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(excluding appropriations and fund transfers)

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BILL 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 also 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.
- Permits the Attorney General to establish and regulate standard medical fees and approved medical procedures that are eligible for reimbursement from 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 to claimants who are passengers in a motor vehicle operated by a person under the influence of alcohol, a drug of abuse, or both, if the claimant is claiming injuries proximately caused by the operator of the motor vehicle and the claimant 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 or during the pendency 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 paid for medical exams and antibiotics for a sex offense victim from the Reparations Fund.
- Makes other changes in the Crime Victims Reparations Law.

TABLE OF CONTENTS

Overview.....	3
Definitions	3
The Reparations Fund	5
Existing law.....	5
Operation of the bill	5
Payment of an award of reparations.....	6
Existing law.....	6
Operation of the bill	6
Awards of reparations	7
Existing law.....	7
Operation of the bill	7
Medical care allowable expense provisions	7
Appeals of reparations awards.....	8
Determination of claims for awards of reparations.....	8
Existing law.....	8
Operation of the bill	9
Filing a claim for reparations.....	10
Existing law.....	10
Operation of the bill	11
Filing, recording, and processing of applications for reparations awards	11

Procedure establishment.....	11
Transfer of information related to award application	12
Findings of fact and the decision of the Attorney General	12
Disqualifying conditions for reparations awards.....	14
Attorney General's reconsideration of an award	15
Attorney's fees	16
Existing law	16
Operation of the bill	16
Assignment of an award of reparations.....	18
Emergency reparations awards	18
The Reparations Fund's right of repayment, reimbursement, recovery, and subrogation	18
Use of Reparations Fund for medical examinations related to sexual offenses.....	21
Uncodified law--transition provisions	22

CONTENT AND OPERATION

Overview

The main focus of the bill 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. There are numerous procedural and name changes in the bill to accomplish this goal.

Definitions

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

Under the existing definition, "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 bill 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 bill 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 bill 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 the existing definition, "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 bill 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 bill defines "provider" to mean any person who provides a claimant with a product, service, or accommodations that are an allowable expense (R.C. 2743.51(V)).

The Reparations Fund

Existing law

There exists in the state treasury the Reparations Fund, which may be used only for the following: (1) the payment of awards of reparations that are 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 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 bill

The bill modifies the permissible uses of funds from the Reparations Fund to reflect that under the bill, the Attorney General makes reparations awards and provides personnel necessary to administer the Crime Victims Reparations Law, a Court of Claims panel of commissioners hears appeals from the Attorney General's decisions on reparations awards, and a judge of the Court of Claims hears appeals from orders of the panel of commissioners concerning decisions of the Attorney General. In addition, the bill 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 bill.

Payment of an award of reparations

Existing law

Under existing law, in making an award of reparations, a single commissioner or a panel of Court of Claims commissioners renders the award against the state and the Director of Budget and Management as its agent for payment of the award. The award may be accomplished only through the following procedure, which may be enforced by writ of mandamus directed to the appropriate official: (1) the Clerk of the Court of Claims forwards a certified copy

of the order granting the award to the Director for payment, and (2) upon receipt of the certified copy of the order granting the award from the Clerk of the Court of Claims, the Director of OBM provides for payment of the claimant, an assignee of the claimant, or the claimant and the claimant's assignee in the amount of the award set forth in the certified copy of the order. If the award is to be paid in installments, the Director provides for payment of the amount of the award that will fall due during the current appropriation period. (R.C. 2743.191(B)(1) and (2).)

No order granting an award may be forwarded by the Clerk of the Court of Claims to the Director of OBM 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).)

Operation of the bill

The bill modifies the above provisions to indicate that, in making an award of reparations, *the Attorney General* renders the award of reparations against the state. The award may be accomplished by the following procedure, enforceable by writ of mandamus: (1) the Attorney General certifies to the Director of Budget and Management the Attorney General's decision, a Court of Claims panel of commissioners' order, or a Court of Claims judgment granting the award, and (2) upon receipt of the certification, the Director of OBM provides for payment of the claimant or providers in the amount certified. The bill deletes the provision of existing law requiring the Director to provide for payment of the amount of the award that will fall due if the award is to be paid in installments. (R.C. 2743.191(B)(1) and (2).)

The bill also prohibits the Attorney General from certifying a decision or order granting an award to the Director of OBM 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

Existing law

The Court of Claims commissioners have 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 of reparations have been met. A decision of a Court of Claims commissioner or a panel of Court of Claims commissioners 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.)

