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<p>H.B. 501 136th General Assembly</p>	<p>Bill Analysis</p>
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Version: As Introduced

Primary Sponsors: Reps. Williams and Rogers

Sarah A. Maki, Attorney

SUMMARY

- Modifies the name of a “wrongfully imprisoned individual” to a “wrongfully incarcerated individual” and the name of the civil action from “wrongful imprisonment” to “wrongful incarceration.”
- Modifies the definition of “wrongfully imprisoned individual” to include an individual who was adjudicated a delinquent child, an individual who was incarcerated in a local correctional facility or Department of Youth Services facility, and an individual who was pardoned.

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DETAILED ANALYSIS

Wrongful incarceration

The bill modifies the Wrongful Imprisonment Law in three ways. First, it changes the name of a “wrongfully imprisoned individual” to a “wrongfully incarcerated individual.” Second, it changes the definition of a wrongfully imprisoned individual. Finally, it changes the name of the civil action from “wrongful imprisonment” to “wrongful incarceration.”

Definition of wrongfully incarcerated individual

The bill modifies some aspects of the definition of the term “wrongfully incarcerated individual.”¹

Violation charged

Under law unchanged by the bill, except for the name of the individual, a wrongfully incarcerated individual is an individual who was charged with a section of the Revised Code by an indictment or information, and the violation charged was an aggravated felony, felony, or misdemeanor.²

¹ R.C. 2743.48(A)(4).

² R.C. 2743.48(A)(4)(a).

Adjudication

The bill expands the definition of a wrongfully incarcerated individual to include an individual who was adjudicated a delinquent child. The bill provides that, except in the case of an Alford plea, a wrongfully incarcerated individual is an individual who was adjudicated a delinquent child for, but did not admit to, the particular charge or lesser included offense by the court or jury, and the offense of which the individual was adjudicated a delinquent child was an aggravated felony, felony, or misdemeanor.³ Under current law, the wrongfully imprisoned individual was found guilty of, but did not plead guilty to, the particular charge or lesser-included offense by the court or jury, and the offense of which the individual was found guilty of was an aggravated felony, felony, or misdemeanor.⁴

Detention facility

The bill expands the definition of a wrongfully incarcerated individual to include an individual who was sentenced to a term of incarceration in a “detention facility.” The bill provides that a wrongfully incarcerated individual is an individual who was sentenced to an indefinite or definite term of incarceration in a detention facility for the offense of which the individual was found guilty or was adjudicated a delinquent child.⁵ Under current law, the wrongfully imprisoned individual was sentenced to an indefinite or definite term of imprisonment in a state correctional institutional for the offense of which the individual was found guilty.⁶

Pardon

The bill expands the definition of a wrongfully incarcerated individual to include an individual who was pardoned. The bill provides that a wrongfully incarcerated individual is an individual whose conviction or adjudication was pardoned and all of the following apply: (1) no criminal or delinquency proceeding is pending against the individual for any act associated with that pardon or (2) the prosecuting attorney, within one year after the date of the pardon, has not brought a criminal or delinquency proceeding against the individual for any act associated with that pardon.⁷

Under current law, the wrongfully imprisoned individual’s conviction or adjudication was vacated, dismissed, or reversed on appeal and all of the following apply: (1) no criminal proceeding is pending against the individual for any act associated with that conviction, (2) the prosecuting attorney, within one year after the date of the vacating, dismissal, or reversal, has not sought any further right of appeal, or (3) the prosecuting attorney, within one year after the

³ R.C. 2743.48(A)(4)(b).

⁴ R.C. 2743.48(A)(4)(b).

⁵ R.C. 2743.48(A)(4)(c).

⁶ R.C. 2743.48(A)(4)(c).

