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Jeffrey Gutman

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## COMPENSATION UNDER THE MICROSCOPE: MICHIGAN

### How Long Does It Take to Resolve State Compensation And Civil Rights Claims?

By Jeffrey S. Gutman  
George Washington University Law School

A frequent question posed is how long it takes to obtain wrongful conviction compensation and whether it takes longer to receive a civil rights case recovery than one under a state compensation statute. The working hypothesis has been – quite long and yes. That hypothesis needed to be tested and Michigan was selected as the state to do so. Why Michigan?

Michigan's state compensation statute took effect in 2017. It has been in effect long enough to allow pre-statute exonerees to file and resolve state claims. But, the statute is not so old such that prior processes for resolving claims skew the statistics. There was, however, initial uncertainty over the proper statute of limitations by which a claim must be filed in the Michigan Court of Claims. The Court of Claims' interpretation led to the dismissal of about ten claims. Those were appealed to the Michigan Court of Appeals. Meanwhile, the legislature amended the statute retroactively to impose a more generous statute of limitations. This glitch certainly lengthened the time it took to resolve some state compensation claims.

Nevertheless, Michigan is a good test state because, unlike many states, state compensation claims are filed and decided by a single body – the Court of Claims. The Court of Claims' online docket is reliable and quite clear. It is easy to see when a claim has been filed and when the Court has closed the case. It is possible to obtain the decisions and orders resolving those claims. As of December 31, 2022, there were 156 exonerees from Michigan recorded in the National Registry of Exonerations, the most of all states except for Illinois, Texas, New York, and California. Thus, Michigan offers a relatively recent, well-documented and statistically significant dataset for analysis.

Michigan exonerees can file civil rights lawsuits in federal or state court in Michigan. Using PACER or LEXIS Court Link and the relevant state court online dockets, it was relatively easy to locate these cases and to determine when they started and when they ended. Because the question posed is how long it takes to resolve cases, the clock was started on state claims and civil rights claims as of the date of filing, not the date of exoneration. Generally, the end date for both state compensation and civil rights cases was the date of dismissal on the docket. On a few occasions, there appeared to be litigation unrelated to the exoneree's compensation on the docket. Often these were disputes about attorney's fees. In these cases, the end date selected was the date on which the case appeared to conclude with respect to the exoneree's compensation.

The month and year in which these cases began and ended was then recorded. In a number of cases, court orders were appealed and this, of course, lengthened the time of the litigation. This data was recorded only in cases in which the exoneree won a recovery, not cases in which they lost. Of course, there are also a number of Michigan cases that are pending and

thus remain unresolved. Those cases were excluded from the analysis. In the overwhelming number of cases, both state compensation and civil rights cases, the favorable resolution of the case came as the result of a settlement rather than a verdict by a judge or jury.

The length of the litigation is certainly suggestive, but not clearly indicative of how long it took an exoneree to be compensated. Once there is a judgment or settlement, it naturally takes time to effectuate the payment. It is not possible to determine how long that takes. As a result, the time between filing and dismissal was simply calculated and an average drawn from those totals.

The results are set forth in Table 1 below:

Case	Number	Range	Average
State Compensation	62	1 – 52 months	16.7 months
Civil Rights	28	6 – 88 months	41 months

**Table 1**

As of mid-February, 2023, there were 62 Michigan exonerees who were awarded state statutory compensation. The time between filing and dismissal ranged between one month and 52 months. The average was 16.7 months. It took the 16 exonerees who were not Black an average of 18.1 months to resolve their cases compared to 16.2 months for the 46 Black exonerees.

There were 32 Michigan exonerees who obtained civil rights recoveries. One was apparently resolved without a lawsuit. I could not obtain definitive data on three cases arising from the Benton Harbor scandal. For the remaining 28 Michigan exonerees, the duration ranged from 6 months (the only case filed in state court) to 88 months. The average was 41 months. For non-Blacks, the average duration was 52 months. For Blacks, it was 34 months.

In Michigan, exonerees are permitted to file both state compensation and federal civil rights cases. Michigan law requires civil rights case winners to pay the state back for any state compensation they receive. Only seven Michigan exonerees prevailed in both kinds of cases.

The percentage of state compensation and civil rights case filers in Michigan is quite close to the national average. The percentage of winners in both categories is somewhat below the national average. Why that is in Michigan for state compensation claims will be the subject of a separate paper. Thus, the number of compensation winners in the second column of Table 1 is, comparatively, not an outlier.

The average time of resolution confirmed my general hypothesis that state compensation claims do not take as long as civil rights cases. It is worth examining that hypothesis somewhat more closely in Michigan. What could explain that substantial difference?

In Michigan, state compensation claims and civil rights claims are filed with a single decisionmaker – a judge – who (unless the case settles) decides whether the defendant is liable and, if so, what the compensation should be. The Michigan Court of Claims is a judicial body within the Michigan Court of Appeals. The Court of Claims is staffed by four Court of Appeals judges who are assigned to hear claims brought against the state of Michigan and its agencies. It has traditional litigation procedure, from the filing of a complaint, motions practice, discovery and, if needed, trial. Jury trials are not permitted in the Court of Claims, but that is the only significant procedural difference from a federal district court. At least in theory, there is nothing about the nature of the court and its procedure that would itself explain the difference.

