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**Reply of the Cuyahoga County Prosecutor's Office to Michelle Feldman,  
 (Legislative Strategist of the Innocence Project) November 29, 2018 Response**

The Cuyahoga County Prosecutor's Office would like to address a few of the misrepresentations in Ms. Feldman's response submitted on November 29, 2018:

1. **Claim:** H.B. 411 maintains current provisions in Ohio's wrongful imprisonment statute's eligibility requirements....

**Response:** No, it does not. It authorizes strict-liability recoveries anytime ex-convicts are released if a reviewing court declares a *Brady* violation occurred. *Brady* violations happen, if at all, at trial. "...*Brady* violations are quintessential claims of trial error[.]" *Harrison v. Quintana*, 2014 U.S. Dist. LEXIS 82617 (E.D. Ky. 2014).

In [Mansaray](#), 138 Ohio St. 3d 277 (2014), the Ohio Supreme Court said R.C. 2743.48(A)'s 2003 amendment ([S.B. 149 \(124th G.A\)](#)) clearly required an error post-sentencing. Thus, alleged *Brady* violations don't qualify for compensation under existing Ohio law. H.B. 411 is therefore NOT "maintaining current provisions." It is vastly expanding eligibility.

Further, Ohio is not "one of **four** states that exclude people who pleaded guilty..." Ohio is one of eleven jurisdictions that have this "guilty plea bar." See [CCPO's Written testimony](#), p. 6. Ohio's statutory presumed compensation amount is smack in the middle of the states that have these laws.

2. **Claim:** From 2003-2014 only ONE claimant received [Ohio] state compensation based on a *Brady* violation...

**Response:** Precisely. Because the plain language of R.C. 2743.48(A)(5) barred compensation for a pre-sentencing error. The reason few pursued “error in procedure” theories under from 2003 onward, is because the statute didn’t allow for them. When civil claims were pursued premised upon trial errors, (as in the *Mansaray* case: an improper ruling on a 4<sup>th</sup> Amendment suppression issue) the Ohio Supreme Court properly rejected these theories.

3. **Claim:** Connecticut’s wrongful conviction compensation law permits eligibility for convictions vacated or reversed due to official misconduct, which would include Brady violations.

**Response:** Not until recently. The Innocence Project was successful in lobbying Connecticut to change its law in 2016. Compare 2013 version of [C.G.S.A. § 54-102uu \(a\)\(2\)](#) to current law. (Attached).

At the end of the day, Proponents of H.B. 411 have identified ONE state out of the 35 (see CCPO testimony, p. 5) that might pay for a *Brady* violation. Ohio should not follow Connecticut’s lead.

“Legislative strategist, Michele Feldman called Kansas’ law ‘a gold standard’ of wrongful conviction laws. [New Kansas law to compensate wrongfully convicted defendants](#) (May 15, 2018). Kansas’ “gold standard” did not have this provision she now points to enacted by the Connecticut legislature in 2016. Ms. Feldman wants Ohio to adopt Connecticut’s “Diamond-Platinum standard” and enshrine it in our Revised Code. This committee should refuse to do so.

4. **Claim:** “We would certainly be open to discussing reasonable caps on attorneys’ fees in the future. However, this is a major issue that deserves careful vetting and stakeholder input.”

**Response:** Proponents of H.B. 411, predominantly Ohio civil rights lawyers, have a vested stake in seeing it be enacted *without* an attorney fee limitation. Follow the money. Again, Kansas’ 2018 “gold standard” law had an attorney fee limit in these cases of \$25,000. See [CCPO’s Written testimony](#), p. 26. If H.B. 411 is to be favorably reported by this Committee (which it should not) this “no attorney left behind loophole” in Ohio law should be closed.

H.B. 411 should not be favorably reported by this Committee. Thus, we urge a no vote to send the parties back to the drawing board on any revisions to existing law.

## [Conn. Gen. Stat. § 54-102uu](#)

Current through the 2018 First Regular Session.

**LexisNexis® Connecticut Annotated Statutes > Title 54 Criminal Procedure (Chs. 959 — 970) > Chapter 961 Trial and Proceedings after Conviction (Pts. I — III) > Part IIc Post-Conviction Remedies (§§ 54-102jj — 54-102uu)**

### **Sec. 54-102uu. Compensation for wrongful incarceration.**

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(a) A person is eligible to receive compensation for wrongful incarceration if:

(1) Such person has been convicted by this state of one or more crimes and has been sentenced to a term of imprisonment for such crime or crimes and has served all or part of such sentence; and

(2) Such person's conviction was vacated or reversed and (A) the complaint or information dismissed on grounds of innocence, or (B) the complaint or information dismissed on a ground citing an act or omission that constitutes malfeasance or other serious misconduct by any officer, agent, employee or official of the state that contributed to such person's arrest, prosecution, conviction or incarceration.

