



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

Dennis M. Papp

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132nd General Assembly
(As Passed by the General Assembly)

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

Sens. Eklund, Bacon, Beagle, Brown, Burke, Coley, Gardner, Hackett, Hoagland, Hottinger, Huffman, Kunze, Lehner, McColley, Obhof, O'Brien, Oelslager, Peterson, Schiavoni, Skindell, Sykes, Tavares, Terhar, Thomas, Williams, Yuko

Effective date: March 22, 2019

ACT SUMMARY

Recovery for wrongful imprisonment

- Modifies the criteria that an individual must satisfy to be determined 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 an individual to reimburse the state for:
 - (1) 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;
 - (2) The entire award for wrongful imprisonment if the individual 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.

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

Recovery for wrongful imprisonment

In general

The act modifies the law governing recovery for wrongful imprisonment in several ways, but it retains the preexisting two-step process by which a person claiming wrongful imprisonment may sue the state for a monetary award. Under that process, the first action, in the common pleas court in the county where the underlying criminal action was initiated, seeks a preliminary determination of wrongful imprisonment, and the second action, in the Court of Claims, provides for a monetary award to compensate for the wrongful imprisonment.¹

Criteria for wrongful imprisonment claim

There are specified criteria that an individual must satisfy in order to qualify as a "wrongfully imprisoned individual." The act modifies four of those criteria.

Application to misdemeanor convictions

First, the act expands the two criteria that describe the wrongful conviction so that they apply regarding wrongful misdemeanor convictions.² Previously, only a person convicted of a felony or aggravated felony could be determined to be a wrongfully imprisoned individual.

Possibility of future prosecution

Second, the act modifies the criterion that pertains to appeals and pending or future criminal charges. Under the act, the individual's conviction must have been vacated, dismissed, or reversed on appeal and all of the following apply:

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

¹ R.C. 2305.02 and 2743.48.

² R.C. 2743.48(A)(1) and (2).



(2) The prosecuting attorney in the case, within one year after the date of the vacating, dismissal, or reversal, has not sought any further appeal. However, a finding that a prosecuting attorney has not sought further appeal within one year 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.

(3) The prosecuting attorney or municipal chief legal officer, 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 a finding that the prosecuting attorney or municipal chief legal officer has not brought a criminal proceeding within one year 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

Formerly, this criterion required that the individual's conviction was vacated, dismissed, or reversed on appeal, that the prosecutor in the case could not or would not seek any further appeal regarding that conviction, and that no criminal proceeding could or would be brought by any prosecutor against the individual for any act associated with that conviction.⁴

Procedural error or no crime criterion

Third, the act revises the criterion 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 by any person.

Under the act, to be determined to be a wrongfully imprisoned person, subsequent to sentencing or during or subsequent to imprisonment, an error in procedure must have been discovered that occurred prior to, during, or after sentencing, involving a violation of the "Brady Rule" that 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 common pleas court 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 "Brady Rule" refers to the rule established by the U.S. Supreme Court in *Brady v. Maryland* (1963), 373 U.S. 83, requiring prosecutors to disclose to the defense any evidence in the government's

³ R.C. 2743.48(A)(4) and (C)(3).

⁴ R.C. 2743.48(A)(4).



possession that is favorable to the defense and material to the defendant's guilt or punishment.⁵

The modification to the procedural error portion of the criterion applies 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 state of the law in effect prior to the act.⁶

Formerly, that the procedural error criterion specified 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 common pleas court 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*,⁷ the Ohio Supreme Court interpreted that former wording to mean that the error must have occurred after sentencing and during or subsequent to imprisonment. The act's wording provides that the procedural error may have occurred prior to, during, or after sentencing, but is discovered after sentencing or during or subsequent to imprisonment.⁸

Deductions from award

The act 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 awards the individual a sum of money, the Court in the judgment entry making the award must deduct from the sum any known debts owed by the 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 deducted amounts are paid to the state or subdivision as part of the judgment.⁹

The act also requires the Court of Claims to deduct certain "qualifying monetary award or recovery" amounts the wrongfully imprisoned individual had previously won or received, if the award arose from conduct that resulted in or contributed to the person being determined a wrongfully imprisoned individual. A "qualifying monetary award or recovery" (QMAR) is a monetary award won in, or a monetary recovery

⁵ 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).

⁶ R.C. 2743.48(A)(5).

⁷ *Mansaray v. State*, 2014-Ohio-750, 138 Ohio St.3d 277.

⁸ R.C. 2743.48(A)(5).

