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Final Report

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Contract No. GS-23F-8182H  
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Submitted to:  
National Institute of Justice  
Office of Justice Programs  
U.S. Department of Justice

Submitted by:  
ICF Incorporated  
9300 Lee Highway  
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## **Study of Victim Experiences of Wrongful Conviction**

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## Executive Summary

Over the past three decades, the rate of exonerations has more than doubled, growing from an average of 24 per year from 1989 through 1999 to an average of 52 per year from 2000 through 2010 (Gross & Shaffer, 2012). While significant strides have been made to identify and assist wrongfully convicted individuals in gaining their freedom and transitioning to life after exoneration, little is known about the experiences of victims during this process. In 2010, the U.S. Department of Justice, National Institute of Justice funded ICF International to conduct an exploratory study examining victim<sup>1</sup> experiences in cases of wrongful conviction in order to begin to fill this gap in knowledge. This report documents the methodology and findings from the study, and examines the implications for practice and policy.

### Methodology

For the purpose of this study, the term **wrongful conviction** is defined as a case in which a government entity has determined that the originally convicted individual factually did not commit the crime. The term **exoneration** refers to the process by which a government entity, by way of a pardon or judicial order, concedes that a convicted person is indeed innocent. Researchers conducted a review of known cases, a survey of service providers,<sup>2</sup> and 11 in-depth case studies to ascertain information regarding the range and frequency of issues victims face as they proceed through the exoneration process.

In 2011, ICF conducted a review of known cases of wrongful conviction that had been exonerated from 2004 through 2010. This review provided important background information on the landscape of wrongful convictions and informed the identification of the in-depth case studies.<sup>3</sup> ICF identified cases for inclusion in this review through a systematic search of publications and websites maintained by the Innocence Project, the Northwestern University School of Law, Centurion Ministries, State Innocence Projects, and other institutions dedicated to tracking cases of wrongful conviction.<sup>4</sup> A total of 265 cases fell into the scope of this review.

In 2011, ICF also conducted a survey of service providers who had worked with victims of violent crimes during or following exoneration of a wrongfully convicted individual. Service providers were asked to answer questions based on the experiences of one victim to whom they provided direct services or assistance during or following the exoneration. In total, 23 surveys were completed by service providers who fell within the scope of the survey.

In 2012, ICF conducted 11 case studies to ensure that victims' voices informed study findings, and to obtain more detailed information about the experiences and needs of victims during and after the exoneration. Researchers contacted the District Attorney's Offices and/or innocence commissions in jurisdictions in which at least four wrongful conviction cases were exonerated from 2004 through 2010, as well as individuals who completed the survey of service providers to seek their assistance in reaching out to victims and assessing the victim's willingness to

<sup>1</sup> For the purpose of this report, victims include individuals directly harmed as a result of the initial crime and family members of victims in cases of murder and non-negligent manslaughter.

<sup>2</sup> Individuals tasked with providing direct social services (e.g., case management, mental health services) to victims will be referred to as service providers.

<sup>3</sup> At the time, no national registry of exonerations existed, and no review of wrongful convictions had taken place since 2003 (Gross, Jacoby, Matheson, Montgomery, & Patil, 2005). In 2012, the University of the Michigan Law School and the Center on Wrongful Convictions at the Northwestern University School of Law published the National Registry of Exonerations (exonerationregistry.org), which provides detailed information about all known exonerations that have taken place in the United States since 1989. Data from the 265 exonerations identified through this study can be found in this registry.

<sup>4</sup> Legal documents and news articles were used to supplement the information provided through these sources.



participate in the study. Researchers also used snowball sampling, where service providers were encouraged to forward the survey to other providers who had worked with victims during or following exoneration in order to identify additional case studies. Researchers interviewed 33 individuals: 11 victims (including immediate family members in cases of murder), 9 prosecutors, 4 service providers,<sup>5</sup> 3 law enforcement officers, 2 family members, 2 attorneys who provided victims with legal advice, and 2 innocence commission members.

## Study Findings

### *Review of Known Cases*

Cases of wrongful conviction identified for this review spanned 29 states and the District of Columbia. Of these wrongfully convicted individuals, 8 (3%) were female, 22 (8%) were minors at the time of arrest, and 13 (5%) had a cognitive/mental health limitation.<sup>6</sup> The majority of the wrongfully convicted persons were African American (49%) and Caucasian (40%), with Hispanics comprising 5% of those wrongfully convicted.

More than half of the wrongful convictions involved a murder conviction (53%). A high proportion of wrongful convictions also involved sexual offenses, including rape (27%) and/or other sexual offenses (25%). Eyewitness misidentification contributed to more than half (55%) of the wrongful convictions identified for this review. Improper forensic science (29%), government misconduct (25%), false confessions (20%), false testimony (16%), informants/snitches (11%), and ineffective legal counsel (11%) were also contributing factors in the wrongful convictions. In the majority of the cases (65%), more than 10 years had passed between the original conviction and the subsequent exoneration; in 20% of the cases, more than 20 years had passed.

Approximately half of the exonerations identified for this review involved DNA evidence (52%). Of the cases exonerated exclusively as a result of non-DNA evidence, the most common factors associated with the exoneration were new non-DNA evidence (46%) and repudiation of non-DNA evidence (43%), followed by testimony recantation (28%) and confession by the actual offender (18%).<sup>7</sup> The actual offender was identified in 83 (31%) of the reviewed cases.<sup>8</sup>

### *Survey of Service Providers<sup>9</sup>*

Twenty-three survey respondents reported working with a victim of a violent crime during or following exoneration. Based on the experience of one victim to whom they provided direct services or assistance during or following the exoneration, service providers reported working with victims of rape (41%), murder (27%), aggravated assault (18%), domestic assault (9%), and robbery (5%) (n=22). Service providers reported that 43% of the cases involved eyewitness misidentification.<sup>10</sup> Invalidated or improper forensic science<sup>11</sup> (19%), false

<sup>5</sup> One service provider provided direct services to victims in two of the case studies.

<sup>6</sup> As identified by the publications, websites, legal documents, and news articles used in this review.

<sup>7</sup> Many non-DNA cases involved several types of evidence; therefore, these categories are not mutually exclusive.

<sup>8</sup> This includes offenders who are identified (e.g., through a confession, DNA testing, or new evidence); not all identified offenders were subsequently charged with the crime.

<sup>9</sup> Findings from the survey of service providers are presented using gender-neutral language (e.g., they, them, their, themselves), and identifying information (e.g., demographic information) is not reported in order to protect the identities of victims whose cases were wrongfully convicted.

<sup>10</sup> Service providers reported that 15 victims provided eyewitness identification as part of the initial investigation and/or at trial; however, eyewitness misidentification was only identified as a factor contributing to the wrongful conviction in 9 cases. Based on the information provided by survey respondents, researchers were unable to determine the cause of this discrepancy.

<sup>11</sup> Invalidated or improper forensic science describes the use of forensic techniques that have not been subjugated to rigorous scientific evaluation, validated techniques improperly conducted or inaccurately conveyed in trial testimony, and forensic misconduct.

confessions/admissions (19%), ineffective legal counsel (10%), informants/snitches (5%), and government misconduct (5%) were also identified as contributing factors in the wrongful convictions (n=21).

Nearly three-quarters of the reported cases were exonerated as a result of DNA evidence (73%). Testimony recantation (18%) and confession by the actual offender (9%) were also identified as factors that contributed to the exoneration (n=11). The actual offender was eventually identified in 56% of the cases (n=16); in 33% of those cases, the actual offender was later convicted of the original crime.

Most victims (88%) first learned about the potential wrongful conviction prior to the exoneration (n=17). Victim service providers provided initial notification to 58% of the victims.<sup>12</sup> Other sources of initial notification included law enforcement (16%), media (e.g., television, a reporter) (11%), automated notification (e.g., an automatically generated letter, email, or phone call) (5%), or another source (11%). When asked to describe victims' reactions to the notification, service providers reported that common reactions included disbelief, denial, shock, fear, frustration, anger, and confusion.

Service providers generally reported that the exoneration impacted victims in a multitude of ways, including emotionally (78%), socially (56%), physically (44%), financially (44%), and spiritually (22%) (n=9). The most common services provided by respondents during the exoneration process or post-exoneration included information/referrals (67%), legal and/or criminal justice system advocacy (67%), crisis intervention (56%), court accompaniment (44%), and victim impact statement assistance (44%). A few service providers reported that victims had counseling and/or psychological service needs that were not met. Respondents also reported a need for easier access to victim compensation funds, more flexibility in the use of compensation funding, and access to victim legal assistance.

Survey respondents provided the following recommendations: (1) treat victims with sensitivity and compassion; (2) provide victims with information on the exoneration process, DNA testing, and common causes of wrongful conviction; and (3) offer victims access to both short- and long-term counseling. In addition, respondents noted the need to develop policies and training so that the criminal justice system is better able to respond to and meet the needs of victims in these cases.

### *Victim Experiences: Findings from the Case Studies*<sup>13</sup>

The 11 case studies were diverse in terms of geographic location, the crimes they represented (rape was the most common crime, followed by murder and sexual assault), and the leading factors that contributed to the wrongful conviction (eyewitness misidentification followed by invalidated/improper forensic science, informants/snitches, false confessions, and ineffective legal counsel) and the subsequent exonerations (67% were DNA exonerations).

In five cases, officials (e.g., law enforcement, prosecutors, service providers) involved in the exoneration provided initial notification to the victims during the reinvestigation (e.g., when a DNA test had been ordered, when the case had been opened for a formal review). In one case,

<sup>12</sup> This may be reflective of the fact that service providers were the target population for this survey.

<sup>13</sup> Findings from the case studies are presented using gender-neutral language (e.g., they, them, their, themselves), and identifying information (e.g., demographic information) is not reported in order to protect the identities of the victims who participated in this study.

an official notified the victim of the wrongful conviction post-exoneration. When asked about these meetings, victims reported being given limited information and being asked few, if any, questions about their potential need for services. In four cases, victims learned of the potential wrongful conviction through third parties, such as reporters or legal representatives for the wrongfully convicted individuals. In another case, notification was not applicable due to the fact that the victim believed in the innocence of the wrongfully convicted person from the time of the original trial, and was actively involved throughout the appeal and exoneration process.

Victims' reactions following the notification varied. Although most victims described the notification as having a significant and often devastating impact on their lives, this was not the case for all victims. In some cases, the exoneration process involved multiple hearings; in other cases, the wrongfully convicted individuals were exonerated within hours of the DNA test results excluding them as the offender. Victims who were provided with regular updates throughout the process emphasized the importance of these updates, saying that it made them feel as if they were part of the process. For some victims, only hours passed from the time they learned of the pending exoneration to the time the wrongfully convicted person was released from prison; for others, it was years. Most of the cases received significant media attention.

A number of victims described the impact of the wrongful conviction as being comparable to, or worse than, their original victimization. Following the initial shock, many victims reported experiencing feelings of guilt and blame. Other emotions expressed by victims were fear, anger, isolation, helplessness, devastation, depression, and at least one victim experienced suicidal ideation. Sleep problems were the most common physical impact that victims reported, including exhaustion, sleeplessness, and nightmares. Victims also reported fainting, stomachaches, trouble eating, and muscle weakness. Financial consequences included missing work and the cost of counseling services and medication. For victims who actively supported the exoneration, the exoneration had a positive impact on their emotional and psychological well-being.

In seven cases, victims who did not previously know the wrongfully convicted person chose to meet with the wrongfully convicted individual and/or their family members following the exoneration. Five of the eleven victims interviewed for this study received and/or provided peer support to other victims whose cases involved a wrongful conviction.<sup>14</sup> The actual offenders were identified in nine cases and were prosecuted in three of the cases.

## Discussion, Recommendations, and Implications

As part of the case studies, victims and other key stakeholders (e.g., attorneys, family members, law enforcement, prosecutors, service providers who participated in and/or provided support to the victim during the exoneration) were asked to make recommendations and identify lessons learned based on their experiences. Across case studies, there was general agreement that initial notification should be provided proactively and in person, and come from the criminal justice system. Victims articulated the importance of being notified in a neutral manner that does not unduly minimize the potential that a wrongful conviction may have occurred. In general, victims expressed a desire to be notified early on in the process. However, law enforcement and prosecutors expressed reluctance to disrupt the lives of victims every time there is a claim of innocence or a request for DNA testing. Victims and stakeholders noted that victims need information explaining the exoneration process, and the contact information of someone within

<sup>14</sup> It should be noted that this may reflect the use of snowball sampling and the fact that some of the victims in these case studies had prior relationships with one another.

the criminal justice system who can answer additional questions or concerns. In addition, victims and service providers recommend that officials ask victims about what types of information and case updates they want to receive and how they want to receive it.

Interviewees highlighted the important role that counseling and peer support can play in helping victims in cases of wrongful conviction. Some victims and stakeholders suggested that victims and wrongfully convicted individuals be given the opportunity to meet. In addition, attorneys recommended that all victims in cases of wrongful conviction be able to access independent legal counsel. Victims and service providers also noted the genuine fear experienced by many victims, and the need for safety planning. Training for criminal justice personnel was identified as an important vehicle through which the criminal justice system can enhance its ability to serve victims in these cases.

In terms of policy, interviewees noted that one of the primary ways to assist victims in cases of wrongful conviction is to reduce the potential for a wrongful conviction to occur. Some of the victims interviewed for this study have joined the wrongfully convicted individuals in calling for criminal justice system reforms, especially regarding the policies and practices used in eyewitness identification. The introduction of DNA evidence into the justice system, and the significant role that DNA has played in helping to identify cases of wrongful conviction, also raises questions regarding the applicability of statutes of limitations in cases involving DNA evidence.

Recognizing that wrongful convictions do occur, there is general agreement among victims and stakeholders that policies, procedures, and guidelines should be developed to help the criminal justice system respond to these cases in a victim-centric manner. A few states have begun addressing notification in cases of wrongful conviction. This legislation, however, has focused on notification of post-conviction DNA testing. Current notification legislation could be improved by explicitly adding wrongful convictions to the mandated notification statutes. Notification could also be enhanced by adding cases of wrongful convictions to criminal justice agencies' internal notification protocols and procedures. It should be noted that legislation is not required to provide notification to victims in cases of wrongful conviction. Once the victim is notified, stakeholders noted that meeting the service needs of victims can be hindered by policies and procedures that do not clearly define victims' eligibility for services and compensation in these cases. To date, New Hampshire is the only state to pass legislation that explicitly guarantees victims access to compensation when a petition for post-conviction DNA testing has been filed, as well as access to services while the court is considering the petition (NH Rev Stat § 21-M:8-h).

## Conclusions

The findings from this study highlight the impact of wrongful convictions on victims, as well as the dearth of services available to this population. In summarizing the overall impact of the wrongful conviction, one victim revealed, "For [several] years, I had been quite comfortable with my role as the victim. When the exoneration happens, that exoneree becomes the victim, and I, the rape victim, become the offender. The roles switch, and it's a role you don't know what to do with. And the world is saying 'How could you have made such a terrible mistake?'" The findings from this study, however, also highlight the need for additional research. To the extent possible, research should be conducted to ascertain how victim experiences differ based on demographics, type of crime, and factors associated with the wrongful conviction and subsequent exoneration. To further elicit how to best assist victims in cases of wrongful



conviction, research is also needed to assess the impact of different notification practices and subsequent victim services.

# 1. Introduction

Over the past three decades, the rate of exonerations has more than doubled, growing from an average of 24 per year from 1989 through 1999 to an average of 52 per year from 2000 through 2010 (Gross & Shaffer, 2012). While significant strides have been made to identify and assist the wrongfully convicted person in gaining their freedom and transitioning to life after exoneration, little is known about the experiences of victims during this process. In 2010, the U.S. Department of Justice, National Institute of Justice (NIJ), funded ICF International to conduct an exploratory study examining victim<sup>15</sup> experiences in cases of wrongful conviction in order to begin to fill this gap in knowledge.

## Key Terminology

- **Wrongful Conviction** – A case in which a government entity has determined that the originally convicted individual factually did not commit the crime.
- **Exoneration** – The process by which a government entity, by way of a pardon or judicial order, concedes that a convicted person is indeed innocent.

This report begins with a review of relevant literature, followed by a description of the study's methodology and findings. The report then discusses recommendations for practice and implications for policy.

## 1.1 Literature Review on Victim Experiences of Wrongful Conviction<sup>16</sup>

The impact of wrongful conviction on victims has not been empirically researched. In order to ground this study in the related empirical literature, ICF conducted a literature review<sup>17</sup> to gain a better understanding of the impact of crime on victims; the role of victims in the criminal justice process; the history of wrongful convictions and exonerations in the United States; and the legal process undertaken to exonerate those who have been wrongfully convicted. ICF also reviewed the literature documenting the anecdotal experiences of victims in cases of wrongful conviction provided by stakeholders working with victims and, in a few instances, by victims themselves.

### 1.1.1 Impact of Crime on Victims

When a crime occurs, victims can experience physical, financial, emotional, psychological, social, and spiritual consequences that can last years. For many victims the physical consequences stemming from a crime are often the most immediate and visible impact experienced. In 1994, Klaus estimated that 31 percent of victims of violent crime sustained some form of physical injury. Immediate physical injuries of a crime can include, but are not limited to, gunshot wounds, broken bones, bruising, burns, and lacerations. Victims also may experience immediate physiological responses (e.g., rapid heart rate, hyper-ventilation, and stomach distress), which can lead to health conditions such as cardiac distress, heart attacks,

<sup>15</sup> For the purpose of this report, victims include individuals directly harmed as a result of the crime and family members of victims in cases of murder and non-negligent manslaughter.

<sup>16</sup> See Appendix A for the full literature review conducted for this study. This review was conducted prior to data collection and it examined the impact of crime on victims, the role of victims in the criminal justice system, the history of and legislative reform related to wrongful convictions, and the role of victims in the exoneration process.

<sup>17</sup> ICF performed multiple searches of the literature using Google™, HeinOnline®, Lexis Nexis®, JSTOR®, ProQuest®, PsychINFO®, SAGE Publications®, and Wiley Online Library® search engines. Searches featured a wide array of terms, including: victim of crime, victim experience, victim impact, role of victims, victim rights, victim services, victim legislation, miscarriage of justice, wrongful conviction, exoneration, exoneration process, wrongful conviction causes, and wrongful conviction factors. Searches were restricted to the study of non-federal cases of violent crime (i.e., aggravated assault, forcible rape, murder, non-negligent manslaughter, and robbery).



and strokes. Victims of sexual assault may be exposed to sexually transmitted diseases and unwanted pregnancy (Canadian Resource Centre for Victims of Crime [CRCVC], 2005; Miller, Cohen, & Rossman, 1993; Wasserman & Ellis, 2011).

In the days, weeks, and months following the crime, victims can experience fatigue, sleep disorders, changes in appetite or eating patterns, and other restrictions to physical movement or activity. For some victims, such as victims who were disfigured or disabled as a result of the crime, the physical consequences of a crime can be permanent. Even in cases where all physical wounds from a crime have healed, victims may continue to experience pain and discomfort, manifesting itself through chronic headaches, muscle tension, irritable bowel syndrome, nausea, and sexual dysfunction (CRCVC, 2005; Miller, Cohen, & Rossman, 1993; Wasserman & Ellis, 2011).

Similarly to physical consequences, victims may experience both immediate and long-term financial consequences. The most notable, immediate impact can come as a result of lost or damaged property. Long-term, one of the greatest costs often comes from needed medical treatment (e.g., doctor appointments, medication, and physical/occupational therapy). In 2003, a

"We've had to borrow from our life insurance just to live. We will have to heat our home this winter by burning wood from a nearby lot. We've sold everything we own, including some family heirlooms. My husband and I are hard-working people. We aren't looking for a free ride. But we're being completely devastated by this criminal who reached in and destroyed our lives."

- *Crime Victim*  
(Herrington et al., 1982, p. 38)

report by the Centers for Disease Control and Prevention calculated the annual health-related costs associated with rape, physical assault, stalking, and homicide by an intimate partner to exceed \$5.8 billion (National Center for Injury Prevention and Control, 2003). Similarly, it is estimated that 10-20% of mental health expenses in the United States can be attributed to crime, primarily mental health treatment for victims (Miller, Cohen, & Rossman, 1993).

Victims may also experience a financial impact if they are unable to work as a result of injury, need job retraining, or experience financial loss due to their participation in the criminal justice system. In some instances victims may suffer temporary or long-term wage loss; in other cases, victims may experience permanent job loss. Other costs that can result from a crime include crime scene cleanup, funeral expenses, relocation expenses, child and elder care, and higher insurance premiums (Wasserman & Ellis, 2011).

The emotional impact of a crime can range from reactions, such as fear, panic, and distrust of others to diagnosable mental disorders, such as mood, anxiety, dissociative, and substance-use disorders (Green & Roberts, 2008; Kilpatrick, Best, Veronen, Amick, Villeponteaux, & Ruff, 1985; Wasserman & Ellis, 2011). Victims may also experience emotional distress as a result of physical injury (CRCVC, 2005). Oftentimes, victims will not immediately reach out for professional mental health assistance because they believe that talking will not help them, that family and friends are sufficient support, or because they do not know that services exist. Unfortunately, research demonstrates that services that are delayed or are too short in duration have limited impact on victims' psychological well-being (Sims, Yost, & Abbott, 2006).

The social impact of crime is often correlated to the physical, financial, emotional, psychological, and spiritual impacts. Physical and financial consequences can restrict victims' movement and thus their ability to engage in social activities. Similarly, emotional and psychological impacts such as fear, anxiety, and shame can cause individuals to withdraw into isolation, especially if they feel vulnerable or have concerns for personal safety. Depending on the crime and the

relationship of the offender to the victim, the victim's family and friends may blame the victim causing them to disengage from their social networks. For example, family members may blame a wife for calling law enforcement to report abuse at the hand of her husband.

Finally, crimes can also lead victims to question their faith or feel betrayed by God or other spiritual deities (Benkert & Doyle, 2009; Johnson, 1997). If a victim's social network is closely related to a religious community, the spiritual consequences of a crime may result in victims ceasing to interact with other members of their religious congregations (Wasserman & Ellis, 2011). It should also be noted that in some instances traumatic experiences lead to a deepening of religious and spiritual beliefs and involvement (Shaw Joseph, & Linley, 2005), and positive spiritual and religious coping has been found to be correlated with positive psychological adjustment (Ano & Vasconcelles, 2005).

### 1.1.2 Role of the Victim in the Criminal Justice System

In the aftermath of a crime, victims often find themselves thrown into the criminal justice system. The time between when a crime occurs and final sentencing at trial can range from months to years, and in cases of appeals and exoneration, decades. As illustrated in Exhibit 1, during each stage of the criminal justice system the role of the victim transforms and the key stakeholders interacting with the victim change.

"Justice does not bring one's son back, but it is the closest thing to what is right."

- Crime Victim  
(Herrington et al., 1982, p. 26)

**Exhibit 1: Role of the Victim in the Criminal Justice System**

The Criminal Justice Process	Investigation and Arrest	Pre-Trial	Trial	Post-Trial	Exoneration Process	Post-Exoneration
Key Stakeholders	<ul style="list-style-type: none"> <li>• Law Enforcement</li> <li>• County/State Office of Victim Advocacy</li> <li>• Community-Based Service Providers</li> <li>• Medical personnel (SAFE/SANE/SART)</li> </ul>	<ul style="list-style-type: none"> <li>• Law Enforcement</li> <li>• Prosecutor's Office</li> <li>• The Court</li> <li>• County/State Office of Victim Advocacy</li> <li>• Community-Based Service Providers</li> </ul>	<ul style="list-style-type: none"> <li>• Prosecutor's Office</li> <li>• The Court</li> <li>• County/State Office of Victim Advocacy</li> <li>• Community-Based Service Providers</li> </ul>	<ul style="list-style-type: none"> <li>• Department of Corrections</li> <li>• County/State Office of Victim Advocacy</li> <li>• Community-Based Service Providers</li> </ul>	<ul style="list-style-type: none"> <li>• Law Enforcement</li> <li>• Prosecutor's Office</li> <li>• Department of Corrections</li> <li>• The Court</li> <li>• County/State Office of Victim Advocacy</li> <li>• Community-Based Service Providers</li> </ul>	<ul style="list-style-type: none"> <li>• County/State Office of Victim Advocacy</li> <li>• Community-Based Service Providers</li> </ul>
Potential Roles for Victims	<ul style="list-style-type: none"> <li>• Fill Out a Victim Notification Form</li> <li>• Participate in the Investigation</li> </ul>	<ul style="list-style-type: none"> <li>• Testify Before the Grand Jury</li> <li>• Assist the Prosecution</li> </ul>	<ul style="list-style-type: none"> <li>• Testify Before the Jury</li> <li>• Provide a Victim Impact Statement</li> </ul>	<ul style="list-style-type: none"> <li>• Testify Before the Parole Board</li> <li>• Write/Present Impact Statement</li> </ul>	<ul style="list-style-type: none"> <li>• Participate in the Exoneration Process</li> </ul>	

A victim's first contact with the judicial system is most often contact with law enforcement, either to report or provide details of the crime. The victim's initial experience with the judicial process may be impacted by whether or not the victim willingly reported the crime, the type of crime that occurred, a victim's prior experiences with law enforcement, and law enforcement's response (MORI Social Research Institute, 2003). Reporting a crime can be an anxiety provoking experience for a number of reasons; victims may worry that they will not be believed, be embarrassed about being victimized or about details of the crime, doubt that anything will result from them reporting the crime, fear retaliation, or be uncertain about whether the offense was a crime punishable by law (National Organization for Victim Assistance, n.d.).



During the investigation, victims may come into contact with medical, legal, law enforcement, advocacy, and forensic science professionals. These individuals are tasked with identifying, collecting and preserving evidence to support the identification and successful prosecution of offenders. As part of the investigation, victims typically participate in one or more interviews

“Very often a victim’s first view of the criminal justice system is the law enforcement officer who responds to the scene of the crime. It is critical that this officer be well-trained and informed about victims’ rights and services. If the officer does not refer the victim to appropriate assistance and compensation programs, that victim may never receive the help he or she needs to heal.”

- Joe Brann, Director, Community Oriented Policing Services Office U.S. Department of Justice  
(Office for Victims of Crime [OVC], 1998, p.47)

where they are asked to provide detailed information of the crime as well as a description/identification of the perpetrator. Medical personnel may also examine the victim to collect evidence and assess the extent of injury. Victim advocates and community-based service providers will often be called upon to provide support and services to victims and accompany them to appointments as necessary and desired (Nugent-Borakove, Fanflik, Troutman, Johnson, Burgess, & O’Connor, 2006).

In instances where a suspect is unknown, victims may be asked to help in the identification process by working with law enforcement to develop a composite image or reviewing mugshots. Once a suspect is identified, victims may be requested to provide eyewitness identification. This is typically done through a photo or live lineup; however, in some circumstances this is done through a showup, where the victim is shown a single suspect. Although these identification techniques can result in investigative leads, research has illustrated the importance of conducting such identifications under strict guidelines and corroborating the identification with additional evidence (Thompson, 2008; Wells & Olson, 2003).

If a suspected offender is identified and arrested, and the prosecutor decides to press charges, a victim may be subpoenaed to testify before a grand jury. Assuming the accused offender is indicted, the victim can choose to attend the arraignment. The time period between a crime and a trial can often be long and challenging for a victim, especially if the accused offender is released on bail. As such, crime victims may worry about their safety and can suffer distress in anticipation of the trial (Cluss, Boughton, Frank, Stewart, & West, 1983).

During an initial trial, the criminal proceedings can play a critical role in the healing process for victims, by holding the perpetrator accountable, allowing for a certain sense of closure, and enabling victims to begin to rebuild their lives (Herman, 2003; Levey, 2004). However, it can also be a time of immense stress for crime victims, as they are called on to assist in the investigation and prosecution, testify in court, and discuss the impact the crime has had on their lives.

Once the trial begins, the victim again may be subpoenaed to testify. Legal proceedings, which are adversarial by nature, can exacerbate victims’ post-traumatic stress symptoms by taking away their sense of power, control, and support (Herman, 2003). Victims may be confused as to the purpose of their inclusion in the prosecution, and feel discouraged if prosecutors do not represent their wishes (Englebrecht, 2011). Despite the shortcomings of the criminal justice system, the largest category of victims that feel injured by the process are those whose cases are not prosecuted, despite the victim wanting the case to move forward (Herman, 2003; Patterson, 2010).

With the development of the victims' rights movement, victims' participation in the criminal justice system has greatly increased, especially as it relates to sentencing decisions. If the accused individual is convicted, a victim has the right to submit a victim impact statement<sup>18</sup> prior to sentencing. Such statements provide a vehicle for the victim to proactively participate in the criminal justice system and allow the court to understand the human cost associated with the crime (National Center for Victims of Crime [NCVC], 2011).

