

**As Passed by the House**

**124th General Assembly**

**Regular Session**

**2001-2002**

**Sub. S. B. No. 149**

**SENATORS Coughlin, Brady, Mallory, Oelslager, Prentiss, Roberts,  
Goodman, Hagan, Ryan**

**REPRESENTATIVES Willamowski, Seitz, Grendell, Mason, Williams,  
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Allen, Hagan, Latell, Driehaus, Beatty, Brown, Patton, Otterman, Barrett,  
Oakar, Britton**

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**A B I L L**

To amend section 2743.48 and to enact sections 117.52 1  
and 2743.49 of the Revised Code to increase the 2  
amount that a wrongfully imprisoned individual, in 3  
an action brought in the Court of Claims, is 4  
entitled to for each year of imprisonment, to 5  
provide for cost of living adjustments of that 6  
amount by the Auditor of State, and to allow the 7  
wrongfully imprisoned individual to recover any 8  
cost debts the wrongfully imprisoned individual 9  
paid the Department of Rehabilitation and 10  
Correction while in its custody or under its 11  
supervision. 12

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 2743.48 be amended and sections 13  
117.52 and 2743.49 of the Revised Code be enacted to read as 14  
follows: 15

Sec. 117.52. The auditor of state shall make the adjustment, 16  
as described in section 2743.49 of the Revised Code, of the amount 17  
that a wrongfully imprisoned individual, in an action brought in 18  
the court of claims pursuant to section 2743.48 of the Revised 19  
Code, may receive for each full year or part of a year of 20  
imprisonment and shall perform all of the functions relating to 21  
that adjustment as specified in section 2743.49 of the Revised 22  
Code. 23

Sec. 2743.48. (A) As used in this section and section 2743.49 24  
of the Revised Code, a "wrongfully imprisoned individual" means an 25  
individual who satisfies each of the following: 26

(1) ~~He~~ The individual was charged with a violation of a 27  
section of the Revised Code by an indictment or information prior 28  
to, or on or after, September 24, 1986, and the violation charged 29  
was an aggravated felony or felony. 30

(2) ~~He~~ The individual was found guilty of, but did not plead 31  
guilty to, the particular charge or a lesser-included offense by 32  
the court or jury involved, and the offense of which ~~he~~ the 33  
individual was found guilty was an aggravated felony or felony. 34

(3) ~~He~~ The individual was sentenced to an indefinite or 35  
definite term of imprisonment in a state correctional institution 36  
for the offense of which ~~he~~ the individual was found guilty. 37

(4) The individual's conviction was vacated or was dismissed, 38  
or reversed on appeal, the prosecuting attorney in the case cannot 39  
or will not seek any further appeal of right or upon leave of 40  
court, and no criminal proceeding is pending, can be brought, or 41  
will be brought by any prosecuting attorney, city director of law, 42  
village solicitor, or other chief legal officer of a municipal 43  
corporation against the individual for any act associated with 44  
that conviction. 45

(5) Subsequent to ~~his~~ sentencing and during or subsequent to 46  
~~his~~ imprisonment, an error in procedure resulted in the 47  
individual's release, or it was determined by a court of common 48  
pleas that the offense of which ~~he~~ the individual was found 49  
guilty, including all lesser-included offenses, either was not 50  
committed by ~~him~~ the individual or was not committed by any 51  
person. 52

(B)(1) When a court of common pleas determines, on or after 53  
September 24, 1986, that a person is a wrongfully imprisoned 54  
individual, the court shall provide the person with a copy of this 55  
section and orally inform ~~him~~ the person and ~~his~~ the person's 56  
attorney of ~~his~~ the person's rights under this section to commence 57  
a civil action against the state in the court of claims because of 58  
~~his~~ the person's wrongful imprisonment and to be represented in 59  
that civil action by counsel of ~~his~~ the person's own choice. 60

(2) The court described in division (B)(1) of this section 61  
shall notify the clerk of the court of claims, in writing and 62  
within seven days after the date of the entry of its determination 63  
that the person is a wrongfully imprisoned individual, of the name 64  
and proposed mailing address of the person and of the fact that 65  
the person has the rights to commence a civil action and to have 66  
legal representation as provided in this section. The clerk of the 67  
court of claims shall maintain in ~~his~~ the clerk's office a list of 68  
wrongfully imprisoned individuals for whom notices are received 69  
under this section and shall create files in ~~his~~ the clerk's 70  
office for each such individual. 71

(C)(1) In a civil action under this section, a wrongfully 72  
imprisoned individual has the right to have counsel of ~~his~~ the 73  
individual's own choice. 74

(2) If a wrongfully imprisoned individual who is the subject 75  
of a court determination as described in division (B)(1) of this 76  
section does not commence a civil action under this section within 77