(b) A person who meets the eligibility requirements of subsection (a) of this section may present a claim against the state for such compensation with the Claims Commissioner in accordance with the provisions of chapter 53. The provisions of said chapter shall be applicable to the presentment, hearing and determination of such claim except as otherwise provided in this section.

(c) At the hearing on such claim, such person shall have the burden of establishing by a preponderance of the evidence that such person meets the eligibility requirements of subsection (a) of this section. In addition, such person shall present evidence as to (1) the person's age, income, vocational training and level of education at the time of conviction, (2) loss of familial relationships, (3) damage to reputation, (4) the severity of the crime for which such person was convicted and whether such person was under a sentence of death pursuant to [section 53a-46a](#) for any period of time, (5) whether such person was required to register pursuant to [section 54-251](#) or [54-252](#), and for what length of time such person complied with the registration requirements of chapter 969, and (6) any other damages such person may have suffered arising from or related to such person's arrest, prosecution, conviction and incarceration.

(d)

(1) If the Claims Commissioner determines that such person has established such person's eligibility under subsection (a) of this section by a preponderance of the evidence, the Claims Commissioner shall order the immediate payment to such person of compensation for such wrongful incarceration in an amount determined pursuant to subdivision (2) of this subsection, unless (A) such compensation award is in an amount exceeding twenty thousand dollars, or (B) such person requests, in accordance with [section 4-158](#), that the General Assembly review such compensation award, in which cases the Claims Commissioner shall submit any such claim to the General Assembly in the same manner as provided under [section 4-159](#), not later than five business days after such award determination is made or such review is requested. The General Assembly shall review any such compensation award and the claim from which it arose not later than forty-five days after such claim is submitted to the General Assembly and may deny such claim or confirm or modify such compensation award. If the General Assembly modifies the amount of the compensation award, the General Assembly may award any amount of compensation the General Assembly deems just and reasonable. If the General Assembly takes no action on such compensation award or the claim from which it arose, the determination made by the Claims Commissioner shall be deemed confirmed.

(2) In determining the amount of such compensation, the Claims Commissioner shall award an amount that is at a minimum, but may be up to two hundred per cent of the median household income for the state for each year such person was incarcerated, as determined by the United States Department of Housing and Urban Development, adjusted for inflation using the consumer price index for urban consumers, provided the amount for any partial year shall be prorated in order to compensate only for the portion of such year in which such person was incarcerated. The Claims Commissioner may decrease or further the award amount by twenty-five per cent based on an assessment of relevant factors including, but not limited to, the evidence presented by the person under subdivisions (1) to (6), inclusive, of subsection (c) of this section.

(e) In addition to the compensation paid under subsection (d) of this section, the Claims Commissioner may order payment for the expenses of employment training and counseling, tuition and fees at any constituent unit of the state system of higher education and any other services such person may need to facilitate such person's reintegration into the community.

(f) Any person claiming compensation under this section based on a pardon that was granted or the dismissal of a complaint or information that occurred before October 1, 2008, shall file such claim not later than two years after October 1, 2008. Any person claiming compensation under this section based on a pardon that was granted or the dismissal of a complaint that occurred on or after October 1, 2008, shall file such claim not later than two years after the date of such pardon or dismissal.

(g) Any person who is compensated pursuant to this section shall sign a release providing that such person voluntarily relinquishes any right to pursue any other action or remedy at law or in equity that such person may have arising out of such wrongful conviction and incarceration.

## History

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[P.A. 08-143, S. 1](#); [P.A. 16-127, S. 29](#), eff. June 9, 2016.

### Annotations

## Notes

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### Amendment Notes

2016 amendment, by P.A. 16-127, effective June 9, 2016, substituted "of one or more crimes and has been sentenced" for "of one or more crimes, of which the person was innocent, has been sentenced" in (a)(1); in (a)(2), inserted the (A) designation, deleted "the complaint or information dismissed on a ground consistent with innocence" at the end of (A) and added (B); in the second sentence of (c), deleted "the damages suffered by such person which may include, but are not limited to, claims for loss of liberty and enjoyment of life, loss of earnings, loss of earning capacity, loss of familial relationships, loss of reputation, physical pain and suffering, mental pain and suffering and attorney's fees and other expenses" following "present evidence as to" and inserted subdivisions (1) through (6); rewrote (d); and in (g), substituted "Any person who is compensated pursuant to this section shall sign a release providing that such person voluntarily relinquishes any right to pursue any other action" for "Nothing in this section shall be construed to prevent such person from pursuing any other action" and deleted "against the state and any political subdivision of the state and any officer, agent, employee or official thereof" following "such person may have."

## Research References & Practice Aids

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**Hierarchy Notes:**

[Conn. Gen. Stat. Title 54](#)

[Conn. Gen. Stat. Title 54, Ch. 961](#)

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