



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Nicholas A. Keller

S.B. 248

132nd General Assembly
(As Introduced)

Sens. Sykes and Eklund, Thomas, Schiavoni, Tavares, Terhar, McColley

BILL SUMMARY

- Requires that a civil action to determine that a person is a "wrongfully imprisoned individual" be filed in the common pleas court where the underlying criminal action was initiated if the person is not an Ohio resident.
- Allows an Ohio resident to file such an action in either the common pleas court where the underlying criminal action was initiated or the one serving the county of residence.
- Modifies several of the criteria that an individual must satisfy in order to be a wrongfully imprisoned individual and provides for retroactive application of the changes to the "error in procedure" criterion.
- Requires the Court of Claims to deduct any known debts owed by a wrongfully imprisoned individual to the state or a political subdivision or any award from a related civil rights action from the money that the individual otherwise would be awarded and pay those deducted amounts to the state or political subdivision.
- Requires a person to reimburse the state for the amount of any award in a related civil rights action that is received after the Court of Claims enters judgment in the person's favor for wrongful imprisonment.
- Requires a person to reimburse the state for the entire award for wrongful imprisonment if the person is later convicted of an offense that is based on any act associated with the conviction that was vacated, reversed, or dismissed on appeal and that was the basis of the person being determined wrongfully imprisoned.

CONTENT AND OPERATION

Recovery for wrongful imprisonment

The bill modifies the law governing recovery for wrongful imprisonment. As under current law, there is a two-step process by which a person claiming wrongful imprisonment may sue the state for a monetary award; the first action, in the common pleas court, seeks a preliminary factual determination of wrongful imprisonment, and the second action, in the Court of Claims, provides for a monetary award to compensate for the person's wrongful imprisonment.

Venue

Instead of requiring a person to bring a civil action to be declared a "wrongfully imprisoned individual" in the common pleas court that heard the underlying criminal action, the bill permits an Ohio resident to file such an action either in the court where the criminal action was initiated or in the common pleas court of the county where the person resides. A nonresident of Ohio must file the action to be declared a wrongfully imprisoned individual in the common pleas court in the county where the underlying criminal action was initiated. Current law describes this procedure as a civil action; the bill describes it only as an "action or proceeding" to determine whether the person meets the criteria for being a "wrongfully imprisoned individual."¹

Criteria for wrongful imprisonment claim

Eligible convictions and possibility of future prosecution

The bill modifies the criteria that an individual must satisfy in order to qualify as a "wrongfully imprisoned individual." First, the bill expands the criterion that describes the wrongful conviction so that the criterion applies regarding wrongful misdemeanor convictions, as well as to wrongful convictions of felonies or aggravated felonies that are covered under existing law.²

The bill removes the criterion that the prosecutor will not appeal or refile charges with respect to the individual's conviction. Currently, in addition to those factors, the criterion requires that the prosecutor in the case cannot or will not seek any further appeal of right or leave of court regarding the vacated, dismissed, or reversed conviction and that no criminal proceeding can or will be brought by any prosecutor against the individual for any act associated with that conviction. Under the bill, the

¹ R.C. 2305.02 and 2743.48(B)(1).

² R.C. 2743.48(A)(1) and (2).



criterion is that the individual's conviction was vacated, dismissed, or reversed on appeal and all of the following apply:³

(a) No criminal proceeding is pending against the individual for any act associated with that conviction;

(b) The prosecuting attorney in the case, within one year after the date of the vacating, dismissal, or reversal, has not sought any further appeal;

(c) The prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation, within one year after the date of the vacating, dismissal, or reversal, has not brought a criminal proceeding against the individual for any act associated with the conviction.

Under the bill, a finding that a prosecuting attorney has not sought any further appeal within one year after the date of vacating, dismissal, or reversal of a conviction does not affect or negate any right or authority the prosecuting attorney may have to seek a further appeal after the expiration of that one-year period. Likewise, a finding that the prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a corporation has not brought a criminal proceeding against an individual within one year after the date of the vacating, dismissal, or reversal of a conviction does not affect or negate any right or authority the prosecuting attorney may have to bring a criminal proceeding against the individual after the one-year period for any act associated with the conviction.⁴

Procedural error criterion

The bill revises the "error in procedure that resulted in the individual's release" criterion that an individual must satisfy to be a "wrongfully imprisoned individual." Under the bill, that criterion specifies that, subsequent to sentencing or during or subsequent to imprisonment, an error in procedure was discovered that occurred prior to, during, or after sentencing, involving a violation of the "Brady Rule" which violated the individual's constitutional rights to a fair trial, and the error resulted in the individual's release, or it was determined either that the offense of which the individual was found guilty, including all lesser-included offenses, was not committed by the individual or that no offense was committed by any person. The bill makes the modification to the procedural error criterion apply retroactively to individuals who

³ R.C. 2743.48(A)(4)(a) to (c).