### 1.1.3 Victims' Rights and Services

In navigating the criminal justice system, defendants have long been afforded many rights, such as the right to an attorney, the right to face their accuser, and the right to a speedy trial. Due to the fact that crime victims are not considered a party to the case (i.e., the government brings the case against the defendant), the rights of victims have only recently begun to be recognized and protected under the law.

States' efforts to support crime victims through established rights and services date back to the 1960s when California passed the first crime victim compensation program. In 1980, Wisconsin brought national attention to the issue by passing its Crime Victims' Bill of Rights (Edmunds & Seymour, 2011).

At the Federal level, in 1982, President Ronald Reagan established the President's Task Force on Victims of Crime. The Task Force drew attention to the plight of victims, recognizing that "The innocent victims of crime have been overlooked, their pleas for justice have gone unheeded, and their wounds – personal, emotional, and financial – have gone unattended" (Herrington, Bobo, Carrington, Damos, Dolan, Eikenberry, et al., 1982, p. ii). Task Force members also noted the burden that the criminal justice system put on victims and the revictimization that often resulted from their involvement in the system. As such, the final report made 68 recommendations targeting all areas of the system and proposed the following constitutional amendment:

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor and to have the Assistance of Counsel for his defense. ***Likewise, the victim, in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings.*** (Herrington, Bobo, Carrington, Damos, Dolan, Eikenberry, et al., 1982, p. 114).

The Federal government also sought to protect victims through the enactment of Federal legislation, such as the Victim and Witness Protection Act of 1982 (18 U.S.C. §1501), the Victims of Crime Act (VOCA) of 1984 (42 U.S.C. §10601(b)), the Victims' Rights and Restitution Act (VRRRA) of 1990 (42 U.S.C. §10606(b)(4)), the Mandatory Victims Restitution Act (MVRA) of 1996 (18 U.S.C. §3663A), the Victim Rights Clarification Act of 1997 (18 U.S.C. §3510), and the Crime Victims' Rights Act (CVRA) of 2004 (18 U.S.C. § 3771).

<sup>18</sup> A written or oral statement discussing the impact of the crime on the victim and the victim's family.

Today, common victim rights include:

- The right to due process;
- The right to fairness, dignity, respect, and privacy;
- The right to notice;
- The right to be present;
- The right to be heard;
- The right to reasonable protection;
- The right to restitution;
- The right to information and referral;
- The right to apply for victim compensation;
- The right to proceedings free from unreasonable delay;
- The right to confer;
- The right to a copy of the presentence report and transcripts; and
- The right to standing and remedies (National Crime Victim Law Institute, 2011).

Thousands of victim-related state statutes are now in existence, and at the time of this review 32 states had passed constitutional amendments to support victims' rights. A 2011 legislative summary by the National Center for Victims of Crime (NCVC) reported that:

"Even in states with a victims' rights constitutional amendment, the overall protection of victims is varied and uneven. In addition, without Federal constitutional protection, victims' rights are always subject to being automatically trumped by defendants' rights."

- Robert E. Preston, Co-chair, National Victims' Constitutional Amendment Network (OVC, 1998, p.5)

- Forty-one states (and the District of Columbia) give crime victims the right to attend trial;
- Every state (including the District of Columbia) allows victim impact statements at sentencing;
- Forty-seven states allow restitution orders to be enforced in the same manner as civil judgments;
- Forty-two states ensure victims are notified of canceled or rescheduled hearings; and
- Forty-eight states (and the District of Columbia) provide victims with notice of a convicted offender's escape (NCVC, 2011).

At the Federal level, the core statutes guiding victim's rights and services are the CVRA and the VRRRA. The CVRA provides court enforceable rights to crime victims upon initiation of a criminal proceeding and continuing until all proceedings have ended. Under the CVRA, crime victims are guaranteed the following rights:

- The right to be reasonably protected from the accused;
- The right to reasonable, accurate, and timely notice of any public court proceeding or any parole proceeding involving the crime, release, or escape of the accused;
- The right not to be excluded from any public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding;

- The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding;
- The reasonable right to confer with the attorney representing the government in the case;
- The right to “full and timely restitution as provided in law;”
- The right to proceedings free from unreasonable delay; and
- The right to be treated with fairness and with respect for the victim’s dignity and privacy.

The CVRA greatly expanded crime victims’ rights by providing victims with a means of redress should their rights be violated. It also charged the Attorney General with creating regulations for enforcement and to ensure compliance with the Act. The current regulations are delineated in the *Attorney General Guidelines for Victim and Witness Assistance* (U.S. Department of Justice, 2012).

Whereas the CVRA guarantees the rights of crime victims, the VVRA describes services available to victims of crime. The government has the duty to provide the described services as soon as possible after the detection of a crime, so long as they do not interfere with the investigation. The end point for these services is less clear. According to the Attorney General Guidelines, discretion and sound judgment should be used to determine whether an investigation or prosecution has concluded, at which point services *may* be provided to the extent permitted by the law and to which available resources exist.

Services afforded to victims under the VVRA include:

- Reasonable protection from a suspected offender and persons acting in concert with or at the behest of the suspected offender;
- General Information, including:
  - Information about the automated Victim Notification System;
  - Logistical information and assistance with regards to transportation, parking, childcare, translator services, and other investigation-related services;
  - Information about the criminal justice system; and
  - Custodial release eligibility information.
- Information on and referrals for available victims services;
- Notice of case events;
- A waiting area removed from and out of the sight and hearing of the defendant and defense witnesses;
- Timely return of property being held for evidentiary purposes; and
- Assistance notifying employers and/or creditors if impacted by the victim’s cooperation in the investigation/prosecution.

### 1.1.4 Wrongful Conviction and Exoneration in the United States

The current rights and services guaranteed to victims of crime are designed to support victims and encourage their participation in the criminal justice system, however, little is known about

their applicability and impact in cases of wrongful conviction. In order to examine victim experiences in cases of wrongful conviction, it is important to understand the history, contributing factors, and legislative reform related to wrongful conviction in the United States.

## HISTORY

William Blackstone's quote, "Better that ten guilty persons escape than that one innocent suffer," (n.d.) is often used to describe the judicial system; however, the United States has a long history of wrongful convictions. A recent book by Wilkie Collins, for example, documents the wrongful convictions of Jesse and Stephen Boorn, convicted of murder in 1819, and one of the first death penalty exonerations in the United States (2005). Additionally, there have been certain periods where wrongful convictions were common and well documented, for example, the Salem witch trials of the 1600s and the Red Scare of the early 1950s.

In 1987, Bedau and Radelet published their groundbreaking study in which they claimed that 350 individuals had been wrongfully convicted in potentially capital cases over the twentieth century. Bedau and Radelet's study shined a light on this miscarriage of justice and was followed by additional research, articles, and books on the subject (Gould & Leo, 2010).

As DNA testing became more sophisticated, affordable, and accessible in the 1990s, the rate at which wrongful conviction cases were identified and exonerated increased. In 1989, Gary Dotson became the first person exonerated through post-conviction DNA-testing (Warden, n.d.). The introduction of DNA testing into the exoneration process was unique in that it provided the courts and public with confidence that the person making the claim of innocence was indeed telling the truth.

Today, the exonerations of wrongfully convicted individuals are generally categorized by whether or not they involved DNA. As of July 11, 2011, 272 post-conviction DNA exonerations had been documented in the United States (Innocence Project, 2011). Although post-conviction DNA exonerations are tracked by the Innocence Project,<sup>19</sup> at the time of this review there was no centralized database for tracking non-DNA exonerations of wrongfully convicted individuals. According to Gross and colleagues, between 1989 and 2003 there were 195 documented cases of non-DNA exonerations. Understanding non-DNA exonerations is critical since most crimes do not have biological evidence that can be subjected to DNA testing; and DNA testing only occurs when the evidence exists, was collected, was preserved, and the state allows for it.

### Gary Dotson

In 1979, Gary Dotson was wrongfully convicted of aggravated kidnapping and rape and was sentenced to 25-50 years in prison. The evidence against Dotson included the victim's identification of him from a police mug book and in a police lineup, and the testimony of a forensic analyst who falsely testified that semen found of the victim's undergarments could have belonged to Dotson.

In 1985, the victim recanted her testimony, saying that she had fabricated the rape; however, the judge refused to order a new trial, noting that the victim's complaint was more believable than her recantation. The governor also stated that he did not believe the recantation and refused to pardon Dotson.

In 1988, Dotson's attorney had DNA tests conducted that were not available at the time of trial. The results showed that the DNA at the crime scene did not match that of Dotson. The judge ruled that Dotson was entitled to a new trial; however, the State's Attorney's Office decided not to prosecute, and after serving eight years, Dotson's conviction was overturned (Warden, n.d.).

<sup>19</sup> A national litigation and public policy organization founded in 1992 to exonerate wrongfully convicted persons through DNA testing and reforming the criminal justice system



## CONTRIBUTING FACTORS ASSOCIATED WITH WRONGFUL CONVICTIONS

Research has shown that eyewitness misidentification, invalidated/improper forensic science,<sup>20</sup> false confessions, informants/snitches, government misconduct, and ineffective legal counsel are contributing factors associated with wrongful conviction (Gross, Jacoby, Matheson, Montgomery, & Patil, 2005; Innocence Project, 2010).

Despite decades of research showing the unreliability of eyewitness identification (Wells & Olson, 2003), eyewitness testimony continues to play a vital role in “identifying, charging, and ultimately convicting suspected criminals” (Technical Working Group for Eyewitness Evidence, 1999, p. iii). As early as 1966, the Supreme Court recognized fallacies in eyewitness identification stating, “The vagaries of eyewitness identification are well-known; the annals of criminal law are rife with instances of mistaken identification” (United States v. Wade, 388 U.S. 219, 228, 1966). Factors found to be associated with the accuracy of eyewitness identification include the presence or absence of a weapon – presence of a weapon decreases accuracy (Stebly 1992); the relative races of the victim and offender – people are better able to identify faces of their own race or ethnic group than faces of others (Meissner & Brigham, 2001); and the presence or absence of the ‘might or might not be present’ instruction for victim lineup – the inclusion of this statement reduces misidentification by 41.6 percent (Stebly, 1997). Even when there are multiple eyewitnesses, misidentification can take place; for example, 38 percent of wrongfully convicted persons exonerated through DNA evidence were misidentified by multiple eyewitnesses (Innocence Project, 2010).

Research has also shown that, with the exception of DNA, the reliability of forensic science techniques remains uncertain. In 2009, the National Academy of Science and National Institute of Justice commissioned a Committee on Identifying the Needs of the Forensic Sciences Community and concluded that:

With the exception of nuclear DNA analysis...no forensic method has been rigorously shown to have the capacity to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source... New doubts about the accuracy of some forensic science practices have intensified with the growing numbers of exonerations resulting from DNA analysis (and the concomitant realization that guilty parties sometimes walk free) (p. 7 & 37).

When available, a confession often serves as one of the most powerful pieces of evidence against an individual. However, research again has identified issues regarding the reliability of confessions. In particular, research has illustrated that suspects can be coerced into confessing crimes they did not commit (Kassin, Drizin, Grisso, Gudjonsson, Leo, & Redlich, 2010). Factors contributing to a false confession include an individual's age, state of duress, state of intoxication, suggestibility, compliance, intelligence, mental capacity, and knowledge of the law (Kassin, Drizin, Grisso, Gudjonsson, Leo, & Redlich, 2010). Additionally, interrogation tactics, such as isolation, long periods of interrogation, repeated accusations, deception, use of fabricated evidence, fear or experience of violence, and threats of harsh sentences or promises of leniency can also lead to false confessions (Davis & O'Donohue, 2004; Ofshe & Leo, 1997).

<sup>20</sup> Invalidated or improper forensic science describes the use of forensic techniques that have not been subjugated to rigorous scientific evaluation, validated techniques improperly conducted or inaccurately conveyed in trial testimony, and forensic misconduct.

Finally, the testimony of informants and jailhouse snitches, government misconduct on the part of law enforcement and prosecutors, and ineffective legal counsel have all been found to be contributing factors of wrongful conviction (Innocence Project, 2010).

## LEGISLATION REFORM

In an effort to provide relief to individuals who were wrongfully convicted, the Innocence Protection Act was passed in 2004 (18 U.S.C. § 3600). This Act ensures that individuals convicted and imprisoned for a Federal offense can petition the court for DNA testing to support a claim of innocence. The Act also encourages states to preserve evidence and make post-conviction DNA testing available to support claims of innocence. Forty-nine states<sup>21</sup> have passed statutes allowing for post-conviction DNA access (Siegel & Massing, 2012). These laws are important; however, they are often criticized because of the burden they place on defendants, their limited applicability to individuals who initially plead guilty, and the inability for defendants to appeal denied petitions. In addition, many of these states do not have statutes requiring evidence preservation (Siegel & Massing, 2012). A few jurisdictions that have preserved evidence are proactively reexamining cases where there are questions of guilt. Concluding their reexamination of all cases possessing testable DNA evidence, Dallas County's Conviction Integrity Unit has shifted to investigating non-DNA cases (Emily, 2010).

States have also begun passing statutes to reform practices related to eyewitness identification, and a number of other states and several large cities have passed new procedures to improve their identification practices (National Association of Criminal Defense Lawyers, n.d.). These statutes and procedures generally focus on the blind administration of lineup procedures, the compositions of live and photo lineups, the instructions provided to witnesses, documentation of the witnesses' confidence in the identification, and the recording of all procedures (IL, Public Act 093-0605, SB 472, 2003; MD, Ch. 590; HB 103, 2007; NC, Session Law 2007-421; HB 1625, 2007; VA, HB 2632, 2005; WV, SB 82, 2007; and WI, AB 648, 2005).

### Miranda v. Clark County

Robert Miranda was sentenced to death for first-degree murder and related charges. Miranda, who always maintained his innocence, was assigned a public defender who had recently graduated law school and had never tried a murder case; it was Clark County's policy to assign its least experienced lawyers to capital murder cases. The public defender in this case interviewed just three of the 40 possible witnesses who could have provided information proving Miranda's innocence.

Miranda's sentence was later vacated on the grounds of ineffective council. In 2002, the U.S. Court of Appeals for the Ninth Circuit ruled that Miranda had a valid claim against Clark County for maintaining policies that resulted in ineffective council (*Miranda v. Clark County*, 279 F.3d 1102, 1112, 9th Cir., 2002). Two years later, Clark County, the police department, and the Public defender's office settled with Miranda for \$5 million (Thevenot, 2004).

Although a limited number of states have passed laws specific to the provision of compensation for individuals wrongly convicted, courts have generally upheld the right of these individuals to pursue compensation under civil rights law (Garrett, 2005). Specifically, courts have held that under Section 1983 (42 U.S.C. § 1983), a wrongfully convicted individual whose conviction was the result of official misconduct, and not coincidence, mistake, or negligence can be afforded compensation. The majority of such cases have arisen from violations of the Brady right (Garrett, 2005), which requires prosecutors to provide the defense with all exculpatory evidence, and prohibits law enforcement from misrepresenting, failing to document, or hiding evidence from the defense (*Brady v. Maryland*, 373 U.S. 83, 1963). Ineffective assistance of

<sup>21</sup> Oklahoma has not passed such statutes.

counsel has also been cited in a number of civil cases, as the court has ruled that municipalities responsible for assigning legal representation in criminal cases can be held liable (Garrett, 2005). Of the first 250 individuals exonerated as a result of DNA testing, 60 percent were compensated through state compensation funds or civil lawsuits, with the amounts of compensation ranging from \$11,200 to \$12.25 million (Innocence Project, 2010).

Political advocates working with cases of wrongful conviction have long argued that current legislation does not go far enough to prevent wrongful convictions and protect and provide restitution to those who have been wrongfully convicted. Efforts to reform legislation typically focus on issues related to access to DNA testing, evidence preservation, forensic oversight, eyewitness identification, false confessions, innocence commissions, and compensation.

### 1.1.5 Role of Victims in the Exoneration Process

Historically, the timing of when a victim is notified about a wrongful conviction has depended, in large part, on the victim's role in the exoneration process. Most prosecutor offices do not have clear guidelines detailing when and under what circumstances a victim should be contacted. In cases involving DNA testing, for example, a victim could be notified when the convicted individual first requests testing, when the State agrees to the testing, when the State confirms that the DNA can be located and is sufficient for testing, when a testing date has been established, after DNA testing has occurred, or not at all (Jenkins, 2009). If victims are not proactively contacted by the prosecutor's office, law enforcement, a victim advocate, or another stakeholder, they may find out through the media or an automated notification (e.g., automated email or phone message) informing them that the convicted individual has been released. According to some victim advocates, it is important for information on the suspected wrongful conviction to be delivered in person (Levy, 2004). Additionally, stakeholders generally agree that victims also need to be provided with information regarding the case, the exoneration process, and DNA testing, when applicable (Jenkins, 2009; Levy, 2004). Providers note that following the initial notification some victims may want to be kept informed of the legal proceedings, whereas others may not want any further information or to be involved in the exoneration process (Jenkins, 2009).

#### Supporting Victims through the Exoneration Process

The Dallas County Criminal District Attorney's Office is one of few prosecutorial offices to have developed protocols and procedures for informing and providing assistance to victims in cases of wrongful conviction (Jenkins, 2009). These protocols and procedures recognize that some victims may not have shared their prior victimization with friends or loved ones. In such cases, the Dallas County Criminal District Attorney's Office has developed creative methods for contacting victims and obtaining DNA samples.

One example of such creativity is a case in which an investigator flew to a victim who moved out of the county to collect a DNA sample. The victim was able to meet the investigator at the airport during her lunch hour, and provide a DNA sample without her employer or family knowing (Jenkins, 2009).

The exoneration process can occur through an executive pardon, charges being dismissed after new evidence surfaces, acquittal at retrial, and posthumous declaration of innocence (Gross et al, 2005). Victims' participation in the exoneration often depends on the process through which the exoneration is pursued. For example, a victim may not participate in a pardon, but may be subpoenaed to testify in the case of a retrial. Similarly, victims may be asked to submit DNA if new DNA evidence is discovered or enhanced testing techniques are available (Turman, 2001).



### 1.1.6 Impact of Wrongful Conviction on Crime Victims

Most of what is known about victim experiences of wrongful conviction has been provided anecdotally by stakeholders working with victims and, in a few instances, by victims themselves. In 2004, Dan Levey, a victim service provider, wrote one of the first articles examining the impact of a wrongful conviction on the victims. Through conversations with victims whose cases had not been overturned<sup>22</sup> and with allied professionals who had worked with victims whose cases had been overturned due to a wrongful conviction, Mr. Levey explored the potential effects of wrongful conviction and offered suggestions for notification and service provision (Levey, 2004). In 2009, Chris Jenkins, a victim assistance coordinator, wrote an article describing the notification process and services provided to victims of wrongful conviction in Dallas County, Texas. This article was based on the experiences of the Conviction Integrity Unit, established by the Dallas County District Attorney's Office in 2007, and focused on the provision of services to victims during exonerations involving DNA evidence (Jenkins, 2009). Also in 2009, Jennifer Thompson-Cannino and Ronald Cotton collaborated on *Picking Cotton*, a memoir of a case of wrongful conviction from the perspectives of both the victim and the wrongfully convicted individual (Thompson-Cannino, Cotton, & Torneo, 2009). A limited number of other service providers and victims have also shared their experiences, speaking at conferences and/or recounting their stories to media outlets.

"[L]ast summer, I was forced to relive the entire nightmare — this time with the added tragedy of knowing that [the convicted individual] had been innocent and died in prison before he could be exonerated. New DNA testing proved that another man, not [the convicted individual], raped me."

- *Crime Victim*  
(Chris, 2009)

According to these accounts when wrongfully convicted cases are exonerated, sometimes decades after the crime has occurred, it can completely disrupt the lives of these victims, disrupt the healing process, and result in revictimization. As a victim's sense of safety and closure disappears, initial reactions may include disbelief, guilt, anger, fear, and confusion (Levy, 2004). Similarly to the impact

of the actual crime, victims may lose their sense of safety as they realize that the real perpetrator may still be free (Jenkins, 2009; Levy, 2004). Additionally, victims may fear physical retaliation or financial recrimination by persons wrongfully convicted or their families (Jenkins, 2009).

In some cases DNA may identify the actual offender; however, without this identification, a closed case may become a cold case. Victims often want assurance that law enforcement will pursue the real perpetrator with the same vigor used to investigate the original crime; however, this is not possible in cases where the statute of limitations has passed. Victims may direct their anger and outrage towards the criminal justice system as they lose their preconceived notions of truth and justice (Jenkins, 2009; Levy, 2004). On the other hand, victims may still believe that the exonerated individuals are the real perpetrators, and fear that the individuals who they believe victimized them will be released (Levy, 2004).

A victim's reaction can be dependent on a number of factors, such as whether family and friends know of the victimization, whether they provided eyewitness identification in the original case, and whether or not they received victim services after the original victimization (Urbaniak, 2011). The media can also impact a victim's response to a wrongful conviction. The victim may feel vulnerable because of unwanted attention; alternatively, they may feel neglected or

<sup>22</sup> The article does not specify the extent to which these cases involved suspected and/or actual wrongful convictions.

resentful because the attention is diverted to the wrongfully convicted individual and away from the crime. The media may publish unkind words about the victim, some of which may quote the wrongfully convicted individual or other community members (Urbaniak, 2011). According to these anecdotal accounts although every victim's experience is a personal one, wrongful convictions will inevitably result in victims reliving what perhaps was one of the most traumatic experiences in their lives.

The current study adds to what is known about victim experiences of wrongful conviction by examining the landscape of wrongful convictions, and looking across cases to identify shared experiences and service needs of victims.

## 2. Methodology

This section provides an overview of the methodology. It begins with a description of the how key terminology was defined, followed by a discussion of the exploratory study design.

### 2.1 Definitions of Key Terminology

Terms such as “*wrongful conviction*” and “*exoneration*” are often used interchangeably. As recently as 2010, multidisciplinary experts participating in the NIJ-sponsored workshop, International Perspectives on Wrongful Convictions conceded that definitions of the terms wrongful conviction and exoneration remain unclear (Jolicoeur, 2010). Defining these terms is confounded by the fact that stakeholders do not always agree as to whether identified individuals are factually innocent of the crimes for which they were convicted.

In fall 2010, as part of the study, ICF facilitated an in-depth discussion where researchers, NIJ, and expert advisors in the field of victim services developed definitions to guide the work of this study. For the purpose of this study, the term **wrongful conviction** is defined as a case in which a government entity has determined that the originally convicted individual factually did not commit the crime. The term **exoneration** refers to the process by which a government entity, by way of a pardon or judicial order, concedes that a convicted person is indeed innocent.

### 2.2 Research Questions

Researchers used the following constructs and research questions to ascertain information regarding the range and frequency of issues victims face as they proceed through the exoneration process:

- Victim Notification Practices

When, how, and by whom are victims notified of wrongful convictions? What are victims’ initial reactions to notification? Are victims in need of and/or offered services during the notification process? What information and/or services would be beneficial to victims at the time of notification?

- Impact of a Wrongful Conviction on a Crime Victim

What impact do wrongful convictions have on victims and their immediate family members? What impact does media coverage have on victims? How do beliefs regarding the wrongfully convicted individual’s guilt or innocence before and/or after the exoneration impact victim experiences? Are victims engaging with the wrongfully convicted person post-exoneration? What impact does contact with the wrongfully convicted individual have on victims? How does the presence of DNA evidence impact victims? How does the identification and/or conviction of the actual offender impact victims?

- Victim Service Needs

What service needs do victims have during and after the exoneration process? What, if any, services are being provided to victims? How do current policies and practices impact victims’ needs and access to services?

## 2.3 Study Design

This study included a review of known cases, a survey of service providers,<sup>23</sup> and 11 in-depth case studies. Although the review of known cases and survey of service providers included quantitative analysis, this study is primarily descriptive in nature.

### 2.3.1 Review of Known Cases

In 2011, ICF conducted a review of known cases of wrongful conviction that had been exonerated from 2004 through 2010.<sup>24</sup> This review provided important background information on the landscape of wrongful convictions, and informed the identification of the in-depth case studies.

ICF identified cases for inclusion in this review through a systematic search of publications and websites maintained by the Innocence Project, the Northwestern University School of Law, Centurion Ministries, State Innocence Projects, and other institutions dedicated to tracking cases of wrongful conviction. Cases were included if they involved a non-federal violent crime (i.e., aggravated assault, forcible rape, murder, non-negligent manslaughter, and robbery) committed in the United States; a government entity determined that the originally convicted individual factually did not commit the crime;<sup>25</sup> and the exoneration occurred from 2004 through 2010. Cases were excluded if they were:

“The focus just has never been on the victim and it’s sad.... We do the best we can, being lawyers.... It’s never enough. There’s just nothing available for them.”

- Prosecutor

- Still open (e.g., an open appeal);
- The individual was convicted of a lesser charge or the sentence was modified to time served (some defendants, although claiming innocence, chose this option to avoid a lengthy appeals process);
- The convicted individual was exonerated of some, but not all, of the crimes, or there was evidence that the individual was involved in the crime in some way;
- There was legal innocence but factual guilt (e.g., cases involving battered woman’s syndrome, self-defense); or
- There was a dismissal in the absence of evidence of factual innocence.

Once identified, the cases were coded in a PASW Statistics 18 database (SPSS).<sup>26</sup> Coded variables included the following:

- Demographics of the wrongfully convicted persons (i.e., state in which the crime occurred, sex, race, status as a minor, and cognitive/mental health limitations of the wrongfully convicted persons);

<sup>23</sup> Individuals tasked with providing direct social services (e.g., case management, mental health services) to victims will be referred to as service providers.

<sup>24</sup> At the time, no national registry of exonerations existed, and no review of wrongful convictions had taken place since 2003 (Gross, Jacoby, Matheson, Montgomery, & Patil, 2005). In 2012, the University of the Michigan Law School and the Center on Wrongful Convictions at the Northwestern University School of Law published the National Registry of Exonerations (exoneratiregistry.org), which provides detailed information about all known exonerations that have taken place in the United States since 1989. Data from the 265 exonerations identified through this study can be found in this registry.

<sup>25</sup> Local law enforcement and the District Attorney’s Offices did not always agree that identified cases should be classified as a wrongful conviction.

<sup>26</sup> PASW Statistics 18 is a statistical database used for quantitative data analysis.

- Crime (i.e., murder,<sup>27</sup> rape, other sexual offenses, robbery, kidnapping/abduction, and attempted murder/assault);
- Date of conviction;
- Contributing factors for conviction (i.e., eyewitness misidentification, invalidated/improper forensic science, government misconduct, false confession, false testimony, informants/snitches, and ineffective legal counsel);
- Whether there was a sentence of death (yes/no);
- Contributing factors for exoneration (i.e., DNA evidence, new non-DNA evidence, repudiation of non-DNA evidence from the original case, testimony recantation, and confession by the actual offender);
- Means of exoneration (judicial or pardon);
- Date of exoneration;
- Number of years incarcerated for the associated crime(s); and
- Whether the actual offender was identified (yes/no).<sup>28</sup>

When variable data could not be identified through the publications and websites listed above, legal documents and news articles were used to supplement available information. In particular, news articles were used to supplement demographic information. Additionally, in instances where there were discrepant data, the authors applied a streamlined approach to identify the most credible data: legal records were given the most weight, followed by data provided by the legal entity that represented the wrongfully convicted individual (e.g., the Innocence Project). In the few instances where neither legal records nor the legal representative explicitly reported the discrepant data, ICF determined the most viable data by the frequency with which it was reported in media sources.

### 2.3.2 Survey of Service Providers

ICF also conducted a survey of service providers who had worked with victims of violent crimes during or following exoneration of a wrongfully convicted individual. To identify service providers who fell into the target population and to inform our sampling plan for the case studies, ICF incorporated the following questions into a 2010 survey of service providers conducted under a separate NIJ-funded evaluation:<sup>29</sup>

- While working in your current agency, have you ever consulted with or provided services to a victim where the related criminal case had been overturned (i.e., an individual was convicted of the crime but later exonerated as a result of a governor's pardon, acquittal at retrial, criminal charges dismissed by the court upon revelation of new evidence, or your state declaring the innocence of an individual who had already died in prison)?

<sup>27</sup> For the purpose of this report, murder includes non-negligent manslaughter.

<sup>28</sup> This includes offenders who are identified (e.g., through a confession, DNA testing, or new evidence); not all identified offenders were subsequently charged with the crime.

<sup>29</sup> Questions were incorporated into a survey of service providers disseminated under the Evaluation of the Statewide Automated Victim Information and Notification Program, NIJ Award No. 2009-VN-CX-K102.

