



Am. Sub. S.B. 153

123rd General Assembly

(As Passed by the General Assembly)

(excluding appropriations and fund transfers)

Sens. Spada, Latta, Cupp, Brady, Drake, Kearns, Oelslager, Wachtmann, Watts, Nein, Hagan, Espy, Gardner

Reps. Metzger, Womer Benjamin, Tiberi, Corbin, Goodman, Mead, Evans, Mottley, Widener, Austria, DePiero, D. Miller, Flannery, Barnes, J. Beatty, Buehrer, Sutton, Barrett, Britton

Effective date: *

ACT SUMMARY

- Transfers from the Court of Claims to the Attorney General the responsibility to make awards of reparations under the Crime Victims Reparations Law.
- Revises the procedure for the payment of an award of reparations.
- Expands the benefits available under the Crime Victims Reparations Law to include reimbursement for crime scene cleanup and property destroyed by evidence collection.
- Permits the psychiatric care or counseling of a family member of certain victims to be an allowable expense for a reparations award.
- Eliminates the filing fee for an application requesting an award of reparations under the Crime Victims Reparations Law and permits the application to be filed by mail.
- Prohibits awarding reparations with regard to victims who are passengers in a motor vehicle operated by a person under the influence of alcohol, a

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

drug of abuse, or both, if the claimant is claiming injuries proximately caused by the operator of the motor vehicle and the victim knew of the operator's impaired state. This prohibition does not apply to specified minors.

- Prohibits awarding reparations to claimants who have been convicted of endangering children or domestic violence within ten years of a claim.
- Specifies the procedure for appealing an award or denial of reparations as follows: (1) motion to reconsider filed with the Attorney General, (2) appeal to a panel of Court of Claims commissioners, and (3) appeal to a judge of the Court of Claims.
- Sets the attorney's fee schedule payable for representation of a claimant.
- Permits the Attorney General to make an emergency award of reparations.
- Specifies the subrogation rights of the Reparations Fund.
- Provides that hospitals are to be reimbursed from the Reparations Fund for the costs of medical examinations for a sex offense victim, including the cost of antibiotics administered as part of the exams.
- For a one-year period, allows the filing of claims for reparations involving crimes that were at least a felony of the first degree and that occurred before the Crime Victims Reparations Program was created in 1976 or that occurred after the program was created but were not compensable under the law as it existed at the time of occurrence.
- Makes other changes in the Crime Victims Reparations Law.

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CONTENT AND OPERATION

Overview

The main focus of the act is the transfer from the Court of Claims to the Attorney General the responsibility to make awards of reparations under the Crime Victims Reparations Law. The act makes numerous procedural and name changes to accomplish this goal.

Definitions

The act modifies some definitions in the Crime Victims Reparations Law and adds new definitions as follows:

Under continuing law, "economic loss" means economic detriment consisting only of allowable expense, work loss, funeral expense, unemployment benefits loss, and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependent's economic loss and a dependent's replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment. The act retains all of these elements of the definition and adds *cost of crime scene cleanup and cost of evidence replacement* to the definition of economic loss. This change permits those items to be reimbursed from the Reparations Fund. (R.C. 2743.51(E).)

The act defines "cost of crime scene cleanup" to mean reasonable and necessary costs of cleaning the scene where the criminally injurious conduct occurred, not to exceed \$750 in the aggregate per claim (R.C. 2743.51(T)).

The act defines "cost of evidence replacement" to mean costs for replacement of property confiscated for evidentiary purposes related to the criminally injurious conduct, not to exceed \$750 in the aggregate per claim (R.C. 2743.51(U)).

Under continuing law, "allowable expense" means reasonable charges incurred for reasonably needed products, services, and accommodations, including those for medical care, rehabilitation, rehabilitative occupational training, and other remedial treatment and care and including replacement costs for eyeglasses and other corrective lenses. It does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or any other institution engaged in providing nursing care and related services in excess of a reasonable and customary charge for semiprivate accommodations, unless accommodations other than semiprivate accommodations are medically required. The act retains those provisions of the definition and specifies that an immediate family member of a victim of a criminally injurious conduct that consists of a homicide, a sexual assault, domestic violence, or a severe and permanent 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, may be reimbursed for that care or counseling as an allowable expense through the victim's application. The cumulative allowable expense for care or counseling of that nature for each family member of a victim of that type may not exceed \$2,500. (R.C. 2743.51(F)(2).) An "immediate family member" is defined as an

individual who is related to a victim within the first degree by affinity or consanguinity. (R.C. 2743.51(W).)

The act defines "provider" to mean any person who provides a claimant with a product, service, or accommodations that are an allowable expense or a funeral expense (R.C. 2743.51(V)).

