

Support Law Reform Proposals to Prevent Wrongful Convictions

Since 1989, there have been over 280 post-conviction DNA exonerations nationwide; eleven of those were in Pennsylvania. During the same period, hundreds of other convictions nationwide have been reversed on strong showings of factual innocence. Of course, since DNA is found so rarely, these cases are just the tip of a much larger iceberg as the causes of the DNA-discredited convictions—the use of inaccurate eyewitness identification testimony, false confessions, unreliable jail-house informant testimony, faulty forensics, incompetent defense lawyers, and the suppression of exculpatory evidence—are present in the investigation and prosecution of many criminal cases.

To address this serious issue, the Pennsylvania Advisory Committee on Wrongful Convictions has issued a report to the State Senate recommending a number of reforms intended to prevent the wrongful convictions of innocent persons. The Committee's proposals are based on careful studies and the advice of national and local experts, including judges, police officials, prosecutors and defense lawyers. The proposals are intended to produce more reliable evidence in the investigation and prosecution of serious criminal cases and to reduce the risk of inaccurate determinations of guilt.

Inaccurate determinations of guilt exact a huge cost and not just from the person who is wrongly incarcerated. Wrongful convictions are most harmful to those who are convicted in error, but they also diminish public safety as police fail to apprehend the real perpetrator, who is then free to commit further crimes. In over 100 of the DNA exonerations, the real perpetrators were later identified. But they had already committed countless additional crimes, including more than 60 sexual assaults and more than 20 murders. Simply put, nobody benefits from the

prosecution of the innocent, nobody, that is, except the actual perpetrator.

Eyewitness Identification

Mistaken identifications have contributed to 75% of the wrongful convictions in the U.S. In the past 30 years, carefully controlled experiments and studies have made clear that these mis-identifications result from systemic flaws in police identification procedures, including highly suggestive practices in lineups and photo-spreads.

Fortunately, there are proven methods that will reduce the likelihood of inaccurate identifications. Police departments in many states, including all in New Jersey, Wisconsin and North Carolina, now follow accepted best practices in the field. They use “double blind” procedures (in which neither the police officer nor the eyewitness knows the identity of the suspect); they select “fillers” based on their resemblance to the description provided by the eyewitness, not by their resemblance to the suspect; all witnesses are given proscribed warnings including that the perpetrator may or may not be present before the procedure is conducted; the witness is required to state his or her degree of confidence in the identification at the time it is made; and the identification procedure is recorded electronically where feasible. The Advisory Committee has recommended these “best practices” now used in hundreds of police departments nationwide for all of Pennsylvania.

Police Interrogation/ Recording of Custodial Interrogations

In approximately 20% of the exonerations, defendants who were innocent of the charges gave “false” confessions of guilt. In most of these cases, detectives used psychological means to get confessions from persons who were immature, mentally retarded, or who were otherwise easy

to manipulate.

The single best method for preventing a false confession from leading to a false conviction is the electronic recording of interrogations. Electronic recording has been embraced by more than 750 [?] police departments around the country; eighteen states require the recording of interrogations. In 2004, Thomas P. Sullivan, the former U.S. Attorney for the Northern District of Illinois, published a report detailing police experiences with the recording of custodial interrogations. Researchers interviewed officers in 238 law enforcement agencies which have implemented the reform and concluded, “virtually every officer with whom we spoke, having given custodial recordings a try, was enthusiastically in favor of the practice.”

Ensuring Informant Testimony Reliability

In a significant number of exonerations, the evidence against the defendant included the testimony of a “jailhouse informant” to whom the defendant had supposedly made an admission of guilt. In almost all such cases, the informant had a huge incentive to implicate the defendant: a plea bargain for a lenient sentence or reduction of charges. To ensure that informant testimony is reliable, there should be full disclosure by the prosecution of all circumstances of the alleged confession, including all inducements to testify, electronic recording of such “confessions” whenever feasible, cautionary jury instructions as to the credibility witnesses who have received or been promised a reward for their testimony, and, as recommended by the Committee, a full hearing in capital cases regarding the informant’s reliability.

Post-Conviction DNA Testing

While Pennsylvania has a statute that authorizes post conviction DNA testing, it has been construed in an unfairly narrow manner by the courts. DNA testing has been denied where there

is substantial evidence of guilt, but that rationale is plainly mistaken as DNA testing has exonerated defendants in many cases in which the evidence of guilt was overwhelming—but wrong. The Committee recommends that the DNA statute be amended to ensure that those who have been wrongly convicted can gain access to the evidence that can establish their innocence.

Preservation of Biological Material

To prove innocence through the use of DNA technology, the biological evidence must be preserved. The Committee recommends new procedures and policies for the preservation of biological and other evidence to ensure that it is available for testing post-conviction.

Forensic Science Accreditation and Reform

A 2009 report by the National Academy of Sciences documents major weaknesses in forensic science by police technicians and laboratories, including use of highly unreliable methods of identification (such as hair analysis and bite marks). Pennsylvania has no statewide oversight of forensic laboratories, and no requirements that laboratories achieve accreditation. The Committee recommends a series of measures to upgrade police laboratories and to ensure that all forensics and forensic testimony is scientifically reliable. To monitor this area, there should be a State Forensic Advisory Board to supervise and improve forensic training, laboratories and procedures.

Compensation for the Innocent

According to a recent report written by the Re-entry Policy Council, a bipartisan group comprised of leading elected officials, policymakers and practitioners working in state and local governments, barriers to successful reentry are profound. In Pennsylvania, there is no statutory provision for compensating persons who have been fully exonerated for their years of unjust

imprisonment. The Committee proposes modest compensation for those who are clearly innocent, without the need for litigation.

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For too long we have assumed that our criminal justice system is as good as it can be and that innocent persons are not convicted of serious crimes. We now know to a moral certainty that the opposite is true; fortunately, there are reforms that will make the criminal justice system as good as it should be and as accurate as it can be.

The proposals included in the Advisory Committee report are not radical changes. They are neither outlying nor experimental . Rather, these are techniques and programs being used by law enforcement agencies and states across the country. Pennsylvanians must not continue to stick our collective heads in the sand and pretend that our criminal justice system need not change. As citizens we all want to have confidence in our system and, particularly, in our convictions. The work of the Advisory Committee on Wrongful Convictions is a significant leap toward achieving the goal of ensuring our common goal that only the guilty are convicted, and the innocent go free.