

Senate Judiciary Committee

November 14, 2018

**Pierce Reed, Ohio Innocence Project**

**Proponent Testimony Re: H.B. 411**

My name is Pierce Reed and I am with the Ohio Innocence Project, an organization that works to exonerate the wrongfully convicted in our state. When an innocent person is finally exonerated and released from prison, their struggles are not over. Exonerees need financial assistance to restart their lives and afford the basic necessities after losing years of economic opportunity.

Ohio has long recognized that the state has a responsibility to compensate the wrongfully convicted for the liberty it unjustly took from them. It was one of the first states to pass a wrongful incarceration compensation law, and now that 33 states have followed suit we have the benefit of knowing areas that can be improved.

Under the current law, Ohio exonerees who are innocent are being denied compensation, while cases overturned on technicalities are receiving payments. House Bill 411 would fix the law so that it works as intended, and would also save taxpayer dollars.

*Problems with the Current Law*

When Ohio passed the original wrongful conviction compensation law in 1986, only exonerees who could offer affirmative proof of innocence were eligible. Proving actual innocence is an extremely high standard that essentially requires a person to have airtight proof that he or she could not have committed the crime. Because few exonerees could meet this standard, in 2003 the Legislature expanded eligibility to wrongful convictions that were overturned based on errors in procedure, meaning constitutional violations.

The law worked as intended for over a decade until the Ohio Supreme Court ruled in the 2014 *Mansaray* decision that the error in procedure must have occurred *after* sentencing or imprisonment. In reality, almost any constitutional violation that would lead to an innocent person being convicted would happen *before* sentencing or imprisonment.

As a result, the current law is now paying state compensation in cases that have nothing to do with innocence. For example, in May 2017 the Ohio Court of Claims granted $111,846 to Frank Davis because his conviction for cocaine possession and trafficking was overturned due to a faulty search warrant and the trial judge refused to release him for nearly six months. Court records show that police found three pounds of cocaine in his home, meaning this was not a case of innocence. However, Davis was compensated because the procedural error that kept him in prison occurred after his incarceration.

Meanwhile, Dale Johnston has not received a dime in state compensation for the six years he spent on death row for the murder of his stepdaughter and her boyfriend—even though the real perpetrators have since been convicted of the crime. His conviction was overturned when a court ruled that the prosecutor at his trial unconstitutionally withheld evidence from Mr. Johnston’s defense attorneys indicating that some else committed the crime, which is called a *Brady* violation. A *Brady* violation is an error in procedure, but because it occurred *BEFORE* sentencing and imprisonment Mr. Johnston has been denied compensation.

*Fixing the Law*

H.B. 411 would fix the law to ensure that state compensation is paid for exonerations based on innocence, rather than technicalities. Specifically the legislation:

1. **Narrows & fixes the “error in procedure” provision**: The current law allows eligibility for convictions involving any type of procedural errors that occur after sentencing or imprisonment. H.B. 411 would limit eligibility to only procedural errors based on *Brady* violations. To have a conviction overturned based on a *Brady* violation, a court must rule that the State unconstitutionally withheld evidence that was so favorable and powerful to the defendant, he or she would not have been convicted if it had been disclosed at trial, which is consistent with innocence. It also clarifies that the error in procedure could have occurred before or after sentencing and imprisonment.
2. **Adds an offset provision to protect taxpayers**. H.B. 411 would require an exoneree who received state compensation and then receives a civil award or settlement to reimburse the state for the difference. Conversely if the exoneree first receives a civil payment, that amount would be subtracted from any state compensation owed to him. Under current law, a claimant can keep the full amount of state compensation even if he receives a civil award.
3. **Permits eligibility if the prosecutor doesn’t re-file charges within one-year of exoneration**. The current law requires the prosecutor to agree to never re-file charges against the exoneree. The bill would allow eligibility if charges aren’t re-filed one year after exoneration. In the rare instance that new evidence of the exoneree’s guilt emerges, H.B. 411 specifies that the prosecutor may re-file charges and if convicted the exoneree would have to pay back the state compensation he received.

*Taxpayer Savings through H.B. 411*

Taxpayer money would be saved through H.B. 411. First, it limits eligibility under the “errors in procedure” provision to only *Brady* violations, rather than any constitutional error—which means fewer claims will qualify.

According to the Ohio Court of Claims, a total of 31 wrongful incarceration claims have been awarded since the ‘errors in procedure’ provision took effect in 2003: 25 claims were based on actual innocence, 6 were based on errors in procedure, and only 1 was based on a *Brady* violation.**[[1]](#footnote-1)** Therefore, the state should expect minimal claims under this provision.

Second, H.B. 411 would implement an offset provision that reduces the amount of state compensation owed to an exoneree by the amount they have received, or will receive, through civil awards or settlements. Had the offset provision been in effect the state would have saved $4.2 million since 2003.

*Legislation is Modest by National Standards*

Some have claimed that this legislation would make Ohio’s wrongful conviction compensation law the most liberal in the country. In fact the opposite is true.

* **Ohio offers a lower amount of compensation per year of wrongful incarceration than other states.** Ohio currently provides $52,625 per year of wrongful incarceration, which would not change under H.B. 411.Other states offer far higher amounts. Kansas just enacted a compensation law in May that provides $65,000 per year. Texas provides $80,000; Colorado provides $70,000 and the District of Columbia provides $200,000.
* **Ohio is one of only four states that exclude people who pleaded guilty to crimes from eligibility for compensation**. H.B. 411 does not change that bar on claims from people who pleaded guilty.
* **Fifteen states offer additional benefits that Ohio does not, including college tuition assistance, medical expenses, and job search assistance.**
* **The federal government and Kansas, Colorado, Minnesota and Washington State provide additional compensation for years wrongfully spent on death row, parole or the sex offender registry, which Ohio does not.**

*Attorney General Amendments Should be Accepted*

Attorney General Mike DeWine sent a letter asking the House of Representatives to accept two amendments to this legislation, which the Innocence Project believes should be accepted. The amendments: 1) maintain that the claimant must file for compensation in the common pleas court where the original trial took place and 2) make technical fixes to the civil payment offset provision.

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H.B. 411 would ensure that innocent Ohioans who suffered from wrongful convictions can get the compensation they need to rebuild their lives, while protecting taxpayers. I hope you will vote to support it.

1. *Ronald Larkins v. State of Ohio.*  2008-11028 WI [↑](#footnote-ref-1)