



**JEAN SCHMIDT
STATE REPRESENTATIVE**

Chair Abrams, Vice Chair Williams, Ranking Member Brown, and members of the Criminal Justice Committee:

Thank you for allowing me to present sponsor testimony along with my colleague, Representative Upchurch, today on House Bill 221. Current law stipulates that posttrial DNA evidence can only be considered if the defendant requests it, a technical loophole within the Ohio Revised Code. The technicality has resulted in innocent defendants who were falsely prosecuted and even placed on Death Row, from being able to present newly discovered evidence of innocence to a court. This legislation will fix this injustice and ensure that any defendant has the ability to prove their innocence by allowing DNA evidence to be used regardless of who ordered the testing.

This issue came to my attention when I heard about the case of Anthony “Tony” Apanovitch. Tony watched my testimony on the death penalty and sent me a letter regarding his case. After reviewing the facts and meeting with Tony and his attorney, I realized a flaw in the law robbed him of his ability to prove his innocence.

Tony was found guilty of rape and murder and sentenced to Death Row. In 2000, the State did DNA testing that appeared to exonerate him. They failed to inform him of this. In 2008 his lawyer discovered this when deposing the coroner. A lower court eventually ordered his release and he remained free for two-and-a-half years.

Ultimately, the courts realized that Tony did not personally request the testing. Under current law Tony had to personally request the testing since he already had one post-conviction

appeal. In 2018, the Ohio Supreme Court ruled the DNA test results could not be used by Tony to get another post-conviction appeal because of his failure to ask for the test.

The Supreme Court wrote “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.”

Tony was returned to Death Row where he resides today.

This is what we are trying to change. The ability to disallow DNA evidence because the defendant did not specifically request the testing is a misuse of the law. We strive every day to better our justice system and truly allow justice to prevail. Our constitution guarantees a right to a fair trial. The law as it stands now violates the constitution. House Bill 221 will change this.

Thank you, Madam Chair, for allowing me to speak today, and we look forward to any questions you or the Committee may have.