

As Introduced

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H. B. No. 411

Representatives Seitz, Sykes

**Cosponsors: Representatives Galonski, Miller, Strahorn, Boggs, Celebrezze,
Smith, K., Kent, Craig, West, Holmes**

A BILL

To amend sections 2305.02 and 2743.48 of the 1
Revised Code to modify the state's wrongful 2
imprisonment law. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2305.02 and 2743.48 of the 4
Revised Code be amended to read as follows: 5

Sec. 2305.02. ~~The A court of common pleas in the county~~ 6
~~where the underlying criminal action was initiated~~ determined as 7
specified in division (B) (1) of section 2743.48 of the Revised 8
Code has exclusive, original jurisdiction to hear and determine 9
~~a civil an~~ action or proceeding that is commenced by an 10
individual who ~~seeks a determination by that court that the~~ 11
~~individual~~ satisfies divisions (A) (1) to (5) of section 2743.48 12
of the Revised Code and that seeks a determination by the court 13
that an error in procedure of the type described in division (A) 14
(5) of that section occurred, that the offense of which the 15
individual was found guilty, including all lesser included 16
offenses, was not committed by the individual, or that no 17
offense was committed by any person. If ~~that the~~ court enters 18

the requested determination, it shall comply with division (B) 19
of that section. 20

Sec. 2743.48. (A) As used in this section and section 21
2743.49 of the Revised Code, a "wrongfully imprisoned 22
individual" means an individual who satisfies each of the 23
following: 24

(1) The individual was charged with a violation of a 25
section of the Revised Code by an indictment or information, and 26
the violation charged was an aggravated felony ~~or,~~ felony, or 27
misdemeanor. 28

(2) The individual was found guilty of, but did not plead 29
guilty to, the particular charge or a lesser-included offense by 30
the court or jury involved, and the offense of which the 31
individual was found guilty was an aggravated felony ~~or,~~ felony, 32
or misdemeanor. 33

(3) The individual was sentenced to an indefinite or 34
definite term of imprisonment in a state correctional 35
institution for the offense of which the individual was found 36
guilty. 37

(4) The individual's conviction was vacated, dismissed, or 38
reversed on appeal, ~~the prosecuting attorney in the case cannot~~ 39
~~or will not seek any further appeal of right or upon leave of~~ 40
~~court,~~ and no all of the following apply: 41

(a) No criminal proceeding is pending, can be brought, or 42
will be brought by any prosecuting attorney, city director of 43
law, village solicitor, or other chief legal officer of a 44
municipal corporation against the individual for any act 45
associated with that conviction. 46

(b) The prosecuting attorney in the case, within one year 47

after the date of the vacating, dismissal, or reversal, has not 48
sought any further appeal of right or upon leave of court, 49
provided that this division does not limit or affect the seeking 50
of any such appeal after the expiration of that one-year period 51
as described in division (C)(3) of this section. 52

(c) The prosecuting attorney, city director of law, 53
village solicitor, or other chief legal officer of a municipal 54
corporation, within one year after the date of the vacating, 55
dismissal, or reversal, has not brought a criminal proceeding 56
against the individual for any act associated with that 57
conviction, provided that this division does not limit or affect 58
the bringing of any such proceeding after the expiration of that 59
one-year period as described in division (C)(3) of this section. 60

(5) Subsequent to sentencing ~~and or~~ during or subsequent 61
to imprisonment, an error in procedure was discovered that 62
occurred prior to, during, or after sentencing, that involved a 63
violation of the Brady Rule which violated the individual's 64
rights to a fair trial under the Ohio Constitution or the United 65
States Constitution, and that resulted in the individual's 66
release, or it was determined by ~~the a~~ court of common pleas ~~in~~ 67
~~the county where the underlying criminal action was initiated~~ 68
either that the ~~charged~~ offense of which the individual was 69
found guilty, including all lesser-included offenses, ~~either~~ was 70
not committed by the individual or that no offense was ~~not~~ 71
committed by any person. In addition to any other application of 72
the provisions of this division regarding an error in procedure 73
that occurred prior to, during, or after sentencing, as those 74
provisions exist on and after the effective date of this 75
amendment, if an individual had a claim dismissed, has a claim 76
pending, or did not file a claim because the state of the law in 77
effect prior to the effective date of this amendment barred the 78

claim or made the claim appear to be futile, those provisions 79
apply with respect to the individual and the claim and, on or 80
after that effective date, the individual may file a claim and 81
obtain the benefit of those provisions. 82