⁷ R.C. 2743.48(A)(4)(d).

date of the vacating, dismissal, or reversal, has not brought a criminal proceeding against the individual for any act associated with that conviction.⁸

Brady Rule

Under law unchanged by the bill except for those changes expressed above, subsequent to sentencing or subsequent to incarceration, an error in procedure was discovered that occurred prior to, during, or after sentencing, that involved a violation of the “Brady Rule” which violated the individual’s right to a fair trial under the Ohio Constitution or the U.S. Constitution. That error resulted in the wrongfully incarcerated individual’s release, or it was determined by the court of common pleas in the county where the underlying criminal or delinquency action was initiated, either that the offense of which the individual was found guilty or was adjudicated a delinquent child, including all lesser offenses, was not committed by the individual or that no offense was committed by any person.⁹

Civil action for wrongful incarceration

The bill modifies the civil action for wrongful incarceration only in the ways discussed above (by changing the name of the individual, the definition of the individual, and the name of the civil action). For the portion of the analysis that discusses the civil action, these changes will be expressed with the current law provisions appearing in parentheses.

Filing a civil action for wrongful incarceration

Continuing law allows a person to file a civil action to be declared a wrongfully incarcerated individual (wrongfully imprisoned individual) in the court of common pleas in the county where the underlying criminal or delinquency action (criminal action) was initiated. That civil action must be separate from the underlying finding of guilt or adjudication (guilt). Upon the filing of a civil action to be determined a wrongfully incarcerated individual (wrongfully imprisoned individual), the Attorney General must be served with a copy of the complaint and the individual must be heard.¹⁰

Right to file an action for wrongful incarceration

When the court of common pleas in the county where the underlying criminal or delinquency action (criminal action) was initiated determines that a person is a wrongfully incarcerated individual (wrongfully imprisoned individual), continuing law requires the court to provide the person with a copy of the wrongful incarceration (wrongful imprisonment) statute and orally inform the person and the person’s attorney of the person’s rights under the statute to commence a civil action against the “state” in the Court of Claims because of the person’s wrongful incarceration (wrongful imprisonment) and to be represented in that civil action by counsel of the person’s own choice.¹¹

⁸ R.C. 2743.48(A)(4)(d).

⁹ R.C. 2743.48(A)(4)(e).

¹⁰ R.C. 2743.48(B)(1).

¹¹ R.C. 2743.48(B)(2).

Responsibilities of the Court of Claims clerk

Continuing law requires the court to notify the Court of Claims clerk, in writing and within seven days after the date of the judgment entry of its determination that the person is a wrongfully incarcerated individual (wrongfully imprisoned individual), of the name and proposed mailing address of the person and the fact that the person has the rights to commence a civil action and to have legal representation. The Court of Claims clerk must maintain in the clerk's office a list of wrongfully incarcerated individuals (wrongfully imprisoned individuals) for whom notices are received under the statute and must create files in the clerk's office for each individual.¹²

Preliminary payment

Within 60 days after the date of the entry of the determination by the court of common pleas in the county where the underlying criminal or delinquency action (criminal action) was initiated that a person is a wrongfully incarcerated individual (wrongfully imprisoned individual), continuing law requires the Court of Claims clerk to forward a preliminary judgment to the president of the controlling board requesting payment of 50% of the amount described below to the wrongfully incarcerated individual (wrongfully imprisoned individual) (see (2) under "**Award of sum of money**," below). The board must take all actions necessary to cause the payment of that amount out of the emergency purposes special purpose account of the board.¹³

Concurrent sentences

If an individual was serving, at the time of the wrongful incarceration (wrongful imprisonment), concurrent sentences on other convictions or other adjudications (other convictions) that were not vacated, dismissed, or reversed on appeal or pardoned (vacated, dismissed, or reversed on appeal), continuing law specifies that the individual is not eligible for compensation for any portion of that wrongful incarceration (wrongful imprisonment) that occurred during a concurrent sentence of that nature.¹⁴

Right to counsel

In a civil action, continuing law provides that a wrongfully incarcerated individual (wrongfully imprisoned individual) has the right to have counsel of the individual's own choice.¹⁵

Letter on wrongfully incarcerated rights

If a wrongfully incarcerated individual (wrongfully imprisoned individual) who is the subject of a court determination does not commence a civil action within six months after the entry of that determination, continuing law requires the Court of Claims clerk to send a letter to the wrongfully incarcerated individual (wrongfully imprisoned individual), at the address set forth in the notice received from the court of common pleas or to any later address provided by the

¹² R.C. 2743.48(B)(3).

