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# OHIO LEGISLATIVE SERVICE COMMISSION

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S.B. 36  
134<sup>th</sup> General Assembly

## Final Analysis

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**Version:** As Passed by the General Assembly

**Primary Sponsors:** Sens. Manning and S. Huffman

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### SUMMARY

- Modifies the time limitation to file an application for an award of reparations to three years after the criminally injurious conduct.
- Provides exceptions to the time limitation if any of the following apply:
  - The claimant was under 21 at the time of the criminally injurious conduct (the claim is not barred until after the claimant's 24<sup>th</sup> birthday).
  - The claim is based on criminally injurious conduct that occurred prior to March 2, 2022 (the act's effective date) and was denied under the law as it existed prior to that date (the claim is not barred, and the claimant is eligible to reapply for relief until more than three years have passed since the criminally injurious conduct).
  - The Attorney General makes an award of reparations for good cause shown.
- Modifies the information that the Attorney General must include in the finding of fact and decision when making an award of reparations.
- Modifies the information that the Attorney General must include in the finding of fact and decision when denying an award of reparations.
- Modifies the disqualifying conditions for an award of reparations.
- Modifies whether the Attorney General or Court of Claims may consider contributory misconduct by a victim for an award of reparations.
- Provides that an award of reparations otherwise payable to a victim is not payable to the victim during any period that the victim is incarcerated.
- Imposes limits on the award of reparations payable to two types of victims.
- Modifies the definitions of "allowable expense" and "contributory misconduct."

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## DETAILED ANALYSIS

### Time limitation for award of reparations

#### Background

Ohio law provides that a claim for an award of reparations must be commenced by filing an application with the Attorney General (AG). The application may be filed by mail. If filed by mail, the post-marked date must be considered the application's filing date. The application must be in a form prescribed by the AG and must include a release authorizing the AG and the Court of Claims to obtain any report, document, or information that relates to the determination of the claim for an award of reparations.<sup>1</sup>

#### Three-year limitation

The act modifies the time limitation to file an application for an award of reparations. It requires that all applications may be filed any time within three years after the occurrence of the criminally injurious conduct, subject to the exceptions below. Former law required that all applications for an award of reparations may be filed any time after the occurrence of the criminally injurious conduct.<sup>2</sup>

#### Exceptions to three-year limitation

The act prohibits the AG or Court of Claims from making an award of reparations if the claim is based on criminally injurious conduct that occurred more than three years before the claim was filed or if the claim was denied under the law as it existed prior to March 2, 2022 (the act's effective date). The act provides the following exceptions to this prohibition:<sup>3</sup>

- If the claimant was under age 21 at the time of the criminally injurious conduct, the claim is not barred until after the claimant's 24<sup>th</sup> birthday.
- If the claim is based on criminally injurious conduct that occurred prior to March 2, 2022, and was denied under the law as it existed prior to that date, the claim is not barred, and the claimant is eligible to reapply for relief until more than three years have passed since the criminally injurious conduct that gave rise to the claim.
- The AG is permitted to make an award of reparations at any time for good cause shown.

#### Information explaining awards of reparations

Continuing law requires the AG have printed and provide to all law enforcement agencies, prosecuting attorneys, city directors of law, village solicitors, and similar prosecuting authorities, cards or other materials that contain information explaining awards of reparations.

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<sup>1</sup> R.C. 2743.56(A).

<sup>2</sup> R.C. 2743.56(B).

<sup>3</sup> R.C. 2743.60(A)(2).

The act requires that the information must explain that reparations applications may be filed at any time within three years after the criminally injurious conduct, subject to the exceptions above.<sup>4</sup>

## **Investigating claim for award of reparations**

### **Background**

Ohio law requires the AG to fully investigate a claim for an award of reparations, regardless of whether any person is prosecuted for or convicted of committing criminally injurious conduct alleged in the application. After completing the investigation, the AG must make a written finding of fact and decision concerning an award of reparations.<sup>5</sup>

### **Finding of fact and decision**

The act reorganizes the information that the AG must include in the findings of fact and decision depending on whether the decision is to make or deny an award of reparations. Prior law did not make this distinction. The act also modifies some of the information that must be included.

### **Making an award of reparations**

First, under law revised by the act, the finding of fact and decision must include whether the criminally injurious conduct was reported to a law enforcement officer or agency and the date on which it was reported. The act removes the requirement to specify the name of the person who reported the conduct or the reasons why it was not reported to law enforcement.<sup>6</sup>

Second, under law revised by the act, the findings of fact and decision must include a description, rather than the “exact nature” under prior law, of the injuries that the victim sustained as a result of the criminally injurious conduct.<sup>7</sup>

Third, under law revised by the act, the finding of fact and decision must include a description of any evidence in support of contributory misconduct by the claimant, or by the victim through which the claimant claims an award of reparations. The act modifies this requirement by specifying that the description of evidence is in support of “a reduction of the award total on the basis of” contributory misconduct “or failure to cooperate” by the claimant or by the victim. It also removes the requirement that the finding of fact and decision include whether the victim has been convicted of a felony or has a record of felony arrests under Ohio law, another state, or the United States, whether disqualifying conditions exist, and whether

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<sup>4</sup> R.C. 2743.71(B)(2).

