

**As Passed by the House**

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**H. B. No. 411**

**Representatives Seitz, Sykes**

**Cosponsors: Representatives Galonski, Miller, Strahorn, Boggs, Celebrezze, Smith, K., Kent, Craig, West, Holmes, Barnes, Blessing, Boyd, Brinkman, Brown, Dever, Fedor, Howse, Kelly, Lepore-Hagan, Ramos, Rezabek, Sheehy, Young**

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**A BILL**

To amend sections 2305.02 and 2743.48 of the 1  
Revised Code to modify the state's wrongful 2  
imprisonment law. 3

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

**Section 1.** That sections 2305.02 and 2743.48 of the 4  
Revised Code be amended to read as follows: 5

**Sec. 2305.02.** ~~The A court of common pleas in the county~~ 6  
~~where the underlying criminal action was initiated~~ determined as 7  
specified in division (B) (1) of section 2743.48 of the Revised 8  
Code has exclusive, original jurisdiction to hear and determine 9  
~~a civil an action or proceeding that is commenced by an~~ 10  
~~individual who seeks a determination by that court that the~~ 11  
~~individual satisfies divisions (A) (1) to (5) of section 2743.48~~ 12  
of the Revised Code and that seeks a determination by the court 13  
that an error in procedure of the type described in division (A) 14  
(5) of that section occurred, that the offense of which the 15  
individual was found guilty, including all lesser included 16  
offenses, was not committed by the individual, or that no 17

offense was committed by any person. If ~~that the~~ court enters 18  
the requested determination, it shall comply with division (B) 19  
of that section. 20

**Sec. 2743.48.** (A) As used in this section and section 21  
2743.49 of the Revised Code, a "wrongfully imprisoned 22  
individual" means an individual who satisfies each of the 23  
following: 24

(1) The individual was charged with a violation of a 25  
section of the Revised Code by an indictment or information, and 26  
the violation charged was an aggravated felony ~~or,~~ felony, or 27  
misdemeanor. 28

(2) The individual was found guilty of, but did not plead 29  
guilty to, the particular charge or a lesser-included offense by 30  
the court or jury involved, and the offense of which the 31  
individual was found guilty was an aggravated felony ~~or,~~ felony, 32  
or misdemeanor. 33

(3) The individual was sentenced to an indefinite or 34  
definite term of imprisonment in a state correctional 35  
institution for the offense of which the individual was found 36  
guilty. 37

(4) The individual's conviction was vacated, dismissed, or 38  
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~~ all of the following apply: 41

(a) No criminal proceeding is pending, can be brought, or 42  
~~will be brought by any prosecuting attorney, city director of~~ 43  
~~law, village solicitor, or other chief legal officer of a~~ 44  
~~municipal corporation~~ against the individual for any act 45  
associated with that conviction. 46

(b) The prosecuting attorney in the case, within one year 47  
after the date of the vacating, dismissal, or reversal, has not 48  
sought any further appeal of right or upon leave of court, 49  
provided that this division does not limit or affect the seeking 50  
of any such appeal after the expiration of that one-year period 51  
as described in division (C) (3) of this section. 52

(c) The prosecuting attorney, city director of law, 53  
village solicitor, or other chief legal officer of a municipal 54  
corporation, within one year after the date of the vacating, 55  
dismissal, or reversal, has not brought a criminal proceeding 56  
against the individual for any act associated with that 57  
conviction, provided that this division does not limit or affect 58  
the bringing of any such proceeding after the expiration of that 59  
one-year period as described in division (C) (3) of this section. 60

