

Special Investigation: The High Costs of Wrongful Convictions

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85
**WRONGFUL
CONVICTIONS**

Wrongful convictions of men and women for violent crimes in Illinois have cost taxpayers \$214 million and have imprisoned innocent people for 926 years, according to a seven-month investigation by the Better Government Association and the Center on Wrongful Convictions.

The joint investigation, which tracked exonerations from 1989 through 2010, also determined that while 85 people were wrongfully incarcerated, the actual perpetrators were on a collective crime spree that included 14 murders, 11 sexual assaults, 10 kidnappings and at least 62 other felonies.

“I am astounded,” said former U.S. Attorney Thomas Sullivan, who chaired the Capital Punishment Reform Committee established by the Illinois General Assembly. “Those are astounding numbers in terms of total years in prison and dollars spent.”

Moreover, the 97 felonies in that crime spree may be just a fraction of the total

number of crimes committed by the actual perpetrators. The investigation found that the 85 exonerations left 35 murders, 11 rapes, and two murder-rapes with no identified perpetrators and thus no way to add up their accumulated crimes.

While the BGA/CWC study revealed that almost all of the wrongful convictions were caused by multiple factors, the cause most commonly alleged was government error and misconduct by police, prosecutors, and forensic officials.



The investigation was conducted by the non-profit, non-partisan BGA and the Center on Wrongful Convictions, a non-profit organization, based at Northwestern University School of Law, which has been instrumental in the exoneration of 23 innocent men and women in Illinois.

The investigation's findings are based on the cases of 83 men and two women who were charged with murder, attempted murder, rape, kidnapping, and armed robbery, and who were exonerated between the years 1989 (chosen because it is the start of the DNA-exoneration era in Illinois) and 2010. The study involved nearly a hundred Freedom of Information Act requests; interviews and emails with the exonerated, police and prison officials, attorneys, judges, and proponents for reform; reviews of public documents assembled in criminal cases and filed in civil suits; and complex calculations based on the varying costs of maintaining inmates in prisons and different county jails (some incarcerations began in the 1970s).

The financial toll was calculated by adding the costs of incarceration in jails and prisons, compensation paid to the wrongfully convicted by the state in the wake of exoneration, and civil litigation costs (lawyers fees, expert witness fees, and judgments and settlements).

The study also suggests that the total financial cost to state taxpayers will approach or surpass \$300 million in the next several years as 16 civil suits now pending and a 17th to be filed later this year are settled or come to trial.

Furthermore, because litigation expenses are such a large part of the public expenditure on wrongful convictions and because 55 of the 85 cases originated in Chicago, the bulk of the state's bill for wrongful conviction has been borne by Chicagoans.

Other states, counties, and cities have instituted a variety of reforms to reduce the financial and human toll. Some of those reforms have been in place for nearly ten years.

The study also revealed that it is far cheaper to incarcerate the innocent than to compensate them afterward.

Over the period of time studied, which covers the past 35 years, the BGA/CWC investigation found that the cost of keeping the 85 in jail and prison for a total of 926 years came to \$18.5 million.



Litigation and compensation expenditures afterward were more than ten times that amount. Through the Illinois Court of Claims, the state provides compensation to the wrongfully convicted based on their years of imprisonment, and those costs totaled \$8.2 million. A total of \$31.6 million has been paid to private attorneys to defend governments and their employees in civil suits filed after exoneration, and \$155.9 million has been paid to exonerees in settlements and judgments. Total litigation and compensation expenditures were \$195.7 million.

One bad set of prosecutions can cost taxpayers dearly. The conviction of four men for a 1978 double murder in Ford Heights ultimately cost taxpayers \$45.2 million. A woman, who started out as a witness in the case but later was wrongfully convicted as a participant, added another \$5 million.

More disturbing, one bad case can ruin lives and wreak havoc in communities.

During the 26 years that Jerry Miller was serving prison time and probation for a brutal rape he did not commit, Robert Weeks, the actual perpetrator, attacked at least four women, raping three (he was stopped before raping the fourth); committed aggravated battery on 11 police officers; and attacked a man with a chain in an unsuccessful attempt to steal his watch, according to police and court documents.