If yes:

- How many such victims have you consulted with or provided services to in the past 2 years?
- Are you still in contact with any of those victims?

In total, 1,248 service providers completed this survey. Of those, 210 responded affirmatively that they had consulted with or provided services to a victim where the related criminal case had been overturned. Survey respondents reported working with an average of 28 victims in cases of wrongful conviction, with responses ranging from 1 to 2,200. Because these responses appeared to be largely inconsistent with the known rates of wrongful conviction, ICF determined that the term “exoneration” was likely misinterpreted by the respondents. To address this finding and inform future activities conducted under this study, the research team, NIJ, and expert advisors developed guiding definitions for the terms “wrongful conviction” and “exoneration,” (see Section 2.1).

In 2011, ICF then sent out a follow-up survey to respondents who reported working with victims where the related criminal case had been overturned to obtain additional information regarding

“You never know what you’re going to get [when you notify a victim]. It’s ... stressful for us. I mean nobody sat us down and said this is how you do a victim contact when you call somebody from decades ago and you rip open that wound. Nobody...sat us down and said this is how you do it.”

- Prosecutor

victim experiences. Using clearly defined terminology, this follow-up survey asked service providers to answer survey questions based on the experiences of one victim to whom they provided direct services or assistance during the exoneration process or post-exoneration.<sup>30</sup> The survey’s focus on a single victim allowed ICF to examine the correlations that existed between

the individual case details (e.g., the type of crime, the factors that contributed to the wrongful conviction) and the experiences and needs of the victim.

The survey questions were informed by a review of available literature, and pilot tested with the study’s expert advisors to assess readability, applicability, and completeness. In addition to respondent and victim demographics, survey questions included seven constructs:<sup>31</sup>

- The original trial;
- Notification of the exoneration;
- The exoneration process;
- Impact on the victim;
- Services received;
- Victim perceptions of the exoneration; and
- Current case status.

The survey was primarily administered in electronic format using skip patterns, although a paper version was available upon request. To include as many service providers as possible, ICF

<sup>30</sup> The survey instructed service providers to not give any identifying information in their written responses.

<sup>31</sup> See Appendix B1 for the survey of service providers instrument.



used snowball sampling, in which service providers were encouraged to forward the survey to other providers that had worked with victims during or following an exoneration. In total, 148 service providers completed this survey, of which 23 respondents (16%) indicated that they had provided direct services or assistance to a victim of a violent crime in a case of wrongful conviction.

### 2.3.3 Case Studies

In 2012, ICF conducted 11 case studies to ensure that victims' voices informed study findings, and to obtain more detailed information about the experiences and needs of victims during and after the exoneration process. Recognizing the sensitive nature of this study, case studies were identified and led by researchers who held a Masters in Social Work degree, and had previous experience providing direct services to victims of crime.

Initial outreach to victims was conducted through third parties (e.g., service providers) who had preexisting relationships with victims in the identified cases. ICF researchers contacted District Attorney's Offices and/or innocence commissions in jurisdictions in which at least four wrongful convictions had been exonerated from 2004 through 2010, and service providers who completed the survey of service providers to seek their assistance in reaching out to victims and assessing the victims' willingness to participate in the study. Researchers provided these individuals with an overview of the study, as well as a copy of the protocol used for the victim interview, and encouraged the third parties to share the protocol with the victims so that the victims could review the questions. ICF also used snowball sampling to identify additional case studies, asking victims and stakeholders who participated in case studies whether they knew and were willing to reach out to victims in other cases of wrongful conviction. ICF only contacted victims after receiving the victim's approval to do so through the third parties.

"Victims need so much more, and I can sit here and talk to you all day and it's just not [going to] cover what a victim goes through; it can't."

- Victim

ICF worked with victims who agreed to participate in the study and/or the third parties in these cases to identify service providers, law enforcement, prosecutors, attorneys, and family members who participated in and/or provided support to the victim during the exoneration. ICF also worked with the victims and/or third parties to schedule the case studies and arrange interviews with the identified individuals. ICF encouraged victims who were interested to invite service providers, family members, or other support figures to be present during their interviews.

To minimize the risk of revictimization, ICF minimized the number of interview questions asking

"You're never the same. You're never the same after you're raped, and you're never the same after an exoneration."

- Victim

about the original crime. Prior to arriving on site, the research team completed a case study overview,<sup>32</sup> which included basic facts about the original crime that were collected from publicly available sources. As part of the case study,

victims were asked to confirm the accuracy of this information. ICF then conducted semi-structured interviews, which were focused on the experiences and needs of the victims during and after the exoneration. All study instruments were pilot tested with the study's expert advisors to assess readability, applicability, and completeness prior to implementation. ICF made every attempt to select case studies that provided diversity in terms of geography, crime,

<sup>32</sup> See Appendix B2 for a copy of the case study overview and Appendices B3 through B5 for the case study interview protocols.

and factors associated with both the wrongful conviction and subsequent exoneration. In total, ICF interviewed 33 individuals: 11 victims (including immediate family members in cases of murder), 9 prosecutors, 4 service providers,<sup>33</sup> 3 law enforcement officers, 2 family members, 2 individuals who provided victims with legal advice, and 2 innocence commission members.

## DATA ANALYSIS

ICF requested permission to record all interviews. The transcriptions from these recordings, as well as notes from interviews that were not recorded, were then input into NVivo qualitative software. Due to the lack of empirical research on victim experiences in cases of wrongful conviction, researchers generated coding categories inductively, reviewing the content from a sample of transcripts to compare and extract themes. Researchers developed a two-tiered coding scheme, and then coded two transcripts independently, comparing the coding to test the clarity and consistency of the developed coding scheme. The codes were revised, as needed, until consistency in coding was achieved, after which all remaining data was coded.

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<sup>33</sup> One service provider provided direct services to victims in two of the case studies.



### 3. Study Findings

This section presents findings from the review of known cases, the survey of service providers, and the 11 case studies.

#### 3.1 Review of Known Cases

Through the review of known cases, ICF identified 265 wrongful convictions that were exonerated from 2004 through 2010, which fell into the scope of this review. This section provides an overview of these cases, followed by a description of the contributing factors associated with wrongful convictions and subsequent exonerations. Discussion is incorporated into the findings of this section to provide readers with a more robust understanding of how the findings of this review compare to related research in the field.

##### 3.1.1 Overview of the Cases

As illustrated in Exhibit 2, the rate of exonerations remained relatively steady from 2004 through 2010. The most notable variation in exonerations occurred from 2008 to 2009, when the number of exonerations increased 54% (from 35 to 54). Part of the reason for this increase was the high volume of exonerations that occurred in Texas in 2009, which accounted for 20% of the identified cases. Exonerations in Texas rose from an average of five per year from 2004 through 2008, to 11 in 2009, and returned to four in 2010. This sudden increase in exonerations may have been associated with the 2009 implementation of the statewide DNA case review program by the Innocence Project of Texas; of the 11 exonerations cited in Texas in 2009, nearly two-thirds (64%) involved DNA evidence.

"That's one of the things, too, that really is big in the exoneration process ... You feel like [you are under] this microscope [with] everybody looking at you. Even when they're probably not, you feel like they are."

- Victim

**Exhibit 2: Number of Exonerations by Year (N=265)**

2010	39
2009	54
2008	35
2007	40
2006	27
2005	39
2004	31

Cases of wrongful conviction identified for this study spanned 29 states and the District of Columbia (see Exhibit 3). The six states with the greatest number of exonerations included Texas, New York, Illinois, California, Florida, and North Carolina. Together, these states comprised nearly half (49%) of all identified exonerations.

**Exhibit 3: Number of Exonerations by State (N=265)**

Texas	39
New York	24
Illinois	23
California	17

<b>Exhibit 3: Number of Exonerations by State (N=265)</b>	
Florida	14
North Carolina	14
Louisiana	12
Wisconsin	11
Mississippi	10
Michigan	9
Ohio	9
Pennsylvania	9
Massachusetts	8
Missouri	8
Georgia	6
Kentucky	6
Nebraska	6
Virginia	6
Washington	5
Washington, DC	5
Connecticut	3
Indiana	3
Maryland	3
New Jersey	3
Oklahoma	3
Tennessee	3
Colorado	2
Utah	2
Alabama	1
Arizona	1

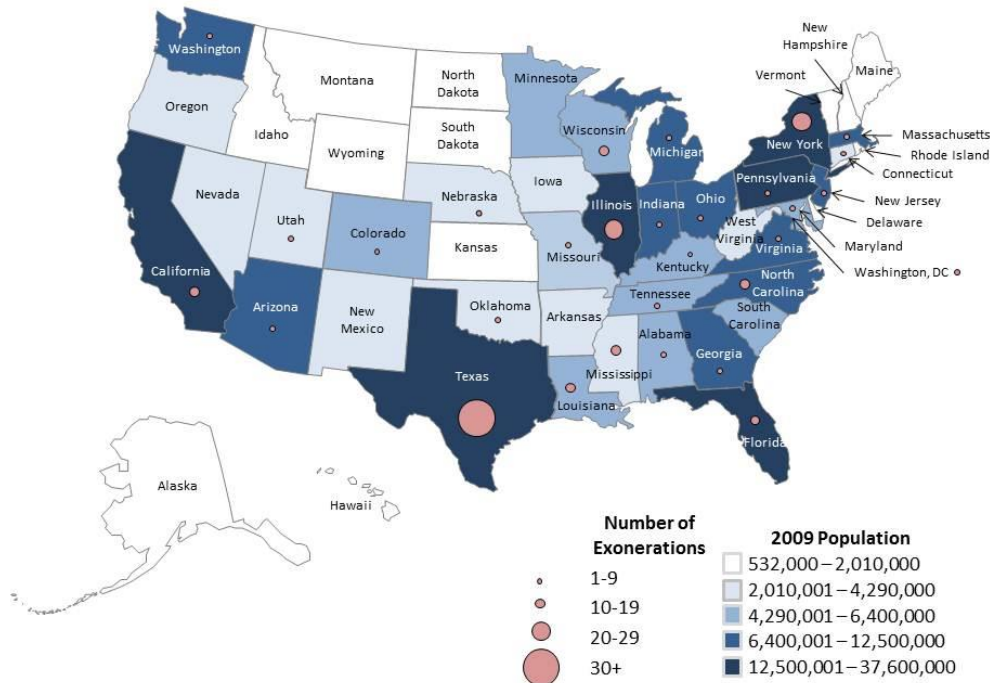
A higher prevalence of exonerations within a state does not necessarily indicate a higher rate of wrongful convictions. The six states with the greatest number of exonerations (i.e., Texas, New York, Illinois, California, Florida, and North Carolina) also represent some of the most populous states in the nation (see Exhibit 4). In addition, the high prevalence of exonerations in these states may reflect the presence of institutions dedicated to identifying and exonerating cases of wrongful conviction. Illinois and New York, for example, both have the long-standing national innocence projects (i.e., the Center on Wrongful Convictions at the Northwestern University

School of Law in Chicago and the Innocence Project at Benjamin N. Cardozo School of Law in New York City) that have represented many of the wrongfully convicted individuals identified in this review. Similarly, the high rate of exonerations in Texas may result from the 2007 implementation of the Conviction Integrity Unit in Dallas County, which is tasked with reviewing and reinvestigating post-conviction claims of innocence.

"If you think about the tiny statistic that I am. When you're the victim of a crime, now you're in this small bubble, and then when you're the victim of a brutal crime, and then when you're the victim of a rape, the pool gets smaller and smaller. When you're the victim of an exoneration, there's like 10 people in there out of billions of people."

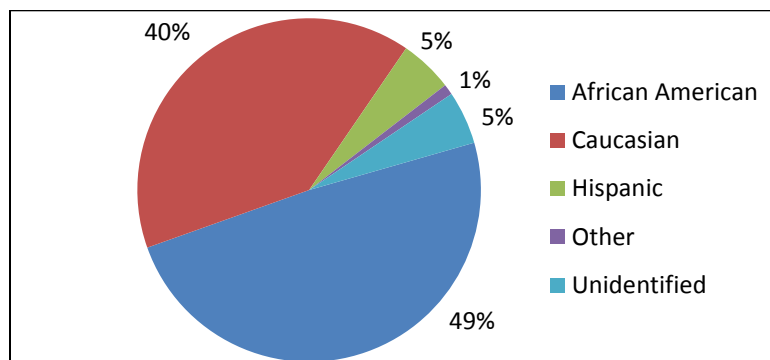
- Victim

**Exhibit 4: Map of Exonerations by State and Population**



When examining the demographics of those wrongfully convicted persons, only 8 (3%) of the 265 identified individuals were female, a finding that is consistent with prior research (Gross, Jacoby, Matheson, Montgomery, & Patil, 2005). As illustrated in Exhibit 5, the majority of wrongfully convicted persons were African Americans (49%) and Caucasians (40%), with Hispanics comprising 5% of those wrongfully convicted. This finding is in contrast to the previous 15-year period in which the racial disparity was greater than 20%, with African Americans comprising 55% and Caucasians 31% of those exonerated (Gross et al., 2005). The proportion of Hispanics exonerated also decreased, from 13% from 1989 through 2003 (Gross et al., 2005) to 5% from 2004 through 2010.

**Exhibit 5: Race of the Exonerated (N=265)**



Of the 265 wrongful convictions identified for this review, 22 (8%) were minors at the time of arrest and 13 (5%) had a cognitive/mental health limitation. Wrongfully convicted minors were more likely to have a cognitive/mental health limitation (18%) than their adult (4%) counterparts.

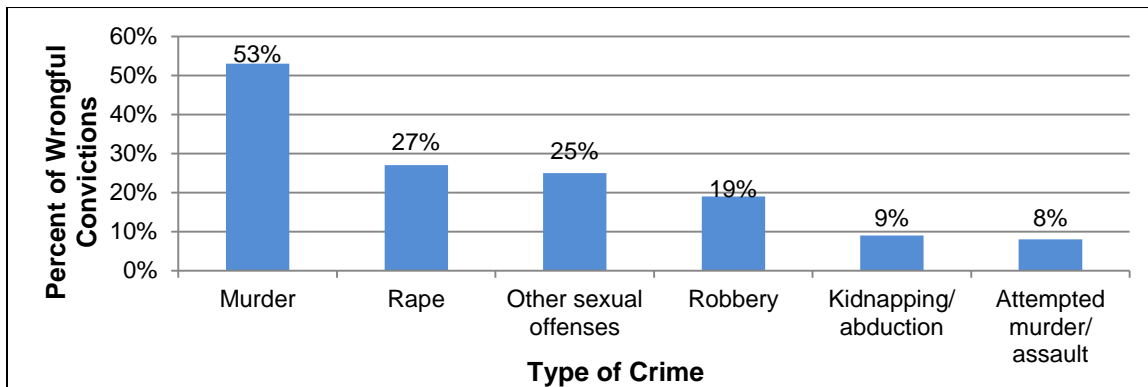
Past research has indicated that individuals who are minors and individuals who have cognitive/mental health limitations are particularly vulnerable to wrongful convictions (Gross et al., 2005; Kassir, Drizin, Grisso, Gudjonsson, Leo, & Redlich, 2010).

### TYPES OF CRIMES REPRESENTED

For this review, ICF coded and analyzed all crimes for which identified individuals were initially convicted. This process differed from the coding methods used by Gross et al. (2005), who coded cases by the most serious crime for which the defendant was convicted.

As illustrated in Exhibit 6, more than half of the wrongful convictions involved a murder conviction (53%), marking an 8% decrease from the previous 15-year period (Gross et al., 2005).<sup>34</sup> A high proportion of wrongful convictions also involved sexual offenses, including rape (27%) and/or other sexual offenses (25%).

**Exhibit 6: Percent of Wrongful Convictions by Type of Crime (N=265)\***



\* Most wrongful convictions involved multiple crimes; therefore, percentages do not sum to 100.

When broken down by race, African Americans constituted the majority of the wrongful convictions in four out of the six crime categories,<sup>35</sup> ranging from 62% for rape to as high as 79% for robbery (see Exhibit 7). This disparity illustrates that although the number of African Americans and Caucasians wrongfully convicted was relatively evenly distributed, on average, African Americans were wrongfully convicted of a larger number of crimes.

**Exhibit 7: Type of Exoneration by Race**

Crime	N	African American			
		Caucasian	Hispanic	Other	
Murder*	132	42%	52%	5%	2%
Rape	69	62%	35%	3%	0%
Other sexual offenses	64	47%	50%	3%	0%
Robbery	48	79%	15%	6%	0%
Kidnapping/abduction	25	68%	24%	8%	0%
Attempted murder/assault*	22	64%	23%	9%	5%

\*Due to rounding, percentages do not sum to 100.

<sup>34</sup> Due to the hierarchical method of coding used in the Gross et al. study (2005), valid comparisons by crime, other than murder, could not be made between the two studies.

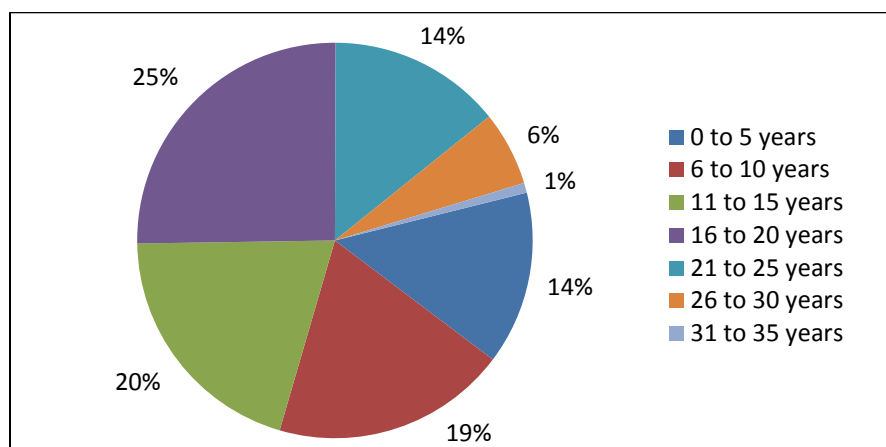
<sup>35</sup> Attempted murder/assault, kidnapping/abduction, murder, other sexual offenses, rape, and robbery.

## TIME BETWEEN THE ORIGINAL CONVICTION AND SUBSEQUENT EXONERATION

A combined 3,751 years passed between when the wrongfully convicted persons represented in this review were originally convicted and when they were subsequently exonerated; this translates to an average of 14 years per individual. Ten percent of those wrongfully convicted individuals were sentenced to death and likely spent at least part of their incarceration on death row.

As shown in Exhibit 8, in the majority of the cases (66%), more than 10 years passed between the original conviction and subsequent exoneration; in 21% of the cases, more than 20 years passed. In contrast to what might be expected, the presence of DNA did not significantly reduce the average number of years between the original conviction and subsequent exoneration.

**Exhibit 8: Time between the Original Conviction and Subsequent Exoneration (N=265)<sup>\*36</sup>**



\* Due to rounding, percentages do not sum to 100.

### 3.1.2 Contributing Factors Associated with Wrongful Convictions

Given the extensive volume of literature documenting the unreliability of eyewitness identification (e.g., Meissner & Brigham, 2001; Wells & Olson, 2003), it is not surprising that eyewitness misidentification contributed to more than half (55%) of the wrongful convictions identified for this review. As shown in Exhibit 9, it was also a leading cause of wrongful conviction in five of the six tracked crime categories: kidnapping/abduction (96%), attempted murder/assault (86%), rape (73%), robbery (72%), and sexual offenses (55%). Following eyewitness misidentification, improper forensic science was a contributing factor in 29% of the identified wrongful conviction cases, and government misconduct was present in 25% of the cases.

"You're so sure that this is the person because when you're in the middle of being raped and this person is about to kill you and they're like, 'stop looking at me,' and every chance you get you're thinking, 'I will look at you and I will remember you' and it's just like burned in your memory. But we now know that that's not really what happens because you have too much adrenaline running."

- Victim

<sup>36</sup> Some individuals were released from prison prior to the exoneration; therefore, it cannot be assumed that the time between the original conviction and subsequent exoneration is equivalent to the amount of time the wrongfully convicted was incarcerated.

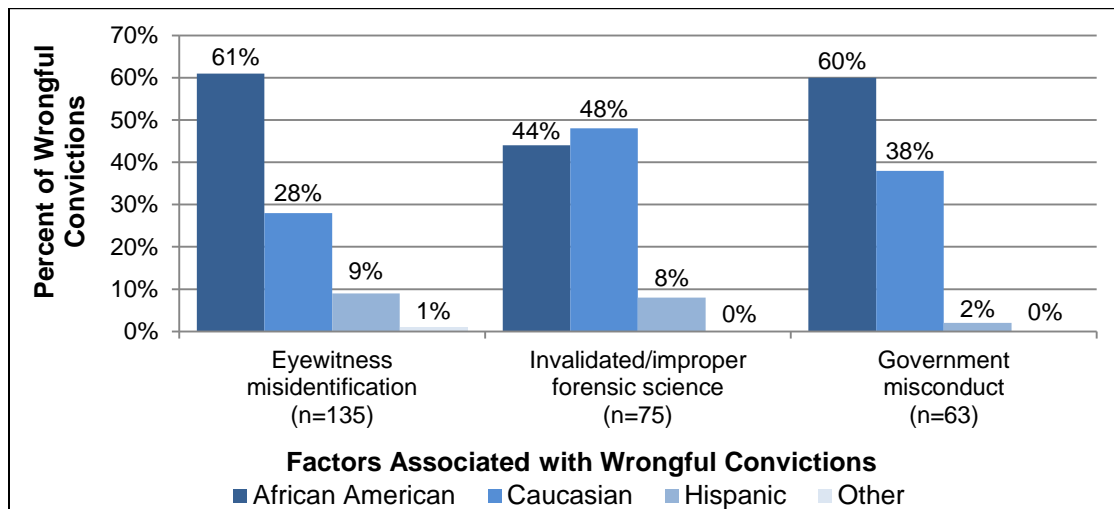
**Exhibit 9: Factors Contributing to the Wrongful Convictions by Type of Crime (N=265)**

	Percent of all wrongful convictions**	Type of Crime*					
		Murder (n=139)	Attempted murder/assault (n=22)	Rape (n=71)	Other sexual offenses (n=67)	Kidnapping/abduction (n=25)	Robbery (n=50)
Eyewitness misidentification	55%	31%	86%	73%	55%	96%	72%
Invalidated/improper forensic science	29%	30%	32%	35%	34%	40%	28%
Government misconduct	25%	31%	27%	15%	18%	12%	24%
False confessions	20%	30%	5%	25%	15%	4%	12%
False testimony	16%	20%	9%	7%	16%	4%	16%
Informants/snitches	11%	20%	5%	7%	3%	4%	6%
Ineffective legal counsel	11%	12%	14%	3%	10%	4%	10%

\* For this review, researchers tracked and analyzed all crimes for which the exonerated individual was initially convicted; therefore, the total number of crimes does not equal the total number of wrongful convictions.

\*\* Most wrongful convictions involved multiple contributing factors; therefore, percentages do not sum to 100.

When examining the three most common factors contributing to wrongful convictions by race, African Americans were 33% more likely than Caucasians to be convicted, at least in part, based on eyewitness misidentification, and 22% more likely to be convicted in cases involving government misconduct (see Exhibit 10).

**Exhibit 10: Factors Contributing\* to the Wrongful Convictions by Race**


\* ICF tracked all factors contributing to the wrongful conviction; therefore, these categories are not mutually exclusive.

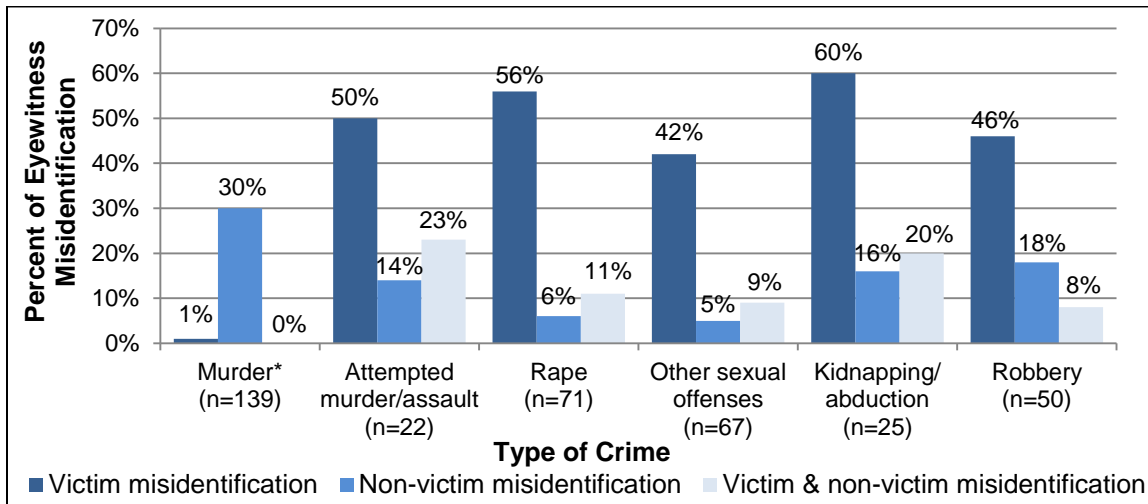
## EYEWITNESS MISIDENTIFICATION

A closer examination of eyewitness misidentification reveals that, with the exception of murder, victims misidentified the wrongfully convicted individual more frequently than non-victim witnesses (see Exhibit 11). Victims misidentified the wrongfully convicted person in 30% of the cases, non-victim witnesses misidentified the wrongfully convicted person in 19% of the cases, and both victim and non-victim witnesses misidentified the wrongfully convicted person in 7% of the cases. This finding does not suggest that non-victim witnesses provide more reliable



eyewitness identification; rather, it is likely reflective of the fact that victims provide eyewitness identification more frequently than non-victims.

**Exhibit 11: Type of Eyewitness Misidentification by Crime**



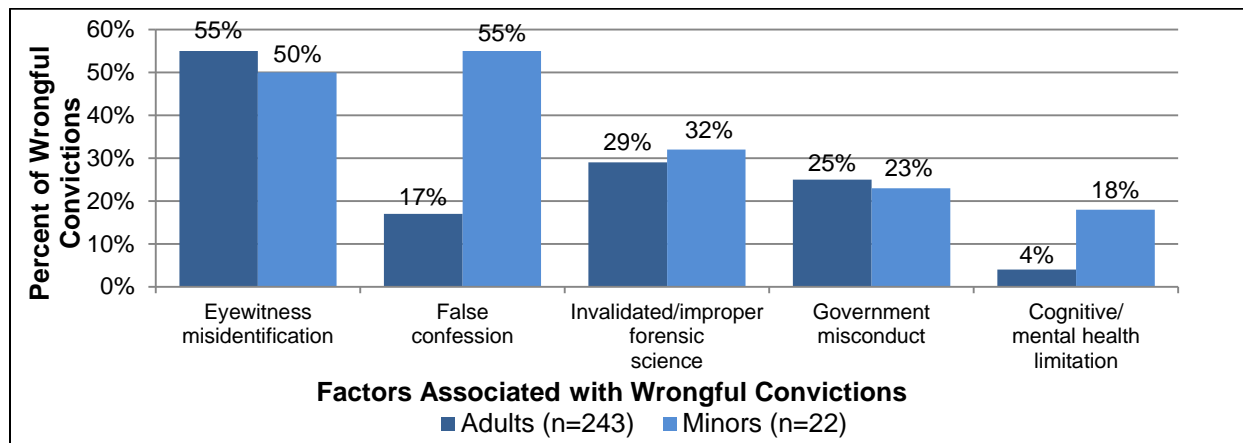
\*The two cases of murder involving eyewitness misidentification by a victim (1%) were cases in which there were multiple victims and crimes associated with the wrongful conviction.

In 1999, the U.S. Department of Justice released a guide for law enforcement that outlined procedures for obtaining more accurate eyewitness identification (U.S. Department of Justice, 1999). To examine the potential impact of this guide on wrongful convictions, ICF compared the number of wrongful convictions involving eyewitness misidentification prior to 1999 with those occurring from 1999 onward. For this review, 57% of the wrongful convictions that occurred prior to 1999 involved eyewitness misidentification, compared to 46% of the wrongful convictions that occurred in or after 1999. This decrease was not statistically significant.

