

# THE SUPREME COURT *of* OHIO

## TASK FORCE ON CONVICTION INTEGRITY AND POSTCONVICTION REVIEW

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### **Summary of Brainstorming Ideas Submitted by Task Force Members**

This document is an overview and preliminary categorization of the ideas submitted by Task Force Members after the September 22, 2020 task force meeting. Numbers in parentheses refer to an idea's location on the provided "Task Force on CIPCR Brainstorming Document" which includes in much greater detail the ideas submitted by the task force members. Some ideas are listed more than once because the idea fits into multiple sections.

### **Wrongful Conviction Review Models**

- **General (CIU, Statewide CIU, Innocence Commission)**
  - Make an earnest effort and underscore a special emphasis on identifying the key facets of an effective Conviction Integrity Unit (CIU). (#5)
  - Examining and defining the necessary components of an "effective" CIU (instead of creating one just to say "we have one"). (#6)
  - Legitimate claims of innocence are disregarded because they are not raised in a timely fashion. (#7)
  - Include representatives from the victim/survivor community and someone with expertise in forensic sciences. (#8)
  - Ohioans have been impacted by faulty science in many cases. (#9)
  - Can we create a vetting process for post-conviction motions for a new trial that identify and prioritize claims of actual innocence and further identify those motions that clearly and logically warrant a full hearing to determine the motion's merits? (#17)
  - Would our state benefit from a free independent-standing innocence commission to view innocence claims? (#20)
  - Remediation (#28)

- Expanded Post-Conviction Access to Evidence for Testing (#34)
- Establish Independent Conviction Review Units (#36)
- CRU Written Policies and Procedures (#37)
- Establish multi-jurisdictional agreements (#38)
- **Misconduct**
  - In a recent study of exonerations, it was found that official misconduct, primarily by prosecutors and police, account for 54% of the wrongful convictions. (#13)

## **Modifications of Statutes and Rules**

- **General**
  - Contemplate whether statutory revision is necessary. (#4)
  - Current evidentiary rules often allow junk science to continue to be used in courtrooms and other evidentiary rules, while well intended, incentivize decision making that falls short of achieving justice. (#11)
  - The holding of individuals, often over the financial inability to post bail combined with bail being improperly used as a means to effectuate a safety hold, prevents individuals who are factually innocent from being able to effectively assist in his or her own defense. (#15)
  - When a motion alleges witness recantations, should a hearing be mandated with de novo review applied by the court to determine if the new testimony is both credible and outcome determinative? (#18)
  - Can ethical rules be created to prohibit what I have previously denominated “dark pleas?” (#19)
  - Can a statutory fix be created to allow claimants to raise new arguments to address advancements in scientific forensic evidence that would undermine the state’s theory of guilt that was used to convict the defendant prior to the acceptance of such scientific developments? (#21)

- Are the proposed rule changes provided by the OPAA in compliance with the current model ABA rules governing prosecutor's ethical obligations? (#23)
  - Find ways to ensure that wrongful convictions do not occur in the first place. (#25)
  - Prevention (#27)
  - Remediation (#28)
  - Changes to Ohio Criminal Rule 33 (#29)
  - Timing of the Filing of a Motion for New Trial (#30)
  - Shifting Science as a Ground for Relief (#31)
  - The Court does have the power to revise the rules of criminal procedure. (#32)
  - Standard for granting motion for new trial (#33)
  - Expanded Post-Conviction Access to Evidence for Testing (#34)
- **Postconviction Relief Petitions**
    - Legitimate claims of innocence are disregarded because they are not raised in a timely fashion. (#7)
    - Procedural barriers are frequently invoked to prevent post-conviction claims and new trial motions from being heard on their merits. (#10)
    - Can we create a vetting process for post-conviction motions for a new trial that identify and prioritize claims of actual innocence and further identify those motions that clearly and logically warrant a full hearing to determine the motion's merits? (#17)
- **Right to Counsel**
    - Right to counsel in cases such as post-conviction matters. (#1)
    - Many junior lawyers would be willing to take on post-conviction cases pro bono. (#2)

- Many cases of actual innocence are never litigated due to a lack of access to counsel and of those cases that are brought, shortcomings in defense counsel skills and knowledge hinders justice. (#12)
- A significant barrier to advancing claims of innocent is the lack of compensation for both the individual and the attorneys who would represent those individuals. (#16)
- **Misconduct**
  - In a recent study of exonerations, it was found that official misconduct, primarily by prosecutors and police, account for 54% of the wrongful convictions. (#13)
  - The suppression of exculpatory evidence often occurs before it ever reaches the prosecutor. (#14)
  - Changes to Ethical and Professionalism Standards (#35)

## **Training and Education Initiatives and Data Collection**

- **General**
  - Many junior lawyers would be willing to take on post-conviction cases pro bono. (#2)
  - Data collection and subsequent evaluation to achieve, at minimum, the statutory obligations [on criminal sentencing] (#3)
  - Include representatives from the victim/survivor community and someone with expertise in forensic sciences. (#8)
  - Ohioans have been impacted by faulty science in many cases. (#9)
  - How can we best address and eradicate the myth that is prevalent among many citizens that “everyone” who is convicted in the criminal justice system eventually claims that they are actually innocent? (#22)
  - Find ways to ensure that wrongful convictions do not occur in the first place. (#25)
  - Prevention (#27)

- Remediation (#28)
- **Misconduct**
  - In a recent study of exonerations, it was found that official misconduct, primarily by prosecutors and police, account for 54% of the wrongful convictions. (#13)
  - The suppression of exculpatory evidence often occurs before it ever reaches the prosecutor. (#14)