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Bill Analysis
Legislative Service Commission

S.B. 285

126th General Assembly
(As Introduced)

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BILL SUMMARY

- Provides an additional set of circumstances in which an individual qualifies as a "wrongfully imprisoned individual" and is eligible to recover a judgment against the state relative to the wrongful imprisonment, which additional circumstances include an individual to whom all of the following apply: (1) as under existing law, the individual was charged with a violation of a Revised Code section that was an aggravated felony or felony, was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense that was an aggravated felony or felony, and was sentenced to a term of imprisonment in a state correctional institution for that offense, and (2) subsequent to sentencing and during imprisonment, a court of common pleas, a court of appeals, or the Supreme Court orders the individual's release based on evidence presented to the court showing that the offense of which the person was found guilty either was not committed by the individual or was not committed by any person, the prosecuting attorney either agrees to or does not object to the individual's release, and the prosecuting attorney cannot or will not bring any criminal proceeding against the individual for any conduct of the individual that was the basis of the finding of guilt.
- Revises the existing mechanism by which an individual who qualifies as a "wrongfully imprisoned individual" may recover a judgment against the state relative to the wrongful imprisonment to reflect the new category of "wrongfully imprisoned individual" established by the bill, as described in the preceding dot point.
- Doubles the amount to which an individual who qualifies as a "wrongfully imprisoned individual" (under either the existing category of "wrongfully imprisoned individual" or the new category established by

the bill) is entitled to recover from the state for the actual time that the person spent in imprisonment (for each full year of imprisonment in the state correctional institution, \$80,660 or the adjusted dollar amount determined by the Auditor of State under the provision mentioned in the second succeeding dot point, whichever is greater, and for each part of a year of being so imprisoned, a pro-rated share of \$80,660 or the adjusted dollar amount determined by the Auditor, whichever is greater).

- Expands the required content of a judgment in a civil action in which the court determines that the complainant is a wrongfully imprisoned individual to require that the judgment also include the amount of any court costs, fees, and other expenses imposed in the civil action and assessed against the individual, and clarifies the manner in which the money, costs, fees, and expenses included in the judgment are to be paid.
- Revises the procedure by which the Auditor of State makes the adjustment in the actual dollar figure for recovery specified in statute and specifies that the adjusted dollar amount so determined by the Auditor is not to be used in determining the amount of recovery unless it is greater than the actual dollar figure specified above in the second preceding dot point.

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CONTENT AND OPERATION

Existing law provides a mechanism by which a person who qualifies as a "wrongfully imprisoned individual" (see **Definition of "wrongfully imprisoned individual"**, below) and obtains a court of common pleas determination of wrongful imprisonment may recover a judgment against the state for the wrongful imprisonment (see **COMMENT**). The bill provides an additional set of circumstances in which a person qualifies as a "wrongfully imprisoned individual," modifies the mechanism for recovery by a person who qualifies under the additional set of circumstances, and increases the amount of the judgment a person who qualifies as a "wrongfully imprisoned individual" under any set of circumstances may recover.

Definition of "wrongfully imprisoned individual"

Existing law

Under existing law, as used in the provisions that establish the mechanism by which "wrongfully imprisoned individuals" may recover a judgment against the state relative to the wrongful imprisonment and related provisions, as described in the remaining parts of this analysis, a "wrongfully imprisoned individual" means an individual who satisfies each of the following (R.C. 2743.48(A)):

(1) The individual was charged with a violation of a Revised Code section by an indictment or information prior to, or on or after, September 24, 1986, and the violation charged was an aggravated felony or felony.

(2) The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which the individual was found guilty was an aggravated felony or felony.

(3) The individual was sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which the individual was found guilty.

(4) The individual's conviction was vacated or was dismissed, or reversed on appeal, the prosecuting attorney in the case cannot or will not seek any further appeal of right or upon leave of court, and no criminal proceeding is pending, can be brought, or will be brought by any prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation against the individual for any act associated with that conviction.