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

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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; 142  
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(ii) The cost of housing and feeding the wrongfully imprisoned individual in a detention facility; 145  
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(iii) The cost of supervision of the wrongfully imprisoned individual; 147  
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(iv) The cost of any ancillary services provided to the wrongfully imprisoned individual. 149  
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(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. 151  
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(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. 162  
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(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 169  
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of the state or of its employees to a wrongfully imprisoned 173  
individual on a claim for relief that is not based on the fact of 174  
~~his~~ the wrongful imprisonment, including, but not limited to, a 175  
claim for relief that arises out of circumstances occurring during 176  
~~his~~ the wrongfully imprisoned individual's confinement in the 177  
state correctional institution. 178

(G) The clerk of the court of claims shall forward a 179  
certified copy of a judgment under division (F) of this section to 180  
the president of the controlling board. The board shall take all 181  
actions necessary to cause the payment of the judgment out of the 182  
emergency purposes special purpose account of the board. 183

(H) To be eligible to recover a sum of money as described in 184  
this section because of ~~his~~ wrongful imprisonment, a wrongfully 185  
imprisoned individual shall not have been, prior to September 24, 186  
1986, the subject of an act of the general assembly that 187  
authorized an award of compensation for ~~his~~ the wrongful 188  
imprisonment or have been the subject of an action before the 189  
former sundry claims board that resulted in an award of 190  
compensation for ~~his~~ the wrongful imprisonment. Additionally, to 191  
be eligible to so recover, the wrongfully imprisoned individual 192  
shall commence a civil action under this section in the court of 193  
claims no later than two years after the date of the entry of the 194  
determination of a court of common pleas that ~~he~~ the individual is 195  
a wrongfully imprisoned individual. 196

Sec. 2743.49. (A)(1) In January of each odd-numbered year, 197  
the auditor of state, in accordance with this division and 198  
division (A)(2) of this section, shall adjust the actual dollar 199  
figure specified in division (E)(2)(b) of section 2743.48 of the 200  
Revised Code or the actual dollar amount determined pursuant to 201  
this section. The adjustment shall be based on the yearly average 202  
of the previous two years of the consumer price index for all 203  
urban consumers or its successive equivalent, as determined by the 204

United States department of labor, bureau of labor statistics, or 205  
its successor in responsibility, for all items, Series A. Using 206  
the yearly average for the immediately preceding even-numbered 207  
year as the base year, the auditor of state shall compare the most 208  
current average consumer price index with that determined in the 209  
preceding odd-numbered year and shall determine the percentage 210  
increase or decrease. The auditor of state shall multiply the 211  
percentage increase or decrease by the actual dollar figure 212  
specified in division (E)(2)(b) of section 2743.48 of the Revised 213  
Code or the actual dollar figure determined for the previous 214  
odd-numbered year under this section and shall add the product to 215  
or subtract the product from its corresponding actual dollar 216  
figure, as applicable, for the previous odd-numbered year. 217

(2) The auditor of state shall calculate the adjustment under 218  
division (A)(1) of this section on or before the thirty-first day 219  
of January of each odd-numbered year. The auditor of state shall 220  
base the adjustment on the most current consumer price index that 221  
is described in division (A)(1) of this section and that is in 222  
effect as of the first day of January of each odd-numbered year. 223

(B)(1) The auditor of state shall certify the calculations 225  
made under division (A) of this section on or before the 226  
thirty-first day of January of each odd-numbered year. 227

(2) On or before the fifteenth day of February of each 228  
odd-numbered year, the auditor of state shall prepare a report 229  
setting forth the amount that a wrongfully imprisoned individual 230  
is entitled to for each full year of imprisonment in the state 231  
correctional institution for the offense of which the wrongfully 232  
imprisoned individual was found guilty as provided in division 233  
(E)(2)(b) of section 2743.49 of the Revised Code and as calculated 234  
in accordance with this section. The report and all documents 235  
relating to the calculations contained in the report are public 236



records. The report shall contain an indication of the period in 237  
which the calculated amount applies, a summary of how the amount 238  
was calculated, and a statement that the report and all related 239  
documents are available for inspection and copying at the office 240  
of the auditor of state. 241

(3) On or before the fifteenth day of February of each 242  
odd-numbered year, the auditor of state shall transmit the report 243  
to the general assembly and to the court of claims. 244

**Section 2.** That existing section 2743.48 of the Revised Code 246  
is hereby repealed. 247

**Section 3.** Sections 117.52, 2743.48, and 2743.49 of the 248  
Revised Code, as amended or enacted by this act, apply to civil 249  
actions for wrongful imprisonment in the Court of Claims commenced 250  
on or after the effective date of this act, or commenced prior to 251  
and pending on the effective date of this act. 252