January 23rd, 2023

Good morning, members of the Judiciary Committee, and thank you for allowing me the opportunity to testify on House Bill 23-1013, “Use of Restrictive Practices in Prisons”. While I am not able to testify in person or online due to work commitments I have on the 31st, I wanted to submit written testimony for this bill. As I am writing this, it is currently 3:15 AM on January 23rd, and since I initially learned of this bill last week, I've had to sit and think of how I will write this out.

From July of 2018 until January of 2021, I was employed by the Colorado Department of Corrections as a Correctional Officer. One of my work duties when I was employed there involved placing individuals into four-point restraints (doubly known as clinical restraints), often always to what was a metal bed frame with a mattress on it, and in each instance it was done to an individual who I was told was a physical threat to themselves and/or others. Between the two prisons I worked at - Denver Reception and Diagnostic Center (DRDC) and Denver Women's Correctional Facility (DWCF), I can recall having to do this countless times. While I do want to make it clear that I support this bill and its intent, I want to relay what exact kind of circumstances I was a party to when placing someone into clinical restraints during the duration of my time with DOC as they relate to the bill itself.

During the entirety of my time there, I can only think of perhaps three individuals who genuinely had to be placed into clinical restraints due to a continued, persistent risk of self-harming behaviors. The vast majority of people I encountered who were subjected to clinical restraints were not in that category, and often they were escalated to the point of being combative by other officers and non-uniformed staff who would provoke them to the point of getting into a physical altercation using what nominally would be considered harassment and bullying under the department's own code of conduct within what is known as "A.R. 1450-1", which is supposed to govern what staff are allowed to say and do, and what constitutes harassment and abusive behavior of any nature. This is often treated as a joke by many officers, whose mentality regarding persons in the custody of the Department of Corrections is to "treat them like adults".

In far too many cases, I would additionally find that it was simply a person who experienced a mental health crisis that could have been avoided had any single officer or staff member utilized the training we all had on crisis intervention and de-escalation. This skillset is something I rarely saw used during most days on the job, as again there is that mentality that "we need to treat them like adults and make them learn a lesson". In several instances where a person was placed into clinical restraints, it was pretty clear that the person in question was experiencing substance withdrawal symptoms or was high on something. Given my more recent experiences from working in an addiction treatment setting, the proper protocol with a person experiencing either of those situations is to transfer them into a supervised medical setting where they can be assessed and helped through the detox process - it is never recommended to ever subject them to clinical restraints, as that can often be a traumatizing event for most individuals who have a substance use disorder. This was rarely the case within the Department of Corrections, and while I can attest to a few instances where a few clinical staff did follow what is considered best practices with handling a person who is experiencing either a mental health crisis or a substance use incident, most simply ignored that out of a wish to make most persons being placed into clinical restraints "pay" for behaviors staff did not personally like.

Bearing all of this in mind, I would strongly encourage this committee to find a way to make sure this bill, should it pass, is abided by at every point. I know the mentality of a lot of staff within the

Department of Corrections well enough to the point that they will try to find ways to use clinical restraints on someone they personally dislike for various reasons as a form of punishment or through sheer disregard of every bit of de-escalation training and crisis intervention training offered right from the very first week of the academy itself. I hold serious concerns with respect to the section of the bill that deals with involuntary medication for similar reasons as well, and again, while I do support this bill, I again encourage this committee to find some way to make that section enforceable as well.

In closing, I thank you all for allowing me the opportunity to offer up my input and testimony regarding my experiences as they relate to this bill and should any of you have any follow up questions, you are all welcome to reach out directly to me through the contact information I provided through the sign up form.

Respectfully,

Christopher Bonham

INNOCENCE PROJECT

Executive Director
Christina Swarns, Esq.

Co-Founders & Special Counsel
Barry C. Scheck, Esq.
Peter J. Neufeld, Esq.

Testimony of the Innocence Project
Colorado House Judiciary Committee
House Bill 23-1034
January 31, 2023

The Innocence Project is a not-for-profit organization that represents the wrongfully convicted and works to reform the criminal legal system to prevent future injustice.Through this work, we have learned the traditional appeals process is often insufficient for proving a wrongful conviction. It is not uncommon for an innocent person to exhaust all possible appeals without being allowed access to the DNA evidence in their case. Sometimes it comes to light that DNA evidence available at the time of the defendant's trial was never tested. Other times, the methods of DNA testing used at the time of the trial were not exact and yielded unreliable results. Today's more sophisticated technology usually can provide irrefutable results. After appeals are exhausted, the only way a person can access the DNA evidence associated with their criminal case is through post-conviction DNA testing access statutes.

HB23-1034 is a cleanup bill that would amend Colorado's post-conviction access to DNA testing statute to better serve the interest of justice and modernize the standards for review to the growing national consensus.

