



## Ohio Revised Code

### Section 2743.48 Wrongful imprisonment civil action against state.

Effective: March 22, 2019

Legislation: House Bill 411 - 132nd General Assembly

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(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) The individual was charged with a violation of a section of the Revised Code by an indictment or information, and the violation charged was an aggravated felony, felony, or misdemeanor.

(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, felony, or misdemeanor.

(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, dismissed, or reversed on appeal and all of the following apply:

(a) No criminal proceeding is pending against the individual for any act associated with that conviction.

(b) The prosecuting attorney in the case, within one year after the date of the vacating, dismissal, or reversal, has not sought any further appeal of right or upon leave of court, provided that this division does not limit or affect the seeking of any such appeal after the expiration of that one-year period as described in division (C)(3) of this section.

(c) The prosecuting attorney, city director of law, village solicitor, or other chief legal officer of a municipal corporation, within one year after the date of the vacating, dismissal, or reversal, has not brought a criminal proceeding against the individual for any act associated with that conviction, provided that this division does not limit or affect the bringing of any such proceeding after the



expiration of that one-year period as described in division (C)(3) of this section.

(5) Subsequent to sentencing or during or subsequent to imprisonment, 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 rights to a fair trial under the Ohio Constitution or the United States Constitution, and that resulted in the individual's release, or it was determined by the court of common pleas in the county where the underlying criminal action was initiated either that the offense of which the individual was found guilty, including all lesser-included offenses, was not committed by the individual or that no offense was committed by any person. In addition to any other application of the provisions of this division regarding an error in procedure that occurred prior to, during, or after sentencing, as those provisions exist on and after the effective date of this amendment, if an individual had a claim dismissed, has a claim pending, or did not file a claim because the state of the law in effect prior to the effective date of this amendment barred the claim or made the claim appear to be futile, those provisions apply with respect to the individual and the claim and, on or after that effective date, the individual may file a claim and obtain the benefit of those provisions.

(B)(1) A person may file a civil action to be declared a wrongfully imprisoned individual in the court of common pleas in the county where the underlying criminal action was initiated. That civil action shall be separate from the underlying finding of guilt. Upon the filing of a civil action to be determined a wrongfully imprisoned individual, the attorney general shall be served with a copy of the complaint and shall be heard.

(2) When the court of common pleas in the county where the underlying criminal action was initiated determines that a person is a wrongfully imprisoned individual, the court shall provide the person with a copy of this section and orally inform the person and the person's attorney of the person's rights under this 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 civil action by counsel of the person's own choice.

(3) 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 the clerk's office a list of wrongfully imprisoned individuals for whom notices are received under this section and shall create files in the clerk's office for each such individual.

(4) Within sixty days after the date of the entry of the determination by the court of common pleas in the county where the underlying criminal action was initiated that a person is a wrongfully imprisoned individual, the clerk of the court of claims shall forward a preliminary judgment to the president of the controlling board requesting the payment of fifty per cent of the amount described in division (E)(2)(b) of this section to the wrongfully imprisoned individual. The board shall take all actions necessary to cause the payment of that amount out of the emergency purposes special purpose account of the board.

(5) If an individual was serving at the time of the wrongful imprisonment concurrent sentences on other convictions that were not vacated, dismissed, or reversed on appeal, the individual is not eligible for compensation as described in this section for any portion of that wrongful imprisonment that occurred during a concurrent sentence of that nature.

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

(2) If a wrongfully imprisoned individual who is the subject of a court determination as described in division (B)(2) 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 the wrongfully imprisoned individual, at the address set forth in the notice received from the court of common pleas pursuant to division (B)(3) of this section or to any later address provided by the wrongfully imprisoned individual, that reminds the wrongfully imprisoned individual of 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 the wrongfully imprisoned individual at least once each three months after the sending of the first reminder.



(3) If an individual has been determined by the court of common pleas in the county where the underlying criminal action was initiated to be a wrongfully imprisoned individual, as described in division (A) of this section, both of the following apply:

(a) The finding under division (A)(4)(b) of this section does not affect or negate any right or authority the prosecuting attorney in the case may have to seek, after the expiration of the one-year period described in that division, a further appeal of right or upon leave of court with respect to the conviction that was vacated, dismissed, or reversed on appeal, and the prosecuting attorney may seek such a further appeal after the expiration of that period.

(b) The finding under division (A)(4)(c) of this section does not affect or negate any right or authority the prosecuting attorney in the case may have under any other provision of law to bring, after the expiration of the one-year period described in that division, a criminal proceeding against the individual for any act associated with the conviction that was vacated, dismissed, or reversed on appeal, and the prosecuting attorney may bring such a proceeding after the expiration of that period as provided under any other provision of law.

