

# Panel I

Testimony submitted by Kathleen Lucas

## **Compensation for Exonerees**

Among the most frequently asked questions about exonerations center on compensation: How does it work? How many get it? How much do they get? This section of the website addresses these questions. Our “Compensation Under the Microscope” series by Professor Jeffrey Gutman examines particular states and policies on this issue. Our “Compensation By the Numbers” data, which will be periodically updated, contains Professor Gutman’s compensation data.

### **How are exonerees compensated?**

Exonerees can receive compensation in three ways, which are, in some states, mutually exclusive.

**The first relies on state statutes** that provide compensation for wrongful imprisonment. **As of June 2022, 38 states and the District of Columbia had adopted compensation statutes.**

These statutes vary from state to state. Generally, they set forth the substantive qualifications for compensation. They are no-fault statutes, meaning that the claimant does not need to prove that the state did something unlawful that caused the wrongful conviction. They do, however, require claimants to demonstrate their innocence, either by standards of a preponderance of the evidence or by clear and convincing evidence.

Most require the underlying crime for which the claimant has been exonerated to be a felony and that the claimant was incarcerated following conviction. Some statutes require claimants to show that they did not cause or contribute to their prosecution or conviction (by pleading guilty, for example). A few states require that the claimant have a gubernatorial pardon, that the exoneration be based solely on DNA evidence, or that claimants not have prior felony convictions.

The statutes assign a decisionmaker for such claims, most commonly a state trial court judge, but sometimes a state claims board or administrative agency. They set forth the procedures by which a claim is made and decided. These state compensation statutes also establish a compensatory metric. In most states, there is an assigned yearly compensation amount. In some states, the statutes set a total maximum payment. Some states pay the amounts over time through an annuity or partial annual payments. A growing number of states also provide a successful claimant non-compensatory relief, such as vocational training, access to health care, educational benefits, and housing support. Some states condition awards on the claimant’s waiver of their right to file lawsuits against particular governmental entities or actors, or require the claimant to repay the state should they later seek and obtain a higher award through litigation.

**The second relies on civil lawsuits.** The vast majority of these lawsuits are filed in federal court. Generally, they allege that certain state actors, such as prosecutors, police, or forensic analysts, engaged in forms of unconstitutional misconduct that violated the exonerees’ federal rights to due process and caused their wrongful convictions. Some

allege, in addition, that certain governmental policies and customs were responsible for the wrongful convictions.

Some lawsuits are filed in state courts and often make state tort claims, such as malicious prosecution, wrongful imprisonment, or attorney malpractice. Often, these state law tort claims are made in federal civil rights cases as well. Unlike claims under state compensation statutes, these lawsuits can only succeed if the plaintiff demonstrates fault and causation – that a state actor breached some constitutional norm or state common law duty – and that the breach caused the wrongful conviction. Thus, recoveries in such cases are less frequent than in state statutory claims.

An exoneration is necessary, but not sufficient, for a civil rights case recovery. For example, in a wrongful conviction caused by an erroneous cross-racial identification, if the police coerced or misled the victim into identifying the defendant, that could form the basis of a viable federal civil rights case. If there was no such coercion, and the victim honestly, but mistakenly, misidentified the defendant, there likely would not be a viable civil rights case. However, state statutory compensation could be available if the claimant proves their innocence.

Federal civil rights cases fail when a judge, typically in response to the defendants' motion to dismiss or for summary judgment, concludes that the plaintiff has not sufficiently alleged or demonstrated unconstitutional misconduct and causation, or that the named defendants are immune from suit. The substantial majority of recoveries in these cases follow settlements with some or all of the defendants. Jury trials, resulting in verdicts for the plaintiff or defendants, are much less common than pre-trial dismissals or settlements.

**The third, and rarest, form of compensation is a private bill.** State legislatures occasionally pass laws that grant compensation to specific individuals. These private bills were never common, but they have become much less frequent as more states have adopted state compensation statutes. Obtaining compensation through a private bill is difficult. It typically requires both an influential legislative advocate and a compelling narrative. These private bills should not be confused with provisions in some state statutes, like those of California and Illinois, that require the state legislature to approve an award of compensation recommended or made by an administrative agency or state court of claims.

### **How long does it take to get compensated?**

Just as state compensation statutes differ from state to state, so does the length of time to obtain compensation. As a very general rule, it takes less time to receive state compensation than a civil rights award.

Some states, however, require a multi-step process for compensation that begins by obtaining a certificate of innocence from the convicting court, followed by filing a claim with an agency or claims court. After a claim is granted, legislative approval may be required. How long this takes depends on the procedure by which these claims are decided and whether the state challenges the claimant's actual innocence. The measure of possible

damages tends not to be litigated as most states prescribe the compensatory amount. A small number of states offer a modest emergency grant pending the outcome of the claims procedure.

Civil rights cases often take years to litigate as they require extensive discovery and motions practice. Decisions to deny motions to dismiss on immunity grounds are immediately appealable, and often are. Beginning in 2020, the COVID-19 virus outbreak slowed the courts and jury trials were delayed. In a small number of cases, most commonly in New York, pre-filing settlements have resolved potentially strong cases for plaintiffs at amounts less than might have resulted from extensive litigation.

On average, successful federal civil rights cases result in recoveries that are between four and five times greater per year of incarceration than those in state statutory cases. Many exonerees have received multi-million-dollar settlements or verdicts. It is frequently said that civil rights cases in this area are hard to win, but the data show that just over half of the cases filed result in some recovery.

### **How many exonerees have been compensated?**

Our new “Compensation By the Numbers” section provides this data. It will be updated frequently. Professor Gutman has researched whether each person listed on the Registry, whether wrongly convicted in a federal or state court, has sought and received state statutory compensation and/or a recovery from a civil lawsuit. The data lags the postings to the Registry by a few months. At the time of this writing, 953 state compensation awards had been made. Three exonerees had received compensation under the federal compensation statute and about 630 people had received a recovery as a result of (or in anticipation of) a civil lawsuit. About 285 exonerees had received a civil case recovery and state statutory compensation. All told, this amounts to somewhat less than half of those on the Registry.

### **How much are exonerees compensated?**

Compensation rates under state statutes vary considerably. Wisconsin, for example, pays only \$5,000 per year of incarceration up to \$25,000. Texas, in contrast, pays \$80,000 per year as a lump sum plus an annual annuity. Since 2004, the federal compensation statute provides \$50,000/year for exonerees not receiving death sentences. Many state statutes are generally about the same as the federal metric, with some permitting increases for inflation.

The range of outcomes is enormous in civil litigation. One of the largest lawsuit verdicts is believed to be the \$101.7 million awarded to [Peter Limone](#), [Joseph Salvati](#), [Louis Greco](#), and [Henry Tameleo](#) in 2007. (Salvati and Tameleo were exonerated posthumously, and the awards went to their estates.) One of the largest verdicts for a single exoneree was \$41 million awarded to [Jeffrey Deskovic](#) in 2014. (The actual payout was limited to \$10 million by a pretrial agreement.) A jury awarded Thaddeus Jimenez of Illinois \$25 million in 2012.

More recently, Eddie Bolden, of Illinois, won a \$25.2 million jury verdict in 2021. Craig Coley, of California, settled a federal civil rights case for \$23.1 million. Nathson Fields, of Illinois, won a \$22 million jury verdict in 2016. These large recoveries, which are fairly uncommon, require context. It is important to be mindful of how long these exonerees were wrongly incarcerated and the particular harms they suffered as a result. There have been verdicts exceeding \$1 million per year of incarceration. Settlements of several hundred thousand dollars per year are not uncommon.

### **What are the reasons some exonerees don't get compensated?**

Roughly 10 percent of the exonerees on the Registry did not serve time in prison. With respect to those in states with statutory compensation, such exonerees would not be eligible except in Illinois. Others are not compensated because they served relatively little time in prison and the potential payoff may not be sufficient to warrant the effort to file a claim. Some may not qualify due to particular requirements in the statute.

Others may have been exonerated at a time when there was no state statute. While subsequently passed statutes typically allow prior exonerees to get compensation, some exonerees may not become aware of the statute; some may have passed away and some may be incarcerated following conviction of other crimes. About 15 percent of those who seek state compensation are denied. A significant number of those exonerees failed because they were not able to demonstrate that they met the definition of innocence in the statute.

On the civil litigation side, some exonerees may not file suit because short incarcerations may limit the value of their claims. For others, it may be difficult to prove unconstitutional misconduct or to overcome immunity defenses. The loss of evidence and witness testimony in cases occurring many years ago is sometimes a barrier too difficult to surmount. In other cases, factors may discourage an attorney from taking the case, such as an exoneree's commission of subsequent crimes, or difficult legal precedent in the district or circuit where the case may be filed. As noted, in some states, exonerees who receive state compensation are barred from bringing civil cases arising from their wrongful conviction.

### **Who helps exonerees?**

An organization called [After Innocence](#) helps some exonerees obtain the compensation to which they are entitled. There are lawyers across the country who have developed considerable expertise in bringing and litigating these claims. Many exonerees have used some of the money they have recovered to start their own non-profit organizations to help those seeking exoneration or those recently exonerated.

### **Is compensation taxable?**

In 2015, federal legislation was passed that exempted wrongful conviction awards from federal taxation. Most state statutes explicitly provide that state statutory compensation is also exempt from state taxation.

Further Reading:

- Jeffrey S. Gutman and Lingziao Sun, [Why is Mississippi the Best State in Which to be Exonerated? An Empirical Evaluation of State Statutory and Civil Compensation for the Wrongfully Convicted](#), 11 Ne. U. L. Rev 694 (2019).
- Jeffrey S. Gutman, An Empirical Reexamination of State Statutory Compensation for the Wrongly Convicted, 82 MISSOURI LAW REVIEW 369 (2017).
- Robert J. Norris, Exoneree Compensation: Current Policies and Future Outlook, in WRONGFUL CONVICTION AND CRIMINAL JUSTICE REFORM: MAKING JUSTICE 289 (Marvin Zalman & Julia Carrano eds., 2014).
- Justin Brooks & Alexander Simpson, Find the Cost of Freedom: The State of Wrongful Conviction Compensation Statutes Across the Country and the Strange Legal Odyssey of Timothy Atkins, 49 SAN DIEGO L. REV. 627 (2012).
- Adele Bernhard, A Short Overview of the Statutory Remedies for the Wrongly Convicted: What Works, What Doesn't and Why, 18 B.U. PUB. INT. L.J. 403 (2009).

## COMPENSATION STATUTES: A NATIONAL OVERVIEW

The Registry regularly updates this list, but statutes can be amended at any time. In addition, because this list was put together to give streamlined information on state statutes, it may not be exhaustive. For the most up to date and precise information, please check the individual statutory codes. Most state codes can be found on the state’s official government website.

This table was originally created by Professor Adele Bernhard and the [Innocence Project](#). We are deeply grateful for their work in compiling these statutes.

Last updated: June 2, 2022

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	AWARD	ADDITIONAL AWARDS	FUTURE CIVIL LITIGATION	CONTRIBUTORY PROVISIONS
AL	Ala. Code 1975 § 29-2-150, et seq.  “Committee on Compensation for Wrongful Incarceration”	2001	Conviction vacated or reversed, and charges dismissed on grounds consistent with innocence.	Not specified	State Division of Risk Management and the Committee on Compensation for Wrongful Incarceration.	2 years	Min: \$50,000/year;  Committee on Compensation for Wrongful Incarceration can recommend discretionary amount in addition to base, but legislature must appropriate funds.	Not specified	Not specified	A new felony conviction will end a claimant’s right to compensation.
AK	NONE									
AZ	NONE									

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AR	NONE									
CA	Cal Penal Code §§ 4900, et seq.; § 3007.05; § 1485.55  “Indemnity for Persons Erroneously Convicted and Pardoned”	1913; 1966; 2000; 2006; 2009; 2013; 2014; 2015; 2016; 2019; 2021	Pardon for innocence;  Declaration of factual innocence;  Conviction reversed, and charges dismissed, or retrial ended in acquittal.	<b>Factual innocence</b> is binding on the compensation board;  Automatic compensation recommendation, absent Attorney General challenge, for applicants with successful writ of habeas corpus; motion to vacate; dismissed charges; or acquittal on retrial;  Attorney General Challenge- must prove by clear and convincing evidence that the claimant committed the acts..	California Victim Compensation and Government Claims Board makes a recommendation to the legislature.	10 years	<b>\$140/day</b>  In addition to any other payment to which the person is entitled to by law, a person who is exonerated shall be paid the sum of one thousand dollars (\$1,000) upon release, from funds to be made available upon appropriation by the Legislature for this purpose.  A person who is exonerated shall be paid the sum of five thousand dollars (\$5,000) upon release, to be used for housing. The exonerated person shall also be entitled to receive direct payment or reimbursement for reasonable housing costs for a period of not more than four years following release from custody.	The Department of Corrections and Rehabilitation shall assist with: (1) Transitional services, including housing assistance, job training, and mental health services, as applicable. The services shall be offered within the first week of an individual's exonerated and again within the first 30 days of exonerated. Services shall be provided for a period of not less than six months and not more than one year from the date of release unless the exonerated person qualifies for services beyond one year under existing law. (2) Enrollment in the Medi-Cal program (3) Enrollment in the CalFresh program (4) Referral to the Employment Development Department and applicable regional planning units for workforce services. (5) Enrollment in the federal Supplemental Security Income benefits program.	Not specified	Requires the board to deny a claim if the board finds by a preponderance of the evidence that a claimant pled guilty with the specific intent to protect another from prosecution.

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CO	C.R.S.A. § 13-65-101, et seq.  "Compensation for Certain Exonerated Persons"	2013; 2017; 2018	Finding of actual innocence.	Clear and convincing	District court in the county in which case originated.	2 years	\$70,000/year.  Additional \$50,000/year on death row;  Additional \$25,000/year on parole, on probation, or as a registered sex offender after a period of incarceration;  Compensation for child support missed while incarcerated;  Reasonable attorneys' fees.	Healthcare from the state of Colorado;  Each institution of higher education in the state shall waive all tuition costs, including any mandatory fees associated with attendance at the institution, for claimant and for children of claimant or custodial child of claimant.	Not specified	A claimant cannot be compensated for those years when claimant was concurrently serving a sentence for an unrelated offense;  In each year in which claimant receives any annual payment from the state court administrator, the claimant's annual payment shall be reduced by ten thousand dollars if claimant fails to present to the state court administrator a policy or certificate showing that claimant has purchased or otherwise acquired a qualified health plan for claimant or dependents that is valid for at least six months;  The claimant is required to complete a personal financial management instruction course before the state court administrator may issue to claimant more than one annual payment of monetary compensation or a lump-sum payment.



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DC	DC ST § 2-421, et seq. "Unjust Imprisonment"	1981; 2017; 2021	Pardon for innocence;  Conviction reversed or set aside on the grounds that claimant is not guilty.	Clear and convincing	The Office of Victim Services and Justice Grants;  If denied a petitioner may seek Mandamus relief in the superior court which affords de novo review.	Not specified	\$200,000/year;  Additional \$40,000 for each year served on parole, probation, supervised release, or as a registered sex offender;  Reimbursement for child support payments that were not paid, and attorneys' fees associated with them;  Reimbursement for attorneys' fees;  No punitive damages.  In addition, within 21 days after a petition for compensation is approved, the claimant will receive \$10,000 to assist in immediately securing services such as: housing; transportation; subsistence; re-integrative services; and mental and physical health care;	Physical and mental health care for the duration of the claimant's life through automatic participation in comprehensive community-centered health care and medical services system;  Reimbursement for any tuition and fees for the claimant's education, vocational or employment skills development program.	Not specified	Claimant must show that claimant did not, by claimants misconduct, bring about the prosecution, and claimant must not have pled guilty.

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FL	FL ST 961.01, et seq.  "Victims of Wrongful Incarceration Compensation"	2008; 2013; 2014; 2017	Certification by prosecuting authority that claimant is innocent, that no further criminal proceeding will be initiated, and no questions of fact remain; and that the claimant is not ineligible for compensation.	<b>preponderance of the evidence</b> that claimant does not qualify for compensation;  This finding goes to an administrative law judge as a recommendation;  Any questions of fact, the nature, significance or effect of the evidence of actual innocence, and the claimant's eligibility for compensation under this act must be established by <b>clear and convincing</b> evidence by the claimant before an administrative law judge.	Trial court – can consider claim even if prosecuting authority does not certify innocence;  Claim is then sent to admin. law judge for factual determination of innocence;  That finding is sent to a trial judge who can adopt those findings or not;  It then sends this rec. to the original sentencing court who can accept or deny the recommendation. (no standard given).	Claimant must file w/in 90 days after order vacating conviction for a declaration of wrongful conviction.  THEN:  2 years	\$50,000/year, adjusted for cost of living increases, Cap: \$2 million;  Court costs;  Reasonable attorneys' fees;  Any fines or costs imposed.	120 hours of tuition at a career center, community college or state university.	Barred	Must not have been convicted of a felony before or during the wrongful incarceration.
GA	NONE									
HI	2016 Hi. ALS 156  "An Act Relating to Wrongful Imprisonment"	2016	Pardoned on actual innocence grounds;  Conviction reversed or vacated on actual innocence grounds.	Preponderance	Circuit court where claimant lives;  or the circuit court for the first circuit (if claimant lives out of state).	2 years	\$50,000/year;  Max. additional \$100,000 for special circumstances;  \$10,000 for attorneys' fees.	Not specified	Barred	A claimant cannot be compensated for those years claimant was concurrently serving a sentence for an unrelated offense, or if the state proves by a preponderance of the evidence that the claimant conspired, attempted, solicited, or assisted in the commission of the crime.

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ID	Idaho Code, ch. 35 § 6-3501, et. seq.  "Idaho Wrongful Conviction Act"	2021 (SB 1027)	Conviction vacated or reversed, and charges dismissed, or retrial ended in acquittal.	Preponderance	Must file the claim for compensation in civil district (state) court.	2 years;  or for actions before this 2021 enactment: 2 years from enactment (2023).	\$62,000/year (including time awaiting trial); or \$75,000/year if claimant was imprisoned on death row;  Additional No less than \$25,000/year on parole, or required to register as a sex offender (Whichever period of time is greater will control);  Reasonable attorneys' fees.  *Burden is on claimant to establish correct number of days to be compensated.	Reentry services through the department of corrections.	Any civil award or settlement (less attorneys' fees and costs) will be deducted from the statutory award.	A claimant shall not prevail on a claim brought pursuant to this chapter if the state shows by a preponderance of the evidence that a claimant pled guilty with the specific intent to protect another party from prosecution.  Claimant was not an accessory or accomplice to the acts that were the basis of the conviction;
IL	705 Ill. Comp. Stat. Ann. 505/8 (c)  "Court of Claims Act"	1945; 2009; 2011; 2018	Pardon for Innocence;  Certificate of innocence.	Preponderance	Court of Claims	2 years after issued a certificate of innocence as provided in Section 2-702 of the Code of Civil Procedure or is granted a pardon by the Governor.	Incarcerated for: ≤5 yrs., \$85,350 Max., ≤14 yrs., \$170,000 Max., >14 yrs., \$199,150 Max.,  with cost of living increase;  Attorneys' fees not more than 25% of overall award.	20 Ill. Comp. Stat. Ann. 1015/2 provides that the claimant receive job search and placement services, including assessment, resume assistance, interview preparation, occupational and labor market information, referral to employers with job openings.	Not specified	Not specified

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IN	Ind. Code § 5-2-23-1 et seq.  "Restitution for Wrongly Incarcerated Persons"	2019, 2021, 2022	Pardon;  Conviction vacated, reversed, or set aside (acquittal on remand is not enough).	Preponderance	The criminal justice institute.  (Judicial review is available for appeal)	2 years	Max. \$50,000/year (serving a concurrent sentence will not result in a higher award);  No compensation for pretrial detention, home detention, or work release.	Claimant is eligible for any program, service, or treatment that is designed to provide rehabilitation or reintegration services to an incarcerated person.	Barred  Claimants who received restitution or damages concerning the conviction (public or private) in another way are not eligible for the statutory award.	Claimant is not entitled to compensation for the part of a sentence that is served concurrently with a sentence for a conviction that is not vacated;  Claimant did not commit, take part in, plan, prepare for, or participate in the planning or preparation of any criminal act in connection with the offense

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IA	Iowa Code Ann. § 663A.1  "Wrongful Imprisonment – Cause of Action"	1997	Conviction vacated, dismissed, or reversed and charges dismissed, or retrial ended in acquittal.	Clear and Convincing	District Court for liability;  State Appeal Board or Civil Ct. for Damages.	2 years	\$50/day;  And lost wages up to \$25,000/year;  Reasonable attorneys' fees.	Not specified	Bars suits against the state or an employee;  Does not preclude any action based on any negligent or wrongful acts or omissions which arose during the period of the wrongful imprisonment, but which are not related to the facts and circumstances underlying the conviction or proceedings to obtain relief from the conviction.	Claimant must not have pled guilty.



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LA	La R.S. 15:572.8  "Compensation for Wrongful Conviction and Imprisonment"	2005; 2007; 2008; 2011; 2012; 2019; 2020; 2021	Conviction vacated or reversed, and claimant "has proven" factual Innocence.	Clear and Convincing	District court where convicted, compensation trial is a bench trial.	2 years.  *Those that received compensation before July 1, 2022, may before July 1, 2023, apply for supplemental compensation;  If they do not apply before July 1, 2023, the supplemental claim is barred.	*\$25,000/year, Cap: \$250,000  Those seeking compensation after July 1, 2022, \$40,000/year, Cap: \$400,000. To be paid out as \$40,000 annually.  After July 1, 2022, a claimant may choose to get a lump sum of \$250,000 in lieu of receiving \$40,000 per year;	In addition to the statutory award provided the court shall order that the petitioner receive eighty thousand dollars total in compensation for the loss of life opportunities resulting from the time spent incarcerated and to cover expenses relating to job skills training, education, housing, and any other services the wrongfully convicted person may need.	Permits	A claimant shall not be entitled to compensation for any portion of a sentence in prison during which claimant was also serving a concurrent sentence for the conviction of another crime.
ME	14 Me Rev Stat Ann § 8241, et. seq.  "Wrongful Imprisonment"	1993	Pardon for innocence (with a written finding of innocence by the governor) and a court also finds the claimant innocent.	Clear and convincing	Superior Court	2 years	Cap: \$300,000;  No punitive or exemplary damages.	Not specified	Not specified	Not specified

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MD	Md State Fin & Proc § 10-501  “Payment to Individuals Convicted, Sentenced, and Confined in Error”	1999; 2003; 2017; 2021	Pardon stating that the individual's conviction has been shown conclusively to be in error;  Conviction vacated or reversed, and charges dismissed, or retrial ended in acquittal.	Clear and Convincing	Administrative Law Judge  (the decision may be appealed by either party)	2 years;  A claimant convicted, confined, and released from confinement before July 1, 2021, who has not previously received compensation under this section, may petition for an order under subsection (b) of this section not later than June 30, 2023;  A claimant who was awarded compensation under this section on or before July 1, 2005, may request an order for supplemental compensation in the amount authorized by this section on or before July 12, 2023.	An amount equal to the product of the total number of days that claimant was wrongfully confined after the erroneous conviction, multiplied by a daily rate of the State's most recent annual median household income as published in the American Community Survey of the U.S. Census Bureau in the year the order of and divided by 365 days to the nearest whole cent;  Reasonable attorneys' fees;  Reimbursement for court fines, fees, and restitution paid.	Housing accommodations for a period of at Max. 5 years;  Education and training relevant to life skills, job and vocational training, or financial literacy for a period of time until the claimant elects to no longer receive the education and training;  Health care and dental care for at least 5 years;  Access to enrollment at and payment of tuition and fees for attending a public senior higher education institution, a regional higher education center, or the Baltimore City Community College for a period of enrollment not exceeding 5 years.	If claimant wins another claim or settlement the amount will be deducted or repaid to the statutory award.	A claimant shall not be entitled to compensation for any portion of a sentence in prison during which claimant was also serving a concurrent sentence for the conviction of another crime;  Claimant must not have committed or suborned perjury, fabricated evidence, or by the claimant's own conduct caused or brought about the conviction.