National landscape of key provisions
Colorado was one of the earliest adopters of DNA-testing, enacting the statute in 2003, and the state should be lauded for its early action and leadership. Since that time, many states have gone on to amend their laws over the last twenty years to more accurately reflect best practices learned since these laws have been enacted. According to an Innocence Project accounting of state-by-state provisions:

- Only 11 states, Colorado included, currently maintain an "actual innocence" standard of review to grant post-conviction DNA testing
- Only 12 states, Colorado included, still have an incarceration standard to allow access to post-conviction DNA testing
- Just 4 states in the nation, including Colorado, explicitly disallow outside private lab facilities to be used for testing

The consequences of these out-of-date provisions are clear: Colorado has just 3 DNA-related exonerations. For comparison, Wisconsin, which has a similar population and prison population, has seen 16 such exonerations, according to the National Registry of Exonerations[1]. Further, we

[1] https://www.law.umich.edu/special/exoneration/Pages/detaillist.aspx?View=%7bfaf6eddb-5a68-4f8f-8a52-2c61f5bf9ea7%7d&SortField=ST&SortDir=Asc

know, thanks to the story and testimony of Mr. Robert “Rider” Dewey, that it is entirely possible that an innocent individual could be blocked from accessingDNA testing under the statute.

If even one wrongfully convicted individual could prove their innocence using the amended statute, surely that is in the interest of justice. Moreover, it is in the interest of justice to find the actual perpetrator of the crimes. In Mr. Dewey’s case, prosecutors were able to find the actual perpetrator of the crimes he was accused of committing. That individual had gone on to commit other violent crimes while Mr. Dewey was wrongfully serving his sentence[2].

Amount of petitions in states using HB23-1034’s amended standards
The Innocence Project has decades of experience working with these laws and seeing their effect firsthand. One thing we have learned in that time is that this is an incredibly self-selective process. There are disincentives for guilty people to file claims because unfavorable results can negatively impact other appeals and their ability to be paroled. It could also reveal involvement in other crimes.

The Innocence Project has attempted to quantify the amount of petitions in other states that use similar or equivalent standards included in HB23-1034 by reaching out to courts and prosecutors across the country.

- In Oregon, according to the Office of General Counsel at the Office of the State Court Administrator, just 2 such petitions have been filed per year from the years 2020-2022
- In Iowa, the Iowa Judicial Branch has reported just five petitions in the last two years
- In Wisconsin, the Wisconsin Innocence Project has noted they have only made 46 motions in a 15 year period after the law’s enactment

While the impact on Colorado’s criminal justice system will be minimal, the impact on a person dealing with wrongful conviction could be huge.

Conclusion and position
The Innocence Project supports HB23-1034. The bill would update Colorado’s decades old statute to more accurately reflect the best practices learned from states across the country, and it would allow the innocent currently serving under the burden of conviction to have access to a full, scientific remedy to prove their innocence.

[2] https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3910

January 31, 2023
Colorado Legislators
CO State Capitol Building
Denver, CO

Reference: Support for Admissibility Standards For Juvenile Statements HB23-1042

My name is Elise Miller. I have lived in Colorado for over 35 years. My background is business, but I am now studying law at DU. I chose to study law at 53 because I believe in justice and I believe that the truth is powerful.
I am a parent. As parents, We know that model behavior is to teach our children that lying is wrong and has consequences. So why should it be legal for anyone in a leadership role to lie to juveniles?
Children are impressionable, scared, vulnerable. Their vulnerability is the reality.
Reality: Then 14 year old Lorenzo Montoya, who confessed to a murder he did not commit after Denver police lied and told him there were fingerprints that showed him at the scene. He lost half his life in prison.
Reality: Kalief Browder, another wrongly convicted by forced confession.
The charges were dropped after Kalief spent three years in prison, but sadly effects on him were too much and he committed suicide in his parents home.
These tactics cause collateral damage to innocent witnesses in addition to the horrendous rate of wrongly convicted.

During a recent situation in our community, a girl and her parent were asked to come speak to the police. This child was not the juvenile being charged, she was a witness. The parent was protective, and said “we don't feel comfortable coming in to talk, my daughter is pretty vulnerable.” The DA’s team response was “If you don't talk to us now, she will have to go in front of a grand jury, which is much more stressful.” So the parents replied “If we come in now, we don't have to do that?” “YES”, the detective from the DA dept answered, with firm reassurance. They went in and cooperated, trusting these words.
Toward the end of the interrogation, the detective and the DA said to the daughter “We are likely going to have a grand jury proceeding which you will be called into to speak.” The parent said “Wait, you told us if we came here today she wouldn't have to go through that.” “Yes we did say that" the detective and the deputy DA responded.
“So you lied to us?” asked the parent? YES was their response.

The Police and the DA are powerful. I was raised to revere and respect them. These are not people that will lie to us. That's not the DA. That's not our team.
This legislation not only protects juveniles, but it protects the department. It's a check and balance. It's a win win.

In a wrongful conviction study, researchers found that 44 percent of exonerated juveniles had been convicted based on false confessions

In addition, people younger than 18 are three times more likely to falsely confess than adults.

States like IL OR and UT are leading the charge with legislation eliminating juvenile testimony that has been obtained with unethical tactics .
Deceptive prosecutorial behavior can lead innocent teens to suicide, anxiety and depression and these are not even the wrongfully convicted, this is just the collateral damage.
The wrongfully prosecuted are the true failures.

I respectfully ask you to consider this legislation to protect both juveniles and the department's ethical tactics toward questioning.

Thank you.

Elise Miller
720-231-7800
elisemiller916@gmail.com