## FALSE CONFESSIONS

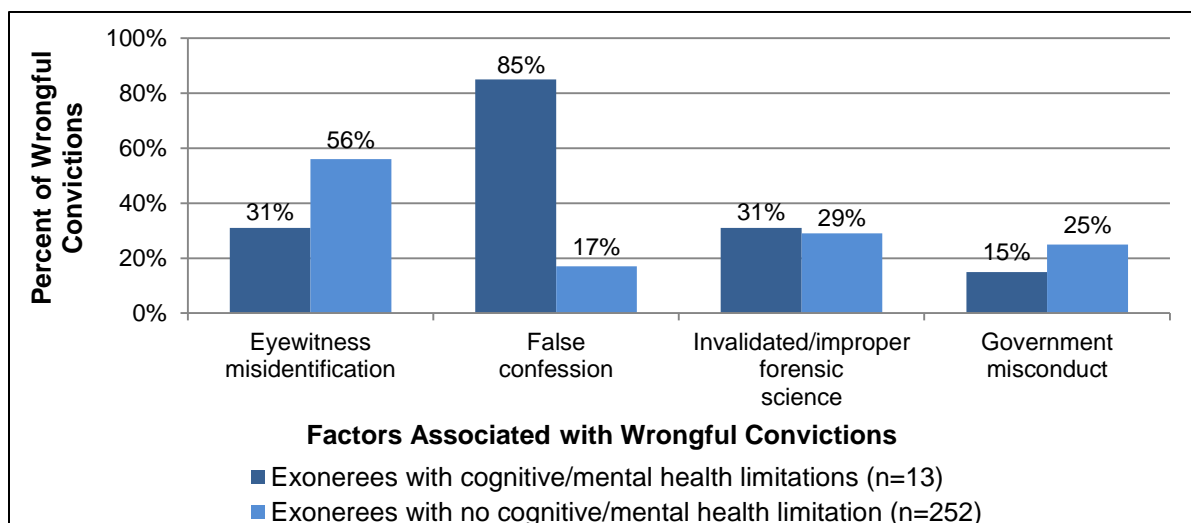
As shown previously in Exhibit 9, false confessions were a contributing factor associated with wrongful convictions in one-fifth (20%) of the identified cases. False confessions were particularly notable in cases involving minors (see Exhibit 12); 55% of the minors in this review provided false confessions, compared to only 17% of the adults. Past research has suggested that minors may be especially vulnerable to providing false confessions because they often do not know and/or understand their rights, or comprehend the long-term consequences of a confession. In addition, they may provide a false confession in order to avoid being transferred to adult court, where they could face a more severe sentence (Center on Wrongful Convictions of Youth, 2009). It should also be noted that 19% of the wrongful convictions that resulted, at least in part, from false confessions also involved government misconduct; this was true for 33% of the minors and 14% of the adults.

**Exhibit 12: Contributing Factors Associated with Wrongful Convictions by Status as a Minor**



Individuals with cognitive/mental health limitations were also at increased risk of making false confessions; they were 68% more likely to provide a false confession than individuals without such limitations (see Exhibit 13). In addition, 100% of the minors found to have a cognitive/mental health limitation gave a false confession. According to Perske (2004), the susceptibility of those with cognitive/mental health limitations to submit a false confession is due in large part to their tendency to be easily influenced by others, a dependence on and urge to please authority figures, short attention spans, memory constraints, impulsivity, and a willingness to take the blame for events leading to negative outcomes. In addition, research indicates that individuals with cognitive/mental health limitations often do not understand their rights, are more likely to agree with leading questions, and change their answers based on the behavior of the interrogators (Everington & Fulero, 1999; O'Connell, Garmoe, & Goldstein, 2005).

**Exhibit 13: Contributing Factors Associated with Wrongful Convictions by Cognitive/Mental Health Limitations**





### 3.1.3 Contributing Factors Associated with Exonerations

In 1989, Gary Dotson became the first person exonerated through post-conviction DNA testing (Warden, n.d.). Today, exonerations of wrongfully convicted individuals are generally categorized by whether or not they involved DNA evidence. Of the cases identified for this review, approximately half of the exonerations involved DNA evidence (52%) (see Exhibit 14). The rate of exonerations involving DNA evidence has followed the same trend of stabilization as the annual rate of all exonerations, increasing from an average of five DNA exonerations per year from 1989 through 1996 to 15 DNA exonerations per year from 1997 through 2003 (Gross et al., 2005), and 20 DNA exonerations per year from 2004 through 2010.

**Exhibit 14: Type of Exoneration (DNA versus non-DNA)  
by Year of Exoneration**

	2004	2005	2006	2007	2008	2009	2010	TOTAL
DNA	13	23	19	20	16	28	20	139
Non-DNA	18	16	8	20	19	26	19	126
TOTAL	31	39	27	40	35	54	39	265

DNA testing was first developed in 1985. To examine the potential impact of DNA testing on wrongful convictions, ICF compared DNA as a contributing factor to the exoneration of wrongful convictions occurring prior to 1985 (70%) and those occurring from 1985 onward (48%). This 22% decrease was significant,<sup>37</sup> and indicates that the introduction of DNA testing in criminal cases may have contributed to a reduction in the rate of wrongful convictions in cases involving DNA evidence. However, additional research is needed to understand the relationship between advances in DNA testing and the rates of wrongful conviction.

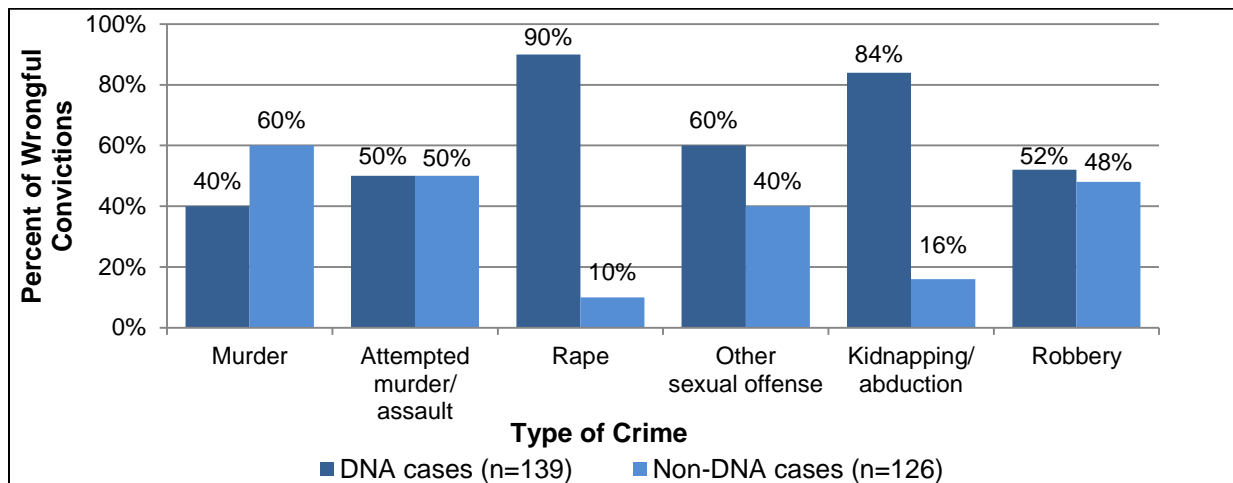
When broken down by the type of crime (see Exhibit 15), DNA evidence was a leading factor for exoneration in 90% of cases involving rape, 84% of cases involving kidnapping/abduction, 60% of cases involving sexual offenses, 52% of cases involving robbery, and 50% of cases involving attempted murder/assault. It is important to remember that researchers tracked and analyzed all crimes for which the wrongfully convicted individual was initially convicted; therefore, most DNA exonerations are associated with several crimes. To illustrate this, of the 21 cases of kidnapping/abduction exonerated as a result of DNA evidence, 20 (95%) also involved a rape and/or other sexual offenses. Thus, the high proportion of kidnapping/abduction cases that were exonerated as a result of DNA evidence may be attributed to the fact that the crimes also involved a rape and/or other sexual offenses—offenses more commonly associated with DNA and forensic evidence.

“I think probably the victims ... might initially not have an opinion one way or another on DNA testing.... [Then] when the DNA doesn't come back to match the guy that they're thinking, it's kind of like okay, well that's wrong; [it has to] be wrong. And you know, I think that's [a] human reaction. It doesn't matter who you are, or how much education [you have], or how long ago this happened. I think that's just human—a normal human reaction.”

- Prosecutor

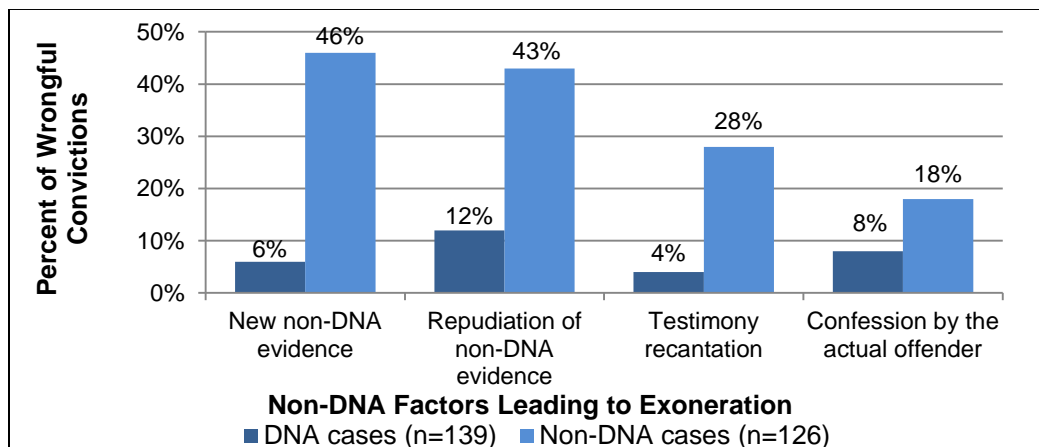
<sup>37</sup>  $\chi^2[1, n=265] = 7.851, p < .01$

**Exhibit 15: Percent of Exonerations by Type of Crime and Type of Exoneration (DNA versus Non-DNA)**



As illustrated in Exhibit 16, of the cases exonerated exclusively as a result of non-DNA evidence, the most common factors associated with the exoneration were new non-DNA evidence (46%) and repudiation of non-DNA evidence (43%), followed by testimony recantation (28%) and confession by the actual offender (18%).<sup>38</sup> It should be noted that non-DNA evidence (e.g., new non-DNA evidence, repudiation of non-DNA evidence, testimony recantation, confession by the actual offender) was present and corroborated the wrongful convictions of some DNA exonerations.

**Exhibit 16: Percent of Exonerations by Non-DNA Factors Leading to Exoneration for DNA and Non-DNA Cases**

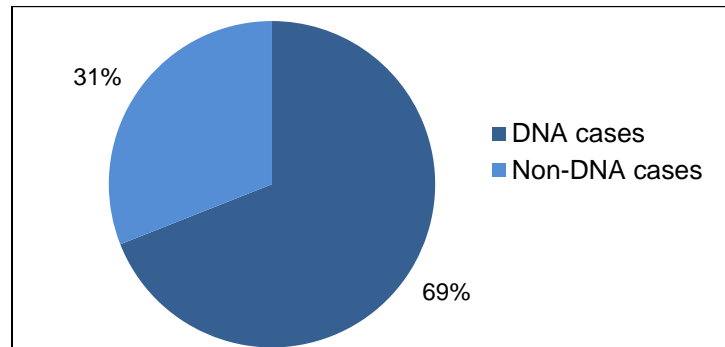


The impact of DNA in cases of wrongful conviction was particularly apparent when looking at its correlation to identification of the actual offender. As illustrated in Exhibit 17, of the 83 cases where the actual offender was eventually identified, the majority (69%) were exonerated through DNA evidence. The high proportion of DNA exonerations that resulted in the identification of the actual offender is due, in large part, to the advent of the Combined DNA Index System (CODIS), a Federal Bureau of Investigation database that combines the DNA profile found at crime

<sup>38</sup> Many non-DNA cases involved several types of evidence; therefore, these categories are not mutually exclusive.

scenes with those of individual offenders. By integrating federal, state, and local forensic data, CODIS has greatly facilitated the matching of crime scene and offender DNA.

**Exhibit 17: Percent of Actual Offenders Identified by Type of Exoneration (DNA versus Non-DNA)\* (n=83)**



\*This includes offenders who are identified (e.g., through a confession, DNA testing, or new evidence); not all identified offenders were subsequently charged with the crime.

## 3.2 Survey of Service Providers<sup>39</sup>

ICF conducted a survey of service providers to gain their perspectives regarding the experiences and needs of victims in cases of wrongful conviction. Findings from the survey also contributed to the identification of case study participants and informed the development of research instruments.

The survey asked respondents to answer questions based on the experiences of one victim to whom they provided direct services or assistance during the exoneration process or post-exoneration. This section provides an overview of the selected cases and then discusses the exoneration process, victim impact and service needs, and contact with the wrongfully convicted individual. Some survey questions were not answered by all 23 respondents. In order for readers to better interpret the findings from the survey, the *n*—which indicates the number of respondents who answered the question—is provided for each exhibit and at the end of sentences presenting figures not displayed in an exhibit. This section concludes with service providers' comments and recommendations regarding the provision of victim services in cases of wrongful conviction.<sup>40</sup>

### 3.2.1 Overview of the Cases

The crimes represented by the selected cases included rape (41%), murder (27%), aggravated assault (18%), domestic assault (9%), and robbery (5%) (see Exhibit 18).

Exhibit 18: Type of Crime (n=22)*	
Rape	41%
Murder	27%
Aggravated assault	18%

<sup>39</sup> Findings from the survey of service providers are presented using gender-neutral language (e.g., they, them, their, themselves), and identifying information (e.g., demographic information) is not reported in order to protect the identities of victims whose cases were wrongfully convicted.

<sup>40</sup> Due to the small sample size, please use caution when interpreting survey findings, and note that the sample sizes for individual survey items presented in this section vary.

### Exhibit 18: Type of Crime (n=22)\*

Domestic assault	9%
Robbery	5%
Other**	9%
Don't know	5%

\* Most wrongful convictions involved multiple crimes; therefore, percentages do not sum to 100.

\*\* "Other" includes responses that did not fit into one of the above categories.

Just over half (52%) of the respondents indicated that the victim knew the wrongfully convicted individual prior to the crime (n=21). As illustrated in Exhibit 19, 64% of these relationships were romantic, 18% were family members, and 9% were friends.

### Exhibit 19: Victims' Relationship with the Wrongfully Convicted Person (n=11)

Romantic partner/spouse	64%
Family member	18%
Friend	9%
Other*	9%

\* "Other" includes responses that did not fit within one of the above categorizations

According to survey respondents, 90% of the victims participated in the original trial (n=19), 74% of the victims provided eyewitness identification as part of the initial investigation and/or at trial (n=20), and 62% of the victims participated in the sentencing process (e.g., provided a victim impact statement) (n=13).

When asked to identify what factors contributed to the wrongful conviction, service providers reported that 43% of the cases involved eyewitness misidentification.<sup>41</sup> Invalidated or improper forensic science (19%), false confessions/admissions (19%), ineffective legal counsel (10%), informants/snitches (5%), and government misconduct (5%) were also identified as contributing factors (see Exhibit 20).

### Exhibit 20: Factors Contributing to the Wrongful Convictions (n=21)\*

Eyewitness misidentification	43%
Invalidated/improper forensic science	19%
False confession	19%
Ineffective legal counsel	10%
Informants/snitches	5%
Government misconduct	5%
Other**	33%
Don't Know	14%

\* Most wrongful convictions involved multiple contributing factors; therefore, percentages do not sum to 100.

\*\* "Other" includes responses that did not fit within one of the above categorizations, such as claim of self-defense, police practices that influenced victim identification, and the unavailability of DNA testing.

<sup>41</sup> Service providers reported that 15 victims provided eyewitness identification as part of the initial investigation and/or at trial; however, eyewitness misidentification was only identified as a factor contributing to the wrongful conviction in 9 cases. Based on the information provided by survey respondents, researchers were unable to determine the cause of this discrepancy.

In the majority of cases, the wrongfully convicted individual was exonerated through a ruling to have the sentence vacated or the verdict thrown out (78%) (n=18). Nearly three-quarters of the reported cases were exonerated as a result of DNA evidence (73%). Testimony recantation (18%) and confession by the actual offender (9%) were also identified as factors that contributed to the exoneration (see Exhibit 21).

#### Exhibit 21: Factors Contributing to the Exonerations (n=11)\*

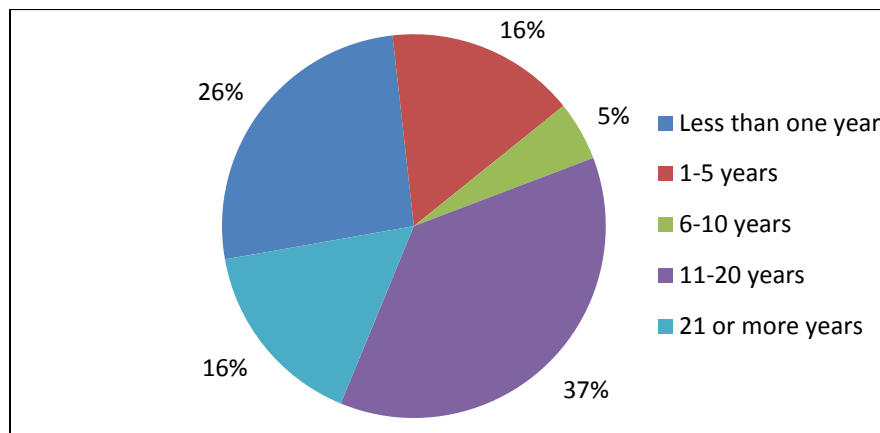
DNA	73%
Testimony recantation	18%
Confession by the actual offender	9%
Other**	9%

\* Most exonerations involved multiple contributing factors; therefore, percentages do not sum to 100.

\*\* "Other" includes responses that did not fit within one of the above categorizations and were specific to the individual case.

As illustrated in Exhibit 22, in 53% of the cases, more than 10 years had passed between the time of the original conviction and the subsequent exoneration.

#### Exhibit 22: Time between the Original Conviction and the Subsequent Exoneration (n=19)<sup>42</sup>



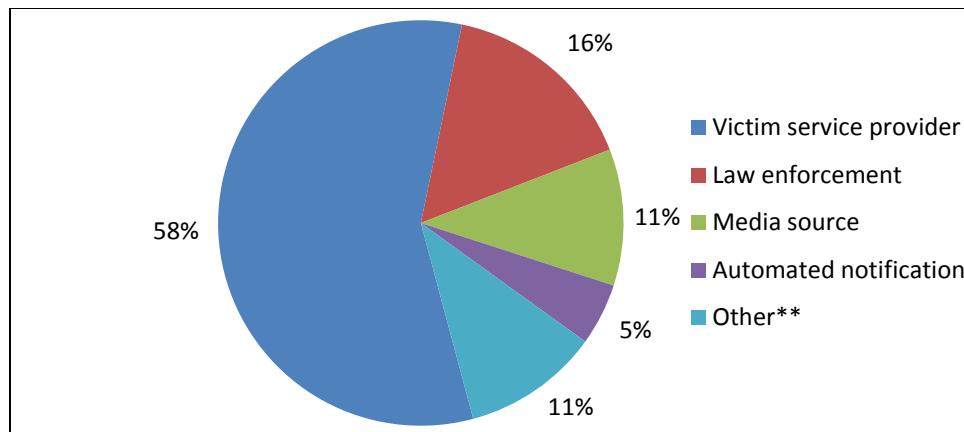
### 3.2.2 The Exoneration Process

Most victims (88%) first learned about the potential wrongful conviction prior to the exoneration; the remaining 12% learned about the wrongful conviction post-exoneration (n=17). As illustrated in Exhibit 23, victim service providers provided initial notification to 58% of victims.<sup>43</sup> Other sources of initial notification included law enforcement (16%), media (e.g., television, a reporter contacting the victim) (11%), automated notification (e.g., an automatically generated letter, email, or phone call) (5%), or another entity (11%).

<sup>42</sup> Some individuals may have been released from prison prior to the exoneration; therefore, it cannot be assumed that the time between the original conviction and subsequent exoneration is equivalent to the amount of time the wrongfully convicted individual was incarcerated.

<sup>43</sup> This may be reflective of the fact that service providers were the target population for this survey.

**Exhibit 23: Source of Notification (n=19)\***



\* Due to rounding, percentages do not sum to 100.

\*\* "Other" includes responses that did not fit within one of the above categorizations, such as advocate, defense attorney, and prosecutor.

When asked to describe the victims' reaction to the initial notification, service providers reported that common reactions included disbelief, denial, shock, fear, frustration, anger, and confusion. One service provider said, "[The] victim felt that there had been a mistake and still feels that the suspect [who] was convicted was guilty of the crime, even though there is DNA evidence to the contrary." In other cases, service providers said that the victim was supportive of the exoneration, with one provider stating, "The individual was supportive of this decision and had actually attended a parole board hearing the year prior, letting the parole board know that [the wrongfully convicted individual] was not the offender that [victimized them]."

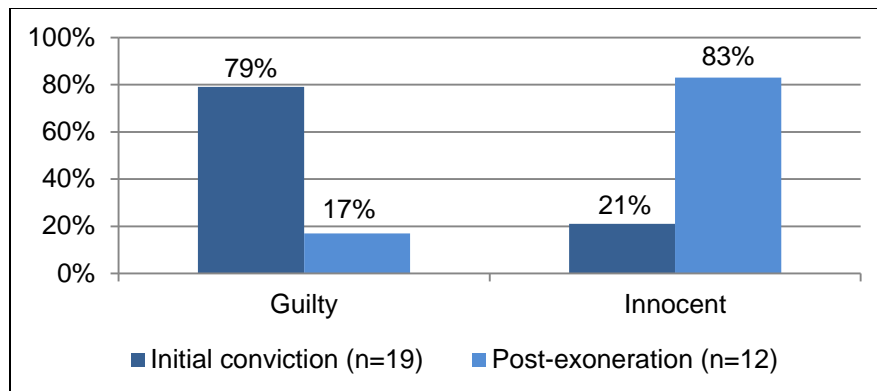
The majority of service providers (78%) reported that the victim was given information regarding, and/or services related to, the exoneration process at the time of notification (n=18). However, only one respondent reported working for an agency that had written and/or established guidelines for the provision of information and/or services to victims in cases of wrongful conviction.

Most victims (61%) did not participate in the exoneration process. Of the 39% who did participate, service providers reported that these victims provided DNA samples, worked with and/or testified on behalf of the prosecution, and/or testified on behalf of the defense (n=18). According to the providers, 65% of cases received media attention (n=20). Service providers reported that the victim's identity was revealed in 23% of the cases that received media attention.

As illustrated in Exhibit 24, there was a marked difference in the proportion of victims who believed that the wrongfully convicted person was guilty at the time of the initial conviction (79%) compared to post-exoneration (17%).



**Exhibit 24: Perception of Guilt of the Wrongfully Convicted Individual**



Note: Due to the large difference in sample size, interpret with caution.

The actual offender was eventually identified in 56% of the cases (n=16); in 33% of these cases, the actual offender was eventually convicted. In most cases (73%), the statute of limitations had not passed at the time of the exoneration (n=16).

### 3.2.3 Impact on the Victim and Service Provision

Service providers generally reported that the exoneration impacted victims in a multitude of ways, including emotionally (78%), socially (56%), physically (44%), financially (44%), and spiritually (22%) (n=9). Some respondents (33%) reported that the victim had post-exoneration safety concerns (n=15), citing that victims were fearful of the wrongfully convicted individual or the actual offender.

As illustrated in Exhibit 25, the most common services provided by the respondents during the exoneration process or post-exoneration included information/referrals (67%), legal and/or criminal justice system advocacy (67%), crisis intervention (56%), court accompaniment (44%), and victim impact statement assistance (44%).

Exhibit 25: Types of Services Provided (n=9)*	
Information/referrals	67%
Legal and/or criminal justice system advocacy	67%
Crisis intervention	56%
Court accompaniment	44%
Victim impact statement assistance	44%
Compensation claim assistance	22%
Transportation assistance	22%
Safety planning	22%
Short-term counseling	11%
Long-term counseling	11%

\* Respondents were able to select multiple categories of service provision; therefore, percentages do not sum to 100.

A few service providers reported that the victims had additional, unmet service needs. Many of these respondents referenced the need for follow-up counseling and psychological support, with one provider explaining, “[The victim] needed psychological counseling [which] was not offered.... Seeing the [actual] offender’s face on [their] TV screen was very traumatic for [them],

as the crime had happened [several] years earlier.... Suddenly the offender was back in [their] life.” Other providers noted the need for easier access to victim compensation funds, more flexibility in the use of compensation funding, and access to legal assistance for the victim.

### 3.2.4 Contact with the Wrongfully Convicted Individual

One victim met with the wrongfully convicted individual post-conviction, but prior to the exoneration (n=17). Following the exoneration, five victims chose to meet with the wrongfully convicted individual (n=10). When asked about the type of contact that victims had with the wrongfully convicted person, service providers indicated that they had had in-person meetings, worked together to educate criminal justice agencies and stakeholders about the impact of wrongful convictions, and co-presented at conferences. In describing the impact of this contact on the victim, one service provider said, “[The victim] had concerns about the wrongfully convicted individual until they had their meeting.”

### 3.2.5 Comments and Recommendations

Service providers also had the opportunity to provide additional comments and recommendations regarding the provision of victim services in cases of wrongful conviction. Recommendations and comments included the following:

- *Develop guiding policies and training for service providers.* There was general recognition that there is a great need for policies and training to assist service providers in helping to meet the needs of victims in cases of wrongful conviction.
- *Offer sensitivity and compassion.* Several service providers referenced a need for sensitivity and compassion when providing services to victims in cases of wrongful conviction.
- *Provide information and resources.* Another common need for victims that was cited by service providers is access to information and resources regarding the exoneration process and what to expect.
- *Provide opportunities for the victim to meet with criminal justice stakeholders and DNA experts.* Several service providers cited the importance of giving the victim the opportunity to meet with criminal justice stakeholders (e.g., law enforcement, prosecutors) and DNA experts, as applicable, to better understand the exoneration process, how DNA evidence is collected and used in the criminal justice system, and common system-level causes of wrongful conviction.
- *Offer victims access to both short- and long-term counseling and support.* Given the range of emotions and trauma that can occur as a result of a wrongful conviction, service providers noted that it is critical for victims to have access to short- and long-term counseling and support.

## 3.3 Victim Experiences: Findings from the Case Studies<sup>44</sup>

Through case study interviews with victims, victims’ family members, service providers, prosecutors, law enforcement, and other key stakeholders, ICF explored the experiences and needs of victims in cases of wrongful conviction. This section begins with an overview of the

<sup>44</sup> Findings from the case study are presented using gender-neutral language (e.g., they, them, their, themselves), and identifying information (e.g., demographic information) is not reported in order to protect the identities of the victims who participated in this study.

examined cases. It then describes the exoneration from the victims' perspective, before discussing the emotional, psychological, physical, financial, social, and spiritual impact on victims. The section concludes with a discussion of three factors associated with victim impact: media and community reaction, meeting the wrongfully convicted individual, and the provision of peer support.

### 3.3.1 Overview of the Case Studies

The eleven case studies were diverse in terms of geographic location, the crimes they represented, and the leading factors that contributed to the wrongful convictions and subsequent exoneration. Case studies involved crimes that were committed across six states, with eight taking place in urban communities. As illustrated in Exhibit 26, rape was the most common crime, followed by murder and sexual assault.

<b>Exhibit 26: Type of Crime (N=11)*</b>	
Rape	5
Murder	3
Sexual assault	3
Burglary	2
Attempted murder	1
Breaking and entering	1
Other sexual offenses	1

\* These numbers represent the crimes that the wrongfully convicted individual was found guilty of committing in the original trial. Many of the cases involved multiple crimes.

Two individuals were wrongfully convicted in one of the case studies. Therefore, a total of 12 individuals were wrongfully convicted for these crimes. The majority of the victims did not know the individuals who were wrongfully convicted prior to the crime; however, this was not true in all cases.

As illustrated in Exhibit 27, eight of the cases involved eyewitness misidentification. Invalidated/improper forensic science (5 cases), informants/snitches (4 cases), false confessions (3 cases), and ineffective legal counsel (1 case) were also factors that contributed to the wrongful convictions.

<b>Exhibit 27: Factors Contributing to the Wrongful Convictions (N=12)</b>	
Eyewitness misidentification by the victim	8
Invalidated/improper forensic science	5
Informants/snitches	4
False confessions	3
Ineffective legal counsel	1

Eight of the twelve individuals wrongfully convicted were exonerated, at least in part, through DNA evidence (see Exhibit 28). Other factors that contributed to the exoneration included a confession by the actual offender (3 cases), discreditation of prior evidence (2 cases), and new non-DNA evidence (1 case).

### Exhibit 28: Factors Contributing to the Subsequent Exonerations (N=12)

DNA	8
Actual offender confessed	3
Discreditation of prior evidence	2
New non-DNA evidence	1

Following the initial exoneration, three of the wrongfully convicted individuals were eventually pardoned.

