EXONERATIONS, *supra* note 195.

211. *See generally* Deborah Mostaghel, *Wrongfully Incarcerated, Randomly Compensated—How to Fund Wrongful-Conviction Compensation Statutes*, 44 IND. L. REV. 503, 522 (2011) (freeing an innocent person from prison is not the final step in compensation).

212. *See* Spivack, *supra* note 113, at 208.

213. *See* Spivack, *supra* note 113, at 217.

214. *See* Spivack, *supra* note 113, at 156.

215. *See* Spivack, *supra* note 113, at 158; D.C. CODE ANN. § 19-320 (West 2012).

216. *See generally* Ion Meyn, *The Unbearable Lightness of Criminal Procedure*, 42 AM. J. CRIM. L. 39, 41 (2014) (highlighting the different consequences of the criminal and civil systems in United States jurisprudence).

217. *See infra* Parts A–E.

should provide more relief to wrongfully convicted individuals.²¹⁸ Legislatures must ensure that compensation statutes are robust and fair.²¹⁹ With the rising numbers of exonerations in recent years, the need for more robust compensation statutes should be at the forefront of state legislatures' agendas.²²⁰ If state legislatures fail to improve their compensation statutes, then the states should contribute to the legal fees if the exoneree chooses to sue his or her family.²²¹ When a person spends years behind bars, he or she often lacks the skills or resources to successfully navigate a lawsuit.²²² The person may also choose to sue the government in tort instead of the family.²²³ Some slayer statutes allow the statute to go into effect once appeals are exhausted or stay the proceeding pending final judgment from the criminal case.²²⁴

A. Sue the Family

The conventional solution for people like Noura Jackson is to sue their families.²²⁵ This option risks interpersonal and interfamilial conflict.²²⁶ When exonerees are put in a position where filing a lawsuit against their family is the only option, the divisions originating from the conviction and time spent in prison only deepen.²²⁷ At the moment, this is the only solution for exonerees.²²⁸ After an individual is exonerated of murder, the main goal should be reintegration into society and establishing a normal life.²²⁹ Alternative dispute resolution mitigates the stress of typical litigation, but more options should be available to exonerees who lost their inheritances.²³⁰

218. See *infra* Parts C, D.

219. See *infra* Part B.

220. See generally NRE: *Compensation for Exonerees*, THE NATIONAL REGISTRY OF EXONERATIONS (Sept. 11, 2017), <http://www.law.umich.edu/special/exoneration/Documents/Compensation%20for%20Exonerees%20Primer.pdf> (exonerees continue to be shafted by society through inadequate compensation statutes), archived at <https://perma.cc/SZA7-TH7P> (private bills passed in state legislatures are uncommon).

221. See *infra* Part C.

222. PBS NEWSHOUR, *supra* note 44.

223. See *infra* Part D.

224. See *infra* Part E.

225. Broach, *supra* note 9.

226. See generally Daniel Taylor, *5 Things to Consider Before Suing Your Relative*, FINDLAW (Sept. 10, 2014, 7:00 AM), http://blogs.findlaw.com/law_and_life/2014/09/5-things-to-consider-before-suing-your-relative.html (suing a family member may cause more conflict).

227. See generally Erik Encarnacion, *Why and How to Compensate Exonerees*, 114 MICH. L. REV. FIRST IMPRESSIONS 139 (2013) (addressing the broader fairness themes of compensation schemes).

228. Broach, *supra* note 9.

229. See INNOCENCE PROJECT, *supra* note 198.

230. See *infra* Parts B–E.

B. More Robust Compensation Statutes

If more innocent people are being released from prison, state laws should provide a clearer path to recover, even if it is not the actual inheritance amount.²³¹ Legislatures should enact better compensation schemes for the wrongfully accused.²³² Article 3 of the European Convention on Human Rights requires compensation of wrongful convictions.²³³ In fact, these types of cases are sometimes classified as human rights violations and appear before the European Court of Human Rights (HUDOC).²³⁴ In a notable HUDOC case, an Armenian citizen was charged with rape and murder after providing a confession under duress.²³⁵ The police fabricated other evidence and a court sentenced him to fifteen years in prison.²³⁶ After being exonerated, the Armenian government compensated the wrongfully incarcerated man for emotional distress, anxiety, and inconvenience, among other intentional torts.²³⁷ He spent five years and six months incarcerated for crimes he did not commit.²³⁸ Even when national laws do not provide for non-pecuniary damages, the wrongfully convicted individual still suffers those damages as well.²³⁹

