NATIONAL GOVERNORS ASSOCIATION

TASK FORCE TO STUDY ERRONEOUS CONVICTION AND IMPRISONMENT

Lauren Dedon
National Governors Association

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Judiciary Committee, Room 101
House Office Building
Annapolis, MD

Overview

- Background on the National Governors Association
- Information on Erroneous Convictions and Exonerations
- Review of State Task Forces/Commissions to Study Wrongful Convictions
- State Statute Compensation Scan
- Alternative State Models to Highlight

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About the National Governors Association

- **The National Governors Association (NGA) is the nation's oldest organization serving the needs of governors and their staff.**
- **NGA Center for Best Practices (NGA Center):**
  - Economic Opportunities
  - Education Division
  - Environment, Energy & Transportation Division
  - Health Division
  - Homeland Security & Public Safety Division

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Exoneration

Source: National Registry of Exonerations

- **A person has been exonerated if he or she was convicted of a crime and later was either:**
  1. Declared to be factually innocent by a government official or agency with the authority to make that declaration; or
  2. Relieved of all the consequences of the criminal conviction by a government official or body with the authority to take that action.
- **The official action may be:**
  1. A complete pardon by a governor or other competent authority, whether or not the pardon is designated as based on innocence;
  2. An acquittal of all charges factually related to the crime for which the person was originally convicted; or
  3. 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 been the result, at least in part, of evidence of innocence that either:**
  1. Was not presented at the trial at which the person was convicted; or
  2. If the person pled guilty, was not known to the defendant and the defense attorney, and to the court, at the time the plea was entered.

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Source: The National Registry of EXONERATIONS

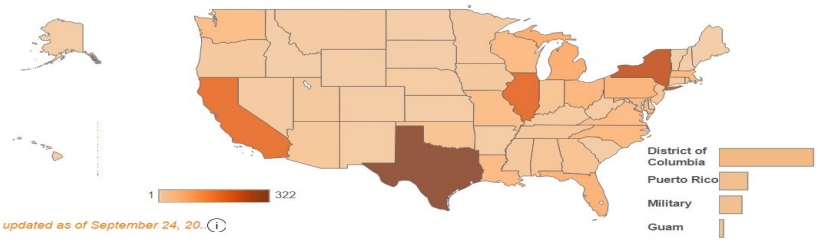
2,095 Exonerations since 1989

18,251 Years Lost - Total

8.7 Years Lost - Avg./Case

Exonerations by State

Fed / Non-Fed All



Data updated as of September 24, 20.

Contributing Factors		
Mistaken Identification	Absent	Present
False Confession	Absent	Present
Bad Forensic Evidence	Absent	Present
Perjury / False Accusation	Absent	Present
Official Misconduct	Absent	Present

Crime	
Murder	810 (39%)
Sexual Assault	303 (14%)
Child Sex Abuse	242 (12%)
Drugs	248 (12%)
Robbery	109 (5%)
Other	383 (18%)

Death Sentence All

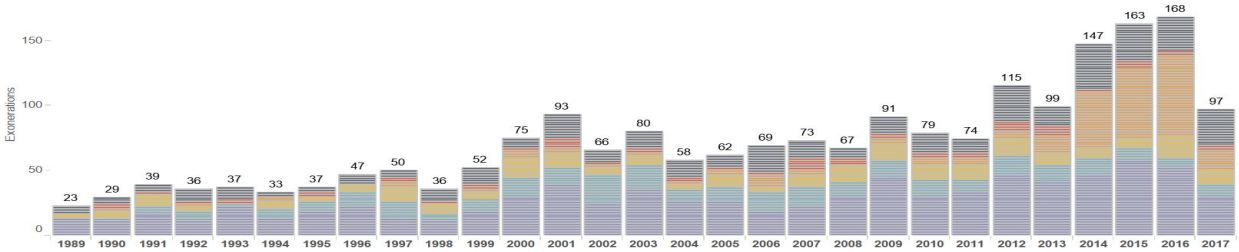
Race	
Black	979 (47%)
Caucasian	
Hispanic	251 (12%)
Other	47 (2%)
Hispanic;#Cauca...	1 (0%)