¹³ R.C. 2743.48(B)(4).

¹⁴ R.C. 2743.48(B)(5).

¹⁵ R.C. 2743.48(C)(1).

wrongfully incarcerated individual (wrongfully imprisoned individual), that reminds the wrongfully incarcerated individual (wrongfully imprisoned individual) of the wrongfully incarcerated individual's (wrongfully imprisoned individual's) rights under the statute. Until the statute of limitations expires and unless the wrongfully incarcerated individual (wrongfully imprisoned individual) commences a civil action, the Court of Claims clerk must send a similar letter in a similar manner to the wrongfully incarcerated individual (wrongfully imprisoned individual) at least once each three months after the sending of the first reminder.¹⁶

Finding does not affect right of prosecuting attorney

If an individual has been determined by the court of common pleas in the county where the underlying criminal or delinquency action (criminal action) was initiated to be a wrongfully incarcerated individual (wrongfully imprisoned individual), continuing law provides that both of the following apply regarding the finding that the wrongfully incarcerated individual's conviction or adjudication (conviction) was vacated, dismissed, or reversed on appeal, and the prosecuting attorney within one year after the date of the vacating, dismissal, or reversal, had not sought a further appeal or right: (1) the finding does not affect or negate any right or authority the prosecuting attorney may have to seek, after the expiration of the one-year period, a further appeal of right with respect to the conviction or adjudication (conviction) that was vacated, dismissed, or reversed on appeal, and the prosecuting attorney may seek such further appeal after the expiration of that period and (2) the finding does not affect or negate any right or authority the prosecuting attorney may have to bring, after the expiration of the one-year period, a criminal or delinquency proceeding (criminal proceeding) against the individual for any act associated with the conviction or adjudication (conviction) that was vacated, dismissed, or reversed on appeal or for any act associated with the pardon (vacated, dismissed, or reversed on appeal), and the prosecuting attorney may bring such a proceeding after the expiration of that period.¹⁷

Jurisdiction of Court of Claims

Continuing law provides that a wrongfully incarcerated individual (wrongfully imprisoned individual) has and may file a civil action against the state in the Court of Claims to recover a sum of money because of the individual's wrongful incarceration (wrongful imprisonment). The Court of Claims has exclusive, original jurisdiction over the civil action.¹⁸

Certified copy of court of common pleas entry

In a civil action for wrongful incarceration (wrongful imprisonment), continuing law provides that the claimant may establish that the claimant is a wrongfully incarcerated individual (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 or adjudication (conviction) and sentencing, and a certified copy of the entry of the determination

¹⁶ R.C. 2743.48(C)(2).

¹⁷ R.C. 2743.48(C)(3).

¹⁸ R.C. 2743.48(D).

of the court of common pleas that the claimant is wrongfully incarcerated (wrongfully imprisoned). No other evidence is required of the claimant to establish that the claimant is a wrongfully incarcerated individual (wrongfully imprisoned individual), and the claimant is irrebuttably presumed to be a wrongfully incarcerated individual (wrongfully imprisoned individual).¹⁹

Award of sum of money

In a civil action for wrongful incarceration, upon presentation of requisite proof to the Court of Claims, continuing law provides that a wrongfully incarcerated individual (wrongfully imprisoned individual) is entitled to receive a sum of money that equals the total of each of the following amounts:²⁰