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MA	Ann L. MA. Gen'l Laws, Chapter 258D § 1-9  "Compensation for Certain Erroneous Felony Convictions"	2004; 2018	Pardon with an express writing of the governor's belief in innocence;  Conviction vacated or reversed, and charges dismissed on grounds consistent with innocence or retrial ended in acquittal.	Clear and convincing	Superior Court in the county where the claimant was convicted or in Suffolk County	3 years	Fact finder decides award;  Cap: \$1,000,000;  Reasonable attorneys' fees;  No punitive or exemplary damages.	Court may order services – to provide the claimant with services that are reasonable and necessary to address any deficiencies in the claimant's physical and emotional condition and waive tuition and fees for the claimant for any educational services from a state or community college in the commonwealth including, but not limited to, the University of Massachusetts at Amherst and its satellite campuses;  After a separate hearing automatic expungement and sealing of the record.	Permits	Claimant cannot have pled guilty, unless such plea was withdrawn, vacated or nullified by operation of law;  Claimant must have been incarcerated solely on the basis of the conviction for the offense that is the subject of the claim;  Claimant did not commit the crimes or crime charged in the indictment or complaint or any other felony arising out of or reasonably connected to the facts supporting the indictment or complaint, or any lesser included felony;  A Claimant shall not be entitled to compensation for any portion of a sentence in prison during which claimant was also serving a concurrent sentence for the conviction of another crime.
MI	MCLS § 691.1751, et seq.  "Wrongful Imprisonment Compensation Act"	2016; 2017; 2020	Conviction vacated or reversed and charges dismissed, or retrial ended in acquittal;  New evidence proves innocence that results in a pardon or acquittal at retrial.	Clear and convincing	Not specified	3 years	\$50,000/year;  Reimbursement of any amount collected by the state;  Reasonable attorneys' fees (actually paid).	Records expunged	Bars state claims;  Permits federal claims.	A Claimant shall not be entitled to compensation for any portion of a sentence in prison during which claimant was also serving a concurrent sentence for the conviction of another crime.

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	AWARD	ADDITIONAL AWARDS	FUTURE CIVIL LITIGATION	CONTRIBUTORY PROVISIONS
MN	M.S.A. § 590.11 & § 611.362, et seq.  "Claim for Compensation Based on Exoneration"	2014; 2019	Conviction vacated or reversed, on grounds consistent with innocence and charges dismissed;  or at new trial had charges dismissed or was acquitted;  or the time for appeal of the order resulting in exoneration has expired or the order has been affirmed and is final.	Unless otherwise ordered by the court, the burden of proof of the facts alleged in the petition shall be upon the petitioner to establish the facts by a fair preponderance of the evidence. (§ 590.04)	District court where original conviction occurred. (May be appealed)  A compensation panel appointed by the Chief Justice of the MN supreme court.	To district court: within 2 years, but no less than 60 days after the petitioner is exonerated.  To court of claims: 60 days from when the district court issues an order. Or 3 years if notice of grant of order was not given.	Min. \$50,000/year Max. \$100,000/year;  Additional Min. \$25,000/year Max. \$50,000/year served on parole, probation, or as a registered sex offender;  Reasonable attorneys' fees;  May include: paid or unpaid child support payments;  Economic damages, associated with the claimant's criminal defense;  Non-economic damages.	Award may also include reimbursement for:  Medical and dental expenses;  Tuition and fees associate with education at public four-year college;  Costs of immediate services upon exoneration and release.	If claimant wins another claim or settlement the amount will be deducted or repaid to the statutory award.	Claimant did not commit or induce another person to commit perjury or fabricate evidence to cause or bring about the conviction;  A Claimant shall not be entitled to compensation for any portion of a sentence in prison during which claimant was also serving a concurrent sentence for the conviction of another crime;  Claimant cannot have pled guilty.
MS	MS ST § 11-44-1, et seq.  "Compensation to Victims of Wrongful Conviction and Imprisonment"	2009	Pardon based on the innocence;  Conviction vacated or reversed, and charges dismissed, or retrial ended in acquittal.	Preponderance	Circuit court in the county in which the claimant was convicted.	3 years	\$50,000/year, Cap: \$500,000;  Reasonable attorneys' fees. (reasonable is: 10% of award if uncontested; 20% If litigated; 25% if appealed; Plus costs.)	Not specified	Claims are barred against the State of Mississippi or a political subdivision thereof under the Mississippi Tort Claims Act.	Claimant did not commit or suborn perjury, or fabricate evidence to bring about claimants conviction.

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MO	§ 650.058 R.S.Mo.  “Individuals who are actually innocent may receive restitution, amount, petition, definition, limitations and requirements — guilt confirmed by DNA testing, procedures — petitions for restitution — order of expungement”	2006; 2016; 2019; 2021	Claimant must be determined to be ‘actually innocent’ by DNA evidence.	DNA evidence must demonstrate innocence.	Sentencing court	1 year	\$100/day	Expungement	Barred	A claimant shall not be entitled to compensation for any portion of a sentence in prison during which claimant was also serving a concurrent sentence for the conviction of another crime.

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	AWARD	ADDITIONAL AWARDS	FUTURE CIVIL LITIGATION	CONTRIBUTORY PROVISIONS
MT	<p>Mont. Code Ann. § 46-32-101, et seq. &amp; § 53-1-214</p> <p>“An Act Providing Compensation for People who have been Wrongly Convicted of Felony Crimes and Exonerated...”</p>	2003; 2021 (effective until July 1, 2023)	<p>Pardon based on the innocence;</p> <p>Conviction vacated or reversed, and charges dismissed, or retrial ended in acquittal.</p>	Preponderance	<p>District court in which the conviction occurred (May appeal to the MT supreme court.)</p> <p>A claim filed under this part must be tried by a jury unless a jury trial is waived upon agreement of the parties.</p>	<p>3 years;</p> <p>A claimant convicted, imprisoned, and released from custody before July 1, 2021, who intends to bring an action shall commence the action no later than July 1, 2024.</p> <p>* (4) (a) A claimant who meets the criteria in subsection (1) and intends to bring an action under [sections 1 through 8] must receive a transition assistance grant of \$5,000 from the department of corrections within 30 days of the claimant's release from imprisonment.</p>	<p>\$60,000/year;</p> <p>Additional \$25,000/year on parole or probation or required to register as a sex or violent offender (whichever is greater);</p> <p>Reasonable attorneys' fees Max. \$25,000.</p>	<p>Expungement;</p> <p>Destruction of any associated biological samples from the claimant;</p> <p>2 years of tuition assistance at any unit or campus of the Montana university system, which must be used during the first 5 years after receiving a damages award;</p> <p>1 year of state-funded medical insurance;</p> <p>The department of corrections shall provide a housing voucher to the claimant while an action is pending.</p>	<p>Barred. (Any award already given must be reimbursed)</p>	<p>Claimant did not aid, abet, or act as an accomplice or accessory to a person who committed the acts that were the basis of the conviction, and did not commit a lesser offense necessarily included in the crime for which the claimant was convicted;</p> <p>Claimant did not commit perjury, fabricate evidence, or by the claimant's own conduct cause or bring about the conviction. (A confession or admission that is later found to be false or a guilty plea that is withdrawn does not constitute committing perjury, fabricating evidence, or causing or bringing about the conviction.)</p>

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NE	NE ST 29-4601, et seq.  "Nebraska Claims for Wrongful Conviction and Imprisonment Act"	2009	Board of Pardons has pardoned the claimant;  A court has vacated the conviction of the claimant;  Conviction was reversed and remanded for a new trial and no subsequent conviction was obtained.	Clear and convincing  (Actual damages are assessed and must be proven by a preponderance.)	Civil court (filed under the state tort claims act)	Not specified	Cap: \$500,000	If the court finds that any property of the claimant was subjected to a lien to recover costs of defense services rendered by the state to defend the claimant in connection with the criminal case that resulted in claimant's wrongful conviction, the court shall extinguish the lien;  Nothing contained in the Nebraska Claims for Wrongful Conviction and Imprisonment Act shall preclude the state from providing services to the claimant upon exoneration, and the reasonable value of services provided shall be treated as an advance against any award or judgment under the act.	Bars state claims	That claimant did not commit or suborn perjury, fabricate evidence, or otherwise make a false statement to cause or bring about such conviction or the conviction of another, with respect to the crime or crimes under subdivision (1) of this section, except that a guilty plea, a confession, or an admission, coerced by law enforcement and later found to be false, does not constitute bringing about claimant's own conviction of such crime or crimes;  A claimant shall not be entitled to compensation for any portion of a sentence in prison during which claimant was also serving a concurrent sentence for the conviction of another crime.

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	AWARD	ADDITIONAL AWARDS	FUTURE CIVIL LITIGATION	CONTRIBUTORY PROVISIONS
NV	Nev. Rev. Stat. Ann. § 41.900, et seq. "Action for Wrongful Conviction"	2019	Conviction vacated or reversed, and the charging document was dismissed, or retrial ended in acquittal;  Pardon by the State Board of Pardons Commissioners on the grounds of innocence.	Not specified	"The court"	2 years	Years Incarcerated:  1-10 years: \$50,000/year  11-20 \$75,000/year.  21 years or more, \$100,000/year  Additional Not less than \$25,000/year on parole or not less than \$25,000/year when required to register as a sex offender.  May award attorneys' fees, not to exceed \$25,000.	The court may appoint an attorney to aid a claimant in an action brought pursuant to this section;  Records are sealed;  Tuition, books and fees for the claimant to enroll in any course or academic program at an institution operated by the Nevada System of Higher Education;  Health insurance;  Programs for reentry into the community;  Counseling services;  Housing assistance in an amount not greater than \$15,000/year;  Programs for assistance for financial literacy.	Statutory award is offset by any civil award.	Claimant was not an accessory or accomplice to the acts that were the basis of the conviction;  Did not aid, abet or act as an accomplice or accessory to a person who committed the acts that were the basis of the conviction;  The claimant did not commit perjury or fabricate evidence at the criminal proceeding that brought claimant's felony conviction and the claimant did not by claimant's own conduct cause or bring about claimant's felony conviction;  A court shall not award, and a claimant shall not receive compensation for any period of imprisonment during which claimant was concurrently serving a sentence for a conviction of another offense for which the claimant was lawfully convicted and imprisoned.

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	AWARD	ADDITIONAL AWARDS	FUTURE CIVIL LITIGATION	CONTRIBUTORY PROVISIONS
NH	NH Stat § 541-B:14, et seq.  "Limitation on Action and Claims"	1977; 2007	"Found innocent"	Board must find by majority vote that claim is "justified."	Board of Claims	3 years	Cap: \$20,000;  Board may award attorneys' fees.	Not specified	Permitted but not against "agency subject to the claim"	Not specified
NJ	NJ Stat Ann §§ 52:4C-1 to 4C-7  "Findings, Declarations Relative to Persons Mistakenly Imprisoned"	1997; 2013	Pardon;  Released on grounds of innocence.	Clear and convincing	Superior Court	2 years	Twice the amount of claimant's income in the year prior to incarceration or \$50,000/year (whichever is greater);  Reasonable attorneys' fees;  Costs related to the litigation.	Non-monetary relief. (As sought in the complaint)	Any award of damages to claimant in an action against the State or any political subdivision thereof or against any employee of the State or any political subdivision thereof with respect to the same subject matter shall be offset by any award of damages awarded under this act.	Claimant did not, commit or suborn perjury, fabricate evidence, by claimant's own conduct cause or bring about conviction, or plead guilty; (Neither a confession or admission later found to be false constitutes committing or suborning perjury, fabricating evidence, or causing or bringing about claimant's conviction under this subsection; And claimant did not plead guilty to the crime for which claimant was convicted.)  A court shall not award and a claimant shall not receive compensation for any period of imprisonment during which the claimant was concurrently serving a sentence for a conviction of another offense for which claimant was lawfully convicted and imprisoned.



STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	AWARD	ADDITIONAL AWARDS	FUTURE CIVIL LITIGATION	CONTRIBUTORY PROVISIONS
OH	Ohio Rev Code Ann § 2305.02 & § 2743.48  “Determination of Wrongful Imprisonment Claim”  “Civil Action Against State for Wrongful Imprisonment”	1986; 1989; 1994; 2003; 2010; 2012; 2013; 2018	Conviction vacated, dismissed, or reversed and it is not appealed, or claimant recharged within the time allotted;  Violation of <i>Brady</i> resulting in a ruling that Claimant did not commit the crime, or no crime was committed.	Preponderance ( <i>Walden v. State</i> , 547 N.E.2d 962)  The ruling of the Court of Common Pleas is binding on the court of common claims.	Court of Common Pleas in the county where the underlying criminal action was initiated for liability (separate from action of finding guilt);  Court of Claims for damages	2 years	\$40,330/year (or amount determined by state auditor);  Lost wages;  Costs;  Reasonable attorneys’ fees.	Not specified	If claimant wins another claim or settlement the amount will be deducted or repaid to the statutory award.	Claimant must not have pled guilty;  If claimant was serving at the time of the wrongful imprisonment concurrent sentences on other convictions that were not vacated, dismissed, or reversed on appeal, claimant is not eligible for compensation as described in this section for any portion of that wrongful imprisonment that occurred during a concurrent sentence of that nature.
OK	51 Okl. St. § 154(b)  “Governmental Tort Claims Act”	1978; 2003; 2021	Pardoned on basis of actual innocence with written statement by the governor;  Conviction vacated and charges dismissed on the basis of actual innocence.	Clear and convincing	State district court	No time limit	Cap: \$175,000;  No punitive damages.	Not specified	Not specified	Claimant must not have pled guilty;  A claimant shall not be entitled to compensation for any part of a sentence in prison during which the claimant was also serving a concurrent sentence for a crime not covered by this subsection.





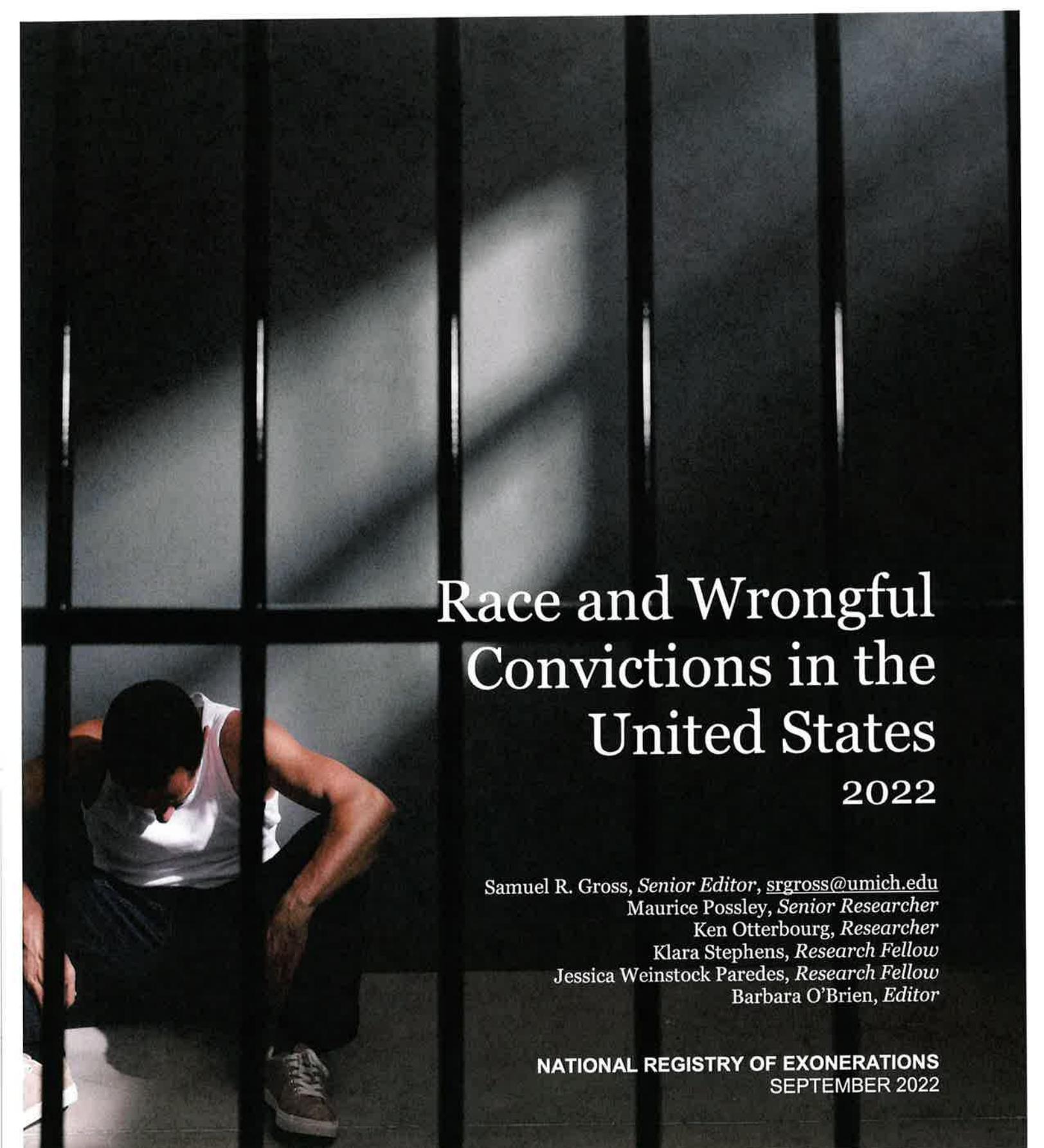
STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	AWARD	ADDITIONAL AWARDS	FUTURE CIVIL LITIGATION	CONTRIBUTORY PROVISIONS
TN	Tenn. Code Ann § 9-8-108, subd. (A)(7)  “Establishment and Operation of Board”  ( § 40-27-109 for the exoneration statute)	1984; 2004; 2010; 2012; 2013	Granted exoneration pursuant to § 40-27-109 (exoneration by governor)	Not specified	Board of Claims	1 year	Cap: \$1,000,000  (Board decides compensation based on any factors the Board considers relevant including, but not limited to, the claimant's physical and mental suffering and loss of earnings.)	Expungement	Not specified  State retains the right of subrogation as provided by law for any amount awarded pursuant to this subdivision (a)(7) against any claimant who willfully and intentionally committed an act or engaged in conduct that directly resulted in or contributed to the wrongful conviction and imprisonment of the claimant.	Not specified
TX	Tex. Civ. Prac. & Rem. Code, Title 5, ch. 103, et seq.  “Compensation to Persons Wrongfully Imprisoned”	1985; 2001; 2009; 2011	Full pardon on the basis of innocence;  Granted writ of habeas corpus based on a court finding of actual innocent;  District court entered an order dismissing the charge; and dismissal order was based on motion to dismiss in which the state's attorney states that no credible evidence exists that inculpates the defendant and, either in the motion or in an affidavit, the state's attorney states that the state's attorney believes that the defendant is actually innocent.	Not specified	Comptroller's Judiciary Section (purely ministerial function).  (If denied claimant may bring a mandamus action)	3 years	\$80,000/year;  Additional \$25,000/year of parole or registered as a sex offender;  Compensation for child support payments owed while the claimant was wrongfully incarcerated;  Reintegration financial assistance, Cap: \$10,000;  Reasonable Attorneys' fees;	Tuition for up to 120 credit hours, including tuition and any mandatory fees associated with attendance at the institution;  Eligibility to obtain group health benefit coverage through the TX Department of Criminal Justice as if the claimant were an employee of the Department (cost will be deducted from statutory award).	Barred  (See <i>State v. Oakeley</i> , 227 S.W.3d 58 (Tex. 2007) [clarifying that claimant may first bring 1983 claim and then file claim under statute, but not vice versa].)	Claimant is not entitled to compensation for any part of a sentence in prison during which claimant was also serving a concurrent sentence for another crime.

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UT	UT Code Ann 78B-9-401, et seq.  "Postconviction Determination of Factual Innocence"	2008; 2011; 2012; 2021	District Court ruling of factual innocence based on newly discovered evidence. (enumerated under Utah 78-35a-402)	Clear and convincing	District court where conviction was rendered.	Petitioner must file for post-conviction relief (e.g. declaration of innocence) w/in 1 year of final judgment, or date on which petitioner should have known of new facts upon which petition is based - no separate limit for filing claim for compensation.	For up to 15 years for years wrongfully incarcerated, petitioner may receive the monetary value of average annual nonagricultural payroll in Utah at time of release from prison.	Expungement;  Access to all State programs as if the conviction never occurred.	Not specified	Payments may be suspended if claimant is convicted of a subsequent felony;  Payments shall be reduced to the extent that the period of incarceration for which the claimant seeks payment was attributable to a separate and lawful conviction.
VT	13 V.S.A Ch. 182, Subch. 2, § 5572-5578  "Compensation for Wrongful Conviction"	2007; 2014; 2015	Pardoned;  Conviction vacated or reversed and the charges dismissed, or retrial ended in acquittal.	Clear and convincing	Washington County Supreme Court	3 years;  Unless claimant was not provided with notice of the right to bring an action, in which case claimant shall be granted an additional year in which to file.	Decided by the trier of fact: Min. \$30,000/year, Max. \$60,000/year;  Awards may include:  Lost wages;  Costs;  Attorneys' fees.	Claimant entitled to up to 10 years of eligibility for Vermont State Health Plan;  Compensation for any reasonable reintegrative services and mental and physical health care costs incurred by the claimant for the time period between his or her release from mistaken incarceration and the date of the award.	Not specified	Claimant did not suborn perjury or fabricate evidence during any of the proceedings related to the crime with which claimant was charged;  Claimant shall be entitled to compensation under this subchapter only for the years in which claimant would not otherwise have been incarcerated for another sentence.