What might explain it is somewhat conjectural, but there are a number of likely reasons. Perhaps most important, the central difference between the two categories of cases is that, in civil rights cases, the plaintiff must prove not only that they were wrongly convicted, but that the conviction was caused by the defendants' unconstitutional conduct. State compensation claims are strict liability cases in the sense that the plaintiff does not need to prove why they were wrongly convicted.

The additional complexity of civil rights cases goes a long way to explain why the national percentage of civil rights cases which result in compensation (almost 52%) is lower than the percentage in state compensation claims (almost 74%). This complexity, naturally, has a time dimension. Civil rights cases will typically involve more extensive discovery and discovery is often contentious and time-consuming.

Moreover, unlike state compensation cases in which the sole defendant is the state, civil rights cases are almost always filed against multiple defendants – police officers, prosecutors, and municipalities. Not only is discovery propounded against each of the defendants, but it is very common for one or more civil rights case defendants to file motions to dismiss the complaint and, if unsuccessful, motions for summary judgment, typically after discovery has concluded. These motions are very commonly voluminous and thus take time to decide.

Unlike state compensation claims, which involve a simple claim against the state, civil rights cases commonly involve many claims based on a number of legal theories. Motions to dismiss and motions for summary judgment typically address multiple claims for relief, making them additionally complicated. If that is not enough, if an individual defendant moves to dismiss or moves for summary judgment on the ground that they are immune from suit and they lose, they are entitled to an immediate appeal. Naturally, this lengthens the duration of the case.

The substantive and procedural complexity of civil rights cases must also be considered in their remedial context. These are very high stakes cases. Of course, by their nature, these cases claim that the unconstitutional acts of people and/or municipalities caused a wrongful conviction and the defendants naturally wish to defend against such claims. These are also potentially multi-million dollar cases. The Devontae Sanford case, for instance, settled recently for \$7,500,000, nearly \$1,000,000 per year of imprisonment. The average annual recovery in civil rights cases in Michigan is \$248,000. Thus, the parties have clear financial incentives to strenuously fight these cases.

Thus, in Michigan, the six-month duration civil rights case was an outlier. In, fact, there were only three other cases that lasted less than two years. Wrongful conviction civil rights cases involve a perfect storm of factors that all point to long cases – high-stakes, substantive and procedural complexity, potentially explosive allegations regarding liability and complicated questions of damages. On average, they are almost necessarily bound to take longer lasting than any alternative.

There are sound reasons to think that state compensation claims in Michigan (and elsewhere) would not take as long. In these cases, the key issue is one of factual innocence. That, of course, can be and is contentious in many cases, but not all. In some, the best example being DNA cases, innocence is not in dispute. In addition, the stakes are lower. State compensation is, in almost every state, capped and/or prescribed at a set amount per year of incarceration. In Michigan, damages are set by statute. The average annual payout in Michigan state compensation cases is \$44,000. Thus, it stands to reason that at least some state compensation cases settle fairly quickly.

It is possible that another factor is at play in Michigan. A relatively small group of plaintiff's lawyers bring state compensation cases in Michigan and one in particular, Wolfgang Mueller, brings most of them. The state is represented by a small group of attorneys in the Attorney General's Office. As a result, this fairly small group of lawyers is both very experienced in these cases and faces each other frequently.

It is hard to know how this reality cuts. Familiarity can breed contempt. But, perhaps it is more likely this experience and familiarity enables these attorneys, who naturally zealously represent their clients' interests, to more quickly and accurately assess the strengths and weaknesses of their cases and perceive how their opponents view them. In addition, this experience informs counsel of the amount of prior case settlements. A narrower range of uncertainty may yield faster settlements.

It is also true that there is a plaintiff's bar in Michigan for civil rights cases, but it is larger, as is a group of law firms or county attorney's offices representing defendants. In no way do I suggest that these attorneys lack the experience of those involved in state compensation cases, but there may be less familiarity because the range of participants is broader.

While this study in Michigan revealed the expected in terms of average case duration,<sup>1</sup> the range of durations is extremely broad. Naturally, a plaintiff is going to want to know how long their case will last. There is no easy answer to that question in Michigan. This range and the average, moreover, casts light on a harsh reality. Wrongful conviction compensation cases, state statutory and federal civil rights, generally take a long time to resolve favorably (recall that these statistics are drawn from cases with favorable outcomes for the plaintiff).

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<sup>1</sup> We had no particular reason to expect that there would be a racial disparity in the resolution of these cases. Even so, it was curious that, on average, cases involving Black plaintiffs resolved more quickly than non-Blacks.

For exonerees with lengthy incarcerations and uncertain prospects upon release, time is not on their side. Immediate needs for vocational training, housing, health care and other necessities may go unmet for a considerable period of time. In the worst cases, this could lead to crimes of desperation. In other cases, the strain, delay and difficulty of contentious litigation could lead some plaintiffs to settle for less money than they might prefer or deserve. A system that is slow in compensating exonerees who are deserving of relief may be yet another form of injustice.