Gender	
Male	1,897 (91%)
Female	198 (9%)

Additional Aspects		
DNA	Absent	Present
Guilty Plea	Absent	Present

Exonerations Total by Year

Show Total by Year



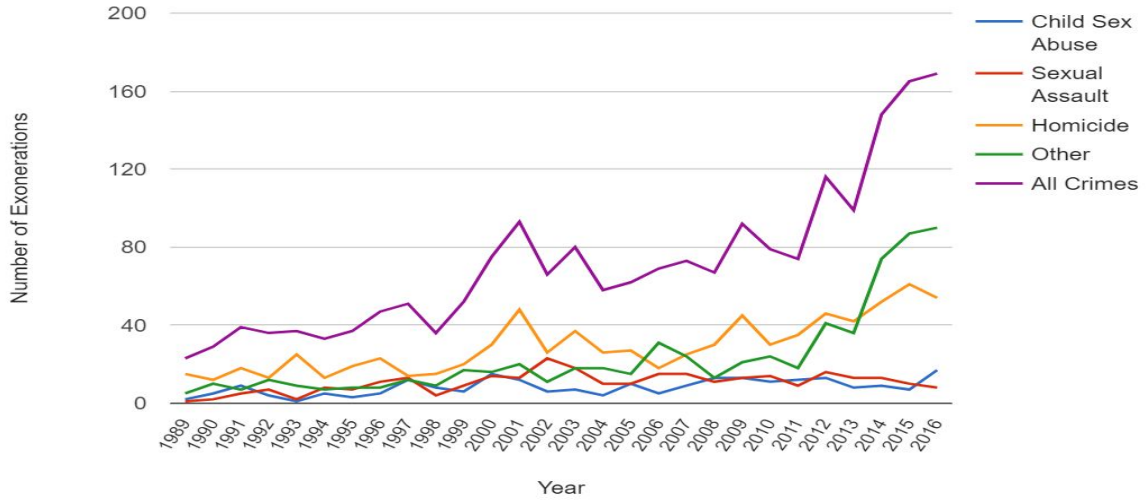
Dashboard designed by CLEAR TELLIGENCE

Murder | Sexual Assault | Child Sex Abuse | Drugs | Robbery | Other

Exonerations By Year And Type Of Crime

Source: National Registry of Exonerations (as of 10/23/2017)