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VA	<p>Va. Code Ann. § 8.01-195.10, et seq.</p> <p>“Compensation for Wrongful Incarceration for a Felony Conviction”</p> <p>Governed by Vermont constitution Art. IV, § 14</p>	2004; 2010; 2012; 2014; 2021	<p>Absolute pardon;</p> <p>Conviction vacated by DNA (§ 19.3-327.3);</p> <p>Conviction overturned by the supreme court on a Writ of actual innocence (§§ 19.2-327.2 &amp; 19.2-327.5).</p>	Not specified	General Assembly	Not specified	90% of the VA per capita personal income/year of incarceration	<p>Reimbursement up to \$10,000 for tuition for career and technical training in the VA Comm. College system;</p> <p>Transition assistance grant worth \$15,000, which would be deducted from any award received pursuant to the statute.</p>	Barred	<p>Claimant may not have pled guilty – unless claimant was charged with a capital offense or convicted of a Class 1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life;</p> <p>If claimant is subsequently convicted of a felony all future payments are forfeited;</p> <p>If the claimant is subsequently incarcerated, claimant forfeits the payments owed during the incarceration.</p>

STATE	STATUTE	WHEN PASSED	ELIGIBILITY	STANDARD OF PROOF	WHO DECIDES	TIME LIMITS FOR FILING	AWARD	ADDITIONAL AWARDS	FUTURE CIVIL LITIGATION	CONTRIBUTORY PROVISIONS
WA	RCWA § 4.100.010, et seq.  "Wrongly Convicted Persons"	2013	Pardoned on grounds consistent with innocence;  Conviction vacated or reversed, and charges dismissed, or retrial ended in acquittal.	Clear and convincing	Superior Court (any party may appeal; standard of review is de novo)	3 years	\$50,000/year (including time spent waiting for trial);  Additional \$50,000/year on death row;  Additional \$25,000/year on parole, community custody or on a sex offender registry;  Child support owed;  Attorneys' fees up to \$75,000;  All court costs and fees, pre-through post-trial;  May not include punitive damages.	Expungement;  Record of conviction sealed;  Upon request of the claimant, the court must refer the claimant to the department of corrections or the department of social and health services for access to reentry services.	Barred;  If claimant wins another claim or settlement the amount will be deducted or repaid to the statutory award.	Claimant may not be currently incarcerated for any offense (while making claim);  A guilty plea to a crime the claimant did not commit, or a confession that is later determined by a court to be false, does not automatically constitute perjury or fabricated evidence under this subsection;  Claimant will not receive compensation for the period of time that claimant was serving a term of imprisonment or a concurrent sentence for any crime other than the felony or felonies that were the basis for the claim.
WV	W. Va Code § 14-2-13(a)  "Claims for Unjust Arrest and Imprisonment or Conviction and Imprisonment."	1987; 2014; 2020	Pardon for innocence;  Conviction vacated or reversed, and charges dismissed, or retrial ended in acquittal.	Clear and convincing	Court of Claims	2 years	Fair and reasonable damages based on claimant's proof.	Not specified	Not specified	Not specified

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WI	Wis Stat § 775.05  "Compensation for Innocent Convicts"	1979; 1987	"Innocent of the crime for which [claimant] suffered imprisonment."	Clear and convincing	Claims Board	Not specified	"The claims board shall find the amount which will equitably compensate the petitioner" Max. \$5,000/year, Cap: \$25,000;  The Board may award attorneys' fees, costs, and disbursements;  If the Board finds award inadequate it may petition the legislature for a specific amount.	Not specified	Not specified	Claimant did not contribute to or bring about conviction.
WY	NONE									
US (Fed)	28 USC §§ 1495 & 2513  "Damages for Unjust Conviction and Imprisonment"	1948; 1954; 1982; 1992; 2004	Pardon on grounds of innocence;  Conviction reversed or set aside on grounds that claimant is not guilty or retrial or hearing ended in acquittal.	Proof of the requisite facts shall be by a certificate of the court or pardon wherein such facts are alleged to appear, and other evidence thereof shall not be received.	U.S. Court of Federal Claims	Not specified	Max. \$50,000/year, Or \$100,000/year on death row.	Not specified	Not specified	Claimant did not commit acts charged and did not by misconduct or neglect cause prosecution.



# Race and Wrongful Convictions in the United States 2022

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**NATIONAL REGISTRY OF EXONERATIONS**  
SEPTEMBER 2022

## **National Registry of Exonerations**

A project of the University of California Irvine • Newkirk Center for Science & Society,  
the University of Michigan Law School, and Michigan State University College of Law

# Race and Wrongful Convictions in the United States 2022

## Preface

This Report is about the role of race in the conviction of innocent people. We discuss cases that are listed in the [National Registry of Exonerations](#), an ongoing online archive that includes all known exonerations in the United States since 1989, 3,248 as of this writing. The Report describes racial patterns in the first 3,200 individual exonerations in the Registry, those posted by August 8, 2022. Information about individual exonerations we discuss may be found by searching for the exonerees by name on the [Registry website](#). Other data are readily available on that site, or by request.

The Registry's [first report](#) on race and wrongful convictions, which was made possible by a generous grant from the Proteus Fund, was released in 2017. The current Report covers a great deal more ground than we did five years ago. It includes many more details, more extensive and better data throughout, and several parts are entirely new.

The number of exonerations we consider has grown by almost 70% since 2017, 3,200 compared to 1,900, which makes the patterns we detect more reliable as well as more current. In the intervening five years we also completed a thorough study of [Government Misconduct and Convicting the Innocent](#); as a result, our discussion of misconduct by police and prosecutors in this Report is more detailed and informative.

This is the first Report by the Registry that includes extensive discussion of changes over time. That required patience. Many, probably most, of the important changes are in the investigations and prosecutions that produce false convictions—but we don't begin to learn about them until the convicted defendants are exonerated, on average 11.6 years later. We're now able to describe and analyze changes that occurred in the twenty-first century. For example, many innocent Black men used to be convicted of rape after they were misidentified by the white victims, but DNA pre-trial testing has now reduced that problem to a fraction of what it once was.

Finally, we know far more about false drug crime convictions than we did five years ago. We have two-and-a-half-times as many exonerations (554 vs. 221), including 259 drug crime exonerees, overwhelmingly Black people, who were framed by police. And we have additional data on thousands of defendants—again, primarily Black people—who were wrongfully convicted of drug crimes by systematic practices of misconduct by police officers.

Samuel R. Gross  
Maurice J. Possley  
Ken Otterbourg  
Klara Huber Stephens  
Jessica Weinstock Paredes  
Barbara O'Brien

September 23, 2022

# Executive Summary

## I. Introduction

- Black people are 13.6% of the American population but 53% of the 3,200 exonerations listed in the National Registry of Exonerations. Judging from exonerations, innocent Black Americans are seven times more likely than white Americans to be falsely convicted of serious crimes. [READ MORE](#)
- We see this racial disparity, in varying degrees, for all major crime categories except white collar crime. This report examines racial disparities in the three types of crime that produce the largest numbers of exonerations: murder, sexual assault, and drug crimes. [READ MORE](#)
- For both murder and sexual assault, there are preliminary investigative issues that increase the number of innocent Black suspects: for murder, the high homicide rate in the Black community; for rape, the difficulty of cross-racial eyewitness identification. For both crimes, misconduct, discrimination and racism amplify these initial racial discrepancies. [READ MORE](#)
- For drug crimes, the preliminary sorting that increases the number of convictions of innocent Black suspects is racial profiling. In addition, the Registry lists 17 “Group Exonerations” including 2,975 additional wrongfully convicted defendants, many of whom were deliberately framed and convicted of fabricated drug crimes in large-scale police scandals. The overwhelming majority are Black. [READ MORE](#)

## II. Murder

- Innocent Black people are about seven-and-a-half times more likely to be convicted of murder than innocent white people. That applies equally to those who are sentenced to death and those who are not. [READ MORE](#)
- A major cause of this disparity is the high homicide rate in the Black community, a tragedy that kills many Black people and sends many others to prison. Like the families of those who are killed, innocent defendants who are falsely convicted are victims who are deeply harmed by murders committed by others. [READ MORE](#)
- In addition, Black people who are convicted of murder are about 80% more likely to be innocent than other convicted murderers. [READ MORE](#)
- Part of that disparity is tied to the race of the victims. About 13% of murders by Black people have white victims, but twice as many—26% of innocent Black murder exonerees— were convicted of killing white people. [READ MORE](#)
- The convictions that led to murder exonerations with Black defendants were almost 50% more likely to include misconduct by police officers than those with white defendants. [READ MORE](#)

- In addition, on average Black murder exonerees spent three years longer in prison before release than white murder exonerees. [READ MORE](#)
- The number of murder exonerations has been increasing, and many of the recent exonerees are Black murder defendants who spent decades in prison. Most of these long-serving Black murder defendants were exonerated by a handful of big-city prosecutorial conviction integrity units (CIUs). More are likely on the way. [READ MORE](#)
- Many of the convictions of Black murder exonerees were influenced by racial discrimination, from unconscious bias and institutional discrimination to explicit racism. [READ MORE](#)
- Most innocent defendants who are convicted of crimes are not exonerated. Judging from the rate of false conviction among death sentences, at least several thousand defendants have been falsely convicted of murder in America in the past 40 years. Judging from the exonerations that have occurred, more than half of them were Black. [READ MORE](#)

### III. Sexual Assault

- Innocent Black people are almost eight times more likely than white people to be falsely convicted of rape. A prisoner serving time for sexual assault is more than three times more likely to be innocent if he is Black than if he is white. [READ MORE](#)
- The major cause of this huge racial disparity is the high danger of misidentification of Black suspects by white victims of violent crimes. [READ MORE](#)
- Assaults on white women by Black men are a small minority of all sexual assaults in the United States, but nearly half of sexual assaults with eyewitness misidentifications that led to exoneration. [READ MORE](#)
- Eyewitness misidentifications do not completely explain the racial disparity in rape exonerations. Some of the misidentifications were obtained by deliberately tainted identification procedures, and Black men are also overrepresented in rape exonerations without misidentifications. [READ MORE](#)
- A substantial number of the convictions that led to rape exonerations of Black defendants were marred by implicit biases, racially tainted official misconduct and, in some cases, explicit racism. [READ MORE](#)
- Black sexual assault exonerees received much longer prison sentences than white sexual assault exonerees, and spent, on average, more than four years longer in prison before exoneration. [READ MORE](#)
- Exonerations of misidentified rape defendants are much less common than they used to be. There have been only two from rape convictions in the last 12 years. That's because DNA testing is now routinely used to determine the identity of rapists before trial. This technology has prevented convictions of hundreds or thousands of innocent rape suspects, mostly Black men who were accused of raping white women. [READ MORE](#)

#### IV. Drug Crimes

- Sixty-nine percent of drug crime exonerees are Black and 16% are white. That means that innocent Black people are 19 times more likely to be convicted of drug crimes than innocent whites—a much larger disparity than we see for murder and rape—despite the fact that white and Black Americans use illegal drugs at similar rates. [READ MORE](#)
- Because drug crimes are almost never reported to police, the police choose who to pursue for drug offenses—and they choose to stop, search and arrest Black people several times more often than whites. That’s racial profiling. One of its deplorable consequences is drug crime convictions of innocent Black defendants. [READ MORE](#)
- Most false drug crime convictions involve comparatively low level charges and sentences that rarely attract the effort necessary to obtain exonerations. Almost all the *erroneous* drug convictions we know about are in a single cluster in Harris County, Texas (Houston), where a unique practice of testing alleged drugs after defendants pled guilty led to 157 exonerations; 62% of the exonerees are Black in a county with 20% Black residents. [READ MORE](#)
- These convictions are errors—mostly caused by defective field drug tests—but most are not innocent errors. Most Black exonerees were stopped and searched—and subjected to the risk of these errors—because of their race. [READ MORE](#)
- We also know of dozens of groups of innocent defendants who were *deliberately framed* by police officers who planted drugs on them. Almost all are Black people or other racial or ethnic minorities. So far, we list 259 individual exonerees who were convicted of these fabricated drug crimes, primarily in three group exonerations; 87% of them are Black. [READ MORE](#)
- There are many more such cases in dozens of groups across the country. These numbers will rise as we are able to add them to our lists. [READ MORE](#)
- It’s no mystery why these outrageous programs of framing innocent drug defendants target Black people. Guilty or innocent, drug law enforcement always focuses disproportionately on Black people. Of the many costs that the war on drugs inflicts on the Black community, the practice of deliberately charging innocent defendants with fabricated crimes may be the most shameful. [READ MORE](#)

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# I. Introduction

Race is central to every aspect of criminal justice in the United States. The conviction of innocent defendants is no exception. Thousands of exonerations across dozens of years demonstrate that Black people are far more likely than white people to be convicted of crimes they did not commit.

As of August 8, 2022, the National Registry of Exonerations listed 3,200 defendants who were convicted of crimes in the United States and later exonerated because they were innocent;<sup>1</sup> 53% of them were Black, nearly four times their proportion of the population, which is now about 13.6%.<sup>2</sup> Judging from exonerations, innocent Black Americans are seven times more likely than white Americans to be falsely convicted of crimes.

Black people are over-represented to a greater or lesser extent among exonerations for all major crime categories listed in the Registry, except white collar crimes. See Table 1.<sup>3</sup>

**Table 1: Exonerations by Race of Defendant and Type of Crime (N=3,200)**

	White	Black	Hispanic	Other	Total
Murder (1,167)	32%	55%	12%	2%	100%
Sexual Assault (350)	33%	59%	7%	1%	100%
Child Sex Abuse (310)	60%	28%	10%	2%	100%
Robbery (151)	19%	64%	15%	2%	100%
Other Violent Crimes (342)	42%	39%	13%	6%	100%
Drug Crimes (554)	16%	69%	14%	1%	100%
White Collar (77)	79%	10%	3%	8%	100%
Other Non-Violent Crimes (249)	28%	52%	16%	5%	100%
<b>All Crimes (3,200)</b>	<b>33%</b>	<b>53%</b>	<b>12%</b>	<b>2%</b>	<b>100%</b>

<sup>1</sup> All National Registry data reported in this paper are as of August 8, 2022, when the Registry listed 3,200 individual exonerations. Information about any individual exonerations we discuss may be found by searching for the exonerees by name on the [Registry web site](#).

<sup>2</sup> [United States Census Bureau, QuickFacts, 2021.](#)

<sup>3</sup> As used in Table 1, on the Registry, and throughout this report, the categories "white" and "Black" do not include individuals who identify themselves as Hispanic or Latino. We do not discuss false convictions and exonerations of Hispanic or Latino defendants (except in a few places); the same applies to Asian and Indigenous defendants, and to all other defendants who are grouped together in Table 1 in the column labeled "Other." To study them separately we would need national criminal justice statistics on reported crimes, arrests, convictions and imprisonment, and the studies that are available use inconsistent standards for tabulating those racial and ethnic categories, suffer from high rates of missing data, or fail to address the issue entirely.

Nearly 3,000 additional defendants who were wrongfully convicted of crimes in 17 large-scale police misconduct scandals were cleared in “Group Exonerations;” the great majority of those defendants were also Black. Judging from the cases we know, a large majority of all innocent people who are convicted of crimes in the United States are Black.

What explains this stark racial disparity? We examine this question by looking at exonerations for murder, sexual assault and drug crimes, the three types of crime that produce the largest numbers of exonerations. What we see—as so often in considering the role of race in America—is complex and disturbing, familiar yet often ignored.

There is no one explanation for the heavy concentration of Black defendants among those convicted of crimes they did not commit. The causes we have identified run from inevitable consequences of patterns in crime and punishment to deliberate acts of racism, with many steps in between. They differ sharply from one type of crime to another.

A major cause of the high number of Black murder exonerations is the high murder rate in the Black community—a tragedy that kills many Black people and sends many others to prison. Exonerated defendants go to prison, but not because they deserve to; they, like those who are killed, are innocent victims of crimes committed by others. But homicide rates alone do not explain the high number of Black people who were falsely convicted of murder or the length of time they spent in prison before release. Misconduct and discrimination also played major roles.

Most innocent Black defendants who were exonerated for sexual assault had been convicted of raping white women (128/207). The leading cause of these false convictions was mistaken eyewitness identifications (101/128)—a notoriously error-prone process when white Americans are asked to identify Black strangers. As with murder exonerations, however, the leading cause is far from the only one. We see clear evidence of racial bias, ranging from unconscious bias to explicit racism. And, as with murder if not more so, Black sexual assault exonerees spent more time in prison than their white counterparts.

Prosecutions for drug offenses are very different from murder and rape cases. A murder or rape investigation is initiated when a violent crime is reported to the police. Drug transactions and drug possession have no immediate victims and are almost never reported. Instead, police have essentially unlimited discretion to choose how and where to enforce drug laws—and against whom, which opens the door to pervasive discrimination.

We see the effects in two settings. Because of racial profiling, Black people are more likely to be stopped, searched, arrested and prosecuted in routine drug possession cases; as a result, they are also more likely to be convicted by factual mistakes. Many false drug convictions, however, are not mistakes. Black people are also the main targets in a shocking series of scandals in which police officers systematically framed innocent defendants for drug crimes that never occurred.

## II. Murder

*About half of those who are parties to homicide in the United States—those who kill and those who are killed—are Black, seven times the rate for the remainder of the population. One of the predictable consequences of this national calamity is that a comparably high proportion of innocent defendants who are convicted of murder are also Black.*

*The high homicide rate in the Black community accounts for most of the overrepresentation of Black people among murder exonerees—but not all. Black murder defendants are not only more numerous than whites, they are also more likely to be innocent, especially if the victims were white. Many of the investigations and prosecutions that lead to convicting innocent Black murder suspects are marked by racial discrimination, including explicit racism.*

*Black murder exonerees are more likely than white murder exonerees to be the victims of misconduct by police officers, and they spend more time in prison before exoneration. We don't yet know the extent of these differences. The number of murder exonerations has been increasing in recent years, and many of the exonerations that are being added are for murder defendants—overwhelmingly Black—who remained in prison since they were convicted 25 to 40 years ago, or longer. Most of these recent exonerations of innocent Black murder defendants who spent decades in prison are the work of a handful of big-city prosecutorial conviction integrity units—and more, it seems, are on the way.*

### 1. Racial patterns in murders and exonerations

Fifty-five percent of all defendants exonerated for murder are Black people (628/1,167), who make up 13.6% of the population of the United States.<sup>4</sup> For the population at large, that's about seven-and-a-half times the rate for whites, who comprise 59.3% of the population<sup>5</sup> but only 32% of murder exonerations. Much of this racial disparity can be traced to a comparable disparity in murder convictions. Black people are more than seven times more likely to be imprisoned for

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<sup>4</sup> [United States Census Bureau, QuickFacts, 2021](#)

<sup>5</sup> *Id.*

murder than white people,<sup>6</sup> and more than six times as likely to be killed in a homicide.<sup>7</sup> Murder in America is overwhelmingly intra-racial: 84% of white murder victims and 93% of Black murder victims are killed by members of their own race.<sup>8</sup>

This high murder rate means that Black people are far more likely than white people to be investigated, arrested and convicted of murder. Mostly, those who are investigated and convicted are guilty. But innocent Black people also face a much higher risk of being suspected of murder, and of being investigated, arrested and sometimes convicted despite their innocence.

Innocent Black murder suspects, especially those who are falsely convicted—like the families of those who are killed—are additional victims of murders committed by others. Those who have been exonerated spent on average almost 16 years in prison before they were released. Many more have not been exonerated at all; more often than not, they will die in prison.

Innocent Black people are about equally overrepresented among murder exonerees who were sentenced to death, 56% (74/134); those sentenced to life imprisonment, with or without the possibility of parole, 55% (294/535); and those sentenced to imprisonment for terms shorter than life, 54% (270/497). However, innocent Black defendants who escaped sentences of death or life imprisonment received sentences that averaged 35 years, compared to 28 years for white murder exonerees who were sent to prison for terms less than life.

## 2. Additional racial disparities in murder exonerations

Differences in homicide rates may explain most of the enormous racial disparity in exoneration rates for murder, but not all. Forty percent of defendants imprisoned for murder are Black,<sup>9</sup> compared to 55% of murder exonerations. Unless some unknown and improbable process gives innocent Black prisoners a big advantage in obtaining exonerations, that means that Black people who are convicted of murder are about 80% more likely to be innocent than other convicted murderers.

### a) Race of victim

About 38% of murder victims in the United States are white.<sup>10</sup> The proportion of murder exonerees of all races who were convicted of killing white victims is somewhat higher, 46%

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<sup>6</sup> E. Ann Carson, [Prisoners in 2020 – Statistical Tables](#), Bureau of Justice Statistics, U.S. Dep't of Justice; Tables 15 & 18, pp. 29, 33. The numbers of prisoners reported in this study by the United States Bureau of Justice Statistics are estimates of the prison population on a particular date, in this case December 31, 2019. So are most of the general statistics we discuss on arrest, conviction and imprisonment. The murder exonerations to which we compare these numbers are based on convictions that occurred over decades, from the 1960s through 2016—almost all since 1980—and the proportions of crimes and convictions by race have varied over that period. As a result, throughout this report, all rates and comparisons we discuss that depend on general criminal justice statistics are estimates or illustrations.

<sup>7</sup> Bureau of Justice Statistics, U.S. Dep't of Justice. [Homicide Trends in the United States, 1980-2008](#). (November 2011): p. 3, Table 1. The rates of homicide victimization by race reported in this study are for all Black and white victims, including those who identify as Hispanic or Latino, or other racial categories.

<sup>8</sup> *Id.* p. 13; Sherman, Amy. An updated look at statistics on black-on-black murders. PolitiFact Florida. (May 2015).

<sup>9</sup> E. Ann Carson, [Prisoners in 2020 – Statistical Tables](#), Bureau of Justice Statistics, U.S. Dep't of Justice; p.30, Table 5.

<sup>10</sup> The only national statistics on the race of murder victims come from [the FBI's Supplementary Homicide Reports](#). These data have three limitations: (i) They are incomplete. (ii) They combine murder and non-negligent manslaughter. (iii) They do not identify Hispanic or Latino victims, so their racial categories—"white" and "black"—are

(537/1,167).<sup>11</sup> The concentration of murder defendants who were convicted of killing white victims is considerably greater among exonerees who were sentenced to death, 66% (89/134).

Many studies in at least 15 states have shown that defendants who are charged with killing white victims, regardless of their own race, are more likely to be sentenced to death than those charged with killing Black victims.<sup>12</sup> Since 1976, 75% of executions in the United States were for murders of white victims.<sup>13</sup> The disparities we see in our data suggest that innocent defendants who are charged with killing white victims are more likely to be sentenced to death, and sometimes no doubt executed, than those charged with killing Black victims.

There are also sentencing disparities among murder exonerees who avoided death sentences. More than half of non-capital murder exonerees were sentenced to life imprisonment,<sup>14</sup> or to life without the possibility of parole (535/1,033), and the rest were sentenced to prison for terms shorter than life. Fifty-eight percent of non-capital murder exonerees who were convicted of killing white victims were sentenced to life imprisonment (262/448), compared to 46% of those who were convicted of killing Black victims (206/444).

In other words, judging from exonerations, the pattern of harsh sentencing for murder convictions with white victims and lighter sentencing for those with Black victims is not restricted to death sentences. If they avoid the death penalty, innocent murder defendants in white-victim cases are also more likely to be sentenced to life in prison than those charged with killing Black victims.

The race-of-victim disparity in murder exonerations also interacts with the race-of-defendant disparity. Only about 13% of murders by Black people have white victims,<sup>15</sup> but 26% of innocent Black murder exonerees were convicted of killing white people (168/638). This is a considerable disparity; it could explain most or all of the difference in murder exonerations by race beyond general homicide rates.

Part of the explanation for the high number of Black murder exonerees who were convicted of killing white victims may be the perils of cross-racial eyewitness identification. We discuss that

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not limited, as ours are, to non-Hispanic white and Black victims. The estimate in the text is the average percent of "white" victims reported by the FBI from 2001 through 2010, multiplied by 0.79 to correct for the 21% of "whites" who were identified as Hispanic or Latino in the 2010 census. U.S. Census Bureau. [QuickFacts - United States](#).

