

Staff Memorandum 2024-16
Innocence, Wrongful Convictions, and Related Matters
Updates on Preliminary Proposals

At its September 2024 meeting, the Committee considered factual innocence and wrongful convictions. This memorandum presents staff proposals for further discussion on those topics.

Preliminary Staff Proposals

1. Harmonize the standards for relief in the habeas statutes.

Summary Staff Proposal

Allow post-conviction relief based on new evidence if there is a “reasonable probability the outcome would have been different.”

Current Law

California’s post-conviction relief statutes contain at least three legal standards that apply to claims based on new or false evidence, depending on whether they are brought by habeas corpus petition or a motion to vacate a conviction.

Background

California’s habeas corpus statute was enacted in 1872 and not significantly amended until 1975 to include how claims of false evidence could be used to vacate a conviction.¹ It was not updated again until 2014 and has been regularly changed since then. These amendments — which have included creating parallel statutes for people no longer in custody to vacate their convictions² — have resulted in a tangle of different standards, as explored at the September meeting.³

As a result of these changes, in order to vacate a conviction, some claims require showing a “reasonable probability” of a different result,⁴ others require showing that a different result is “more likely than not”⁵ — that is, by a preponderance of evidence — and at least claim still requires evidence that “completely undermines the prosecution’s case, is conclusive, and points unerringly to [the person’s] innocence.”⁶ It is also unclear what someone with new evidence of

¹ Stats. 1975, c. 1047 (AB 48). This amendment codified, with some modification, the due process requirements of *Napue v. Illinois*, 360 U.S. 264 (1959). See Penal Code § 1473(b)(3).

² See Penal Code §§ 1473.5, 1473.6, 1473.7.

³ See Staff Memorandum 2024-09, page 6 (chart with different standards).

⁴ See *In re Richards*, 63 Cal.4th 291, 312–313 (2016) (standard applies to false evidence claims under Penal Code § 1473(b)(1) and is the same used to evaluate state-law errors under *People v. Watson*, 46 Cal.2d 818 (1956)); *People v. Hendrix*, 13 Cal.5th 933, 944 (2022) (*Watson* “does not mean more likely than not, but merely a reasonable chance, more than an abstract possibility”).

⁵ Penal Code §§ 1473(b)(1)(C) & (D).

⁶ Penal Code § 1473.6(a)(1).

innocence must prove to have a conviction vacated if they are no longer in custody as the language for this type of petition is different from all the others.⁷

California should specify a single unified standard for post-conviction claims based on new evidence, including claims based on a significant dispute about expert testimony.⁸ Such claims should allow vacatur of a conviction if the evidence shows there is a reasonable probability of a different outcome in the case, a standard used in the habeas context for almost 50 years. At least four other states — Maryland, Massachusetts, Utah, and Wisconsin — use a similar legal standard for new evidence claims.⁹

Staff Proposal

The Committee should consider recommending harmonizing the habeas and motion to vacate conviction statutes and allowing relief if the petitioner shows a reasonable probability that the outcome of the case would have been different considering the new or false evidence.

2. Clarify that strict procedural rules should not result in the dismissal of meritorious habeas petitions or motions to vacate.

Summary Staff Proposal

Allow habeas petitions and motions to vacate that offer new evidence to be evaluated on their merits if they show by a preponderance of the evidence that the outcome of the case would be different.

Current Law

Existing law allows a habeas petition to be dismissed as untimely or cumulative even if the petition offers important evidence that has not been considered by a court.

Background

Habeas corpus petitions are often limited by complex procedural requirements. For example, a petition in a non-death-penalty case must be filed “as promptly as the circumstances allow.”¹⁰ There are also strict rules on “successive” petitions, meaning a person cannot engage in “piecemeal litigation” and must bring all

⁷ Penal Code § 1473.7(a)(2). The statute specifies evidence that “requires vacation of the conviction or sentence as a matter of law or in the interests of justice.”

⁸ Penal Code § 1473(b)(1)(D).

⁹ See Utah Code Ann. 1953 § 78B-9-104(2)(a); *State v. Plude*, 750 N.W.2d 42, 52 (Wis. 2008); Md. Code Ann. Crim. Proc. § 8-301(a)(1); *Comm. v. Weichell*, 847 N.E.2d 1080, 1090 (Mass. 2006). See also *Hunt v. State*, 474 Md. 89, 114 (Court of Appeals of Md. 2021) (“Weighing the effect of newly discovered evidence in an actual innocence proceeding involves substantially the same inquiry as determining prejudice in the context of an ineffective assistance of counsel claim or assessing whether *Brady* evidence is material.”)

