



# Office of the Ohio Public Defender

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Timothy Young, State Public Defender

## **Testimony in Support of HB411 Wrongful Imprisonment Compensation Sponsors: Representatives Seitz and Sykes**

Chairman Bacon, Vice Chair Dolan, Ranking Member Thomas, and members of the Senate Judiciary Committee. I am Tim Young the Ohio Public Defender. Thank you for the opportunity to testify in support of HB411.

HB411 corrects an unintended drafting error in prior legislation that caused the Supreme Court of Ohio to conclude that individuals who were wrongfully imprisoned could only be compensated if the procedural error in their case occurred after the sentencing portion of the case.<sup>1</sup> This opinion had devastating consequences on the ability of wrongfully imprisoned individuals to collect compensation. When a procedural error occurs that results in the wrong person being convicted of a crime, that error often occurs before or during trial – as opposed to after sentencing.

HB411 would allow individuals to be compensated for their wrongful conviction either when their actual innocence has been established or a violation of *Brady v. Maryland*<sup>2</sup> occurred during their case. As this committee knows, a *Brady* violation occurs when the state does not disclose evidence that is favorable to the defendant. For an individual to be successful in a *Brady* claim, that individual must show that the state withheld either exculpatory or impeachment evidence, and that the withholding resulted in prejudice to the individual – meaning there is a reasonable probability that the trial would have had a different result if the state had disclosed the evidence.<sup>3</sup> A court makes this determination by

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<sup>1</sup> *Mansaray v. State*, 138 Ohio St.3d 277, 2014-Ohio-750.

<sup>2</sup> 373 U.S. 83 (1963).

<sup>3</sup> *Strickler v. Greene*, 527 U.S. 263, 280 (1999) (citing *United States v. Bagley*, 473 U.S. 667, 676 (1985)); see also *Kyles v. Whitley*, 514 U.S. 419 (1995).

considering all the evidence presented at trial to determine if there is a reasonable probability that if the withheld evidence had been presented at trial, the case would have resulted in a conviction. This is an extremely high standard, and very few individuals are successful with a *Brady* claim. The Office of the Ohio Public Defender (OPD) has collected data regarding the number of successful *Brady* claims in Ohio over the past ten years. There may be cases that, because of the procedural posture of the case, we have no ability to find. That being said, after searching cases from Ohio appellate courts, the Supreme Court of Ohio, and the Sixth Circuit Court of Appeals (cases from Federal District Courts are still being reviewed), the OPD has only been able to identify approximately 20 cases where a *Brady* claim was successful.

The remedy for a *Brady* violation is a new trial. While a new trial is pending, an individual cannot be compensated for their overturned conviction under this bill. If the individual is convicted of lesser-included offenses at the new trial, that individual cannot be compensated under this bill. The only way the defendant would be able to collect compensation is if, after one year following the court overturning their conviction, the state has not pursued new charges for any act associated with the overturned conviction. If at some point after a year, the state does pursue charges and is successful in obtaining a conviction for any related offense – the individual must return any compensation they received. Therefore, it is a small number of people, out of an already small pool, who are eligible for compensation under this bill. Of the approximately 20 cases I mentioned earlier – the OPD estimates that only eight or fewer of those individuals would be eligible for compensation under this bill.

It is important for Ohio to not only compensate individuals whose actual innocence has been established, but also individuals who have made successful *Brady* claims. To be clear, when an individual is successful with a *Brady* claim, that individual has established in a court of law that there is a reasonable probability they would not have been convicted if the state had turned over evidence the state was



required to turn over.

Sixty-two known people have been exonerated in Ohio since 1975.<sup>4</sup> When individuals are wrongfully imprisoned, it is not just the wrongfully imprisoned individual who suffers. Their family members can be traumatized by the result of an unjust proceeding, and the family unit may be thrown into disarray. Compensation collected pursuant to this bill is imperative for helping these families try to piece their lives back together. While an individual is wrongfully imprisoned, they are unable to provide financial or emotional support to their family. They cannot progress in their chosen profession – much less save for retirement. They are unable to be present during major life events such as the birth of a grandchild or the death of a parent. The time lost is not replaceable and the damage caused is not easily fixed. HB411 will help Ohio avoid an unconscionable outcome of denying compensation to a wrongfully imprisoned person. When Ohio makes a mistake, Ohio has an obligation to correct it.

I ask that you support HB 411. I will take any questions you might have at this time.

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<sup>4</sup> The National Registry of Exonerations, <http://www.law.umich.edu/special/exoneration/pages/browse.aspx>

