

Testimony of the Innocence Project
Colorado Senate Judiciary Committee
House Bill 23-1034
February 15, 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The consequences of these out-of-date provisions are clear: Colorado has just 3 DNA-related exonerations.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 Exonerations¹. Further, we

1

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 accessing DNA 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 sentence².

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>