¹⁰ *In re Douglas*, 200 Cal.App.4th 236, 242 (2011) (cleaned up).

their claims at once.¹¹ Courts will allow a person to bring an untimely or successive habeas petition in four narrow circumstances, one of which is that the petitioner is “actually innocent”¹² — which requires the extremely high showing that “the evidence was such that it would undermine the entire prosecution case and point unerringly to innocence or reduced culpability.”¹³

These procedural bars can result in people with meritorious claims of innocence being unable to get into court to vacate their convictions. A recent unsuccessful bill, AB 3088 (Friedman), would have eliminated these procedural bars by requiring courts to always consider a habeas petition if “in light of all of the evidence now before the court, it is more likely than not the outcome of the case would have been different.”

A pragmatic standard like the one from AB 3088 would complement the staff recommendation to harmonize the habeas standards. A person filing their first timely petition based on the grounds specified in the habeas statutes would need to demonstrate a “reasonable probability” that the outcome of the case would have been different. However, if the petition is untimely or successive, they would need to demonstrate with a preponderance of the evidence that the outcome of the case would have been different — a higher standard than “reasonable probability” because it requires showing it is more likely than not there would have been a different outcome. Taken together, the two recommendations preserve the existing disfavor for multiple and untimely claims by imposing a higher burden of proof for these types of petitions.

Other states take a similar approach, including Connecticut and Utah.¹⁴ And in Michigan, successive habeas petitions are allowed when there is a claim of new evidence or there is a significant possibility that the defendant is innocent of the crime.¹⁵

¹¹ *In re Clark*, 5 Cal.4th 750, 767 (1993) (cleaned up).

¹² *Id.* at 797–798. A petitioner may also bring an untimely petition if they can show “error of constitutional magnitude led to a trial that was so fundamentally unfair that absent the error no reasonable judge or jury would have convicted the petitioner,” that they were convicted or sentenced under an invalid statute, or that the death penalty was imposed by a sentencing authority which had a grossly misleading profile of the petitioner.

¹³ *Id.* at 798, n. 33.

¹⁴ In Connecticut, a rebuttable presumption of delay without good cause generally applies when a petitioner files a subsequent habeas petition, but the presumption does not apply to claims asserting actual innocence. Conn. Gen. Stat. § 52-470(f). Utah law provides for a special innocence proceeding, separate from the general habeas law, in which a petitioner may present newly discovered material evidence that, if credible, would clearly establish their factual innocence. Utah Code § 78B-9-402(2)(a)(i).

¹⁵ Michigan Court Rules 6.502(G).

Staff Proposal

The Committee should consider recommending that courts must consider the merits of a habeas petition or motion to vacate if the petitioner shows that the outcome of the case would have been different in light of new evidence.

3. Specify that courts can dismiss criminal cases as a remedy.**Summary Staff Proposal**

Allow courts to dismiss criminal charges as a remedy after vacating a conviction.

Current Law

Courts can fashion relief “as the justice of the case may require.”¹⁶

Background

A criminal case is not definitively resolved once a habeas corpus petition is granted. Courts typically only vacate a conviction and sentence — which means the prosecution has an opportunity to prosecute the case again. Even if the case is ultimately dismissed by the prosecutor, this may take months or years to be decided.

The habeas corpus statutes already specify that a court may “dispose of such party as the justice of the case may require,”¹⁷ and the California Supreme Court has held that the “scope of a court’s authority in granting habeas corpus relief is quite broad.”¹⁸ The Penal Code should clarify that courts, at their discretion, can dismiss criminal charges in appropriate cases, similar to the power that trial courts have under Penal Code section 1385 in the pre-conviction context.

Staff Proposal

The Committee should consider recommending that the Penal Code specify that one of the available remedies to a court in a habeas corpus case or motion to vacate is the dismissal of charges, preventing a prosecutor from prosecuting the case again.

¹⁶ Penal Code § 1484.

¹⁷ Penal Code § 1484.

¹⁸ *In re Duval*, 44 Cal.App.5th 401, 411 (2020).