Those documents indicate that injuries to the four women included a broken cheekbone, a broken nose, a broken orbital bone, a broken wrist, and lacerations, contusions, and hematomas to one woman's face, neck, ribs, and legs.

Three of the police officers required hospital treatment. Many of the attacks occurred in and around Wicker Park.

(An attorney for Weeks declined to comment.)

After his release from prison on parole in 2006, the innocent Miller, an Army veteran with no previous criminal convictions, endured the humiliation of having his name, photograph, and physical description posted on the state's registered sex offender website. In a recent interview with the BGA, Miller said he was also required to attend and pay for sex offender classes, prohibited from jobs that had contact with children and from living with any family member who had children, and forbidden to answer his door on Halloween.

Documents filed in Miller's civil suit against the city indicate that serological testing by the Chicago police crime lab to determine the blood type of the perpetrator should have cleared him, but the technician reported inconclusive results, a conclusion that a nationally renowned expert found "simply inconceivable" in 2009 after conducting the same tests on the rape victim's garment. Nothing in police reports indicate that Miller had done anything suspicious to make officers suspect he was a rapist, nor was he seen in the vicinity of the rape when it occurred, nor was there any physical evidence linking him to the crime.

According to police reports, Miller became a suspect because two patrolmen saw the composite sketch of the rapist and thought it resembled a man they'd seen several days earlier near Lincoln Park, approximately two miles from where the rape occurred. Miller had worked at a restaurant near the Lincoln Park Zoo and said he was back in the neighborhood that day looking for another job as a cook.

One of the parking lot cashiers picked Miller out of a lineup, another was described in police reports as having made a "tentative" identification, and although the victim picked two other men out of a photo array as possible suspects, at trial she said Miller "looked like" the man who attacked her.

DNA testing in 2007 exonerated Miller. His civil suit cost the city \$8 million in settlement and legal fees.



Alleged government error, often rising to the level of misconduct, and eyewitness

misidentification—both of which cost Miller and the city so much—are the two leading causes of wrongful convictions in the BGA/CWC study.

Government error and misconduct appeared in 81 out of the 85 cases, and purported eyewitnesses fingered the wrong person in 46, according to the investigations.

False confessions occurred in 33 cases, allegations of ineffective assistance of counsel appeared in 23, and incentivized witness testimony in 30 (an incentivized witness is someone who testifies with the expectation of some reward or benefit from law enforcement officials).

In the government error and misconduct arena, police behavior dominated (66 cases), followed by prosecutors (44). In 29 cases, forensic specialists testified or provided evidence that supported the prosecution's faulty theory of the case.

Cook County Judge Tommy Brewer, a former FBI agent, assistant state's attorney, and criminal defense attorney, found the frequency of government misconduct in the results particularly disturbing. In a recent interview he said that they "remind us that what we call the criminal justice system is often anything but just. And to the extent justice is lacking in our criminal justice system, it is not because of human frailties but often the deliberate malfeasance of those we entrust to run the system."

Jurisdictions in various parts of the country have introduced reforms designed to address the causes of wrongful convictions, but Illinois has been slow to adopt many of them.

According to an ongoing study being carried out by Sullivan and colleagues at Chicago-based law firm Jenner & Block, 11 states and hundreds of municipalities require the electronic recording of interrogations for all major felony crimes. Illinois requires recording only in homicide cases.

The American Bar Association (ABA) has recommended model rules requiring that prosecutors, upon finding new evidence that might indicate a wrongful conviction, must turn that material over to the defense; investigate to determine if the person is indeed innocent, and if so, take steps to remedy the conviction. While other states have embraced that reform, Illinois has not.

Illinois also lags behind in enacting reforms designed to reduce eyewitness misidentification.

In 2001, New Jersey's Attorney General John Farmer introduced the "blind" administration of lineups and photo arrays, an attempt to eliminate any cues from officers conducting the process. A blind administrator does not know who the suspect is.

Wisconsin, North Carolina, and municipalities in various other states, including Boston, Denver, and Dallas, have followed New Jersey's lead.

The BGA/CWC study found a substantial lag time between wrongful conviction and exoneration (the average length of imprisonment in the 85 cases was more than 10 years). Thus in Illinois, the financial costs and the attendant human toll is likely to proceed apace for the foreseeable future.