(B) (1) A person who is a resident of this state may file a 83
civil action to be declared a wrongfully imprisoned individual 84
in the court of common pleas in either the county where the 85
underlying criminal action was initiated or the county in which 86
the person resides. A person who is not a resident of this state 87
may file a civil action to be declared a wrongfully imprisoned 88
individual in the court of common pleas in the county where the 89
underlying criminal action was initiated. That civil action 90
shall be separate from the underlying finding of guilt ~~by the~~ 91
~~court of common pleas.~~ Upon the filing of a civil action to be 92
determined a wrongfully imprisoned individual, the attorney 93
general shall be served with a copy of the complaint and shall 94
be heard. 95

(2) When ~~the a~~ court of common pleas ~~in the county where~~ 96
~~the underlying criminal action was initiated as specified in~~ 97
division (B) (1) of this section determines ~~in a separate civil~~ 98
~~action~~ that a person is a wrongfully imprisoned individual, the 99
court shall provide the person with a copy of this section and 100
orally inform the person and the person's attorney of the 101
person's rights under this section to commence a civil action 102
against the state in the court of claims because of the person's 103
wrongful imprisonment and to be represented in that civil action 104
by counsel of the person's own choice. 105

(3) The court described in division (B) (1) of this section 106
shall notify the clerk of the court of claims, in writing and 107
within seven days after the date of the entry of its 108

determination that the person is a wrongfully imprisoned 109
individual, of the name and proposed mailing address of the 110
person and of the fact that the person has the rights to 111
commence a civil action and to have legal representation as 112
provided in this section. The clerk of the court of claims shall 113
maintain in the clerk's office a list of wrongfully imprisoned 114
individuals for whom notices are received under this section and 115
shall create files in the clerk's office for each such 116
individual. 117

(4) Within sixty days after the date of the entry of the 118
determination by ~~the a~~ court of common pleas ~~in the county where~~ 119
~~the underlying criminal action was initiated as specified in~~ 120
division (B) (1) of this section that a person is a wrongfully 121
imprisoned individual, the clerk of the court of claims shall 122
forward a preliminary judgment to the president of the 123
controlling board requesting the payment of fifty per cent of 124
the amount described in division (E) (2) (b) of this section to 125
the wrongfully imprisoned individual. The board shall take all 126
actions necessary to cause the payment of that amount out of the 127
emergency purposes special purpose account of the board. 128

(5) If an individual was serving at the time of the 129
wrongful imprisonment concurrent sentences on other convictions 130
that were not vacated, dismissed, or reversed on appeal, the 131
individual is not eligible for compensation as described in this 132
section for any portion of that wrongful imprisonment that 133
occurred during a concurrent sentence of that nature. 134

(C) (1) In a civil action under this section, a wrongfully 135
imprisoned individual has the right to have counsel of the 136
individual's own choice. 137

(2) If a wrongfully imprisoned individual who is the 138

subject of a court determination as described in division (B) (2) 139
of this section does not commence a civil action under this 140
section within six months after the entry of that determination, 141
the clerk of the court of claims shall send a letter to the 142
wrongfully imprisoned individual, at the address set forth in 143
the notice received from the court of common pleas pursuant to 144
division (B) (3) of this section or to any later address provided 145
by the wrongfully imprisoned individual, that reminds the 146
wrongfully imprisoned individual of the wrongfully imprisoned 147
individual's rights under this section. Until the statute of 148
limitations provided in division (H) of this section expires and 149
unless the wrongfully imprisoned individual commences a civil 150
action under this section, the clerk of the court of claims 151
shall send a similar letter in a similar manner to the 152
wrongfully imprisoned individual at least once each three months 153
after the sending of the first reminder. 154

(3) If an individual has been determined by a court of 155
common pleas as specified in division (B) (1) of this section to 156
be a wrongfully imprisoned individual, as described in division 157
(A) of this section, both of the following apply: 158

(a) The finding under division (A) (4) (b) of this section 159
does not affect or negate any right or authority the prosecuting 160
attorney in the case may have to seek, after the expiration of 161
the one-year period described in that division, a further appeal 162
of right or upon leave of court with respect to the conviction 163
that was vacated, dismissed, or reversed on appeal, and the 164
prosecuting attorney may seek such a further appeal after the 165
expiration of that period. 166

(b) The finding under division (A) (4) (c) of this section 167
does not affect or negate any right or authority the prosecuting 168

attorney in the case may have under any other provision of law 169
to bring, after the expiration of the one-year period described 170
in that division, a criminal proceeding against the individual 171
for any act associated with the conviction that was vacated, 172
dismissed, or reversed on appeal, and the prosecuting attorney 173
may bring such a proceeding after the expiration of that period 174
as provided under any other provision of law. 175