(5) Subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release, or it was determined by a court of common pleas that the offense of which the individual was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.

Operation of the bill

The bill expands the definition of "wrongfully imprisoned individual" so that, in addition to the persons included within the definition under existing law, it also includes an individual who satisfies each of the following (R.C. 2743.48(A)(2)):

(1) The individual satisfies each criterion described above in (1), (2), and (3) under "**Existing law**";

(2) Subsequent to sentencing and during imprisonment, a court of common pleas, a court of appeals, or the Supreme Court orders the individual's release based on evidence presented to the court showing that the offense of which the person was found guilty either was not committed by the individual or was not committed by any person, the prosecuting attorney in the case either agrees to or does not object to the individual's release, and the prosecuting attorney in the case cannot or will not bring any criminal proceeding against the individual for any conduct of the individual that was the basis of the finding of guilt.

In the remaining parts of this analysis that address the operation of the bill, an individual who is a "wrongfully imprisoned individual" under this expansion of the definition added by the bill is referred to as a "new-category wrongfully imprisoned individual" and an individual who is a "wrongfully imprisoned individual" under the existing definition of the term is referred to as an "existing-category wrongfully imprisoned individual."

Court determination of wrongful imprisonment; notification of person and Court of Claims

Existing law

Under existing law, a court of common pleas has exclusive, original jurisdiction to hear and determine an action or proceeding that is commenced by an individual who satisfies the first four criteria that must be satisfied in order to be within the definition of "wrongfully imprisoned individual" (see *Definition of "wrongfully imprisoned individual"*, " above) and that seeks a determination by the court that the offense of which he or she was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person. If the court enters the requested determination, it must comply with the provisions described in the next paragraph. (R.C. 2305.02.)

When a court of common pleas determines that a person is a "wrongfully imprisoned individual," the court must provide the person with a copy of R.C. 2743.48 (the section that contains the recovery mechanism) and orally inform the person and his or her attorney of the person's rights under that section to commence a civil action against the state in the Court of Claims because of the person's wrongful imprisonment and to be represented in that action by counsel of his or her own choice. The court must notify the Clerk of the Court of Claims, in writing and within seven days after the date of the entry of its determination that the person is a wrongfully imprisoned individual, of the person's name and proposed mailing address and of the fact that the person has the rights to commence a civil action and to have legal representation as provided in the mechanism. The Clerk of the Court of Claims must maintain in the Clerk's office a list of wrongfully imprisoned individuals for whom notices are received under this provision and must create files in the Clerk's office for each such individual. (R.C. 2743.48(B)(1) and (2).)

Operation of the bill

The bill retains the existing provisions described above, but specifies that they apply only in relation to existing-category wrongfully imprisoned individuals. (R.C. 2305.02 and 2743.48(B)(1)(a) and (B)(2).)

Regarding new-category wrongfully imprisoned individuals, the bill provides that, when a court of common pleas, a court of appeals, or the Supreme Court orders an individual's release based on evidence presented to the court showing that the offense of which the person was found guilty either was not committed by the individual or was not committed by any person, the prosecuting attorney in the case either agrees to or does not object to the individual's release, and the prosecuting attorney in the case cannot or will not bring any criminal

proceeding against the individual for any conduct of the individual that was the basis of the finding of guilt, the court also must determine whether the individual satisfies the criteria described above in (1), (2), and (3) under the "**Existing law**" portion of "**Definition of 'wrongfully imprisoned individual'**." If the court determines that the individual satisfies those criteria, the court must state that determination in the release order, and the release order constitutes for purposes of R.C. 2743.48 (the section that contains the recovery mechanism) a determination by a court that the person is a wrongfully imprisoned individual. When a court of common pleas, a court of appeals, or the Supreme Court determines as described in this paragraph that a person is a wrongfully imprisoned individual, the court must provide the person with a copy of R.C. 2743.48 and orally inform the person and his or her attorney of the person's rights under that section to commence a civil action against the state in the Court of Claims because of the person's wrongful imprisonment and to be represented in that action by counsel of his or her own choice. The court must notify the Clerk of the Court of Claims, in writing and within seven days after the date of the entry of its determination that the person is a wrongfully imprisoned individual, of the person's name and proposed mailing address and of the fact that the person has the rights to commence a civil action and to have legal representation as provided in the mechanism. The existing provisions requiring the Clerk of the Court of Claims to maintain a list of wrongfully imprisoned individuals for whom notices are received and to create files for each such individual apply regarding this type of notice. (R.C. 2743.48(B)(1)(b) and (2).)