4. Expand post-conviction discovery.

Summary Staff Proposal

Require prosecutors to disclose favorable evidence to defendants, even if discovered after trial. Allow prosecutors in Conviction Integrity Units and people pursuing a habeas corpus petition or motion to vacate access to more information to investigate innocence claims.

Current Law

The Penal Code provides a limited statutory right to discovery — the legal process for obtaining documents and other evidence — for people sentenced to a term of 15 years or more who anticipate filing a habeas corpus petition or motion to vacate.¹⁹

Background

After conviction, Penal Code section 1054.9 provides a limited right to obtain documents and other evidence from prosecutors and law enforcement. After first applying only to people with death or life without parole sentences, the statute was expanded in 2019 to apply to people with a sentence of at least 15 years for a serious or violent offense, although this threshold does not seem to be based on any particular sentencing data.²⁰ The defendant must have filed or be preparing to file a petition for habeas corpus (or motion to vacate a conviction, if out of custody), must have tried to obtain the materials from trial counsel, and must pay the “actual costs of examination or copying.”²¹

As the Committee heard at the September meeting, one problem with the discovery statute is that it only allows someone to obtain what they would have been entitled to at the time of trial.²² In other words, there is no requirement that prosecutors and law enforcement disclose to convicted people favorable evidence from after trial, such as exculpatory evidence or material from successful Racial Justice Act claims. Prosecutor’s jury selection notes — which have been shown to contain evidence of racial bias in some cases²³ — are also not

¹⁹ Penal Code § 1054.9(a). The conviction must also be considered serious or violent under California law.

²⁰ Penal Code § 1054.9(a).

²¹ Penal Code § 1054.9(a) & (e).

²² Penal Code § 1054.9(c) (“discovery materials’ means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial”).

²³ Annelise Finney, *Allegations of Prosecutorial Bias Spark Review of Death Penalty Convictions in Alameda County*, KQED, April 22, 2024.

easily obtainable by defendants after conviction because they can be considered “work product.”²⁴

California’s rules of ethics for attorneys help address parts of this problem but they are insufficient. Ethical rules require a prosecutor to make timely disclosures of any “new, credible and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense.”²⁵ Upon learning of the information, the prosecutor must promptly disclose the evidence to a court, to the defendant, and conduct an investigation. If the evidence establishes by clear and convincing evidence that a defendant was convicted for an offense they did not commit, the prosecutor must try to remedy the conviction.²⁶ But this ethics rule does not appear in the Penal Code and the California Supreme Court has not imposed such a requirement as a matter of constitutional law.²⁷ And the complex definition of favorable evidence in the ethics rule is overly-narrow and would not cover material related to sentencing or the Racial Justice Act.²⁸

Other states require more post-conviction discovery by law. North Carolina mandates open-file discovery to non-death-penalty defendants in post-conviction proceedings once they are represented by counsel.²⁹ Texas requires that prosecutors provide defendants with exculpatory, mitigating, or impeachment evidence even after trial, including material that “would tend to reduce the punishment for the offense charged.”³⁰

²⁴ *Box v. Superior Court*, 87 Cal.App.5th 60, 67 (2022) (defendant is entitled to discovery of the prosecution’s jury selection notes only after showing a prima facie case of racial bias during jury selection).

²⁵ Rules of Professional Conduct, rule 3.8(f). California was also the first state to impose criminal penalties for prosecutors who intentionally and in bad faith withhold exculpatory material. Penal Code § 141.

²⁶ Rules of Professional Conduct, rule 3.8(g).

²⁷ Last year, the California Supreme Court held that a prosecutor’s duty to disclose favorable evidence under as a matter of constitutional due process extends to habeas petitions, provided the evidence was known to or should have been known by the state at the time of trial. *In re Jenkins*, 14 Cal.5th 493, 527 (2023). The Court did not address what should happen when new exculpatory evidence is discovered after conviction. And the United States Supreme Court has held that a prosecutor does not have a post-conviction obligation to develop and disclose new exculpatory information that was not available at the time of the original trial, i.e. new DNA analysis. *District Attorney’s Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52 (2009).

²⁸ Allowing prosecutors or courts to determine whether evidence is favorable, or material, has been criticized as inadequate. See, e.g., Daniel Medwed, *Brady’s Bunch of Flaws*, 67 Washington and Lee Law Review, Volume 67, 1533, 1541–1544 (2010); Sophia Waldstein, *Open-File Discovery: A Plea for Transparent Plea-Bargaining*, 92 Temple Law Review 517, 549 (2020).