The United States lacks a clear and mandatory compensation scheme.²⁴⁰ Without one, the disparity between states remains stark.²⁴¹ Modes of compensation include civil lawsuits, private bills, and other means.²⁴² Without a comprehensive and uniform scheme, exonerees remain tethered to whatever statute currently exists in their states.²⁴³ The federal government recommends that exonerees be compensated up to \$50,000 per year, but 81% of eligible people receive far less.²⁴⁴ On average, most exonerees wait three years to receive any compensation.²⁴⁵ Some states require a governor's pardon to receive compensation.²⁴⁶ This decision may be motivated by

231. See generally Deborah Mostaghel, *Wrongfully Incarcerated, Randomly Compensated—How to Fund Wrongful-Conviction Compensation Statutes*, 44 IND. L. REV. 503, 523–24 (2011) (analyzing the challenges of funding and executing compensation schemes).

232. *Id.*

233. *Innocence and Wrongful Conviction*, CORNELL LAW SCHOOL (Mar. 14, 2016), <http://www.deathpenaltyworldwide.org/wrongful-convictions.cfm#a1-2>.

234. *Id.*

235. *Poghosyan and Baghdasaryan v. Armenia*, 2012-III Eur. Ct. H.R. 511.

236. *Id.*

237. CORNELL LAW SCHOOL, *supra* note 233.

238. *Poghosyan and Baghdasaryan*, no. 22999/06, § 2.

239. *Id.*

240. CORNELL LAW SCHOOL, *supra* note 233.

241. See INNOCENCE PROJECT, *supra* note 198.

242. *See id.*

243. *See id.*

244. *See id.*

245. *See id.*

246. 705 ILL. COMP. STAT. ANN. 505/8 (West 2009); MD. CODE ANN., STATE FIN. & PROC. § 10-501 (West 2017); N.C. GEN. STAT. ANN. § 148-82 (West 2012); TEX. CIV. PRAC. & REM. CODE § 103.001 (West 2011).

politics and the desire to ensure the public that the right people receive repayment.²⁴⁷

Often, money fails to undo the years of pain and suffering an innocent person experiences behind bars.²⁴⁸ Social services and non-monetary compensation present challenges that are both hard to quantify and difficult to implement.²⁴⁹ State legislatures often stop at monetary compensation without considering holistic solutions.²⁵⁰ Most exonerees leave prison without support, transportation, insurance, or education, among other essential services.²⁵¹ Only ten states mention services in their compensation statutes.²⁵² According to the Innocence Project, a meager fifteen exonerees have received social support through these services.²⁵³ Holistic measures would ensure that these people are being repaid with more than just money.²⁵⁴ The goal should be to reintroduce exonerees into society with the least number of barriers.²⁵⁵ The problem with some post-incarceration vocational programs is that exonerees do not meet the key qualification of having a criminal record.²⁵⁶ For example, a New Jersey man named David Shepard was exonerated after eleven years in prison, but was ineligible for post-incarceration services because the law required a criminal conviction.²⁵⁷ A separate program for exonerees or a special exemption in the current programs would solve this problem.²⁵⁸

C. *The Government Fools (Part of) the Bill*

State legislatures should pass bills requiring states to partially contribute to compensating an individual who wants to sue his or her family for lost inheritance.²⁵⁹ While these types of funds are costly for states, a fund may help wrongfully convicted individuals pay for future lawsuits.²⁶⁰ If a person faces this challenge, the state should compensate exonerees for depriving

247. Shawn Armbrust, *When Money Isn't Enough: The Case for Holistic Compensation of the Wrongfully Convicted*, 41 AM. CRIM. L. REV. 157, 166 (2004).

