



OHIO LEGISLATIVE SERVICE COMMISSION

Bill Analysis

Dennis M. Papp

Sub. H.B. 411*

132nd General Assembly
(As Reported by S. Judiciary)

Reps. Seitz and Sykes, Galonski, Miller, Strahorn, Boggs, Celebrezze, K. Smith, Kent, Craig, West, Holmes, Barnes, Blessing, Boyd, Brinkman, Brown, Dever, Fedor, Howse, Kelly, Lepore-Hagan, Ramos, Rezabek, Sheehy, Young

BILL SUMMARY

Recovery for wrongful imprisonment

- 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 or recovery from a related civil rights action that the individual actually collected 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 or recovery in a related civil rights action that the individual actually collected after the Court of Claims enters judgment in the individual's favor for wrongful imprisonment.
- Requires an individual 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.

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

Violation sanction centers

- Changes the nature and purposes of violation sanctions centers that the Department of Rehabilitation and Correction is authorized to operate or contract for private operation.

CONTENT AND OPERATION

Introduction

The bill modifies the law governing recovery for wrongful imprisonment and modifies the purpose of violation sanction centers.

Recovery for wrongful imprisonment

In general

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 in the county where the underlying criminal action was initiated, 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.

Criteria for wrongful imprisonment claim

Currently, there are five criteria that an individual must satisfy in order to qualify as a "wrongfully imprisoned individual." The bill modifies four of those criteria.

Eligible convictions and possibility of future prosecution

First, the bill expands the two criteria that describe the wrongful conviction so that the criteria apply regarding wrongful misdemeanor convictions, as well as to wrongful convictions of felonies or aggravated felonies that are covered under existing law.¹

Second, the bill modifies the criterion that pertains to appeals and pending or future criminal charges. Currently, that criterion requires that the individual's conviction was vacated, dismissed, or reversed on appeal, 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

¹ R.C. 2743.48(A)(1) and (2).

be brought by any prosecutor against the individual for any act associated with that conviction. The bill replaces that criterion with a new criterion regarding appeals and pending or future criminal charges. Under the bill, the criterion is that the individual's conviction was vacated, dismissed, or reversed on appeal and all of the following apply:²

(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 (but see the paragraph following (c));

(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 (but see the next paragraph).

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.³

Procedural error or no crime criterion

Third, the bill revises the criterion that an individual must satisfy to be a wrongfully imprisoned individual that requires either that there was an "error in procedure that resulted in the individual's release" or that there was a court determination that the charged offense was not committed by the individual or was not committed by any person.

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

² R.C. 2743.48(A)(4)(a) to (c).

³ R.C. 2743.48(A)(4) and (C)(3).

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 by the court of common pleas in the county where the underlying criminal action was initiated 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 portion of the criterion apply retroactively to individuals who 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 portion of the criterion.⁴

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 by the court of common pleas in the county where the underlying criminal action was initiated 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*,⁵ the Ohio Supreme Court interpreted the current wording of the procedural error portion of the criterion 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.⁶

The "Brady Rule" refers to the rule established by the U.S. Supreme Court in *Brady v. Maryland* (1963), 373 U.S. 83, requiring 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 a wrongfully imprisoned individual and awards the individual a sum of money in the action, the Court in the judgment entry making the award must deduct from the sum of money any known debts owed by the

⁴ R.C. 2743.48(A)(5).

⁵ *Mansaray v. State*, 2014-Ohio-750, 138 Ohio St.3d 277.

⁶ R.C. 2743.48(A)(5).

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).



wrongfully imprisoned individual to the state or a political subdivision and must include in the judgment entry an award to the state or subdivision of the amount so deducted. The individual must 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 certain "qualifying monetary award or recovery" amounts the individual had previously won or received, if the award arose from any conduct that resulted in or contributed to the person being determined a wrongfully imprisoned individual. A "qualifying monetary award or recovery" (hereafter, a QMAR) is a monetary award won in, or a monetary recovery received through a settlement in, a civil action under 42 U.S.C. § 1983.⁹ This provision, which only applies to Court of Claims judgments entered on or after the bill's effective date, specifies as follows:¹⁰

(1) It requires the Court, in the judgment entry, to deduct the amount of the QMAR in the action that the wrongfully imprisoned individual actually collected prior to the time of the Court's judgment entry, after payment of the individual's attorney's fees and costs related to the litigation, from the sum of money to which the individual is entitled. If the individual has won or received two or more QMARs, the court must aggregate the amounts of all of those QMARs that the individual actually collected prior to the date of the Court's judgment entry, and the aggregate amount must be deducted from the sum of money to which the wrongfully imprisoned individual is entitled. The court must include in the judgment entry an award to the state of any amount deducted under this provision.

(2) The total amount the Court deducts under the provision described in paragraph (1), above, with respect to a QMAR plus the total amount of a reimbursement required under the provision described below in paragraph (1) under "**Reimbursement**" with respect to that same QMAR may not exceed the amount that the wrongfully imprisoned individual actually collects under that QMAR.

Reimbursements

The bill also provides for reimbursement from a wrongfully imprisoned individual who files a civil action in the Court of Claims and who is awarded a sum of money in the action, in the following circumstances:

⁸ R.C. 2743.48(F)(3).

⁹ R.C. 2743.38(J)(2)(b).

¹⁰ R.C. 2743.48(F)(4)(a)(i), (a)(iii), and (c).



