

**Testimony by Mark Godsey, Director of the Ohio Innocence Project
In Support of House Bill 411**

My name is Mark Godsey, and I am the director of the Ohio Innocence Project, which works to exonerate the wrongfully convicted in Ohio. When an innocent person is finally exonerated and released from prison, their struggles are not over. After losing years of their lives, exonerates face numerous challenges such as affording basic necessities without employment or credit histories, rebuilding family relationships, and dealing with the trauma of their wrongful convictions.

Ohio has recognized that our state has a responsibility to compensate the wrongfully convicted for the liberty it unjustly took from them. In 2003, the Ohio General Assembly enacted R.C. 2743.48. That law provided compensation to Ohio citizens who were wrongfully convicted and could show their actual innocence or that their convictions were caused by an "error in procedure," including the government's failure to disclose information that could have shown they were innocent of the crimes for which they were convicted. For more than a decade, this law worked as the General Assembly had intended. Then, the Ohio Supreme Court ruled in 2012 that the "error in procedure" must have occurred after sentencing. However, almost all constitutional violations that lead to wrongful convictions occur before sentencing, and this ruling has effectively prevented deserving exonerates from receiving compensation. Significantly though, the Court invited the General Assembly to amend R.C. 2743.38 if its decision in *Mansaray* is incorrect. We ask that you accept that invitation.

The case of Dale Johnston exemplifies why this fix is necessary. Mr. Johnston was wrongfully convicted of murdering his daughter and her boyfriend in Logan, Ohio in 1982. After six years on death row he was exonerated when a court ruled that prosecutors illegally withheld evidence pointing to a different perpetrator, who later pleaded guilty to the crime. Mr. Johnston has not received a dime in state compensation. The courts ruled that he did not meet the standard for proving actual innocence, even though the actual perpetrators have been convicted, and he does not qualify under the "errors in procedure" provision because the prosecutorial misconduct occurred before sentencing.

House Bill 411 would clarify the intention of the General Assembly to allow wrongfully convicted people like Dale Johnston to receive compensation. It also makes the following improvements:

- 1. Narrows the types of "errors in procedure" that are eligible.** Under the current law, convictions involving any type of "errors in procedure" qualify; this bill would narrow eligibility to errors involving the government unconstitutionally withholding evidence that could have helped the exoneree prove innocence and avoid wrongful conviction (e.g. *Brady* violations).
- 2. Offsets state compensation awards with civil compensation payments:** A taxpayer protection was added that requires exonerates who receive state compensation and later receive civil lawsuit awards, or vice versa, to reimburse the state for the difference.
- 3. Permits eligibility if prosecutor does not attempt to re-prosecute after one year:** The current law requires that the prosecuting attorney cannot or will not ever pursue additional criminal proceedings against the exoneree for the conviction. The bill modifies the requirement to make the exoneree eligible if there is no pending criminal proceeding and the prosecutor has not sought an appeal within one year of the wrongful conviction being vacated, reversed or dismissed.

This bill will ensure that the wrongfully convicted receive compensation, while taxpayers are protected. I hope you will vote to support House Bill 411.