<sup>11</sup> We classify a murder exoneration as a "white victim" case if it included at least one murder victim who was white. Eighteen cases in the Registry with multiple murder victims had both at least one white victim and at least one Black victim each. They are coded as white victim cases.

<sup>12</sup> For reviews of the literature on this issue, see Grosso, Catherine M., Barbara O'Brien, Abijah Taylor, and George Woodworth. "Race Discrimination and the Death Penalty: An Empirical and Legal Overview." *America's Experiment with Capital Punishment* 525 (James R. Acker, Robert M. Bohm, & Charles S. Lanier, eds., 3d ed. 2014); O'Brien, Barbara, Catherine M. Grosso, George Woodworth, and Abijah Taylor. "Untangling the Role of Race in Capital Charging and Sentencing in North Carolina, 1990-2009." *94 N.C. L. Rev.* 1997 (2016).

<sup>13</sup> Death Penalty Information Center. [Race of Victims Since 1976](#).

<sup>14</sup> This category also includes any sentence of 99 years in prison or longer.

<sup>15</sup> Federal Bureau of Investigation. [2014 - Crime in the United States](#). The estimate in the text is the proportion of "White" victims for "Black or African American" offenders, multiplied by 0.79 to correct for the 12% of "whites" who were identified as Hispanic or Latino in the 2010 census. See *supra*, note 10.

issue in more detail in the next section, on sexual assault exonerations, where it looms larger.<sup>16</sup> Beyond that, it is no news that inter-racial violence by Black people is punished more harshly than intra-racial violence. It would not be surprising to learn that it is also pursued with greater ferocity and less accuracy.

#### **b) Misconduct and delay**

Two racial differences in murder exonerations might help explain the disproportionate number of murder exonerations with Black defendants.

Misconduct: Official misconduct is more common in murder convictions that lead to exonerations of Black defendants than in those with white defendants.

Delay: Exonerations of Black murder defendants take longer than exonerations of white murder defendants.

*Misconduct*. Seventy-two percent of the murder prosecutions that led to exoneration included official misconduct that we know about (845/1,167). We have identified many different types of misconduct. The most common is concealing exculpatory evidence—often called “Brady violations” after the landmark 1963 Supreme Court case *Brady v. Maryland*<sup>17</sup>—which occurred in 63% of the cases (736/1,167). The next most common type is witness tampering—everything from misleading a witness at a lineup, to threatening a witness, to suborning perjury—which occurred in 35% of murder exoneration cases (416/1,167); followed by perjury by a state official, which happened in 20% of the cases (230/1,167).

The rate of official misconduct is considerably higher among murder exonerations with Black defendants than those with white defendants, 78% (500/638) compared to 64% (236/369). The overall rate of misconduct is a bit higher in capital cases—up from 73% to 78% (105/134)—but the difference by race is similar: 85% (63/74) of Black exonerees who were sentenced to death were victims of official misconduct, compared to 70% (32/46) of white death-row exonerees.

Most of these differences by race are due to misconduct by police officers. The rate of misconduct by prosecutors is about the same for all murder exonerations regardless of race, 48% for Black defendants (308/638) and 45% for whites (167/369). (There is a slightly larger difference in prosecutorial misconduct among capital exonerations, 65% for Black defendants (48/74) and 59% of whites (27/46).) On the other hand, there is a substantial difference in the rate of misconduct by police: 58% for Black murder exonerees (370/638) compared to 38% for whites (142/369).

The high rate of misconduct by police in murder cases with Black defendants is reflected in the nature of the misconduct that occurs. Eighty-four percent of perjury by government officials is committed by police officers.<sup>18</sup> It happened in 21% of murder exonerations with Black defendants (136/638) and 14% of those with white defendants (51/369).

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<sup>16</sup> Only 35% of murder exonerations of Black defendants convicted of killing white victims included eyewitness misidentifications (58/164), compared to 78% of sexual assault exonerations of Black men who were convicted of sexual assaults on white women (101/130).

<sup>17</sup> *Brady v. Maryland*, 73 U.S. 83 (1963).

<sup>18</sup> Samuel Gross, et al., [Government Misconduct and Convicting the Innocent](#), National Registry of Exonerations (2020) at p. 96.

Witness tampering is also committed primarily by police officers.<sup>19</sup> It happened in 42% of murder exonerations with Black defendants (271/638) but only 25% of those with white defendants (91/369). In 17% of Black defendant murder exonerations the witness tampering included violence or threats to the witness (106/638), compared to 7% for white defendant cases (24/369). For example:

[Kendrick Scott](#) and [Justly Johnson](#) were arrested and charged with murder within hours after Lisa Kindred was shot and killed in Detroit on May 9, 1999, and convicted in 2000. Antonio Burnette and Raymond Jackson had been arrested hours earlier as part of the same investigation, and they told the police—and later testified in court—that Scott and Johnson told them that they had committed the murder.

Scott and Johnson were exonerated in 2018 after the victim's son—who witnessed the killing at close range when he was eight, but was never questioned by anyone before trial—testified that he was certain that neither Scott nor Johnson was the gunman. In addition, Burnette testified that the police “whooped” him during his interrogation and that he was afraid he would be charged with the murder himself if he did not say what they wanted to hear, and a cousin of Jackson's testified that before he died in 2008, Jackson told her that he had lied because he was afraid of the police and the prosecution.

Tainted identification procedures are a particularly dangerous form of misconduct. They occurred in 10% of murder exonerations, that we know (112/1,167): 5% of cases with white defendants (18/369), and more than twice as often—12%—of those with Black defendants (75/638). Their purpose, often successful, is to produce false evidence that an eyewitness to the crime identified the defendant based on their memory of what they saw. These are cases in which police (and, rarely, prosecutors) *tell* witnesses, in one form or another, who to identify in a lineup or other identification procedure. Sometimes they use visual cues:

In 1985, [Nathson Fields](#), a member of the El Rukn street gang in Chicago, was misidentified by members of a rival gang as one of two men who gunned down two of their comrades the previous year. Fields was the only person in the lineup wearing short sleeves, which showed an El Rukn tattoo on his forearm. He was exonerated in 2009.

And sometimes they use threats:

A year after [Charles Wilhite](#) was convicted of murder in Springfield, Massachusetts in 2010, the critical eyewitness testified that a detective repeatedly threatened to charge him as an accessory to the murder if he didn't identify Wilhite—who was acquitted at a retrial in 2013.

Police used threats in 52% of tainted identification procedures that produced false identification of Black murder exonerees (39/75), compared to 11% of those that produced false identifications of white exonerees (2/18).

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<sup>19</sup> [Id.](#) at p.35

We only know about misconduct that is reported in documents we can obtain. Official misconduct in criminal cases is under-reported because, by its very nature, most misconduct is deliberately concealed—and much if not most remains hidden.<sup>20</sup> That means that wrongful murder convictions are also more likely to include *undiscovered misconduct* when the defendant is Black: in exonerations for which some misconduct already is known, in those with no known misconduct, and among false murder convictions that have not resulted in exoneration.

*Delay.* Black murder exonerees spend longer before release than white murder exonerees, about 16 years on average compared to about 13, whether or not they were sentenced to death. Three additional years in prison is a severe penalty. For reference, the average *total time* spent in prison for drug crime exonerees is about one year; excluding those who served no time because they got probation, it's still under two years. This longer pipeline to exoneration also means that, at any given time, a larger proportion of Black murder defendants who will eventually be exonerated are still in prison.

Murder exonerations with known misconduct do take longer than those without, 17.7 years to 12.2 years, on average. The higher rate of misconduct in cases with Black exonerees may cause some of the longer average time they wait to be exonerated, perhaps because the authorities resist exoneration more strenuously in cases with government misconduct. The longer time to exoneration for Black exonerees may also contribute to the higher rate of *known* misconduct because it provides a better opportunity for misconduct that occurred to be discovered. In any event, differences in time to exoneration by race persist even after controlling for government misconduct. Among murder exonerations with official misconduct, the average time to exoneration is 19.1 years for Black exonerees and 16.6 years for white exonerees; among murder exonerations without misconduct, it's 13.3 years for Black exonerees and 11.3 for whites.

It seems that innocent Black people who are convicted of murder are at a disadvantage not only because their convictions were more likely to have been influenced by official misconduct, but also simply because of their race.

Consider this case:

In 1984, 19-year-old [Henry McCollum](#) and his 15-year-old half-brother, [Leon Brown](#), were sentenced to death for the rape and murder of 11-year-old Sabrina Buie in Robeson County, North Carolina. McCollum and Brown were from New

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<sup>20</sup> In some contexts, the fact that we can only report on misconduct that has been uncovered can lead to reporting biases. For example, the rate of observed misconduct in death penalty exonerations is almost twice the rate for sexual assault exonerations, 78% vs. 41%. That may be due to a higher rate of misconduct in capital murder investigations and prosecutions, at least among cases that end in exoneration; it may also be due, at least in part, to a higher rate of uncovering whatever misconduct occurred in post-conviction investigations in capital cases. Death sentences are re-examined more thoroughly than other crimes, and the trials that produce them are heavily litigated in successive reviews. As a result, we are more likely to know if misconduct was committed in capital cases. By contrast, many rape exonerations are based entirely on DNA tests that clear the innocent defendant but provide no information about any chicanery that may have led to the false conviction—which can create a false impression that no misconduct occurred. Because of the danger of biases such as this, we are generally cautious in making generalizations about patterns of misconduct from the data in the Registry. That danger does not apply to the comparisons we make here. We can think of no plausible reason why official misconduct leading to a murder conviction of an innocent person is more likely to come to light if the defendant is Black than if he is white. The racial disparities we see seem to be caused by real differences in the rates of official misconduct in murder cases, mostly by police officers.

Jersey; they were visiting relatives in North Carolina. Both were intellectually disabled, and both falsely confessed under pressure from police. No physical evidence connected them to the crime.

In 2010, after decades of unsuccessful efforts to prove their innocence through the courts, the North Carolina Innocence Inquiry Commission agreed to investigate the case. It determined that DNA from a cigarette butt found at the scene of the crime came from Roscoe Artis, a proven serial murderer and rapist who was himself sentenced to death for raping and killing an 18-year-old woman in the same county about a month after McCollum and Brown had confessed.

Artis had been a suspect in the Sabrina Buie rape-murder. In 1984, the police had asked the North Carolina State Bureau of Investigations to compare the fingerprints found on beer cans at the crime to those of Artis—but they hid that request from the defense. The authorities also concealed the fact that a witness who testified at trial that McCollum and Brown had admitted to the murder, had not only previously denied knowing anything about the case, but had taken a lie detector test that confirmed his denial.

McCollum and Brown were exonerated in 2014, after nearly 31 years in prison. They were pardoned by the Governor of North Carolina in 2015 and received \$750,000 each in compensation from the state. Even so, after their release the prosecutor who sent them to death row told *The New York Times*: “No question about it, absolutely they are guilty.”

Certainly there was misconduct that contributed to the conviction of McCollum and Brown, and that may have contributed to the decades of resistance to reopening the case. Did it also matter that the defendants were Black—as well as strangers to the community and intellectually disabled? Did their race contribute to authorities’ unjustified and apparently unexamined confidence in their guilt even as evidence of innocence mounted? That would fit the data we see across cases.

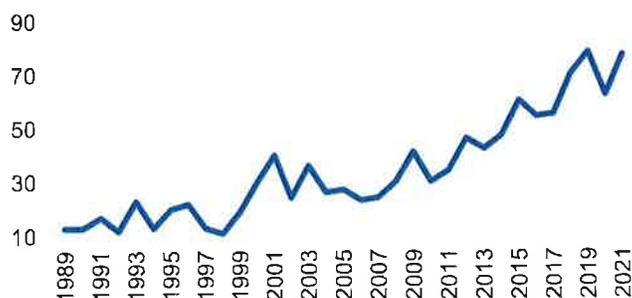
McCollum and Brown are two of 75 innocent death-row defendants who spent 30 years or longer in prison before they were exonerated, 67% of whom are Black (50/75).

The racial pattern is similar for all murder exonerees, regardless of sentence. Of the 181 exonerees who spent 25 years or longer in prison before release, 68% are Black; among the ten who lost 40 or more years to prison, it’s 80%.

### **c) Changes over time**

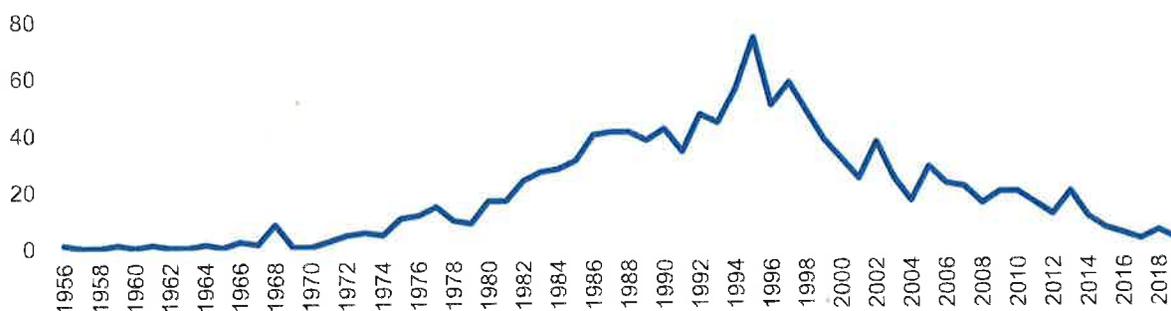
We can date an exoneration in at least two ways. The conventional one is by the date the exoneration itself occurred, the occasion on which the defendant was finally cleared. This sorting describes that timing of the process of exonerating innocent defendants. Figure 1, for example, shows that the annual number of murder exoneration has been growing pretty steadily since 1989.

**Figure 1: Number of Murder Exonerations by Year of Exoneration**



In order to study the process that led to an innocent defendant's *conviction*, however, we need to focus on the period leading up to that event, and classify exonerations by date of conviction. Figure 2 displays the number of murder exonerations by the year in which the exonerees were convicted. It shows that dates of conviction are more spread out than dates of exoneration; they range from 1956 to 2019, and rise to a sharp peak from 1992 to 1998.

**Figure 2: Number of Murder Exonerations by Year of Conviction**



A major reason for the drop off in exonerations for convictions after the mid-1990s is the time lag from conviction to exoneration, which averages 16.2 years for murder exonerations. As a result, many exonerations that will eventually happen for murder convictions after 1995 have not yet occurred, including some in cases that are already more than 25 years after conviction. It's likely, however, that even when all those murder exonerations are recorded, there will be a peak for convictions in the mid-1990s because the all-time high-water mark in the number of murders in the United States lasted from 1990 to 1994, with convictions trailing by one to a few years.<sup>21</sup>

If we separate out homicide exonerations by race of defendant, we see more Black murder exonerees than white for all but a handful of years of conviction, despite the fact the Black people are a small minority of the population. This disparity is concentrated—and accounts for

<sup>21</sup> For a useful compilation of FBI crime statistics by year, see The Disaster Center, [Unites States Crime Rates 1960 – 2019](#).

the largest number of cases—in the period from 1992 through 2000, the years for which the number of all murder exonerations is highest. See Figure 3.

**Figure 3: Number of Murder Exonerations by Year of Conviction and Race of Defendant**

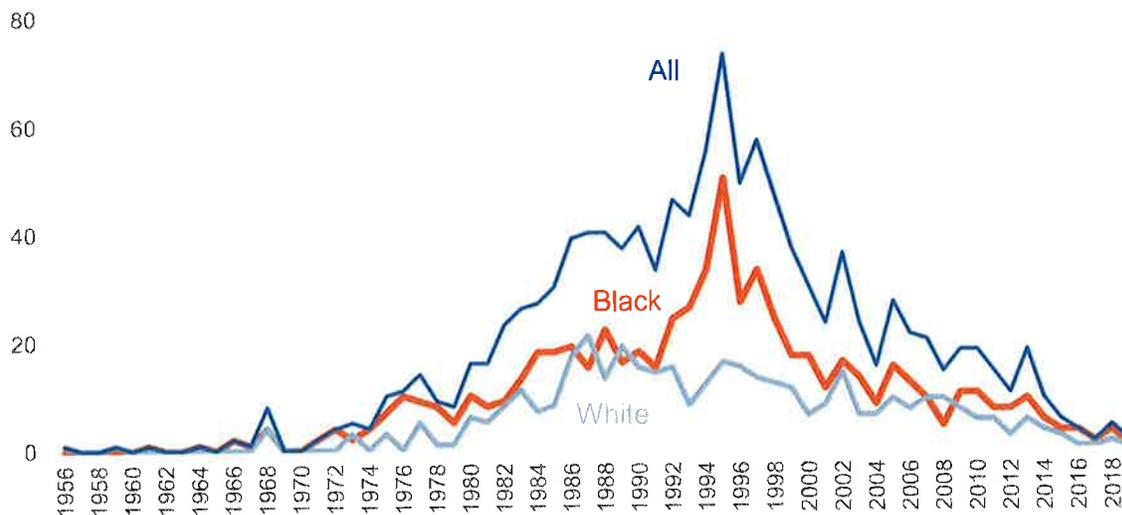
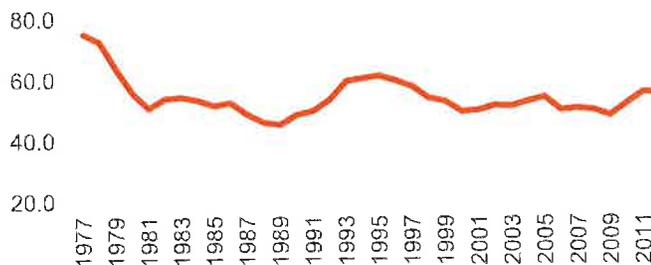


Figure 4 displays a running 5-year average of the percent of murder exonerations with Black exonerees. By year of conviction, this proportion has remained fairly stable since 1980, ranging back and forth from 45% to 61%, between three-and-a-half and four-and-a-half times the proportion of Black people in the population.

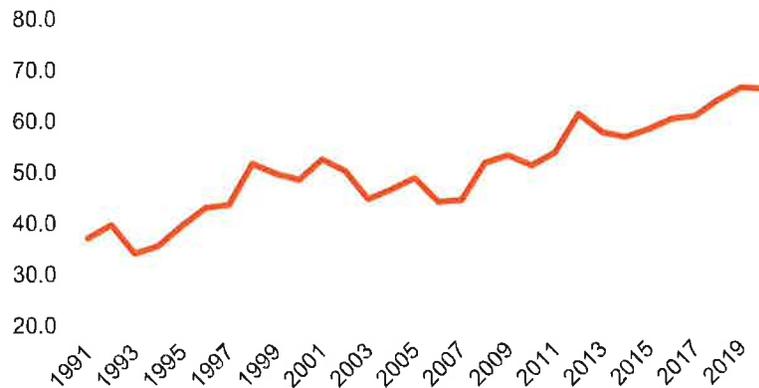
**Figure 4: Percent of Murder Exonerations with Black Defendants by Year of Conviction (Five-Year Moving Average)<sup>22</sup>**



<sup>22</sup> For each year, the value of the “Five-Year Moving Average” in Figure 4 is the average of the values for that year, the two years before and the two years after.

On the other hand, there has been a large and reasonably steady increase in the proportion of Black murder exonerees by year of *exoneration*, from 37% in 1991 to 66% in 2020, as we see in Figure 5.

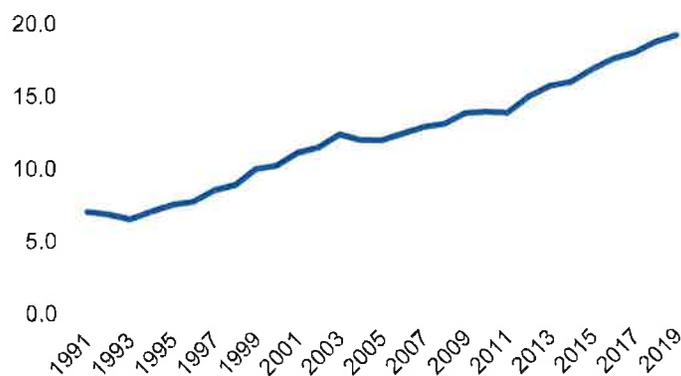
**Figure 5: Percent of Murder Exonerations with Black Defendants by Year of Exoneration (Five-Year Moving Average)<sup>23</sup>**



Why has there been a sharp increase in the percentage of Black murder exonerees by year of *exoneration* since 1991 (Figure 5), while the percentage of Black murder exonerees by year of *conviction* remained roughly steady (Figure 4)? The answer turns on two other patterns. First, as we saw in the previous section, Black murder exonerees spend on average three years longer in prison before exoneration than white murder exonerees. Second, as we see in Figure 6, the average time spent in prison for all murder exonerees nearly tripled over the same period, from less than 7 years for those cleared in 1991 to 19 years for those exonerated in 2019.

<sup>23</sup> For each year, the value of the “Five-Year Moving Average” in Figure 5 is the average of the values for that year, the two years before and the two years after.

**Figure 6: Years in Prison before Murder Exonerations by Year of Exoneration (Five-Year Moving Average)<sup>24</sup>**



The rate of exonerating innocent murder defendants has picked up steam in spurts since 1989, rising from about 16 a year through 1993, to 69 murder exonerations a year for the most recent five-year period. See Figure 1. Along the way, it seems that many of those who worked on these exonerations—innocence organizations, defense attorneys, prosecutors, judges—began to focus attention on innocent murder defendants who remained in prison and had been there the longest.

This process would have occurred at different times in different offices, courts and counties. In many, probably most, it will happen—if ever—in years to come. But whenever it happens, in most large American counties, the great majority of the innocent murder defendants who are identified will be Black prisoners who've been ignored for 10, 20, 30 years, or longer. As they are exonerated, the proportion of Black murder exonerees will rise—as will the average time from conviction to exoneration. How could it be otherwise? Innocent Black defendants are not only more likely to be convicted of murder than innocent white defendants, they also receive harsher sentences and were less likely to be exonerated in early years after conviction.

Many of the innocent Black murder defendants who spent decades in prison were exonerated by Conviction Integrity Units (CIUs), divisions of prosecutorial offices whose mission is to prevent, identify, and correct false convictions.<sup>25</sup> The first CIU was founded in 2002 and did little. As of 2007, there were two CIUs in the country; they had been involved in three exonerations. And then the numbers began to climb exponentially—literally—doubling every few years. By the end of 2012 there were 9 CIUs across the country; in 2015 there were 24; in 2018, 44; at the end of 2021, 93.

The number of CIU exonerations has followed a similar pattern. From 2008 through 2013, there were 42 CIU exonerations, an average of 7 a year. In 2014 alone there were 51 CIU exonerations.

<sup>24</sup> For each year, the value of the "Five-Year Moving Average" in Figure 6 is the average of the values for that year, the two years before and the two years after.

<sup>25</sup> The National Registry of Exonerations, [Conviction Integrity Units](#).

From 2015 through 2021, there were 441 CIU exonerations, an average of 63 a year, 37% of all exonerations in that period (441/1,200).

Since the beginning of 2014, when CIU exonerations became common, CIUs have been involved in about a third of all murder exonerations (170/538). Sixty-three percent of all murder exonerees in this period are Black (337/538), compared to 52% for the eight years from 2006 through 2013 (141/270)—in line with the upward trend we see in Figure 5. But only 54% of non-CIU murder exonerations since 2014 had Black defendants (199/368), compared to 81% of CIU murder exonerations (138/170). In other words, almost all of the increase in the proportion of Black murder exonerees in the last eight years is due to the extraordinary concentration of Black exonerees in CIU murder exonerations. The CIU murder exonerees in this period spent more time in prison before exoneration, about 21 years on average, compared to 17 for non-CIU murder exonerees.