The Reparations Fund

There exists in the state treasury the Reparations Fund, which formerly could be used for the following: (1) the payment of awards of reparations granted by the Court of Claims commissioners, (2) the compensation of the Court of Claims commissioners, (3) the compensation of judges necessary to hear and determine appeals from the commissioners, (4) the compensation of any personnel needed by the Court of Claims to administer the Crime Victims Reparations Law, (5) the compensation of witnesses as provided in the Crime Victims Reparations Law, (6) other administrative costs of hearing and determining claims for an award of reparations by the Court of Claims commissioners and of hearing and determining appeals from the commissioners by the Court of Claims, (7) the costs of administering the Crime Victims Recovery Law, (8) the costs of investigation and recommendation as certified by the Attorney General, (9) the provision of state financial assistance to victim assistance programs, (10) the cost of printing and distributing the Crime Victims Reparations Law pamphlet prepared by the Attorney General, and (11) as specified in the Crime Victims Reparations Law, the costs associated with the printing and providing of information cards or other printed materials to law enforcement agencies and prosecuting authorities and with publicizing the availability of awards of reparations. The Reparations Fund is funded through a variety of mechanisms, including (1) all costs paid pursuant to the Crime Victims Reparations Law, (2) portions of license reinstatement fees mandated by the OMVI law, (3) portions of the proceeds of the sale of certain forfeited vehicles, (4) payments collected by the Department of Rehabilitation and Correction from prisoners who voluntarily participate in an approved work and training program, and (5) all moneys collected pursuant to its right of subrogation under the Crime Victims Reparations Law. (R.C. 2743.191(A).)

Operation of the act; creation of Court of Claims Victims of Crime Fund

The act modifies the permissible uses of the Reparations Fund to reflect that under the act, the Attorney General makes reparations awards and provides personnel necessary to administer the Crime Victims Reparations Law. In addition, the act provides that costs of medical examinations and antibiotics related to sex offenses can be paid from the fund (see "**Use of Reparations Fund for**

medical examinations related to sexual offenses," below). The funding mechanism of the Reparations Fund is not altered by the act.

The act creates the Court of Claims Victims of Crime Fund in the state treasury to be used to pay the compensation of the Court of Claims commissioners that hear appeals of decisions of the Attorney General, compensation of Court of Claims judges necessary to hear appeals from the commissioners, compensation of any Court personnel needed to administer the appeals, and any other related administrative expenses. The Court of Claims Victims of Crime Fund is to consist of money transferred by the Director of Budget and Management from the Reparations Fund to match appropriations to the Court for the appellate responsibilities. (R.C. 2743.531.)

Payment of an award of reparations

Prior law

Under prior law, in making an award of reparations, a single commissioner or a panel of Court of Claims commissioners rendered the award against the state and the Director of Budget and Management as its agent for payment of the award. The Clerk of the Court of Claims forwarded a certified copy of the order granting the award to the Director for payment, and the Director provided for payment of the claimant, an assignee of the claimant, or the claimant and the claimant's assignee. If the award was to be paid in installments, the Director provided for payment of the amount of the award that fell due during the current appropriation period. (R.C. 2743.191(B)(1) and (2).)

No order granting an award could be forwarded by the Clerk of the Court of Claims to the Director of OBM until all appeals had been determined and all rights to appeal exhausted, except as otherwise provided in the Crime Victims Reparations Law. (R.C. 2743.191(C).)

Operation of the act

The act modifies the above provisions to indicate that, in making an award of reparations, *the Attorney General* renders the award of reparations against the state and provides for payment of the claimant or providers in the amount of the award. The act eliminates the provision specifying the role of the Director of OBM in paying awards. (R.C. 2743.191(B).)

The act also prohibits the Attorney General from making payment on a decision or order granting an award until all appeals have been determined and all rights to appeal exhausted, except as otherwise provided in the Crime Victims Reparations Law (R.C. 2743.191(C)).

Awards of reparations

Prior law

The Court of Claims commissioners had jurisdiction to make awards of reparations for economic loss arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that the requirements for an award were met. A decision of a Court of Claims commissioner or a panel of Court of Claims commissioners concerning an OMVI violation could not be used as the basis for any civil or criminal action and was not admissible as evidence in any civil or criminal proceeding. (R.C. 2743.52.)

Operation of the act

The act provides that the Attorney General is to make awards of reparations for economic loss arising from criminally injurious conduct, if satisfied by a preponderance of the evidence that the requirements for an award of reparations have been met. The act adds a provision stating that a Court of Claims panel of commissioners or a Court of Claims judge has appellate jurisdiction to order awards. The act further modifies existing law to state that a decision of the Attorney General, an order of a Court of Claims panel of commissioners, or a judgment of a Court of Claims judge concerning an *OMVI* violation may not be used as the basis for any civil or criminal action and is not admissible as evidence in any civil or criminal proceeding. (R.C. 2743.52.)

Medical care allowable expense provisions

For claims for medical, psychological, dental, chiropractic, hospital, physical therapy, and nursing services, the act permits the Attorney General to audit fee bill payments and adjust fee bill reimbursements in accordance with cost containment and reimbursement guidelines adopted by the Administrator of Workers' Compensation.

The act also states that a medical provider that accepts payment for medical care-related allowable expenses as part of an award of reparations cannot seek reimbursement for any part of those allowable expenses from the victim or the claimant who was granted the award. The act specifies that this provision does not prohibit the medical provider from seeking reimbursement from a collateral source. (R.C. 2743.521.)