²⁹ N.C. Gen. Stat. 15A-1415(f).

³⁰ Texas Code Crim. Proc. § 3914(h) (a defendant must receive “any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state that

Prosecutors in Conviction Integrity Units — which often examine old convictions — have also encountered obstacles to efficiently investigating cases of innocence. For example, until a habeas petition is filed by a petitioner, there is no active criminal case, and it may be difficult for prosecutors to subpoena documents, obtain search warrants, or get confidential records of police officers if misconduct is alleged.³¹

The Penal Code should be updated to allow more efficient discovery of evidence that can show someone is innocent or has been wrongfully convicted.

Staff Proposal

The Committee should consider recommending the following changes to the Penal Code to broaden post-conviction discovery:

- Require prosecutors and law enforcement to disclose any favorable evidence discovered after conviction. Favorable evidence should be defined broadly, like it is in Texas,³² to include exculpatory, impeachment, or mitigating information that tends to negate the guilt of the person or tends to reduce the sentence. This definition should also include relevant rulings under the Racial Justice Act.
- Allow a person convicted of a felony whose sentence included a period of incarceration greater than 1 year — not just those who received a sentence of at least 15 years — investigating a habeas corpus petition or motion to vacate to obtain the prosecutor’s entire file, not just what they would have been entitled to at trial.
- This disclosure of the prosecutor’s file should continue to be subject to existing exemptions for any “writing that reflects an attorney’s impressions, conclusions, opinions, or legal research or theories,”³³ but the prosecution’s jury selection notes should always be disclosed and exempted from the definition of work product.³⁴
- Allow prosecutors working in Conviction Integrity Units to use investigatory tools, including subpoenas, search warrants, and access to confidential law enforcement records.

tends to negate the guilt of the defendant or would tend to reduce the punishment for the offense charged.”).

³¹ See, e.g., Penal Code §§ 1326, 832.7(a).

³² Texas Code Crim. Proc. § 3914(h).

³³ Code Civil Procedure § 2018.030(a); Penal Code § 1054.6.

³⁴ *Box v. Superior Court*, 87 Cal.App.5th 60, 67 (2022). See also *People v. Jones*, 12 Cal.5th 348 (2021) (prosecutor waived work-product arguments).

5. Modernize compensation for innocent people.

Summary Staff Proposal

Update California's innocence compensation scheme to clarify the statute, match processes and rewards in other states, and provide more equitable relief to innocent people.

Current Law

A person who has been convicted and incarcerated for a felony offense that they did not commit will be compensated for each day of wrongful incarceration at \$140 per day.³⁵ A person seeking compensation has 10 years to bring a claim after an acquittal, dismissal of charges, pardon, or release from custody, whichever is later.³⁶ The compensation process is administered by the California Victim Compensation Board (CalVCB).

Background

At the September meeting, the Committee had a wide-ranging discussion about California's current compensation system, including whether the current system should be expanded to cover harms suffered by family members of exonerated people and whether compensation should be provided to people who, while not necessarily factually innocent, may have been incarcerated unlawfully.

The staff discussion that follows first surveys relevant practices from other states and then outlines staff proposals for updating the current compensation scheme. After the staff proposals are additional items that staff has determined warrant further Committee discussion because they raise unique issues likely to significantly expand the cost and complexity of the current system.

Additional compensation offered by other states

California's compensation scheme has a clearly-defined formula for compensation based on time spent incarcerated and provides relatively quick payment if a court has found that someone is factually innocent. But unlike some other states, it does not address an exoneree's full economic damages, such as loss of income or loss of earning potential, or harm to their families.

These damages may include lost wages or unpaid child support accrued during the wrongful incarceration, and court costs, fines, and attorney fees. Exonerees who were incarcerated for long sentences have also been deprived of the opportunity to build a legacy for themselves and their families.³⁷ For example, they were not able to earn wages, build credit history, purchase a home, or help

³⁵ Penal Code § 4904.

³⁶ Penal Code § 4901(a).

