

## **II. Drug Cases**

This is the third straight year with record numbers of exonerations in drug cases: [43](#) in 2014, [53](#) in 2015, and [61](#) in 2016. In each year, the great majority of drug exonerations were CIU cases from Harris County (Houston) Texas—72% in 2014 (31/43), 83% in 2015 (44/53), and 79% (48/61) in 2016.

The Harris County drug exonerations are due in large part to the diligence of its CIU. In early 2014, Deputy District Attorney Inger Chandler, the newly-assigned head of the Harris County District Attorney's Post Conviction Review Section, noticed that her office was processing a steady trickle of cases in which defendants pled guilty to possession of illegal drugs, and then, months or years later, a report from the crime lab would reveal that the materials seized from the defendant contained no controlled substances. She investigated and found that there were many more such cases, and that they were being handled slowly and inconsistently.

In mid-2014, the Post Conviction Review Section embarked on a program to address these problems. The section started handling all cases of defendants who were cleared by drug tests after pleading guilty. It streamlined the process and began to address the backlog of cases from past years. The result has been [126](#) drug-crime exonerations by the Post Conviction Review Section so far, including [48](#) in 2016, and no doubt more to come.

This is a problem that disproportionately affects minorities and especially African Americans, an issue we discuss in detail in our companion report on **Race and Wrongful Convictions in the United States**. We see racial disparities in exonerations for all types of crime, but the disparities are especially stark for drug cases. About half of the people exonerated for non-drug related crimes in 2016 were African-American. In contrast, roughly two-thirds of those exonerated for drug possession or sale in 2016 were African American (41/61), including 71% of the guilty-plea drug exonerations in Harris County, where African Americans are 20% of the population.

Why did so many defendants plead guilty when they were innocent? Some likely thought that they were carrying illegal drugs but were not. Most agreed to plea bargains at their initial court appearances, despite their innocence, rather than remain in pretrial custody for months and risk years in prison if convicted, especially since many had undoubtedly been told that the substance they had been carrying had field-tested positive for illicit drugs already. This explanation is especially likely for defendants with criminal records, who generally cannot post the comparatively high bails set for them and who risk substantial prison sentences if convicted.

There is some evidence that pretrial detention and the fear of long terms of imprisonment did influence these false guilty pleas. Seventeen of the 20 Harris County drug exonerees from 2016

who pled guilty to significant terms of imprisonment (3 months to 2 years) had felony records that we know about, while 3 of the 5 who had no known criminal records got no time in jail at all.

Faulty forensic tests are partly to blame. In [94](#) of all [140](#) drug crime exonerations in Harris County the defendants were arrested on the basis of “field tests” that indicated the presence of controlled substances. (In the other cases, the arresting officers mistook an innocent white powder for cocaine, a hand-rolled cigarette for marijuana, or non-prescription pills for controlled drugs.)

Commonly-used drug field tests are notoriously unreliable; they routinely misidentify everything from Jolly Ranchers to soap to cat litter as illegal drugs.<sup>1</sup> They are inadmissible as evidence in court but sufficient to justify an arrest—and they may convince an innocent defendant that she is bound to be convicted at trial, so she would do better to plead guilty.

In 2016, the New York Times Magazine and ProPublica published an [article](#) that focused on the scores of defendants who pled guilty in Harris County after faulty field tests and were later exonerated by negative lab tests. Prompted by the article, the Conviction Integrity Unit of the Multnomah County, Oregon District Attorney’s office checked all drug possession guilty pleas since 2010. They discovered five cases in which defendants had pled guilty and received probation but subsequent lab tests found no controlled substance. All [five](#) were exonerated in 2016.

The Harris County CIU has done an excellent job of addressing the problem of false guilty pleas in drug cases. Testing after guilty pleas in Harris County has sped up, and the DA’s office no longer offers plea bargains in felony drug cases without lab tests unless the bargain includes no further incarceration. Multnomah County has gone farther, instituting a policy that “(a)ll controlled substance based prosecutions must be accompanied by a request for, and report of, confirmatory testing from the Oregon State Police (OSP) Forensic Laboratory for the presence of a controlled substance.”

Some other prosecutorial offices may also require testing before they file charges or agree to a plea bargain in a drug case, but we know of no others that systematically test suspected drugs after guilty pleas, and dismiss convictions that are not supported by the test results. In most jurisdictions, forensic drug testing is rarely done, if ever, once a defendant has pled guilty. And if testing is done and no illegal drugs are found, the results may well be lost or ignored, as many

---

<sup>1</sup> See Randy Balko, [Faulty field tests bring false confessions, bad convictions](#), The Washington Post, February 11, 2016; Claire Z. Cardona, [Texas man arrested on meth possession charge says substance deputy found was cat litter](#), Dallas News, January 10, 2017.

were in Harris and Multnomah counties until recently.

But even if the Harris County CIU's procedures become standard practice, there is a larger problem that is much harder to solve: What about innocent defendants who plead guilty to other misdemeanors and low-level felonies—assault, trespassing, resisting arrest—to avoid pretrial detention and the risk of long terms of imprisonment after trial? Or innocent drug defendants who plead guilty to possession of actual illegal drugs that belong to someone else?

There is no easy test for guilt or innocence in those cases. Very few such convictions ever result in exoneration, but the number of false convictions in misdemeanors and low-level felonies probably dwarfs the number for the serious violent felonies that make up most of the exonerations in the Registry.

---

*The [National Registry of Exonerations](#) is a joint project of the University of California Irvine Newkirk Center for Science and Society, the University of Michigan Law School, and the Michigan State University College of Law. It provides detailed information about every known exoneration in the United States since 1989—cases in which a person was wrongly convicted of a crime and later cleared of all the charges based on new evidence of innocence.*