

# THE SUPREME COURT *of* OHIO

## TASK FORCE ON CONVICTION INTEGRITY AND POSTCONVICTION REVIEW

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October 22, 2021  
Meeting Minutes

### Task Force Members in Attendance

**Hon. Gene Zmuda (Chair)**  
Sixth District Court of Appeals

**Sara Andrews**  
Director, Ohio Sentencing Commission

**Hon. Pierre Bergeron**  
First District Court of Appeals

**Hon. Michael P. Donnelly**  
*Ex-officio member*  
Supreme Court of Ohio

**Douglas Dumolt, Esq.**  
*Non-voting Designee of Dave Yost*  
Ohio Attorney General's Office

**Rep. David Leland**  
District 22

**John Martin, Esq.**  
Cuyahoga County Public Defender's Office

**Hon. Stephen McIntosh**  
Franklin County Common Pleas Court

**Elizabeth Miller, Esq.**  
*Non-voting Designee of Tim Young*  
Office of the Ohio Public Defender

**Sheriff Tom Rigenbach**  
Buckeye Sheriff's Association

**Joanna Sanchez, Esq.**  
*Non-voting Designee of Tim Young*  
Wrongful Conviction Project  
Office of the Ohio Public Defender

**Hon. Nick Selvaggio**  
Champaign County Common Pleas Court

**Andy Wilson, Esq.**  
Senior Advisor on Criminal Justice Policy  
Office of the Governor

**Timothy Young, Esq.**  
Ohio Public Defender

## **Approval of September 10 and October 1, 2021 Meeting Minutes**

Task Force Chair Judge Gene Zmuda opened the meeting by requesting any objections to the approval of the September 10, 2021 and October 1, 2021 meeting minutes. No objections were raised, and the minutes were unanimously approved.

## **Conviction Integrity in the News**

Tim Young, Elizabeth Miller, Joanna Sanchez, and David Ingram shared news of the collaborative effort of the Ohio Public Defender's ("OPD") Wrongful Conviction Project and the Franklin County Prosecutor's Office to exonerate Kim Hoover-Moore. Hoover-Moore was released on October 21, 2021, after spending nearly two decades in prison for the killing of an infant in her care. New evidence based on advances in the science around shaken-baby syndrome showed that the infant's death was caused by an injury sustained days before the infant came into Hoover-Moore's care.

Young pointed out that Hoover-Moore likely spent several additional years in prison due to Franklin County's previous prosecutor fighting Hoover-Moore's attorneys on access to evidence and other procedural issues. Ingram said this case marked the beginning of a partnership between OPD and the Franklin County Prosecutor's Office.

## **North Carolina Innocence Inquiry Commission Model for Ohio**

Sara Andrews, Douglas Dumolt, Mark Godsey, John Martin, Joanna Sanchez, Judge Nick Selvaggio, and Andy Wilson formed agreed to form a working group to draft a recommendation for the creation of an innocence commission in Ohio. Dumolt presented to the Task Force an initial draft of this recommendation. He explained that this draft was intended to provide a general framework while leaving room for legislation to be drafted in the future.

Dumolt's presentation covered the following:

### *Draft Recommendation Language*

- The following language was presented as the initial draft recommendation:

### **Recommendation for an Ohio Innocence Commission**

(Derived from existing North Carolina Innocence Commission [Article 92.pdf \(ncleg.gov\)](#))

The Taskforce recommends that the General Assembly create an innocence commission to investigate and adjudicate claims of actual innocence referred to it by judges and prosecutors from the jurisdiction giving rise to the conviction. An innocence commission would supplement, not replace, existing post-conviction mechanisms for challenging a conviction. If the General Assembly decides to act upon this recommendation, the Taskforce recommends a commission be created with all of the following features:

- The commission should be an independent, neutral, fact-finding entity empowered to investigate claims of factual innocence arising out of felony convictions from any court of common pleas
- The commission should be composed of members of the public as well as individuals representing the types of professionals who have substantial roles in the criminal justice system prior to a defendant's conviction
- The commission staff should be a professional staff insulated from political pressure aimed at overturning or validating criminal convictions
- The commission's authority to review claims of factual innocence should be limited to claims referred to it by the judge or prosecutor having jurisdiction over the original criminal case (or that judge or prosecutor's successor in office).
- The commission's authority to review claims should be limited to a review of claims alleging new, verifiable information evidencing innocence that the jury did not hear at trial and has not been previously considered at a hearing granted through post-conviction relief
- The commission's authority to review claims should be limited to claims where the claimant has, with the benefit of counsel, waived his Fifth Amendment rights and attorney client privileges reasonably related to the claim of factual innocence.
- The commission should be empowered to issue subpoenas for documents, compel the attendance of witnesses, and utilize the methods of discovery available under the rules of Criminal and Civil Procedure
- The commission should have the power to inspect, examine, and temporarily take possession of physical evidence for forensic examination or testing
- Claims of factual innocence investigated by the commission should be presented to a three-judge panel for adjudication
- The commission should utilize an inquisitorial, as opposed to adversarial, process when investigating claims of factual innocence and when presenting evidence relating to such claims to a panel of judges for adjudication

- The commission’s authority, policies, and practices must be consistent both with Marsy’s Law as well as victim rights provisions set forth in R.C. 2930.
- The commission should be adequately funded to investigate claims of factual innocence and comply with the constitutional and statutory rights Ohio affords to crime victims
- Subject to limited exceptions involving circumstances where exculpatory or inculpatory evidence discovered in its investigation, as well as in cases where there is sufficient evidence to warrant a public hearing on the claim, the commission’s work product should be confidential.