Have CIUs been addressing a backlog of innocent Black murder defendants from decades past? Some clearly have. For example:

In 1988, [Curtis Crosland](#), a 23 year-old Black man, was convicted of murder in Philadelphia for shooting a grocery store owner during a robbery. He was sentenced to life in prison without the possibility of parole. Crosland's conviction was based primarily on evidence that a witness, who refused to testify at trial, had testified at a preliminary hearing that he heard Crosland admit that he shot the store owner. That conviction was reversed on appeal, but Crosland was convicted again in 1991 based on similar evidence, except that at the second trial the main witness did testify and explicitly recanted his earlier testimony at the preliminary hearing.

Over the next 29 years, Crosland and various attorneys working with him petitioned state and federal courts many times to reopen his case. Along the way, they obtained statements from three witnesses who had not testified at trial—one who was in the store and two who were at a window across the street—who did not see Crosland but did identify other men who were at the scene with guns. All of those petitions were rejected.

In 2018, Larry Krasner took office as District Attorney of Philadelphia. In his election campaign, he promised to invigorate the county's Conviction Integrity Unit, which until then had participated in three exonerations over a period of four years. In 2020, a much more active Philadelphia CIU agreed to review the Crosland case. They found a trove of previously concealed evidence, including documents that show that the main witness against Crosland had lied about that case and other matters on many occasions; and that a man who had been seen at the robbery by the witnesses who were found by Crosland's post-conviction attorneys had also been identified to the police as the shooter repeatedly, in the initial investigation in 1988.

In late May 2021, in a proceeding in federal court, the Philadelphia District Attorney's Conviction Integrity Unit agreed that Crosland's conviction should be vacated because the trial prosecutors "violated Crosland's right to due process by not disclosing this evidence to him prior to trial, resulting in his wrongful

conviction.” In June 2021, charges were dismissed, and Crosland was released after 33 years in prison.

Curtis Crosland is the twenty-second of 25 CIU murder exonerees in Philadelphia since 2014<sup>26</sup>—92% of whom are Black. That number is highly unusual. Most CIUs have had no exonerations at all so far (53/94), including at least nine units that opened five years ago or longer; many others have been involved in only one or two exonerations.<sup>27</sup>

The 138 Black CIU murder exonerees since 2014 are spread across 26 different CIUs, but not evenly. Almost four-fifths (108/138)—including a third of all Black murder exonerees in the United States in this period—come from CIUs in eight counties, all in large East Coast or Midwestern cities: Philadelphia (23), Brooklyn (19), Detroit (19), Chicago (17), Baltimore (13), Boston (7), Queens (6) and the Bronx (4).<sup>28</sup> There’s no reason to think this trend will slow down in those cities, and as more CIUs become active the pace may accelerate.

*In sum:* We know how many exonerated murder defendants are Black—55%—but we don’t know the percentage of Black people among all falsely convicted murder defendants. We also know that Black murder exonerees spend longer in prison before exoneration than whites, which means that when the rate of exonerations is rising, as it has been since 1989, innocent Black defendants may be underrepresented among those who have been exonerated. Since the beginning of 2014, the number of murder exonerees who spent 20, 30 or even 40 years in prison has grown, and the proportion of murder exonerees who are Black has increased substantially. A handful of big-city CIUs are responsible for most of that increase. Without them, 56% of murder exonerees since the beginning of 2014 would have been Black; with them, it’s 64%.

#### **d) Intentional and structural discrimination**

In some cases, it’s easy to spot racism in the investigations or the prosecutions that led to the false murder convictions we study:

In 1980, a Texas Ranger investigating the rape-murder of a high school student described what was coming to the two custodians who found the body, [Clarence Brandley](#) and a white colleague. He said, “One of you is going to have to hang for this” and, turning to Brandley, added, “Since you’re the nigger, you’re elected.” Brandley was sentenced to death in 1981 and exonerated in 1990.

In 1987, in Monroeville, Alabama, police framed [Walter McMillian](#) for the murder of a clerk at a dry cleaner’s. McMillian, a 46-year old Black man, had numerous alibi witnesses, all Black: he was at a fish fry at the time of the killing. But he also had a white girlfriend, which was reason enough for the police to target him. McMillian was sentenced to death in 1988 and exonerated in 1993.

More often, discrimination is less overt:

In 2014, [Glenn Ford](#) was exonerated after 30 years on death row in Louisiana. He was released because over the decades after his conviction, his lawyers discovered

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<sup>26</sup> All but one were obtained after Larry Krasner became the District Attorney in 2018.

<sup>27</sup> The National Registry of Exonerations, [Conviction Integrity Units](#).

<sup>28</sup> The counties are: Baltimore City, Maryland; Bronx, New York; Cook (Chicago), Illinois; Kings (Brooklyn), New York; Philadelphia, Pennsylvania; Queens, New York; Suffolk (Boston), Massachusetts; Wayne (Detroit), Michigan.

several facts that undermined the state's case: trial testimony by the state's expert witnesses was false or misleading; police officers lied to the jury about what Ford said to them; hidden police reports included tips from informants that implicated two other suspects, but not Ford; and one of those two suspects admitted that he was the actual killer.

In 2015, A.M. "Marty" Stroud III, the former trial prosecutor who put Ford on death row in 1984, published a remarkable apology: "Glenn Ford was an innocent man. He was released from the hell hole he had endured for the last three decades."<sup>29</sup>

Stroud takes painful personal responsibility for the tragedy, but not because of deliberate misconduct. He was inattentive: "My fault was that I was too passive. I did not consider the rumors about the involvement of parties other than Mr. Ford to be credible.... Had I been more inquisitive, perhaps the evidence would have come to light years ago."

Stroud describes how he played by rules that gave him an unfair advantage over an innocent man: "I did not question the unfairness of Mr. Ford having appointed counsel who had never tried a criminal jury case much less a capital one." Even more troubling: "The jury was all white, Mr. Ford was African-American. Potential African-American jurors were struck with little thought about potential discrimination because at that time a claim of racial discrimination in the selection of jurors could not be successful...."<sup>30</sup>

Stroud is unsparingly self-critical, but he does not describe himself as racist: "In 1984, I was 33 years old. I was arrogant, judgmental, narcissistic and very full of myself. I was not as interested in justice as I was in winning." He believed Ford was guilty and did not question that belief. The same is probably true of the police officers who concealed information about the real killers, the judge who presided over the selection of an all-white jury, and the jury itself, which sentenced Ford to death.

Some police and prosecutors may habitually assume that any Black murder suspect they deal with is a killer. That's false, of course, and it's a form of racial profiling. If they are white, they may mistrust claims of innocence by Black defendants and alibi evidence from Black witnesses because Black people are unfamiliar to them and seem less trustworthy than those who are more similar to themselves.

All of us—including judges and jurors as well as lawyers and police—are subject to unconscious racial biases—and all of us are prone to go along with accepted practices. Routine, institutional discrimination is more common than intentional racism, and probably harder to detect and

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<sup>29</sup> Stroud III, A.M. "Marty". [Lead Prosecutor Apologizes for Role in Sending Man to Death Row](#). *Shreveport Times*. March 2015.

<sup>30</sup> Ford was convicted two years before the landmark case of *Batson v. Kentucky*, 476 U.S. 79 (1986), in which the Supreme Court for the first time created a procedure for challenging the use of peremptory challenges to create all-white criminal trial juries.

correct. Perhaps that is one reason why Clarence Brandley, the target of explicit racism, was exonerated nine years after he was convicted, while Glenn Ford had to wait 30 years.

Would Glenn Ford have been convicted and sentenced to death if he had not been a Black man charged with killing a white victim? There's no way to know. Hundreds of white defendants have also been falsely convicted of murder, and most of their cases included serious official misconduct. But we do know that innocent Black murder defendants as a group are at a disadvantage because of their race, and that sometimes it costs them their freedom, and most or all of their remaining years.

### 3. The net effect

We don't know the number of false criminal convictions, for murder or any other crime. Most by far remain hidden—false convictions far outnumber exonerations—and we have too little information to estimate that hidden figure.<sup>31</sup> Except in one context: death sentences.

Death sentences have a far higher rate of exoneration than other criminal convictions, and we have far more detailed data on them than any other category of criminal sentences. A study published in the Proceedings of the National Academy of Sciences made use of these unique characteristics to calculate “a conservative estimate of the proportion of false convictions among death sentences in the United States”—4.1%.<sup>32</sup>

As the study is careful to point out, this estimate is for death sentences only. It cannot be applied to all crimes, or even to all murders. Still, it's a starting point; it suggests that the rate of miscarriages of justice for murders in general is somewhere in the general vicinity of the rate for capital murders.

Assume for a moment that the proportion of innocent defendants among all murder convictions is half the rate for death sentences, 2%. That would mean there would be about 3,300 innocent defendants among the estimated 165,000 inmates who are in American prisons for murder convictions,<sup>33</sup> plus thousands more among the comparable number of defendants who were convicted of murder in the past 40 years but are not now in prison because they were released or have died.

In short, it's likely that at least several thousand defendants have been falsely convicted of murder in the time period covered by the Registry, and—judging from the exonerations we have seen—more than half of them were Black.

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<sup>31</sup> Gross, Samuel R. [What We Think, What We Know, and What We Think We Know About False Convictions](#). *Ohio State J. of Crim Law*, Vol. 14, No. 2 (Spring 2017), at pp. 765-67.

<sup>32</sup> Gross, Samuel R., O'Brien, Barbara, Hu, Chen and Kennedy, Edward. [Rate of False Conviction of Criminal Defendants Who Are Sentenced to Death](#). *Proceedings of the National Academy of Sciences*, Vol. 111, No. 20 (May 20, 2014); pp. 7230-7235.

<sup>33</sup> As of the end of 2019. E. A. Carson, [Prisoners in 2020 - Statistical Tables](#). Bureau of Justice Statistics, U.S. Dep't of Justice (December 2021). Calculated from Tables 15 and 18, pp. 29, 33.

# III. Sexual Assault

*Nearly 60% of rape exonerations involve Black people, who are the defendants in less than a quarter of rape convictions. The majority of rape exonerees were misidentified by victims who had been raped by strangers. Two thirds of those misidentified rape defendants were Black men, most of whom were misidentified by white victims.*

*Cross-racial eyewitness identification is a notoriously risky process. It appears to be the leading cause of rape convictions of innocent Black men in the United States. But it's not the only factor. Some of the misidentifications were obtained by deliberately tainted identification procedures, and Black men are also overrepresented in the minority of rape exonerations without misidentifications. In addition, Black rape exonerees received longer sentences than whites, and spent several more years in prison before release.*

*This country has a horrific history of racism in addressing accusations of interracial rape against Black men. The persistence of that racism is easy to spot in some rape exonerations. In others, no doubt, it's hidden beneath the surface.*

*Most rape exonerations are based on post-conviction DNA evidence that proves that the exoneree was not the rapist. Such exonerations became increasingly uncommon as DNA testing became widely available to determine the identity of rapists before trial. There have been no DNA rape exonerations for convictions after 2007: DNA testing has greatly reduced false convictions based on mistakes about the identity of rapists. This is a major achievement. It has prevented the conviction of hundreds if not thousands of innocent rape suspects, mostly Black men who were accused of raping white women.*

## **1. Race and false conviction for rape**

Fifty-nine percent of sexual assault exonerees are Black, four-and-a-half times the proportion in the population; 33% are white. That suggests that innocent Black people are almost eight times more likely than white people to be falsely convicted of rape. Unlike murder, these numbers are way out of line with the racial composition of sexual assault convictions. As of the end of 2019, 21% of those serving time in state prisons for sexual assault were Black, 39% were white, and 25% Hispanic.<sup>34</sup> Judging from known erroneous convictions, a prisoner serving time for sexual assault is more than three times more likely to be innocent if he is Black than if he is white.

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<sup>34</sup> *Id.* (the remaining 15% were Indigenous People; Asians, and Pacific Islanders; and persons of two or more races).

## 2. Eyewitness misidentification

The leading cause of false sexual assault convictions is eyewitness misidentification of defendants who are strangers to the victims.

Ninety-eight percent of sexual assault exonerations have female victims. Strangers commit only about a quarter of rapes in the United States,<sup>35</sup> but they account for 69% of the false rape convictions that result in exoneration (243/350).

In 75% of sexual assault exonerations, the identity of the man who committed the rape was the central issue at trial (263/350); 87% of those cases were rapes by strangers (228/263), and 89% included mistaken eyewitness identifications (233/263). In the remaining 25% of sexual assault exonerations the assault never happened (87/350). Instead, the supposed victim lied about a consensual sexual encounter or fabricated an attack from scratch. None of these “no-crime” exonerations involved mistaken eyewitness identifications; in 83% the complainant knew the innocent defendant (72/87).

There were eyewitness misidentifications in 67% of all sexual assault exonerations (233/350), including 84% of the cases in which the defendants were strangers to the victims (205/243). The rate of eyewitness errors is much higher for innocent Black defendants—74% (154/207)—than for white defendants, 53% (61/116).

In 44% of all sexual assault exonerations with eyewitness misidentifications, Black men were convicted of raping white women,<sup>36</sup> a racial combination that appears in less than 11% of sexual assaults in the United States.<sup>37</sup> According to surveys of crime victims, about 70% of white sexual assault victims were attacked by white men and only about 13% by Black men.<sup>38</sup> But 52% of sexual assault exonerees with white female victims are Black (129/49), and 43% are white (106/249)—which suggests that Black defendants convicted of raping white women are more than six times more likely to be innocent than white men convicted of raping women of their own race.

There are many possible explanations for this disturbing pattern, but the simplest is probably the most powerful: the perils of cross-racial identification. One of the oldest and most consistent findings of systematic studies of eyewitness identification is that white Americans are much more likely to mistake one Black person for another than to mistakenly identify members of their own race.<sup>39</sup>

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<sup>35</sup> See, e.g., Bureau of Justice Statistics, U.S. Dep't of Justice, [Criminal Victimization in the United States, 2008, Statistical Tables, Table 27](#).

<sup>36</sup> To be precise, this ratio is the number of sexual assault exonerations with mistaken eyewitness identification, and with Black defendants and white victims, divided by the number of all sexual assault exonerations with mistaken eyewitness identification in cases in which the races of the defendants and all the victims are known (101/229).

<sup>37</sup> Black offenders accounted for an average of approximately 11% of all rapes and sexual assaults of white victims from 1996 through 2008. Bureau of Justice Statistics, U.S. Dep't of Justice. [Criminal Victimization in the United States, 1996-2008](#) (based on the National Criminal Victimization Survey; the statistic fluctuates because for each year it is usually extrapolated from a sample of ten or fewer survey responses).

<sup>38</sup> *Id.*

<sup>39</sup> See Meissner, Christian A. and John C. Brigham. [“Thirty Years of Investigating the Own-Race Bias in Memory for Faces: A Meta-Analytic Review.”](#) *7 Psychol., Pub. Pol'y & L.* 3 (2001).

The problem of cross-racial identification in rape prosecutions in America is asymmetrical. It poses a greater risk of misidentification for Black sexual assault defendants than for white defendants, for two reasons. First, a lower proportion of sexual assaults by white perpetrators are cross-racial. Most sexual assault victims are friends, family members or acquaintances of the attackers, who are likely to be of the same race—and if the victim is a stranger, she is likely to be white regardless of the race of the attacker simply because whites are the great majority of the population. Second, in experimental studies, white subjects show stronger “own race bias” than Black subjects—they tend to be worse at identifying members of other races. This is not surprising. As members of the majority group, many white Americans have little contact with Black people, but almost all Black people have regular dealings with white people.<sup>40</sup>

### 3. Misconduct and discrimination

#### a) Tainted identifications

Eyewitness misidentifications do not occur in a vacuum. Some are the products of misconduct and racial bias.

[Marvin Anderson](#) was suspected of rape in Virginia because the real rapist told his victim that he “had a white girl,” and Anderson was the only Black man known to the local police who lived with a white woman. Anderson had no criminal record, so an officer showed his color employment identification photo to the victim together with half a dozen black-and white mug shots of other men, and asked her to pick the perpetrator. Naturally, she chose Anderson, who spent 15 years in prison before he was exonerated by DNA.

Anderson’s false conviction was the product of a tainted identification, a dangerous form of misconduct in which police, directly or (as in this case) indirectly, *tell* an eyewitness who to pick in a formal identification procedure.

Tainted identifications occurred in 10% of the investigations of defendants who were convicted of rape and later exonerated (35/350). That’s about the same rate we saw for murder exonerations (112/1,167), but the process was quite different.

In murder cases, about 40% of tainted identification threats were used to induce the witnesses to identify the defendants—usually threats of arrest or prosecution (44/112). Predictably, that happened in nearly half of tainted murder identifications of Black exonerees (36/75), but only 11% of the few tainted identifications of white murder defendants (2/18).

In sexual assault exonerations the victims always survive the crimes, by definition, because if a victim is killed, the case becomes a murder. Unlike murder prosecutions, the critical eyewitness in a sexual assault case is almost always the victim. Perhaps for that reason, none of the tainted identifications in sexual assault exonerations include threats by the police.<sup>41</sup> Instead, as in

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<sup>40</sup> *Id.* at p.18.

<sup>41</sup> In a few exonerations that included sexual assaults as well as other violent crimes, police threatened witnesses other than the rape victims and forced them to identify the exonerees. Samuel Gross, et al., [Government Misconduct and Convicting the Innocent](#), National Registry of Exonerations (2020) at p. 41 n. 67.

Marvin Anderson's case, they may draw attention to the person they suspect without saying so. For example:

[Thomas Doswell](#) was identified by a rape victim in Pittsburgh who was shown photographs of eight men, one of which—Thomas's—had the letter "R" (for rapist) written on it. He was exonerated by DNA 19 years later.

In other cases, the authorities are more straightforward. After a rape victim picked the man standing next to Anthony Broadwater in a lineup in Syracuse, New York, in 1981, the prosecutor told her: "Of course you chose the wrong one... He and his attorney worked to make sure you'd never have a chance.... [He] had his friend come down and stand next to him. We had to send a car to the prison to get him here. They wouldn't go ahead until he showed.... They totally worked a number on you. He uses that friend, or that friend uses him, in every lineup they do. They're dead ringers." Every part of the prosecutor's statement was false. After the victim identified him at trial, Broadwater spent sixteen-and-a-half years in prison and 21 years as a registered sex offender before he was exonerated in 2021.

And in [Jerry Lee Evans](#)'s case, Dallas police simply told the victim which picture to choose. He spent 22 years in prison before he was exonerated and released.

In three quarters of murder exonerations with tainted identifications, one or more eyewitnesses lied and deliberately misidentified the exoneree (84/112), usually in cases in which they were threatened (44/84). In the absence of threats, only two rape exonerations with tainted identifications include deliberate misidentifications of the defendants.

The rate of tainted identifications is only slightly higher among Black rape exonerees than among whites, 11% to 9%. Still, as usual, Black rape exonerees who were set up for these misidentifications outnumber whites by more than two to one (22 to 10), and nearly half of all tainted identifications in rape exonerations are Black exonerees who were misidentified by white victims.

#### **b) Rape exonerations without eyewitness misidentifications**

In a third of rape exonerations there were no mistaken eyewitness identifications (117/350). Nonetheless, 45% of the exonerees in those cases are Black—less than the rate for rape exonerations with misidentifications (69%) but more than twice the proportion of Black people among those imprisoned for rape and about three and a half times their proportion of the population.

In three quarters of rape exonerations without misidentifications, no rape was committed (87/117). Most often, the complainants lied and accused the defendants of rape after consensual sex; in a few they said they'd been raped to avoid admitting to consensual sex with someone else; and in a couple of cases the complainants were delusional.

In the remaining quarter of these cases, the victims were raped but for one reason or another could not identify the rapists, who were convicted by other means (30/117). In most, (16/30) the conviction depended on a confession from the defendant, or from a co-defendant (guilty or innocent) who implicated the exoneree as well as himself. Some of these confessions were obtained by misconduct in racially tainted investigations.

In 1983, [Stanley Wrice](#), a Black man, was convicted of participating in a vicious gang rape of a white woman in Chicago and sentenced to life in prison. The victim did not identify Wrice, but he had confessed and two witnesses testified that they saw him participate in the rape. Wrice was exonerated in 2013 after it was established that he had been tortured into confessing by two officers in a Chicago police unit that specialized in obtaining confessions by torture, mostly from Black murder suspects. (Two years earlier, their commander, Lieutenant Jon Burge, was sent to federal prison for committing perjury in testimony about the unit.) By then, one of the two supposed eyewitnesses, also a Black man, had recanted and stated under oath that he too had been tortured, to force him to testify against Wrice; the other witness had died.

### c) Racism and discrimination

Racism in rape prosecutions can become a self-fulfilling prophecy—and an excuse for misconduct. In some cases, the critical players are defense attorneys, judges or jurors, rather than prosecutors or police officers.

In 1990, [Michael Phillips](#), a Black man, pled guilty in Dallas to the rape of a 16-year old white girl who misidentified him. Phillips later said that his lawyer never investigated his unanswerable claim that he was physically incapable of committing the crime; instead, she persuaded him that he would get life in prison if he went to trial because no jury would believe a Black man over a white girl. Phillips spent 12 years in prison, an unusually long term for a rape by a defendant with no prior record for violence or sexual misconduct. He was exonerated in 2014 when the rape kit was finally tested for DNA.

In some cases, the presence of racism is unmistakable.

In 1991, Marcus Lyons had recently been released from prison after completing a sentence for rape. He tried to call attention to his case by putting on his Navy uniform, going to the steps of the DuPage County, Illinois, courthouse, and nailing his foot to a cross made out of railroad ties. One of the officers who stopped him said “Come on nigger, your 15 minutes of fame are over.” Lyons was exonerated in 2007, by DNA testing of semen found on underpants worn by the victim. He might have been cleared in 1988 if blood-type testing had been done on those underpants, but the police—who knew the pants had never been tested—let the lawyers believe they had been and no semen was found.

In others, the impact of race is a shade less explicit.

In 1984, [Ulysses Charles](#), a Black immigrant from Trinidad who spoke with a strong Caribbean accent, was convicted of raping three white women in Boston. All three victims misidentified Charles as the rapist, even though they had told police that the rapist had an American accent, and had failed to mention Charles’s dreadlocks and gold front teeth. Before trial, tests on crime scene evidence found seminal fluid from the rapist and showed that the attacker had blood type O; Charles, as the police knew, had blood type B. That evidence was concealed, and at trial the prosecutor called a forensic analyst who testified

falsely that the rapist had not ejaculated. Charles was exonerated by DNA testing in 2001, after 20 years in prison.

Would the extreme misconduct that sent Charles to prison have occurred if he had been white? Would the victims have been confident of their identifications, despite the fact that he did not resemble the man they had earlier described? Would the jurors? Maybe—but it seems unlikely.

Of all the problems that plague the American criminal justice, few if any are as incendiary as the relationship between rape and race. From the Reconstruction through the first half of the twentieth century, claims that Black men raped white women triggered countless lynchings, riots and sometimes massacres of Black people.<sup>42</sup> Those horrors have stopped, but the fears and biases that fed them have not disappeared. It should be no surprise that racial bias and outright racism also play a role in wrongful convictions for sexual assault.

