

Exonerations correct only a small fraction of false convictions

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(PhysOrg.com) -- Criminal justice scholars often say that the true number of innocent people convicted of crimes is unknown—in fact, unknowable. A new University of Michigan study challenges that belief in one important context.

Among defendants sentenced to death in the United States since 1973, at least 2.3 percent—and possibly more—were falsely convicted, said U-M law professor Samuel Gross in a study co-authored by Barbara O'Brien, a professor at Michigan State University College of Law.

If defendants who were sentenced to prison had been freed because of innocence at the same rate as those who were sentenced to death, there would have been nearly 87,000 non-death row exonerations in the United States from 1989 through 2003, rather than the 266 that were reported, the study said.

"The main thing we can safely conclude from exonerations of falsely convicted defendants is that there are many other false convictions that we have not discovered," said Gross, whose research has focused on the death penalty, false convictions and eyewitness identification.

Since 1989, nearly all exonerations in the United States fall into three categories: rape convictions, because of post-conviction DNA testing; murder convictions, and especially death sentences, which are subjected to much more detailed post-conviction reinvestigation than other convictions; and a few groups of false drug and gun possession

convictions that were produced by concerted programs of police perjury that later unraveled.

As result, researchers know little about false convictions among crimes of violence other than murder or rape, even though false convictions for robbery could greatly outnumber those for rape and murder. And researchers know next to nothing about false convictions for other types of crimes, such as property crimes, misdemeanors and white collar crimes.

The study did find a couple of strong demographic predictors of false conviction for rape or murder. Black men accused of raping white women face a greater risk of false conviction than other rape defendants; and young suspects, those under 18, are at greater risk of false confession than other suspects.

Gross, the Thomas and Mabel Long Professor of Law, and O'Brien also compared capital cases that ended in exoneration to those that ended in execution. They found that capital exonerations are less common among defendants convicted of murdering more than two victims. They are more common for those convicted of murdering children.

These patterns could reflect differences in the quality of the evidence—and therefore the likelihood of error—based on the age and number of victims, Gross said.

"On the other hand, the low exoneration rate among multiple murder cases may simply mean that defendants who are convicted of killing more than two victims are less likely than others to linger on death row or have their death sentences reduced to life imprisonment," he said.

Capital exonerations also appear to be more frequent among cases in which the criminal investigation was unusually difficult, or where

important items of direct or circumstantial evidence of guilt were missing. Specifically:

- Exonerated capital defendants were less likely to have serious criminal records than those who were executed. Gross said he had expected an opposite result because the police might attach too much weight to a suspect's violent history and pursue weak, and sometimes false, cases against plausible-seeming suspects who had committed other crimes.
- Confessions are three-and-a-half times as common among the executed as the exonerated, 52 percent to 15 percent. Many murder defendants confess, and most confessions are true. Without a confession, especially one that is voluntary, the risk of false conviction increases.
- The pattern for confessions is repeated at trial. Some capital defendants do not actively contest their guilt in court. These tacit admissions of guilt are more common among executed than exonerated defendants who were sentenced to death, 38 percent to 13 percent. In other words, among death-sentenced inmates, the risk that a conviction was an error is greater in cases in which the defendants actively asserted their innocence at trial.
- The clearest evidence that a difficult investigation increases the risk of error is the time between the crime and the defendant's arrest. On average, pre-arrest investigations in death sentence cases that led to exoneration were two-and-a-half times as long as in those that ended in execution.

The findings appear in the current issue of the *Journal of Empirical Legal Studies*.

Provided by University of Michigan

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