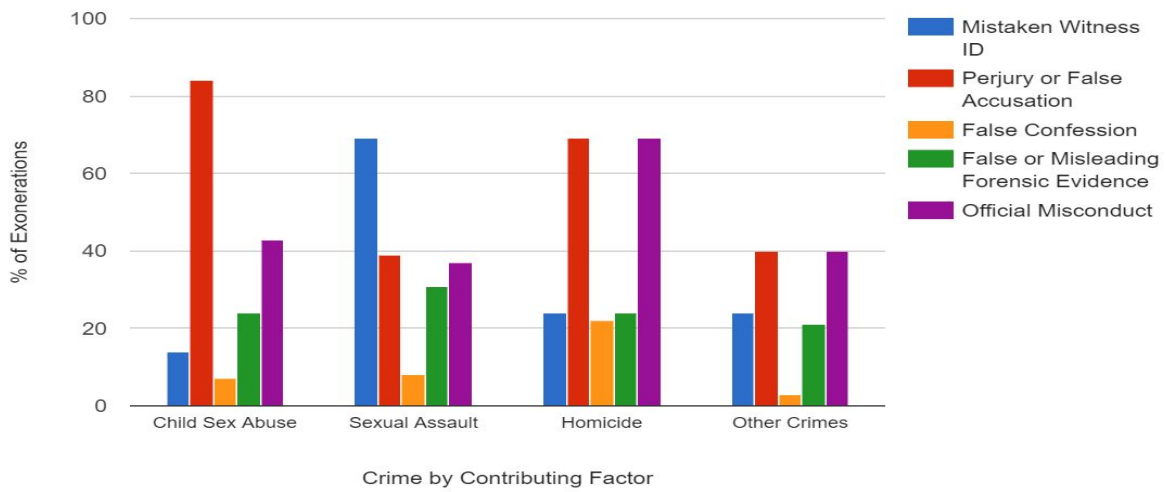
Total = 2109

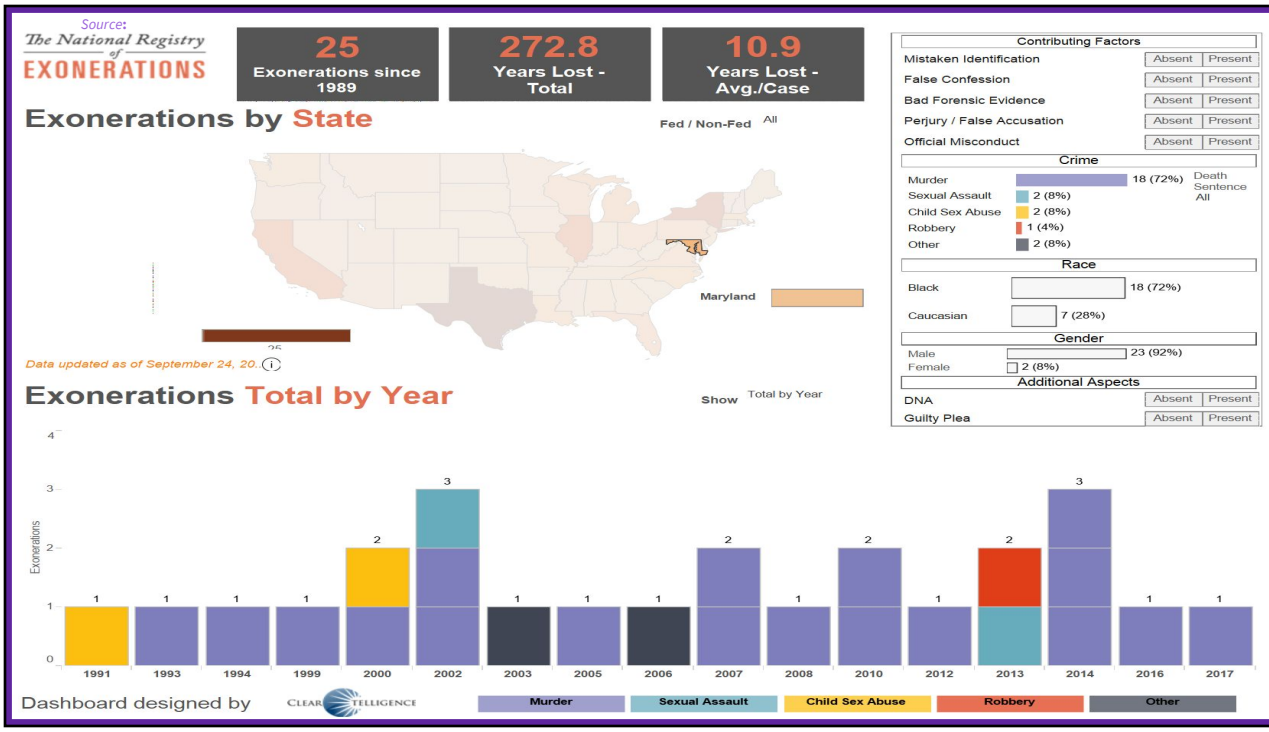


% of Exonerations by Contributing Factor and Type of Crime

Source: National Registry of Exonerations (as of 10/23/2017)

Total = 2109





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Maryland Task Force to Study Erroneous Conviction and Imprisonment

- **Study the State's current process for establishing whether a conviction was made in error and for determining the innocence of a person erroneously convicted;**
- **Study the processes and standards in other states for designating an erroneous conviction, determining a person's innocence, and compensating a person for imprisonment based on an erroneous conviction; and**
- **Make recommendations on whether the State should create and implement a new process to designate an erroneous conviction and determine the innocence of an person erroneously convicted, including whether a specific agency should certify that a person is innocent.**
  - The task force must report its findings and recommendations to the Governor and the General Assembly by December 15th, 2017.