#### **4. Sentencing and time in prison before exoneration**

On average, Black sexual assault exonerees spent more than four years longer in prison than white sexual assault exonerees, 13.5 years compared to 9.4 years. Much of this disparity is caused by a comparatively small number of exonerees who were imprisoned for decades. Thirty-five sexual assault exonerees spent 25 years in prison or longer; half of them were exonerated in the past nine years. Of those, one was Hispanic, six were white—and 28 were Black, 80% of the total, including all but one of the nine who were imprisoned for 30 to 45 years.

Black sexual assault exonerees also received harsher sentences than whites: 27% were sentenced to life imprisonment (55/207) compared to 17% for white sexual assault exonerees (20/116); of the rest, 17% of Black rape exonerees were sentenced to 45 years or longer (36/207), compared to 7% of whites (8/116); and the average minimum term for those who were not sentenced to life was 26 years for Black defendants and 18 years for white defendants.

These are extremely severe sentences, by any measure, for white and Black sexual assault exonerees alike. In 2000, for example, only 1.6% of all sexual assault defendants convicted in state courts were sentenced to life imprisonment, the average maximum term of incarceration was 7 years, and 16% received probation<sup>43</sup> (as did *three* of 349 sexual assault exonerees, less than 1%). Part of the explanation is the process that produced these sentences. Eighty-eight percent of sexual assault convictions in state courts in 2000 were based on guilty pleas, almost all pursuant to plea bargains, but 92% of sexual assault exonerees went to trial (321/349). From the look of it, they paid heavily for their day in court—especially the Blacks. Very likely, many innocent defendants who have not been exonerated decided not to take that risk.

Our data are limited. We have only sketchy information on racial patterns in sentencing for sexual assault convictions in general, none for those with innocent defendants who were not exonerated, and incomplete data on the details of the crimes and the process of obtaining exonerations even for the cases we know best, those that we list in the Registry.

We cannot say for sure why so many Black sexual assault exonerees received such extreme sentences, even by comparison to the draconian sentences meted out to white sexual assault

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<sup>42</sup> See, e.g., Gilbert King, *Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of a New America*, 2012; Yuliya Parshina-Kottas, et al., [What the Tulsa Race Massacre Destroyed](#), N.Y. Times, May 24, 2021.

<sup>43</sup> Bureau of Justice Statistics, U.S. Dep't of Justice. [Felony Sentences in State Courts](#). (2000)

defendants who were later exonerated. Differences in criminal history cannot explain the gap: Among sexual assault exonerees who had no prior criminal convictions, the only four who received life sentences were Black. The average term for the rest was 24 years for Black exonerees and 11 years for white exonerees. Our best guess is that Black sexual assault defendants who insisted on their innocence and refused to plead guilty were punished more harshly for doing so than innocent white defendants who followed the same course.

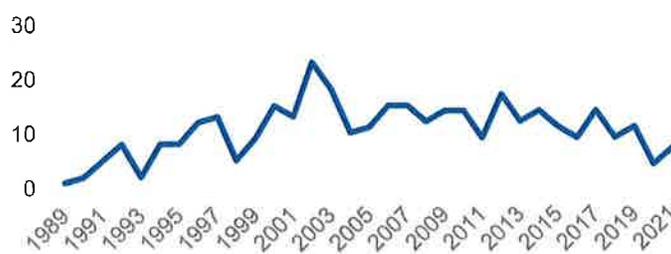
Sentence length has an obvious impact on the time exonerated defendants spend in prison: the longer the sentence, the longer the time it is possible for the defendant to spend in prison before exoneration. That explains some of the racial difference in prison time before exoneration for sexual assault, but not all. Controlling for length of sentence, Black sexual assault exonerees served on average about three years longer before release than white exonerees.<sup>44</sup>

In short, we don't know why Black sexual assault exonerees spent so much more time in prison before release than white sexual assault exonerees, but there are two simple, plausible and compatible explanations: they received longer sentences when convicted, and they faced greater resistance to exoneration, even in cases in which they were ultimately released.

## 5. Changes over time

Rape exonerations are decreasing. Across the time span of the Registry, murder exonerations increased by a factor of five, from 14 a year in 1989-1992 to almost 72 a year in 2018-2021, as we saw in Figure 1. Rape exonerations also rose in the first dozen years of the Registry, from a few a year in 1989-1990 to a peak of 23 in 2002—but then fell back to an average of about 13 a year through 2017, before dropping to less than ten a year in the last few years. See Figure 7.

**Figure 7: Number of Sexual Assault Exonerations by Year of Exoneration**



The comparison is equally telling when we examine exonerations by the year of the conviction of the innocent defendants instead of the year in which the exoneration occurred. The peak in murder exonerations is for convictions in 1995, directly following the all-time record in murders in the United States, after which the number declines more or less steadily as the convictions approach the present. See Figure 2. Rape exonerations peaked earlier, for convictions in 1990,

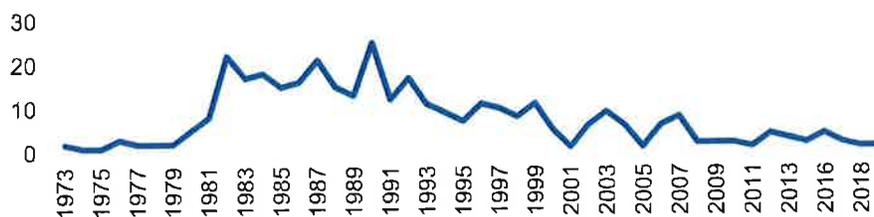
<sup>44</sup> We computed the following ordinary least squares regression analysis with Years Lost before exoneration as the dependent variable, and Sentence in years, Race (1 if defendant is Black; 0 otherwise), and the interaction of Sentence and Race as the independent variables:

$$\text{Years lost} = 3.962 + 3.163 \text{ Black} + .244 \text{ Sentence} - .110 \text{ Sentence} * \text{Black}.$$

The coefficients for all three independent variables are statistically significant.

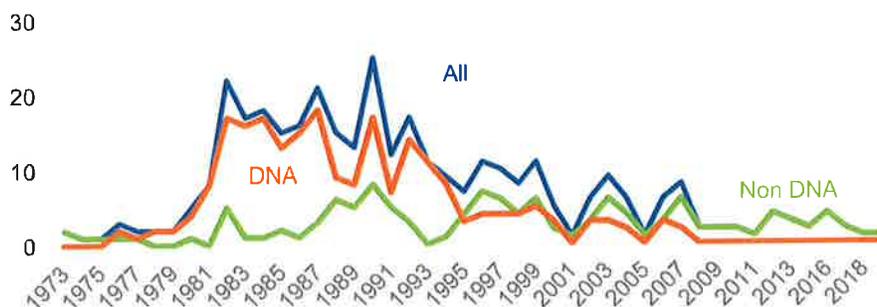
then dropped rapidly for a decade, averaging about four a year for convictions from 2001 through 2010, and about two a year since. See Figure 8.

**Figure 8: Number of Sexual Assault Exonerations by Year of Conviction**



The cause of this pattern is no mystery. Two thirds of rape exonerations are for convictions from 1973 through 1994 (237/350); 80% of them were based on post-conviction DNA testing (189/237). After that, DNA rape exonerations declined for convictions through 2007, and then disappeared entirely. Non-DNA rape exonerations, by contrast, have occurred at a reasonably steady low rate for convictions since 1982, averaging about three a year. See Figure 9.

**Figure 9: Number of DNA and Non-DNA Sexual Assault Exonerations by Year of Conviction**



DNA testing is extremely effective at identifying a person who left testable biological evidence at a particular location. Because rapists usually leave semen or other biological material in, on or near the bodies of their victims, DNA evidence can be uniquely effective for determining whether a defendant who was convicted of rape was in fact the rapist. That's the main reason for the surge of rape exonerations after post-convictions DNA testing became available in the United States, starting in 1989—225 exonerations to date, 85% of which included eyewitness misidentifications. DNA testing is no help in determining guilt or innocence in a rape case when the identity of the person who had sex with the complainant is not an issue, usually because the only dispute is whether the sex was consensual.

In 1989, when DNA exonerations started, there was a large backlog of erroneous rape convictions from earlier years, when pre-trial DNA testing was not available. It has produced

132 DNA rape exonerations so far— almost 60% of the total—and new ones from this era continue to trickle in. After 1989, pre-trial DNA testing became available—over time. In the early 1990s, it often was not done, and quite a few innocent rape defendants who might have been cleared by DNA were convicted—57 that produced exonerations for convictions from 1990 through 1994, about 11 a year. That rate declined to about three per year from 1995 through 2007, and none at all for rape convictions since 2008.

Judging from exonerations, it appears that for the last 14 years, all (or nearly all) innocent rape suspects in the United States who might benefit from DNA testing were never convicted because the DNA evidence cleared them before trial. Unfortunately, a minority of misidentified rape suspects do not benefit from DNA testing because, for one reason or another, there is no biological material to test.

There have been 136 exonerations of misidentified rape defendants who were convicted from 1980 through 1989, about 14 a year, but only 12 who were convicted in the ten years from 2000 through 2009—and just two in the twelve years since. It seems that, now that pre-trial DNA testing is well established in the United States, the number of false rape convictions based on misidentifications has plummeted.

More than 70% of the innocent rape defendants who were misidentified and convicted in the 1980s were Black men (98/136)—70% of whom were convicted of raping white women (68/98). Of the handful who were misidentified in the 21 years since 2000, only about a third were Black (5/14), and just two were convicted of assaulting white victims.

By preventing most false convictions of misidentified rape defendants, DNA testing has eliminated the bulk of the disproportionate, often discriminatory, and sometimes racist convictions of innocent Black men who were accused of raping white women. We know that a dozen or more exonerations a year no longer happen. We don't know the total number of convictions of innocent Black rape defendants that are now prevented, but it must be hundreds a year.<sup>45</sup>

<sup>45</sup> In the meantime, since 1991, rape exonerations without eyewitness misidentification have continued at a low but fairly steady pace of about three a year. Fewer than half of the exonerees are Black (37/86), about 40% of them in cases with white complainants (15/37). See Figure A:

**Figure A: Number of Rape Exonerations without Eyewitness Misidentifications, by Year of Conviction**



## IV. Drug Crimes

*Sixty-nine percent of drug crime exonerees are Black and 16% are white. That means that innocent Black people are 19 times more likely to be convicted of drug crimes than innocent white people. By now, this finding may seem depressingly familiar, but it's actually much worse than anything we've seen—and probably understates the actual disparity.*

*White and Black Americans use illegal drugs at similar rates, but Black people are arrested for drug crimes (overwhelmingly drug possession) at several times the rate of white people. That's because essentially none of the huge number of drug crimes in the United States are reported to the police, so they get to choose who to investigate, search and arrest for drug crimes, and they usually choose Black people.*

*That's racial profiling—the process by which the War on Drugs is focused on minorities, especially Black people. Most innocent victims of racial profiling are stopped and searched, perhaps harassed and humiliated—but not arrested. But some are arrested and convicted in error, usually because of unreliable field testing for drugs. For the most part, these are hardly blameless errors: the victims are Black people who were stopped, searched and subjected to that risk because of their race.*

*In addition, we know of 17 groups of defendants who were wrongfully convicted of drug crimes by systematic police misconduct, including many who were framed by police officers who planted drugs on them. Almost all are Black people or other people of color. The Registry includes 259 exonerations of defendants who were convicted of such fabricated drug crimes, primarily in three group exonerations; 3% of them are white, 9% are Hispanic, and 87% are Black. There are many more such cases that will be added over time.*

### **1. The structure of drug crime enforcement**

Arrest is the intake valve of criminal justice. Most criminal investigations are initiated when a civilian reports a crime to police; occasionally, police witness a crime themselves. Either way, their first task is to identify and arrest the criminal. Unless an officer saw the crime and seized or recognized the criminal, that may require questioning eyewitnesses, conducting identification procedures, collecting physical and forensic evidence, learning about the victim, the suspect and their relations, and so on. If a suspect is arrested and charged, the evidence the police obtain will be the basis for any conviction at trial or—more likely—by guilty plea.

Murder and rape cases follow this pattern: police initiate investigations of those crimes that are reported (or, rarely, that officers observe) and arrest suspects if they are able. Drug crimes are totally different.

Nobody has a plausible estimate of the total number of drug crimes committed in the United States, but they happen millions of times *each day*.<sup>46</sup> For all practical purposes, none of these drug crimes are reported to the police, and, despite more than 100,000 arrests a year, the risk of arrest for a drug crime is tiny—one in a thousand, if not far less.<sup>47</sup>

How do police find those unreported drug crimes that do produce arrests? More than 85% of drug arrests are for possession of illegal drugs (virtually all the rest are for the sale or manufacture of drugs).<sup>48</sup> In most possession cases, the police find the drugs by searching suspects—or their possessions, or vehicles, or homes. Almost all of these searches are conducted without warrants, often without specific reasons to believe that illegal drugs might be found. Since the crime is possession, once drugs are found on a suspect or in their control there's usually nothing left to prove.

In short, police search people for drugs, and arrest them when they happen to find what they're looking for. But who do they *choose to search*? Spoiler alert: It's usually Black people or other people of color.

## 2. Race and drug crime prosecutions

The best systematic data on illicit drug use in the United States come from anonymous annual surveys by the federal Department of Health and Human Services. The most recent survey to include data on race was in 2018. It found that about 11.7% of the population over 12 years of age had used illegal drugs in the previous year, and that white and Black Americans did so at comparable rates, 12.0% and 13.7% respectively—and similar patterns for earlier years.<sup>49</sup>

Drug arrests and convictions are another matter. A study by Human Rights Watch found that from 1980 to 2007 (a period that includes almost three quarters of the convictions that led to exonerations in the Registry), Black people were arrested for drug crimes at 2.8 to 5.5 times the

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<sup>46</sup> According to a report by the Substance Abuse and Mental Health Services Administration of the United States Dept. of Health & Human Services, Center for Behavioral Health Statistics and Quality on the [National Survey on Drug Use and Health, 2018 and 2019](#), Table 1.3A, in 2019, 33.6 million American adults used illicit drugs in the past month. If they each did so only once a month, that would be over 1 million illegal drug consumptions a day—but of course, the average use must be considerably higher. Some users are addicts and many others are weekly or regular users. In addition, every act of drug consumption depends on several other drug crimes—a chain of crimes of distribution, and possession (by the user and the chain of suppliers)—which is impossible to count, especially since possession is a continuous crime that may take place repeatedly across weeks and months. In addition, drug use may implicate other related crimes, such as driving under the influence. If we make a very conservative estimate that the average monthly drug user commits three drug crimes a month (an average of one each ten days) that would mean an annual total of about *1.2 billion drug crimes a year*—not counting additional estimated 2.2 million Americans aged 12 to 17 who also used illicit drugs in the past month in 2019.

<sup>47</sup> There were about 1,156,000 drug arrests of all sorts in the United States in 2020, see Drug Policy Facts, [Estimated Annual Number of Arrests for Drug Offenses in the US By Type of Offense - 2010-2020](#), at least 1.2 billion drug crimes, if not many more (see supra note 46)—a ratio of at least 1,000 to 1.

<sup>48</sup> *Id.*

<sup>49</sup> Substance Abuse and Mental Health Services Administration, U.S. Dep't of Health and Human Services. National Center for Health Statistics. Health, United States, 2019: Table 20. Hyattsville, MD. 2021. Available from: <https://www.cdc.gov/nchs/hus/contents2019.htm>. The rate is somewhat lower for Hispanics, 9.8%, and lower yet for Asians, 6.7%.

rate for white people, depending on the year.<sup>50</sup> Data from the FBI show similar patterns in the years since.<sup>51</sup>

Convictions follow suit, as best we know. A study by the Sentencing Project in 2009 found that from 1995 to 2005, Black people constituted about 13% of drug users, but 36% of drug arrests and 46% of those convicted of felony drug offenses.<sup>52</sup> Over that ten-year period, a Black drug user was about two-and-a-half to three times more likely to be convicted of a drug felony than a white drug user. Thirty percent of those serving prison terms for drug offenses are Black, more than twice their proportion of the population and about four times the rate for whites.<sup>53</sup>

Most drug crime convictions, however, are misdemeanors. There are no systematic national data on misdemeanor drug convictions,<sup>54</sup> but there's every reason to believe that they exhibit the same sort of racial disparities we see in every other part of drug law enforcement in America.

### 3. Innocent drug crime defendants

Most defendants who are convicted of drug crimes get light sentences, by American standards. Among the minority who are convicted of felonies, fewer than 40% go to prison,<sup>55</sup> and the average sentence for those who are incarcerated is two-and-a-half years, about a quarter as long as for defendants imprisoned for rape, and an eighth as long as for those imprisoned for murder.<sup>56</sup> But the great majority of drug convictions are for misdemeanors, for which the worst possible sentences are months in local jails rather than years in state prisons. In practice, many if not most convicted misdemeanor drug defendants get no time in custody.<sup>57</sup>

Excluding drug cases, very few defendants with such comparatively light penalties are ever exonerated, regardless of innocence. Most of the effort that goes into addressing wrongful convictions is devoted to defendants with extremely severe sentences. As a result, the distribution of exonerations is heavily lopsided. At the top of the range, defendants who are sentenced to death are about six times as likely to be exonerated as those convicted of murder but not sentenced to death, and hundreds of times more likely than defendants convicted of robbery.<sup>58</sup>

And so on down the line. Excluding drug cases, non-violent crimes make up more than 60% of felony convictions<sup>59</sup> but only 14% of exonerations (326/2,320). There are, for example, about three times as many felony convictions for theft as for robbery but one-eighth the number of

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<sup>50</sup>Human Rights Watch, [Decades of Disparity, Drug Arrests and Race in the United States \(2009\)](#).

<sup>51</sup>See, e.g., the most recent data at Federal Bureau of Investigation, [Crime in the United States 2019](#).

<sup>52</sup>Mauer, Marc. [The changing racial dynamics of the war on drugs](#). *The Sentencing Project* (2009).

<sup>53</sup>E. Ann Carson, [Prisoners in 2020 – Statistical Tables](#), Bureau of Justice Statistics, U.S. Dep't of Justice; Tables 15 & 18, pp. 29, 33.

<sup>54</sup>Natapoff, Alexandra, *Punishment Without Crime*: New York: Basic Books (2018), Kindle edition p.50.

<sup>55</sup>Bureau of Justice Statistics, U.S. Dep't of Justice. [Felony Sentences in State Courts](#) (2000), Table 2.

<sup>56</sup>Id. p.3.

<sup>57</sup>Natapoff, Alexandra, *Punishment Without Crime*: New York: Basic Books (2018), Kindle edition p.50.

<sup>58</sup>Gross, Samuel R. [What We Think, What We Know, and What We Think We Know About False Convictions](#). *Ohio State J. of Crim Law*, Vol. 14, No. 2 (Spring 2017), at pp. 765-67.

<sup>59</sup>Bureau of Justice Statistics, U.S. Dep't of Justice. [Felony Sentences in State Courts](#). (2000) ["Other Offenses" are "Composed of nonviolent offenses such as receiving stolen property and vandalism."]

exonerations (20/151). Misdemeanor convictions outnumber felonies by at least four to one,<sup>60</sup> but account for less than two percent of non-drug exonerations (44/2,646). Clearly, only a tiny fraction of innocent defendants who are convicted of misdemeanors or non-violent felonies are ever exonerated.

Most innocent defendants with relatively light sentences probably never try to clear their names. They serve their time and do what they can to put the past behind them. If they do seek justice, they are unlikely to find help. For example, the Center on Wrongful Convictions at Northwestern University School of Law—one of the organizations that founded the Registry—used to limit its intake to cases of prisoners who had at least ten years *remaining* on their sentences, because it was overloaded with innocence cases in which the stakes were that high or higher.

In addition, minor crimes are generally more difficult to reinvestigate than violent felonies because the initial investigations—and the record keeping—are usually more limited, so there's less to go on. Most exonerations are from convictions at trial, which generate and preserve much more information than guilty pleas, and trials are vanishingly rare in drug cases. In 2000, for example, only 4% of felony drug crime convictions were obtained at trial, and an unknown but smaller share of misdemeanor drug convictions. By contrast, 19% of rape convictions and 42% of murder convictions were obtained at trial, and those trials produced 93% and 96% of the exonerations for rape and for murder, respectively.

Whatever the reasons, there are too few exonerations for misdemeanors and other relatively minor crimes to say much about racial patterns or most other aspects of those cases, in general. Drug crimes are a unique and important exception.

Drug crimes are the second largest crime category for exonerations, after murder. They account for 17% of all exonerations but include a majority of misdemeanor exonerations, and they have by far the lightest penalties for any of the major crimes. Almost a third of exonerees in non-drug cases in the Registry were sentenced to death (134/2,648) or to life imprisonment (711/2,648); the median sentence for the remainder was 20 years in prison. Only eight of the 554 drug crime exonerees were sentenced to life in prison, less than 2%, and the median sentence for the rest was a year in jail.

Why does the Registry contain so many drug crime exonerations, despite their comparatively low stakes?

#### 4. Clusters of drug crime exonerations

On October 11, 2009, police in Houston, Texas arrested 17-year-old [Michael Jones](#) after they seized a powdery substance from him that tested positive on a “presumptive” field test for cocaine. Two days later, Jones pled guilty to possession of a controlled substance and was placed on probation for three years. In 2011, the Houston Police crime laboratory tested the powder and found no controlled substances. Three years after that, in November 2015, charges were dismissed and Jones was exonerated.

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<sup>60</sup> Natapoff, Alexandra. [Misdemeanors](#). *Southern California Law Review*, Vol. 85, Issue. 5 (2012). pp. 1313–1375.

Why were the supposed drugs that were seized from Mr. Jones' case tested two years after he pled guilty and was placed on probation? Normally, a case like his would have been entirely forgotten long before then.

But Michael Jones's case did not proceed on its own steam. It was one of a cluster of 157 exonerations of wrongful drug convictions in Harris County, Texas, home to Houston, that all had a common cause. No single one of those cases would have attracted the attention and effort necessary for an exoneration, but once the general pattern was discovered, exonerating each individual case became routine. (As we'll see, the nature of this cluster also explains another curiosity about the Jones exoneration: Why did it take three years after a lab test had definitively cleared him?)

The Harris County cases are one of four clusters that account for 72% of all of drug crime exonerations in the Registry (400/554). These clusters fall into two categories that reflect the two common scenarios in which innocent defendants are falsely convicted of possession of illegal drugs. (i) Error: The materials the defendant was convicted of possessing were not in fact the illegal drugs they appeared to be. (ii) Misconduct: The drugs used to convict the defendant were planted by police, or simply booked in evidence by an officer who falsely said that they had been taken from the defendant.

#### **a) Error: post-guilty plea drug testing exonerations in Harris County**

Many drug defendants—like Mr. [Jones](#)—plead guilty within days of arrest, before the alleged drugs taken from them are tested in a laboratory. That almost always means that those supposed drugs are never tested—except in Harris County, where the police laboratory often does test those materials even after guilty pleas, and sometimes discovers that they contain no illegal drugs. Over the years, a handful of those negative tests led to exonerations, but most were unnoticed or ignored—until 2014, when the Harris County District Attorney's Office launched a systematic program to track down the defendants who had pled guilty to possessing illegal drugs that lab tests later showed were innocuous substances. That led to 157 drug crime exonerations, including several before 2014. There are a few similar cases in other counties, but the Harris County exonerations are the only sizeable cluster based on post-guilty plea chemical drug testing.

