

AN ACT

To amend section 2743.48 and to enact sections 117.52 and 2743.49 of the Revised Code to increase the amount that a wrongfully imprisoned individual, in an action brought in the Court of Claims, is entitled to for each year of imprisonment, to provide for cost of living adjustments of that amount by the Auditor of State, and to allow the wrongfully imprisoned individual to recover any cost debts the wrongfully imprisoned individual paid the Department of Rehabilitation and Correction while in its custody or under its supervision.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That section 2743.48 be amended and sections 117.52 and 2743.49 of the Revised Code be enacted to read as follows:

Sec. 117.52. The auditor of state shall make the adjustment, as described in section 2743.49 of the Revised Code, of the amount that a wrongfully imprisoned individual, in an action brought in the court of claims pursuant to section 2743.48 of the Revised Code, may receive for each full year or part of a year of imprisonment and shall perform all of the functions relating to that adjustment as specified in section 2743.49 of the Revised Code.

Sec. 2743.48. (A) As used in this section and section 2743.49 of the Revised Code, a "wrongfully imprisoned individual" means an individual who satisfies each of the following:

(1) ~~He~~ The individual was charged with a violation of a section of the Revised Code 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) ~~He~~ 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 ~~he~~ the individual was found guilty was an aggravated felony or felony.

(3) ~~He~~ The individual was sentenced to an indefinite or definite term of imprisonment in a state correctional institution for the offense of which ~~he~~ 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 ~~his~~ sentencing and during or subsequent to ~~his~~ 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 ~~he~~ the individual was found guilty, including all lesser-included offenses, either was not committed by ~~him~~ the individual or was not committed by any person.

(B)(1) When a court of common pleas determines, on or after September 24, 1986, that a person is a wrongfully imprisoned individual, the court shall provide the person with a copy of this section and orally inform ~~him~~ the person and ~~his~~ the person's attorney of ~~his~~ the person's rights under this section to commence a civil action against the state in the court of claims because of ~~his~~ the person's wrongful imprisonment and to be represented in that civil action by counsel of ~~his~~ the person's own choice.

(2) The court described in division (B)(1) of this section shall 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 name and proposed mailing address of the person and of the fact that the person has the rights to commence a civil action and to have legal representation as provided in this section. The clerk of the court of claims shall maintain in ~~his~~ the clerk's office a list of wrongfully imprisoned individuals for whom notices are received under this section and shall create files in ~~his~~ the clerk's office for each such individual.

(C)(1) In a civil action under this section, a wrongfully imprisoned individual has the right to have counsel of ~~his~~ the individual's own choice.

(2) If a wrongfully imprisoned individual who is the subject of a court determination as described in division (B)(1) of this section does not commence a civil action under this section within six months after the entry of that determination, the clerk of the court of claims shall send a letter to ~~him~~ the wrongfully imprisoned individual, at the address set forth in the notice received from the court of common pleas pursuant to division (B)(2)

of this section or to any later address provided by the wrongfully imprisoned individual, that reminds ~~him~~ the wrongfully imprisoned individual of ~~his~~ the wrongfully imprisoned individual's rights under this section. Until the statute of limitations provided in division (H) of this section expires and unless the wrongfully imprisoned individual commences a civil action under this section, the clerk of the court of claims shall send a similar letter in a similar manner to ~~him~~ the wrongfully imprisoned individual at least once each three months after the sending of the first reminder.

(D) Notwithstanding any provisions of this chapter 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 in this section, because of ~~his~~ the individual's wrongful imprisonment. The court of claims shall have exclusive, original jurisdiction over such a civil action. The civil action shall proceed, be heard, and be determined as provided in sections 2743.01 to 2743.20 of the Revised Code, except that if a provision of this section conflicts with a provision in any of those sections, the provision in this section controls.

(E)(1) In a civil action as described in division (D) of this section, the complainant may establish that ~~he~~ the claimant 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 ~~his~~ the claimant's conviction and sentencing, and a certified copy of the entry of the determination of a court of common pleas that ~~he~~ the claimant is a wrongfully imprisoned individual. No other evidence shall be required of the complainant to establish that ~~he~~ the claimant is a wrongfully imprisoned individual, and ~~he~~ the claimant shall be irrebuttably presumed to be a wrongfully imprisoned individual.