(5) Subsequent to sentencing ~~and or~~ during or subsequent 61  
to imprisonment, an error in procedure was discovered that 62  
occurred prior to, during, or after sentencing, that involved a 63  
violation of the Brady Rule which violated the individual's 64  
rights to a fair trial under the Ohio Constitution or the United 65  
States Constitution, and that resulted in the individual's 66  
release, or it was determined by ~~the a~~ court of common pleas ~~in~~ 67  
~~the county where the underlying criminal action was initiated~~ 68  
either that the ~~charged~~ offense of which the individual was 69  
found guilty, including all lesser-included offenses, ~~either~~ was 70  
not committed by the individual or that no offense was ~~not~~ 71  
committed by any person. In addition to any other application of 72  
the provisions of this division regarding an error in procedure 73  
that occurred prior to, during, or after sentencing, as those 74  
provisions exist on and after the effective date of this 75  
amendment, if an individual had a claim dismissed, has a claim 76  
pending, or did not file a claim because the state of the law in 77

effect prior to the effective date of this amendment barred the 78  
claim or made the claim appear to be futile, those provisions 79  
apply with respect to the individual and the claim and, on or 80  
after that effective date, the individual may file a claim and 81  
obtain the benefit of those provisions. 82

(B) (1) A person who is a resident of this state may file a 83  
civil action to be declared a wrongfully imprisoned individual 84  
in the court of common pleas in either the county where the 85  
underlying criminal action was initiated or the county in which 86  
the person resides. A person who is not a resident of this state 87  
may file a civil action to be declared a wrongfully imprisoned 88  
individual in the court of common pleas in the county where the 89  
underlying criminal action was initiated. That civil action 90  
shall be separate from the underlying finding of guilt ~~by the~~ 91  
~~court of common pleas.~~ Upon the filing of a civil action to be 92  
determined a wrongfully imprisoned individual, the attorney 93  
general shall be served with a copy of the complaint and shall 94  
be heard. 95

(2) When ~~the a~~ court of common pleas ~~in the county where~~ 96  
~~the underlying criminal action was initiated as specified in~~ 97  
division (B) (1) of this section determines in a separate civil 98  
~~action~~ that a person is a wrongfully imprisoned individual, the 99  
court shall provide the person with a copy of this section and 100  
orally inform the person and the person's attorney of the 101  
person's rights under this section to commence a civil action 102  
against the state in the court of claims because of the person's 103  
wrongful imprisonment and to be represented in that civil action 104  
by counsel of the person's own choice. 105

(3) The court described in division (B) (1) of this section 106  
shall notify the clerk of the court of claims, in writing and 107

within seven days after the date of the entry of its 108  
determination that the person is a wrongfully imprisoned 109  
individual, of the name and proposed mailing address of the 110  
person and of the fact that the person has the rights to 111  
commence a civil action and to have legal representation as 112  
provided in this section. The clerk of the court of claims shall 113  
maintain in the clerk's office a list of wrongfully imprisoned 114  
individuals for whom notices are received under this section and 115  
shall create files in the clerk's office for each such 116  
individual. 117

(4) Within sixty days after the date of the entry of the 118  
determination by ~~the a~~ court of common pleas ~~in the county where~~ 119  
~~the underlying criminal action was initiated as specified in~~ 120  
division (B) (1) of this section that a person is a wrongfully 121  
imprisoned individual, the clerk of the court of claims shall 122  
forward a preliminary judgment to the president of the 123  
controlling board requesting the payment of fifty per cent of 124  
the amount described in division (E) (2) (b) of this section to 125  
the wrongfully imprisoned individual. The board shall take all 126  
actions necessary to cause the payment of that amount out of the 127  
emergency purposes special purpose account of the board. 128

(5) If an individual was serving at the time of the 129  
wrongful imprisonment concurrent sentences on other convictions 130  
that were not vacated, dismissed, or reversed on appeal, the 131  
individual is not eligible for compensation as described in this 132  
section for any portion of that wrongful imprisonment that 133  
occurred during a concurrent sentence of that nature. 134

(C) (1) In a civil action under this section, a wrongfully 135  
imprisoned individual has the right to have counsel of the 136  
individual's own choice. 137

(2) If a wrongfully imprisoned individual who is the 138  
subject of a court determination as described in division (B) (2) 139  
of this section does not commence a civil action under this 140  
section within six months after the entry of that determination, 141  
the clerk of the court of claims shall send a letter to the 142  
wrongfully imprisoned individual, at the address set forth in 143  
the notice received from the court of common pleas pursuant to 144  
division (B) (3) of this section or to any later address provided 145  
by the wrongfully imprisoned individual, that reminds the 146  
wrongfully imprisoned individual of the wrongfully imprisoned 147  
individual's rights under this section. Until the statute of 148  
limitations provided in division (H) of this section expires and 149  
unless the wrongfully imprisoned individual commences a civil 150  
action under this section, the clerk of the court of claims 151  
shall send a similar letter in a similar manner to the 152  
wrongfully imprisoned individual at least once each three months 153  
after the sending of the first reminder. 154

