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Testimony In Opposition To HB 2190
Kansas House Committee on Corrections and Juvenile Justice
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My name is Tricia Rojo Bushnell and I am the Executive Director of the Midwest Innocence Project, which works to exonerate individuals convicted of crimes they did not commit in Kansas, Missouri, Iowa, Nebraska and Arkansas, and to enact policies to prevent wrongful convictions in the first place. Together with our partners, MIP has represented Floyd Bledsoe, Richard Jones, Lamonte McIntyre, and Olin “Pete” Coones, Jr., in the cases that ultimately resulted in their exonerations. Together, they served over 67 years for crimes they did not commit. As the cases of these innocent Kansans represent, it takes years and often multiple organizations working together to investigate and litigate to correct such an injustice. The process is long and complex and difficult and virtually impossible to navigate without a lawyer, the opposite of what a system dedicated to justice should be. And yet HB 2190 would further restrict and complicate this legal labyrinth and will result in irreversible injustices for the wrongfully convicted. I urge you to oppose HB 2190.

HB 2190 is a solution in search of a problem. The restrictions set forth in HB 2190 will not limit the number of petitions filed by pro se defendants. It will not lessen the burden on the State to respond to those petitions or the judiciary to review those filings. It will however ensure the State’s attention will be spent arguing procedural issues rather than getting to the merit of claims—whether a Kansan’s fundamental rights have been violated. And it will ensure wrongfully convicted people are barred from proving their innocence, resulting in continued manifest injustices for Kansans.

Indeed, had the proposed changes in HB 2190 been in effect, Lamonte McIntyre would never have been exonerated in 2017. Despite the overwhelming evidence of his innocence, he would have been left to languish as the ultimate motion that freed him would have been considered “successive.” Like many innocent people in prison, Lamonte sought to prove his innocence in court in any way possible and availed himself of every avenue, including filing a pro se K.S.A. 60-1507 motion twenty years earlier in 1997. That petition was tragically denied, even though it contained some of the same evidence used to later exonerate him. Under HB 2190, not only would he have been barred from filing this successive motion, the evidence that ultimately freed him would no longer have been classified as “new” as some of it had been raised in claims presented before.

[Changes to Successive Motions](#)

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HB 2190 proposes to add language to the “successive motions” section that sets restrictions on the types of claims that can be raised. Yet, as currently enacted, the section on successive motions already provides a judge wide discretion to reject motions. There is no need for further gate keeping. Instead, without such discretion, justice will be denied for the most vulnerable; the vast majority of petitioners are incarcerated and indigent, with no resources to hire an investigator and lawyer, and innocent defendants, understandably, often file motion after motion to try to win their freedom. To deny such petitioners the opportunity to prove their innocence because they had a previously unsuccessful motion is unconscionable and contrary to the notion of justice. A judge with knowledge of the many nuanced factors of a case is already the decision maker on whether a motion should be heard. There is no need for the proposed change to successive motions and the potential risk to the wrongfully convicted is high.

Restrictions to what is considered new evidence

Confusingly, HB 2190 also seeks to limit what can be considered “new evidence” for purposes of finding (and correcting) a manifest injustice with the following clause: “Evidence shall not be considered new if the prisoner previously based a claim on such evidence but failed to present evidence in support of the prisoner's claim or withdrew the claim.” Under this new standard, innocent defendants who unsuccessfully attempted to present their innocence to the court without the assistance of a funded investigator and lawyer will be barred from later proving their innocence once those resources and the evidence of their innocence comes to light.

For example, because of limited funding and resources, the Midwest Innocence Project has an extensive waitlist, so by the time we are able to investigate and litigate on behalf of an innocent defendant, they have typically spent decades in prison and have filed their own pro se motions with the limited information they had to try to win their freedom. In many cases, pro se defendants who are successful in obtaining a hearing are unable to present the evidence at that hearing as they have no investigator or attorney to secure that evidence for them. Similarly, for those who are able to eventually obtain a lawyer, such lawyers often withdraw motions that were filed pro se so that we can finish the investigation and present the court with a full and thorough motion. Yet, HB 2190 would prevent courts from hearing these complete and compelling motions and would bar judges from entertaining meritorious and well written pleadings and keep innocent defendants from ever winning their freedom.

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As this committee knows, wrongful convictions hurt not just innocent individuals who are incarcerated for crimes they did not commit, but also present further harms to victims and society as the real perpetrator is allowed to go free and the victim is denied true and accurate justice. In the case of Lamonte McIntyre, justice for Lamonte was not only justice for him, but also a validation of all the harm done to everyone from his wrongful incarceration, including his mother, Rosie McIntyre, Sandra Newsom, the mother of victim Doniel Quinn, Niko Quinn, whose story was recently featured in the Kansas City Star, and all of their family and community members.

A system that prevents society from correcting that injustice cannot be called a justice system and laws that prevent true justice, including the correction of an injustice, have no place in our society.

HB 2190 will foreclose relief for innocent Kansans incarcerated for crimes they did not commit and ensure that they are left to languish on the taxpayer's dime. I urge you to oppose HB 2190.

I can be reached for questions at trojobushnell@themip.org.