Appeals of reparations awards

Under prior law, the Court of Claims heard and determined all matters relating to appeals from decisions of the Court of Claims commissioners on

awarding reparations. The act provides that a Court of Claims panel of commissioners hears and determines all matters relating to appeals from decisions of the Attorney General under the Crime Victims Reparations Law. The act further provides that a Court of Claims judge hears and determines all matters relating to appeals from appellate decisions or orders of a panel of commissioners. (R.C. 2743.53.)

Prior law provided that the Supreme Court had to appoint at least three Court of Claims commissioners to hear claims for an award of reparations and to make awards of reparations pursuant to the Crime Victims Reparations Law. The act modifies this provision to require the Supreme Court to appoint at least three Court of Claims commissioners to hear and determine all matters relating to appeals from decisions of the Attorney General pursuant to the Crime Victims Reparations Law. (R.C. 2743.54(A).)

Determination of claims for awards of reparations

Prior law

Under prior law, a single commissioner or a panel of Court of Claims commissioners heard and determined all matters relating to claims for an award of reparations. A claim for an award of reparations could not be heard and determined until the expiration of the time allowed for the claimant to respond to the Attorney General's finding of fact and recommendation for the claim. A single commissioner or a panel of commissioners could order law enforcement officers to provide them with copies of any information or data gathered in the investigation of the criminally injurious conduct that was the basis of any claim to enable the commissioners to determine whether, and the extent to which, a claimant qualified for an award of reparations. Any reference in the Crime Victims Reparations Law to action by more than a single commissioner meant action by a panel of commissioners. A panel consisted of three commissioners who could only proceed upon a majority vote. (R.C. 2743.55(A).)

The Court of Claims commissioners had to sit in Franklin County. A single commissioner or a panel of commissioners, pursuant to rules adopted by the Chief Justice of the Supreme Court, could sit and hear claims for an award of reparations at any other location in the state. (R.C. 2743.55(B).)

Each claim for an award of reparations was heard by a single commissioner. The commissioner could determine the claim and make an award administratively without a hearing. If a claimant or the Attorney General objected to the determination or award made by a single commissioner and filed an objection with the clerk within 30 days after journalization of the order of the

commissioner, the claim was heard by a panel of three commissioners who made an award or denied the claim upon a majority vote. (R.C. 2743.55(C).)

The Supreme Court could promulgate rules to implement the Crime Victims Reparations Law, including rules for the allowance of attorney's fees, the procedure for hearing claims by a single commissioner or a panel of commissioners, and the procedure for hearing appeals from decisions of the commissioners. (R.C. 2743.55(D).)

Operation of the act

The act eliminates most of the provisions discussed in the preceding paragraphs and continues, as modified, the following: the Attorney General, a Court of Claims panel of commissioners, or a Court of Claims judge must determine all matters relating to claims for an award of reparations. The Attorney General, a Court of Claims panel of commissioners, or a Court of Claims judge may order law enforcement officers to provide copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable the Attorney General, panel of commissioners, or judge to determine whether, and the extent to which, a claimant qualifies for an award of reparations. A Court of Claims panel of commissioners must sit in Franklin County. The act repeals the authorization for commissioners to sit outside Franklin County, the administrative award determination procedure, and the Supreme Court's authority to adopt rules for the Crime Victims Reparations Law. (R.C. 2743.55.)

Filing a claim for reparations

Prior law

A claim for an award of reparations could be commenced by filing an application for an award of reparations with the Clerk of the Court of Claims or in the court of common pleas. A claimant who filed for an award of reparations in a court of common pleas had to file in the court of the county of the claimant's residence or, if the claimant was not a resident of Ohio, in the court of the county in which the criminally injurious conduct that was the basis of the application took place. Each application was required to be accompanied by a filing fee of \$7.50 unless waived. The application had to be in a form prescribed by the Clerk of the Court of Claims and contain the following information: (1) the name and address of the victim of the criminally injurious conduct, the name and address of the claimant, and the relationship of the claimant to the victim, (2) the nature of the criminally injurious conduct that was the basis for the claim and the date on which the conduct occurred, (3) the law enforcement agency or officer to whom the criminally injurious conduct was reported and the date on which it was reported,

(4) the nature and extent of the injuries that the victim sustained from the criminally injurious conduct, (5) the type of economic loss that the victim, a dependent, or the claimant sustained as a result of the criminally injurious conduct, (6) a release authorizing the Court of Claims, the Court of Claims commissioners, and the staff of the Attorney General to obtain any report, document, or information that related to the determination of the claim, and (7) any information that the Clerk of the Court of Claims required and was reasonably related to the application for an award. The Clerk of the Court of Claims could require the claimant to submit with the application materials to substantiate the facts stated in the application. (R.C. 2743.56(A) and (B).)