Filing of civil action

Existing law specifies that, notwithstanding any provisions of the Court of Claims Law (R.C. Chapter 2743.) to the contrary, a "wrongfully imprisoned individual" has and may file a civil action against the state, in the Court of Claims, to recover a sum of money as described below, because of the individual's wrongful imprisonment (also see **COMMENT**). The Court of Claims has exclusive, original jurisdiction over such an action, and the action must proceed, be heard, and be determined as provided in the Court of Claims Law, except that if a provision of R.C. 2743.48 (the section containing the recovery mechanism) conflicts with a provision in the Court of Claims Law, the provision in R.C. 2743.48 controls. (R.C. 2743.48(D).)

The bill does not change these provisions. However, as a result of the bill's changes described above in "**Court determination of wrongful imprisonment; notification of person and Court of Claims**," the provisions also apply regarding new-category wrongfully imprisoned individuals. (R.C. 2743.48(D).)

Civil action procedures; amount of possible recovery

Existing law

Existing law specifies that, in a civil action as described above in "**Filing of civil action**," all of the following apply (R.C. 2743.48(C)(1), (D), and (E)):

(1) The complainant may establish that he or she is a "wrongfully imprisoned individual" by submitting to the Court of Claims a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing, and a certified copy of the entry of the determination of a court of common pleas that the claimant is a wrongfully imprisoned individual. No other evidence is required of the complainant to establish that he or she is a wrongfully imprisoned individual, and the claimant is irrebuttably presumed to be a wrongfully imprisoned individual.

(2) A wrongfully imprisoned individual has the right to have counsel of his or her own choice.

(3) Upon presentation of requisite proof to the Court, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of each of the following amounts: (a) the amount of any fine or court costs imposed and paid, and the reasonable attorney's fees and other expenses he or she incurred in connection with all associated criminal proceedings and appeals, and, if applicable, in connection with obtaining his or her discharge from confinement in the state correctional institution, (b) for each full year of imprisonment in the state correctional institution for the offense of which he or she was found guilty, \$40,330 or the adjusted amount determined by the Auditor of State pursuant to the procedure described below in "**Adjustment of amount recoverable for wrongful imprisonment**," and for each part of a year of being so imprisoned, a pro-rated share of \$40,330 or the adjusted amount determined by the Auditor pursuant to that procedure, (c) any loss of wages, salary, or other earned income that directly resulted from his or her arrest, prosecution, conviction, and wrongful imprisonment, and (d) the amount of the following cost debts the Department of Rehabilitation and Correction recovered from the wrongfully imprisoned individual who was in the Department's custody or under its supervision: (i) any user fee or copayment for services at a detention facility, including, but not limited to, a fee or copayment for sick call visits, (ii) the cost of housing and feeding him or her in a detention facility, (iii) the cost of supervision of him or her, and (iv) the cost of any ancillary services provided to him or her.

Operation of the bill

The bill modifies the provisions described above in "Existing law" as follows:

(1) It retains the existing provision that prescribes the manner in which the complainant may establish that he or she is a wrongfully imprisoned individual, but adds language that also permits the complainant to establish that he or she is a wrongfully imprisoned individual by submitting to the Court of Claims a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing, and a certified copy of the entry of the determination of a court of common pleas, a court of appeals, or the Supreme Court that was included in a release order regarding a new-category wrongfully imprisoned individual that the claimant is a wrongfully imprisoned individual. As under existing law, no other evidence is required of the complainant to establish that he or she is a wrongfully imprisoned individual, and the claimant is irrebuttably presumed to be a wrongfully imprisoned individual. (R.C. 2743.48(E)(1).)

