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MIDWEST INNOCENCE PROJECT



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Tricia Bushnell, Midwest Innocence Project Executive Director
Committee on Corrections and Juvenile Justice on House Bill 2167
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The Midwest Innocence Project is a non-profit that works to exonerate the wrongfully convicted in Kansas, Arkansas, Iowa, Missouri and Nebraska. We support House Bill 2167. Exonerations around the country have made clear that innocent people are and have been sentenced to death. Further, the inclusion of the death penalty as a sentencing option increases the rate of false confessions, a leading cause of wrongful convictions. The elimination of the death penalty would reduce the rate of false confessions created from fear of the ultimate punishment and ensure that innocent capital defendants would live to challenge their wrongful convictions.

As of today, 157 individuals have been freed from death row after evidence established they were innocent.¹ 20 of them were exonerated after DNA testing.² We will never know how many innocent individuals did not live to see their conviction overturned, as once someone is executed, there is no standing to raise an innocence claim, and no resources to continue investigation as other living defendants are waiting. Studies estimate that over 4% or 1 in 20 of all individuals sentenced to die at the hands of the state are actually innocent.³

Even if not applied in a particular case, the threat of the death penalty also contributes to wrongful convictions as individuals have falsely confessed or pleaded guilty in order to escape the threat of death. A review of the DNA cases shows that in over 25% of all DNA exonerations, false confessions were both elicited and used as evidence to wrongfully convict an innocent person.⁴ And when we look only at homicide cases—where the threat of the death penalty looms—that number rises to 63%.⁵ That means nearly 2/3rds of the innocent people convicted of homicides and exonerated by DNA testing, confessed to those crimes.

In October 2015, Missouri’s Governor Nixon commuted the death sentence of Kimber Edwards,⁶ a man who evidence suggests falsely confessed to the crime after his codefendant—the real perpetrator—implicated him. Both Edwards and his codefendant, Orthell Wilson, were threatened with the death penalty, a penalty that

¹ Death Penalty Information Center, “Innocence and the death penalty,” <http://www.deathpenaltyinfo.org/innocence-and-death-penalty>

² Innocence Project, “DNA Exonerations in the United States,” <http://www.innocenceproject.org/dna-exonerations-in-the-united-states/>

³ Samuel R. Gross, Barbara O’Brien, Chen Hu, Edward H. Kennedy, “Rate of false conviction of criminal defendants who are sentenced to death,” *Proceedings of the National Academies of Science*, March 25, 2014, <http://www.pnas.org/content/111/20/7230>

⁴ Innocence Project, “False Confessions or Admissions,” <http://www.innocenceproject.org/causes/false-confessions-admissions/>.

⁵ *Id.*

⁶ Jeremy Kohler, “Nixon commutes death sentence for convicted murderer Kimber Edwards,” *St. Louis Post-Dispatch*, Oct. 2, 2015, http://www.stltoday.com/news/local/crime-and-courts/nixon-commutes-death-sentence-for-convicted-murderer-kimber-edwards/article_ba43a356-35bc-597c-9c20-0ea5a30aea41.html



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Wilson avoided by making a false statement that Edwards was involved in the crime. Edwards, who has been diagnosed with Asperger's Syndrome, confessed out of terror that he would face execution. He was sentenced to death anyway.

Similarly, in 1989, Chris Ochoa not only confessed and pleaded guilty to a rape and murder in Texas that he did not commit, he also testified on the stand that he and his innocent co-defendant both committed the crime.⁷ During the investigation, police interviewed 22-year-old Ochoa and his 18-year-old co-defendant Richard Danziger separately. During these interrogations, police told Ochoa—falsely—that Danziger had confessed and implicated both himself and Ochoa.

At that point, Ochoa, like so many other innocent defendants, found himself in an impossible situation. Facing the death penalty, and believing the police's lie that Danziger had confessed, Ochoa took a plea deal and agreed to testify against Danziger to avoid the death penalty. Danziger went to trial, and Ochoa, on the stand and under oath, once again confessed in detail to a crime neither he nor Danziger committed. Both Danziger and Ochoa were sentenced to life in prison.

In 2000, DNA testing from the rape kit excluded Danziger and Ochoa and matched another inmate. The men were both released and ultimately exonerated in 2002.⁸ As a footnote to their release—while he was wrongfully imprisoned, Danziger sustained severe brain trauma from an attack by another inmate in prison and requires constant care. Ochoa went on to law school and is now a lawyer in Texas.

The criminal justice system is a human system—one which only functions on the work of humans, and because of that, one that is susceptible to mistakes. The 1,975 total exonerations⁹ recorded to date make clear that we do not always get it right. Currently in the United States, the rate of exonerations has reached one every two days.¹⁰ It is possible that that rate could one day include someone sentenced to death in Kansas. However, that is only possible if he lives to see that day.

Thank you.

⁷ The National Registry of Exonerations, "Chris Ochoa," <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3511>

⁸⁸ *Id.*

⁹ The National Registry of Exonerations, "Exonerations since 1989," <http://www.law.umich.edu/special/exoneration/Pages/Exonerations-in-the-United-States-Map.aspx>

¹⁰ The National Registry of Exonerations, "Exonerations in 2015," https://www.law.umich.edu/SPECIAL/EXONERATION/DOCUMENTS/EXONERATIONS_IN_2015.PDF