



MEMORANDUM

To: House Government Accountability and Oversight Committee
From: Representative Bill Seitz, Representative Emilia Sykes
Date: December 5, 2017
Re: HB 411 Sponsor Testimony

Thank you, Mr. Chairman, and members of the committee, for the opportunity to present House Bill 411 today.

The proposed legislation before you is not brand new legislation. Something very similar was included in the budget bill this year (House Bill 49) in both the House and Senate versions, but was removed in the Conference Committee process. By way of background, the original legislation granting compensation to wrongfully imprisoned persons was passed several decades ago under sponsorship of then-Representative Vernon Sykes. It limited compensation only to persons who established on appeal or in post conviction actions that they were actually innocent. In 2003, then-Representative Barbara Sykes and I succeeded in passing revisions to the statute that increased the amount of compensation that is payable (this was to account for intervening inflation) and that also extended the right of compensation to persons whose convictions were reversed subsequent to sentencing because of errors in procedure. The words “subsequent to sentencing” were not as clear as they should have been, and that caused a problem in 2014 when the Ohio Supreme Court ruled in *State v. Mansaray* that only those errors procedure that OCCURRED “subsequent to sentencing” were grounds for compensation. This statutory construction was certainly not what Representative Sykes and I meant in 2003—what we meant was, the error in procedure leading to reversal of the conviction must have been DISCOVERED subsequent to sentencing. The reality is that few if any “errors in procedure” occur subsequent to sentencing, so the *Mansaray* case effectively blocked any wrongfully convicted person from getting compensation based on an error in procedure that resulted in the reversal of the conviction. Hence, the need for this bill.

This past year I worked with the The Innocence Project, the Office of the Public Defender, the Ohio Prosecuting Attorneys Association, my joint co-sponsor Representative Sykes, and Senate President Obhof to craft a budget amendment to restore the original intent of both former Representative Sykes and me that a wrongfully imprisoned person is entitled to compensation for his or her time in prison whether the conviction is reversed because he or she was ultimately proven innocent, or whether the

conviction was reversed because exculpatory evidence was unconstitutionally withheld from the defendant prior to or during the original trial in violation of the U.S. Supreme Court ruling in *Brady v. Maryland* and subsequent cases. It is important to note that this clarifying legislation:

- Does NOT increase the amount of compensation that a wrongfully imprisoned person can recover
- Applies only to errors of procedure that entail Brady violations (which are constitutional errors where the state withholds from the defendant evidence that would tend to show he or she is not guilty)—not merely any technicality upon which a sentence is reversed, nor even other errors in procedure of constitutional dimension (e.g., Fourth Amendment search and seizure violations, or Sixth Amendment ineffectiveness of counsel violations)
- Requires that any debts owed by the prisoner to the state (e.g. taxes, child support arrearages) be deducted from the allowable compensation
- Provides that if the prisoner also recovers in a civil rights suit brought under federal law, 42 U.S.C Section 1983, that recovery is offset against the allowable compensation.
- On the recommendation of the Ohio Prosecuting Attorneys Association, provides clarity as to the proper court in which these cases are to be brought.

It is our hope that this legislation will pass quickly through both chambers since something very similar was a part of the budget previously this year, and we have spent the last several months working with different parties to iron out differences in the bill. I am very pleased to report that as of last week, the OPAA has dropped it's opposition to this bill in light of the changes we have negotiated.

Again, we would like to thank the committee for allowing us to present HB 411 today. We urge you to strongly consider favorable consideration. At this time, we are happy to answer any of the members' questions.