⁴ R.C. 2743.48(A)(4) and (C)(3).



had a claim dismissed, have a claim pending, or did not file a claim because the claim was barred or appeared to be futile based on the current provisions of that criterion.⁵

Under current law, that criterion specifies that, subsequent to sentencing and during or subsequent to imprisonment, a procedural error resulted in the individual's release, or it was determined that the charged offense, including all lesser-included offenses, either was not committed by the individual or was not committed by any person. In *Mansaray v. State*,⁶ the Ohio Supreme Court interpreted the current wording to mean that the error must have occurred after sentencing and during or subsequent to imprisonment. The bill's wording clarifies that the error may have occurred prior to, during, or after sentencing, but is discovered after sentencing or during or subsequent to imprisonment.

The "Brady Rule" refers to the rule established by the U.S. Supreme Court in *Brady v. Maryland* (1963), 373 U.S. 83, that prosecutors must disclose to the defense any evidence in the government's possession that is favorable to the defense and material to the defendant's guilt or punishment. Depending on the circumstances, failure to disclose such evidence could be considered a violation of the Brady Rule.⁷

Deductions from award

The bill specifies that if a person who has been declared a "wrongfully imprisoned individual" files a civil action against the state in the Court of Claims and the Court determines that the individual is entitled to receive a sum of money in the action, the Court must deduct from the sum of money any known debts owed by the wrongfully imprisoned individual to the state or a political subdivision and pay those deducted amounts to the state or political subdivision as part of the judgment.⁸

The bill also requires the Court of Claims to deduct the amount of any monetary award the individual had previously won in a civil action under 42 U.S.C. § 1983 against the state or a political subdivision, minus the individual's attorney's fees and costs related to the litigation, if the § 1983 action arose from any conduct that resulted in or contributed to the person being determined a wrongfully imprisoned individual. The

⁵ R.C. 2743.48(A)(5).

⁶ *Mansaray v. State*, 2014-Ohio-750, 138 Ohio St.3d 277.

⁷ R.C. 2743.48(J)(1); *see also* "Brady material," as defined in *Black's Law Dictionary* 101 (Bryan A. Garner ed., 8th ed., West 2004).

⁸ R.C. 2743.48(F)(3).



deduction is to be included in the judgment entry as an award to the state. This provision only applies to judgments entered after the bill's effective date.⁹

Reimbursement

If the individual had not won a monetary award in a § 1983 action against the state or any of its political subdivisions before the recovery for wrongful imprisonment but subsequently wins such an award, the wrongfully imprisoned individual must reimburse the state for the sum of money paid under the judgment for wrongful imprisonment. The reimbursement cannot exceed the amount of the monetary award the individual won in the § 1983 action, and this requirement for reimbursement applies only to judgment entries for wrongful imprisonment entered after the bill's effective date.¹⁰

If, after being awarded money for wrongful imprisonment, the wrongfully imprisoned individual is convicted of or pleads guilty to an offense that is based on an act associated with the conviction that was vacated, reversed, or dismissed on appeal and that was the basis of the person being determined to be a wrongfully imprisoned individual, the individual must reimburse the state for the entire sum of money paid under the prior judgment for wrongful imprisonment.¹¹

Evidentiary application of wrongful imprisonment determinations

The bill provides that any determination of a common pleas court or the Court of Claims that a person is a wrongfully imprisoned individual or any finding in the civil action that results in either of those determinations is inadmissible as evidence in a criminal proceeding that is pending at the time of the civil action or in any subsequent criminal proceeding.¹²

HISTORY

ACTION	DATE
Introduced	01-16-18

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⁹ R.C. 2743.48(F)(4)(a) and (c).

¹⁰ R.C. 2743.48(F)(4)(b) and (c).

¹¹ R.C. 2743.48(F)(5).

¹² R.C. 2743.48(I).