(3) If an individual has been determined by a court of 155  
common pleas as specified in division (B) (1) of this section to 156  
be a wrongfully imprisoned individual, as described in division 157  
(A) of this section, both of the following apply: 158

(a) The finding under division (A) (4) (b) of this section 159  
does not affect or negate any right or authority the prosecuting 160  
attorney in the case may have to seek, after the expiration of 161  
the one-year period described in that division, a further appeal 162  
of right or upon leave of court with respect to the conviction 163  
that was vacated, dismissed, or reversed on appeal, and the 164  
prosecuting attorney may seek such a further appeal after the 165  
expiration of that period. 166

(b) The finding under division (A) (4) (c) of this section 167

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	228
sick call visits;	229
(ii) The cost of housing and feeding the wrongfully	230
imprisoned individual in a detention facility;	231
(iii) The cost of supervision of the wrongfully imprisoned	232
individual;	233
(iv) The cost of any ancillary services provided to the	234
wrongfully imprisoned individual.	235
(F) (1) If the court of claims determines in a civil action	236
as described in division (D) of this section that the	237
complainant is a wrongfully imprisoned individual, it shall	238
enter judgment for the wrongfully imprisoned individual in the	239
amount of the sum of money to which the wrongfully imprisoned	240
individual is entitled under division (E) (2) of this section. In	241
determining that sum, the court of claims shall not take into	242
consideration any expenses incurred by the state or any of its	243
political subdivisions in connection with the arrest,	244
prosecution, and imprisonment of the wrongfully imprisoned	245
individual, including, but not limited to, expenses for food,	246
clothing, shelter, and medical services. The court shall reduce	247
that sum by the amount of the payment to the wrongfully	248
imprisoned individual described in division (B) (4) of this	249
section.	250
(2) If the wrongfully imprisoned individual was	251
represented in the civil action under this section by counsel of	252
the wrongfully imprisoned individual's own choice, the court of	253
claims shall include in the judgment entry referred to in	254
division (F) (1) of this section an award for the reasonable	255
attorney's fees of that counsel. These fees shall be paid as	256

provided in division (G) of this section. 257

(3) If the wrongfully imprisoned individual owes any debt 258  
to the state or any of its political subdivisions, the court of 259  
claims, in the judgment entry referred to in division (F) (1) of 260  
this section, shall deduct the amount of any such debts that are 261  
known from the sum of money to which the wrongfully imprisoned 262  
individual is entitled under division (E) (2) of this section. 263  
The court shall include in the judgment entry an award to the 264  
state or a political subdivision, whichever is applicable, of 265  
any amount deducted pursuant to this division. These amounts 266  
shall be paid as provided in division (G) of this section. 267

(4) (a) If, at the time of the judgment entry referred to 268  
in division (F) (1) of this section, the wrongfully imprisoned 269  
individual has won a monetary award against the state or any of 270  
its political subdivisions in a civil action under section 1983 271  
of Title 42 of the United States Code, 93 Stat. 1284 (1979), 42 272  
U.S.C. 1983, as amended, that arose from any conduct that 273  
resulted in or contributed to the person being determined to be 274  
a wrongfully imprisoned individual, the court of claims, in the 275  
judgment entry, shall deduct the amount of the award in the 276  
action that the wrongfully imprisoned individual received, after 277  
the payment of the individual's attorney's fees and costs 278  
related to the litigation, from the sum of money to which the 279  
wrongfully imprisoned individual is entitled under division (E) 280  
(2) of this section. The court shall include in the judgment 281  
entry an award to the state of any amount deducted pursuant to 282  
this division. These amounts shall be paid as provided in 283  
division (G) of this section. 284