(1) If the wrongfully imprisoned individual had previously won or received a QMAR that arose from any conduct that resulted in or contributed to the person being determined a wrongfully imprisoned individual and the individual actually collects any amount of the QMAR after the date of the Court's judgment entry, the individual must reimburse the state for the sum of money paid under the Court's judgment entry, after deduction of the individual's attorney's fees and costs related to the litigation, for the amount of the QMAR actually collected after that date. A reimbursement required under this provision may not exceed the amount that the individual actually collects under the QMAR. If the individual has won or received two or more QMARs and actually collects any amount of two or more of those QMARs after the date of the Court's judgment entry, the Court must apply this provision separately with respect to each such QMAR. The total amount of a reimbursement required under this provision with respect to a QMAR plus the total amount of a deduction under the provision described above in paragraph (1) under "**Deductions from award**" with respect to that same QMAR may not exceed the amount that the wrongfully imprisoned individual actually collects under that QMAR.¹¹

(2) If the wrongfully imprisoned individual had not won a QMAR before the recovery for wrongful imprisonment but subsequently wins a QMAR that arose from any conduct that resulted in or contributed to the person being determined to be a wrongfully imprisoned individual, the individual must reimburse the state for the sum of money paid under the Court of Claims' judgment for wrongful imprisonment, after deduction of the individual's attorney's fees and costs related to the litigation. The reimbursement cannot exceed the amount that the individual actually collects under the QMAR. If the wrongfully imprisoned individual has won or received two or more such QMARs, the court must apply this provision separately with respect to each such qualifying monetary award or recovery. This requirement for reimbursement applies only to Court of Claims judgments for wrongful imprisonment entered after the bill's effective date.¹²

(3) If, after being awarded money by the Court of Claims 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 Court's judgment for wrongful imprisonment.¹³

¹¹ R.C. 2743.48(F)(4)(a)(ii), (a)(iii), and (c).

¹² R.C. 2743.48(F)(4)(b) and (c).

¹³ R.C. 2743.48(F)(5).

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 that civil action or in any subsequent criminal proceeding.¹⁴

Violation sanction center changes

The bill changes the nature and purposes of violation sanctions centers that the Department of Rehabilitation and Correction (hereafter DRC) is authorized to operate or contract for private operation as follows:

(1) Under the bill, DRC may operate or contract for the operation of one or more violation sanction centers. Currently, DRC may do this through its Division of Parole and Community Services, and a violation sanction center so operated may be operated only as an "alternative residential facility," as defined in the Criminal Sentencing Law.¹⁵ The Criminal Sentencing Law, unchanged by the bill in this regard, defines an "alternative residential facility" as any facility, other than an offender's home or residence, a community-based correctional facility, jail, halfway house, or prison, in which an offender is assigned to live and that provides programs through which the offender may seek or maintain employment or may receive education, training, treatment, or habilitation and that has received the appropriate license or certificate for any specialized education, training, treatment, habilitation, or other service that it provides from the government agency responsible for licensing or certifying that type of activity.¹⁶

(2) Under the bill, a violation sanction center operated as described above in (1) is a prison for purposes of the Criminal Sentencing Law and may be used for either of the following purposes: (a) service of a prison term that the Parole Board imposes under current law on a releasee who has violated a post-release control sanction imposed on the releasee, or (b) as a facility designated by the Adult Parole Authority for confining a violator under R.C. 2967.15(A) until a determination is made regarding the person's release status. Currently, a violation sanction center operated as described above in (1) is not a prison for purposes of the Criminal Sentencing Law and may be used for either of the following purposes: (a) service of the term of a more restrictive sanction

¹⁴ R.C. 2743.48(I).

¹⁵ R.C. 2967.141(A), currently, divisions (A) and (B); also R.C. 2929.01(AA) and 2969.21.

¹⁶ R.C. 2929.01(A).



that the Parole Board imposes under current law on a releasee who has violated a post-release control sanction imposed on the release, or (b) service of a sanction that the Adult Parole Authority or Parole Board imposes on a parolee whom the Authority determines to be a parole violator because of a violation of the terms and conditions of parole or a conditional pardon.¹⁷

(3) Under the bill, as under existing law, a violation sanction center established as described above in (1) is not an alternative residential facility for the purpose of imposing sentence on an offender who is convicted of a felony, and a court sentencing an offender for a felony under the Criminal Sentencing Law may not sentence the offender to a community residential sanction that requires the offender to serve a term in the center. Existing law includes an affirmation of this by also stating that a violation sanction established as described above in (1) may be used only as described above in (2), notwithstanding the fact that it is an alternative residential facility.¹⁸

(4) Under the bill, if a releasee is ordered to serve a sanction in a violation sanction center, as described above in (2): (a) the releasee must be considered to be under a prison term for a violation of post-release control, (b) the time the releasee serves in the center must count toward, and be considered in determining, the maximum cumulative prison term for all violations for purposes of the law regarding determining sanctions for violation of a community control sanction, and (c) the time the releasee serves in the center may not count as part of, and may not be credited toward, the remaining period of post-release control that is applicable to the releasee. Currently, if a releasee is ordered to serve a sanction in a violation sanction center, as described above in (2): (a) the releasee is not considered to be under a new prison term for a violation of post-release control, (b) the time the releasee serves in the center does not count toward, and is not considered in determining, the maximum cumulative prison term for all violations for purposes of the law regarding determining sanctions for violation of a community control sanction, and (c) the time the releasee serves in the center counts as part of, and is credited toward, the remaining period of post-release control that is applicable to the releasee.¹⁹

¹⁷ R.C. 2967.141(A), currently division (B).

¹⁸ R.C. 2967.141(B), currently division (C).

¹⁹ R.C. 2967.141(C), currently division (D).

HISTORY

ACTION	DATE
Introduced	11-07-17
Reported, H. Gov't Accountability and Oversight	03-15-18
Passed House (77-11)	06-07-18
Reported, S. Judiciary	---

