



# OHIO LEGISLATIVE SERVICE COMMISSION

Robert Meeker

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## Fiscal Note & Local Impact Statement

**Bill:** H.B. 411 of the 132nd G.A.

**Status:** As Reported by House Government Accountability and Oversight

**Sponsor:** Reps. Seitz and Sykes

**Local Impact Statement Procedure Required:** No

**Subject:** Recovery for wrongful imprisonment

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### State & Local Fiscal Highlights

- The bill is likely to generate additional work for the courts of common pleas, the Ohio Attorney General's Office which represents the state in such matters, and the state's Court of Claims which processes the request for monetary damages. It appears that the courts, the Attorney General, and the Court of Claims should all be able to absorb the work using existing staff and appropriated resources.
- There is some degree of uncertainty as to how many additional actions may be filed as a result of the provision that provides for the retroactive application of the changes to the "error in procedure" criterion. This means that, subsequent to the bill's enactment, there may be a one-time increase in filings as individuals take advantage of this retroactive provision.
- As the number of additional individuals who may be judged wrongfully imprisoned is uncertain, the potential increase in the amount that the state disburses in wrongful imprisonment payments annually is uncertain as well.
- The state and political subdivisions may see an increase in revenues when, pursuant to the bill, debts are deducted, or certain awards are reimbursed, from an award to a wrongfully imprisoned individual under certain circumstances.

### Detailed Fiscal Analysis

The bill modifies the venue in which an action to be declared a wrongfully imprisoned individual may be filed, requires the deduction of certain debts and reimbursement of certain costs from money awarded by the Court of Claims to a wrongfully imprisoned individual, and modifies the criteria that an individual must satisfy to be a wrongfully imprisoned individual.

#### Venue

The bill allows a resident of the state to file an action to be declared a wrongfully imprisoned individual in the court of common pleas in the county in which the person resides, in addition to the county in which the underlying criminal action occurred as

under current law. While this provision will not result in additional cases, it may move a case into a different court of common pleas than the one in which it would have been filed in the absence of the bill. Given the filing of such actions is relatively infrequent, this provision should have no discernible ongoing fiscal effect on any given court of common pleas.

If the person is not a resident of the state, an action must be filed in the county in which the underlying criminal action occurred, unchanged by the bill.

### **Criteria for wrongful imprisonment claims**

The bill modifies the criteria that an individual must satisfy in order to qualify as a wrongfully imprisoned individual. The bill (1) expands the criterion that describes the wrongful conviction so that the criterion applies regarding wrongful misdemeanor convictions, as well as to felonies or aggravated felonies covered under existing law, (2) removes the criterion that the prosecutor will not appeal or refile charges with respect to the individual's conviction, and (3) revises the "error in procedure that resulted in the individual's release" criterion that an individual must satisfy (see the LSC Bill Analysis for additional details). The bill makes the "error in procedure" modification retroactive for 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 criterion.

The effect of the modifications described above is uncertain. Since 2010, there have been 20 individuals that have filed a civil claim for monetary damages in the state's Court of Claims as wrongfully imprisoned individuals having been declared as such by a court of common pleas. The number of individuals whose claims were unsuccessful or were not commenced based on the restrictions as described under current law is uncertain.

These modifications may make more individuals eligible to file an action to be declared a wrongfully imprisoned individual than otherwise are eligible under current law. Additional actions will mean additional work for the courts of common pleas as well as the Ohio Attorney General's Office which represents the state in such matters. If, as it appears, the number of additional actions that may be filed annually will be relatively small, then the courts and the Attorney General should be able to absorb the work using existing staff and appropriated resources. There is some degree of uncertainty as to how many additional actions may be filed as a result of the provision that provides for the retroactive application of the changes to the "error in procedure" criterion. This means that, subsequent to the bill's enactment, there may be a one-time increase in filings as individuals take advantage of this retroactive provision.

Ultimately, additional cases could increase the amount of money the state pays as awards to wrongfully imprisoned individuals. Since 2010, individual awards have ranged between \$40,000 and \$3.7 million with an average award of \$1.1 million per individual. As the number of additional individuals who may be judged wrongfully

imprisoned is uncertain, the potential increase in the amount that the state disburses in wrongful imprisonment payments annually is uncertain as well.

### **Deductions and reimbursements**

The bill 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. Once deducted, the Court of Claims is required to pay those amounts to the state or the appropriate political subdivision. Additionally, the bill 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 the basis of the person being determined wrongfully imprisoned.

These provisions may increase revenues for the state and political subdivisions. The impact of any increase is indeterminate and based wholly on the amount of any awards, the amount of debts owed, and the likelihood that a person is later convicted under the necessary circumstances. The amount of money that may be deducted or reimbursed is capped at the amount awarded. Since 2010, the total amount of awards to wrongfully imprisoned individuals is just under \$22 million.

### **Current law regarding wrongful imprisonment**

Under continuing law, upon presentation of requisite proof to the appropriate court of common pleas, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of each of the following amounts:

1. The amount of any fine or court costs imposed and paid, and the reasonable attorney's fees and other expenses incurred by the wrongfully imprisoned individual in connection with all associated criminal proceedings and appeals, and, if applicable, in connection with obtaining the individual's discharge from confinement in the state correctional institution;
2. An amount determined by the Auditor of State for each full year (or prorated share for a partial year) that the individual was imprisoned in the state correctional institution for the offense of which the individual was found guilty;<sup>1</sup>
3. Any loss of wages, salary, or other earned income that directly resulted from the individual's arrest, prosecution, conviction, and wrongful imprisonment;
4. The amount of certain cost debts the Department of Rehabilitation and Correction recovered from the wrongfully imprisoned individual.

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<sup>1</sup> The base amount is statutorily set at \$40,330 per year, with the Auditor adjusting as necessary. Currently, the adjusted rate is \$52,625.18.

The Controlling Board, upon certification by the Court of Claims, transfers the sum necessary to pay that judgment to the court's GRF line item 015402, Wrongful Imprisonment Compensation. Since the Controlling Board provides the money for such judgments on an as-needed basis, the court's line item does not receive a direct appropriation through the main operating appropriations act enacted by each General Assembly. The necessary funds are typically transferred from the Controlling Board's Emergency Purposes/Contingencies appropriation (Fund 5KM0), which contains money generally appropriated for the purpose of assisting state agencies and political subdivisions in responding to unexpected events, disasters, and emergency situations.

The table below shows the total amount of money that the court has disbursed to make wrongful imprisonment settlements from FYs 2000-2018, year to date. Over that same period, 20 individuals have been found to be wrongfully imprisoned by the state.

| <b>Wrongful Imprisonment Settlement Disbursements, FYs 2010-2018</b> |                         |
|--|-------------------------|
| <b>Fiscal Year</b>   | <b>Total Disbursed*</b> |
| 2010   | \$1,088,396             |
| 2011   | \$3,664,717             |
| 2012   | \$549,628               |
| 2013   | \$379,128               |
| 2014   | \$721,560               |
| 2015   | \$2,962,101             |
| 2016   | \$8,357,100             |
| 2017   | \$4,129,947             |
| 2018**   | \$0                     |
| <b>Total</b>   | <b>\$21,852,577</b>     |

\*Includes both preliminary and final judgements

\*\*As of March 20, 2018