³⁷ Jeffrey S. Gutman, *An Empirical Reexamination of State Statutory Compensation for the Wrongfully Convicted*, 82 Missouri Law Review 369, 430 (Spring 2017).

a child pay for college.³⁸ And many families accrue significant financial burdens during incarceration: in addition to having to fill the direct financial gaps left by the absence of their loved one, they may also pay for mental health support and phone calls and visits to the incarcerated person, among other costs.³⁹

In addition, data shows that California's compensation system is often the only way that people may receive money that could correct the injustice of a wrongful conviction: only about one-third of exonerated people in California have been able to receive monetary compensation via a federal civil rights lawsuit.⁴⁰

In light of these significant economic losses, some states provide broader compensation for exonerees and their families than California does, including:

- Adjusting compensation amounts for inflation.⁴¹
- Waiving tuition at state universities and educational institutions for exonerees and their children.⁴²
- Paying child support arrears accrued during the period of incarceration directly to the department responsible for collecting payments.⁴³
- Reimbursement of fines, fees, or restitution paid by successful claimants.⁴⁴
- Awarding reasonable attorney fees for bringing compensation claims.⁴⁵ Some states also reimburse attorneys for fees incurred working on overturning the wrongful conviction.⁴⁶

³⁸ *Id.*

³⁹ Saneta deVuono-powell et al, *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center, 2015.

⁴⁰ National Registry of Exonerations, *Compensation by the Numbers: Federal Civil Rights Lawsuit Compensation*, July 15, 2024. Of 276 exonerees, 94 (34%) have received awards, with 24 cases (9%) still pending.

⁴¹ Conn. Gen. Stat. § 54-102uu(d)(2); Fla. Stat. § 961.06(1)(a); Ill. Comp. Stat. § 705-505/8(c); Ohio Rev. Code § 2743.49; Va. Stats. § 8.01-195.11(A); Wa. Rev. Code § 4.100.060(5).

⁴² Co. Rev. Stat. § 13-65-103(2)(e)(II); Wa. Rev. Code § 28B.15.395.

⁴³ Co. Rev. Stat. § 13-65-103(2)(e)(III); D.C. § 2-423.02(a)(1)(B); Minn. Stat. Ann. § 611.365(a)(5); Tx. Civ. Prac. & Rem. Code § 103.052(a)(2); Wa. Rev. Code § 4.100.060(5)(c).

⁴⁴ See, e.g., Co. Rev. Stat. § 13-65-103(2)(e)(V); Fla. Stat. § 961.06(1)(c); Va. Stats. § 8.01-195.11(C); Wa. Rev. Code § 4.100.060(5)(d).

⁴⁵ See, e.g., Co. Rev. Stat. § 13-65-103(2)(e)(IV); Fla. Stat. § 961.06(1)(d); Minn. Stat. Ann. § 611.365(2)(b); Va. Stats. § 8.01-195.11(C).

⁴⁶ See, e.g., Fla. Stat. § 961.06(1)(d); Iowa Stat. § 663A.1(6)(a); Ohio Rev. Code § 2743.48(E)(2)(a).

- Compensating for time spent on the sex offender registry, parole, probation, and other similar restraints on liberty.⁴⁷
- Paying economic damages, such as lost wages, and reimbursing medical and dental expenses incurred as a result of incarceration.⁴⁸
- Allowing for a look-back period for people who received compensation under a previous, more stringent law.⁴⁹
- Allowing a personal representative of the exoneree to pursue the claim after the death of the exoneree.⁵⁰

Most significantly, in New York, a factually innocent person may claim damages that are specific to the harms the individual endured instead of a flat amount of compensation per day.⁵¹

Staff Proposals

The Committee should consider recommending the following changes to California's current compensation system:

- Redraft the statutory compensation scheme — which has been repeatedly amended in recent years with sometimes inconsistent results — to improve clarity, brevity, and consistency with other laws.
- Apply the stream-lined process currently in place for convictions vacated through habeas corpus to convictions reversed on direct appeal and people acquitted after an initial trial. This process requires CalVCB to presumptively approve compensation unless the Attorney General or District Attorney shows clear and convincing proof of the claimant's guilt.⁵²

⁴⁷ Co. Rev. Stats. § 13-65-103(3)(a)(II); D.C. § 2-423.02(a)(1)(A)(ii); Id. Code § 6-3503(1)(b); K.S.A. § 60-5004(e)(1)(B); Minn. Stat. Ann. § 611.365.(a); Nev. § 41.950(1)(b); Or. Rev. Stats § 30.657(5)(a)(B); Tx. Civ. Prac. & Rem. Code § 103.052(b).