⁹ R.C. 2743.48(F)(3) and (J)(2)(a).



received through a settlement in, a civil action under 42 U.S.C. § 1983.¹⁰ This provision only applies to Court of Claims judgments entered on or after the act's effective date.¹¹

The Court, in the judgment entry, must deduct the amount of the QMAR in the action that the individual actually collected prior to the time of the Court's judgment entry, after payment of the individual's attorney's fees and litigation-related costs, from the sum of money to which the individual is entitled. If the individual has won or received multiple 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 deduct that aggregate amount from the sum of money to which the individual is entitled. The court must include in the judgment entry an award to the state of any amount deducted under this provision, to be paid as part of the judgment. The total amount the Court deducts under this provision, with respect to a QMAR plus the total amount of a reimbursement required under the provision described below in "**Reimbursement**" with respect to that same QMAR may not exceed the amount that the individual actually collects under that QMAR.¹²

Reimbursements

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

If the 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 judgment entry, after deduction of the individual's attorney's fees and litigation-related costs, for the amount of the QMAR actually collected after that date. The reimbursement may not exceed the amount that the individual actually collects under the QMAR. If the individual has won or received multiple QMARs and actually collects any amount of two or more of them after the date of the Court's judgment entry, the Court must apply this provision separately with respect to each 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 "**Deductions from award**" with respect to that same

¹⁰ R.C. 2743.38(J)(2)(b).

¹¹ R.C. 2743.48(F)(4)(a)(c).

¹² R.C. 2743.48(F)(a)(i) and (iii).



QMAR may not exceed the amount that the individual actually collects under that QMAR.¹³

If the 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 litigation-related costs. The reimbursement cannot exceed the amount that the individual actually collects under the QMAR. If the individual has won or received multiple QMARs, the court must apply this provision separately with respect to each QMAR. This requirement for reimbursement applies only to Court of Claims judgments for wrongful imprisonment entered on or after the act's effective date.¹⁴

If, after being awarded money by the Court of Claims for wrongful imprisonment, the individual is convicted of 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.¹⁵

Evidentiary application of wrongful imprisonment determinations

The act 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 pending at the time of, or commenced subsequent to, that civil action.¹⁶

Violation sanction center changes

The act changes the nature and purposes of violation sanctions centers that may be operated by, or under contract entered into with, the Department of Rehabilitation and Correction.

¹³ R.C. 2743.48(F)(4)(a)(ii), (a)(iii), and (c).

¹⁴ R.C. 2743.48(F)(4)(b) and (c).

¹⁵ R.C. 2743.48(F)(5).

¹⁶ R.C. 2743.48(I).



Under the act, DRC may operate or contract for the operation of one or more violation sanction centers. A violation sanction center operated under the act is a prison for purposes of the Criminal Sentencing Law and may be used (a) for service of a prison term that the Parole Board imposes on a releasee who violated a post-release control sanction 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.¹⁷

Formerly, DRC could operate a violation sanction center through its Division of Parole and Community Services, and a violation sanction center so operated could be operated only as an "alternative residential facility."¹⁸ An "alternative residential facility" is any facility, other than an offender's home or residence, 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 receive education, training, treatment, or habilitation and that has received the appropriate license or certificate for any specialized service it provides from the government agency responsible for licensing or certifying that type of service.¹⁹ A violation sanction center operated under former law was not a prison and could be used for service of the term of a more restrictive sanction that the Parole Board imposed on a releasee who violated a post-release control sanction or service of a sanction imposed on a parolee whom the Adult Parole Authority determined to be a parole violator because of a violation of parole or a conditional pardon.²⁰

The act retains preexisting provisions that specify that a violation sanction center is not an alternative residential facility for the purpose of imposing sentence on an offender convicted of a felony and that a court sentencing an offender for a felony may not sentence the offender to a community residential sanction that requires the offender to serve a term in the center, but it repeals a provision that affirmed this by also stating that such a violation sanction center could be used only for the specified purposes, notwithstanding the fact that it was an alternative residential facility.²¹

Under the act, if a releasee is ordered to serve a sanction in a violation sanction center, (a) the releasee is considered to be under a prison term for a violation of post-release control, (b) the time the releasee serves in the center counts toward, and is

¹⁷ R.C. 2967.141(A).

¹⁸ R.C. 2967.141 and 2969.21.

¹⁹ R.C. 2929.01(A).

²⁰ R.C. 2967.141(A) and 2929.01(AA).

²¹ R.C. 2967.141(B).



considered in determining, the maximum cumulative prison term for all violations for purposes of the law regarding sanctions for violation of a community control sanction, and (c) the time the releasee serves in the center does not count as part of, and is not credited toward, the remaining period of post-release control. Formerly, if a releasee was ordered to serve a sanction in a violation sanction center, the releasee was not considered to be under a new prison term for a violation of post-release control, the time served in the center did not count toward, and was not considered in determining, the maximum cumulative prison term for all violations for purposes of the law regarding sanctions for violation of a community control sanction, and the time served in the center counted as part of, and was credited toward, the remaining period of post-release control applicable to the releasee.²²

HISTORY

ACTION	DATE
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Reported, H. Gov't Accountability and Oversight	03-15-18
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Reported, S. Judiciary	12-06-18
Passed Senate (31-0)	12-12-18
House concurred in Senate amendments (83-3)	12-13-18

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²² R.C. 2967.141(C).