(b) If division (F) (4) (a) of this section does not apply 285  
and if, after the time of the judgment entry referred to in 286

division (F) (1) of this section, the wrongfully imprisoned 287  
individual wins a monetary award against the state or any of its 288  
political subdivisions in a civil action under section 1983 of 289  
Title 42 of the United States Code, 93 Stat. 1284 (1979), 42 290  
U.S.C. 1983, as amended, that arose from any conduct that 291  
resulted in or contributed to the person being determined to be 292  
a wrongfully imprisoned individual, the wrongfully imprisoned 293  
individual shall reimburse the state for the sum of money paid 294  
under the judgment entry referred to in division (F) (1) of this 295  
section, after the deduction of the individual's attorney's fees 296  
and costs related to the litigation. A reimbursement required 297  
under this division shall not exceed the amount of the monetary 298  
award the wrongfully imprisoned individual wins in the civil 299  
action under section 1983 of Title 42 of the United States Code. 300

(c) Divisions (F) (4) (a) and (b) of this section apply only 301  
with respect to judgment entries referred to in division (F) (1) 302  
of this section that are entered into on or after the effective 303  
date of divisions (F) (4) (a) and (b) of this section. 304

(5) If, after the time of the judgment entry referred to 305  
in division (F) (1) of this section, the wrongfully imprisoned 306  
individual is convicted of or pleads guilty to an offense that 307  
is based on any act associated with the conviction that was 308  
vacated, reversed, or dismissed on appeal and that was the basis 309  
of the person being determined to be a wrongfully imprisoned 310  
individual, the wrongfully imprisoned individual shall reimburse 311  
the state for the entire sum of money paid under the judgment 312  
entry referred to in division (F) (1) of this section. 313

(6) The state consents to be sued by a wrongfully 314  
imprisoned individual because the imprisonment was wrongful, and 315  
to liability on its part because of that fact, only as provided 316

in this section. However, this section does not affect any 317  
liability of the state or of its employees to a wrongfully 318  
imprisoned individual on a claim for relief that is not based on 319  
the fact of the wrongful imprisonment, including, but not 320  
limited to, a claim for relief that arises out of circumstances 321  
occurring during the wrongfully imprisoned individual's 322  
confinement in the state correctional institution. 323

(G) The clerk of the court of claims shall forward a 324  
certified copy of a judgment under division (F) of this section 325  
to the president of the controlling board. The board shall take 326  
all actions necessary to cause the payment of the judgment out 327  
of the emergency purposes special purpose account of the board. 328

(H) To be eligible to recover a sum of money as described 329  
in this section because of wrongful imprisonment, both of the 330  
following shall apply to a wrongfully imprisoned individual: 331

(1) The wrongfully imprisoned individual shall not have 332  
been, prior to September 24, 1986, the subject of an act of the 333  
general assembly that authorized an award of compensation for 334  
the wrongful imprisonment or have been the subject of an action 335  
before the former sundry claims board that resulted in an award 336  
of compensation for the wrongful imprisonment. 337

(2) The wrongfully imprisoned individual shall commence a 338  
civil action under this section in the court of claims no later 339  
than two years after the date of the entry of the determination 340  
of the court of common pleas that the individual is a wrongfully 341  
imprisoned individual under division (B) (2) of this section. 342

(I) No determination of a court of common pleas as 343  
specified in division (B) of this section or of the court of 344  
claims as described in division (D) of this section that a 345

person is a wrongfully imprisoned individual, and no finding in 346  
the civil action that results in either of those determinations, 347  
is admissible as evidence in any criminal proceeding that is 348  
pending at the time of, or is commenced subsequent to, that 349  
civil action. 350

(J) (1) As used in division (A) of this section, "Brady 351  
Rule" means the rule established pursuant to the decision of the 352  
United States supreme court in Brady v. Maryland (1963), 373 353  
U.S. 83. 354

(2) As used in divisions (F) (3) and (4) of this section, 355  
"state" and "political subdivisions" have the same meanings as 356  
in section 2743.01 of the Revised Code. 357

**Section 2.** That existing sections 2305.02 and 2743.48 of 358  
the Revised Code are hereby repealed. 359