

# For many, no compensation

**DEBT:** State standards — and the legal assistance that the wrongly convicted receive — vary widely.

BY SHARON COHEN  
THE ASSOCIATED PRESS

After A.B. Butler Jr. was cleared of rape and freed from prison two years ago, the state of Texas granted him a pardon and gave him a check for its mistake. The value of 16½ years behind bars: About \$4.60 a day.

The check totaled \$27,854 for more than a third of his life wasted, while his parents died and his marriage collapsed.

"It should have been more and it could have been more," sighs Butler, a 47-year-old construction worker. "But I just look at it as a blessing that I'm free. I take what I have and move on. There's always tomorrow and that's what I look forward to."

While Butler's attitude is accepting, his case and a growing number like it raise a thorny question: When innocent prisoners are freed after "paying a debt to society" that was never owed, does society have a debt to them in return?

What these men have found are varying and sometimes inconsistent state standards for paying — and, often, not paying

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—A.B. Butler Jr.

— for the life-changing mistake of putting the wrong person in prison.

An Associated Press review of 110 men whose convictions were overturned by DNA testing shows that where they live, when they were freed and even how skilled their lawyers are greatly influence whether they get compensated and if so, by how much.

"There's no fairness," declares Randy Schaffer, a Houston lawyer who has represented three freed Texas men. "Society has not decided it owes any obligation to those that it sweeps from its midst wrongly."

Only 15 states, along with the District of Columbia and the federal government, have specific laws to compensate the wrongly convicted, according to a review conducted last year by Pace Uni-

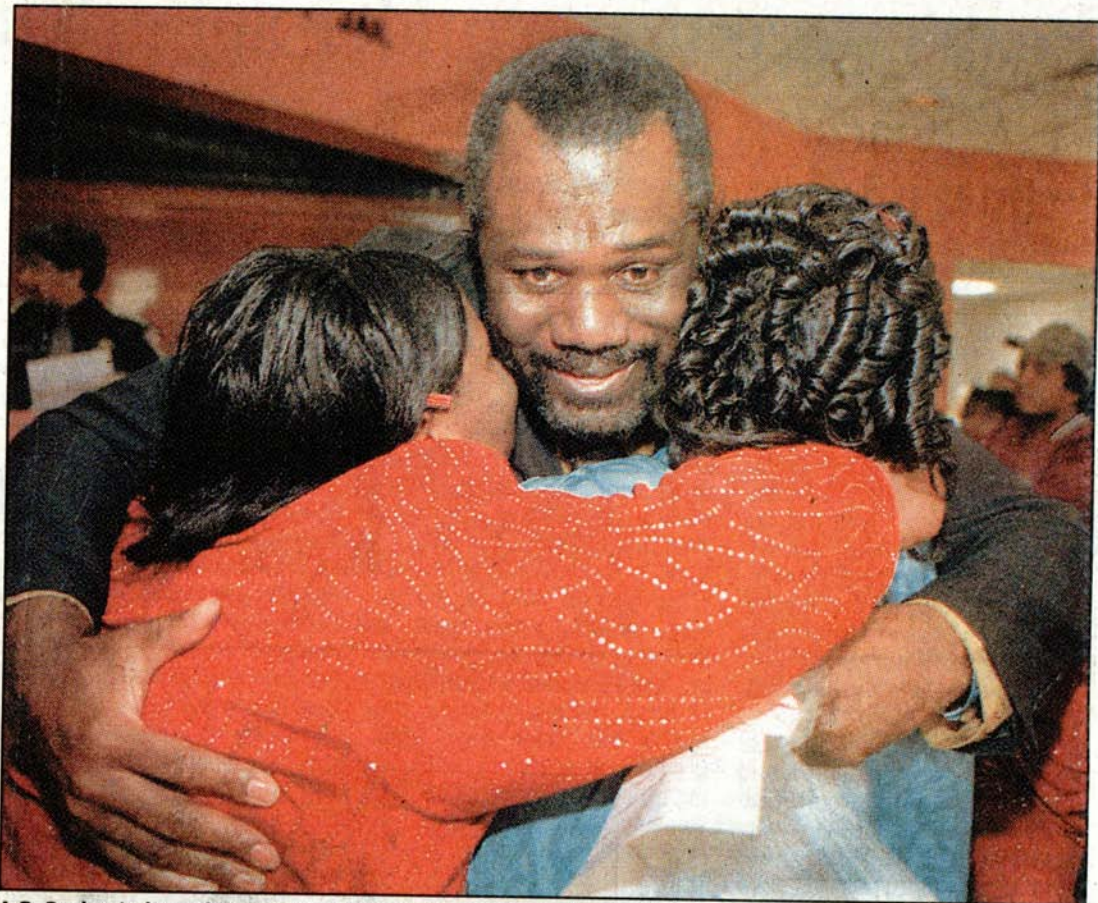
## Putting a price on injustice

Only 15 states, along with the District of Columbia and the federal government, have specific laws to compensate innocent prisoners who have been freed.

Ala.	2001	\$50,000 minimum for each year in jail
Calif.	2000*	\$100 for each day in jail
D.C.	1981	No maximum
Ill.	1945	\$62,400 for five years or less; \$124,800 for five to 14 years; \$145,600 for more than 14 years
Iowa	1997	\$50 per day and lost wages up to \$25,000 a year
Maine	1993	\$300,000
Md.	1963	Actual damages
N.H.	1977	\$20,000
N.J.	1997	Twice the income in the year before jail or \$20,000 per year of incarceration
N.Y.	1984	No limit
N.C.	1947	\$10,000 per year up to \$150,000
Ohio	1986	\$25,000 per year, lost wages, costs and attorney's fees
Tenn.	1984	Actual damages
Texas	2001*	\$25,000 per year up to \$500,000
U.S.	1948	\$5,000 (A pending bill would raise compensation to \$50,000 per year for non-death penalty cases and \$100,000 per year for death penalty cases.)
W.Va.	1987	Fair and reasonable damages
Wis.	1913	\$5,000 per year up to \$25,000

\*Existing law amended

SOURCE: ADELE BERNHARD, PACE UNIVERSITY



A.B. Butler Jr. hugs his sisters as he is released from the Smith County Jail in Tyler, Texas, on Jan. 7, 2000. He served more than 16 years before DNA tests exonerated him in a rape case.

## DEBT: Compensation often is hard to get

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versity associate law professor Adele Bernhard.

"It's not the common person's issue," she says. "We don't think it's going to happen to us or anybody we know."

The AP found 43 of the 110 men have received compensation, ranging from Ben Salazar's \$25,000 in Texas to an extraordinary \$36 million civil settlement shared by four Illinois men

locked up for a total of 65 years.

Thirteen men collected \$1 million or more, from civil suits, state claims or both.

State claims, where available, are the most common form of compensation. In at least five cases, men who had been freed collected money from states with special legislation, sometimes called "moral obligation" bills, written to help a specific person.

Others have pursued civil lawsuits — though cases against law enforcement or governments are very difficult to win.

Prosecutors have absolute immunity for anything done at trial. Police have qualified immunity, though not when it can be proven they deliberately did something wrong, such as conceal exculpatory evidence.