248. *Id.* at 182.

249. *See generally id.* (highlighting the inadequacy of existing remedies for the wrongfully convicted).

250. *Id.* at 173.

251. *See* INNOCENCE PROJECT, *supra* note 198.

252. *See id.*

253. *See id.*

254. *See* Armbrust, *supra* note 247, at 173.

255. *See id.* at 175.

256. *See id.*

257. *Id.* at 175–76.

258. *See generally id.* at 173 (emphasizing that most exonerees lack experience handling money, while incorporating social services provide a better solution for this population).

259. *See generally* Edwin Borchard, *State Indemnity for Errors of Criminal Justice*, 21 B.U. L. REV. 201, 201 (1941) (recognizing the need for legislation in the area of compensating the wrongfully convicted).

260. *See* Mostaghel, *supra* note 211, at 544.

them of their fundamental right to freedom.²⁶¹ Although rare, a state may be ordered to pay attorney's fees which could help compensate with some amount of money.²⁶²

As early as 1941, the public acknowledged that compensating wrongfully incarcerated individuals was essential for preventing the further miscarriage of justice.²⁶³ Today, determining who bears the cost of this tragic mistake remains a problem.²⁶⁴ Normally, fines imposed during sentencings contribute to victims' damages funds.²⁶⁵ However, in exoneration cases, a philosophical approach involves taxpayers in the compensation scheme.²⁶⁶ Edwin Borchard, a former Yale Law School professor, provides some insight into this predicament for taxpayers and legislators:

We have recognized, in certain spheres of activity, that it is unfair to the individuals injured that they alone should bear the entire loss resulting from the accident, and therefore society distributes the loss among its members. Where the common interest is joined for a common end-maintaining the public peace by the prosecution of crime-each individual member being subject to the same danger (erroneous conviction), the loss when it occurs should be borne by the community as a whole and not by the injured individual alone.²⁶⁷

Forcing taxpayers to pay for matters better suited for private litigants may trigger negative political consequences.²⁶⁸ Taxpayers bear no relation to these inheritance matters and they may oppose increasing taxes to fund special compensation statutes for exonerees.²⁶⁹

D. An Exoneree Sues the Government in Tort in Lieu of Family Suit

Exonerees who lost their inheritances should sue the government in tort rather than their families.²⁷⁰ In some states, a showing of legal disability apart from imprisonment may entitle a prisoner to toll the statute of limitations.²⁷¹ Exonerees can convince a court to toll the statute of limitations if they can prove that the wrongful imprisonment prevented them from bringing the

261. Borchard, *supra* note 259, at 208.

262. See Stephanie Slifer, *How the Wrongfully Convicted are Compensated for Years Lost*, CBS NEWS (Mar. 27, 2014, 6:33 AM), <https://www.cbsnews.com/news/how-the-wrongfully-convicted-are-compensated/>, archived at <https://perma.cc/MAFA-2YAM>.

263. Borchard, *supra* note 259, at 201.

264. Mostaghel, *supra* note 211, at 523.

265. *Id.*

266. Borchard, *supra* note 259, at 208.

267. *Id.*

268. Lawrence Rosenthal, *A Theory of Government Damages in Liability: Torts, Constitutional Torts, and Takings*, 9 U. PA. J. CONST. L. 797, 798–99 (2007).

269. *Id.*

270. See Mostaghel, *supra* note 211, at 537.

271. Gordon v. Connell, 545 N.W.2d 722, 724 (Neb. 1996).

action against the state.²⁷² However, many states do not recognize tolling the statute of limitations for prisoner claims.²⁷³ As a solution, state legislatures may carve out an exception for this small group of people who neither fall under the discovery rule nor another applicable scenario that tolls the statute of limitations.²⁷⁴