Operation of the bill

The bill modifies existing law to state that the Attorney General makes 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 bill adds a provision stating that a Court of Claims panel of commissioners or a Court of Claims judge has appellate jurisdiction to order 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 bill 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

The bill permits, for medical care-related allowable expenses, the Attorney General to do all of the following: (1) establish standard medical fees and approved medical procedures for which an award of reparations may be made, (2) determine the eligibility and reasonableness of claims for medical, psychological, dental, chiropractic, hospital, physical therapist, and nursing services, (3) recognize usual, customary, and reasonable methods of payment for covered service, and (4) audit fee bill payments and adjust fee bill reimbursement to be consistent with medical cost containment and reimbursement guidelines promulgated by the Administrator of the Bureau of Workers' Compensation.

The bill also states that a medical provider that accepts payment for medical care-related allowable expenses as part of an award of reparations is to be considered paid in full for those allowable expenses and cannot seek reimbursement for any part of those allowable expenses from the claimant who was granted the award. (R.C. 2743.521.)

Appeals of reparations awards

Under existing law, the Court of Claims hears and determines all matters relating to appeals from decisions of the Court of Claims commissioners. In addition, the court may order law enforcement officers to provide it with copies of any information or data gathered in the investigation of the criminally injurious conduct that is the basis of any claim to enable it to determine whether, and the extent to which, a claimant qualifies for an award of reparations. (R.C. 2743.53.)

The bill 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 and deletes the provisions of existing law relating to the provision of information to Court of Claims commissioners by law enforcement officers. The bill further provides that a Court of Claims judge hears and determines all matters relating to appeals from decisions or orders of a panel of commissioners. (R.C. 2743.53.)

Existing law provides that the Supreme Court must 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 bill 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

Existing law

Under existing law, a single commissioner or a panel of Court of Claims commissioners must hear and determine all matters relating to claims for an award of reparations. A claim for an award of reparations cannot 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 may order law enforcement officers to provide them with 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 commissioners to determine whether, and the extent to which, a claimant qualifies for an award of reparations. Any reference in the Crime Victims Reparations Law to action by more than a single commissioner means action by a panel of commissioners. A panel consists of three commissioners who may only proceed upon a majority vote. (R.C. 2743.55(A).)

The Court of Claims commissioners must sit in Franklin County. A single commissioner or any panel of commissioners, pursuant to rules adopted by the Chief Justice of the Supreme Court, may 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 is heard by a single commissioner. The commissioner may determine the claim and make an award administratively without a hearing. If a claimant or the Attorney General objects to the determination or award made by a single commissioner and files an objection with the clerk within 30 days after journalization of the order of the commissioner, the

claim is heard by a panel of three commissioners who make an award or deny the claim upon a majority vote. (R.C. 2743.55(C).)

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

Operation of the bill

The bill deletes 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 bill 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

Existing law

A claim for an award of reparations may 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 files for an award of reparations in a court of common pleas must file in the court of common pleas of the county of the claimant's residence or, if the claimant is not a resident of this state, in the court of common pleas of the county in which the criminally injurious conduct that is the basis of the application took place. Each application is required to be accompanied by a filing fee of \$7.50 unless waived. The application must 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 is 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 relates to the determination of the claim for an award of reparations that is requested in the application, and (7) any information that the Clerk of the Court of Claims requires and that is reasonably related to an application for an award of reparations. The Clerk of the Court of Claims may require the claimant to submit with the application materials to substantiate the facts that are stated in the application. (R.C. 2743.56(A) and (B).)

Existing law further provides that all applications for an award of reparations must 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 is filed against the alleged offender. 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 and does not affect the provisions of R.C. 2743.64 (prosecution or conviction not required for award). This applies to all applications for an award of reparations filed on or after March 11, 1987, and to any application for an award of reparations filed before March 11, 1987, for which an award or denial of the claim is not final.

(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 bill

The bill 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 bill replaces these requirements with a general provision authorizing a claim for an award of reparations to be commenced by filing an application for an award of reparations 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 for an award of reparations that is requested in the application. 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 bill further provides that all applications for an award of reparations shall 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. This applies to all applications for an award of reparations filed on or after March 11, 1987, and to any application for an award of reparations filed before March 11, 1987, for which an award or denial of the claim is not final within the meaning of R.C. 2743.61.

(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

Existing law requires 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 requires 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. Existing law further states that if an applicant files an affidavit stating that he is an indigent person and payment of the filing fee would create a financial hardship for him, the clerk who receives the application, pursuant to rules established by the Clerk of the Court of Claims, may accept the application for filing without payment of the filing fee. If the application is accepted without payment of the filing fee and an award is made pursuant to the application, the amount of the award must be reduced by the amount of the filing fee. (R.C. 2743.57.)