(2) In a civil action as described in division (D) of this section, 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 incurred by the wrongfully imprisoned individual in connection with all associated criminal proceedings and appeals, and, if applicable, in connection with obtaining ~~his~~ the wrongfully imprisoned individual's discharge from confinement in the state ~~penal or reformatory~~ correctional institution;

(b) For each full year ~~that he was imprisoned~~ of imprisonment in the state correctional institution for the offense of which ~~he~~ the wrongfully imprisoned individual was found guilty, ~~twenty-five~~ forty thousand three

hundred thirty dollars or the adjusted amount determined by the auditor of state pursuant to section 2743.49 of the Revised Code, and for each part of a year ~~that he was~~ of being so imprisoned, a pro-rated share of ~~twenty-five~~ forty thousand three hundred thirty dollars or the adjusted amount determined by the auditor of state pursuant to section 2743.49 of the Revised Code;

(c) Any loss of wages, salary, or other earned income that directly resulted from ~~his~~ the wrongfully imprisoned individual's arrest, prosecution, conviction, and wrongful imprisonment;

(d) The amount of the following cost debts the department of rehabilitation and correction recovered from the wrongfully imprisoned individual who was in custody of the department or under the department's 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 the wrongfully imprisoned individual in a detention facility;

(iii) The cost of supervision of the wrongfully imprisoned individual;

(iv) The cost of any ancillary services provided to the wrongfully imprisoned individual.

(F)(1) If the court of claims determines in a civil action as described in division (D) of this section that the complainant is a wrongfully imprisoned individual, it shall enter judgment for the wrongfully imprisoned individual in the amount of the sum of money to which ~~he~~ the wrongfully imprisoned individual is entitled under division (E)(2) of this section. In determining that sum, the court of claims shall not 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.

(2) If the wrongfully imprisoned individual was represented in the civil action under this section by counsel of ~~his~~ the wrongfully imprisoned individual's own choice, the court of claims shall include in the judgment entry referred to in division (F)(1) of this section an award for the reasonable attorney's fees of that counsel. These fees shall be paid as provided in division (G) of this section.

(3) The state consents to be sued by a wrongfully imprisoned individual because ~~his~~ the imprisonment was wrongful, and to liability on its part because of that fact, only as provided in this section. However, this section 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 ~~his~~ the wrongful imprisonment, including, but not limited to, a claim for relief that arises out of circumstances occurring during ~~his~~ the wrongfully imprisoned individual's confinement in the state correctional institution.

(G) The clerk of the court of claims shall forward a certified copy of a judgment under division (F) of this section to the president of the controlling board. The board shall take all actions necessary to cause the payment of the judgment out of the emergency purposes special purpose account of the board.

(H) To be eligible to recover a sum of money as described in this section because of ~~his~~ wrongful imprisonment, a wrongfully imprisoned individual shall not have been, prior to September 24, 1986, the subject of an act of the general assembly that authorized an award of compensation for ~~his~~ 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 ~~his~~ the wrongful imprisonment. Additionally, to be eligible to so recover, the wrongfully imprisoned individual shall commence a civil action under this section 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 that ~~he~~ the individual is a wrongfully imprisoned individual.

Sec. 2743.49. (A)(1) In January of each odd-numbered year, the auditor of state, in accordance with this division and division (A)(2) of this section, shall adjust the actual dollar figure specified in division (E)(2)(b) of section 2743.48 of the Revised Code or the actual dollar amount determined pursuant to this section. The adjustment shall 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 United States 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 of state shall compare the most current average consumer price index with that determined in the preceding odd-numbered year and shall determine the percentage increase or decrease. The auditor of state shall multiply the percentage increase or decrease by the actual dollar figure specified in division (E)(2)(b) of section 2743.48 of the Revised Code or the actual dollar figure determined for the previous odd-numbered year under this section and shall add the product to or subtract the product from its corresponding actual dollar figure, as applicable, for the previous odd-numbered year.

(2) The auditor of state shall calculate the adjustment under division

(A)(1) of this section on or before the thirty-first day of January of each odd-numbered year. The auditor of state shall base the adjustment on the most current consumer price index that is described in division (A)(1) of this section and that is in effect as of the first day of January of each odd-numbered year.

(B)(1) The auditor of state shall certify the calculations made under division (A) of this section on or before the thirty-first day of January of each odd-numbered year.

(2) On or before the fifteenth day of February of each odd-numbered year, the auditor of state shall 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 division (E)(2)(b) of section 2743.49 of the Revised Code and as calculated in accordance with this section. The report and all documents relating to the calculations contained in the report are public records. The report shall contain an indication of the period in which the calculated amount applies, a summary of how the amount was calculated, and a statement that the report and all related documents are available for inspection and copying at the office of the auditor of state.

(3) On or before the fifteenth day of February of each odd-numbered year, the auditor of state shall transmit the report to the general assembly and to the court of claims.

SECTION 2. That existing section 2743.48 of the Revised Code is hereby repealed.

SECTION 3. Sections 117.52, 2743.48, and 2743.49 of the Revised Code, as amended or enacted by this act, apply to civil actions for wrongful imprisonment in the Court of Claims commenced on or after the effective date of this act, or commenced prior to and pending on the effective date of this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

Sub. S. B. No. 149

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____