



Good morning, Chairman Manning, Vice Chair Reynolds, Ranking Member Hicks-Hudson and members of the Senate Judiciary Committee. My name is Nick Anderson, and I am a senior policy fellow at the Ohio Innocence Project (OIP), which is part of the College of Law at the University of Cincinnati. Thank you for the opportunity to provide written proponent testimony on Substitute House Bill 234.

As you know, Substitute House Bill 234 would change Ohio law to prevent trial court judges from considering a defendant's lack of remorse when imposing a sentence on a defendant who is entering what is known as an *Alford* plea. An *Alford* plea is rare in Ohio but allows a defendant to maintain their innocence while acknowledging that the State has enough evidence to convict the defendant.

The use of *Alford* pleas was permitted by the United States Supreme Court more than 50 years ago. *North Carolina v. Alford*, 400 U.S. 25 (1970). In *Alford*, the Court reviewed a North Carolina death penalty case. The defendant, Henry C. Alford, was indicted for first-degree murder. He insisted he was innocent of the crime, but upon the advice of his public defender, pleaded guilty to second-degree murder to avoid the death penalty. As he told the trial court, "I'm not guilty but I plead guilty." When the judge inquired why Mr. Alford would plead guilty if he were innocent, Mr. Alford explained:

"I pleaded guilty on second-degree murder because they said there is too much evidence, but I ain't shot no man, but I take the fault for the other man. We never had an argument in our life, and I just pleaded guilty because they said if I didn't, they would gas [me] for it, and that is all."

The United States Supreme Court held that pleas such as this – when a defendant maintains innocence but pleads guilty – may be permitted by the states in their courts. Ohio is one of the states that permits the use of *Alford* pleas.

If a judge in Ohio accepts an *Alford* plea, the judge must sentence the defendant. Ohio law provides that in rendering a sentence on a defendant in a criminal case, the judge must consider a variety of factors. The judge may consider whether the defendant has accepted responsibility for the crime and shown remorse for it. R.C. 2929.19(D). As a policy decision, Ohio's sentencing factors may have benefit in the majority of cases. But for defendants who enter *Alford* pleas, including wrongfully convicted people, sentencing factors pose enormous risk.

Although *Alford* pleas are not the norm in wrongful conviction cases, for many convicted in wake of innocence, *Alford* pleas are seemingly the only realistic option to gain freedom. The written testimony of Karl Willis and Wayne Braddy, two men who were wrongfully convicted of aggravated murder in Toledo, explains that they availed themselves of an *Alford* plea after decades of litigation in order to return to their loved ones. By the time that they did so, they had been imprisoned for decades, and watched the man who admitted his role in the murder for which they were convicted walk free – a result of a plea bargain for the murder and an unrelated rape case.

Notably, Ohio is a death penalty state, and this legislature is currently considering House Bill 392, a bill that would permit nitrogen hypoxia as an additional method of execution. In states in which capital punishment exists, there is increased risk of an innocent person pleading guilty to a crime that carries the potential for execution. A 2015 study found that almost 75% of homicide exonerees who pled guilty were convicted of murder. The overwhelming majority of these cases occurred in states with the death penalty; therefore, the pleas were presumably entered to avoid being executed. But while these wrongfully convicted individuals escaped the death penalty, they still received stiff sentences, such as life without parole—a slow-motion death sentence.

*Alford* pleas are rare, but they are important. If a duly elected prosecutor in Ohio determines the circumstances of a case warrant the offer of an *Alford* plea, the defendant should be able to consider the offer with an assurance that the essence of the plea – insistence on innocence of the crime while simultaneously pleading guilty to it – will not lead to a more significant or harsh sentence than a plea that includes an admission of guilt and showing of remorse.

Lastly, as the Legislative Service Commission notes, enactment of Substitute House Bill 234 will not lead to a significant increase in the use of *Alford* pleas and will not have a significant financial impact on the government or burden Ohio's taxpayers.

For all of these reasons, the Ohio Innocence Project urges you to vote favorably on Sub. House Bill 234.

Thank you for your consideration.