(2) It retains without change the provision specifying that a wrongfully imprisoned individual has the right to have counsel of his or her own choice (R.C. 2743.48(C)(1)).

(3) In the existing provision that specifies the amount of possible recovery in the action, it doubles the amount to which a wrongfully imprisoned individual is entitled for the actual time that the person spent in imprisonment, makes related changes, and retains without change the other amounts the provision specifies to which the person is entitled. These changes apply to both actions brought by an existing-category wrongfully imprisoned individual and those brought by a new-category wrongfully imprisoned individual. Under the bill, upon presentation of requisite proof to the Court, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of each of the following amounts: (a) the fine, court costs, attorney's fees, and expenses amount specified in (3)(a), above, under "Existing law," (b) for each full year of imprisonment in the state correctional institution for the offense of which he or she was found guilty, \$80,660 or the adjusted dollar amount determined by the Auditor of State pursuant to the procedure described below in "Adjustment of amount recoverable for wrongful imprisonment," whichever is greater, and for each part of a year of being so imprisoned, a pro-rated share of \$80,660 or the adjusted dollar amount determined by the Auditor pursuant to that procedure, whichever is greater, (c) the loss of earned income specified in (3)(c), above, under "Existing law," and (d) the amount of the cost debts the Department of Rehabilitation and Correction recovered that is specified in (3)(d), above, under "Existing law." (R.C. 2743.58(E)(2).)

Entry of judgment

Existing law

Under existing law, if the Court of Claims determines in a civil action as described above in "**Filing of civil action**" that the complainant is a "wrongfully imprisoned individual," it must enter judgment for the individual in the amount of the sum of money to which he or she is entitled as described above in "**Civil action procedures; amount of possible recovery**." In determining that sum, the Court of Claims cannot take into consideration any expenses incurred by the state or any of its political subdivisions in connection with the arrest, prosecution, and imprisonment of the wrongfully imprisoned individual, including, but not limited to, expenses for food, clothing, shelter, and medical services. If the wrongfully imprisoned individual was represented in the civil action by counsel of his or her own choice, the Court of Claims must include in the judgment entry an award for the reasonable attorney's fees of that counsel, and the fees must be paid as provided in the next paragraph.

The Clerk of the Court of Claims is required to forward a certified copy of any such judgment to the President of the Controlling Board. The Board is required to take all actions necessary to cause the payment of the judgment out of the Board's Emergency Purposes Special Purpose Account. (R.C. 2743.48(F)(1) and (2) and (G).)

Operation of the bill

The bill retains the existing provisions regarding the entry of judgment in a civil action as described above in "**Filing of civil action**" in which the Court of Claims determines that the complainant is a wrongfully imprisoned individual, with two changes. First, it expands the required content of the judgment to require that, in addition to the sum of money to which the wrongfully imprisoned individual is entitled, the judgment also must include the amount of any court costs, fees, and other expenses imposed in the civil action and assessed against the individual. Second, it clarifies that all of the money, costs, fees, and expenses included in the judgment are to be paid in the manner described above in the last paragraph under "**Existing law**." (R.C. 2743.48(F)(1) and (2) and (G).)

Exemption of certain wrongfully imprisoned individuals from eligibility for recovery

Existing law specifies that, to be eligible to recover a sum of money under the mechanism because of wrongful imprisonment, a wrongfully imprisoned individual cannot have been, prior to September 24, 1986, the subject of an act of the General Assembly that authorized an award of compensation for the wrongful

imprisonment or have been the subject of an action before the former Sundry Claims Board that resulted in an award of compensation for the wrongful imprisonment (R.C. 2743.48(H)).

The bill retains this provision without change (R.C. 2743.48(H)).