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State Task Forces/Commissions on Wrongful Convictions:
Purpose

- **Established to examine state policy changes that might prevent wrongful convictions in the future.**
- **Tasked with reviewing past cases of wrongful convictions, examining the current system in place, and developing recommendations for preventing these convictions from happening in the future.**

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State Task Forces/Commissions on Wrongful Convictions:
Structure

- **Typically created by legislatures**
- **Some are established for a specific timeframe**
- **Membership includes judges, prosecutors, defense attorneys, members of law enforcement, legislators, executive branch officials, forensic experts, victim advocates, legal scholars, and/or other related representatives (e.g. academics, exonerees, etc.)**

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Common State Report Contents

- **Letter from the Chair**
- **Executive Summary**
- **Recommendations Summary**
- **Background**
- **Task Force Membership**
- **Task Force Activities**
- **Discussion of Recommendations**
- **Various Appendices**

- **Range between 15 – 328 pages**

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Example State Task Force/Commission:
California Commission on the Fair Administration of Justice

- **Created in 2004 by the legislature to:**
  1. Study and review past cases that have resulted in wrongful executions or conviction of innocent persons;
  2. Examine ways of providing safeguards and making improvements in the way the criminal justice system functions; and
  3. Make recommendations and proposals designed to further ensure that the application and administration of criminal justice in California is just, fair, and accurate.

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Example State Task Force/Commission:
Connecticut Advisory Commission on Wrongful Convictions

- **Created by statute in 2003.**
- **Spurred by a wrongly incarcerated man who came before the legislature to seek relief.**
- **Its primary objective was to make recommendations that would reduce or eliminate the possibility of the conviction of an innocent person in Connecticut.**
- **The commission investigated wrongful conviction cases to discover what went wrong and suggest how the problems discovered could be addressed.**
- **Advisory Commission website and report accessed here.**

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Example State Task Force/Commission:
Florida Innocence Commission

- **Established in 2010 by the Florida Chief Justice to recommend solutions to the Supreme Court of Florida to eliminate or significantly reduce the causes for wrongful convictions.**
- **A final report was submitted in 2012 and included recommendations related to eyewitness identification, false confessions, law enforcement interrogation techniques, jailhouse informants, invalid scientific evidence, professional responsibility, and criminal justice funding.**

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Example State Task Force/Commission:
New York State Justice Task Force

- **Created by the Chief Judge of the State of New York in 2009.**
- **The current Chief Judge of New York has continued the task force, which now examines the causes of wrongful convictions and recommends changes to the criminal justice system to prevent such convictions.**
- **Recommendations have included:**
  - Expanding the New York State DNA databank
  - Expanding post-conviction access to DNA testing and databank information;
  - Electronically recording custodial interrogations;
  - Implementing identification procedure best practices;
  - Expanding access to forensic case file materials;
  - Reforming criminal discovery; and
  - Using root cause analysis of prior incidents to prevent future wrongful convictions.

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Example State Task Force/Commission:
Pennsylvania Advisory Committee on Wrongful Convictions

- **Established in 2006 within the Joint State Government Commission to study the underlying causes of wrongful convictions.**
- **Divided into subcommittees that focused on legal representation, investigation, redress, and forensic science.**
- **The committee also reviewed cases in which innocent persons were wrongfully convicted and later exonerated to identify common causes of wrongful convictions.**
- **The committee then developed a series of policy and practice recommendations throughout various decision points in the criminal justice system.**

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Example State Task Force/Commission:
Texas Timothy Cole Exoneration Review Commission

- **Created by the legislature in 2015.**

- **The commission was created to:**
  1. Review cases in which an innocent defendant was convicted of a crime, and later exonerated;
  2. Consider the impact on the criminal justice system for potential solutions to reduce the occurrence of wrongful convictions; and
  3. Review and update the research and recommendations of the Timothy Cole Advisory Panel.

