



INNOCECE PROJECT

**House Judiciary Committee
Maryland General Assembly
Tuesday, February 1, 2022
Testimony In Support of HB 249**

The Mid-Atlantic Innocence Project (MAIP) and the national Innocence Project support House Bill 249.

The National Registry of Exonerations reports that 43 innocent Marylanders have been exonerated after collectively spending more than 650 years in prison for crimes they didn't commit. Nationally, official misconduct¹ has contributed to at least 54% of the first 2400 wrongful convictions² and 33 percent have involved inadequate defense lawyers. Among Maryland cases, these percentages are 74% and 33%, respectively. This accounts for 35 known cases of Marylanders who unjustly lost their freedom across the counties of Anne Arundel, Calvert, Howard, Montgomery, Wicomico, and Baltimore City.

Every wrongful conviction exacts a tremendous toll. The wrongfully convicted and their families suffer incalculable losses and trauma. Victims and their families do not receive justice and have to relive their trauma. Communities lose valuable members, continue to experience crimes committed by the real perpetrator, and lose already scarce trust in law enforcement.

Last year, Maryland passed the "Walter Lomax Act," which will ensure compensation to all persons wrongfully convicted by the state. The case of Maryland exoneree Walter Lomax is a clear example alone of the need to address the issues of misconduct and inadequate defense.

In 1968, [Walter Lomax](#) was convicted of the fatal shooting of a food market's manager. In 2006, Baltimore City Circuit Court Judge Gale Rasin found that Mr. Lomax's trial attorney had provided a constitutionally ineffective defense by failing to present evidence and to call two police officers as witnesses who could have said they obtained descriptions of the gunman that were at odds with the way Mr. Lomax looked. Moreover, the lawyer failed to call a police officer who could have testified that he chased the suspect and that the suspect outran him—a feat that Mr. Lomax would have been unable to accomplish due to prior injuries he suffered from at the time. Judge Rasin resentenced Mr. Lomax to time served and he was released. However, his convictions remained intact.

Mr. Lomax served nearly 40 years in prison before he was exonerated in 2014, after a reinvestigation by the Baltimore City Conviction Integrity Unit. The Unit found that homicide detectives withheld or misplaced

¹As catalogued by the National Registry of Exonerations, official misconduct may include witness tampering, misconduct in interrogations, fabricating evidence, concealing exculpatory evidence and committing perjury at trial.

²Gross, Possley, Roll & Stephens, "Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement." *National Registry of Exonerations*, Sept. 1, 2020.

https://www.law.umich.edu/special/exoneration/Documents/Government_Misconduct_and_Convicting_the_Innocent.pdf

numerous pieces of exculpatory evidence, including police reports containing witness descriptions that did not match Lomax and a photo identification made by a witness who was never called to testify in court, presumably because the person did not identify Lomax.³

Official misconduct has also been present in the use of forensic evidence. At [Bernard Webster](#)'s 1982 rape trial in Maryland, for example, the forensic analyst testified that the rapist had type A blood which implicated Mr. Webster. However, the same expert had previously testified that determining the blood type from the mixed sample that was available, was not possible.

Despite what we know about the cost of wrongful convictions and the official and attorney misconduct that leads to such problems, accountability for those who committed intentional or egregiously negligent misconduct is rare — even when an individual is involved in multiple wrongful convictions. No case exemplifies this issue more than that of [Eric Simmons](#) & [Kenneth McPherson](#), two brothers who spent 24 years in prison for a murder they did not commit. Their case included misconduct by two officials involved in other wrongful convictions:

- Firstly, a detective who had been involved in the case of [Antione Pettiford](#). The judge who overturned Mr. Pettiford's conviction ruled that the detective "deliberately" misled the defense. In response to the ruling, the Baltimore Police Department's spokesperson stated that homicide commanders found that Patton did nothing wrong. "There won't be any disciplinary action or administrative action," Rowe said. "It doesn't warrant any."⁴
- Secondly, the case involved a prosecutor whose failure to disclose exculpatory information also led to the exoneration of [Paul Madison](#). During the reinvestigation of Mr. Simmons and Mr. McPherson's case, the Baltimore City Conviction Integrity Unit found that prosecutors did not disclose the existence of a third witness nor their statement.

Maryland has taken the first steps in addressing wrongful convictions by creating pathways for the innocent to bring their cases to court and by taking responsibility, through compensation, for the harm caused. It should now lead the country in addressing the most egregious of causes of wrongful convictions which will do justice by its exonerees and better protect its citizens.

For these reasons, the Mid-Atlantic Innocence Project and the national Innocence Project support HB 249 and thank Delegate Moon for his continued work to address this serious issue.

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³<https://theappeal.org/did-baltimore-cops-conspire-to-suppress-evidence-that-led-to-a-wrongful-murder-conviction/>

⁴<https://www.baltimoresun.com/news/bs-xpm-2000-06-17-0006170001-story.html>