<sup>5</sup> R.C. 2743.59(A).

<sup>6</sup> R.C. 2743.59(C)(2).

<sup>7</sup> R.C. 2743.59(C) (3).

there is evidence that the victim engaged in an ongoing course of criminal conduct within five years of the criminally injurious conduct that is the subject of the claim.<sup>8</sup>

Fourth, the act eliminates the requirement that the finding of fact and decision include whether the victim of the criminally injurious conduct was a minor and, if so, whether a complaint, indictment, or information was filed against the alleged offender and its date of filing.<sup>9</sup>

### **Denying an award of reparations**

If the AG decides to deny an award of reparations, the act requires the findings of fact and decision to include the reasons for that decision and a description of any disqualifying conditions.<sup>10</sup>

## **Determining making an award of reparations**

### **Disqualifying conditions**

The act eliminates the prohibition against the AG or the Court of Claims making an award to a claimant if any of the following applies:<sup>11</sup>

- The victim was convicted of a felony within ten years prior to the criminally injurious conduct that gave rise to the claim or is convicted of a felony during the pendency of the claim.
- The claimant was convicted of a felony within ten years prior to the criminally injurious conduct that gave rise to the claim or is convicted of a felony during the pendency of the claim.
- It is proved by a preponderance of the evidence that the victim or the claimant engaged, within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim, in an offense of violence, aggravated trafficking or trafficking in drugs, or any substantially similar offense that would also constitute a felony under the laws of Ohio, another state, or the United States.
- The claimant was convicted of endangering children or domestic violence, or of any state law or municipal ordinance substantially similar to endangering children or domestic violence, within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim.
- It is proved by a preponderance of the evidence that the victim at the time of the criminally injurious conduct that gave rise to the claim engaged in conduct that was a

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<sup>8</sup> R.C. 2743.59(C)(6).

<sup>9</sup> R.C. 2743.59(C)(7) and (8).

<sup>10</sup> R.C. 2743.59(D)(2).

<sup>11</sup> R.C. 2743.60(E)(1).

felony possession of drugs violation or engaged in any substantially similar conduct that would constitute a felony under the laws of Ohio, another state, or the United States.

Former law allowed the AG or the Court of Claims to make an award to a minor dependent of a deceased victim for the dependent's economic loss or for counseling, if the minor is not otherwise ineligible as described above due to the minor dependent's criminal history and if the victim was not killed while engaging in illegal conduct that contributed to the criminally injurious conduct that gave rise to the claim. Former law also specified that the use of illegal drugs by the deceased victim cannot be deemed to have contributed to the criminally injurious conduct that gave rise to the claim. The act removes both of these provisions.<sup>12</sup>

### **Contributory misconduct**

The act removes a provision stating that when the AG decides whether a claim should be denied because of an allegation of contributory misconduct, the burden of proof concerning that alleged contributory misconduct is upon the claimant, if either of the following apply:<sup>13</sup>

- The victim was convicted of a felony more than ten years prior to the criminally injurious conduct that is the subject of the claim or has a record of felony arrests under the laws of Ohio, another state, or the United States.
- There is good cause to believe that the victim engaged in an ongoing course of criminal conduct within five years or less of the criminally injurious conduct that is the subject of the claim.

Instead, under the act, in determining whether to make an award of reparations, if the criminally injurious conduct upon which the claim is based resulted in a victim's death, the AG and the Court of Claims cannot consider whether there was contributory misconduct by the deceased victim. The AG or the Court of Claims cannot reduce or deny an award of reparations based on contributory misconduct of a deceased victim.<sup>14</sup>

The act also modifies the definition of "contributory misconduct." Under prior law, "contributory misconduct" meant any conduct of the claimant or of the victim through whom the claimant claims an award of reparations that is unlawful or intentionally tortious and that, without regard to its proximity in time or space to the criminally injurious conduct, has a causal relationship to it. Under the act, the term means any conduct of the claimant or of the victim through whom the claimant claims an award of reparations that is unlawful or intentionally tortious and to which all of the following apply:<sup>15</sup>

- The conduct occurred at the time of the criminally injurious conduct.

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<sup>12</sup> R.C. 2743.60(E)(2).

<sup>13</sup> R.C. 2743.60(F)(1) and (2).

<sup>14</sup> R.C. 2743.60(E)(2).

<sup>15</sup> R.C. 2743.51(M).

- The conduct itself caused or posed a substantial and imminent threat of causing serious physical harm or death to another.
- The conduct instigated or proximately caused the criminally injurious conduct that is the basis of the claim.