- **The commission submitted recommendations to the legislature on eyewitness identification, law enforcement officer training, and jury instruction. It also provided model policies adopted by local law enforcement.**

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Common Recommendations Made by State Task Forces/Commissions

- **Eyewitness identification**
- **False confessions**
- **Informant testimony (including jailhouse informants)**
- **Attorney accountability/professional responsibility**
- **Jury instruction**
- **Law enforcement officer training (including law enforcement interrogation techniques)**
- **Invalid scientific evidence**
- **Expanding access to DNA databanks and forensic case file materials**
- **Indigent defense services**
- **Postconviction relief/compensation**
- **Criminal justice funding**

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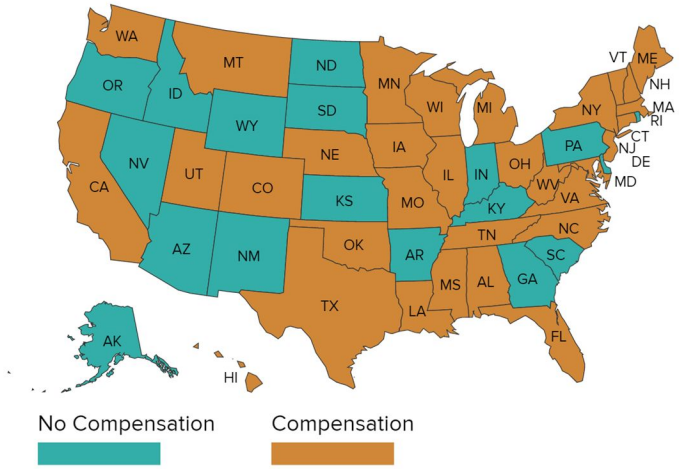
Compensation for the Exonerated

32 states, D.C. and the federal government compensate exonerees



Source: The Innocence Project

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Model State Statutory Elements

- Eligibility
- Standard of Proof
- Deciding Body
- Statute of Limitations for Filing
- Future Civil Litigation
- Other Contributory Provisions
- Compensation Amounts

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Review of State-Level Compensation Amounts

- Set compensation levels per year or per day of incarceration.
- Set compensation levels at a minimum or maximum threshold.
- Set no threshold amount (leave amount of compensation up to a designated body).
- Compensation and services packages.

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Additional State Compensation Considerations:
Fiscal Implications

❖**Depends on:**
- ▪Average number of exonerees;
- ▪Average time spent wrongfully incarcerated; and
- ▪State statutory compensation scheme.

❖**Other considerations:**
- ▪Statutory amounts v. civil lawsuit damages
- ▪Taxes
- ▪Correctional costs of wrongful convictions

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North Carolina Innocence Inquiry Commission

- **Created in 2006 and began operating in 2007.**

- **The Commission is first of its kind, as it is charged with providing an independent and balanced truth-seeking forum for credible post-conviction claims of innocence in North Carolina.**

- **Made up of eight members:**
  - A superior court judge, a prosecuting attorney, a defense attorney, a victim advocate, a member of the public, a sheriff, and two discretionary members.

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North Carolina Innocence Inquiry Commission
Cont.

- **Independent state agency for credible post-conviction claims of innocence.**
  - Reviews innocence claims and conducts hearings.
  - The commission is separate from the appeals process, and is the first commission empowered to make determinations of innocence.
  - A person exonerated through the commission process is declared innocent and cannot be retried for the same crime.

- **Since 2007, the commission has received 2,146 claims, closed 2,052 cases, and held ten hearings.**
  - Ten individuals have been exonerated because of the commission's investigations.

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Other Models

- **Conviction Integrity Units**
- **Illinois Torture Inquiry and Relief Commission**
- **New York State Justice Task Force**

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Additional Resources

- The National Registry of Exonerations
- The Innocence Project
- The Exoneration Initiative
- University of Virginia School of Law
- George Washington University School of Law

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Thank You

Lauren Dedon, J.D.
Policy Analyst, Homeland Security and Public Safety Division
National Governors Association
202.624.5375
Ldedon@nga.org

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