Since the bill 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

Existing law requires the Clerk of the Court of Claims to send a copy of the application to the Attorney General. Upon receipt of the copy of the application, the Attorney General contacts 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 requests 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 are 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.

Existing law also states that the Clerk of the Court of Claims, upon receipt of the Attorney General's finding of fact and recommendation for a claim for an award of reparations, must 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 assigns the claim to a Court of Claims commissioner.

The bill, in conformance with the transfer of the reparations program from the Court of Claims to the Attorney General, deletes 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

Existing law 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 or was not reported to a law enforcement officer or agency 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 and 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 bill deletes from the sixth provision, above, the required information regarding a description of any evidence in support of whether the victim has a record of felony arrests under the laws of this state, another state, or the United States, and adds to that provision required information regarding a description of any evidence in support of whether the victim has engaged in the following disqualifying felonious behavior: (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 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 bill also deletes the seventh provision above (R.C. 2743.59(C)(7)).

Disqualifying conditions for reparations awards

Existing 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 bill adds to the disqualifying factors the following: an award of reparations may not be made to a claimant if the claimant 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 claimant 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 bill, an award cannot be made to a claimant who was under the influence of alcohol, a drug of abuse, or both, was a passenger in a

motor vehicle, should have reasonably known, if sober, that the driver was under the influence of alcohol, a drug of abuse, or both, and is seeking compensation for injuries proximately caused by that driver. (R.C. 2743.60(B).)

The bill also prohibits an award of reparations for a claimant (1) 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 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 (2) 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)).

Existing law also requires, in determining whether to make an award of reparations, consideration of whether there was contributory misconduct by the victim or the claimant. The bill states, in addition to existing factors, 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 bill states 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. A 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 to 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 bill 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 existing procedures regarding a claimant's appeal of a decision of a panel of commissioners to the Court of Claims. The bill 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

Existing law

As part of an order, a single commissioner or a panel of Court of Claims commissioners determines and awards 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 may be awarded by the Court of Claims in the event of appeal. Attorney's fees may be denied upon a finding that the claim or appeal is frivolous. Awards of attorney's fees are in addition to awards of reparations, and attorney's fees may be awarded whether or not an award of reparations is made. An attorney who represents an applicant for an award of reparations cannot charge the applicant for the services rendered in relation to that representation and must apply to the Court of Claims for payment for the representation. (R.C. 2743.65(A).)

Operation of the bill

The bill repeals the existing 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 bill 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 bill 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 Court of Claims rules and 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 bill 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 bill for representing a claimant under the Crime Victims Reparations Law is void and unenforceable. (R.C. 2743.65.)

Assignment of an award of reparations

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

Emergency reparations awards

The bill 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. (R.C. 2743.67.)

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

The bill 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.)

Existing law states that if an award of reparations is made under the Crime Victims Reparations Law, the state, upon the payment of the award or a part of the award, is 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 is a collateral source or would be a collateral source if it were readily available to the victim or claimant. The claimant may 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 may join with the Attorney General as co-plaintiff in any action against the offender.

Existing law further states that if payment is made to an assignee as a result of the payment of an award of reparations, the state is 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 is a collateral source or would be a collateral source if it were readily available to the victim, claimant, or assignee.

The bill 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 to prove the individual's liability. (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)).

Use of Reparations Fund for medical examinations related to sexual offenses

Under existing law, local governments are 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 are charged costs for examinations in county facilities, and for examinations in private facilities if the alleged offense was committed in an unincorporated area. Municipalities are charged costs for examinations in municipal facilities, and in private facilities if the alleged offense was committed in the municipal corporation.

The bill repeals these provisions, and provides that the hospitals and emergency medical facilities are to be reimbursed out of the Reparations Fund. To be eligible for the payment, the hospital or facility must follow protocol adopted by the Department of Health for conducting the examinations and must use a sexual examination kit that meets that protocol. 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 bill 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 and Director of Budget and Management are to provide for payment of the fees to hospitals and facilities from the Reparations Fund, through procedures the bill establishes and that can be enforced through a mandamus action and a writ of mandamus directed to the appropriate official. (R.C. 2907.28.)

Uncodified law--transition provisions

Section 3 of the bill states that for purposes of an application for an award of reparations under the Crime Victims Reparations Law, economic loss incurred prior to the effective date of the bill must be determined in accordance with the law in effect at the time of the filing of the application, and economic loss incurred on or after the effective date of the bill must be determined in accordance with the bill's provisions.

If the Attorney General has filed a finding of fact and recommendation with respect to a claim prior to the effective date of the bill, 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 effective date of the bill, the claim must be determined procedurally in accordance with the bill's provisions.

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 effective date of the bill 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 effective date of the bill must be determined in accordance with the bill's provisions.

HISTORY

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