### 3.3.2 The Exoneration Process and the Role of the Victim

Victims interviewed for this study reported varying levels of participation in the criminal justice system from the time of the original investigation through the exoneration.

#### PARTICIPATION IN THE ORIGINAL INVESTIGATION AND TRIAL

Most, but not all, interviewed victims participated in the original investigation and prosecution. The majority of victims whose family members were murdered reported being interviewed during the investigation; being present at the trial; and, in some cases, reading victim impact statements during sentencing. In cases of rape, sexual assault, and attempted murder, many of the victims interviewed for this study also provided eyewitness identification and testimony.

Almost all of the victims interviewed reported that they believed that the wrongfully convicted person was guilty at the time of the conviction. One victim, who did not believe in the wrongfully convicted individual's guilt, described the initial investigation by saying "It's like you're in a bad dream and nobody can hear what you are saying.... It was like I was trying to argue a case for defense and they were prosecution and that was it. There was no common ground; we were on opposite sides."

In a few cases, the wrongfully convicted person appealed the conviction. The victim who believed in the wrongfully convicted individual's innocence supported these appeals. In other cases, victims reported moving on with their lives, believing that the wrongfully convicted person was guilty and the case was closed. For most victims, years passed before they learned that the individual incarcerated for the crime may have been wrongfully convicted.

#### INITIAL NOTIFICATION

The manner in which victims first learned of the wrongful conviction varied greatly across case studies. In five cases, officials (e.g., law enforcement, prosecutors, victim advocates) involved in the exoneration provided initial notification to the victims during the reinvestigation (e.g., when a DNA test had been ordered, when the case had been opened for a formal review). In one case, an official notified the victim of the wrongful conviction post-exoneration. Remembering the notification, the victim stated, "I never was told there might be. I was just called and told the DNA test proved that he was wrongfully [convicted].... I had no warning whatsoever."

In four cases, the victims learned of the potential wrongful conviction through third parties, such as reporters or legal representatives for the wrongfully convicted. In one case, notification was not applicable due to the fact that the victim believed in the innocence of the wrongfully convicted person from the time of the original trial, and was actively involved throughout the appeals and exoneration process.

In cases where a third party provided notification, some, but not all, of the victims followed up with law enforcement or the District Attorney's Office to request additional information. In one case, law enforcement explained,

We thought, 'Well, first we'll test the suspect against the [rape] kit before we even bother the victim. No need to bring back all the hurtful memories. Don't want to disturb the victim after all these years.' In this particular case, [the victim] had a watch on the inmate, so that if [the individual] got transferred, [the victim] would be notified. [The wrongfully convicted person] was moved back to the county [for DNA testing], and [the victim] was notified [of this transfer through an automatically generated letter.]

This letter prompted the victim to contact law enforcement to enquire about the transfer, at which time the victim was told about the wrongfully convicted individual's claim of innocence and the court order for additional DNA testing.

In a few cases where officials were involved in the notification process, notification was done by officials who were involved in the original case. Although this continuity in personnel was rare, victims and stakeholders in these cases noted that it was beneficial and provided an important support system for the victim. In all of these cases, officials from the original case had a positive relationship with the victim and there were no issues of impropriety.

When officials from the criminal justice system made the initial notification, they typically initiated contact through a telephone call during which they would schedule a time to speak with the victim in person. The resulting meetings usually took place in the victims' homes; however, meetings also occurred in other locations, such as places of employment. During these meetings, officials reported providing information on the status of the case, and, when

"You need to be as compassionate when you talk to them years later as you are when you show up [at] the scene and that person is injured. You need to be just as compassionate when they answer their telephone at home or [you] show up [at] their house ..., realizing that those wounds are still ... right under the surface."

- Law Enforcement

necessary, requesting DNA samples from the victims. When victims were asked about these initial meetings, they reported that they were given limited information and asked few, if any, questions about their potential need for services. Stakeholders, including victims, agreed that victims were often overwhelmed at the time of notification and had questions later, after they had had time to process the information.

Victims' reactions following the initial notification varied. Some victims who were aware that the wrongfully convicted person had sought to appeal the conviction reported thinking that this was just another attempt on the part of the person to have the case overturned. One victim remembered thinking,

I didn't want to wait; I just wanted to give my blood. I was unwilling to go through any more trials; I just didn't want to do it anymore. There was not a doubt in my mind that it was [the wrongfully convicted individual's] DNA.... My first reaction was, 'Let's put this baby to rest. If this can show beyond any doubt, then we're done and we don't ever have to talk about this again.' ... I wasn't confused at all; I was very much willing to do it, because I didn't have any doubt in my mind.... We went straight to my doctor and took the blood sample right then.

Another victim reported having the opposite reaction, “I remember writing a letter to [the District Attorney] saying if they need a new DNA sample from me it needs to be court ordered. Like, I am not cooperating in any way, shape, or form.”

Victims who had not had any contact with the criminal justice system since the original conviction often reported being shocked. One law enforcement officer explained, “As you might imagine, [the victim] was very shocked.... [The victim was] convinced that the case was over and that there was no other litigation pending.... [The victim had] put that case behind [them], put that experience behind [them].... [It] was quite a shock, and it was a very emotional meeting. And we [were] still steadfastly convinced that ... [the wrongfully convicted individual] was guilty.”

In a few cases, victims reported that, during the notification process, officials had assured them that subsequent DNA testing would confirm the guilt of the wrongfully convicted person. One victim recalled,

It totally blindsided me. [The law enforcement officer] called me at work, ... you know, in the middle of my work day, and nobody knows any of this about me.... [The law enforcement officer] gave me the explanation that [the wrongfully convicted person] was up here on a writ to get [their] DNA tested. [The law enforcement officer] kept assuring me that it was no big deal. [The law enforcement officer] had followed the case and we knew it was [the wrongfully convicted person].... They just kept assuring me, ‘We’re just going to do the buccal swab; it’s just a technicality.’

While most victims described the notification process as having a significant and often devastating impact on their lives, this was not the case for all victims. In some cases, the victims believed that the wrongfully convicted person was innocent, or had previous doubts about their guilt. In other cases, victims were undergoing critical life events that overshadowed the exoneration.

## THE EXONERATION PROCESS

The process through which the wrongfully convicted individuals were exonerated varied across cases. In some cases, the process involved multiple hearings; in other cases, the wrongfully convicted individuals were exonerated within hours of DNA test results excluding them as the offender. Victims’ participation in the exoneration process also varied. In some cases, victims did not participate, or their participation was limited (e.g., they provided DNA samples). In other cases, victims attended hearings and other related events.

Victims reported varying levels of contact with officials during the exoneration process; some were provided with frequent updates on the status of their cases, others had little to no contact. One victim remembered, “The 2-week period that I was waiting to hear, there were newspaper articles being printed ... and it was just [kind of] like I know nothing about what’s going on with this.” Another victim recalled, “Nothing was happening.... I would call the victim/witness coordinator and she [would say,] ‘I don’t know anything. [The District Attorney] isn’t keeping me apprised of what’s going on.’ I would call [the District Attorney] and [they] wouldn’t get back to me. So I started calling the [wrongfully convicted individual’s legal representative] directly.” Victims who were provided with regular updates throughout the process emphasized the importance of these updates, saying that it made them feel as if they were part of the process.



These victims also said that they were encouraged to reach out to officials, and did so, when they wanted additional information or had questions.

A few victims reported learning information during, or as a result of, the exoneration process that altered their perceptions of the original investigation and trial. One victim explained, “So the more I found out what was actually known at the time [of the original investigation], the more upset I became with the sheriff and the prosecutor.” One family member recalled conducting an Internet search on the case following a discussion with a reporter who revealed information about the case of which the family member was previously unaware. This family member recalled, “All this stuff came up on the Internet.... There are so many people that know more about what happened to [the victim] than [the victim’s] own [family]. That disturb[ed] me.”

In a couple of cases, victims found out that the actual offender had been identified as a potential suspect during the original investigation. One of these victims said, “Apparently, they knew all along that [the actual offender] was a suspect. They never put him in the lineup; they never put him in any kind of lineup at all. They never showed me a picture of him.... Once I figured out all they did wrong, I was really angry.”

### NOTIFICATION OF THE EXONERATION

For victims who were first notified of the potential wrongful conviction prior to the exoneration, the time between the initial notification and notification of the pending exoneration varied from a few weeks to years. Many victims, as well as other key stakeholders, reported that when they first heard about the exoneration they were in shock. Some victims reported that their memory of this event is unclear. As one victim described,

They called me and they said the results were in. And this is where part of my memory becomes a blur, I think because it was such a hellish experience. Part of my mind has blocked it. I do remember them coming into the kitchen, and I remember them saying the DNA had come back and it wasn’t [the wrongfully convicted person’s] DNA, that [the wrongfully convicted person] wasn’t the rapist, that the DNA matched [the actual offender]. And then it was like I stopped hearing.... My whole mind was spinning and I was unable to focus. It was like hearing underwater or something. I remember thanking them. I remember [the District Attorney] saying ‘We’re going to go to the prison and get [the wrongfully convicted person] out as quickly as we can so [the wrongfully convicted person] doesn’t stay another night in prison.’ ... They were very committed to getting [the wrongfully convicted person] out as quickly as they possibly could. There was no fighting it. No one tried to say the DNA could have been contaminated or that we would run it again. It was clear that we had made a mistake.

Another victim described the moment, saying “You know what, there’s no human language that can explain that feeling. None. There’s no words to describe what a horrible feeling it is. Shock, disbelief, fear, and very, very mad. I was pretty mad at everybody in that room at that moment.... I got upset, but the real thing didn’t hit me right there.” Many victims reported sobbing; feeling a mixture of emotions—panic, guilt, fear; and, for some, happiness that the wrongfully convicted person was going to be freed.

In many of the cases where officials had provided initial notification to the victims during the reinvestigation, the same officials provided notification of the pending exoneration. One law

enforcement officer reflected retrospectively that having an advocate present during the notification may have provided additional support to the victim.

I kind of wish I had involved advocacy at the time we went and notified the victims of the DNA results, but we didn't. And to be honest with you, it didn't occur to us at the time that that would be a role that they would play. It was a very new thing for us, the exoneration.... We didn't really know what, if any, role advocacy could play in that other than being present at the notification. You [have to] understand there was really no court hearing that required either of these victims to participate.... What this really involved was really just two personal visits in their homes, and that was the extent of it.

Other victims reported finding out about the exoneration through third parties. One victim recounted being told about the exoneration by someone who had read about it in the newspaper. This individual told the victim, "They just won't let you rest.... They're not gonna let you rest." The victim recounted, "And I'm just sitting there goin' ... '[W]hat?' And [my relative] says, 'She don't know,' and I'm looking at [my relative] and I'm looking at the [the person who read about the exoneration in the newspaper], and I'm goin', 'I don't know what? What?' And I start bawling. 'What's goin' on? ... What is goin' on?'"

For some victims, only hours passed between the time they learned of the pending exoneration and the time the wrongfully convicted person was released from prison; for others, it was years.

"It's so confusing; it's so confusing because you're telling me now that something that was true for [so many] years is not true. And I still felt like it was [the wrongfully convicted person]. I knew it was [the wrongfully convicted individual]."

- Victim

Victims, especially those in cases where the wrongfully convicted individuals were released within hours or days, often described being fearful. Individuals who still believed that the wrongfully convicted person was guilty were fearful that "their offender" was going to be freed. Others were fearful that the actual offender

remained unknown and potentially at-large, and still others were fearful that the wrongfully convicted individual would be angry and seek retaliation against them or their family. As one victim explained, "You don't get enough preparation, you just don't. Two days is not enough time; it's just not."

For many victims, the notification process had a noteworthy impact on the consequences they experienced as a result of the wrongful conviction. For example, victims who were assured that the DNA test would confirm the wrongfully convicted person's guilt remembered that the exoneration was especially difficult because they had never considered that a wrongful conviction was even a possibility. For other victims, finding out through third-party sources, such as the media, was particularly upsetting, and led to anger toward and, in some cases, distrust of the criminal justice system.

Many of the victims recounted that they were not offered services or provided with information about wrongful convictions, including what went wrong in their case, and general information about DNA testing or eyewitness misidentification

"One of the things that was sort of one of my prime motivators was not to have [the victim] take on the personal responsibility of the wrongful conviction. I believe with every ounce of my body it was absolutely not [the victim's] fault. And there's nothing [the victim] could have done to change [the wrongful conviction]. There was fault, but not with [the victim].... [The victim is] the kind to say, 'If I'd only, If I only,' and I didn't want [the victim] to publicly take that on because people always look for people to blame. And I did not want it to be the victim."

- Attorney (Victim Legal Advisor)

when they were notified of the pending exoneration. In one case, a law enforcement officer explained that the victim had not been provided with information because the prosecutor's office was afraid of civil liability. This law enforcement officer said, "It bothers me that they let that political overtone of them getting sued—and I'm sure it came from higher up—minimize [their] contact with the victim. You wouldn't respond to a call and leave [the victim] lying on the floor bruised and battered, so don't leave [them] that way emotionally now."

Some victims remembered being told not to worry about their safety. One victim, who requested safety planning, reported that officials helped change the locks and put additional locks on all of the windows and doors in their house. A few victims were given current photos of the wrongfully convicted person. In a few other cases, law enforcement told the victims that they would increase patrol of their neighborhoods following the exoneration. In general, however, victims reported not being offered services or safety planning at the time of the exoneration.

### IDENTIFICATION AND PROSECUTION OF THE ACTUAL OFFENDER

In nine of the eleven case studies, the actual offender was eventually identified by law enforcement. In most cases, officials notified the victim when the actual offender was identified; however, a few victims found out through a third party or were informed at the same time as the media and other community members. As one family member recalled, "We're sitting there in court and [the] judge is explaining that ... there was DNA testing and that the test didn't match, and then they announced in open court—so we heard it when the whole town heard it—that there was a DNA match."

Some victims accepted the wrongful conviction when the actual offender was identified, or shortly thereafter. One victim reported, "I knew right then and there ... as they showed me the picture [of the actual offender, and] it was like, 'boom, that's the dude.' There [were] no ifs, ands, or buts about it. It was like, 'Oh, we made a mistake.'" For other victims, DNA helped them to accept the wrongful conviction. A few victims expressed gratitude that their exoneration involved DNA evidence. As one victim explained, "I guess you could say [I was] thankful—'cause, you have to find your blessings in the situation—that there was DNA.... If they hadn't said, 'We've retested the DNA and we're certain, you know, it has identified this other person,' I think I probably would have [had doubts about the wrongfully convicted person's innocence].... But, I think because they identified [the actual offender] and said this is the DNA of [the actual offender], that I don't think there was ever really a question for me."

DNA helped many victims accept that the wrongfully convicted individual was factually innocent; however, the presence of DNA did not lead all victims or stakeholders to change their opinion. This sentiment was expressed by one victim who acknowledged, "I would like for [the actual offender] to admit that [they] did it, if [the actual offender] really is the person who did it.... I still have that lingering doubt. Maybe I'm happier with the lingering doubt." A few officials and service providers also expressed doubt in the DNA results. One victim recalled, "I know my investigator said, '... I think you sent the right guy to jail. I really think you did.' She said, 'Do you really believe that DNA?' ... I mean, before this, I would have thought that DNA was slam dunk; now I'm not sure." Similarly, another family member recalled a service provider expressing doubt in the DNA results during the trial of the actual offender:

And we're sitting there and [the service provider] leaned up, talking to us, and she goes, 'I swear [the wrongfully convicted person] still had something to do with this.' And I'm like ... 'Are you kidding me? Did that just come out of your

mouth? We're going into the [trial] of the man who matches the DNA. You're the victim coordinator and you just went from asking us if we need anything to drink to telling ... [us] that you believe wholeheartedly that [the wrongfully convicted person] did it....' I mean, I was in shock.

A number of victims reported that they did not recognize the actual offender as their assailant when they were shown photographs. One practitioner who has worked with victims on multiple cases of wrongful conviction said that even after victims have accepted that the wrongfully convicted individual is innocent, it is not uncommon for them to report that they continue to picture the wrongfully convicted person when they recall the crime. During the case study interviews, some of the victims who provided eyewitness identification discussed the similarities that existed between the wrongfully convicted individual and the actual offender. In some cases, these were physical similarities; in other cases, they had similar behaviors, jobs, and/or clothing.

Three of the nine offenders eventually identified by law enforcement were prosecuted and convicted. The victim and a family member in one of these cases recalled feeling a sense of peace following the conviction. In three cases, the statute of limitations had passed by the time of the exoneration; in the remaining cases, the offenders were not prosecuted for reasons specific to the individual case. One practitioner noted that even when the statute of limitations has passed, some law enforcement agencies have tried to identify the actual offender to further confirm the wrongful conviction.

In some of the cases that were not prosecuted, the actual offenders were already incarcerated for other offenses. Victims in these cases expressed relief that their offenders were incarcerated; however, the sentences for these offenders varied in length. One victim, whose offender's release date is pending said, "[The actual offender] gets out of prison. Everybody else gets out of prison. Who's [going to] let me out of prison? Who's helping me get out of prison? Who's taking care of the victims? Not just when they get exonerated. Who's holding my hand now? This isn't something that's [going to] go away. Who's [going to] hold my hand ... when [the actual offender] gets out of prison?" In a few of these cases, the victims and/or other stakeholders have submitted letters to the Department of Corrections informing them of the additional crimes committed by these offenders so that they can be taken into consideration prior to any release. Some victims have also chosen to register to receive automated notifications about the actual offender.

In two cases, including one where the actual offender was eventually identified, the victims reported that law enforcement continued to try to collect evidence against the wrongfully convicted person even after the exoneration. In both of these cases, the victims believed in the innocence of the wrongfully convicted individual. One victim recalled,

The judicial system sure did not help me, because they victimized me all over again and I say that because they were angry with me because I did not rally to their side.... I felt like because I rallied around [the wrongfully convicted person] and I believed in [the wrongfully convicted person's] innocence ... they would not talk to me. Never once did they speak to me.... I finally had to tell the officers at the police department to stop [contacting me].... I had to say to them, '... [I]f you are [going to] keep this on television and you're [going to] keep calling me, telling me you're investigating someone that's been exonerated, do not call me.' And so then I am being victimized all over again.

Officials in this case noted that their efforts to continue to gather evidence regarding the guilt of the wrongfully convicted person was based on their desire to protect the victim from engaging with and supporting someone who officials believed was involved in the crime. In cases where the victims and the authorities disagreed about the innocence of the wrongfully convicted individual, and where the authorities maintained that the wrongfully convicted person could have been involved in the crime, victims often perceived their relationship with the criminal justice system to be adversarial. These victims often reported finding support from the wrongfully convicted individual and the wrongfully convicted individual's family members and legal representation.

## RELATED CIVIL SUITS

In a few of the case studies, the wrongfully convicted person filed a civil suit<sup>45</sup> following the exoneration. The extent to which these suits involved and/or impacted victims varied. Some victims voluntarily assisted the wrongfully convicted person in their civil litigation, others participated as a result of being subpoenaed. In a few cases victims were not involved in the resulting civil suits.

In two cases, victims sought out attorneys to assist them with this process. Attorneys noted that victims, especially those who misidentified the wrongfully convicted individual, often have concerns about their financial liability. Attorneys reported helping victims navigate their participation in these suits in a manner that protected their interests as a victim. In one of these cases, the attorney described “working closely with [the wrongfully convicted person’s] lawyers, trying to assist in giving information so that they could frame the lawsuit for [the wrongfully convicted person] to get damages.”

In some cases victims reported feeling revictimized during these civil suits. One victim described the deposition as aggressive, saying “The plaintiff’s attorney plopped a ... mug shot in front of me and I was like, ‘Well, yeah, [the individual] sort of looks familiar.’ ... [The plaintiff’s attorney then] said, ‘Suppose I told you that that is the DNA match from your case.’ ... I was angry, very angry that [the attorney] just did that.... It was out of the blue. If [the attorney] had at least led into it, [they] could have softened it a little bit, but that was not what [the attorney] wanted to do.”

### 3.3.3 The Impact of the Wrongful Conviction on the Crime Victim

Victims, as well as key stakeholders, reported that wrongful convictions often have a strong emotional and psychological impact on victims. A number of victims described the experience as being comparable to, or worse than, their original victimization. In cases of murder, some victims equated the exoneration to their family members being murdered all over again. One victim underscored the impact of the wrongful conviction, saying “I just wanted the earth to swallow me. I would say that [the day I found out about the exoneration] was worse than the day I was assaulted.” Another victim recalled, “I was a mess. I was absolutely hysterical [and] distraught. This was way worse than being attacked. And I said over and over again, I’d rather [be victimized] again then go through this. This was horrible because ... now I was a perpetrator.” A third victim recounted, “It was harder going through the revictimization than it was through the rape.... Now you have the same feelings of that pain. You have the same scariness. You have the same fear. You have the same panic, but now you have this flood of guilt on top of it.”

<sup>45</sup> Compensation for wrongful convictions varies by jurisdiction. In addition, some jurisdictions allow the wrongfully convicted person to claim compensation and file civil suits, while other jurisdictions have enacted statutes precluding this.



Some victims described obsessing over the details of the original trial in order to understand how the wrongful conviction occurred. One victim recounted,

Then starts this horrible, horrible, horrible, process ... of you now reliving the whole crime. Actually, I was already reliving the whole crime waiting on the buccal swab.... 'Oh yeah, that happened. Oh yeah, that happened. Oh, [they are] guilty; there's no way [they are not guilty].' And so then you find out it's not [the wrongfully convicted individual], and then you basically start reliving the whole thing again. That tape starts playing in your head; you start going through, you know, the 'What if?' The 'How could I?' The 'How did this happen?' And you can't breathe, you can't eat, you can't think; you can't do anything because you're so obsessed over this thing that happened.

Another victim said, "You spend your whole life trying to put [the crime] in its place; then to have to come around and revisit everything. And you try to remember every single detail because you

"I think that it's really important that crime victims understand that it's not their fault if someone was wrongfully convicted.... They're providing a piece of what the thing is, but ultimately it's not even their decision whether to charge the case or not."

- Prosecutor

want to know where you went wrong.... Why wasn't there a red flag somewhere along the line? ... And so you do; you spend your whole time trying to go back to a place that you've been trying to leave for such a long time." In describing this process, a victim said, "You have to just put the brakes on and flip everything that you know to be true, and rewind and make it all different."

Following the initial shock, many victims reported experiencing feelings of guilt and blame. A number of victims, especially those who provided eyewitness identification, said that they felt responsible for the wrongful conviction. As one victim explained,

And what was interesting to me was they said, 'We have made a mistake.' But what I heard was / made a mistake. [The law enforcement officer who worked the case] has since corrected me. But I took all of it on myself, every single part of the mistake I took on personally, because I felt that not only had I made the mistake and cost [the wrongfully convicted person] all of that time, but I felt like I had disgraced [the law enforcement officer] who is one of the finest police officers ever. I felt like I had disgraced the District Attorney's Office. I felt like I had kept a rapist on the streets ... and failed the city. I failed everybody, and that was a burden that I put on myself and kept it there for probably the next 8 years.

Many victims felt guilty for the additional crimes that the actual offender had committed. Some also felt guilt for events that occurred during and/or after the wrongfully convicted person was incarcerated.

Victims also had, and in some cases continued to have, feelings of guilt regarding the wrongfully convicted person. One family member remembered, "There was such ... guilt on our part. Like we had a part in convicting [the wrongfully convicted person] because we hated them so bad." Other victims also mentioned feeling guilt for being relieved when the wrongfully convicted person was released to probation, and thus continued to be monitored. One victim said, "You have so much guilt inside, and then you have your guilt that's built on guilt."



A number of victims also spoke of enduring fear following the exoneration. Victims reported heightened awareness, occasionally describing it as paranoia. For some, this lasted weeks; for others, it lasted years. One victim stated, “My initial thought was [the wrongfully convicted individual] is going to kill me. [They] will hurt me, and if [they] can’t get to me, [they] will get to my children. So I was on hyperalert. The children could not leave my side. I went to school and told the teachers, ‘They are to stay with you every second.’ That went on for almost 2 years.” Anger was also a common emotion expressed by victims. Stakeholders noted that in most cases years, even decades, had passed between the original crime and the exoneration; victims had moved on and created new lives for themselves. As one victim explained, “I think it’s anger at all of it—the compensation [for the wrongfully convicted person], the publicity, the changing of the platform where now I’m the bad person. People are trying to find me and judge me; throw stones at me. Yeah, you’re angry.”

Victims also described the exoneration as an isolating process, with one victim saying “One word to describe the whole process, totally frickin’ lonely.... Is there a word stronger than lonely?” Other emotions expressed by victims were helplessness, devastation, and depression; at least one victim experienced suicidal ideation. Following the exoneration, victims reported that events such as seeing the wrongfully convicted individual out in the community for the first time, or testifying at a related civil trial, often triggered strong emotional and psychological consequences.

For victims who had believed in the wrongfully convicted person’s innocence and actively supported the exoneration, the exoneration had an important and positive impact on their emotional and psychological well-being. One victim explained, “I had put all of my hopes [in the fact that] this is [going to] happen for [the wrongfully convicted person], and this is [going to] happen for [the wrongfully convicted person’s] family, and this is [going to] be made right. And this was just the right thing to do.” This victim believed that had the wrongfully convicted individual not been exonerated, the emotional and psychological consequences would have been devastating. This victim remembered speaking to the wrongfully convicted individual’s family during the exoneration, saying “What hurts me is sitting here in anticipation, not knowing if [the wrongfully convicted person] will get out. That’s what hurts me sitting here with you today. That if [the wrongfully convicted person] can’t leave, I don’t know what I will do. You know, you can’t [revictimize me] again.... The issue right now is what are you going to do if [your family member] does not walk out of here after [going] through this process?” Despite the positive impact of the exoneration, these victims reported significant social consequences as a result of the wrongful conviction, including the loss of friends and strain in family relationships when these individuals maintained that the wrongfully convicted individual was guilty of committing the crime.

Victims also reported that their family members experienced substantial emotional and psychological consequences, which, in turn, impacted them. In describing the impact that the wrongful conviction had on an adult family member, one victim said, “People don’t realize it’s not about them. This is not about them. It’s about, what do I need? And that ... is what needs to be kept in the forefront. It’s about what do I need. I shouldn’t be the one having to take care of somebody else because I’m really in no capacity to do that.” A few victims noted that the exoneration was especially challenging for children; some children became extremely protective of their parents, discussed seeking vengeance on behalf of their parents, or self-medicated to deal with the emotional consequences. One victim recounted asking their child to move into their house to help take care of them following the exoneration. For some, the exoneration was the first time these children had learned of their parent’s prior victimization.

In addition to disclosing the victimization to their children, some victims had to disclose the victimization to their supervisors and coworkers in order to explain why they were missing work, or to ensure that their coworkers knew what to do if media tried to contact them at their place of employment. In addition, some victims spoke of the social impact of having law enforcement contact their former romantic partners for DNA samples.

In addition to the emotional, psychological, and social consequences, victims reported physical and financial consequences as a result of the wrongful conviction. Sleep problems were the most common physical impact that victims reported—exhaustion, sleeplessness, and nightmares. Victims also reported fainting, stomachaches, trouble eating, and muscle weakness. Upon hearing the confession of the actual offender, a law enforcement officer described how one victim “just kind of bent over almost like she was in labor.” A few victims noted that, at times, the physical consequences were so bad that they were unable to go to work, and they needed to seek medical treatment. Other financial consequences also included the cost of counseling services and medication.

“By the way, I wasn’t able to go to work after [the wrongfully convicted individual] was let go. And you know why, because [the actual offender] was walking around and I didn’t know who it was.”

- Victim

Most victims did not speak directly to the spiritual impact of the wrongful conviction; however, a number of victims alluded to the important role that spirituality and their belief in God played in helping them come to terms with the wrongful conviction. Typically, these victims discussed their faith and spirituality on an individual level, and not as part of an organized religion or religious community.

Victims interviewed for this study were quick to point out that they continue to experience consequences as a result of the wrongful conviction. Wedding, graduations, and other major life events are often accompanied by thoughts about the events that the wrongfully convicted individual and their families missed due to the incarceration. Many victims said that they believed the consequences of the wrongful conviction would never fully go away, and would continue to impact them to various degrees throughout their lives.

### 3.3.4 The Media and Community Reaction

As with many wrongful convictions involving violent crimes, most of the case studies received significant media attention; some even received national attention. Stakeholders reported that, in their opinion, the media tends to portray these cases from the perspective of the wrongfully convicted person, and that the media’s coverage of the exoneration often triggered strong emotional reactions from the victim. In a few of the cases, victims felt that the media insinuated that they intentionally misidentified the wrongfully convicted individual (e.g., saying that the victim “fingered” or “convicted” the wrongfully convicted person). One prosecutor said, “The media likes to vilify the victim because somebody has to be the villain in their story.”