1. The amount of any fine or court costs imposed and paid, and the reasonable attorney's fees and other expenses incurred by the wrongfully incarcerated individual (wrongfully imprisoned individual) in connection with all associated criminal or delinquency proceedings (criminal proceedings) and appeals and in connection with obtaining the wrongfully incarcerated individual's (wrongfully imprisoned individual's) discharge from confinement in the detention facility (state correctional institution).
2. For each full year of incarceration (imprisonment) in the detention facility (state correctional facility) for the offense of which the wrongfully incarcerated individual (wrongfully imprisoned individual) was found guilty or was adjudicated a delinquent child (found guilty), \$40,300 or the adjusted amount determined by the State Auditor, and for each part of a year of being so incarcerated (imprisoned), a pro-rated share of \$40,300 or the adjusted amount determined by the State Auditor.
3. Any loss of wages, salary, or other earned income, that directly resulted from the wrongfully incarcerated individual's (wrongfully imprisoned individual's) arrest, prosecution, conviction or adjudication (conviction), and wrongful incarceration (wrongful imprisonment).
4. The amount of the following debts the Department of Rehabilitation and Correction (DRC) or the Department of Youth Services (DYS) recovered from the wrongfully incarcerated individual who was in custody of DRC or DYS or under DRC's or DYS's supervision: (a) any user fee or copayment for services at a detention facility, including a fee or copayment for sick call visits, (b) the cost of housing and feeding the wrongfully incarcerated individual (wrongfully imprisoned individual) in a detention facility, (c) the cost of supervision of the wrongfully incarcerated individual (wrongfully imprisoned individual), and (d) the cost of any ancillary services provided to the wrongfully incarcerated individual (wrongfully imprisoned individual).

¹⁹ R.C. 2743.48(E)(1).

²⁰ R.C. 2743.48(E)(2) and 2743.49.

Under continuing law, the State Auditor must certify the calculations as described in (2) above on or before January 31 of each odd-numbered year. On or before February 15 of each odd-numbered year, the State Auditor must prepare a report setting forth the amount that a wrongfully incarcerated individual (wrongfully imprisoned individual) is entitled to for each full year incarceration (imprisonment) in the detention facility (state correctional institution) for the offense of which the wrongfully incarcerated individual (wrongfully imprisoned individual) was found guilty.²¹

Expenses incurred by wrongfully incarcerated individual

If the Court of Claims determines in a civil action for wrongful incarceration (wrongful imprisonment) that the complainant is a wrongfully incarcerated individual (wrongfully imprisoned individual), continuing law requires the Court to enter judgment for the wrongfully incarcerated individual (wrongfully imprisoned individual) in the amount of the sum of money to which the wrongfully incarcerated individual (wrongfully imprisoned individual) is entitled. In determining that sum, the Court of Claims must not take into consideration any expenses incurred by the state or any of its “political subdivisions” in connection with the arrest, prosecution, and incarceration (imprisonment) of the wrongfully incarcerated individual (wrongfully imprisoned individual) including expenses for food, clothing, shelter, and medical services. The Court must reduce that sum by the amount of the payment to the wrongfully incarcerated individual (wrongfully imprisoned individual) (see, “**Preliminary judgment,**” above).²²

Award for reasonable attorney’s fees

If the wrongfully incarcerated individual (wrongfully imprisoned individual) was represented in the civil action for wrongful incarceration (wrongful imprisonment) by counsel of the wrongfully incarcerated individual’s (wrongfully imprisoned individual’s) own choice, continuing law requires the Court of Claims to include in the judgment entry an award for reasonable attorney’s fees.²³

Debt to state of political subdivision

If the wrongfully incarcerated individual (wrongfully imprisoned individual) owes any debt to the state or any of its political subdivisions, the Court of Claims, in the judgment entry must deduct the amount of any such debts that are known from the sum of money to which the wrongfully incarcerated individual (wrongfully imprisoned individual) is entitled. The Court must include in the judgment entry an award to the state or political subdivision of any deducted amount.²⁴

²¹ R.C. 2743.49(B).

²² R.C. 2743.48(F)(1).

²³ R.C. 2743.48(F)(2).

²⁴ R.C. 2743.48(F)(3).