Prior law further provided that all applications for an award of reparations be filed as follows (R.C. 2743.56(C)):

(1) If the victim of the criminally injurious conduct was a minor, within two years from the date a complaint, indictment, or information was filed against the alleged offender. This did not require that a complaint, indictment, or information be filed against an alleged offender in order for an application for an award of reparations to be filed pertaining to a victim who was a minor, and did not affect the provisions of R.C. 2743.64 (prosecution or conviction not required for award).

(2) If the victim of the criminally injurious conduct was an adult, within two years after the occurrence of the criminally injurious conduct.

Operation of the act

The act removes much of the original, specific requirements for the initial filing of a claim, including eliminating the \$7.50 filing fee and the authority to file applications with the courts of common pleas. The act replaces these requirements with a general provision authorizing a claim for an award to be commenced by filing an application for an award with the Attorney General. The application must be in a form prescribed by the Attorney General and must include a release authorizing the Attorney General and the Court of Claims to obtain any report, document, or information that relates to the determination of the claim. An application can be filed by mail, and the post-marked date of the application is considered its filing date. (R.C. 2743.56(A).)

The act further provides that all applications for an award of reparations are to be filed as follows (R.C. 2743.56(B)):

(1) If the victim of the criminally injurious conduct was a minor, *within two years of the victim's eighteenth birthday or* within two years from the date a complaint, indictment, or information is filed against the alleged offender,

whichever is later. This does not require that a complaint, indictment, or information be filed against an alleged offender in order for an application for an award of reparations to be filed pertaining to a victim who was a minor *if the application is filed within two years of the victim's eighteenth birthday*, and does not affect the provisions of R.C. 2743.64.

(2) If the victim of the criminally injurious conduct was an adult, within two years after the occurrence of the criminally injurious conduct.

Filing, recording, and processing of applications for reparations awards

Procedure establishment

Prior law required the Clerk of the Court of Claims to establish a procedure for the filing, recording, and processing of applications for an award of reparations that are filed with clerks of the courts of common pleas, and required the clerk of the court of common pleas to forward each application for an award of reparations to the Clerk of the Court of Claims within seven business days. Prior law further stated that if an applicant filed an affidavit stating that he was an indigent person and payment of the filing fee would create a financial hardship for him, the clerk who received the application, pursuant to rules established by the Clerk of the Court of Claims, could accept the application for filing without payment of the filing fee. If the application was accepted without payment of the filing fee and an award was made pursuant to the application, the amount of the award was reduced by the amount of the filing fee. (R.C. 2743.57.)

Since the act eliminates the filing fee and the authority to file applications with courts of common pleas, all these provisions are repealed.

Transfer of information related to award application

Prior law required the Clerk of the Court of Claims to send a copy of the application to the Attorney General. Upon receipt of the copy, the Attorney General contacted the prosecuting attorney of the county in which the criminally injurious conduct occurred and the law enforcement agency that actively investigated the criminally injurious conduct and requested that they provide information on the criminally injurious conduct and related matters. The prosecuting attorney and any officer or employee of the office of the prosecuting attorney or of the law enforcement agency were immune from any civil liability that might otherwise be incurred as the result of providing information on the criminally injurious conduct and related matters to the Attorney General.

Prior law also stated that the Clerk of the Court of Claims, upon receipt of the Attorney General's finding of fact and recommendation for a claim, had to

forward a copy of the finding and recommendation to the claimant and give the claimant an opportunity to respond in writing. After the expiration of the time allowed for the claimant's response, the Clerk assigned the claim to a Court of Claims commissioner.

The act, in conformance with the transfer of the reparations program from the Court of Claims to the Attorney General, eliminates the procedural aspects of these provisions but maintains the immunity from any civil liability that might otherwise be incurred as the result of providing information on criminally injurious conduct and related matters to the Attorney General. (R.C. 2743.58.)

Findings of fact and the decision of the Attorney General

Continuing law that is amended by the act requires the finding of fact that is issued by the Attorney General to contain all of the following: (1) whether the criminally injurious conduct that is the basis for the application did occur, the date on which the conduct occurred, and the exact nature of the conduct, (2) whether the criminally injurious conduct was reported to a law enforcement officer or agency, the date on which the conduct was reported, 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 at all or was not reported within 72 hours after the conduct occurred, (3) the exact nature of the injuries that the victim sustained as a result of the criminally injurious conduct, (4) a specific list of the economic loss that was sustained as a result of the criminally injurious conduct by the victim, the claimant, or a dependent, (5) a specific list of any benefits or advantages that the victim, the claimant, or a dependent has received or is entitled to receive from any collateral source for economic loss that resulted from the conduct, whether a collateral source would have reimbursed the claimant for a particular expense if a timely claim had been made, and the extent to which the expenses likely would have been reimbursed by the collateral source, (6) a description of any evidence in support of contributory misconduct by the claimant or by the victim through whom the claimant claims an award of reparations, whether the victim has been convicted of a felony or has a record of felony arrests under the laws of this state, another state, or the United States, 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, (7) whether an assignment has been filed, (8) whether the victim of the criminally injurious conduct was a minor, (9) 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, and (10) any information that is relevant to the claim for an award of reparations.