#### **b) Misconduct: Group Exonerations**

As we use the term, "Group Exoneration" has a very specific meaning: *The exoneration of a group of defendants who were convicted of crimes as a result of a large-scale pattern of law enforcement perjury and corruption.* We now have data for 33 such groups, including thousands of exonerated defendants; we devote a [separate section](#) of the Registry website to these groups, and add new ones regularly. In 17 of those groups, substantial numbers of defendants were convicted of drug crimes that were fabricated by police officers, usually by planting drugs on innocent defendants.

Most of the exonerations in these groups are not listed in the Registry, for reasons we discuss in the Appendix. However, 288 exonerations in these groups are included in the Registry, of which 259 were for drug crimes.<sup>61</sup> More than 90% of the drug crime group exonerations in the Registry

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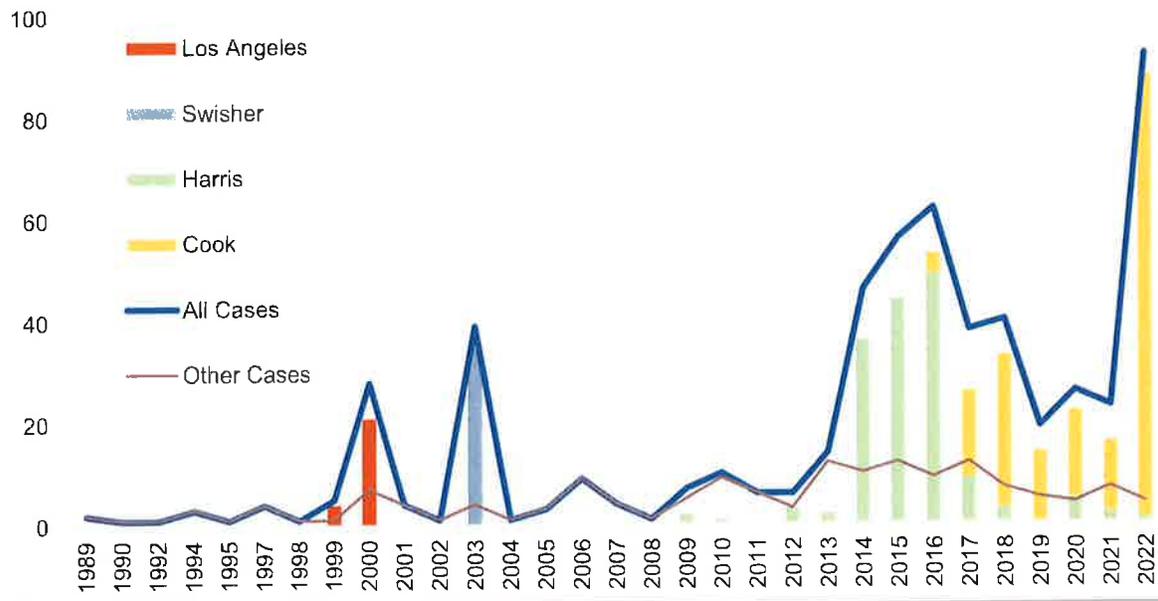
<sup>61</sup> Of the remaining 29 cases, 19 were convictions for illegal gun possession (planted), and the rest were a mixed bag of burglaries and a few violent crimes.

(240/259) are in three groups: the “Rampart” group in Los Angeles includes 25 individual drug crime exonerations that occurred in 1999 and 2000; the “Tulia” group in Swisher County, Texas, has another 35 from 2003; and the “Sergeant Watts” group in Chicago has added 183 drug crime exonerations since 2016—and counting.<sup>62</sup>

**c) Patterns over time**

In the sections on racial patterns in exonerations for murder and rape, we examined changes over time in the numbers of exonerations, by year of conviction and by year of exoneration. For drug crime exonerations, changes over time reflect little more than the timing of the clusters that include the overwhelming majority of those cases. Figure 10 displays drug crime exonerations by year of exoneration. The four clusters appear as colored bars; all other drug crime exonerations as a brown line.

**Figure 10: Number of Drug Crime Exonerations by Year of Exoneration and County Clusters**



As we see in Figure 10, the overall pattern in drug crime exonerations over time (the blue line) closely tracks the peaks and valleys of the four clusters that include almost three quarters of all such cases (400/554): the Harris County cluster of post-guilty plea lab testing exonerations, (primarily 2012-2018); and three Group Exonerations, the Rampart group, in Los Angeles

<sup>62</sup> The cluster of Harris County post-guilty plea drug testing exonerations is not a “group exoneration” as we use the term here because the police who arrested the Harris County defendants did not deliberately fabricate drug crimes that never happened. That does not mean that there was no misconduct that contributed to the false convictions in Harris County. As we note below, Section IV(4), racial profiling led to many of the stops and searches that uncovered the substances that were mistaken for illegal drugs. That, of course, is misconduct—but not the sort that defines “group exonerations,” in which police fabricated drug crimes from scratch by planting drugs or otherwise.

(1999-2000), the Tulia group, in Swisher County, Texas (2003), and the Watts group, in Chicago, from 2016 onward.

The shape of the curve will change as more groups are added. We know of several groups with substantial numbers of cases that we intend to add to the individual Registry, but our resources are limited and the process is slow. The underlying structure, however, will not change. Drug crime exonerations will continue to be dominated by clusters of cases in particular counties—in fact, more so, as we are able to add more group exonerations from past years.

## **5. Mistaken convictions discovered after guilty pleas in Harris County, Texas**

More than a quarter of the drug crime exonerations we know about occurred in Harris County, Texas, almost all from 2012 through 2018 (157/554). As we mentioned, the defendants in these cases pled guilty to drug possession before the supposed drugs they possessed were tested in a crime lab, and were exonerated weeks, months or years later after testing was done and no illegal drugs were found.

The Harris County exonerations are more typical of run-of-the-mill American drug convictions than any other set in the Registry. They are all based on guilty pleas, mostly quick ones; more than half were entered within four days of arrest, compared to a median of five months from arrest to conviction for other drug crime exonerations. Nearly 40% are misdemeanors—close to 90% of misdemeanor drug exonerations, and half of *all* misdemeanor exonerations in the Registry. And the penalties were light, by American standards: about 20% of the Harris County drug exonerees got probation with no time in custody; half were sentenced to two weeks in jail or less; and only seven, 5%, were sentenced to one year in jail or longer. Among all other drug crime exonerations, eight were sentenced to life imprisonment and the median sentence for the rest was two years in prison.

But *why* did the defendants in these ordinary seeming drug cases plead guilty even though they possessed no controlled substances? Some may have had powders or pills that they *thought* contained illegal drugs but did not. As far as we can tell, however, most pled guilty in order to get out of jail.

In a typical case, the defendant had a criminal record<sup>63</sup> and could not post the comparatively high bail that was set. At the first court appearance, the prosecutor made a for-today-only take-it-or-leave-it offer to the defendant: plead guilty and go home immediately, or in a few days or weeks. If the defendant pled not guilty, however, they would remain in jail until trial—usually for months, sometimes for a year or longer—and then risk years in prison if convicted. It's hardly surprising that many innocent defendants took the deal.

The only reason we know about these false guilty pleas is that the Harris County and Houston Police crime labs test the materials seized from the drug defendants even after they enter guilty pleas. Few crime labs do that, which means that in many if not most ordinary drug convictions lab tests are never done, since 95% or more of drug possession convictions are based on guilty pleas that are often entered quickly.

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<sup>63</sup>Eighty percent of the 157 Harris County drug-guilty plea exonerees had criminal records; 92 had felony records, overwhelmingly drug and other non-violent felony convictions; another 34 had prior misdemeanor convictions.

The Harris County drug crime exonerees were exonerated by a fortuity: They happened to be arrested in the only county in the country that conducts routine post-conviction drug tests. There's no reason to think that police are more likely to arrest innocent drug defendants in Harris County than in other counties, but if they do, we are far more likely to know about it. If crime labs in other counties also conducted post-plea drug tests, we'd learn about thousands of additional false drug convictions across the country.

The context may be unique, but the racial composition of the Harris County drug exonerations is familiar: 62% of the exonerees are Black in a county with 20% Black residents, more than six times the rate for other racial groups.

Most, if not all of these innocent Black defendants in Harris County pled guilty rather than go to trial because it was their best option, given that they had been arrested and charged, and were held in jail. But why were so many innocent Black defendants arrested for drug possession when there is no reason to believe that Black people are more likely than white people to use illegal drugs?

Seventy-nine percent of the arrests of Black Harris County drug crime exonerees were based on cheap and notoriously inaccurate “presumptive” field tests for drugs, which are most often used on suspicious substances found in searches following traffic stops, and sometimes street stops as well (77/97).<sup>64</sup> Anybody who is subject to that sort of search for drugs is at risk of false arrest and possibly false conviction.<sup>65</sup> The issue is who the police choose to search.

A 2008 study by the Department of Justice found that across the country, Black drivers are about as likely to be stopped as white drivers, but after they are stopped, they are three times more likely to be searched.<sup>66</sup> Twelve years later, a detailed government study of police stops and racial profiling in California found almost exactly the same pattern.<sup>67</sup> In other words, Black people bear a heavily disproportionate share of the burden of drug-law enforcement by American police, from inconvenient, embarrassing, frightening and sometimes destructive or violent searches, to false criminal convictions for drug possession—which may number in the thousands a year.

Why do officers search Black people for drugs at such a high rate? Several overlapping strands contribute to this practice.

Some drug searches and arrests are the result of overt racial discrimination. In June 2016, for example, a federal judge found “substantial evidence of racially selective [drug-law] enforcement by the San Francisco Police Department”<sup>68</sup> in a program that resulted in the indictment of 37 defendants for drug dealing, all Black. The officers involved made derogatory comments about

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<sup>64</sup> Gabrielson, Ryan and Topher Sanders. [How a \\$2 Roadside Drug Test Sends Innocent People to Jail](#). *New York Times*. (July 7, 2016). In 2017, the Texas panel on wrongful convictions recommended that lab tests for drugs be required as a basis for criminal prosecutions. See Gabrielson, Ryan. *Texas Panel on Wrongful Convictions Calls for Ending Use of Unverified Drug Field Tests*. *ProPublica* (Jan. 18, 2017).

<sup>65</sup> See, e.g. Cardona, Claire. [Texas Man Arrested on Meth Possession Charge Says Substance Deputy Found was Cat Litter](#). *Dallas Morning News*. (January 10, 2017).

<sup>66</sup> Bureau of Justice Statistics, U.S. Dep't of Justice. [Contacts between Police and the Public, 2008](#). Tables 9 and 14.

<sup>67</sup> California Racial and Identity Profiling Advisory Board, [Annual Report 2022](#) and [press release](#).

<sup>68</sup> Ho, Vivian. [Charges dropped in SF Drug Busts that Prompted Racial Bias Claims](#). *San Francisco Chronicle*. (January 24, 2017).

“Black males” and ignored drug dealers of other races. Six months later, all pending charges were dismissed. More often, the discrimination is not explicit.

Black people are subject to more attention and surveillance from police than white people. One reason that is often offered is that they are more likely to live in high crime areas, but that is not a complete explanation. In 2013, for example, a federal judge found that New York City’s notorious stop-and-frisk program—under which police made more than 4.4 million street stops from 2004 through 2012, 80% of them of Black people or Hispanics—could not be justified on that basis because the stops were more closely linked to the racial composition of the neighborhoods, and to the race of those detained, than to crime rates.<sup>69</sup>

Another reason that’s given—usually for searches after stops—is that Black people are more likely than white suspects to have criminal records. That’s true, but—like residential crime rates—it does not explain the racial pattern of searches. It’s also partly circular, especially for drug crimes. A major reason that Black people are more likely to have drug-crime records is that police are more likely to stop, search and arrest them. Those records, however obtained, also mean that bail is likely to be higher, so Black drug defendants are more likely than whites to face the Hobson’s choice of plea bargaining: plead guilty or stay in jail.

Black people, of course, are the prime targets of racial profiling: selecting suspects for investigation, detention, or arrest because of their race. The stop-and-frisk program in New York was racial profiling on city sidewalks. But the phrase “racial profiling” was first used in the late 1990s—when it was also called “driving while Black”—to describe systematic police programs of trolling for drugs on highways by searching cars with Black or Hispanic drivers.<sup>70</sup> It continues to happen, on and off the highway, despite the fact that police are just as likely to find drugs when they search white suspects and their cars—if not more so.<sup>71</sup>

Our “War on Drugs” requires police officers to search for drug crimes that nobody reports to them. One method they use is to search many people and cars and hope to find drugs in a few of them. While there’s no evidence that the odds are better if the driver is Black, many officers seem to believe that’s true; they’ve certainly been told so by their superiors.<sup>72</sup> They may also believe—usually correctly—that Black drivers are less likely to have the connections or resources to complain effectively about rude, demeaning, destructive, fruitless and often illegal searches.

Most of the victims of those drug searches are inconvenienced, often scared and humiliated, but they are not arrested because no drugs are found. Some, however, are arrested and convicted of drug possession. Judging from what we see in Harris County, a fair number are innocent, and a high proportion of those innocent defendants are Black.

The formal judgments of guilt of these Black defendants are errors. The police, prosecutors and judges did believe, falsely, that the defendants possessed illegal drugs. But they are not blameless errors. Most innocent Black suspects are not selected for exploratory drug stops and

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<sup>69</sup> *Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y., 2013).

<sup>70</sup> See Gross, Samuel R., [The Rhetoric of Racial Profiling, in Social Consciousness. Legal Decision Making: Psychological Perspectives](#). R. Wiener, B. Bornstein, R. Schopp & S. Willborn, eds. (Springer: New York, 2007).

<sup>71</sup> See, e.g., [David Cole & John Lamberth, The Fallacy of Racial Profiling, N.Y. Times, May 13, 2001](#); California Racial and Identity Profiling Advisory Board, [Annual Report 2022](#), at p. 53, Figure 23.

<sup>72</sup> See Gross, Samuel R., [The Rhetoric of Racial Profiling](#), in *Social Consciousness. Legal Decision Making: Psychological Perspectives*. R. Wiener, B. Bornstein, R. Schopp & S. Willborn, eds. (Springer: New York, 2007).

searches, and for the arrests and convictions that sometimes follow, because of their behavior. They are deliberately subjected to this costly, disturbing and dangerous process—including the built-in risk of false conviction—because of their race.

## 6. Fabricated Drug Crimes in Group Exonerations

As we've seen, the most distinctive aspect of drug law enforcement is choice: police officers get to choose their suspects. In ordinary drug cases—the ones in the Harris County exonerations, for example—they choose *who to search* (usually people of color), and arrest those who have illegal drugs, or seem to. Sometimes, however, they go farther and choose *who to frame* by planting drugs on them, or by falsely reporting that the suspects sold drugs to them.

Sometimes they do this in a case that's a one off, or one of a pair, at least as far as we know. For example:

On November 7, 2006, [James Simmons](#), a Black technology consultant, was arrested in Seattle by a deputy sheriff who testified at trial that Simmons (whom he subdued with a taser) confessed to selling the crack cocaine that the deputy seized from him. Simmons testified that the deputy attacked him and planted the crack on him, and that he never said that he sold it. Simmons was exonerated in 2010, after that deputy was fired for dishonesty in reporting on another drug arrest he made a few weeks after he arrested Simmons.

But most of the fabricated drug crime convictions that we know about occurred in large clusters that we call Group Exonerations: *the exoneration of a group of defendants who were convicted of crimes as a result of a large-scale pattern of law enforcement perjury and corruption.*

The Registry maintains a list that now totals 33 Group Exonerations that occurred across 28 years. The exonerations in the earliest group were complete in 1996; at least three are ongoing and continue to add exonerations as we write. Altogether, these groups include more than 36,000 exonerated defendants—about eleven times the number of individual exonerations in the Registry. The groups are extremely variable in many respects, including the quality of information that's available to us, but they have two common features: (i) In all but a few of the groups, most or all of the exonerated defendants were convicted of drug crimes. (ii) In every group for which we have information about the racial and ethnic identity of the defendants, Black people—and occasionally Hispanics—are significantly overrepresented; in most groups, they are the great majority.

### a) The nature and number of group exonerations

Two of the earliest group exonerations that we know about illustrate the range of the drug-crime groups:

- *Los Angeles, California, 1999–2000: the Rampart Scandal.* In 1999, authorities learned that for several years or longer, a group of officers in the Rampart division of the Los Angeles Police Department had routinely lied in arrest reports and testimony, and framed many innocent defendants by planting drugs or guns on them. On several occasions, they had shot and wounded unarmed suspects, and then planted guns on them. In the aftermath of this scandal, about 170 criminal defendants had their convictions vacated and dismissed by Los Angeles County judges in late 1999 and 2000.

The great majority were young Hispanic men who were believed to be gang members. Almost all pled guilty to false felony drug or gun charges.<sup>73</sup>

- *Tulia, Texas, 2003*. In 1999 and 2000, 35 defendants, almost all of them Black, were convicted of selling cocaine in Tulia, Texas, on the uncorroborated word of a corrupt undercover narcotics agent named Tom Coleman.<sup>74</sup> In 2003, all 35 defendants were pardoned by the governor after a judge investigated the cases and concluded that Coleman had engaged in “blatant perjury” and was “the most devious ... law enforcement witness this court has witnessed....” The investigation revealed that Coleman had charged the defendants with selling quantities of highly diluted cocaine that he actually took from a personal drug stash.<sup>75</sup>

The Rampart and the Tulia group exonerations both include dozens of defendants who were convicted of possession or sale of drugs that were planted by police officers. Otherwise, these two groups are very different.

The *Rampart* scandal was a wide ranging criminal conspiracy including at least nine officers who worked in a program named “CRASH,” an acronym for “Community Response Against Street Hoodlums.” The Rampart CRASH program was credited with reducing the high rate of gang related crime in that neighborhood, but over time, the CRASH crew itself devolved into a criminal gang. They continued to arrest suspects for legitimate crimes, including drug trafficking and illegal gun possession, but they also conducted illegal searches and lied about them, stole money and drugs from suspects (and sold drugs they had stolen), shot some suspects and assaulted others, and planted drugs and occasionally guns on suspects.

Most of the suspects they searched, arrested, framed and abused were Central American immigrants, usually undocumented. Many were deported before or after they were charged with crimes, and may never have learned that their convictions could be challenged. The process that produced the exonerations we know about was confusing, if not chaotic. As a result, our information on the Rampart exonerations is severely limited. We don’t know the exact number of exonerations or the names of many of the exonerees, or the charges for which they were convicted, or the evidence and the process that led to their exonerations.

The *Tulia* exonerations were all the work of a single, dishonest, itinerant under-cover police officer, Tom Coleman. The entire evidence against all 35 Tulia defendants consisted of Coleman’s uncorroborated false reports that for each of them, on a given date in 1998 or 1999, he purchased a quantity of cocaine from that person—plus the baggies of heavily diluted cocaine that Coleman booked in evidence. Those fake sales were the only crimes they were convicted of. The Tulia defendants were all exonerated by gubernatorial pardons in 2003, a few years after the convictions, following a single set of hearings in which the defendants were represented by a group of volunteer lawyers who worked together. As a result, we have specific information about the defendants, the process, and the evidence in every case.

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<sup>73</sup> Covey, Russell. [Police Misconduct as a Cause of Wrongful Convictions](#). 90 *Wash. U. L. Rev.* 1133 (2013).

<sup>74</sup> In addition, two defendants had their prosecutions deferred and eventually dismissed; one was a juvenile who received a non-criminal disposition; and two were not convicted of crimes but had probation on other charges revoked because of their false arrests by Coleman (those revocations were eventually also reversed).

<sup>75</sup> *Id.*; Barnes, Steve. [Rogue Narcotics Agent in Texas Is Found Guilty of Perjury](#). *New York Times* (January 15, 2005).

The 31 other groups that are listed in the [Groups Registry](#) are also extremely variable in many respects, from the number of cases and the charges on which the defendants were convicted, to the process of convictions and exoneration, to the quality of information at our disposal. For example, two of those groups involved forensic lab analysts in Massachusetts whose misconduct led to dismissal of drug charges against more than 32,000 convicted defendants. [One of them](#) “dry-labbed” many of her cases—wrote reports that said the seized materials were whatever the police suspected they were, without the benefit of chemical testing. [The other](#) forensic analyst systematically stole drugs from the lab to feed her own multiple addictions.

Table 2 includes a list of the 17 groups that are relevant to this Report: those in which significant numbers of defendants were convicted of drug crimes that were fabricated by police officers, usually but not always by planting drugs. We do not include a group in which all the exonerations were for drunk driving or other groups in which the systematic misconduct that defines the group was by forensic analysts rather than police officers, or in which the police misconduct did not involve instances of fabricating drug crimes.

**Table 2: Group Exonerations Including Cases of Drug-Crimes Fabricated by Police Officers\***

When & Where the Exonerations Took Place	Number of Exonerations & of Drug Cases	Racial & Ethnic Identity of Defendants	What Happened
<a href="#">New York City, 1994-1996</a> <i>the Dirty 30 Group</i>	About 100; mostly drugs cases. <a href="#">1 in Registry.</a>	Almost all Black and Hispanic.	NY police officers conducted illegal searches, stole money, took bribes from drug dealers and others, and planted drugs on some defendants.
<a href="#">Philadelphia, PA 1995-1997</a>	About 230; mostly drug cases. None in Registry.	Almost all Black.	Wide-ranging police misconduct in the 39 <sup>th</sup> District and elsewhere, including planting drugs.
<a href="#">Los Angeles, CA 1999-2001</a> <i>the Rampart Group</i>	About 170; many drugs cases. <a href="#">48 in Registry.</a>	Mostly Hispanic.	LA police officers abused suspected gang members over seven years, including planting drugs and weapons on many of them.
<a href="#">Oakland, CA, 2000-2001</a> <i>the Riders Group</i>	75; mostly drug cases. None in Registry.	Almost all Black.	Corrupt Oakland police officers known as the "Riders" planted drugs, falsified records and beat defendants.
<a href="#">Tulsa, TX, 2003</a>	35; all drug cases. <a href="#">35 in Registry.</a>	Mostly Black.	Corrupt sheriff's deputy in Swisher County, TX, falsely accused defendants of selling drugs. All pardoned in 2003.
<a href="#">Louisville, KY, 2002</a>	7; all drug cases. None in Registry.	Unknown.	Two Metro-Louisville Police officers falsified search warrants, planted drugs and committed other crimes.
<a href="#">Mansfield, OH, 2007-2011</a>	19; mostly drug cases. <a href="#">1 in Registry.</a>	Mostly Black.	A confidential informant gave fabricated information to a DEA agent, who used it as the basis for arrest warrants supported by perjury and falsified arrest reports.
<a href="#">Benton Harbor, MI, 2009-2011</a>	65; mostly drug cases. None in Registry.	Almost all Black.	Two officers planted drugs, conducted illegal searches, and falsified arrests.
<a href="#">Camden, NJ, 2009-2010</a>	70; mostly drug cases. None in Registry.	Almost all Black, some Hispanic.	Police officers planted drugs, falsified arrests and committed perjury.
<a href="#">Tulsa, OK, 2009-2013</a>	30; Mostly drug cases. <a href="#">4 in Registry.</a>	Racially mixed.	Police officers and an ATF agent fabricated evidence, planted drugs, falsified search warrants, committed perjury, and stole money.
<a href="#">Philadelphia, PA, 2013-2020</a>	More than 1,100; mostly drug cases. <a href="#">1 in Registry.</a>	Mostly Black.	Officers fabricated evidence, planted drugs, robbed suspected dealers, and committed perjury and other misconduct.
<a href="#">Philadelphia, PA, 2015-2020</a>	More than 250; mostly drug cases. None in Registry.	Mostly Black.	Officer pled guilty to perjury, falsified search-warrant applications, and, with colleagues, fabricated evidence and planted drugs.
<a href="#">East Cleveland, OH, 2016-2019</a>	43; mostly drug cases. None in Registry.	Almost all Black.	Police officers fabricated evidence, committed search and seizure violations, and tampered with witnesses.
<a href="#">Chicago, IL, 2016-2022</a> <i>the Watts Group</i>	187; mostly drug cases. <a href="#">186 in Registry.</a>	All Black.	Sgt. Ronald Watts and his subordinates planted drugs, falsified arrest records, and testified falsely against defendants from the Ida B. Wells public-housing development.
<a href="#">Jackson County, FL, 2018</a>	88; mostly drug cases. <a href="#">1 in Registry.</a>	Racially mixed.	Sheriff's deputy made questionable traffic stops, planted drugs, fabricated evidence, and falsified arrest reports.
<a href="#">New York City, 2018-2022</a>	453; mostly drug cases. <a href="#">3 in Registry.</a>	Mostly Black and Hispanic.	Officer indicted on perjury charges after video caught him fabricating evidence used in drug arrests.
<a href="#">New York City, 2021</a>	53; mostly drug cases. None in Registry.	Mostly Black and Hispanic.	Two police officers convicted of perjury, including testimony about a drug deal that never took place.
<b>ALL CASES</b>	<b>At least 2,975 drug Exonerations</b>	<b>Primarily Black</b>	

\* The Registry is actively researching both old and new groups to add to the Groups Registry, including some that we described briefly in reports that were published before the creation of the Groups Registry.