#### **Additional considerations**

- Although the North Carolina Innocence Commission permits the review of claims referred to it by a broad range of individuals, the Taskforce recognizes Ohio has a long tradition of local control over the investigation and prosecution of criminal offenses. Accordingly, the Taskforce recommends that any referrals to a commission be limited to referrals from local judges and prosecutors in the jurisdiction giving rise to the conviction in question.
- The Taskforce discussed and considered issues relating to potential commission composition as well as where the commission would be administratively housed. The Taskforce recognized the legitimate competing interests involved with any recommendation in these areas. Absent a consensus recommendation, the Taskforce elected to merely note the issue for future consideration by the General Assembly.
- The statute creating the North Carolina Innocence Commission articulates ostensibly clear and direct definitions relating to claims of factual innocence and the legal standards for reviewing any such claim. However, the Taskforce noted that the policies and practices of the North Carolina Innocence Commission may not be entirely consistent with the plain language of its enabling statute. Should the General Assembly create an innocence commission, the Taskforce would suggest greater clarity be provided in any Ohio statute or rule to ensure the commission’s actions are consistent with legislative intent.

#### *Use of “Factual Innocence”*

- The use of “factual innocence” in the recommendation’s language did not receive consensus among the working group. Dumolt noted that, while North Carolina’s statute limits its commission to reviewing only claims of “complete factual innocence,” the North Carolina commission may operate differently in practice based on conversations relayed by Godsey. He said Godsey would have rather left the issue to the General Assembly to decide.

- Sanchez agreed with Godsey that the word “factual” should be left out. She said this issue echoed the Task Force’s earlier discussions on the difficulty of meeting such a standard and worried that limiting the scope of a commission in this way would leave it without cases to review.

### *Guilty Pleas*

- North Carolina’s statute creates different standards for claimants who were convicted as a result of a guilty plea and those who did not plead guilty. Dumolt explained that the working group intentionally made the recommendation silent on this issue, leaving it to the General Assembly to decide.

### *Referral Process*

- Language limiting the ability to refer cases to local judges and prosecutors did not receive consensus either. While all working group members acknowledged that Ohio’s home-rule traditions would have an effect on the referral process, Godsey and others preferred to leave the recommendation silent on this issue. This would leave the Ohio Innocence Project and OPD free to advocate for themselves to be included as entities with the ability to make referrals.
  - Judge Pierre Bergeron worried that limiting referrals in this way would result in uneven application of conviction review throughout the state. One of the reasons the Task Force decided to recommend a statewide commission was to ensure equal access to all of Ohio’s counties, he said. Since there would be a long investigation and hearing process before a person is exonerated, Judge Bergeron did not see the issue with simply allowing referrals outside of those from county officials.
  - Tim Young took issue with the limitations to referrals as well. He said that county judges and prosecutors are often the main obstacles that legitimate claims of innocence face, so it would not make sense to give those officials the sole right to refer cases. At minimum, Young said, members of the Innocence Network should have the ability to refer cases as well.
  - Martin also expressed concern about limiting referrals. He pointed out that the North Carolina commission only averages around one exoneration per year. He said that further limiting who can refer cases could render Ohio’s commission unable to secure exonerations. However, Martin felt that referrals should be limited to cases without traditional forms of relief pending.

## *Recommendation Format*

- Judge Selvaggio suggested that a more general recommendation for a statewide commission could be made with majority and minority views on nonconsensus issues attached. This would avoid spending time arguing details that will have to be argued later in the General Assembly, he said.
  - Martin said this idea could make sense, but he also felt that majority and minority views could become too complicated and render the recommendation itself somewhat meaningless.
  - Dumolt agreed with Martin that majority and minority views could become so different from each other that it wouldn't make sense to present them as a single recommendation.
  - Representative David Leland agreed with Judge Selvaggio. He felt that it was more important for the Task Force to make a general recommendation and bring the issue to the General Assembly for full debate than to craft a recommendation that covers every detail. Representative Leland said the recommendation without those details is enough for a sponsor to take to the Legislative Service Commission and craft legislation to introduce.
- Judge Bergeron suggested the recommendation leave vague the two issues of a standard of innocence and a referral mechanism. Footnotes could then be added to explain the lack of consensus on those issues, he said.
- Judge Zmuda concluded that additional time would be needed to refine the recommendation into a version that a majority of members could support. He said that the working group would continue to work on the recommendation language so that a vote may be held at a future meeting.

### **Next Meeting Date — Friday, November 12, 2021, from 10:00 a.m. to 12:00 p.m.**

The next meeting of this Task Force is scheduled for November 12, 2021, from 10:00 a.m. to 12:00 p.m.