The act modifies the sixth provision, above, by adding required information regarding whether any of the following disqualifying conditions exist: (1) 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, (2) 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, (3) 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, a violation of the drug trafficking law, or any substantially similar offense that also would constitute a felony under the laws of this state, another state, or the United States, or (4) the claimant was convicted of endangering children or domestic violence, or of any state law or municipal ordinance substantially similar to those offenses, within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim. (R.C. 2743.59(C)(6).)

The act also eliminates the seventh provision above (R.C. 2743.59(C)(7)).

Disqualifying conditions for reparations awards

Continuing law prohibits an award of reparations for a claimant if certain conditions apply. For example, an award of reparations may not be made to a claimant who is the offender or an accomplice of the offender who committed the criminally injurious conduct, nor to any claimant if the award would unjustly benefit the offender or accomplice. The act adds to the disqualifying factors the following: an award of reparations may not be made to a claimant if the victim was a passenger in a motor vehicle and knew or reasonably should have known that the driver was under the influence of alcohol, a drug of abuse, or both, and the claimant is seeking compensation for injuries proximately caused by that driver. This factor does not apply if on the date of the occurrence of the criminally injurious conduct, the victim was under 16 years of age or was at least 16 years of age but less than 18 years of age and was riding with a parent, guardian, or care-provider. Also under the act, an award cannot be made to a claimant with regard to a victim who was under the influence of alcohol, a drug of abuse, or both, was a passenger in a motor vehicle, and should have reasonably known, if sober, that the driver was under the influence of alcohol, a drug of abuse, or both, and with respect to which the claimant is seeking compensation for injuries proximately caused by that driver. (R.C. 2743.60(B).)

Under prior law, an award of reparations was prohibited if it was proved by a preponderance of the evidence that the victim or the claimant, within ten years prior to the criminally injurious conduct that gave rise to the claim or during the

pendency of the claim, engaged in conduct that would constitute a felony under the laws of this state, another state, or the United States. The act modifies this provision, to prohibit an award of reparations for a claimant if it is proved by a preponderance of the evidence that the victim or 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, a violation of the drug trafficking law, or any substantially similar offense that also would constitute a felony under the laws of this state, another state, or the United States. The act also prohibits an award if the claimant has been convicted of child endangering or domestic violence or of any state law or municipal ordinance substantially similar to either violation within ten years prior to the criminally injurious conduct that gave rise to the claim or during the pendency of the claim (R.C. 2743.60(E)).

Continuing law requires, in determining whether to make an award of reparations, consideration of whether there was contributory misconduct by the victim or the claimant. The act adds that if it is proven by a preponderance of the evidence that the victim engaged in conduct at the time of the criminally injurious conduct that was a felony violation of drug possession, the conduct must be presumed to have contributed to the criminally injurious conduct and must result in a complete denial of the claim. (R.C. 2743.60(F).)

Attorney General's reconsideration of an award

The act provides that the Attorney General, on the Attorney General's own motion or upon request of a claimant or victim, may reconsider a decision to make an award of reparations, the amount of an award of reparations, or a decision to deny a claim for an award of reparations. A claimant may file a request for reconsideration with the Attorney General not later than 30 days after the Attorney General renders an initial decision. The claimant may submit with the request any additional information that is relevant to the claimant's claim for an award of reparations. The Attorney General must reconsider the application based upon evidence that is relevant to the application and issue a final decision within 60 days of receiving the request for reconsideration. The Attorney General may extend the 60-day time limit and, if doing so, must record in writing specific reasons to justify the extension. The Attorney General is required to notify the claimant of the extension and of the reasons for the extension. If a claimant does not file a request for reconsideration of a decision of the Attorney General to make an award or deny a claim or of the amount of an award within 30 days after the decision is rendered, the award, the denial of the claim, or the amount of the award is final unless the Attorney General in the interest of justice allows the reconsideration after the expiration of that period of time. (R.C. 2743.61(A).)

The act includes procedures for a claimant to appeal a decision of the Attorney General to a Court of Claims panel of commissioners that are similar to former procedures regarding a claimant's appeal of a decision of a panel of commissioners to the Court of Claims. The act also specifies that the Attorney General or a claimant can appeal an award or denial of reparations, or the amount of an award, made by a panel of commissioners. A Court of Claims judge must hear such an appeal and determine the appeal on the basis of the record of the hearing before the commissioners, including the original award or denial made by the Attorney General, any information or documents presented to the panel of commissioners, and any briefs or oral arguments requested by the judge. If the judge decides the decision of the panel of commissioners is unreasonable or unlawful, the judge is to reverse and vacate the decision or modify it and enter judgment on the claim. The decision of the Court of Claims judge is final. The Attorney General or claimant must file a notice of an appeal from a decision of a panel of commissioners within 30 days after an award or denial of a claim is made by the panel, or the award or denial is final. But a Court of Claims judge can allow the filing of an appeal after this deadline in the interests of justice.