(D) Notwithstanding any provisions of this chapter to the 176
contrary, a wrongfully imprisoned individual has and may file a 177
civil action against the state, in the court of claims, to 178
recover a sum of money as described in this section, because of 179
the individual's wrongful imprisonment. The court of claims 180
shall have exclusive, original jurisdiction over such a civil 181
action. The civil action shall proceed, be heard, and be 182
determined as provided in sections 2743.01 to 2743.20 of the 183
Revised Code, except that if a provision of this section 184
conflicts with a provision in any of those sections, the 185
provision in this section controls. 186

(E) (1) In a civil action as described in division (D) of 187
this section, the complainant may establish that the claimant is 188
a wrongfully imprisoned individual by submitting to the court of 189
claims a certified copy of the judgment entry of the court of 190
common pleas associated with the claimant's conviction and 191
sentencing, and a certified copy of the entry of the 192
determination of the court of common pleas that the claimant is 193
a wrongfully imprisoned individual under division (B) (2) of this 194
section. No other evidence shall be required of the complainant 195
to establish that the claimant is a wrongfully imprisoned 196
individual, and the claimant shall be irrebuttably presumed to 197
be a wrongfully imprisoned individual. 198

(2) In a civil action as described in division (D) of this section, upon presentation of requisite proof to the court of claims, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of each of the following amounts:

(a) The amount of any fine or court costs imposed and paid, and the reasonable attorney's fees and other expenses incurred by the wrongfully imprisoned individual in connection with all associated criminal proceedings and appeals, and, if applicable, in connection with obtaining the wrongfully imprisoned individual's discharge from confinement in the state correctional institution;

(b) For each full year of imprisonment in the state correctional institution for the offense of which the wrongfully imprisoned individual was found guilty, forty thousand three hundred thirty dollars or the adjusted amount determined by the auditor of state pursuant to section 2743.49 of the Revised Code, and for each part of a year of being so imprisoned, a pro-rated share of forty thousand three hundred thirty dollars or the adjusted amount determined by the auditor of state pursuant to section 2743.49 of the Revised Code;

(c) Any loss of wages, salary, or other earned income that directly resulted from the wrongfully imprisoned individual's arrest, prosecution, conviction, and wrongful imprisonment;

(d) The amount of the following cost debts the department of rehabilitation and correction recovered from the wrongfully imprisoned individual who was in custody of the department or under the department's supervision:

(i) Any user fee or copayment for services at a detention

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|---|-----|
| facility, including, but not limited to, a fee or copayment for | 228 |
| sick call visits; | 229 |
| (ii) The cost of housing and feeding the wrongfully | 230 |
| imprisoned individual in a detention facility; | 231 |
| (iii) The cost of supervision of the wrongfully imprisoned | 232 |
| individual; | 233 |
| (iv) The cost of any ancillary services provided to the | 234 |
| wrongfully imprisoned individual. | 235 |
| (F) (1) If the court of claims determines in a civil action | 236 |
| as described in division (D) of this section that the | 237 |
| complainant is a wrongfully imprisoned individual, it shall | 238 |
| enter judgment for the wrongfully imprisoned individual in the | 239 |
| amount of the sum of money to which the wrongfully imprisoned | 240 |
| individual is entitled under division (E) (2) of this section. In | 241 |
| determining that sum, the court of claims shall not take into | 242 |
| consideration any expenses incurred by the state or any of its | 243 |
| political subdivisions in connection with the arrest, | 244 |
| prosecution, and imprisonment of the wrongfully imprisoned | 245 |
| individual, including, but not limited to, expenses for food, | 246 |
| clothing, shelter, and medical services. The court shall reduce | 247 |
| that sum by the amount of the payment to the wrongfully | 248 |
| imprisoned individual described in division (B) (4) of this | 249 |
| section. | 250 |
| (2) If the wrongfully imprisoned individual was | 251 |
| represented in the civil action under this section by counsel of | 252 |
| the wrongfully imprisoned individual's own choice, the court of | 253 |
| claims shall include in the judgment entry referred to in | 254 |
| division (F) (1) of this section an award for the reasonable | 255 |
| attorney's fees of that counsel. These fees shall be paid as | 256 |

provided in division (G) of this section. 257

(3) If the wrongfully imprisoned individual owes any debt 258
to the state or any of its political subdivisions, the court of 259
claims, in the judgment entry referred to in division (F)(1) of 260
this section, shall deduct the amount of any such debts that are 261
known from the sum of money to which the wrongfully imprisoned 262
individual is entitled under division (E)(2) of this section. 263
The court shall include in the judgment entry an award to the 264
state or a political subdivision, whichever is applicable, of 265
any amount deducted pursuant to this division. These amounts 266
shall be paid as provided in division (G) of this section. 267

