



Good morning, Chairwoman Abrams, Vice Chair Williams, Ranking Member Brown and members of the committee. I am the director of policy and engagement for the Ohio Innocence Project (OIP) at the University of Cincinnati College of Law.

OIP is an organization which investigates and litigates wrongful conviction claims here in Ohio. In 20 years, OIP has freed 42 Ohioans who are innocent but were convicted for crimes they did not commit. Those 42 people collectively served over 800 years in prison. Three of them were sentenced to death.

Since 1989, 110 Ohioans have been exonerated after being wrongly convicted of crimes they did not commit. The deprivation of liberty and freedom impacts not only the individuals who are imprisoned, but also their families, communities, and Ohio's taxpayers, whose dollars are spent on imprisoning an innocent person and often making restitution afterward. In order to combat this injustice in Ohio, it is necessary to ensure legal avenues for postconviction relief are available to those who have a valid innocence claim, including innocence claims based on DNA evidence that demonstrates the innocence of an imprisoned person. H.B. 221 will ensure that every person with DNA evidence that establishes innocence can present that evidence to the courts.

Ohio's statutory scheme for admitting new DNA evidence in postconviction proceedings was at the national forefront at the time of its enactment in 2003. Since then, changing circumstances have affected the statute's efficacy at achieving justice.

In 2018, the Supreme Court of Ohio decided *State v. Apanovitch*, 155 Ohio St.3d 358, 2018-Ohio-4744, 121 N.E.3d 351. The Court held that R.C. 2953.23 permits DNA evidence in a postconviction proceeding only if the DNA testing was requested by the person imprisoned. The Court held that the common pleas courts do not have jurisdiction to hear the merits of a valid innocence claim if the testing of the DNA at issue was requested by the government. *Id.* In so doing, the Court specifically noted that "We recognize that it may seem unduly formalistic or unfair to foreclose the trial court from considering a postconviction claim that is based on DNA testing that the state itself procured. But it is the prerogative of the General Assembly, not this court, to set the terms by which an offender may pursue postconviction relief." *Id.* at ¶ 41. H.B. 221 is the invitation to the General Assembly to exercise its prerogative and to ensure that all

reliable, valid DNA evidence is presented in common pleas court, regardless of whom requested it.

This is particularly true in light of the increasing number of Conviction Integrity Units (CIUs) in prosecuting attorneys' offices around the state. The goal of a CIU is to review innocence claims in pursuit of both justice for the wrongly convicted and the efficiency and integrity of the prosecutor's office. Part of a CIU's operation will often include the prosecutor's request for DNA collection and testing of the person claiming innocence. But because that collection and testing is done at the request of the government, under the rule established in *State v. Apanovitch*, a common pleas court will not have jurisdiction to consider it because the current statutory language of R.C. Chapter 2953 specifies that testing must be requested by the defender.

The risk of denying an innocent person's opportunity to be heard is real given the increasing prevalence of CIU's in Ohio. The first CIU in Ohio was adopted in Cuyahoga County in 2014, only eight years ago. Since then, Franklin, Hamilton and Summit Counties created CIUs. Those four counties are the source of more than half of all sentences of death in Ohio. Moreover, the Ohio Prosecuting Attorneys Association has made clear that it sees the use of county-operated CIUs as the solution to wrongful convictions in Ohio and suggests prosecutors should, when feasible, establish CIUs. All DNA evidence obtained through cooperation with CIUs should be admissible in our common pleas courts.

Of the over 100 exonerations of innocent people in Ohio since 1989, nearly one in four involved DNA evidence. Out of all of the exonerations in Cuyahoga County, a county with a CIU, 37.5% involved DNA evidence. Similarly, 33% of all Summit County exonerations involved DNA. With the rise of CIUs across the country and in Ohio, it is necessary to adjust the postconviction statutory language to better fit the new realities of prosecutions and actual innocence litigation.

Lastly, the current statutory language limiting the admissibility of DNA evidence in cases in which a defendant requests it is not the result of a policy debate. Indeed, there is nothing in the statutory history of R.C. 2953.23 that reflects any debate on this point. Rather, the language reflects an assumption that only a defendant would request DNA testing. That may have been true at the time of debate, but we now operate in a different criminal legal system in which CIUs are increasing and more widely used.

Enacting H.B. 221 will ensure that our judges and juries can consider all relevant, reliable DNA evidence. It is a simple but invaluable revision to the law.

The Ohio Innocence Project respectfully asks for your support and vote in favor of this bipartisan and common-sense bill.