Attorney's fees

Prior law

As part of an order, a single commissioner or a panel of commissioners determined and awarded reasonable attorney's fees, commensurate with services rendered, to be paid by the state to the attorney representing a claimant under the Crime Victims Reparations Law. Additional attorney's fees could be awarded by the Court of Claims in the event of appeal. Attorney's fees could be denied upon a finding that the claim or appeal was frivolous. Awards of attorney's fees were in addition to awards of reparations, and attorney's fees could be awarded whether or not an award of reparations was made. An attorney who represented an applicant for an award of reparations could not charge the applicant for the services rendered in relation to that representation and had to apply to the Court of Claims for payment for the representation. (R.C. 2743.65(A).)

Operation of the act

The act repeals the former attorney's fees provisions and provides that the state is to pay attorney's fees in amounts determined by the Attorney General. The attorney must submit on an application form an itemized fee bill at the rate of \$60 per hour upon receipt of the final decision on the claim. The fees are subject to the following maximum amounts:

--\$720 for claims resolved without the filing of an appeal to a panel of commissioners;

--\$1,020 for claims in which an appeal to the panel of commissioners is filed plus, at the request of an attorney whose main office is not in Franklin, Delaware, Licking, Fairfield, Pickaway, Madison, or Union County, an amount for the attorney's travel time to attend the oral hearing before the panel at the rate of \$30 per hour;

--\$1,320 for claims in which an appeal to a judge of the Court of Claims is filed plus, at the request of an attorney whose main office is not in Franklin County or the above-listed surrounding counties, \$30 per hour for travel time to attend the oral hearing before the judge;

--\$720 for a supplemental reparations application;

--\$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 but not during the pendency of the claim. If the attorney had knowledge of the felony conviction prior to the filing of the application for the claim, the Attorney General can determine the filing of the claim was frivolous and deny attorney's fees.

The act allows the Attorney General to reimburse an attorney for fees incurred in the creation of a guardianship if the guardianship is required for an individual to receive an award of reparations, at the rate of \$60 per hour.

The act requires the Attorney General to forward an application form for attorney's fees to a claimant's attorney before or when the final decision on a claim is rendered. The application form is to (1) inform the attorney of the bill's attorney fee requirements, (2) require a verification statement comporting with the law prohibiting falsification, (3) require an itemized fee statement, (4) require a verification statement that the claimant was served a copy of the completed application form, and (5) include notice that the claimant may oppose the application by notifying the Attorney General in writing within ten days. The Attorney General is to forward a copy of this section of law (R.C. 2743.65) with the application form.

The attorney must file the application with the Attorney General. The Attorney General is required to review all application forms that are submitted by claimant's attorneys, and to issue an order approving the amount of fees to be paid to the attorney within 60 days after receipt of the form. The Attorney General's decision with respect to an award of fees is final ten days after the Attorney General renders the decision and mails a copy of it to the attorney at the address provided by the attorney. The attorney can request reconsideration of the decision on grounds that it is insufficient or calculated incorrectly, and the Attorney General's decision on the request for reconsideration is final.

The act prohibits attorney's fees from being paid for any of the following:

- Estate work or representation of a claimant against a collateral source;
- Duplication of investigative work required to be performed by the Attorney General;
- Performance of unnecessary criminal investigation of the offense;
- Presenting or appealing an issue that has been repeatedly ruled upon by the highest appellate authority, unless a unique set of facts or unique issue of law exists to distinguish it;
- A request that is unreasonable, is not commensurate with services rendered, violates the Ohio Code of Professional Responsibility, or is based upon services that are determined to be frivolous.

The Attorney General can reduce or deny the payment of attorney's fees to an attorney who has filed a frivolous claim, meaning one in which there are clearly no legal grounds under the existing laws of the state to support the filing of a claim on behalf of the claimant or victim. The Attorney General also can determine that a lesser number of hours should have been required in a given case. Additional reimbursement can be made if the attorney demonstrates to the Attorney General that the nature of the particular claim required the expenditure of an amount in excess of that allowed.

A contract or other agreement between an attorney and any person that provides for the payment of attorney's fees or other payments in excess of the attorney's fees allowed under the act for representing a claimant under the Crime Victims Reparations Law is void and unenforceable. (R.C. 2743.65.)

Assignment of an award of reparations

Prior law provided that an assignment or agreement to assign a right to an award of reparations was unenforceable, except that an assignment of a right to receive payment of all or any part of an award of reparations was enforceable and had to be honored by a single commissioner or a panel of commissioners if a number of conditions applied. The act repeals all provisions relating to the assignability of reparations awards. (R.C. 2743.66(E) and (F).)

Emergency reparations awards

The act authorizes the Attorney General to make an emergency award if, before acting on an application for an award of reparations, it appears likely that a final award will be made, and the claimant or victim will suffer undue hardship if

immediate economic relief is not obtained. An emergency award cannot exceed \$2,000. The Attorney General or the Court of Claims panel of commissioners must deduct the amount of the emergency award from the final award or the claimant or victim must repay the amount of the emergency award that exceeds the final award made to the claimant. If no final award is made, the claimant or victim must repay the entire emergency award. (R.C. 2743.67.)