Period of limitations for commencing civil action for recovery; reminder to person of right to bring action

Existing law

Existing law provides that, to be eligible to recover a sum of money under the mechanism because of wrongful imprisonment, a wrongfully imprisoned individual must commence a civil action under the mechanism in the Court of Claims not later than two years after the date of the entry of the determination of a court of common pleas that the individual is a wrongfully imprisoned individual. (R.C. 2743.48(H).)

If a wrongfully imprisoned individual who is the subject of a court of common pleas determination to that effect does not commence a civil action under the mechanism in the Court of Claims within six months after the entry of that determination, the Clerk of that Court must send a letter to the wrongfully imprisoned individual, at the address set forth in the notice received from the court of common pleas, as described above in "**Court determination of wrongful imprisonment; notification of person and Court of Claims,**" or to any later address provided by the wrongfully imprisoned individual, that reminds the individual of his or her rights under the section containing the mechanism. Until the statute of limitations described in the preceding paragraph expires and unless the wrongfully imprisoned individual commences a civil action under R.C. 2743.48 (the section containing the mechanism), the Clerk of the Court of Claims is required to send a similar letter in a similar manner to the wrongfully imprisoned individual at least once each three months after the sending of the first reminder. (R.C. 2743.48(C)(2).)

Operation of the bill

The bill retains the existing period of limitations provision described above, but adds language so that it also applies regarding new-category wrongfully imprisoned individuals. Under the bill, to be eligible to recover a sum of money under the mechanism because of wrongful imprisonment, a wrongfully imprisoned individual must commence a civil action under the mechanism in the Court of Claims no later than two years after the date of the entry of the determination of a court of common pleas, a court of appeals, or the Supreme Court that was included

in a release order regarding a new-category wrongfully imprisoned individual that the claimant is a wrongfully imprisoned individual. (R.C. 2743.48(H).)

The bill extends the existing notice provision described above so that it applies to new-category wrongfully imprisoned individuals as well as existing-category wrongfully imprisoned individuals, and modifies the provision to reflect the fact that, under its provisions, the notice the Court of Claims receives indicating that a person has been determined to be a wrongfully imprisoned individual could come from a court of appeals or the Supreme Court as well as from a court of common pleas (R.C. 2743.48(C)(2)).

Adjustment of amount recoverable for wrongful imprisonment

Existing law

Existing law requires the Auditor of State, in January of each odd-numbered year and in accordance with the provisions described in this paragraph, to adjust the actual dollar figure specified above in "**Civil action procedures; amount of possible recovery**" (i.e., the \$40,330 or the pro-rated amount) or the actual dollar amount determined pursuant to the provisions described in this paragraph. The adjustment must be based on the yearly average of the previous two years of the Consumer Price Index for all urban consumers or its successive equivalent, as determined by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor in responsibility, for all items, Series A. Using the yearly average for the immediately preceding even-numbered year as the base year, the Auditor must compare the most current average Consumer Price Index with that determined in the preceding odd-numbered year and must determine the percentage increase or decrease. The Auditor then must multiply the percentage increase or decrease by the actual dollar figure specified above in "**Civil action procedures; amount of possible recovery**" or the actual dollar figure determined for the previous odd-numbered year under the provisions described in this paragraph and must add the product to or subtract the product from its corresponding actual dollar figure, as applicable, for the previous odd-numbered year. The Auditor must calculate the adjustment under this provision on or before January 31 of each odd-numbered year and must base the adjustment on the most current Consumer Price Index described in this paragraph that is in effect as of January 1 of each odd-numbered year. The Auditor must certify the calculations made as described in this paragraph on or before January 31 of each odd-numbered year. (R.C. 117.52 and 2743.49(A) and (B)(1).)