A person may choose to settle with his or her family, but suing the government for exactly what was lost—the amount of the inheritance—may offer superior relief.²⁷⁵ Unlike private tortfeasors, the government does not convict these exonerees for profit, but rather for political or other purposes.²⁷⁶ While sovereign immunity may impede these efforts, some states provide a waiver of immunity for some types of suits.²⁷⁷ It is unclear whether suing the government in tort is a feasible option in light of doubt expressed by some courts.²⁷⁸

E. Nobody Receives the Money Until Appeals are Exhausted

Another possible solution is putting the inheritance money in a fund until appeals are exhausted.²⁷⁹ According to the Bureau of Justice Statistics, the median length of an appeal process from notice of appeal to final resolution is 421 days.²⁸⁰ These statistics do not include death penalty cases, and the length of the process varies by the type of court and whether the case was reviewed on the merits.²⁸¹ The main problem with this solution is the family must wait to recover the inheritance and the money will sit in a vault until the presumed killer exhausts his or her appeals or completes a re-trial.²⁸² From the perspective of the family seeking the inheritance, sequestering the money may amount to an unusual form of governmental taking.²⁸³ Although

272. See generally *Bianchi v. Bellingham Police Dept.*, 909 F.2d 1316, 1319 (9th Cir. 1990) (prisoner entitled to state tolling the statute under Washington law). *Contra* *Little v. Smith*, 943 S.W.2d 414, 420 (Tex. 1997).

273. *Gordon*, 545 N.W.2d at 724.

274. See *Bianchi*, 909 F.2d at 1319.

275. *Ruppel & Valiente*, *supra* note 10.

276. *Mostaghel*, *supra* note 211, at 510.

277. *State Sovereign Immunity and Tort Liability*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Sept. 8, 2010), <http://www.ncsl.org/research/transportation/state-sovereign-immunity-and-tort-liability.aspx>, archived at <https://perma.cc/74EY-GJ94>.

278. See *Rosenthal*, *supra* note 268, at 799.

279. See generally *Mostaghel*, *supra* note 211 (outlining various funding options for the wrongfully convicted).

280. Nicole L. Walters, et al., *Criminal Appeals in State Courts*, U.S. DEPARTMENT OF JUSTICE (Sept. 2015), <https://www.bjs.gov/content/pub/pdf/casc.pdf>, archived at <https://perma.cc/K7YU-XMEL>.

281. *Id.*

282. See *Thomasi McDonald & Anne Blythie, Jason Young Won't Get a Third Trial in 2006 Slaying of His Pregnant Wife*, THE NEWS & OBSERVER (Aug. 29, 2017, 6:25 PM), <http://www.newsobserver.com/news/local/crime/article170089137.html>, archived at <https://perma.cc/TD9P-FG67>.

283. See *Asset Forfeiture Abuse*, ACLU, <https://www.aclu.org/issues/criminal-law-reform/reforming-police-practices/asset-forfeiture-abuse> (last visited Nov. 10, 2017), archived at <https://perma.cc/2RV2-6GUM>.

it is not a perfect solution, delaying the process ensures more fairness than the current compensation statutes.²⁸⁴

In reality, this would not be a tenable option.²⁸⁵ This would be both unfair, illogical, and would intensify the pain that victims' families already experience during appeals and new trials.²⁸⁶ Often, DNA evidence is re-examined, or evidence of prosecutorial misconduct or false confessions emerge years or decades after the final judgment.²⁸⁷ The courts must balance the rights of the exonerees with the need for finality in probate.²⁸⁸

A takings-based argument emphasizes the constitutional angle of compensating the wrongfully convicted.²⁸⁹ The government should compensate exonerated individuals because the losses they suffered directly resulted from the government misappropriating their property without just compensation.²⁹⁰ Many European countries use this model in their compensation schemes.²⁹¹ In the wrongful incarceration context, the government seized the wrongfully convicted person's liberty.²⁹² Thus, the government should compensate the individual for lost time and labor.²⁹³ Eminent domain principles protect labor as a form of property.²⁹⁴ Therefore, the government wrongfully took labor from convicted individuals through incarceration.²⁹⁵ The takings argument is more relevant for the exonerated individuals who lost their inheritance.²⁹⁶ The government should compensate individuals for their lost property that was taken without any compensation.²⁹⁷ The goals of compensation include social insurance and morality, so the incentives outweigh the actual numbers.²⁹⁸