Victims’ interaction with the media varied; some victims never spoke publicly about the wrongful conviction, others actively engaged the media. According to one victim who did not speak with the media, “Everything was written from [the wrongfully convicted person’s] point of view ... but yet I also did not do anything about trying to change what they said, because I just wanted it to go away. I wanted them to go away. I wanted the whole thing to go away. [From my perspective,] there [was] no need to stir it up and make it worse.” In another case, victims and family members proactively contacted the media to ensure that published stories were accurate.

A family member recalled telling the media, “You know, we hold a piece of the story ... that has never been told because no one ever asked.” Some victims expressed an interest in engaging the media, but said that they were discouraged from doing so or cautioned against it by employers or other stakeholders.

Victims who provided eyewitness identification spoke about the unexpected backlash and anger directed toward them. These victims reported that reading the blogs and comments that followed news articles was particularly painful. One victim said,

I always caution [other victims], because I made this mistake myself. When these stories start hitting the newspaper, don’t go online and read about them because there’s always going to be a blog, and in the blog are the most awful, violent things you can ever imagine. And then [victims] always do, and it’s very frightening, because the community is saying ‘If I could ever find [the victim], I would kill them. I would take them and stab them. [The victim] deserves to be raped and thrown in a ditch.’ Really terrible and violent things.

Another victim stated, “One thing victims need to realize, and I learned the very, very, very hard way, is that you just can’t read it because ... even though my name wasn’t out there, this is the thing; your name’s not out there, but you are out there. This is your case. This is something that happened to your body. This is what happened to your mind, to your life.... I didn’t give anybody permission to put this out in the newspaper.” A service provider in this case said that after reading comments on the Internet, the victim was “hysterical. That’s the simplest way to say it. [The victim] would be on the computer all night long, reading comments, [thinking,] ‘Look at what these people are saying about me.’ It was awful and you couldn’t tell [the victim], ‘Quit reading it.’ [The victim lost so much] sleep reading other people’s comments.”

The media was often present for the release of the wrongfully convicted individual. In describing this day, one law enforcement officer said, “You see exoneration cases. You see the media’s flash when they’re walking out of the courthouse. Everybody is excited, and yet quietly sitting at home by themselves is the victim.”

Three of the victims interviewed for this study attended the wrongfully convicted person’s release. In two cases, the victims had spoken out publicly prior to the day of release and had actively supported the exonerations. In the third case, the victim’s family member remembers pulling up to the courthouse and seeing multiple news trucks. “First of all, why [do] these people care and why is this so interesting?” The victim in this case recounted, “I remember when I walked in and I looked at [the wrongfully convicted person, I thought,] ‘They don’t have on those old orange suits.... They’re all dressed up.’ And I’m sitting there and I’m looking at them, and I think, ... ‘I’m hurt so bad and they’re so happy. They’re so happy and I am hurting so bad.’”

One service providers noted that for victims who are not interested in engaging with the media, “The biggest fear these victims have ... is being identified, ... especially because they’ve moved on. It was [many years] ago. A lot of them don’t want their families to know it even happened.” This sentiment was also expressed by a victim:

In 48 hours I went from feeling very safe and secure to not only having to tell my [kids that I had been victimized], but that the [wrongfully convicted person] was about to get out. And I had to tell some of their friends and family members because they were very close to my kids, and nobody could promise me it wasn’t

going to be in the news.... [The law enforcement officer] said, 'I have to warn you, it might be in the news.'

Some victims also reported that the media coverage had a noteworthy impact on their family members. One victim recalled, "So then when this article appears in the [newspaper], you know, friends ... out there kind of recognized the details.... [My family member] felt like it was happening all over again.... [My family] felt horrible for me, but it was really tough for [them]. It was like, 'Oh my God, this is never going to end. I can't put this behind me.'"

For the cases examined in this report, the media only identified the victims who chose to speak out publicly. That said, a few victims noted that their victimization occurred before the existence of pseudonym laws; the names of these victims can still be found in old court documents. In addition, in smaller communities, community members were often able to identify the victims even if their names were not explicitly stated in news reports.

In some cases, attorneys, law enforcement, or service providers served as the primary point of contact for media inquiries. These individuals assessed the media opportunities, only passing along the opportunities that they thought would be of interest and benefit to the victim. These individuals often vetted questions before the interviews, and ensured that media personnel respected the victim and remained within the agreed-upon topics.

The media served as a source of information for a few victims. One victim, who was not in contact with criminal justice officials, developed a close relationship with a reporter during the exoneration. This reporter served as the victim's primary source of information and provided the victim with regular updates throughout the exoneration process. Through this relationship, the victim was able to publish an anonymous statement in the press following the exoneration. This victim acknowledged that the ability to provide such a statement was due, in large part, to the ethics of the individual reporter; in other cases, victims made comments to reporters "off the record" that were later included in news reports.

For many victims, the media attention is ongoing and will ebb and flow depending on the news cycle and other related events (e.g., other wrongful convictions in the media, court proceedings on related litigation). Other case studies continue to receive media attention because the wrongfully convicted person and/or the victim continue to actively engage the media and share their stories.

### 3.3.5 Meeting the Wrongfully Convicted Individual Post-Exoneration

In seven cases, victims who did not previously know the wrongfully convicted person chose to meet with the wrongfully convicted person and/or their family members following the exoneration. The circumstances that led to these meetings varied and were specific to each of the cases. One victim, for example, reported only being able to meet the wrongfully convicted individual after the actual offender was identified. This victim said, "A year ago ... everything about [the wrongfully convicted person] was vile, dirty, and disgusting. I couldn't even look at a picture.... And I actually gave [the wrongfully convicted person] a hug and actually gave [the wrongfully convicted person's significant other] a hug. I don't know; it was very healing. I couldn't have gotten there had they not found [the actual offender], because if I didn't have living proof of [the actual offender], I couldn't have been there."

In the majority of the cases, third-party representatives for the victim and/or the wrongfully convicted individual initiated and planned the meeting. The meetings generally took place at a location that was deemed to be neutral for both the victim and the wrongfully convicted person, and were attended by the victim, the wrongfully convicted individual, and support systems for one or both parties (e.g., law enforcement, family members).

Victims reported being nervous, and some recalled their anxiety manifesting itself physically prior to the meeting. A few victims who provided eyewitness identification remembered being afraid that the wrongfully convicted person would hate them or possibly try to hurt them. In two cases, law enforcement spoke with the wrongfully convicted individual to assess their attitude toward the victim prior to the meeting.

"It was really interesting, because I was so nervous. I thought, you know, my heart could be heard, thumping."

- Victim

One of these officers explained, "I had already spoken to [the wrongfully convicted person].... [They'd] told me personally that [they'd] already forgiven everybody that was involved in the case and [they] really seemed to have no animosity toward anybody, including [the victim]. So, I felt a little more at ease about the meeting taking place."

In all of the interviewed cases, victims reported that meeting the wrongfully convicted individual was a positive experience. In these cases, each of the wrongfully convicted persons expressed their forgiveness toward the victim, said that they did not blame the victim, or expressed sympathy for the crime that occurred. One victim described the encounter, saying

I remember thinking I was going to faint; I was going to throw up. I was shaking. I had really prayed hard as to what I was going to say.... And as soon as [the wrongfully convicted person] walked into the room, I just started to cry. I told [the wrongfully convicted person], 'If I was sorry for every minute of every hour of every day for the rest of my life, it would never be enough. I'm so sorry for what happened to you. Is there any way that you could forgive me?' [The wrongfully convicted person] just took my hand and started crying and said, 'I forgave you years ago.' It was like all of the broken pieces in my body, I could feel it starting to come back together and heal.... [The wrongfully convicted person] said, 'I don't hate you. I don't want to hurt you. I want us both to have a great life.' And then we just spent time talking about being a part of a system that fails people, and being victims of [the actual offender] and what those years were like for each one of us. [The wrongfully convicted person] had questions [they'd] always wanted to ask me, and [they] asked me. And I had questions I needed [answered] ... and I asked them.

Another victim expressed that meeting with the wrongfully convicted individual allowed them to continue healing and move past the impact of the exoneration. This victim explained, "There was so much guilt on my part.... If I wouldn't have met [the wrongfully convicted person] and spoke to [them] myself, I don't think I could have lived with myself. It was horrendous to know that I had done something like that to somebody. It was the worst.... And that's what I needed; I needed to own up to the part I played and sit in a room with [the wrongfully convicted person] and say, 'I'm sorry.'"

Several victims said that, over the years, the wrongfully convicted individual had become a "monster" in their mind. Victims reported that meeting the wrongfully convicted person helped ameliorate their fear. One victim explained, "Immediately [the wrongfully convicted person] was



erased from that nightmare. That changed everything for me. It helped me to start healing. Because [the wrongfully convicted person] had forgiven me, I wasn't terrified. I realized [the wrongfully convicted person] didn't hate me. I could remove [that] face from my nightmares."

In a few of the cases, the victim and the wrongfully convicted individual developed a friendship following their meeting. In some of these cases, the victim and the wrongfully convicted person have spoken together publicly and/or worked together to reform the criminal justice system. One victim explained, "My opinion was it wasn't just my story. So, I refused to do anything unless

"And the odd thing is, we've become best friends.... Like I told [the wrongfully convicted person], I said, 'I hated you so bad.' Boy, oh I hated [the wrongfully convicted person] so bad.... And then we've become friends. I know that's weird.... I felt sorry for [the wrongfully convicted person], you know, 'cause [they] had been through so much like what I had been through."

- Victim

[the wrongfully convicted person] wanted to do it together." Another victim stated, "There will always [be] this weird, messed up bond [between the wrongfully convicted person and myself]. [The actual offender] messed up our lives and our families' lives." Other victims reported having regular contact with the wrongfully convicted individual, but said that hearing the wrongfully convicted person's story was difficult.

In a few other cases, victims mentioned that they had had uncomfortable interactions with the wrongfully convicted person after the initial meeting. In one case, the wrongfully convicted individual asked the victim for money. In another case, the victim ceased contact due to the wrongfully convicted person's mental health issues.

### 3.3.6 Peer Support

Five of the eleven victims interviewed for this study had contact with other victims whose cases involved a wrongful conviction. It should be noted that this may reflect the use of snowball sampling, and the fact that some of the victims in these case studies had prior relationships with one another.

According to the victims interviewed for this study, peer support enables victims to talk with other people with whom they can identify; ask and offer advice regarding the exoneration process and dealing with the media; and better process their own experiences. One victim explained,

I have been in contact with several [victims] that have been in the same place as I have.... The things we all have in common is this incredible sense of blame. This is my fault. We're a bad person. How could I have made such a mistake? And then comes fear. Oh my God, is this person going to retaliate? Is their family going to retaliate? And then the third thing that happens is a sense of judgment from the community.... Those are some of the things that I have found to be common with all of us.... Those three patterns of incredible blame, terrible fear, and looking at the world as judging us as bad people.

Many victims described their experience as isolating, noting that peer support helped to alleviate this feeling. This was especially true for the victims who had misidentified the wrongfully convicted individual. One of these victims explained, "I think it was the fact that [the other victim] stood up in court and said, '[The wrongfully convicted person] did it,' and it wasn't [the wrongfully convicted person].... That was huge. How could I make this mistake? I'm [smart]. I'm a nice, loving person. How could I have done this? Well, [the other victim] is [smart] and ...



looks like a nice person, and [the other victim] did it and ... felt awful. And [I thought,] ‘Oh, somebody else did it ... I’m not the only one.’”

In some cases, the victims had provided peer support to other victims. A few of these victims noted that speaking with other victims helped them process their own experiences. One victim recalled, “I called [the victim], and I basically, I think said ... everything that [another victim] said to me. It was like this light bulb went off. I would never judge [that victim], or [another victim], as severely as—or judge them at all—the way that I’ve been judging myself. It was an ‘aha’ moment, like ‘Oh my God, now I get it.’”

Most of the victims interviewed for this study indicated that they would be willing to be in touch with other victims whose cases had been wrongfully convicted.

Some had granted permission for the District Attorney’s Office and/or service providers to share their contact information with other victims. One victim who has provided peer support on multiple occasions noted that not all of the victims who are provided with their contact information follow up to receive peer support. According to this victim, it is important for victims to take ownership of the decision regarding whether or not to reach out for peer support.

Peer support was generally described as being the most beneficial when peers engaged one-on-one; some victims who engaged with peers in a group setting reported feelings of anxiety preceding and/or during the group sessions. It also should be noted that all of the victims interviewed for this study who received peer support were direct victims of a crime (i.e., not family members of victims in cases of murder); therefore, additional research is needed to explore the benefits of peer support for victims (i.e., family members) in cases of murder.

### Social Support

A number of victims spoke about the support their parents, partners, extended family, coworkers, and friends provided to them during the exoneration process. In some cases, criminal justice officials integrated this support into their victim response, inviting family to be present during meetings and other related activities. For others, this support came outside of the official process. A family member in one case recalled, “I remember ... the day that they were [going to] release [the wrongfully convicted person].... We descended on the courthouse in a flock, I mean everybody ... we were all there.” A few victims recalled telling their employers about the exoneration, and receiving support from their supervisors and colleagues.

The extent to which victims relied on friends and family for support varied across cases. Some victims reported that their friends and family would have provided support if they had asked them, but that they often did not bring up the wrongful conviction in conversation because they recognized that it was a difficult topic for people to relate to and discuss. One victim explained, “You don’t get it. If you haven’t been through it, you don’t get it.” In one case, a victim without a strong support system turned to the officials on the case for support. This victim explained, “To be honest with you, I made this office my family.”

## 4. Discussion, Recommendations, and Implications

Findings from this study highlight the significant impact that wrongful convictions have on victims, in particular, the emotional and psychological consequences. The notification process, access to information and services, media attention, community reaction, and interaction with the criminal justice system and the wrongfully convicted individual were identified as key factors associated with victim experiences of wrongful conviction. Case factors, such as victims’ participation in the original trial (e.g., misidentifying the wrongfully convicted person), the availability of DNA evidence during the exoneration, and the identification and prosecution of the actual offender were also associated with victim experiences. The impact of these factors was not mutually exclusive, but rather interconnected and dependent. For example, victims who misidentified the wrongfully convicted individual reported that information on eyewitness identification and memory helped them understand the context in which the misidentification

occurred. Similarly, victims reported that counseling services and peer support helped them cope with the media attention and community reaction to the wrongful conviction.

As part of the case study interviews, victims and other key stakeholders were asked to make recommendations and identify lessons learned based on their experiences. This section provides an overview of stakeholders' recommendations for practice, and discusses implications for policy. The section concludes with a discussion of the study's limitations.

## 4.1 Recommendations for Practice

The victims and stakeholders interviewed for this study provided recommendations for improving the provision of notification, information, and services. Stakeholders also discussed the important role that training can play in enhancing the criminal justice system's response to victims.

### 4.1.1 Victim Notification

Across case studies, there was general agreement that initial notification should be provided proactively and come from the criminal justice system. Victims and other stakeholders also recommended that, when appropriate and feasible, notification should be provided by the officials involved in the original case. As one member of law enforcement explained, "To have a victim be contacted by somebody that he or she doesn't know, has never met, who in [the victim's] mind has no stake in the case, who has no history in the case, I think would be more problematic than ... having somebody that's known by the victim." This continuity of personnel also allows victims to get immediate answers to questions they may have about the original investigation and prosecution. Stakeholders did caution that an official from the original case should only be involved in notification if he or she had a positive relationship with the victim and if there were no issues of impropriety.

When someone from the original case is not able to provide notification, many stakeholders suggested having a victim service provider present. Other stakeholders noted the importance of having law enforcement or prosecutors present because "the best person to deliver the news is the one who can answer the questions." One law enforcement officer noted that in cases where there may be additional litigation, "In most cases, it should be law enforcement [who notifies the victim] because you are having to interview, and I would imagine, [in] a lot of cases, you are

"I tried to keep [the victim] up to speed as much as possible ... always being upfront and honest with [the victim].... But it also had to be balanced; there were some things that I couldn't tell [the victim] to protect the integrity of the investigation."

- Law Enforcement

having to re-interview the victim in regards to the matter. And information that a victim advocate may have passed on could taint that interview. I wouldn't have a problem with having a victim advocate there. Their presence in any interview really wouldn't be an issue, [but law enforcement should lead the meeting]."

It was generally advised that, when possible, notification should take place in person. However, many officials noted that victims are often surprised by the initial call, and may request at least some preliminary information over the telephone. One service provider suggested that officers and other officials dress in plain clothes when providing notification in order to avoid unwanted attention or speculation from neighbors and other community members. Service providers noted that in cases where the victim has moved and/or in-person notification is not feasible, telephone

notification is preferred over a letter or other forms of communication. Stakeholders noted that notification and service provision to victims living out of state can be extremely challenging.

When providing notification, stakeholders recommend that officials understand that the victim may have a strong and unpredictable reaction. One interviewee who has provided notification to several victims in cases of wrongful conviction explained, “Be prepared for them to be angry, blame you, hate you. Be prepared for the ones [who are] grateful, ‘Oh, thank you for letting me know.’ Be prepared for the ones that say, ‘Don’t ever call me again, ever.’” Another stakeholder suggested that when making the initial phone call, “[s]tart off the conversation with ... ‘I’m calling you about this case. Is this a good time to talk?’ ... You have to give them that option of saying [‘No.’]”

Recommendations regarding the timing of the initial notification varied across stakeholders. One of the complicating factors identified by this study is the varying amount of time it can take for a wrongful conviction to be confirmed, and the varying amount of time that may pass between this confirmation and the subsequent release of the wrongfully convicted individual. In the interviewed cases, some victims only had hours to prepare for the release of the wrongfully convicted person; others had years. Both victims and practitioners agreed that victims should not be blindsided by the exoneration, or find out after the wrongfully convicted individual has been released. In general, victims expressed a desire to be notified early on in the process. However, one victim who was notified years before the eventual exoneration reflected,

My initial response was, ‘Well, yeah, I really want to be involved in this.’ But ... all I did was think about it. I mean, not constantly, but it was always there. Would it have been better to be ignorant for a while? You know, it was [a long time] from the time I found out [they were] trying to exonerate [the wrongfully convicted person] until the actual DNA came back. That was a long [time]. So, I don’t know the answer to that. I don’t know when a good time to tell a victim is. You know, I appreciated not picking up a newspaper and reading about it.

Law enforcement and prosecutors also expressed a reluctance to disrupt the lives of victims every time there is a claim of innocence or a request for DNA testing. One prosecutor suggested that certain dates, such as the holiday season or the anniversary of the crime, should be taken into consideration before reaching out to a victim.

There was general agreement among officials that having protocols can be beneficial to ensuring that notification is provided in a consistent manner across cases. As one service provider explained, “The more ambiguity and lack of procedural guidelines we have, the worse victims will be treated.”

Victims articulated the importance of being notified in a neutral manner that does not unduly minimize the potential that a wrongful conviction may have occurred. One victim suggested that someone sit with the victim and say,

‘[A] DNA test has been ordered. It’s going to happen. We hope that we got it right, because we certainly don’t want an innocent person in prison, but if we got it wrong, then we need to be prepared for this, and I need to know what it is you think you need. Here’s my contact information if you have any questions. As I learn things, I will let you know.’ ... And when the news comes back, I think the same people need to come back and deliver the news and say, ‘We got it wrong, but it wasn’t your fault; it was nothing you did

wrong, and we're going to do everything we can to help you and to help [the wrongfully convicted person].'

Victims and service providers in jurisdictions with multidisciplinary teams recommended a coordinated response to victims in cases of wrongful conviction. These interviewees noted the importance of having a primary point of contact for the victim, but said that a multidisciplinary response can provide additional support to victims by allowing them to ask questions of and seek assistance from multiple individuals. Service providers, in particular, pointed out that while they are often the primary contact for the victim, some victims may feel more comfortable with, or have preexisting relationships with, other officials involved in the case. As one service provider explained, "People can get very, very territorial about who gets to do what, and I don't think oftentimes that's the best thing for our clients. We need to understand that it takes a village sometimes."

#### Recommendations for Providing Notification

- Initial notification should be provided proactively and come from the criminal justice system.
- When appropriate and feasible, notification should be provided by the officials involved in the original case.
- When possible, notification should take place in person.
- Officials should dress in plain clothes when providing notification
- Notification should take place prior to the exoneration; recommendations regarding the exact timing of the initial notification vary across stakeholders
- Notification should occur in a neutral manner that does not unduly minimize the potential that a wrongful conviction may have occurred.

### 4.1.2 Receiving Information on the Exoneration Process and Case Status Updates

Throughout the case studies, victims noted the importance of receiving information. Victims and stakeholders reiterated the fact that victims are often unfamiliar with the criminal justice system, and need information explaining the exoneration process. Multiple service providers explained that victims want to understand the process, and how their lives, well-being, and safety will potentially be impacted. One victim said, "I needed [someone] to explain the process. 'This is what you can expect.... It'll have to happen this way and they can't take your house [through civil litigation]. You don't have to be scared.' ... Just a, kind of, a little road map so that I knew

"[By asking victims what information they want to receive,] you give victims control. I have one sexual assault survivor who absolutely does not keep track of the offender, absolutely doesn't want to know about it, lives in another state, and frankly doesn't know if [the offender is] alive or dead. If [those victims] were to get notified about something, it would set [them] back. But other people [want] to know every single detail."

- Attorney (Victim Legal Advisor)

what was coming, 'cause I never really knew." In cases involving DNA, victims may need information on DNA and DNA testing. Victims, as well as stakeholders, noted that much of what people know about DNA comes from the media and television. Stakeholders suggested that this information be provided in a simple manner, and use terminology that is understandable to the general public.

Similarly to notification, victims recommend that information be provided in a neutral manner, especially prior to the confirmation of guilt or innocence. Key stakeholders, including law enforcement and service providers, noted that victims usually take a strong position for or against the exoneration; however, it is not always helpful if agencies try to convince them to take a stance in one direction or the other. As one victim noted, "It's not about innocence or guilt. It's about helping the [victim deal with the] emotions.... That person needs to just help them deal with their emotions, ... help them process this."



Recognizing that victims are often unable to absorb the information they are given, some stakeholders suggested leaving printed information with the victim that they can refer back to when they have questions. Officials in one community, for example, have developed a pamphlet on DNA and DNA testing that they use when explaining the process to victims. In addition, victims and service providers recommend that victims be given the name, phone number, and email address for someone within the criminal justice system who they can contact if they have additional questions or concerns. In explaining the importance of providing victims with both a phone number and an email address, one victim who had provided peer support noted, “The biggest thing I found is that almost all ... victims will contact me [through] email; they can’t even talk about it. We just email for 6 months, and then they’ll call me.”

Victims also spoke about the importance of providing victims with complete and ongoing information and case status updates. Underlying this recommendation, one victim stated, “Basically, if anything is happening, I feel like I should be told.... Just give me the facts and tell me what is going on and just let me know.... I’d rather find out through the normal channels.” A law enforcement officer reiterated this sentiment, explaining

You have to be upfront with people. I think people are stronger than what you realize; don’t project what you think they want to hear. These victims deserve to be told the truth. I mean, they dealt with a terrible [crime], they can deal with some verbal bad news, and they’re survivors as it is. Because you lose your own credibility [if you don’t tell them; it becomes] more about you and your agency than it is about taking care of your victim.

Service providers noted that despite the fact that many of the victims interviewed for this study expressed a desire for regular status updates, it cannot be assumed that this will be the desire of all victims. Victims and other stakeholders generally agreed that, during the initial notification, officials should ask victims about what types of information and case updates they want to receive and how they want to receive it. One victim clarified, “To me, the magic wand really would be asking me, ‘Do you want to be notified [as events occur]?’.... I am sure there are people who don’t [want to be notified].... I would rather know than not know. The not knowing is enough to drive you up the wall.... And then once you ask, then you follow through with the information.... To me, if I don’t hear anything, I assume nothing is going on; nothing is happening.”

In addition to being given information during the initial notification and subsequent exoneration, victims noted the need for information following the exoneration. A

#### Recommendations for Providing Information

- During initial notification, victims should be provided with printed information that they can refer back to when they have questions.
- Information should be provided in a simple manner, and use terminology that is understandable by the general public.
- During initial notification, victims should be given the name, phone number, and email address for someone within the criminal justice system who they can contact if they have additional questions or concerns.
- During the initial notification, officials should ask victims about what types of information and case updates they want to receive and how they want to receive it.
- Information should be provided in a neutral manner that does not unduly minimize the potential that a wrongful conviction may have occurred.

number of victims who provided eyewitness identification said that learning how misidentifications may occur<sup>46</sup> was extremely valuable in helping them process and understand the wrongful conviction. Officials noted that it might not be appropriate or legally advisable for law enforcement to provide this information. Victims also said that information on how memories are formed helped them to understand why they continued to see the wrongfully convicted individual when they thought about the crime. As one victim explained,

What helped me was to understand memory. That was just a serendipitous moment for me.... I heard ... about eyewitness [identification] and memory, what happens under trauma, weapon focus, cross-racial issues, the different sequence of events that happened to me from the initial viewing to the initial picking out and all the contaminated memory. And once I understood that it wasn't because I was a bad person or a stupid person, but that my memory became contaminated by this series of events. It was the first time I was able to go, 'Wow, I'm not a bad person.' And that was such a relief for me.

Similarly, another victim recalled that being told about memory helped them to understand why they did not recognize the actual offender as the person who victimized them. The victim recalled, "One of the things that I was warned about was that when I saw a picture of the actual perpetrator, that [they] would not look familiar to me. And [they] did not.... And I think that was important for me to hear."

### 4.1.3 Victim Services

Few victims were offered services during or following the exoneration. Stakeholders and victims acknowledge that these cases are unique, and that the service needs of victims are not uniform and often vary depending on the case. As one victim explained, "[N]o victim is going to need the same thing.... We all have to do whatever we have to do to cope." Recognizing that victims' needs will vary, when asked about service needs, interviewees highlighted the important role that counseling and peer support can play in helping victims in cases of wrongful conviction.

Some, but not all victims interviewed for this study sought counseling services during or after the exoneration. A few victims sought counseling services prior to the exoneration; others

"I think there are going to be victims like [name] who think they don't need services. But I cannot see them literally not needing some kind of [assistance], because the whole DNA process puts them back at the scene of the crime. They are retraumatized all over again. There's no way you can go through that again and not need some kind of help."

- Service Provider

initiated contact with counselors after being notified of the wrongful conviction. Victims who sought counseling identified it as an important step in helping them understand, accept, and learn how to process the wrongful conviction. In addition, victims noted that counseling was also a service need for family members (e.g., significant others, children) who experienced trauma as a result of the wrongful conviction.

Counseling was the most common service need identified across interviewees; however, a number of victims pointed out that mental health providers generally have limited or no experience working with victims in cases of wrongful conviction. One victim who sought out

<sup>46</sup> For example, the impact of stress, trauma, cross-race effect, and weapon focus on encoding memories. See the University of Texas at El Paso's Eyewitness Identification Research Laboratory ([http://www.nlada.org/forensics/for\\_lib/Documents/1104948589.13/bibliographies.html](http://www.nlada.org/forensics/for_lib/Documents/1104948589.13/bibliographies.html)) for a list of bibliographies citing research on eyewitness identification.



counseling services noted, “The only thing [the counselor] could say was, ‘Wow. What an interesting story.’ ... [I] needed a little bit something more than that.... By the second visit... [the counselor] asked if he could go and research online, and I’m thinking, ‘Okay, so you don’t

“[As service providers and officials,] you know from the outside looking in that there is a need, but you don’t know what the need is unless we can tell you. The tough thing is that sometimes we can’t tell you. Even now, there are so many question marks for me and my situation, as I’m sure there are for [other victims].”

- Victim

believe me?’ I wasn’t sure really where he was coming from.... [Then he asked,] ‘Do you need medication?’ ... All I really needed was somebody to listen.” Another victim, who recognized the need for counseling, expressed similar sentiments, “I needed counseling from the first day. Knowing me, if someone had offered it, I probably would’ve thought I [can] do this on my own. And part of it is who ... was going to talk to me about it? If you’ve

never walked down that road, how are you going to tell me which way to turn? Part of it was my personality thinking I could do this on my own, and the other part of it [was] who can possibly understand what I am experiencing?”

A service provider who has provided mental health services to this population recommended that counseling services be provided by someone who has been trained to work with, and has experience working with, victims of trauma. This service provider explained, “[Counseling needs to be provided by] fully licensed individuals who are trained in trauma.... This is not a case that you put an intern on.” Another service provider agreed, saying “Counseling is probably the biggest thing.... They are sent through so many emotions. They’re still in the grieving process. Not that you ever really quit grieving ... but they’re having to face all these other issues, too.... It is such a roller-coaster ride of emotions.”

