



## MEMORANDUM

To: Senate Judiciary Committee  
From: Representative Bill Seitz, Representative Emilia Sykes  
Date: September 25<sup>th</sup>, 2018  
Re: HB 411 Sponsor Testimony

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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 last year (House Bill 49) in both the House and Senate versions, but was removed in the Conference Committee process, and this bill is identical to SB 248 that has been heard in this committee under the sponsorship of Senators Eklund and Sykes. 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.

For nearly three years, 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.

This bill passed 10-1 out of the House Government Accountability and Oversight Committee then 77-11 on the House floor. To further improve this bill we would like to add two amendments, on recommendation of the Attorney General, which I have attached and to which Senators Eklund and Sykes agree. These amendments were brought to our attention by the Attorney General's office after the House Committee passed the bill. They tweak the last two bullet points above.

In closing, I leave you with two points. First, the Ohio Prosecuting Attorneys Association was originally neutral on this bill, but switched to opposed based on pressure from the assistant prosecutor in Cleveland who won the *Mansaray* case that this bill effectively overturns. I've attached correspondence from myself and Senator Sykes that rebuts the arguments made by OPAA. Second, I would ask you to consider how this bill impacts the argument made by proponents of State Issue 1 that the legislature has not pursued criminal justice reform with sufficient zeal. I disagree with that characterization, as we have made some meaningful reforms, but I agree that more can be done. Passing this bill, would be a timely sign that we are serious about criminal justice reform, even if we disagree that the Ohio Constitution needs amending to accomplish that goal.

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