### **Incarceration**

The act provides that reparations otherwise payable to a victim are not payable to the victim during any period that the victim is incarcerated.<sup>16</sup>

### **Award of reparations**

The act imposes limits on the award of reparations payable to two types of victims. Under continuing law, the first type of victim is a person who is an immediate family member of a victim of criminally injurious conduct that consists of a homicide, a sexual assault, domestic violence, or a severe and permanently incapacitating injury resulting in paraplegia or a similar life-altering condition, who requires psychiatric care or counseling as a result of the criminally injurious conduct. Under the act, the award of reparations payable to this type of victim cannot exceed \$5,000.<sup>17</sup>

Under continuing law, the second type of victim is a person who suffers trauma so severe that it impedes or prohibits a person from participating in normal daily activities, and who is either of the following:

- A family member of a victim of criminally injurious conduct that consists of a homicide, or a family member of a victim who, as a result of criminally injurious conduct, has sustained a severe and permanently incapacitating injury resulting in paraplegia or a similar life-altering condition, and who can demonstrate either (1) the person witnessed the criminally injurious conduct, or (2) the person arrived at the crime scene in the immediate aftermath;
- An immediate family member who is a caretaker of a dependent victim of criminally injurious conduct that consists of a sexual assault.

Under the act, the award of reparations payable to this type of victim cannot exceed \$15,000.<sup>18</sup>

The act also prohibits an award of attorney's fees to the two types of victims described above.<sup>19</sup>

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<sup>16</sup> R.C. 2743.60(I).

<sup>17</sup> R.C. 2743.51(L)(2) and 2743.60(H).

<sup>18</sup> R.C. 2743.51(L)(3) and 2743.60(H).

<sup>19</sup> R.C. 2743.65(E)(5).

Under continuing law, the AG must determine, and the state must pay, attorney's fees commensurate with the services rendered, to the attorney representing a claimant for an award of reparations. The attorney's fees are subject to caps. The act removes a provision imposing a cap of \$200 if the claim was denied on the basis of a claimant's or victim's conviction of a felony offense prior to the filing of the claim. If the claimant or victim was convicted of a felony offense during the pendency of the claim, the \$200 maximum did not apply. If the attorney had knowledge of the claimant's or victim's felony conviction prior to the application's filing, the AG could determine that the filing of the claim was frivolous and deny attorney's fees.<sup>20</sup>

## **Allowable expense**

The act modifies the definition of "allowable expenses," which are included within "economic loss."<sup>21</sup> Under the act, for an immediate family member of a victim of criminally injurious conduct that consists of a homicide, a sexual assault, domestic violence, or a severe and permanently incapacitating injury resulting in paraplegia or a similar life-altering condition, who requires psychiatric care or counseling as a result of the criminally injurious conduct, "allowable expense" means "reasonable charges" incurred for psychiatric care or counseling reasonably needed as a result of the criminally injurious conduct. The act does not require the victim to apply for the allowable expense. No other type of expense is compensable for a victim of that type. Under prior law, "allowable expense" meant psychiatric care and counseling. Prior law required the victim to apply for the allowable expense. Prior law also limited the cumulative payment for care or counseling of that nature to \$2,500 for each immediate family member of a victim of that type and \$7,500 in the aggregate for all immediate family members.<sup>22</sup>

For a person who suffers trauma so severe that it impedes or prohibits a person from participating in normal daily activities and who is either (1) a family member of a victim of criminally injurious conduct of a homicide, or a family member of a victim who, as a result of criminally injurious conduct, has sustained a severe and permanently incapacitating injury resulting in paraplegia or a similar life-altering condition and who can demonstrate by a preponderance of the evidence either that the person witnessed the criminally injurious conduct or the person arrived at the crime scene in its immediate aftermath or (2) an immediate family member who is a caretaker of a dependent victim of criminally injurious conduct that consists of a sexual assault, an "allowable expense" is work loss and reasonable charges incurred for psychiatric care or counseling reasonably needed as a result of the criminally injurious conduct. No other type of expense is compensable under the law regarding reparations for a victim of that type.<sup>23</sup>

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<sup>20</sup> R.C. 2743.65(A)(5).

<sup>21</sup> R.C. 2743.51(E) and (F).

<sup>22</sup> R.C. 2743.51(F)(2).

<sup>23</sup> R.C. 2743.51(F)(3).

## Technical changes

The act makes several technical and cross-reference changes.<sup>24</sup>

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### HISTORY

Action	Date
Introduced	02-02-21
Reported, S. Judiciary	03-03-21
Passed Senate (32-0)	03-03-21
Reported, H. Criminal Justice	10-25-21
Passed House (95-1)	10-27-21
Senate concurred in House amendments (33-0)	11-10-21

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<sup>24</sup> R.C. 2743.51, 2743.60, 2743.65, and 2743.71.