(4) (a) If, at the time of the judgment entry referred to 268
in division (F)(1) of this section, the wrongfully imprisoned 269
individual has won a monetary award against the state or any of 270
its political subdivisions in a civil action under section 1983 271
of Title 42 of the United States Code, 93 Stat. 1284 (1979), 42 272
U.S.C. 1983, as amended, that arose from any conduct that 273
resulted in or contributed to the person being determined to be 274
a wrongfully imprisoned individual, the court of claims, in the 275
judgment entry, shall deduct the amount of the award in the 276
action that the wrongfully imprisoned individual received, after 277
the payment of the individual's attorney's fees and costs 278
related to the litigation, from the sum of money to which the 279
wrongfully imprisoned individual is entitled under division (E) 280
(2) of this section. The court shall include in the judgment 281
entry an award to the state of any amount deducted pursuant to 282
this division. These amounts shall be paid as provided in 283
division (G) of this section. 284

(b) If division (F)(4)(a) of this section does not apply 285
and if, after the time of the judgment entry referred to in 286

division (F) (1) of this section, the wrongfully imprisoned 287
individual wins a monetary award against the state or any of its 288
political subdivisions in a civil action under section 1983 of 289
Title 42 of the United States Code, 93 Stat. 1284 (1979), 42 290
U.S.C. 1983, as amended, that arose from any conduct that 291
resulted in or contributed to the person being determined to be 292
a wrongfully imprisoned individual, the wrongfully imprisoned 293
individual shall reimburse the state for the sum of money paid 294
under the judgment entry referred to in division (F) (1) of this 295
section, after the deduction of the individual's attorney's fees 296
and costs related to the litigation. A reimbursement required 297
under this division shall not exceed the amount of the monetary 298
award the wrongfully imprisoned individual wins in the civil 299
action under section 1983 of Title 42 of the United States Code. 300

(c) Divisions (F) (4) (a) and (b) of this section apply only 301
with respect to judgment entries referred to in division (F) (1) 302
of this section that are entered into on or after the effective 303
date of divisions (F) (4) (a) and (b) of this section. 304

(5) If, after the time of the judgment entry referred to 305
in division (F) (1) of this section, the wrongfully imprisoned 306
individual is convicted of or pleads guilty to an offense that 307
is based on any act associated with the conviction that was 308
vacated, reversed, or dismissed on appeal and that was the basis 309
of the person being determined to be a wrongfully imprisoned 310
individual, the wrongfully imprisoned individual shall reimburse 311
the state for the entire sum of money paid under the judgment 312
entry referred to in division (F) (1) of this section. 313

(6) The state consents to be sued by a wrongfully 314
imprisoned individual because the imprisonment was wrongful, and 315
to liability on its part because of that fact, only as provided 316

in this section. However, this section does not affect any 317
liability of the state or of its employees to a wrongfully 318
imprisoned individual on a claim for relief that is not based on 319
the fact of the wrongful imprisonment, including, but not 320
limited to, a claim for relief that arises out of circumstances 321
occurring during the wrongfully imprisoned individual's 322
confinement in the state correctional institution. 323

(G) The clerk of the court of claims shall forward a 324
certified copy of a judgment under division (F) of this section 325
to the president of the controlling board. The board shall take 326
all actions necessary to cause the payment of the judgment out 327
of the emergency purposes special purpose account of the board. 328

(H) To be eligible to recover a sum of money as described 329
in this section because of wrongful imprisonment, both of the 330
following shall apply to a wrongfully imprisoned individual: 331

(1) The wrongfully imprisoned individual shall not have 332
been, prior to September 24, 1986, the subject of an act of the 333
general assembly that authorized an award of compensation for 334
the wrongful imprisonment or have been the subject of an action 335
before the former sundry claims board that resulted in an award 336
of compensation for the wrongful imprisonment. 337

(2) The wrongfully imprisoned individual shall commence a 338
civil action under this section in the court of claims no later 339
than two years after the date of the entry of the determination 340
of the court of common pleas that the individual is a wrongfully 341
imprisoned individual under division (B) (2) of this section. 342

(I) No determination of a court of common pleas as 343
specified in division (B) of this section or of the court of 344
claims as described in division (D) of this section that a 345

person is a wrongfully imprisoned individual, and no finding in 346
the civil action that results in either of those determinations, 347
is admissible as evidence in any criminal proceeding that is 348
pending at the time of, or is commenced subsequent to, that 349
civil action. 350

(J) (1) As used in division (A) of this section, "Brady 351
Rule" means the rule established pursuant to the decision of the 352
United States supreme court in Brady v. Maryland (1963), 373 353
U.S. 83. 354

(2) As used in divisions (F) (3) and (4) of this section, 355
"state" and "political subdivisions" have the same meanings as 356
in section 2743.01 of the Revised Code. 357

Section 2. That existing sections 2305.02 and 2743.48 of 358
the Revised Code are hereby repealed. 359