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**Pennsylvania Innocence Coalition Testimony in Support of HB 2794  
Pennsylvania House Judiciary Committee  
October 12, 2022**

The Innocence Project and the Pennsylvania Innocence Project (Pennsylvania Innocence Coalition) strongly support HB 2794 and the need for statewide compensation for those wrongfully convicted in Pennsylvania. The Innocence Project is a national organization dedicated to exonerating wrongfully convicted people through postconviction DNA testing and reforming the criminal justice system to prevent future injustice. We work with our local partners across the country, including the Pennsylvania Innocence Project, on policies that prevent and address wrongful conviction. The Pennsylvania Innocence Project opened in 2009; in its 13 years of existence, it has fully exonerated 16 people and freed 8 more. It has also worked with the legislature on reforms to the Post Conviction Relief Act and Post-Conviction DNA Testing Statute. We thank the House Judiciary Committee for its consideration of this greatly needed reform, and Representatives Ryan and Young for introducing such a strong bill on behalf of Pennsylvania's innocence community.

In eminent domain cases, the government compensates people for taking their personal property. It is almost unimaginable that the government does not do the same for taking someone's personal liberty. Most wrongfully convicted people spend years behind bars fighting to prove their innocence. Upon release, they face a number of immediate challenges financially such as obtaining housing, transportation, health care, and other basic needs. Often, wrongfully convicted people have even less assistance transitioning home than those who were guilty of crimes and released with post-release services such as through parole.

The effects of wrongful conviction are profound. The average prison stay of individuals exonerated through DNA testing is 14 years. While wrongfully imprisoned, exonerees missed out on opportunities to build work experience and further their careers, making it difficult to immediately re-enter the workforce. Incarcerated in the prime of their lives, they often missed out on critical economic benchmarks such as attending college, investing earnings, buying a home, creating retirement accounts, and contributing to social security.

Pennsylvania has exonerated 108 people since 1989, the fifth most in the country, who collectively served more than 1,394 years in prison for crimes they didn't commit. Every other state with as many (or more) exonerated people has already enacted a compensation statute<sup>1</sup>; in other words, no state in America has as many uncompensated exonerees as Pennsylvania. Without a state compensation law, the only way that exonerees can get financial justice is to file a federal civil rights lawsuit against the state or local government entities that contributed to the wrongful conviction. These lawsuits are extremely difficult to win (because exonerees must be able to prove fault) and take an average of 6 years to resolve, all as taxpayers fund the litigation

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<sup>1</sup> Illinois: 505 exonerees, law since 2008; Texas: 436 exonerees, law since 1985; New York: 313 exonerees, law since 1984; California: 265, law since 1913

costs. If the exoneree prevails there is no limit on the amount that can be awarded. Federal wrongful conviction lawsuits have already cost Pennsylvania taxpayers nearly \$73 million.

For example, Lewis “Jim” Fogle was exonerated in Indiana County in 2015, with the agreement of the District Attorney’s Office, after having been in prison for 34 years for a crime that DNA evidence showed he could not have committed. He has struggled financially and emotionally since his release. His federal civil rights lawsuit has been pending since 2017 with no guarantee of success or any compensation for his three-plus decades of wrongful conviction.

The federal government, the District of Columbia, and thirty-eight states have compensation statutes that compensate wrongfully convicted people. When the state unjustly takes a person’s freedom, regardless of fault, the state has a responsibility to help the exonerated person rebuild his or her life. HB 2794 offers \$75,000 per year of wrongful incarceration; nationwide, the average compensation paid to exonerees is just under \$70,000 per each year of wrongful incarceration.<sup>2</sup> HB 2794 also matches federal law, first established in 2004 and signed by President George W. Bush, which provides \$100,000 per year of incarceration on death row. This bill is also in line with 8 other states that provide additional compensation for years spent wrongly under post-release supervision or on a sex offender registry, including Kansas and Idaho. While no amount of money can make up for the years an innocent person lost behind bars, this bill would be a hugely important step in repairing the damage to the wrongfully convicted.

HB 2794 aligns with the vast majority of other state statutes by placing the adjudication process within the purview of the courts. The standard of proof that petitioners must meet to receive compensation matches 14 other states, including Ohio and Indiana. The bill also matches best practices in other states by providing non-monetary services to help ensure wrongfully convicted people are set up for success after exoneration, such as medical assistance (10 states and D.C.) or mental health services (9 states). HB 2794 also adjusts awards for inflation like 8 other states, including Florida.

Most importantly, HB 2794 includes a civil offset provision that has been adopted by many states that have enacted laws more recently, including Kansas in 2018 and Idaho in 2021. This provision protects wrongfully convicted Pennsylvanians’ constitutional right to file civil litigation, while protecting municipalities and taxpayers from “double-dipping” across civil awards and statutory compensation. The state is reimbursed if the exoneree first receives state compensation under the law, and then wins a civil lawsuit against the local government actors that is greater than the amount of state compensation. If an exoneree first received a civil award/settlement stemming from the wrongful conviction, that amount would be deducted from any state compensation owed. 11 states include this civil offset provision as a commonsense way to protect individual liberty while balancing fiscal responsibility.

We respectfully offer one suggested amendment, which is to make this legislation retroactive to allow for the current exonerated population to benefit. Currently, this bill language only applies to exonerations going forward. We recommend the following language, with a grandfathering period to allow for past exonerees to consider whether they want to pursue statutory compensation:

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<sup>2</sup> National Registry of Exonerations

Any person who was convicted, imprisoned or subject to involuntary treatment pursuant to tit. 42, Ch. 85, § 8503, and released prior to the effective date of this Act must bring any petition under this section based on that conviction within six (6) years of the effective date of this Act.

HB 2794 is tightly construed to ensure that only those who can prove their factual innocence will receive compensation. Indeed, not one penny of taxpayer money will be spent upon the passage of this legislation – instead, HB 2794 merely provides a pathway for consideration by a judge. Exonerated Pennsylvanians have been struggling to survive after their wrongful convictions for a very long time. The Pennsylvania Innocence Project and the Innocence Project strongly support this legislation to finally provide much needed financial justice.

Thank you for your consideration. Any questions or comments can be directed to Nathaniel Erb at [nerb@innocenceproject.org](mailto:nerb@innocenceproject.org) or Liz Delosa at [elizabeth.delosa@painnocence.org](mailto:elizabeth.delosa@painnocence.org).

Respectfully submitted,

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