Qualifying monetary award or recovery

If, at the time of the judgment entry, the wrongfully incarcerated individual (wrongfully imprisoned individual) has won or received a “qualifying monetary award or recovery” that arose from any conduct that resulted in or contributed to the person being determined to be a wrongfully incarcerated individual (wrongfully imprisoned individual), all of the following apply:²⁵

- The Court of Claims, in the judgment entry, must deduct the amount of the award or recovery in the action that the wrongfully incarcerated individual (wrongfully imprisoned individual) actually collected prior to the time of the judgment entry, after the payment of the individual’s attorney’s fees and costs related to the litigation, from the sum of money to which the wrongfully incarcerated individual (wrongfully imprisoned individual) is entitled. If the wrongfully incarcerated individual (wrongfully imprisoned individual) has won or received two or more qualifying monetary awards or recoveries, the Court must aggregate the amounts of all of those awards or recoveries that the individual actually collected prior to the date of the judgment entry, and the aggregate amount must be deducted from the sum of money to which the wrongfully incarcerated individual (wrongfully imprisoned individual) is entitled. The Court must include in the judgment entry an award to state of any amount deducted.
- If the wrongfully incarcerated individual (wrongfully imprisoned individual) actually collects any amount of the qualifying monetary award or recovery after the date of the judgment entry, the wrongfully incarcerated individual (wrongfully imprisoned individual) must reimburse the state for the sum of money paid under the judgment entry, after the deduction of the individual’s attorney’s fees and costs related to the litigation, for the amount of the qualifying monetary award or recovery actually collected after that date. The reimbursement must not exceed the amount that the wrongfully incarcerated individual (wrongfully imprisoned individual) actually collects under the qualifying monetary award or recovery. If the wrongfully incarcerated individual (wrongfully imprisoned individual) has won or received two or more qualifying awards or recoveries of the type described above and actually collects any amount of two or more of those qualifying monetary awards or recoveries after the date of the judgment entry, the Court must apply this provision separately with respect to each qualifying monetary award or recovery.
- The total amount a court deducts under the first dot point above with respect to a qualifying monetary award or recovery plus the total amount of a reimbursement under the second dot point above with respect to that same qualifying monetary award or recovery must not exceed the amount that the wrongfully incarcerated individual (wrongfully imprisoned individual) actually collects under that qualifying monetary award or recovery.

²⁵ R.C. 2743.48(F)(4)(a).

If the above provisions do not apply, and if, after the time of the judgment entry, the wrongfully incarcerated individual (wrongfully imprisoned individual) wins a qualifying monetary award or recovery that arose from any conduct that resulted in or contributed to the person being determined to be a wrongfully incarcerated individual (wrongfully imprisoned individual), the wrongfully incarcerated individual (wrongfully imprisoned individual) must reimburse the state for the sum of the money paid under the judgment entry, after the deduction of the individual's attorney's fees and costs related to the litigation. The reimbursement must not exceed the amount that the wrongfully incarcerated individual (wrongfully imprisoned individual) actually collects under the qualifying monetary award or recovery. If the wrongfully incarcerated individual (wrongfully imprisoned individual) has won or received two or more such qualifying monetary awards or recoveries, the Court must apply this provision separately with respect to each such qualifying monetary award or recovery.²⁶

Subsequent conviction or plea of guilty

If, after the time of the judgment entry, the wrongfully incarcerated individual (wrongfully imprisoned individual) is convicted of or pleads guilty to an offense that is based on any act associated with the conviction that was vacated, reversed, or dismissed on appeal or any act associated with the pardon (vacated, reversed, or dismissed, on appeal) and that was the basis of the person being determined to be a wrongfully incarcerated individual (wrongfully imprisoned individual), the bill requires the wrongfully incarcerated individual (wrongfully imprisoned individual) to reimburse the state for the entire sum of money paid under the judgment entry.²⁷

State consent to be sued

Continuing law provides that the state consents to be sued by a wrongfully incarcerated individual (wrongfully imprisoned individual) because the incarceration (imprisonment) was wrongful, and to liability on its part because of that fact, only as provided under the statute. However, the statute does not affect any liability of the state or of its employees to a wrongfully incarcerated individual (wrongfully imprisoned individual) on a claim for relief that is not based on the fact of the wrongful incarceration (wrongful imprisonment), including a claim for relief that arises out of circumstances occurring during the wrongfully incarcerated individual's (wrongfully imprisoned individual's) confinement in the detention facility (state correctional institution).²⁸

Payment from emergency purpose special purpose account

Under law unchanged by the bill, the Court of Claims clerk must forward a certified copy of the judgment entry to the president of the controlling board. The board must take all actions

²⁶ R.C. 2743.48(F)(4)(b) and (c).