Given the unique nature of these cases, interviewees also recommended making peer support available. A number of victims recommended that a national network be established to facilitate peer support across jurisdictions, advising that this network be operated by a neutral victim-centered third party. Victims suggested matching victims with peers based on the crime and the details of the case (e.g., eyewitness misidentification as a contributing factor to the wrongful conviction). Victims, as well as service providers, noted that many victims are willing to provide peer support; however, not all victims may be able to serve as a peer support without compromising their own or another victim’s emotional well-being.

In addition to counseling and peer support, some victims and stakeholders also suggest that victims and wrongfully convicted individuals be given the opportunity to meet. Victims in these case studies reported that meeting the wrongfully convicted person was beneficial and a positive experience for them; however, it cannot be assumed that this will be true for all victims. In addition, it cannot be assumed that all victims and wrongfully convicted individuals will want to participate in such meetings. One law enforcement officer who participated in a meeting between a victim and the wrongfully convicted person noted,

[Meeting the wrongfully convicted person is] something that needs to be personally left up to the victim. I would not recommend it one way or the other. I think it’s totally something that needs to be left up to the victim. I think he or she needs to decide based on where they are with ... the case as to whether or not it’s something they think might be helpful to them personally. And they may even [want to] seek some professional advice before they do it. I would certainly not recommend it one way or the other.

The opportunity for the victim and the wrongfully convicted person to meet was often discussed within the framework of restorative justice. However, more research is needed to examine the use of victim-offender mediation as a restorative justice practice that could be adopted and used with victims and those who have been wrongfully convicted.

A few victims and stakeholders, including attorneys, noted the importance of ensuring that victims have access to independent legal counsel, especially in cases when there is criminal or civil litigation following the exoneration. One attorney noted that “there are real risks” for victims who provided eyewitness testimony, including threats of criminal charges (e.g., perjury, obstruction of justice). Attorneys also noted that there can be a conflict of interest in cases of wrongful conviction when the victim’s advocate is based in the prosecutor’s office. Attorneys recommended that all victims in cases of wrongful conviction be able to access independent legal counsel, where they can freely and confidentially express their fears, concerns, and doubts. One attorney suggested that counsel have expertise in criminal defense, as well as training and experience working with victims who have experienced trauma. More research is needed to examine the legal considerations and potential liabilities for victims in cases of wrongful conviction.

Finally, victims and service providers noted the genuine fear experienced by many victims, and the need for safety planning. One service provider explained that regardless of whether there is an actual threat, victims who perceive a threat fear for their safety and the safety of their family. This provider suggested that law enforcement should assess victims’ homes to address safety issues and help alleviate victims’ fears. In addition, some victims noted the importance of receiving a current photo of the wrongfully convicted person.

#### Recommendations for Victim Services

- Counseling services should be provided by someone who has been trained to work with, and has experience working with, victims of trauma.
- A national network should be established and operated by a victim-centered third party to facilitate peer support across jurisdictions.
- Victims and wrongfully convicted individuals should be given the opportunity to meet each other.
- Victims should be able to access independent legal counsel.
- Victims should be provided safety planning.

### 4.1.4 Training for Criminal Justice Personnel

In addition to improving notification and service provision for victims in cases of wrongful conviction, training was identified as another vehicle through which the criminal justice system can enhance its ability to serve these victims. Criminal justice professionals recommended that law enforcement, prosecutors, and service providers receive training on issues directly and indirectly related to wrongful conviction. Some of the topics

“So when [the forensic lab] called and said it didn’t match, I was just dumbfounded.... I could hardly speak.... I was so convinced of their guilt to begin with.... I wouldn’t have walked into the courtroom if I didn’t think they were guilty ... beyond a reasonable doubt; so ... when this all happened, it was like being turned upside down.... It’s just stunning. I mean, it leaves you speechless actually.... It’s hard to accept they actually really didn’t have anything to do with it; but over time, you come to realize ... that’s a fact.”

- Prosecutor

suggested by stakeholders included the following: (1) victims’ right to notification and information, (2) engaging victims without unduly influencing them, (3) the impact of trauma, and (4) the impact of a wrongful conviction. Stakeholders suggested inviting victims to present their experiences as part of the training. As one prosecutor noted, “I don’t think anyone can listen to their stories ... and not think differently about prosecuting cases.” Another attorney described this

gap in training by stating, “I also think there should be more ... instructions for prosecutors on the harm of revictimization when this happens. There is such a desire for convictions and moving cases, but I don’t think prosecutors think about the impact that you are now bring on the victims [when there is a wrongful conviction].”

Stakeholders also noted that these trainings should be provided to all criminal justice professionals, and suggested incorporating such training into existing training academies (e.g., police and prosecutorial academies, national and state victim assistance academies).

Training can also be used as a format for addressing issues related to secondary trauma.<sup>47</sup> A number of officials, especially those who participated in the original investigation and

“It was upsetting to all of us.... I mean, there’s this kind of feeling of ‘I wish I wouldn’t have been part of this.’ I don’t like that. I mean, you know, I work in a prosecutor’s office ... it’s all about justice. It’s all about doing the right thing.”

- Service Provider

prosecution, reported the strong emotional impact that the wrongful conviction had on them as individuals. More research is needed to fully examine the impact of wrongful convictions on criminal justice professionals and service providers; however, findings from this study indicate that secondary impact does occur. With

regards to the wrongful conviction, one prosecutor stated, “It attacked my sense of values. I can’t imagine what [the victim] was going through.... It challenged all of the values I had.” Another provider recalled,

It was very devastating.... You have an out-of-body experience where you just kind of like shut down ... having known what that family had already been through.... And then having to make that phone call and to be in touch with them. It was just something you really can’t describe because you kind of go, ‘Really? ...is this happening?’ ... I can remember the day; it was like our office just [kind of] was on shutdown.... I can remember my boss went home physically... sick over the whole thing.

## 4.2 Implications for Policy

In addition to informing and enhancing service provision to victims, findings from this report have important implications for policy. In particular, findings indicate a need to ensure that the actual offender is convicted, and to guarantee victims access to services in cases where a wrongful conviction occurs.

### 4.2.1 Ensuring the Conviction of Actual Offenders

Interviewees noted that one of the primary ways to assist victims in cases of wrongful conviction is to reduce the chance of a wrongful conviction occurring. As one prosecutor stated,

I think it all starts out with the initial crime.... The mentality of some [prosecutors is] that we have to get a conviction here no matter what, even if we might have some doubts. In the end, [this] harms victims more than anything because [the victim was led] to believe this was their assailant. They live with that. They feel

<sup>47</sup> Secondary trauma is “the natural consequent behaviors and emotions resulting from knowing about a traumatizing event experienced or suffered by a person” (Figley, 1995, p. 7).

sometimes ... personally responsible for that. And it's tough enough to go through a crime without later finding out that you got the wrong person.

The review of known cases identified eyewitness misidentification, invalidated/improper forensic science, false confessions, false testimony, informants/snitches, government misconduct, and ineffective legal counsel as contributing factors to wrongful convictions. A sizable amount of research has been conducted illustrating the limitations of eyewitness identification when not conducted under evidence-based guidelines; the accuracy of forensic science practices outside of DNA analysis; and the link between interrogation tactics, coercion, and false confessions (e.g., Committee on Identifying the Needs of the Forensic Sciences Community, 2009; Davis & O'Donohue, 2004; Kassin, Drizin, Grisso, Gudjonsson, Leo, & Redlich, 2010; Meissner & Brigham, 2001; Ofshe & Leo, 1997; Sharps, Janigian, Hess, & Hayward, 2009). However, efforts to integrate research into practice remain slow. A 2007 study by the Justice Project noted, for example, that despite the U.S. Department of Justice's 1999 publication of *Eyewitness Evidence: A Guide for Law Enforcement*, no national training program exists, and no federal agency has been tasked with the responsibility to educate officials about evidence-based eyewitness identification practices (The Justice Project, 2007).

Some of the victims interviewed for this study who have chosen to speak out publicly have joined wrongfully convicted individuals in calling for reforms to the criminal justice system, especially the policies and practices used in eyewitness identification. With many victims describing the wrongful conviction as comparable to, or worse than, the original victimization, some victims argue that wrongful convictions should be framed as a victim's issue in that wrongful convictions victimize the wrongfully convicted individual and also revictimize the victim of the original crime. In addition, when the wrong person is incarcerated, the actual offender remains free to commit other crimes and victimize other individuals. Establishing and enhancing policies and practices to reduce the potential for a wrongful conviction supports victims by ensuring that the offenders who commit these crimes are accurately identified and held accountable.

In addition, the introduction of DNA evidence into the criminal justice system, and the significant role that DNA has played in helping to identify cases of wrongful conviction, raises questions regarding the applicability of statutes of limitations in cases involving DNA evidence. One victim explained,

The other thing that's really big, the one thing that weighs on me worse than anything, that is gut wrenching to me, [is] that you can bring a DNA test to me and say we're going to let this [individual] out based on DNA testing. [This individual is] free.... Now we're going to go do DNA testing; we're going to find the person who raped you, but [because the statute of limitations has passed, we can't prosecute the actual offender].... We let somebody out based on the DNA, but because of the law, we can't put [the actual offender in prison] because of DNA.... Human beings make laws, and so human beings can change the laws.... It's wrong. Change it. That's what needs to happen.

#### 4.2.2 Guaranteeing Victims Access to Notification and Services

Recognizing that wrongful convictions do occur, there is general agreement among victims and stakeholders that policies, procedures, and guidelines should be developed to help the criminal justice system respond to these cases in a victim-centric manner. At both the federal and state



levels, the rights and services afforded to victims whose cases resulted in a wrongful conviction are often not explicitly defined by statute.

At the federal level, the Crime Victims' Rights Act of 2006 (CVRA, 18 U.S.C. § 3771) and the Victims' Rights and Restitution Act of 2006 (VRRRA, 42 U.S.C. § 10607) guarantee rights and services to victims as they proceed through the criminal justice system. In cases of wrongful conviction, the CVRA affords victims' rights during appeals and retrials of the wrongfully convicted individual. Victims are also afforded rights if the actual offender is identified and prosecuted. However, in cases where the statute of limitations has passed or the actual offender is never identified, a victim is no longer guaranteed the legal rights provided under the CVRA. Similarly, according to the *Attorney General Guidelines for Victim and Witness Assistance*, the services provided to victims under the VRRRA may continue after the conclusion of an investigation or prosecution; however, they are not guaranteed and are dependent on available resources (U.S. Department of Justice, 2012). At the state level, thousands of statutes and constitutional amendments guarantee rights and services to victims. However, the majority of these statutes and amendments do not explicitly ensure these rights and services in cases of wrongful conviction.

## VICTIM NOTIFICATION

A few states have begun addressing notification in cases of wrongful conviction. This legislation, however, has focused on notification of post-conviction DNA testing. Hawaii (Haw. Rev. Stat. § 844D-132) and Maine (15 Me. Rev. Stat. § 2138), for example, have passed legislation requiring victim notification of any motion for post-conviction DNA testing. Similarly, Colorado (Colo. Rev. Stat. § 24.4.1.302.5) requires victim notification of a vacated sentence due to post-conviction DNA testing. North Carolina, which has established an Innocence Inquiry Commission, is unique in that it addresses both DNA and non-DNA cases, requiring victim notification when a formal inquiry regarding a claim of factual innocence is granted, regardless of the presence of DNA (N.C. Gen. Stat. § 15A-146).

Current notification legislation could be improved by explicitly adding wrongful convictions to the mandated notification statutes. Legislation needs to consider triggers to notification as they

"There's no reason to bother that victim if there's nothing to test.... [However,] after you verify that there is something to test, ... I'm of the belief that we should tell [the victim] before they test the [inmate] because I think they need to know that [the inmate has asked for a DNA test]. Because even if it comes back that [the inmate] did commit the crime, I think that victim should have the right to write a letter to the [Parole Board] and say, 'Look, this scum raped me 20 years ago. [They] asked for DNA testing and [they] knew it was going to come back that [they] committed the crime, so [they] revictimized me.'"

- Service Provider

relate to both DNA and non-DNA cases, as well as how notifications are to be provided in cases where there is disagreement within the criminal justice system regarding the factual innocence of wrongfully convicted individuals. Despite the fact that a number of jurisdictions have adopted automated systems for providing victim notification (Irazola, Williamson, Niedzwiecki, Debus-Sherrill, & Stricker, 2013), this study's findings suggest that, in cases of wrongful conviction, notification should be provided manually (e.g., in person or through a phone call). Notification could also be enhanced by adding cases of wrongful convictions to criminal

justice agencies' internal notification protocols and procedures. It should be noted that legislation is not required to provide notification to victims in cases of wrongful conviction.

Stakeholders and victims concur that the criminal justice system should be tasked with the responsibility of providing notification services. Implementation of this practice, however, is potentially hindered by the fact that current laws do not require that the wrongfully convicted individual's legal representatives notify the District Attorney's Office prior to contacting the victim directly. Additional research is needed to examine the implications and impact that such legislation would have on all parties involved in a wrongful conviction.

In addition, policies related to wrongful convictions will need to account for preexisting statutes that relate to the potential identification of wrongful convictions (e.g., laws permitting inmates access to DNA testing, laws guiding the testing of rape kit backlogs). Stakeholders note that policies, procedures, and guidelines can help ensure that victims are provided consistent notification, information, and services across cases; however, the uniqueness of these cases also requires the need for flexibility. One law enforcement officer explained,

I understand the desire to set up written policies; guidelines is a better term for it. [However,] when you establish, you know, standard operating procedures and policies that are black-and-white, that becomes problematic because every one of these cases is different, and if you try to set down hard-and-fast rules ... just about every case that comes along [will not] fit completely within that rule set. So guidelines are good, but [they need to be flexible].

Policies, protocols, and guidelines regarding victim notification need to balance the potential for revictimization (especially in cases where DNA testing confirms the guilt of the offender who claims innocence) with victims' rights to information. More research is needed to examine the timing and impact of different notification practices.

## VICTIM SERVICES AND COMPENSATION

Findings from this study indicate the significant impact and noteworthy service needs of victims in cases of wrongful conviction. Stakeholders noted that meeting these need can be hindered by policies and procedures that do not clearly define victims' eligibility for services and compensation in such cases. To date, New Hampshire is the only state to pass legislation that explicitly guarantees victims access to compensation when a petition for post-conviction DNA testing has been filed, and services while the court is considering the petition (N.H. Rev. Stat. § 21-M:8-h).

When asked about the availability of victim compensation in these cases, one service provider explained that, in their jurisdiction, compensation is only available for expenses incurred as a result of an original crime. This provider said, "We had to verify to them that all of this is necessary because of the original crime. If [the victim] hadn't been raped in the first place, [they] would not be going through this exoneration." Other service providers and stakeholders pointed out that even when victims in these cases are eligible for compensation, they may only be eligible for the amount of compensation they were provided at the time of the original crime. In one jurisdiction, victims were only entitled to compensation if they had applied for compensation following the original crime.

A 2003 study funded by the U.S. Department of Justice noted that states have discretion over filing deadlines for crime victim's compensation, which are "generally from six months to three years after the crime" (Newmark, Bonderman, Smith, & Liner, 2003, p. 6). A number of victims whose victimization occurred several years prior to the exoneration said that, at the time of the



original crime, no one had informed them that they were eligible for victim compensation. One victim said, “It would give me so much peace of mind [if someone were able to tell me,] ‘We’re [going to] get you services. We’re [going to] get you whatever you need if you need help financially.’ ... I still haven’t applied because I didn’t know until this [interview] that I [could] apply for victims’ benefits.... It may be too late now for me to do it. Do you know how much money I spend on prescriptions?”

Service providers also noted that there are often restrictions regarding eligibility. For example, in some jurisdictions, there must be an open investigation or prosecution; therefore, in cases where the statute of limitations has passed or where the District Attorney’s Office has decided not to pursue a conviction of the actual offender, victims are ineligible for compensation. Providers and victims suggest that service needs extend beyond those of the victim, noting that family members, including children, are often ineligible for services if they were not a witness during the original trial. In addition, certain services, such as group counseling, may not be covered in some jurisdictions.

With the exception of New Hampshire, where legislation is restricted to cases involving DNA, it remains largely unclear whether victims in cases of wrongful conviction are afforded rights and services during and/or after the exoneration. Without legislation that clearly addresses cases of wrongful conviction, the criminal justice system will continue to lack guidance on how to approach these cases, and victims will continue to struggle to get the services and support they need.

### 4.3 Limitations

Although this study expands on what is known about victim experiences in cases of wrongful conviction, it is important to note the limitations. This section identifies the limitations of the review of known cases, the survey of service providers, and the case studies. At the time of the review of known cases, there was no national registry of wrongful convictions; therefore, information gathered from the review of known cases was limited to those cases identified in the review and does not represent an exhaustive list of all wrongful convictions during the designated time period. In addition, some variables could only be coded when explicitly reported (e.g., cognitive/mental health limitations). Finally, care should be taken in interpreting the findings from the review of known cases because the researchers did not compare the demographics and other variables from the identified cases to the overall incarcerated population in the United States.

There were also limitations related to the survey of service providers and the case studies. The primary limitation is the exploratory nature of this study; the findings in this report are not generalizable beyond the specific cases included in this study. The survey of service providers asked respondents to answer questions based on the experiences of one victim to whom they provided direct services or assistance during the exoneration process or post-exoneration. This survey requirement, as well as the use of snowball sampling and the voluntary nature of the survey, hinders the generalizability of the survey findings. In addition, findings from the survey of service providers should be interpreted with caution due to the small sample size.

With regard to the case studies, the victims and key stakeholders interviewed for this study represented 11 cases; therefore, although their experiences provide important insight and information for practitioners and policymakers, the findings from these case studies are not generalizable. Similar to the survey of service providers, generalizability is hindered by the

voluntary nature of the case studies, the use of snowball sampling, and the fact that individual cases were identified and victim participation confirmed through third parties. The findings are also limited by the researchers' ability to interview all officials and victims<sup>48</sup> involved in these cases. Finally, despite all case studies falling into the inclusion criteria for this study,<sup>49</sup> it should be noted that local officials involved in a few of these cases believed that the wrongfully convicted individual had been involved in the crime and therefore the case should not be classified as a wrongful conviction.

## 5. Conclusions

Findings from this study highlight the significant impact of wrongful convictions on victims, as well as the dearth of services available to this population. In summarizing the overall impact of the wrongful conviction, one victim said, "For [several] years, I had been quite comfortable with my role as the victim. When the exoneration happens, that exoneree becomes the victim, and I, the rape victim, become the offender. The roles switch, and it's a role you don't know what to do with. And the world is saying 'How could you have made such a terrible mistake?'" The experiences of and recommendations offered by these victims and stakeholders can begin to inform the work of other practitioners as they assist victims in cases of wrongful conviction. In addition, policymakers and administrators can use the findings from this study to guide the development and enhancement of related policies and protocols.

The findings from this study, however, also highlight the need for additional research. To the extent possible, research should be conducted to assess how victim experiences differ based on demographics, the type of crime, and the factors associated with the conviction and subsequent exoneration. To understand how to best assist victims in cases of wrongful conviction, additional research is needed to assess the impact of different notification practices and subsequent victim services

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<sup>48</sup> Some cases had multiple victims.

<sup>49</sup> All cases were identified as wrongful convictions by the Innocence Project, the Northwestern University School of Law, Centurion Ministries, State Innocence Projects, or other institutions dedicated to tracking cases of wrongful conviction.

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## Appendix A: Study Instruments

## Survey of Service Providers<sup>1</sup>

### Introductory Disclaimer:

*This survey is being conducted by ICF International to assess the perspectives of victim service providers as it relates to the experiences of crime victims in cases of wrongful conviction (for the purposes of this study, wrongful conviction is defined as a case in which a government entity determines that the originally convicted offender **factually** did not commit the crime). Specifically, this study focuses on victims' experiences in non-federal cases of violent crime (i.e., aggravated assault, rape, and robbery) and family members of victims (co-victims) in cases of murder and non-negligent manslaughter. Findings from this study will assist policy makers, judges, lawyers, law enforcement, and victim service providers in better understanding and meeting the needs of victims (e.g., examining the issue of victims compensation in cases of wrongful conviction) by identifying the range and frequency of issues victims face in cases of wrongful conviction.*

*Participation in this survey is voluntary; you may choose not to answer any question, or stop participating at any time. The information you give us is confidential. Responses to survey questions will be reported in aggregate and never identify you or your agency. Please answer the questions to the best of your ability without seeking additional information from the victim or outside individuals. If you have any questions about the assessment or this process, please feel free to contact the ICF Project Manager, Erin Williamson at [EWilliamson@icfi.com](mailto:EWilliamson@icfi.com) or by telephone at 703-934-3000 or the chairperson of ICF International's Institutional Review Board, Janet Griffith at [JGriffith@icfi.com](mailto:JGriffith@icfi.com) or by telephone at 703-934-3000.*

### I. Introduction

For the purposes of this survey, wrongful conviction is defined as: *a case in which a government entity determines that the original convicted offender **factually** did not commit the crime.*

Based on the above definition, have you ever provided direct services or assistance to a victim in a case of wrongful conviction? (Note: respondents who answered "No" or "Don't know" were prompted to the end of the survey.)

- Yes
- No
- Don't know

*If yes, have you worked with such a victim in a non-federal case of violent crime (i.e., aggregated assault, rape, murder, non-negligent manslaughter, or robbery)? (Note: respondents who answered "No" or "Don't know" were prompted to the end of the survey.)*

- Yes
- No

### II. Background

What state is your agency located in? \_\_\_\_\_

Select the type of entity that best describes the agency/organization you work for: (check only one)

- Non-profit organization

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<sup>1</sup> Service providers include individuals tasked with providing direct social services (e.g., case management, mental health services) to victims.

- Criminal justice government agency
- Non-criminal justice government agency
- Other, *please describe*: \_\_\_\_\_

*If criminal justice government agency, please select the system that best describes where you work: (check only one)*

- |                     |   |
|---------------------|---|
| - Corrections       | - Probation                             |
| - Court/prosecution | - Military                              |
| - Juvenile justice  | - Tribal justice                        |
| - Parole            | - Other, <i>please describe</i> : _____ |
| - Police            |   |

How many victims (or co-victims in cases of murder and non-negligent manslaughter) have you provided direct services or assistance to during the exoneration process or post-exoneration:

- In the past year: \_\_\_\_\_
- In the past 5 years: \_\_\_\_\_
- In the past 10 years: \_\_\_\_\_

*For the below questions please think about **\*\*just\*\*** one victim or co-victim (herein referred to as “the victim”) in a non-federal case of violent crime (i.e., aggregated assault, rape, murder, non-negligent manslaughter, or robbery) to whom you provided direct services or assistance during the exoneration process or post-exoneration. Please answer the questions to the best of your ability without seeking additional information from the victim or outside individuals. Additionally, please do not provide any identifying information in your written responses.*

### III. Demographics

Is the victim female or male?

- Female
- Male

What is the race of the victim? *(check all that apply)*

- |                                    |   |
|------------------------------------|---|
| - American Indian or Alaska Native | - Hispanic or Latino                        |
| - Asian                            | - Native Hawaiian or Other Pacific Islander |
| - Black or African American        | - Don't know                                |
| - Caucasian                        |   |

What age was the victim **at the time of the crime**?

- |         |              |
|---------|--------------|
| - 0-18  | - 50-59      |
| - 19-29 | - 60-69      |
| - 30-39 | - 70+        |
| - 40-49 | - Don't know |

What was the victim's estimated family income **at the time of the crime**?

- |                       |                        |
|-----------------------|------------------------|
| - \$0 - \$25,000      | - \$75,001 - \$100,000 |
| - \$25,001 - \$50,000 | - More than \$100,000  |
| - \$50,001 - \$75,000 | - Don't know           |

What type of setting did the victim reside in **at the time of the crime**?

- |            |              |
|------------|--------------|
| - Rural    | - Urban      |
| - Suburban | - Don't know |

What type of crime did the wrongful conviction case represent? *(check all that apply)*

- Aggravated assault
- Murder
- Rape
- Robbery
- Other, *please describe:* \_\_\_\_\_
- Don't know

Did the victim know the convicted individual prior to the crime?

- Yes
- No
- Don't know

*If yes, what relationship did the victim have to the convicted individual? (check all that apply)*

- Child
- Co-worker
- Friend
- Mother/father (including step-parents)
- Mother-in-law/father-in-law
- Neighbor
- Romantic partner/spouse
- Other family member
- Other, *please describe:* \_\_\_\_\_
- Don't know

#### IV. The Original Trial

Did the victim identify the convicted individual (i.e., provide eyewitness identification) as part of the initial investigation or at trial?

- Yes
- No
- Don't know

Did the victim participate in the original trial?

- Yes
- No
- Don't know

Did the victim participate in the sentencing process (e.g., provide a victim impact statement)?

- Yes
- No
- Don't know

What were the leading causes of the wrongful conviction? *(check all that apply)*

- Ineffective legal counsel
- Eyewitness misidentification
- False confessions
- Government misconduct
- Informants or snitches
- Invalidated or improper forensic science
- Other, *please describe:* \_\_\_\_\_
- Don't know

What process was used for the exoneration?

- Acquitted with a new trial/grand jury declined to re-indict
- Pardon
- Sentence vacated/verdict thrown out
- Other, *please describe:* \_\_\_\_\_
- 

What was the basis for the exoneration? *(check all that apply)*

- Discreditation of prior evidence
- DNA
- New evidence (non-DNA)
- Offender confessed
- Recanted testimony by someone other than the victim

- Recanted testimony by victim
- Other, *please describe*: \_\_\_\_\_

## V. Notification of Exoneration

How did the victim first learn about the exoneration and/or initiation of a process to consider exoneration? (*check all that apply*)

- Automated notification (e.g., automatically generated letter/email/phone call)
- Contacted by the court
- Contacted by law enforcement
- Contacted by a victim advocate from a community-based organization
- Contacted by a victim advocate from the Department of Corrections
- Contacted by a victim advocate from the prosecutor's office
- Media source (e.g., on television, by a reporter contacting him/her)
- Other, *please describe*: \_\_\_\_\_
- Don't know

When did the victim first learn about the exoneration and/or initiation of a process to consider exoneration?

- Prior to the exoneration
- Post-exoneration
- Don't know

What was the victim's initial reaction to learning about the exoneration and/or initiation of a process to consider exoneration? \_\_\_\_\_

When the victim first learned about the exoneration and/or initiation of a process to consider exoneration was he/she provided information on and/or services related to the exoneration process?

- Yes
- No
- Don't know

*If yes, were written and/or established guidelines specific to cases of exoneration used to guide the provision of information and/or services to the victim?*

- Yes, *please describe*: \_\_\_\_\_
- No
- Don't know

## VI. Exoneration Process

How much time passed **between** the conviction and exoneration?

- Less than one year
- 1-5 years
- 6-10 years
- 11-20 years
- 21 or more years
- Don't Know

Did the victim participate in the exoneration process?

- Yes
- No
- Don't know

*If yes, how did he/she participate? (check all that apply)*

- Provided a DNA sample
- Submitted a victim impact statement
- Testified on behalf of the defense
- Testified on behalf of the prosecution
- Other, *please describe*: \_\_\_\_\_



Did the case receive media attention?

- Yes
- No
- Don't know

*If yes, was the **victim's** identity publicized?*

- Yes
- No
- Don't know

## **VII. Impact on the Victim**

Please indicate what impact the crime had on the victim following the initial conviction through post-exoneration: *(check all that apply)*

- |                           |              |
|---------------------------|--------------|
| - Emotional/psychological | - Spiritual  |
| - Financial               | - No impact  |
| - Physical                | - Don't know |
| - Social                  |              |

Were there any post-exoneration safety concerns? *(check all that apply)*

- Danger presented by the actual offender (identified or cold case)
- Danger presented by the wrongfully convicted individual
- There were no post-exoneration safety concerns
- Other, *please describe:* \_\_\_\_\_

## **VIII. Services Received**

When did **you** provide services to the victim? *(check all that apply)*

- Prior to or during the original trial
- Post-conviction but prior to the beginning of the exoneration process
- During the exoneration process
- Post-exoneration

Please indicate what services the victim received through you or another service provider during and following the exoneration process:

- |  |   |
|--|---|
| - Compensation claim assistance (e.g., assistance filling out forms) | - Long-term counseling                                |
| - Court accompaniment  | - Safety planning                                     |
| - Crisis intervention  | - Short-term counseling                               |
| - Information/referrals  | - Transportation assistance                           |
| - Legal and/or criminal justice system advocacy                      | - Victim impact statement assistance                  |
| - Legal services   | - Victim compensation (i.e., the actual compensation) |
|  | - Don't know  |

If other services were provided to the victim, please describe by identifying the period of the judicial process in which they were provided: \_\_\_\_\_

Did the victim need additional services **during the exoneration process** that were not provided and/or not available?

