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

## Bill Analysis

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**Version:** As Reported by Senate Judiciary

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

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### SUMMARY

- Includes two additional types of victims who may receive an award of reparations.
- Modifies the information that the Attorney General must include in the finding of fact and decision when making an award of reparations.
- Specifies what the Attorney General must include in the finding of fact and decision if the Attorney General denies an award of reparations.
- Modifies the disqualifying conditions for an award of reparations.
- Modifies the definitions of “allowable expense” and “contributory misconduct.”

### DETAILED ANALYSIS

#### Investigating claim for award of reparations

##### Background

Ohio law requires the Attorney General (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>1</sup>

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\* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

<sup>1</sup> R.C. 2743.59(A).

## Finding of fact and decision

The bill makes modifications to the information that must be included in the finding of fact and decision issued by the AG. The bill specifies that the finding of fact and decision issued by the AG must contain this information *if the AG decides to make an award of reparations*. The bill modifies the requirement that the finding of fact and decision include whether the criminally injurious conduct was reported to a law enforcement officer or agency and the date on which the conduct was reported by removing the requirement that the name of the person who reported the conduct and the reasons why the conduct was not reported to a law enforcement officer or agency be included. The bill requires a *description* of the injuries that the victim sustained as a result of the criminally injurious conduct, rather than the exact nature of the injuries.<sup>2</sup>

The bill modifies the existing law requirement that the finding of fact and decision 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 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*. The bill 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 there is evidence 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.<sup>3</sup>

The bill requires that the finding of fact and decision include a statement as to whether payments made pursuant to the award are to be made to the claimant, to a provider, or jointly to the claimant and provider, and the amount of the payments. The bill removes the requirement that the finding of fact and decision include whether the victim of the criminally injurious conduct was a minor and, if the victim of the criminally injurious conduct was a minor, whether a complaint, indictment, or information was filed against the alleged offender and, if such a filing occurred, its date. The bill also eliminates a requirement that a statement as to whether the claimant is eligible for an award of reparations and a statement as to whether any of the payments made pursuant to the award should be paid in a lump sum or installments be included.<sup>4</sup>

## Denial of award of reparations

The bill provides that, if the AG decides to deny an award to the claimant, the finding of fact and decision issued by the AG must contain the reasons for that decision and a description

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<sup>2</sup> R.C. 2743.59(C)(2) and (3).

<sup>3</sup> R.C. 2743.59(C)(6).

<sup>4</sup> R.C. 2743.59(C)(7) and (8).

of any disqualifying conditions that exist under R.C. 2743.60 (law specifying who cannot receive an award of reparations).<sup>5</sup>

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

The bill eliminates the existing law prohibition against the AG or the Court of Claims making an award to a claimant if any of the following applies:<sup>6</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 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.

Existing law allows 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 in the previous bullet points 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. Existing law also specifies 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 bill removes both of these provisions.<sup>7</sup>

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

<sup>6</sup> R.C. 2743.60(E)(1).

<sup>7</sup> R.C. 2743.60(E)(2).

The bill removes the existing law provision that states that when the AG decides whether a claim should be denied because of an allegation of contributory misconduct, the burden of proof on the issue of that alleged contributory misconduct is upon the claimant, if either of the following apply:<sup>8</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 bill, 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 an award of reparations or deny a claim for an award of reparations based on contributory misconduct of a deceased victim.<sup>9</sup>

The bill also modifies the definition of "contributory misconduct." Under existing law, "contributory misconduct" 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 that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim. Under the bill, 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>10</sup>

- The conduct occurred at the time of the criminally injurious conduct that is the basis of the claim.
- 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.

## **Award of reparations**

Under existing law, reparations payable to a victim who is a person who suffers personal injury or death as a result of (1) criminally injurious conduct, (2) the good faith effort of any

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<sup>8</sup> R.C. 2743.60(F)(2).

<sup>9</sup> R.C. 2743.60(E)(2).

<sup>10</sup> R.C. 2743.51(M).

person to prevent criminally injurious conduct, or (3) the good faith effort of any person to apprehend a person suspected of engaging in criminally injurious conduct and to all other claimants sustaining economic loss because of injury to or the death of that victim shall not exceed \$50,000 in the aggregate.<sup>11</sup>

The bill also includes awards of reparations to two other types of victims. Reparations payable to 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 cannot exceed \$5,000.<sup>12</sup>

Reparations payable to 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 cannot exceed \$15,000:<sup>13</sup>

- 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.

The bill also prohibits an award of attorney's fees to these two additional types of victims described above.<sup>14</sup>

Under existing law, the attorney general is required to 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 maximum amounts, including a maximum of \$200 if the claim is 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 is convicted of a felony offense during the pendency of the claim, the \$200 maximum does not apply. If the attorney had knowledge of the claimant's or victim's felony conviction prior to the

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<sup>11</sup> R.C. 2743.51(L)(1) and 2743.60(I).

<sup>12</sup> R.C. 2743.51(L)(2) and 2743.60(I).

<sup>13</sup> R.C. 2743.51(L)(3) and 2743.60(I).

<sup>14</sup> R.C. 2743.65(E)(5).

filing of the application for the claim, the AG may determine that the filing of the claim was frivolous and may deny attorney's fees. The bill removes this provision.<sup>15</sup>

## **Allowable expense**

The bill makes modifications to the definition of "allowable expense," which are included within "economic loss."<sup>16</sup> Under the bill, 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. No other type of expense is compensable for a victim of that type. Existing law allowed that person to be reimbursed for that care or counseling as an allowable expense through the victim's application and provided that the cumulative expense for care or counseling of that nature could not exceed \$2,500 for each immediate family member of a victim of that type and \$7,500 in the aggregate for all immediate family members of a victim of that type.<sup>17</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>18</sup>

## **Technical changes**

The bill makes several technical and cross-reference changes.<sup>19</sup>

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<sup>15</sup> R.C. 2743.65(A)(5).

<sup>16</sup> R.C. 2743.51(E) and (F).

<sup>17</sup> R.C. 2743.51(F)(2).

<sup>18</sup> R.C. 2743.51(F)(3).

<sup>19</sup> R.C. 2743.51, 2743.60, 2743.65, and 2743.71.

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## HISTORY

Action	Date
Introduced	02-02-21
Reported, S. Judiciary	---

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