²⁷ R.C. 2743.48(F)(5).

²⁸ R.C. 2743.48(F)(6).

necessary to cause payment of the judgment out of the emergency purposes special purpose account of the board.²⁹

Prior award by General Assembly or Sundry Claims Board

To be eligible to recover a sum of money because of wrongful incarceration (wrongful imprisonment), continuing law requires that the wrongfully incarcerated individual (wrongfully imprisoned individual) must not have been, prior to September 24, 1986, the subject of an act of the General Assembly that authorized an award of compensation for the wrongfully incarcerated individual (wrongfully imprisoned individual) or have been the subject of an action before the former Sundry Claims Board that resulted in an award of compensation for the wrongfully incarceration (wrongful imprisonment).³⁰

Statute of limitations

To be eligible to recover a sum of money because of wrongful incarceration (wrongful imprisonment), continuing law requires that the wrongfully incarcerated individual (wrongfully imprisoned individual) commence a civil action for wrongful incarceration (wrongful imprisonment) in the Court of Claims no later than two years after the date of the entry of the determination of the court of common pleas that the individual is a wrongfully incarcerated individual (wrongfully imprisoned individual).³¹

Admissibility of wrongful incarceration

No determination of a court of common pleas or the Court of Claims that a person is a wrongfully incarcerated individual (wrongfully imprisoned individual), and no finding in the civil action for wrongful incarceration (wrongful imprisonment) that results in either of those determinations, is admissible as evidence in any criminal or delinquency proceeding (criminal proceeding) that is pending at the time of, or is commenced subsequent to, that civil action.³²

Cross references and conforming changes

The bill makes conforming changes in two other R.C. sections (by changing the name of the individual and the name of the civil action).³³ The bill also makes a cross reference change.³⁴

Definitions

The bill defines “**detention facility**” to mean any of the following:³⁵

²⁹ R.C. 2743.48(G).

³⁰ R.C. 2743.48(H)(1).

³¹ R.C. 2743.48(H)(2).

³² R.C. 2743.48(I).

³³ R.C. 117.52 and 2743.15.

³⁴ R.C. 2305.02.

³⁵ R.C. 2743.48(A)(3).

- A “state correctional institution” that includes any institution or facility that is operated by DRC and that is used for the custody, care, or treatment of criminal, delinquent, or psychologically or psychiatrically disturbed offenders.³⁶
- A “local correctional facility” means a county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, a minimum security jail, or another county, multicounty, municipal, municipal-county, or multicounty-municipal facility used for the custody of persons arrested for any crime or delinquent act, persons charged with or convicted of any crime, or persons alleged to be or adjudicated a delinquent child.³⁷
- A DYS facility.

The bill uses the following terms:

- “**Brady Rule**” means the rule established pursuant to the decision of the U.S. Supreme Court in *Brady v. Maryland*.³⁸
- “Political subdivision” means municipal corporations, townships, counties, school districts, and all other bodies corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state to which the sovereign immunity of the state attaches.³⁹
- “Qualifying monetary award or recovery” means a monetary award won in, or a monetary award received through a settlement in, a Section 1983 claim.⁴⁰
- “State” means the State of Ohio, including, but not limited to, the General Assembly, the Ohio Supreme Court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state. “State” does not include political subdivisions.⁴¹

HISTORY

Action	Date
Introduced	10-07-25

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³⁶ R.C. 2967.01, not in the bill.

³⁷ R.C. 2903.13, not in the bill.

³⁸ R.C. 2743.48(A)(1) and *Brady v. Maryland* (1963), 373 U.S. 83.

³⁹ R.C. 2743.01(B), not in the bill.

⁴⁰ R.C. 2743.48(A)(2) and 42 United States Code 1983, as amended.

⁴¹ R.C. 2743.01(A), not in the bill.