⁴⁸ See e.g., Ohio Rev. Code § 2743.48 (E)(2)(a)-(d) (a person may recover total sum of any fines or court costs paid, \$52,625 per year of imprisonment, *and* any loss of wages, salary, or other earned income); Minn. Stat. Ann. § 611.365(2)(a) (person may recover the sum of \$50,000 per year of imprisonment and additional monetary damages, which may include economic damages, such as lost wages and reimbursement for medical and dental expenses, and noneconomic damages for any physical or nonphysical injuries or sickness incurred as a result of incarceration).

⁴⁹ La. Rev. Stat. § 15:572.8(H)(3); Minn. Stat. Ann. § 590.11(2); Ohio Rev. Code § 2743.48(A)(5).

⁵⁰ Minn. Stat. Ann. § 611.365(7); Va. Stats. § 8.01-195.11(D).

⁵¹ New York requires the court to “award damages in such sum of money as the court determines will fairly and reasonably compensate” people. 860 N.Y. Court of Claims Act § 8-b.” This may include awarding compensation for lost wages, physical or mental suffering, stigma attached to the type of conviction, presence or absence of a previous significant criminal history, and deprivation of a parenting role. See *Baba-Ali v. New York*, 878 N.Y.S.2d 555 (2009).

⁵² Penal Code §§ 4900(b), 4902(d), 1485.55(d).

- Allow a family member of the exoneree to pursue the claim after the death of the exoneree.
- Create a one-time lookback period that allows claimants who received the maximum of \$10,000 — the cap allowed until 2000 — to file a supplemental claim. This would include claimants who never filed or who did not receive compensation that would be available to them under current law.
- Compensate wrongfully convicted persons for other deprivations of liberty, including juvenile detention, involuntary hospitalization, and time spent on parole, probation, community supervision, and the sex offender registry.
- Automatically adjust the compensation formula to account for inflation.
- Reimburse restitution, fines, fees, court costs, and other sums paid by the claimant that were required by the conviction and pay any child support arrears incurred due to the wrongful conviction.
- Pay reasonable attorney fees and costs incurred in obtaining compensation, including to pro bono attorneys. The fees should be based on a reasonable hourly rate for work actually performed by counsel.
- Provide in-state tuition waivers for children of exonerees.

Items for Further Committee Discussion

In addition to the staff proposals above, the Committee should discuss whether to recommend these additional changes to the Penal Code, which raise unique issues likely to make the compensation process significantly more complex, controversial, and expensive:

- Allow individuals to claim specific harms beyond the daily compensation rate, which could include damages suffered by family members and others in a family-like relationship.⁵³
- Allow claims for all unlawful incarceration, including when a portion of a sentence was (1) unconstitutionally excessive because the sentence was cruel or unusual, (2) for conduct that is no longer criminal (such as a

⁵³ The California Family Rights Act was recently amended to reflect the fact that most families today depart from the “nuclear family” model and increasingly include close loved ones that are not biologically or legally related. AB 1041 (Wicks 2022) expanded the definition of “family member” to include a designated person, or “any individual related by blood or whose association with the employee is the equivalent of a family relationship.” Government Code § 12945.2(b). Given the fraught relationships an exoneree may have with their biological or legal family, any definition for family member should be similarly expansive.

resentencing for a felony-murder conviction under SB 1437), or (3) violated the Racial Justice Act.⁵⁴

- Allow the state to seek reimbursement from counties or individual law enforcement agencies if those entities caused the wrongful conviction. Though the state currently bears the full costs of the compensation process, these costs could be shifted to the parties directly responsible for the wrongful conviction, which typically include local law enforcement departments and county prosecutors. But tracing or apportioning liability will be complex and local parties may have a strong desire to intervene in compensation claims, which would likely increase the adversarial nature of the proceedings and add significant delay.
- Pay reasonable attorney fees and costs incurred in obtaining vacatur of the conviction — not just the compensation process — including to pro bono attorneys.

Conclusion

Staff looks forward to discussing the proposals presented in this memorandum with the Committee.

Respectfully submitted,

Thomas M. Nosewicz
Legal Director

Joy F. Haviland
Senior Staff Counsel

⁵⁴ Ohio does not limit compensation to factually innocent people and allows compensation for violations of *Brady v. Maryland*, 373 U.S. 83 (1963), the due process rule generally requiring favorable evidence to be disclosed to defendants before trial. See Ohio Rev. Code § 2743.48(A)(5).