- Yes, *please describe*: \_\_\_\_\_
- No
- Don't know

Did the victim need additional services **post-exoneration** that were not provided and/or not available?

- Yes, *please describe*: \_\_\_\_\_
- No
- Don't know

### IX. Confidence in the Verdict and Contact with the Wrongfully Convicted

Did the victim believe that the individual originally convicted (i.e., the wrongfully convicted individual) of the crime was guilty or innocent at the time of the initial conviction and post-exoneration?

	Initial conviction	Post-exoneration
<b>Guilty</b>	<input type="radio"/>	<input type="radio"/>
<b>Innocent</b>	<input type="radio"/>	<input type="radio"/>
<b>Not sure of guilt</b>	<input type="radio"/>	<input type="radio"/>
<b>Don't know</b>	<input type="radio"/>	<input type="radio"/>

Did the victim have any contact with the wrongfully convicted post-conviction but prior to the beginning of the exoneration process or post-exoneration?

	Post-conviction but prior to the beginning of the exoneration process	Post-exoneration
<b>Yes</b>	<input type="radio"/>	<input type="radio"/>
<b>No</b>	<input type="radio"/>	<input type="radio"/>
<b>Don't know</b>	<input type="radio"/>	<input type="radio"/>

*If yes, please describe the type of contact (e.g., participation in a victim-offender meeting; continuation of a romantic relationship), identifying the time period in which this contact occurred:*

\_\_\_\_\_

### X. Current Status of the Crime

Had the statute of limitations for the crime passed at the time of exoneration?

- Yes
- No
- Don't know

Was the actual offender of the crime ever identified?

- Yes
- No
- Don't know

*If yes, was the actual offender convicted?*

- Yes
- Case is ongoing
- No, *why not*: \_\_\_\_\_
- Don't know

*If no*, is the case considered a cold case?

- Yes
- No
- Don't know

*If yes*, does the victim have access to specialized cold case services?

- Yes
- No
- Don't know

Do you have any additional comments regarding this case and/or the needs of this victim?

\_\_\_\_\_

Do you have any comments regarding victim services in cases of wrongful conviction?

\_\_\_\_\_

If you have provided direct services or assistance to other victims/co-victims during an exoneration process or post-exoneration and are willing to fill out additional assessments so that their experiences can also be part of this important study, please provide your email address and we will send you a paper version of the assessment to complete: \_\_\_\_\_

Thank you for participating in this Assessment. As a reminder, if you have questions or feedback regarding the survey or the content, please contact the Project Manager, Erin Williamson [EWilliamson@icfi.com](mailto:EWilliamson@icfi.com).

## Case Study Overview

Case Study Number<sup>2</sup> \_\_\_\_\_

Victim Demographics		Convicted Person's Demographics	
<b>Sex:</b> <input type="checkbox"/> Male <input type="checkbox"/> Female		<b>Sex:</b> <input type="checkbox"/> Male <input type="checkbox"/> Female	
<b>Race: (check all that apply)</b> <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Caucasian <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Native Hawaiian or Other Pacific Islander		<b>Race: (check all that apply)</b> <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Caucasian <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Native Hawaiian or Other Pacific Islander	
<b>Age at the time of the crime:</b> <input type="checkbox"/> 0-18 <input type="checkbox"/> 40-49 <input type="checkbox"/> 60-69 <input type="checkbox"/> 19-29 <input type="checkbox"/> 50-59 <input type="checkbox"/> 70+ <input type="checkbox"/> 30-39		<b>Age at the time of the crime:</b> <input type="checkbox"/> 0-18 <input type="checkbox"/> 40-49 <input type="checkbox"/> 60-69 <input type="checkbox"/> 19-29 <input type="checkbox"/> 50-59 <input type="checkbox"/> 70+ <input type="checkbox"/> 30-39	
The Crime			
<b>Type of crime (i.e., what was the crime for which the wrongfully convicted individual was convicted): (check all that apply)</b> <input type="checkbox"/> Attempted murder/assault <input type="checkbox"/> Murder <input type="checkbox"/> Sexual assault <input type="checkbox"/> Kidnapping <input type="checkbox"/> Robbery <input type="checkbox"/> Other, please list: _____ <input type="checkbox"/> Rape			
<b>Setting of Crime (Type of setting the victim resided in at the time of the crime):</b> <input type="checkbox"/> Urban <input type="checkbox"/> Rural <input type="checkbox"/> Suburban			
<b>Did the victim know the convicted individual prior to the crime?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what relationship did the victim have to the convicted individual? (check all that apply) <input type="checkbox"/> Child <input type="checkbox"/> Mother/father (including step-parents) <input type="checkbox"/> Romantic partner/spouse <input type="checkbox"/> Co-worker <input type="checkbox"/> Mother-in-law/father-in-law <input type="checkbox"/> Neighbor <input type="checkbox"/> Friend/acquaintance <input type="checkbox"/> Other family member <input type="checkbox"/> Other, please describe: _____			
The Original Trial			
<b>Did the victim identify the convicted individual (i.e., provide eyewitness identification) as part of the initial investigation and/or at trial?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No		<b>Did the victim participate in the original trial?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Did the victim participate in the sentencing process (e.g., provide a victim impact statement)?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No			
<b>What were the leading causes of the wrongful conviction? (check all that apply)</b> <input type="checkbox"/> Eyewitness misidentification by the victim <input type="checkbox"/> False confession/admission <input type="checkbox"/> Government misconduct <input type="checkbox"/> Eyewitness misidentification by someone other than the victim <input type="checkbox"/> Informants or snitches <input type="checkbox"/> Ineffective legal counsel <input type="checkbox"/> Invalidated or improper forensic science <input type="checkbox"/> Other, please describe: _____			
Post-Exoneration			
<b>What was the result of the exoneration process?</b> <input type="checkbox"/> Judicial <input type="checkbox"/> Other, please describe: <input type="checkbox"/> Pardon			
<b>What was the basis for the exoneration? (check all that apply)</b> <input type="checkbox"/> Discreditation of prior evidence <input type="checkbox"/> Offender confessed <input type="checkbox"/> Recanted testimony by the victim <input type="checkbox"/> DNA <input type="checkbox"/> Recanted testimony by someone other than the victim <input type="checkbox"/> Other, please describe: <input type="checkbox"/> New evidence (non-DNA)			
<b>Was the actual offender of the crime ever identified?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, was the actual offender tried and/or convicted? <input type="checkbox"/> Yes <input type="checkbox"/> No		<b>Had the statute of limitations for the crime passed at the time of exoneration?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No	

<sup>2</sup> ICF created internal case study numbers to avoid the use of personally identifiable information.

## Case Study Interview Guide for Victims

**Case Study Number:** \_\_\_\_\_

My name is *(introduce self)*. I work for ICF International. Thank you for agreeing to participate in today's interview. This interview is part of a larger study funded by the United States Department of Justice's (USDOJ) National Institute of Justice (NIJ) examining the needs and experiences of victims in cases of wrongful conviction.

You were selected to participate in this interview because we believe that it is critical to hear from victims directly so that their voices and experiences inform the study's findings. The questions in this interview focus on your experience during and following the exoneration process; it does not include questions about the original crime. Findings from this study will assist policy makers, judges, lawyers, law enforcement, and service providers in better understanding and meeting the needs of victims by identifying the range and frequency of issues victims face in cases of wrongful conviction. We have set aside an hour for this interview, however if you feel that you'd like additional time, we will schedule a follow-up conversation after the hour is over.

Participation in this interview is voluntary; you may choose not to answer any question, or stop participating at any time. While the questions in this interview ask about your personal experience, the information you give us is confidential, and nothing said in this interview will ever be associated with you or anyone else by name. The case studies will be combined with other information to produce a report that will be used to help understand the needs and experiences of crime victim in cases of wrongful conviction.

With your permission, we would like to record the audio of this interview so that we can transcribe the conversation for accuracy. Only the evaluation team will have access to this audio recording. Upon transcription of these recordings, we will destroy the recordings themselves, maintaining only electronic records that do not personally identify any individual.

If you have any questions about this study or this interview process, please feel free to contact the Project Manager, Erin Williamson at [EWilliamson@icfi.com](mailto:EWilliamson@icfi.com) or by telephone at 703-934-3000 or the chairperson of ICF International's Institutional Review Board, Janet Griffith at [JGriffith@icfi.com](mailto:JGriffith@icfi.com) or by telephone at 703-934-3000.

Before we begin, do you have any questions?

If you agree, we will begin the tape now. *(Ask permission to begin taping and proceed with taping according to interviewee's agreement.)*

### CASE STUDY OVERVIEW

To begin I want to show you a sheet that provides an overview of the case to make sure everything is accurate and fill in any missing pieces of information *(review the Case Study Overview and make changes as needed)*. We have compiled this information from public records, and also from information provided by others involved in your case.

### NOTIFICATION

- Can you describe when and how (e.g., by whom, in what form) you first heard or learned about the possibility of the exoneration?

- Was this format (e.g., the people, the timing, the method used) helpful? *Please describe what was and what was not helpful.*
- Were there ways that the notification process could have been improved?
- What was your initial reaction to learning about the exoneration and/or initiation of a process to consider exoneration? What were your expectations about the outcome?
  - Were there issues involving confidentiality (e.g., family members were not aware of the prior victimization)? If so, what role did these play in your response to hearing of the exoneration and/or initiation of a process to consider exoneration?
- When you first learned about the exoneration and/or initiation of a process to consider exoneration, were you provided information and/or services related to the exoneration process? *If yes, please describe.*
  - *If yes, were this information and/or services helpful? Please describe what was and what was not helpful.*
  - *If yes, what agencies/organizations (e.g., court-based victim/witness advocate, law enforcement victim advocate) provided information and/or services? Please list.*
- Were there information and/or services that you did not receive that would have been helpful? *If yes, please describe.*
- Did the case receive media attention?
  - *If yes, was your identity publicized?*
  - *If yes, what impact did media coverage have on you and your family?*
- Did you believe that the individual originally convicted of the crime was guilty or innocent at the time of the initial conviction? After the exoneration?
- Did you have any contact with the convicted individual after the original conviction but before the beginning of the exoneration process? After the exoneration? *If yes, please describe.*

## EXONERATION PROCESS

- How much time passed **between** the conviction and the exoneration?
- How long was the exoneration process (i.e., from the initiation of a process to consider exoneration to the final exoneration decision)?
- To what extent, if any, did you directly participate in the exoneration process (e.g., did you testify on behalf of the prosecution, testify on behalf of the defense, provide a DNA sample, submit a victim impact statement)? *If yes, please describe.*



- *If yes, was your participation voluntary (e.g., did you choose to testify or were you forced to testify through a subpoena)?*
- *If yes, did anyone explain the exoneration process and/or provide support and assistance during the process? If yes, please describe and list agencies/organizations involved.*
- *If no, were you given the option to participate in the exoneration process? If yes, please describe the option and why you chose not to participate.*

## NEEDS AND SERVICES

- What initial reaction did you and your family have when first learning about the possibility of exoneration?
- What, if any, physical, financial, social, emotional, spiritual or other impact was there on you and your family **during** the exoneration process?
- Did you receive information and/or services **during** the exoneration process?
  - *If yes, what services did you receive (e.g., compensation claim assistance, court accompaniment, crisis intervention, information/referrals, legal and/or criminal justice system advocacy, legal services, safety planning, short-term/long-term counseling, transportation assistance, victim compensation, and victim impact statement assistance)?*
  - *If yes, what agencies/organizations provided information and/or services? Please list.*
  - *If yes, when did you first begin receiving these services (i.e., prior to the exoneration process, during the exoneration process, or post-exoneration)?*
- Were you able to access all the information and/or services you felt you needed **during** the exoneration process? *If yes, please describe.*
  - Were there information and/or services that you did not receive that would have been helpful? *If yes, please describe.*
- What, if any, emotional/psychological, financial, physical, social, spiritual was there on you and your family **following the exoneration process**?
  - Were there any post-exoneration safety concerns (e.g., danger presented by the wrongfully convicted individual, danger presented by the original offender)? *If yes, please describe.*
- Did you receive information and/or services **following** the exoneration process?
  - *If yes, what services did you receive (e.g., compensation claim assistance, court accompaniment, crisis intervention, information/referrals, legal and/or criminal justice system advocacy, legal services, safety planning, short-term/long-term counseling,*

transportation assistance, victim compensation, and victim impact statement assistance)?

- *If yes, what agencies/organizations provided information and/or services? Please list.*
- Were you able to access all of the information and/or services you felt you needed **following** the exoneration process? *If yes, please describe.*
  - Were there information and/or services that you did not receive that would have been helpful? *If yes, please describe.*

## OVERALL

- Do you have any additional comments regarding your case and/or how to better meet the needs of victims in cases of wrongful conviction?

## Case Study Interview Guide for Service Providers

Case Study Number: \_\_\_\_\_

Case Affiliation (e.g., victim witness coordinator, non-profit service provider):  
\_\_\_\_\_

My name is *(introduce self)*. Thank you for agreeing to participate in today's interview regarding the needs and experiences of crime victim in cases of wrongful conviction. This study is being conducted by ICF International, in partnership with the United States Department of Justice's (USDOJ) National Institute of Justice (NIJ).

For the purposes of this study, wrongful conviction is defined as a case in which a government entity (such as a court or prosecutor) determines that the originally convicted offender **factually** did not commit the crime. Specifically, this study focuses on victims' experiences in non-federal cases of violent crime (i.e., aggravated assault, rape, and robbery) and family members of victims (co-victims) in cases of murder and non-negligent manslaughter.

You were selected to participate in an interview because of your experience working with victims in one or more cases of wrongful conviction. This interview will ask about your overall experience and perspective, as well as your experience and perspective as it relates to this case, in particular.

Participation in this interview is voluntary; you may choose not to answer any question, or stop participating at any time. The information you give us is confidential, and nothing said in this interview will ever be associated with you, the crime victim, or anyone else by name. The case studies will be combined with other information to produce a report that will be used to help understand the needs and experiences of crime victim in cases of wrongful conviction.

With your permission, we would like to record the audio of this interview so that we can transcribe the conversation for accuracy. Only the evaluation team will have access to this audio recording. Upon transcription of these recordings, we will destroy the recordings themselves, maintaining only electronic records that do not personally identify any individual.

If you have any questions about this study or this interview process, please feel free to contact the Project Manager, Erin Williamson at [EWilliamson@icfi.com](mailto:EWilliamson@icfi.com) or by telephone at 703-934-3000 or the chairperson of ICF International's Institutional Review Board, Janet Griffith at [JGriffith@icfi.com](mailto:JGriffith@icfi.com) or by telephone at 703-934-3000.

Before we begin, do you have any questions?

If you agree, we will begin the tape now. *(Ask permission to begin taping and proceed with taping according to interviewee's agreement.)*

### BACKGROUND

For the purposes of this study "wrongful conviction" is defined as: *a case in which a government entity determines that the originally convicted offender **factually** did not commit the crime.*

- Based on the above definition, to how many victims (or co-victims in cases of murder and non-negligent manslaughter) have you provided direct services or assistance during the exoneration process or post-exoneration:

- In the past year: \_\_\_\_
  - In the past 5 years: \_\_\_\_
  - In the past 10 years: \_\_\_\_
- For these cases, did you provide direct services or assistance prior to the exoneration process or did your involvement begin during the exoneration process or post-exoneration?
  - What has your role and/or interaction with crime victims been in these cases (e.g., notifying the victim of the exoneration and/or initiation of a process to consider exoneration, providing the victim with direct or referral services)?

## NOTIFICATION

- Does your agency have any written and/or established guidelines specific to cases of exoneration that guide the notification process? *If yes, please describe. (Note: if there are written guidelines ask for a copy)*
- Are victims within your jurisdiction notified of exonerations and/or initiation of a process to consider exoneration? *If so, who participates in this process?*
- When does this notification typically take place (e.g., when the convicted individual first requests DNA testing, when the state agrees to DNA testing, after DNA testing has occurred, when the state has decided to drop the charges)?
- What is the typical method of notification (e.g., in-person, phone, letter)?
- When victims first learn about the exoneration and/or initiation of a process to consider exoneration, are they provided information and/or services related to the exoneration process? *If yes, please describe.*

## NEEDS AND SERVICES

- Does your agency have any written and/or established guidelines specific to cases of wrongful conviction that guide the provision of information and/or services to crime victims? *If yes, please describe. (Note: if there are written guidelines ask for a copy)*
- What information and/or service needs do crime victims have upon learning about an exoneration and/or initiation of a process to consider exoneration?
- What services does your agency provide to crime victims in cases of wrongful conviction (e.g., compensation claim assistance, court accompaniment, crisis intervention, information/referrals, legal and/or criminal justice system advocacy, legal services, safety planning, short-term/long-term counseling, transportation assistance, victim compensation, and victim impact statement assistance)?
- Are services available within your jurisdiction to meet **all** of these needs whether or not provided by your agency? *Please describe.*

- *If no*, do victims need additional services **during the exoneration process** that are not available?
- *If no*, do victims need additional services **post-exoneration** that are not available?
- Are there policies, procedures or practices that **facilitate** victims' access to services during the exoneration process or post-exoneration? *If yes, please describe.*
- Are there policies, procedures or practices that **hinder** victims' access to services during the exoneration process or post-exoneration? *If yes, please describe.*

**CASE SPECIFIC** –*The following set of questions pertain to a specific case (referenced in the case study number) in which the victim has agreed to participate in the study and the service provider agreed to discuss prior to the interview.*

#### Prior Case Involvement

- Did you (or someone else in your agency) provide direct services or assistance to the victim prior to the exoneration and/or initiation of a process to consider exoneration?
  - *If yes*, when did your work with the victim begin (e.g., following the initial crime, during the initial trial, post-conviction but prior to the initiation of a process to consider exoneration)?
  - *If yes*, what services did you provide prior to the initiation of a process to consider exoneration (e.g., compensation claim assistance, court accompaniment, crisis intervention, information/referrals, legal and/or criminal justice system advocacy, legal services, safety planning, short-term/long-term counseling, transportation assistance, victim compensation, and victim impact statement assistance)?
  - *If yes*, did the victim need additional services prior to the initiation of a process to consider exoneration that were not provided and/or not available? *If yes, please describe.*

#### Notification

- When was the victim first notified (e.g., when the convicted individual first requested DNA testing, when the State agreed to DNA testing, after DNA testing had occurred, when the State decided to drop the charges)?
- Were you involved in notifying the victim about the exoneration and/or initiation of a process to consider exoneration?
  - *If yes*, what was the victim's initial reaction to learning about the exoneration and/or initiation of a process to consider exoneration?
  - *If yes*, what method of notification was used (e.g., in-person, phone, letter)?
  - *If yes*, when the victim first learned about the exoneration and/or initiation of a process to consider exoneration was he/she provided information on and/or services related to the exoneration process? *If yes, please describe.*

- Were there issues involving confidentiality (e.g., family members were not aware of the prior victimization)? If so, what role did these play in the victim's response to hearing of the exoneration and/or initiation of a process to consider exoneration?
  - *If yes, how did this impact your involvement with the victim?*

#### Exoneration Process

- How much time passed **between** the conviction and the exoneration?
- How long was the exoneration process (i.e., from the initiation of a process to consider exoneration to the final exoneration decision)?
- Did the victim participate in the exoneration process (e.g., did he/she testify on behalf of the prosecution, testify on behalf of the defense, provide a DNA sample, submit a victim impact statement)? *If yes, please describe.*
- Did the case receive media attention?
  - *If yes, was the victim's identity publicized?*
  - *If yes, what do you believe was the impact of the media coverage on the victim?*
- So far as you know, did the victim believe that the individual originally convicted of the crime was guilty or innocent at the time of the initial conviction? Post-exoneration?
- So far as you know, did the victim have any contact with the wrongfully convicted individual post-conviction but prior to the beginning of the exoneration process? Post-exoneration? *If yes, please describe.*

#### Needs and Services

- What emotional/psychological, financial, physical, social, spiritual or other impact was there on the victim **during** the exoneration process? **Following** the exoneration?
- Were there any post-exoneration safety concerns (e.g., danger presented by the wrongfully convicted individual, danger presented by the original offender)? *If yes, please describe.*
- What were the victim's service needs **during** the exoneration (e.g., court accompaniment, counseling, safety planning)? **Following** the exoneration? How did these needs change over time?
- What services did **your agency** provide to the victim **during** the exoneration (e.g., compensation claim assistance, court accompaniment, crisis intervention, information/referrals, legal and/or criminal justice system advocacy, legal services, safety planning, short-term/long-term counseling, transportation assistance, victim compensation, and victim impact statement assistance)? **Following** the exoneration? How did the needs of (name of the victim) change over time?
- What services did the victim receive from **other agencies during** the exoneration (e.g., compensation claim assistance, court accompaniment, crisis intervention, information/referrals,



legal and/or criminal justice system advocacy, legal services, safety planning, short-term/long-term counseling, transportation assistance, victim compensation, and victim impact statement assistance)? **Following** the exoneration? *Please list other agencies.*

- Were there any policies, procedures or practices that **facilitated** the victim's access to services during the exoneration process or post-exoneration? Were there policies, procedures that **hindered** the victim's access to services during the exoneration process or post-exoneration? *If yes, please describe.*
- In your opinion, to what extent did available services meet the needs of the victim? Did the victim need additional services **during** the exoneration process that were not provided and/or not available? **Following** the exoneration? *If yes, please describe.*

## OVERALL

- Do you have any additional comments regarding this case and/or the needs of the victim?
- Do you have any additional comments regarding victim services in cases of wrongful conviction overall?

## Case Study Interview Guide for Other Key Stakeholders

Case Study Number: \_\_\_\_\_

Case Affiliation (e.g., prosecutor, law enforcement): \_\_\_\_\_

My name is *(introduce self)*. Thank you for agreeing to participate in today's interview regarding the needs and experiences of crime victim in cases of wrongful conviction. This study is being conducted by ICF International, in partnership with the United States Department of Justice's (USDOJ) National Institute of Justice (NIJ).

For the purposes of this study, wrongful conviction is defined as a case in which a government entity (such as a court or prosecutor) determines that the originally convicted offender **factually** did not commit the crime. Specifically, this study focuses on victims' experiences in non-federal cases of violent crime (i.e., aggravated assault, rape, and robbery) and family members of victims (co-victims) in cases of murder and non-negligent manslaughter.

You were selected to participate in an interview because of your experience working with one or more cases involving a wrongful conviction. This interview will ask about your overall experience and perspective, as well as your experience and perspective as it relates to this case, in particular.

Participation in this interview is voluntary; you may choose not to answer any question, or stop participating at any time. The information you give us is confidential, and nothing said in this interview will ever be associated with you, the crime victim, or anyone else by name. The case studies will be combined with other information to produce a report that will be used to help understand the needs and experiences of crime victim in cases of wrongful conviction.

With your permission, we would like to record the audio of this interview so that we can transcribe the conversation for accuracy. Only the evaluation team will have access to this audio recording. Upon transcription of these recordings, we will destroy the recordings themselves, maintaining only written records that do not personally identify any individual.

If you have any questions about this study or this interview process, please feel free to contact the Project Manager, Erin Williamson at [EWilliamson@icfi.com](mailto:EWilliamson@icfi.com) or by telephone at 703-934-3000 or the chairperson of ICF International's Institutional Review Board, Janet Griffith at [JGriffith@icfi.com](mailto:JGriffith@icfi.com) or by telephone at 703-934-3000.

Before we begin, do you have any questions?

If you agree, we will begin the tape now. *(Ask permission to begin taping and proceed with taping according to interviewee's agreement.)*

### BACKGROUND

For the purposes of this assessment wrongful conviction is defined as: *a case in which a government entity determines that the originally convicted offender **factually** did not commit the crime.*

- Based on the above definition, how many cases involving wrongful conviction have you worked on during the exoneration process or post-exoneration:
  - In the past year: \_\_\_\_\_

- In the past 5 years: \_\_\_\_
- In the past 10 years: \_\_\_\_
- For these cases, were you involved in the original investigation and/or prosecution or did your involvement begin during the exoneration process or post-exoneration?
- What has been your role and/or interaction with crime victims in these cases (e.g., notifying the victim of the exoneration and/or initiation of a process to consider exoneration, interacting with the victim during court proceedings, providing the victim with direct or referral services)?

## NOTIFICATION

- Does your agency have any written and/or established guidelines specific to cases of exoneration that guide the notification process? *If yes, please describe. (Note: if there are written guidelines ask for a copy)*
- Are victims within your jurisdiction notified of exonerations and/or initiation of a process to consider exoneration?
  - *If yes, who participates in this process?*
- When does this notification typically take place (e.g., when the convicted individual first requests DNA testing, when the State agrees to DNA testing, after DNA testing has occurred, when the State has decided to drop the charges)?
- What is the typical method of notification (e.g., in-person, phone, letter)?
- When victims first learn about the exoneration and/or initiation of a process to consider exoneration, are they provided information on and/or victim assistance support services related to the exoneration process? *If so, please describe.*

## NEEDS AND SERVICES

- Does your agency have any written and/or established guidelines specific to cases of exoneration that guide the provision of information and/or victim assistance support services to crime victims? *If yes, please describe. (Note: if there are written guidelines ask for a copy)*
- What information and/or service needs do crime victims have upon learning about an exoneration and/or initiation of a process to consider exoneration?
- Are services available within your jurisdiction to meet all of these needs? *Please describe.*
  - Do victims need additional services **during the exoneration process** that are not available?
  - Do victims need additional services **post-exoneration** that are not available?
- Are there particular policies, procedures or practices that **facilitate** victims' access to services during the exoneration process or post-exoneration? *If yes, please describe.*

- Are there particular policies, procedures or practices that **hinder** victims' access to services during the exoneration process or post-exoneration? *If yes, please describe.*

**CASE SPECIFIC** - *The following set of questions pertain to a specific case (referenced in the case study number) in which the victim has agreed to participate in the study and the key stakeholder agreed to discuss prior to the interview.*

#### Notification

- When and how was the victim first notified (e.g., when the convicted individual first requested DNA testing, when the state agreed to DNA testing, after DNA testing had occurred, when the state decided to drop the charges)?
- Were you involved in notifying the victim about the exoneration and/or initiation of a process to consider exoneration?
  - *If yes, what was the victim's initial reaction to learning about the exoneration and/or initiation of a process to consider exoneration?*
  - *If yes, when the victim first learned about the exoneration and/or initiation of a process to consider exoneration was he/she provided information and/or services related to the exoneration process? If yes, please describe.*
- Were there issues involving confidentiality (e.g., family members were not aware of the prior victimization)? If so, what role did these play in the victim's response to hearing of the exoneration and/or initiation of a process to consider exoneration?
  - *If yes, how did this impact your involvement with the victim?*

#### Exoneration Process

- How much time passed **between** the conviction and the exoneration?
- How long was the exoneration process (i.e., from the initiation of a process to consider exoneration to the final exoneration decision)?
- Did the victim participate in the exoneration process (e.g., did he/she testify on behalf of the prosecution, testify on behalf of the defense, provide a DNA sample, submit a victim impact statement)? *If yes, please describe.*
- Did the case receive media attention?
  - *If yes, was the victim's identity publicized?*
  - *If yes, what do you believe the impact of the media coverage was on the victim?*
- So far as you know, did the victim believe that the individual originally convicted of the crime was guilty or innocent at the time of the initial conviction? Post-exoneration?

- So far as you know, did the victim have any contact with the convicted individual post-conviction but prior to the beginning of the exoneration process? Post-exoneration? *If yes, please describe.*

#### Needs and Services

- What emotional/psychological, financial, physical, social, spiritual or other impact **during** the exoneration process was there on the victim? What impact was there **following** the exoneration?
- Were there any post-exoneration safety concerns (e.g., danger presented by the wrongfully convicted individual, danger presented by the original offender)? *If yes, please describe.*
- What were the victim's service needs **during** the exoneration (e.g., court accompaniment, counseling, safety planning)? **Following** the exoneration? How did these needs change over time?
- What services was the victim eligible to receive? Were there any policies, procedures or practices that **facilitated** the victim's access to services during the exoneration process or post-exoneration? Were there policies, procedures or practices that **hindered** the victim's access to services during the exoneration process or post-exoneration? *If yes, please describe.*
- To what extent did available services meet the needs of the victim? Did the victim need additional services **during** the exoneration process that were not provided and/or not available? **Following** the exoneration? *If yes, please describe.*

#### **OVERALL**

- Do you have any additional comments regarding this case and/or the needs of the victim?
- Do you have any additional comments regarding victim services in cases of wrongful conviction overall?