The Groups Registry is far from complete. We only began to conduct a systematic search for group exonerations a few years ago, our resources are limited, and they are not easy to find and study from a distance. Most do not receive national attention; some barely make regional news beyond a story or two about the corrupt officers; even local news coverage is often limited. We don't know how many group exonerations we have yet to find.

We also know of several police corruption scandals that did not produce group drug exonerations, but might have if the authorities had invested the effort necessary to identify defendants with tainted convictions and exonerate them. In some places, prosecutors had no system for reviewing criminal convictions based on charges filed by the corrupt officers.<sup>76</sup> In others, they left it up to the convicted defendants themselves to seek dismissal of their convictions, if they learned that it was possible and had the resources to try; it rarely happened.<sup>77</sup>

Wholesale police frame-ups of innocent drug defendants are at one end of a continuum of fabricated drug crime convictions. At the opposite end are isolated acts of perjury in particular cases; some individual exonerations that include police perjury fit that mold. In between, there are serial perjurers: officers who frame innocent defendants occasionally over the course their careers, but not as part of a concerted plan or large scale conspiracy. [James Simmons](#), for example, may have been the victim of such an officer. In all likelihood, the great majority of these false drug convictions are never discovered, from one end of the spectrum to the other.

#### **b) Group exonerations and the individual Registry**

Group exonerations are fundamentally different from exonerations based entirely on individual investigations.

The unit of observation for an individual exoneration is the defendant and their case. The investigations that lead to these exonerations produce a great deal of information about each case, much of which is publicly reported.

The defining feature of a group exoneration is the corrupt law enforcement officer or the police conspiracy. The unit of observation is the group of wrongful convictions they generate. Once that picture comes into focus, specific exonerations may be handled summarily and receive little or no separate attention. As we've pointed out, that quick and inexpensive group process makes

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<sup>76</sup> For example, beginning in the 1990s and extending into the late 2000s, a series of Chicago police corruption scandals resulted in convictions of more than a dozen police officers on charges relating to the falsification of drug cases, theft of narcotics from drug dealers and users, and the filing of false reports. Possley, Maurice. [When Cops Go Bad, Everyone Pays](#). *Chicago Tribune*. (October 22, 2006); Main, Frank. "Cops' Arrests Get 10 Felony Cases Tossed Out." *Chicago Sun-Times*. (May 9, 2005); Possley, Maurice and Gary Marx. "Austin 7 Arrests Fall Apart in Court." *Chicago Tribune*. (January 25, 1997); Warnick, Mark. "City Cop Scandals Dash Drug Trials." *Chicago Tribune*. (December 25, 1997); Heinzmann, David and Annie Sweeney. "Federal Probe Nets 4 SOS Cops, No Brass." *Chicago Tribune*. (April 8, 2011). The Cook County State's Attorney's office told us it has no idea how many convictions were later dismissed, although a review of federal lawsuits reveals that several defendants sued the City of Chicago after their convictions were vacated. Email from Andrew Conklin, Media Spokesperson, Cook County State's Attorney's Office (March 2012).

<sup>77</sup> In 2002, for example, the Dallas District Attorney's Office dismissed pending drug charges against 20 defendants who were apparently framed by two former Dallas police officers who were themselves convicted of stealing money from suspects and falsifying reports. Three convicted defendants who were still imprisoned also had their convictions reversed, but prosecutors made no attempt to identify other defendants who had been falsely convicted in this conspiracy on the ground that it was "up to the individual defendant." Bensman, Todd. "False Drug Convictions May Linger." *Dallas Morning News*. (September 8, 2002).

possible many exonerations for comparatively minor false convictions that would never be reinvestigated on their own.

For some group exonerations, that summary process also means that we know little about many of the individual cases they include: not the dates of arrest, conviction and exoneration; not the facts of the alleged crimes; not the mode of the convictions or the sentences; sometimes, not even the names of the exonerated defendants—or how many there are in the group. For other groups, we know these basic facts but not the process or the evidence that led to the exoneration of the particular defendants.

We first discussed group exonerations in 2012, in the initial Report we published when we went public.<sup>78</sup> At that time, we briefly described 12 groups (nine of which are now included in the Groups Registry) and explained that because group exonerations “are fundamentally different from exonerations based on individual investigations”—and because of the limited information that was available on most of them—“we do not include group exonerations in our database.”

By 2020, when we launched the Groups Registry, we had learned a great deal more about group exonerations. We had identified more groups and had collected a lot more information on the cases in those groups we knew most about. We concluded that some of cases in group exonerations should be included in the individual Registry. (The relationship between group exonerations and the Registry of individual exonerations is complex and technical. We discuss it in detail in the Appendix.)<sup>79</sup>

The process of adding eligible group cases to the Registry is slow and labor intensive. So far, as we mentioned, we’ve added 259 drug-crime cases from the Groups Registry to the individual Registry; 87% of them are Black, 9% are Hispanic, and 3% are white.

Almost all of these cases are in the three groups we’ve discussed: the Rampart group in Los Angeles, the Tulia group in Swisher County, Texas, and the Watts group in Chicago,

Only 28% of the Rampart exonerations in the Groups Registry are listed in the individual Registry (48/171), of which half are for drug crimes (25/48) (most of the rest are for illegal gun possession, 15/23). For the cases that are not listed, we either don’t know enough about the defendants and the events to provide an adequate description, or—if we do have that basic information—we don’t know enough about the process and the evidence that led to the exonerations to meet our standards.<sup>80</sup>

The Tulia cases, as we’ve seen, are entirely different. We have more than adequate records for every case—the legal proceedings included re-examinations of the evidence for and against each defendant—and all of them have been added to the Registry of individual exonerations.

The Watts exonerations in Chicago are a variation on the themes we saw in the Rampart and Tulia groups:

*Chicago, Illinois, 2016-2022: the Watts Group.* For nearly a decade, Chicago Police Sergeant Ronald Watts directed a crew of officers who terrorized Black

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<sup>78</sup> See Samuel Gross & Michael Shaffer, [Exonerations in the United States, 1989 – 2012](#), National Registry of Exonerations (2012), pp. 80-90.

<sup>79</sup> See Appendix, p. 46.

<sup>80</sup> See Appendix, p. 46.

residents of the Ida B. Wells public housing development. They planted drugs and extorted thousands of dollars with threats of arrest and prison. In 2012, Watts and a subordinate, Kallatt Mohammed, were caught on a video stealing money from an FBI informant they believed was a drug dealer. In 2013, they pled guilty in federal court and were sentenced to prison. After that, scores of complaints about their behavior finally gained traction. The first exonerations, in 2016, were the cases of Clarissa Glenn and her husband, Ben Baker, who was framed twice—the second time after he filed a complaint with the police department. By August 2022, 173 people had been exonerated—ten twice and one three separate times, for a total of 186 exonerations, of which 183 were for drug crimes.

In many respects, the Watts cases resemble those in the Rampart scandal, but unlike Rampart, our information on the Watts scandal is excellent. It includes, for each case, the record of a detailed re-examination of the evidence of guilt or innocence by the Cook County District Attorney's Office. As a result, all 183 Watts group drug exonerations to date are included in the Registry of individual exonerations. The final distinction is that we first learned about the Watts cases in 2016, as the process of exonerating the defendants was just beginning. We have been adding the cases since then, in real time, and may continue to do so for years to come.

### **c) The impact of the police misconduct**

The legal system may sometimes treat routine drug convictions as throw-away crimes, but the consequences of these fabricated convictions are hardly trivial. Two examples from the Watts group in Chicago, the largest and most recent of the group exonerations in the main Registry, illustrate the range of penalties suffered by the victims of these frame-ups:

In February, 2006, [Gregory Warren](#) and several others were herded into a parking lot at the Ida B. Wells public housing development by Sergeant Ronald Watts and other Chicago Police Officers. Before Warren was searched, Watts told him he was going to jail; asked why, Watts replied, "You'll see." Warren was handcuffed and searched. No drugs were found, but the officers took all the cash in Warren's wallet, and drove him to the police station where Watts pulled what appeared to be bagged drugs from a drawer and said, "These are yours." Other officers used Warren's stolen money to buy Popeye chicken, which they ate in front of him. In August 2007, Warren pled guilty and was sentenced to two years' probation. He was exonerated in 2018.

In February, 2007, 44-year-old [Marie Leaks](#) was in an apartment at the Ida B. Wells public housing development when Sergeant Watts and other officers barged in and demanded information about drugs in the building. When Leaks said she had no information, Watts—who was holding bags of drugs—pointed at Leaks and said, "These are hers." "Next thing I knew," Leaks later said, "I was in handcuffs and taken to jail... I was overwhelmed and confused by the whole thing. The public defender told me that I could go to trial, but explained I would probably lose." Leaks pled guilty, was sentenced to four years in prison, and spent two years in custody. She was exonerated in 2022.

In 50 of the 183 Watts drug exonerations in Chicago, the defendants served no time in custody; in all but two of those cases because they were sentenced to probation. The rest received sentences that ranged from four months to 18 years—including 24 who were sentenced to five years in prison or longer; they served an average of about a year-and-a-half before release.

Sentences imposed by courts are only part of the undeserved punishment meted out in many of these scandals. Some suspects were beaten, had property stolen, or both—including some who were never charged with crimes. For example, the initial investigation that led to the first [Philadelphia](#) group exoneration was instigated by an event in 1991, when narcotics officers in the police department's 39th district arrested a Black college student named Arthur Colbert. Over a period of six hours, they called him “nigger,” took him to an abandoned crack house where they beat him, took him to the precinct where they continued to beat him, held a loaded pistol to his head and threatened to kill him, broke into his apartment and searched it—and eventually released him, after promising to kill him if they ever saw him again.<sup>81</sup>

Finally, with the exception of one [misdemeanor](#) conviction in New York, all of these fabricated drug crimes saddled the exonerees with felony criminal records.

#### **d) Why do these scandals happen?**

We don't know the motives of the dishonest officers who framed all these defendants, but there are a few obvious candidates. Some of the corrupt officers took bribes or stole money and drugs from real drug traffickers and may have framed innocent defendants to deflect suspicion. Some extorted money by threats of arrest and prosecution, and made good on their threats when their victims did not comply. Some probably did it because they believed the defendants they framed were drug dealers or gang members, or both, and deserved to be sent to prison, even by dishonest means. And some did it to build their careers. Tom Coleman, for example, lost his job as a deputy sheriff and was then indicted for theft in a different Texas county before he was hired as an undercover agent in Tulia. After he arrested 46 people on fabricated drug charges, the Texas Department of Public Safety named him as the 1999 Outstanding Lawman of the Year.<sup>82</sup>

But why did they focus so heavily on minorities, especially Black people?

It's impossible to miss the obvious racism at the core of some of these cases. In addition, many Black defendants—especially poor residents of big cities and small towns alike—have limited resources and little political clout. They are unlikely to be able to successfully defend themselves against the police, even if innocent.

But the most powerful reason the officers who carry out these outrages focus on Black people is simple: That's what they always do. Drug law enforcement in general bears much more heavily on Black people than on white people, as we saw in Harris County. As any forger knows, the way to create convincing fakes is to make them look like the real thing. For drug cases, that means pursuing and arresting mostly Black people.

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<sup>81</sup> Kramer, Michael. “How Cops Go Bad.” *Time*. (December 15, 1997).

<sup>82</sup> Blakeslee, Nate. [The Color of Justice](#). *Texas Observer*. (June 2000).

Of the many costs that the war on drugs inflicts on the Black community, the practice of deliberately charging innocent defendants with fabricated crimes may be the most shameful. We have no idea how often it really occurs.

# V. Conclusion

Exonerations provide a view of criminal cases from the past that we couldn't see when they happened.

For murder, we see a high concentration of innocent Black defendants who were convicted in the 1980s and 1990s. The scale of that problem seems to have decreased for convictions in the past 20 years, along with a sharp drop in the national murder rate after 1995, but it's hardly gone away. We know about many of those 20- to 40-year old false murder convictions because of the work of a handful of big city prosecutorial Conviction Integrity Units. We can only hope that their offices—and other prosecutors, and police—will learn from the past they uncovered and avoid similar injustices in the future.

For rape, we see a dramatic change for the better. Many innocent defendants who were misidentified by rape victims and convicted in the 1980s, were exonerated by DNA tests in the decades since 1989; the bulk were Black men who were accused of raping white women. There have been no DNA exonerations of misidentified rape defendants who were convicted since 2008 because DNA testing now routinely corrects misidentifications before conviction. This is an extraordinary technological success that has prevented hundreds of false convictions, perhaps more—mostly of Black men. Let's hope that other technological breakthroughs improve the accuracy of criminal investigations to a similar degree. If so, they may also, in the process, reduce the heavy disproportionate impact of false convictions on Black people.

For drug crimes, the picture is grim. Black and white Americans use illegal drugs at similar rates, but Black people are *19 times* more likely to be convicted of drug crimes they didn't commit than white people. Most drug crime exonerations occur in large clusters, which makes it impossible to identify temporal trends, but we see no indication that this huge disparity is waning.

The causes of this extreme racial discrepancy are plain. Black people are much more likely than white people to be stopped and searched by officers who are trolling for drugs, which puts them at risk of false drug convictions based on factual errors. And Black people are the great majority of the victims of police officers who systematically fabricate evidence to frame innocent defendants for drug crimes.

The solution is equally clear: Stop treating illicit drug use primarily as a criminal problem. The War on Drugs is a heavy burden on our country, but the worst costs are born by Black people and other people of color. If white people were stopped, searched and humiliated as often as Black people, would we even have a War on Drugs? What if police across the country engaged in methodical programs of planting drugs on innocent white people? It's hard to believe.

# VI. Appendix

The fundamental reason that we treat group exonerations separately from individual exonerations is the widespread lack of information about those groups—by us, and by the courts, prosecutors and governors who exonerate the defendants. This distinction has two parts:

*First*, for many exonerations in these groups we simply lack basic information that we need to describe and code them separately—the names, dates, charges, sometimes even the number of exonerees—but we can still include them in the group story and the group statistics.

*Second*, even when we do know these basic facts, many group exonerations lack a procedural element that’s part of our definition of “exoneration,” and essential to our confidence that the overwhelming majority of individual exonerees are innocent of the crimes for which they were convicted.

We classify a person who was convicted of a crime as “exonerated” if,

...following a post-conviction re-examination of the evidence in the case, [that person] was relieved of all the consequences of the criminal conviction, and either: (1) was declared to be factually innocent by a government official or agency with the authority to make that declaration; or (2) received [a complete pardon, acquittal or dismissal of all charges, after new evidence of that person’s innocence became available.]<sup>83</sup>

This is a practical definition of “exoneration.” It means that we don’t attempt to evaluate the guilt or innocence of defendants; instead, we rely on decisions by legal actors that are recorded in publicly available sources. Our goal is to draw a line that includes very few guilty defendants as exonerees, at the expense of excluding quite a few innocent ones, and to do so transparently, using data that are open to the public.

The system works well. There’s no doubt that some of the thousands of defendants in the Registry were guilty of the crimes for which they were convicted. Misclassifications are

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<sup>83</sup> The complete [definition](#) adds some important details:

**Exoneration**—A person has been exonerated if he or she was convicted of a crime and, following a post-conviction re-examination of the evidence in the case, was relieved of all the consequences of the criminal conviction, and either: (1) was declared to be factually innocent by a government official or agency with the authority to make that declaration; or (2) received (i) a complete pardon by a governor or other competent authority, whether or not the pardon is designated as based on innocence, or (ii) an acquittal of all charges factually related to the crime for which the person was originally convicted, in a court of the jurisdiction in which the person was convicted, or (iii) a dismissal of all charges related to the crime for which the person was originally convicted, by a court or by a prosecutor with the authority to enter that dismissal. The pardon, acquittal, or dismissal must have occurred after evidence of innocence became available that either (i) was not presented at the trial at which the person was convicted; or (ii) if the person pled guilty, was not known by the defendant and the defense attorney at the time the plea was entered. The evidence of innocence need not be an explicit basis for the official act that exonerated the person. A person who otherwise qualifies has not been exonerated if there is unexplained physical evidence of that person's guilt.

inevitable, as they are in any complex coding system, but as best we can tell, they're rare. It's difficult to obtain a complete reversal of a criminal conviction in the United States for any reason, and especially one based on new evidence of innocence. In that context, we use two main filters to exclude defendants whose convictions were overturned for reasons unrelated to innocence:

(i) There must be either an official declaration of innocence, or, failing that, a complete pardon, acquittal or dismissal after new evidence of innocence has emerged.

(ii) In addition, there's a procedural requirement: an exoneration must be based on a re-examination of the evidence in the specific case.

The second requirement may seem inevitable—how else could an exoneration ever surface? For individual exonerations, that's probably true. In some groups, however, the only evidence that was required for a particular exoneration was the fact that a law enforcement officer who participated in a corrupt conspiracy played some role in the investigation or arrest of the defendant—nothing more.

For example, in the [Massachusetts dry-labbing](#) group exoneration, more than 19,000 drug convictions were dismissed because Annie Dookhan, the forensic analyst who was responsible for testing the alleged drugs, made up incriminating results in numerous cases. Each of those defendants was convicted by unreliable evidence from a dishonest law enforcement officer, but that hardly means that they're all innocent. If Dookhan had done all the chemical tests she was supposed to do, many of those tests—probably most, possibly the overwhelming majority—would have proven the defendants' guilt.

Similarly, many drug convictions in the group exonerations in [Philadelphia](#) were dismissed simply because an officer who was known to be corrupt participated in the investigation or arrest. In some cases, the corrupt officers had minor roles. In others—but we don't know which—they were primarily responsible for the convictions, but the defendants were guilty all the same. Even the most dishonest officers may make legitimate arrests along with the fraudulent ones. It's appropriate that these cases are included in the group exonerations. The defendants were cleared after they had been convicted in a dishonest process that casts serious doubts on their guilt. But without a more painstaking process, we are not sufficiently confident of their innocence to also list them as individual exonerations.

Mass group exonerations like the ones in Massachusetts and Philadelphia are only possible because of the distinctive nature of drug convictions.

The fact that a police officer who participated in the defendant's arrest lied or planted evidence in another case may raise a question about the validity of a murder defendant's conviction. So might the fact that the forensic analyst who tested blood from the scene of the murder made up findings in other murder cases. But these disturbing facts would, at most, lead to a hearing or reinvestigation which might or might not lead to an exoneration if the new evidence disproves that individual defendant's guilt. It's hard to imagine that even a single murder or rape conviction would be dismissed simply because an officer who was involved in the investigation

was guilty of misconduct in other cases, without reference to any other evidence in the case at hand.<sup>84</sup>

But some prosecutors and judges are willing to dismiss large numbers of drug convictions on the basis of information about police misconduct that's perfectly consistent with the defendants' guilt. Why not? Few people ever think about the countless unprosecuted acts of possession of illegal drugs; why would they care how many drug possession cases are dismissed after conviction? Even if the defendants are all guilty, who'd ever notice in the shadow of the mountains of victimless, unreported, unconvicted drug crimes we live with every day.

In short, we only include defendants from the group exonerations on our list of individual exonerations if we know that they were cleared by a process that includes a review of all the evidence in their cases.

We have described how that standard played out for the three groups that include almost all the group exonerations in the main Registry: The Watts exonerations in Chicago include detailed reinvestigations of the facts of each case, and have been added to the Registry in real time. The Tulia exonerations in Texas include equally detailed reviews; they were all added together in 2021, 18 years after the exonerations took place. The Rampart exonerations in Los Angeles were also added to the individual registry in 2021, 19 to 20 years after they took place, but they are more of a mixed bag. We know the names of the exonerees in 91 of the estimated 170 or so exonerations, of which 48 (53%) qualify for the individual Registry.<sup>85</sup>

There are many more such cases. We are examining additional sets of defendants that we may add to our Groups Registry, including groups we have discussed briefly in earlier reports but have not yet researched thoroughly enough to include in that registry. And we are reviewing the group exonerations we already list to identify defendants who qualify for the individual Registry. It's a slow, time consuming process. These numbers will rise as we go along.

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<sup>84</sup> For example, forensic analysts Joyce Gilchrist in Oklahoma, and Fred Zain in West Virginia and Texas, were implicated in many incidents of forensic fraud in the investigation of murders and other violent crimes. The authorities conducted extensive detailed reviews of hundreds of cases in which they provided evidence, much of it false, but only 10 resulted in exonerations, three for Gilchrist and seven for Zain. See Samuel Gross, et al., [Government Misconduct and Convicting the Innocent](#), National Registry of Exonerations (2020) at pp. 67-68, 124-125, 140-142, 156-157.

<sup>85</sup> Professor Russell Covey has also collected and evaluated information on the Rampart and Tulia group exonerations. See Covey, Russell, [Police Misconduct as a Cause of Wrongful Convictions](#), 90 Wash. U. L. Rev. 1133 (2013). He assembled reasonably detailed information on 87 of the Rampart exonerations in Los Angeles, and concluded that 38 of those cases qualified as exonerations by the Registry's criteria, and the defendants are highly likely to be innocent; that 27 cases included "evidence of criminal culpability" by the defendants; and that 22 cases were too unclear to call. On the other hand, Covey concluded that with one or two possible but unlikely exceptions, all the exonerated Tulia defendants were innocent. *Id.* at pp. 1150-51.

Professor Covey's data and methods are different from ours. Among other differences, he estimates the likelihood that individual defendants in these groups are innocent or guilty, which we do not do. Nonetheless, his conclusions are consistent with our own.