The Reparations Fund's right of repayment, reimbursement, recovery, and subrogation

The act specifies that the Attorney General is the legal representative of the Reparations Fund. The Attorney General may institute, prosecute, and settle actions or proceedings for the enforcement of the Reparations Fund's right of repayment, reimbursement, recovery, and subrogation. The Attorney General must defend all suits, actions, or proceedings brought against the Fund. (R.C. 2743.711.)

Prior law stated that if an award of reparations was made, the state, upon the payment of the award or a part of the award, was subrogated to all of the claimant's rights to receive or recover benefits or advantages for economic loss for which an award of reparations was made from a source that was a collateral source or would be a collateral source if it were readily available to the victim or claimant. The claimant could sue the offender for any damages or injuries caused by the offender's criminally injurious conduct and not compensated for by an award of reparations. The claimant could join with the Attorney General as co-plaintiff in any action against the offender.

Prior law further provided that if payment was made to an assignee as a result of the payment of an award of reparations, the state was subrogated to all of the assignee's rights to receive or recover benefits or advantages for funeral expense or allowable expenses for which a reparations payment was made, from a source that was a collateral source or would be a collateral source if it were readily available to the victim, claimant, or assignee.

The act repeals the above provisions and replaces them with provisions that specify that the payment of an award of reparations from the Reparations Fund creates a right of reimbursement, repayment, and subrogation in favor of the Reparations Fund from an individual who is convicted of the offense that is the basis of the award of reparations. For purposes of establishing an individual's liability, a certified judgment of the individual's conviction together with the related indictment is admissible as evidence. (R.C. 2743.72(A).) Additionally, the payment of an award of reparations from the Reparations Fund creates a right of reimbursement, repayment, and subrogation in favor of the Reparations Fund from

a third party who, because of an express or implied contractual or other legal relationship, had an obligation to pay any expenses for which an award of reparations was made (R.C. 2743.72(B)).

The Reparations Fund is an eligible recipient for payment of restitution. The subrogation right of the Reparations Fund includes the amount of an award of reparations actually paid to a claimant or to another person on the claimant's behalf and a right of prepayment for the anticipated future payment of an award of reparations to be paid by reason of criminally injurious conduct. The subrogation right of the Reparations Fund is enforceable through the filing of an action in the Franklin County Court of Common Pleas within six years of the date of the last payment of any part of an award of reparations from the Fund. The time of an offender's imprisonment shall not be computed as any part of this period of limitation. This subrogation right may be established and enforced in the Franklin County Court of Common Pleas as against the heirs and assigns of a subrogation debtor. (R.C. 2743.72(E), (F), and (G).)

As a prerequisite to bringing an action to recover an award related to criminally injurious conduct upon which compensation is claimed or awarded, the claimant must give the Attorney General prior written notice of the proposed action. If an action is initiated prior to a claimant filing a reparations claim or supplemental reparations claim, the claimant must give the Attorney General written notice of the existence of the action. After receiving either notice, the Attorney General promptly must do one of the following: (1) join in the action as a party plaintiff to recover any reparations awarded, (2) require the claimant to bring the action in the claimant's individual name as trustee on behalf of the state to recover any reparations awarded, or (3) reserve the rights described in (1) or (2). If, as requested by the Attorney General, the claimant brings the action as trustee, and the claimant recovers compensation awarded by the Reparations Fund, the claimant may deduct from the compensation recovered on behalf of the state the reasonable expenses including attorney's fees allocable by the court for that recovery. (R.C. 2743.72(H).)

A claimant may not settle or resolve any action arising out of criminally injurious conduct without written authorization from the Attorney General to do so. Any attempt by a third party or an offender, or an agent, an insurer, or attorneys of third parties or offenders, to settle an action is void and results in no release from liability to the Reparations Fund. (R.C. 2743.72(I).)

If there is more than one offender in connection with an instance of criminally injurious conduct, each offender is jointly and severally liable to pay to the Reparations Fund the full amount of the reparations award (R.C. 2743.72(J)).

The right of the Reparations Fund to repayment, reimbursement, and subrogation is automatic, regardless of whether the Reparations Fund is joined as a party in an action by a claimant against an offender or third party in connection with criminally injurious conduct. The Reparations Fund, through the Attorney General, may assert its repayment, reimbursement, or subrogation rights through correspondence with the claimant, offender, or third party, or their legal representatives. The assertion is not to be considered the assertion of a consumer debt. (R.C. 2743.72(K) and (L).)

The Reparations Fund, through the Attorney General, may institute and pursue legal proceedings against an offender, third party, or overpaid claimant. In actions against an offender or third party, the claimant and victim are not necessary parties to the action. (R.C. 2743.72(M).)

The costs and attorney's fees of the Attorney General in enforcing the Reparations Fund's reimbursement, repayment, or subrogation rights are fully recoverable from the liable offender, third party, or overpaid claimant (R.C. 2743.72(N)).