284. PBS NEWSHOUR, *supra* note 44.

285. Rosenthal, *supra* note 268, at 799.

286. See McDonald & Blythie, *supra* note 282.

287. See *Changes in DNA Exoneration Over Time*, NATIONAL REGISTRY OF EXONERATIONS (Apr. 18, 2016), http://www.law.umich.edu/special/exoneration/Documents/Changes_In_DNA_Exonerations.pdf.

288. Little v. Smith, 943 S.W.2d 414, 417 (Tex. 1997).

289. Howard Master, Note, *Revisiting the Takings-Based Argument for Compensating the Wrongfully Convicted*, 60 N.Y.U. ANN. SURV. AM. L. 97, 97 (2004) (citing Edwin M. Borchard, *European Systems of State Indemnity for Errors of Criminal Justice*, 3 J. CRIM. L. & CRIMINOLOGY 684, 685 (Mar. 1913)).

290. *Id.*

291. See Edwin Borchard, *European Systems of State Indemnity for Errors of Criminal Justice*, 3 J. AM. INST. CRIM. L. & CRIMINOLOGY 684, 687 (1913).

292. Master, *supra* note 289, at 117.

293. See *id.*

294. See *id.*

295. *Id.*; see also U.S. v. Lewis, 342 F. Supp. 833, 835–36 (E.D. La. 1972) (wrongful imprisonment is compensable).

296. See Master, *supra* note 289, at 138.

297. See *id.*

298. See *id.* at 111.

VI. CONCLUSION

Some overlaps may never be resolved without legislative intervention because they involve two different goals.²⁹⁹ The most satisfactory solution to the exoneree-beneficiary problem is pushing some of the burden back on the state to compensate individuals.³⁰⁰ While this solution may not be personalized to exonerees, it provides a convincing next step in compensating individuals who lost more than their liberty.³⁰¹

In reality, the solution to the exoneree-beneficiary problem should encompass a combination of solutions.³⁰² While every solution contains shortcomings, the exoneree can choose from a wide range of options apart from suing his or her family.³⁰³ At the moment, exonerees may only sue their families to receive adequate compensation.³⁰⁴ More options increase the likelihood exonerees will be made whole.³⁰⁵

Inevitable gaps appear in statutes that do not account for every situation.³⁰⁶ As new circumstances arise, legislatures should address new issues to ease uncertainty.³⁰⁷ English jurist Sir William Blackstone coined the famous legal maxim: “It is better that ten guilty persons escape than that one innocent suffer.”³⁰⁸ This sentiment remains in American criminal jurisprudence today.³⁰⁹ Although every legal system contains flaws, checks and solutions should be in place for people to seek redress for novel wrongs.³¹⁰ Even if the wrongs were not perpetrated maliciously or intentionally, people who lose their freedom deserve more options when seeking redemption for both freedom and needlessly lost benefits.³¹¹

299. See Meyn, *supra* note 216, at 41.

300. See *supra* Part V.

301. See *supra* Part V.

302. See *supra* Part V.

303. See *supra* Part V.

304. See Broach, *supra* note 9.

305. See *supra* Part V.

306. Compare TEX. EST. CODE ANN. § 201.051 (West 2014) (if child has intended parents, “the child is the child of the intended mother”), with TEX. FAM CODE ANN. § 160.754 (West 2014) (intended parents defined as individuals who enter into an agreement providing that the individuals will be the parents of a child born to a gestational mother by means of assisted reproduction, regardless of whether either individual has a genetic relationship with the child) (the Texas statutes do not account for the unmarried woman who obtains a child through a surrogate mother, since intended parents is plural).

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308. See Alexander Volokh, *n Guilty Men*, 146 PENN. L. REV. 173, 174 (1997).

309. See *id.* at 176–77.

310. See *supra* Part V.

311. See *supra* Part V.