On or before February 15 of each odd-numbered year, the Auditor must prepare a report setting forth the amount that a wrongfully imprisoned individual is entitled to for each full year of imprisonment in the state correctional institution for the offense of which the wrongfully imprisoned individual was found guilty as

provided in the mechanism and as calculated in accordance with the provisions described in the preceding paragraph. The report and all documents relating to the calculations contained in it are public records. The report must contain an indication of the period in which the calculated amount applies, a summary of how the amount was calculated, and a statement that it and all related documents are available for inspection and copying at the Auditor's office. On or before February 15 of each odd-numbered year, the Auditor must transmit the report to the General Assembly and the Court of Claims. (R.C. 117.52 and 2743.49(B)(2) and (3).)

Operation of the bill

The bill revises the procedure by which the Auditor of State makes the adjustment in the actual dollar figure for recovery specified in statute and restricts the circumstances in which the adjusted dollar amount is to be used. Under the bill, the Auditor, in January of each odd-numbered year and in accordance with the provisions described in this paragraph, must determine an adjusted dollar amount that, if the adjusted dollar amount is greater than the actual dollar figure specified above in "**Civil action procedures; amount of possible recovery**" as increased by the bill (i.e., the \$80,660 or the pro-rated amount), must be used to determine the amount of recovery instead of the actual dollar figure so specified. The bill specifies that the adjusted dollar amount determined in the manner described in this paragraph is not to be used in determining the amount of recovery unless it is greater than the actual dollar figure specified above in "**Civil action procedures; amount of possible recovery**" as increased by the bill. The adjustment used in determining the adjusted dollar amount as described in this paragraph must be based on the yearly average of the previous two years of the Consumer Price Index for all urban consumers or its successive equivalent, as determined by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor in responsibility, for all items, Series A. After determining the Consumer Price Index percentage increase or decrease in the same manner as under existing law, the Auditor then must multiply the percentage increase or decrease by the actual dollar figure specified above in "**Civil action procedures; amount of possible recovery**" as increased by the bill and add the product to or subtract the product from the actual dollar figure so specified, as applicable. The resulting amount is the adjusted dollar amount for purposes of the provisions described in this paragraph and the determination of the recovery under the provisions described above in "**Civil action procedures; amount of possible recovery**." The Auditor must calculate the adjusted dollar amount under this provision on or before January 31 of each odd-numbered year and must base the adjusted dollar amount on the most current Consumer Price Index described in this paragraph that is in effect as of January 1 of each odd-numbered year. The Auditor must certify the calculations made as described in this paragraph on or

before January 31 of each odd-numbered year. (R.C. 117.52 and 2743.49(A) and (B)(1).)

Regarding the report that the Auditor is required to prepare on or before February 15 of each odd-numbered year, the bill modifies the report's required content. Under the bill, the report must set forth the amount that a wrongfully imprisoned individual is entitled to for each full year of imprisonment in the state correctional institution for the offense of which the wrongfully imprisoned individual was found guilty as provided in the mechanism. The amount must be the greater of the actual dollar figure specified above in "Civil action procedures; amount of possible recovery" as increased by the bill and the adjusted dollar amount calculated in accordance with the provisions described in the preceding paragraph. As under existing law, the report and all documents relating to the calculations contained in it are public records, it must contain an indication of the period in which the calculated amount applies, a summary of how the amount was calculated, and a statement that it and all related documents are available for inspection and copying at the Auditor's office, and, on or before February 15 of each odd-numbered year, the Auditor must transmit it to the General Assembly and the Court of Claims. (R.C. 117.52 and 2743.49(B)(2) and (3).)

COMMENT

Existing law specifies that the state consents to be sued by a "wrongfully imprisoned individual" because the imprisonment was wrongful, and to liability on its part because of that fact, only as provided in R.C. 2743.48. It also specifies that R.C. 2743.48 does not affect any liability of the state or of its employees to a wrongfully imprisoned individual on a claim for relief that is not based on the fact of the wrongful imprisonment, including, but not limited to, a claim for relief that arises out of circumstances occurring during the wrongfully imprisoned individual's confinement in the state correctional institution. The bill does not change these provisions. (R.C. 2743.48(F)(3).)

HISTORY

ACTION	DATE
Introduced	03-09-06

S0285-I-126.doc/kl

