



**Auditor of State
Betty Montgomery**

May 6, 2005



The Honorable Jon Husted
Speaker of the House
77 S. High Street, 13th Floor
Columbus, OH 43266

RE: Wrongful Imprisonment

Dear Speaker Husted:

I am writing, as required by Ohio Revised Code (ORC) section 2743.49, to report to you on the adjustments calculated by the Auditor of State's Office regarding the amount owed to an individual who has been found to be wrongfully imprisoned in the State of Ohio.

ORC 2743.48 provides a process for an individual who has been wrongfully convicted and imprisoned for commission of a felony criminal offense to file a civil action against the state. Included in this statute is an amount which an individual is entitled to recover for each full year in which the person was wrongfully imprisoned. The amount as specified in ORC 2743.48 (E)(2)(b) and effective for the years 2003 and 2004 was \$40,330. This amount is to be prorated for any partial year that the individual was wrongfully imprisoned.

ORC 2743.49 requires that in each odd numbered year, the Auditor of State shall adjust the amount owed to a wrongfully imprisoned individual, based on the yearly average of the consumer price index (CPI) for the previous two years, and shall forward a report of the adjusted amount to the Ohio General Assembly, as well as the Ohio Court of Claims. The amount as adjusted by the Auditor of State is to be in effect for the next two years. This letter is intended to satisfy the reporting requirement of this statute.

In attempting to calculate the adjusted amount pursuant to ORC 2743.49, it appeared to my staff that the formula drafted into statute may be in conflict with the intent of the General Assembly. Specifically, the statute requires that the amount a wrongfully imprisoned person is entitled to be adjusted every two years, and that adjustment is to be based on changes in the CPI. However, the formula in ORC

2743.49(A)(1) provides a formula for adjusting the amount that only factors in a single year's change in CPI. In other words, despite two years in between adjustments, only one year's growth is provided for in statute.

Given this potential conflict, I present you with two calculations. The first is a determination based on a strict reading of the statute, and consequently, must be the amount that I certify for the purposes of ORC 2743.49. This amount reflects only a single year's worth of growth in the CPI. In addition, however, I present a second calculation that is based on the increases in the CPI over the two year period. If it was the General Assembly's intent to adjust the amount in this manner, a statutory change may be required.

First Calculation - Certified Adjustment Based on One Year's Growth (Strict Statutory Interpretation)

Pursuant to ORC 2743.49, I hereby certify that \$41,418.91 is the amount, for use in calendar years 2005 and 2006, to which an individual found to be wrongfully imprisoned is entitled for each full year of wrongful imprisonment for purposes of ORC 2743.48(E)(2)(b). Based on a plain reading of ORC 2743.49, this new amount is calculated by increasing the amount currently paid (\$40,330) to wrongfully imprisoned inmates by the percentage increase in the CPI from 2003 to 2004 (2.7 percent) which is \$1,088.91. A more detailed methodology for calculating this adjusted amount is attached, but following is the basic calculation:

$$\begin{array}{r} \$40,330 \text{ (current amount)} \times 2.7\% \text{ (CPI Change - '03 to '04)} = \$1,088.91 \text{ (amount increase)} \\ + \$40,330.00 \text{ (current amount)} \\ \hline \$41,418.91 \text{ (new adjusted amount)} \end{array}$$

Second Calculation – Based on Two Years' Growth (Potential Legislative Intent)

If it was the General Assembly's intent for the adjusted amount to reflect the previous two years' growth in the CPI, then the amount certified for purposes of ORC 2743.49 would be \$42,371.54. This amount is determined by calculating the growth from 2002 to 2003 and then calculating the same from 2003 to 2004. However, as stated above, I believe that a statutory amendment would be necessary to achieve this calculation. Although a more detailed methodology for calculating the adjustment under this scenario is attached, following is the basic calculation:

Year One (2002 to 2003)

$$\begin{array}{r} \$40,330 \text{ (current amount)} \times 2.3\% \text{ (CPI Change - '02 to '03)} = \$927.59 \text{ (increase)} \\ + \$40,330.00 \text{ (previous amount)} \\ \hline \$41,257.59 \text{ (1st year adj.)} \end{array}$$

Year Two (2003 to 2004)

$$\begin{array}{r} \$41,257.59 \text{ (1}^{\text{st}} \text{ year adjustment)} \times 2.7\% \text{ (CPI Change - '03 to '04)} = \$1,113.95 \text{ (increase)} \\ + \$41,258.59 \text{ (1}^{\text{st}} \text{ year adj.)} \\ \hline \$42,371.54 \text{ (new adjusted amount)} \end{array}$$

As described in ORC 2743.49, this report and all related documents are public record and are available for copying and inspection in my office. Please do not hesitate to contact my office if you need additional information about this report or if I can be of any further assistance.

Sincerely,



Betty D. Montgomery
Auditor of State

cc: The Honorable Chris Redfern, House Minority Leader
The Honorable Bill Harris, Senate President
The Honorable C.J. Prentiss, Senate Minority Leader
The Honorable Kevin Coughlin, State Senator
The Ohio Court of Claims

Wrongful Imprisonment Award
Certification of Adjusted Amount (ORC 2743.49)

First Calculation - Certified Adjustment Based on
One Year's Growth (Strict Statutory Interpretation)

By Statute (ORC 2743.49):

1) Using the yearly average for the immediately preceding even-numbered year as the base year...	188.9
2) The auditor of state shall compare the most current average consumer price index with that determined in the preceding odd-numbered year...	184
3) And shall determine the percentage increase or decrease.	2.7%
4) 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)...	\$40,330.00
5) And shall add the product to or subtract the product from its corresponding actual dollar figure, as applicable, for the previous odd-numbered year.	\$1,088.91
New adjusted amount	\$41,418.91

Wrongful Imprisonment Award
Certification of Adjusted Amount (ORC 2743.49)

Second Calculation – Based on Two Years’ Growth
(Potential Legislative Intent)

Year 1

1) Using the yearly average for the immediately preceding odd-numbered year (2003) as the base year...	184
2) The auditor of state shall compare the most current average consumer price index with that determined in the preceding even-numbered year (2002)...	179.9
3) And shall determine the percentage increase or decrease.	2.3%
4) 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)...	\$40,330.00
5) And shall add the product to or subtract the product from its corresponding actual dollar figure, as applicable, for the previous odd-numbered year.	\$927.59
	\$41,257.59

Year 2 - Based on the adjustment in year 1

1) Using the yearly average for the immediately preceding even-numbered year (2004) as the base year...	188.9
2) The auditor of state shall compare the most current average consumer price index with that determined in the preceding odd-numbered year (2003)...	184
3) And shall determine the percentage increase or decrease.	2.7%
4) The auditor of state shall multiply the percentage increase or decrease <i>by the dollar figure as adjusted in the previous even numbered year ...</i>	\$41,257.59
5) And shall add the product to or subtract the product from its corresponding actual dollar figure, as applicable, for the previous odd-numbered year.	\$1,113.95
New adjusted amount	\$42,371.54