(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 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 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 the claimant's conviction and sentencing, and a certified copy of the entry of the determination of the court of common pleas that the claimant is a wrongfully imprisoned individual under division (B)(2) of this section. No other evidence shall be required of the complainant to establish that the claimant is a wrongfully imprisoned individual, and 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 of claims, 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 the wrongfully imprisoned individual's 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 the wrongfully imprisoned individual was found guilty, 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 of being so imprisoned, a pro-rated share of 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 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 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. The court shall reduce that sum by the amount of the payment to the wrongfully imprisoned individual described in division (B)(4) of this section.

(2) If the wrongfully imprisoned individual was represented in the civil action under this section by counsel of 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) If the wrongfully imprisoned individual owes any debt to the state or any of its political subdivisions, the court of claims, in the judgment entry referred to in division (F)(1) of this section, shall deduct the amount of any such debts that are known from the sum of money to which the wrongfully imprisoned individual is entitled under division (E)(2) of this section. The court shall include in the judgment entry an award to the state or a political subdivision, whichever is applicable, of any amount deducted pursuant to this division. These amounts shall be paid as provided in division (G) of this section.

(4)(a) If, at the time of the judgment entry referred to in division (F)(1) of this section, the 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 imprisoned individual, all of the following apply:

(i) The court of claims, in the judgment entry, shall deduct the amount of the award or recovery in the action that the 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 imprisoned individual is entitled under division (E)(2) of this section. If the wrongfully imprisoned individual has won or received two or more



qualifying monetary awards or recoveries of the type described in division (F)(4)(a) of this section, the court shall 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 shall be the amount deducted under this division from the sum of money to which the wrongfully imprisoned individual is entitled under division (E)(2) of this section. The court shall include in the judgment entry an award to the state of any amount deducted pursuant to this division. These amounts shall be paid as provided in division (G) of this section.

(ii) If the wrongfully imprisoned individual actually collects any amount of the qualifying monetary award or recovery after the date of the judgment entry referred to in division (F)(1) of this section, the wrongfully imprisoned individual shall reimburse the state for the sum of money paid under the judgment entry referred to in division (F)(1) of this section, 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. A reimbursement required under this division shall not exceed the amount that the wrongfully imprisoned individual actually collects under the qualifying monetary award or recovery. If the wrongfully imprisoned individual has won or received two or more qualifying monetary awards or recoveries of the type described in division (F)(4)(a) of this section and actually collects any amount of two or more of those qualifying monetary awards or recoveries after the date of the judgment entry referred to in division (F)(1) of this section, the court shall apply this division separately with respect to each such qualifying monetary award or recovery.

(iii) The total amount a court deducts under division (F)(4)(a)(i) of this section with respect to a qualifying monetary award or recovery plus the total amount of a reimbursement required under division (F)(4)(a)(ii) of this section with respect to that same qualifying monetary award or recovery shall not exceed the amount that the wrongfully imprisoned individual actually collects under that qualifying monetary award or recovery.

(b) If division (F)(4)(a) of this section does not apply and if, after the time of the judgment entry referred to in division (F)(1) of this section, the 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 imprisoned individual, the wrongfully imprisoned individual shall reimburse the state for the sum of money paid under the judgment entry referred to in division (F)(1) of this section, after the deduction of the individual's attorney's fees and costs related to the





litigation. A reimbursement required under this division shall not exceed the amount that the wrongfully imprisoned individual actually collects under the qualifying monetary award or recovery. If the wrongfully imprisoned individual has won or received two or more such qualifying monetary awards or recoveries, the court shall apply this division separately with respect to each such qualifying monetary award or recovery.

(c) Divisions (F)(4)(a) and (b) of this section apply only with respect to judgment entries referred to in division (F)(1) of this section that are entered on or after the effective date of divisions (F)(4)(a) and (b) of this section .

(5) If, after the time of the judgment entry referred to in division (F)(1) of this section, the 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 and that was the basis of the person being determined to be a wrongfully imprisoned individual, the wrongfully imprisoned individual shall reimburse the state for the entire sum of money paid under the judgment entry referred to in division (F)(1) of this section.

(6) 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 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 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.

(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 wrongful imprisonment, both of the following shall apply to a wrongfully imprisoned individual:





(1) The 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 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.

(2) 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 the court of common pleas that the individual is a wrongfully imprisoned individual under division (B)(2) of this section.

(I) No determination of a court of common pleas as specified in division (B) of this section or of the court of claims as described in division (D) of this section that a person is a wrongfully imprisoned individual, and no finding in the civil action that results in either of those determinations, is admissible as evidence in any criminal proceeding that is pending at the time of, or is commenced subsequent to, that civil action.

(J)(1) As used in division (A) of this section, "Brady Rule" means the rule established pursuant to the decision of the United States supreme court in *Brady v. Maryland* (1963), 373 U.S. 83.

(2) As used in divisions (F)(3) to (5) of this section:

(a) "State" and "political subdivisions" have the same meanings as in section 2743.01 of the Revised Code.

(b) "Qualifying monetary award or recovery" means a monetary award won in, or a monetary recovery received through a settlement in, a civil action under section 1983 of Title 42 of the United States Code, 93 Stat. 1284 (1979), 42 U.S.C. 1983, as amended.