Elimination of duties of the Clerk of the Court of Claims

Consistent with the transfer of the Reparations Program to the Attorney General, the act eliminates the duties of the Clerk of the Court of Claims regarding administering claims for reparations. Other provisions are modified to recognize the role of the Court of Claims commissioners and judges in hearing appeals under the program. (R.C. 2743.09 and 2743.121.)

Use of Reparations Fund for medical examinations related to sexual offenses

Under prior law, local governments were required to reimburse hospitals and other emergency medical facilities for costs incurred in conducting a medical examination of a victim of rape, sexual battery, corruption of a minor, gross sexual imposition, or sexual imposition to gather physical evidence for a possible prosecution. Counties were charged costs for examinations in county facilities, and for examinations in private facilities if the alleged offense was committed in an unincorporated area. Municipalities were charged costs for examinations in municipal facilities, and in private facilities if the alleged offense was committed in the municipal corporation.

The act repeals these provisions, and provides that hospitals and emergency medical facilities are to be reimbursed out of the Reparations Fund for the costs of the examinations and any antibiotics administered as part of the examinations. To be eligible for the payment, the hospital or facility must follow a protocol identified in rule by the Attorney General for conducting such examinations. The

hospital or facility must submit requests for payment to the Attorney General on a monthly basis, through a procedure and on forms prescribed by the Attorney General. The requests must identify the number of sexual assault examinations performed and verify that all required protocols were met.

The Attorney General must determine a reasonable flat fee to be paid to the hospitals and facilities for each examination, in accordance with the Administrative Procedure Act. The hospitals and facilities must accept the flat fee as payment in full for conducting the examination. The act provides that no costs incurred by a hospital or facility in conducting the examination can be billed or charged directly or indirectly to the victim or the victim's insurer.

The Attorney General is to provide for payment of the fees to hospitals and facilities from the Reparations Fund, through procedures the act establishes and that can be enforced through a mandamus action and a writ of mandamus directed to the appropriate official. (R.C. 2907.28.)

Procedures for transfers from the Reparations Fund for victim assistance programs

(R.C. 109.92)

Formerly, codified law required the Director of Budget and Management to transfer amounts appropriated to the Attorney General for victim assistance programs from the Reparations Fund to the funds from which those appropriations were made. The act eliminates this requirement, as this kind of transfer is usually provided for in the biennial appropriation act.

Transition provisions

(Section 3)

The act states that for purposes of an application for an award of reparations under the Crime Victims Reparations Law, any issues concerning participation in the program, eligibility for benefits, and exclusionary conditions are to be determined under the version of the Reparations Law in effect at the time of the criminally injurious conduct.

If the Attorney General has filed a finding of fact and recommendation with respect to a claim prior to the act's effective date, the claim must be determined procedurally in accordance with the law in effect at the time of the filing of the finding of fact and recommendation. If the Attorney General has not filed a finding of fact and recommendation with respect to a claim prior to the act's effective date, the claim must be determined procedurally in accordance with the

act's provisions. The act provides that the Court of Claims Victims of Crime Fund can be used to pay reparations awards with respect to claims for which the Attorney General has filed a finding of fact and recommendation prior to the act's effective date.

Attorney's fees incurred on an application or supplemental application for an award of reparations under the Crime Victims Reparations Law filed prior to the act's effective date must be determined in accordance with the law in effect at the time of filing of the application, and attorney's fees incurred on an application or supplemental application filed on or after the act's effective date must be determined in accordance with the act's provisions.

Temporary authority to pay certain claims

(Section 10)

For one year beginning on the act's effective date, the Attorney General is required to accept applications for reparations for certain kinds of economic loss that would not otherwise qualify for compensation. Claims eligible for this provision involve:

--Economic loss arising from criminally injurious conduct that was at least a felony of the first degree and that occurred before January 3, 1976 (which is the date the Crime Victims Reparations Program was created);

--Economic loss arising from criminally injurious conduct that was at least a felony of the first degree and that occurred on or after January 3, 1976, where the economic loss was not compensable under the Crime Victims Reparations Program at the time it occurred but is compensable under the program as it exists under the act.

The Attorney General (or, on appeal, a Court of Claims panel of commissioners or judge) is to determine the amount of the reparations award for such a claim pursuant to the Crime Victims Reparations Law as it exists under the act. The applications are to be considered in the order they are received. The act specifies that it does not allow an individual who received compensation for an injury under the state's pre-1976 "Good Samaritan" Law to receive another award for that same injury.

The act imposes a cap of \$500,000 on the total amount of awards that can be made under this provision. If the total amount of all qualified claims exceeds \$500,000, the award made to each claimant is to be reduced proportionately by multiplying the claim by the ratio of \$500,000 divided by the total of all qualified claims.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-10-99	p. 585
Reported, S. Judiciary	10-20-99	p. 1095
Passed Senate (33-0)	10-20-99	pp. 1099-1100
Reported, H. Finance & Appropriations	01-25-00	pp. 1543-1544
Passed House (95-0)	01-26-00	pp. 1557-1561, 1569-1572
Senate concurrence (33-0)	02-16-00	p. 1392

00-SB153.123/rss

