

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 1879 PCB CLAM 05-01 Compensation for the Wrongfully Incarcerated  
**SPONSOR(S):** Claims Committee; Quinones  
**TIED BILLS:** **IDEN./SIM. BILLS:**

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<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.: Claims Committee	4 Y, 0 N	Birtman	Birtman
1) Justice Appropriations Committee		DeBeaugrine	DeBeaugrine
2) Justice Council			
3)			
4)			
5)			

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**SUMMARY ANALYSIS**

This concurrent resolution creates Joint Rule 9, providing for the compensation of the wrongfully incarcerated. The concurrent resolution would allow persons who have been wrongfully convicted of a felony which resulted in imprisonment to file a claim bill, provided that the claimant is actually innocent. Actual innocence is defined by the resolution, and requires the following:

- The claimant was charged with a felony;
- The claimant did not plead guilty or no contest to the offense charged or any lesser included offense, unless the claimant was charged with a capital offense;
- The claimant was convicted of the offense;
- The claimant was incarcerated as a result of the conviction;
- The claimant was imprisoned solely on the basis of the conviction for the offense;
- The claimant did not, by his or her own misconduct or neglect, bring about the prosecution;
- The claimant's acts did not constitute a crime; and
- A court of competent jurisdiction found by clear and convincing evidence that the offense, including any lesser included offenses, was not committed by the claimant.

The joint rule gives the Legislature flexibility in fashioning a holistic remedy that awards different types of benefits or monetary compensation, but not both. Benefits available include health insurance, waiver of tuition and fees to specified state educational institutions, job preference, and waiver of statutory fees to expunge arrest or court records. Monetary compensation is capped at \$200,000, and may be payable in a lump sum or through an annuity. Any unpaid amounts or benefits cease upon the conviction of a subsequent felony.

As a condition of the award, the claimant would release and forever waive any governmental entity from any and all present or future claims arising from the factual situation giving rise to the relief act. Attorney's fees would be limited to 25% of the award, and would not be compensable for services related to a finding of actual innocence. The passage of a relief act pursuant to the joint rule would not waive any defense of sovereign immunity nor increase the limits of liability on behalf of the state.

This concurrent resolution appears to have no fiscal impact.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h1879a.JUA.doc  
**DATE:** 4/6/2005

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – the resolution provides a legislative mechanism to compensate the wrongfully incarcerated without creating a new government program or bureaucracy.

Safeguard individual liberty – the resolution gives the Legislature a mechanism to provide a wide array of benefits to those who have been wrongfully incarcerated.

Promote personal responsibility – the resolution limits eligibility to those who have not pled guilty or no contest, or who have contributed to their own incarceration by their own acts. The resolution also provides that unpaid compensation and benefits cease upon the subsequent conviction of a felony.

### B. EFFECT OF PROPOSED CHANGES:

For those people who are actually innocent of a crime for which they have been incarcerated, there are very few, if any, legal remedies available due to the doctrines of sovereign immunity<sup>1</sup>, absolute immunity<sup>2</sup>, and qualified immunity<sup>3</sup>. Thus there are individuals who have been incarcerated for crimes that they did not commit with no avenue for compensation. Presently, twenty states and the federal government provide some kind of compensation mechanism for the wrongfully convicted.<sup>4</sup> Of these states, only two provide compensation in a form other than monetary.<sup>5</sup> An argument has been made that the wrongfully convicted also need compensation for the problems that they encounter upon their release, which include not only financial difficulties, but also health problems and a lack of education and job training.<sup>6</sup>

This concurrent resolution creates a joint rule allowing eligible claimants to file a claim bill for compensation, and giving the Legislature holistic options regarding the award.

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<sup>1</sup> Sovereign immunity is a doctrine that prohibits suits against the government without the government's consent. Article X, section 13 of the State Constitution allows the state to waive its immunity through an enactment of general law. In 1973, the Legislature enacted s. 768.28, F.S., which allows individuals to sue the state government, subdivisions of the state, and municipalities under circumstances where a private person would be liable to the claimant. Florida courts have recognized two exceptions to the state's waiver of sovereign immunity: the state is immune from discretionary or planning-level functions (Department of Health and Rehabilitative Services v. Yamuni, 529 So.2d 258 (Fla. 1988)) and is immune where the government owes a general duty to all citizens but no particular duty to the injured party (Everton v. Willard, 468 So.2d 936 (Fla. 1985)).

<sup>2</sup> Judges and prosecutors are afforded absolute immunity. Berry v. State, 400 So.2d 80 (Fla. 4<sup>th</sup> DCA 1981), review denied, 411 So.2d 380 (Fla. 1981).

<sup>3</sup> Qualified immunity protects public officials from civil damages to the extent that their conduct does not violate established statutory or constitutional rights of which a reasonable person would have known. To establish qualified immunity, the official had to be acting within the scope of his/her discretionary authority and there was a clear violation of established rights. Gentile v. Bauder, 718 So.2d 781 (Fla. 1998).

<sup>4</sup> Summary of statutes discussed in When Justice Fails, 6 U. Chi. L.Sch. Roundtable 73, as provided by the Innocence Project and updated by Florida House of Representatives Claims Committee Staff, March 18, 2005.

<sup>5</sup> Montana provides educational aid (Montana Code s. 53-1-214) and Virginia may award tuition worth \$10,000 in the Virginia community college system (Virginia Code s. 8.01-195.11).

<sup>6</sup> When Money Isn't Enough: The Case for Holistic Compensation of the Wrongfully Convicted, Shawn Armbrust, 41 Am. Crim. L. Rev. 157, 170 (Winter 2004).

## CLAIM BILL PROCESS

A claim bill, sometimes called a relief act, is a bill that compensates a particular individual or entity for injuries or losses occasioned by the negligence or error of a public officer or agency. It is a means by which an injured party may recover damages even though the public officer or agency involved may be immune from suit. Claim bills are uniquely legislative in nature, and the process for filing claim bills is covered by House and Senate rules.

House Rule 5.6 allows the Speaker to appoint a Special Master to review a claim bill or conduct a hearing, if necessary. The Special Master may administer an oath to all witnesses, accept relevant documentary and tangible evidence offered as deemed necessary, and record the hearing. The Special Master then prepares a final report containing findings of fact, conclusions of law, and recommendations. Neither stipulations entered into by the parties or jury verdicts are binding on the legislature. The hearing and consideration of a claim bill is held in abeyance until all available administrative and judicial remedies are exhausted, unless a written settlement agreement has been executed. Senate Rule 4.81 is virtually identical to the House Rule, except that the Senate requires claim bills to be filed with the Secretary of the Senate on or before August 1 in order to be considered by the Senate during the next regular session.<sup>7</sup>

This joint resolution creates Joint Rule 9 which allows specified persons to file a claim bill for compensation for being wrongfully incarcerated. The Joint Rule requires adherence with the rules of both chambers, except that all other judicial and administrative remedies need not be exhausted. Because claim bills are uniquely legislative, allowing compensation via a claim bill gives the Legislature the maximum amount of flexibility and control. Two other states have compensation mechanisms controlled by their state Legislatures.<sup>8</sup>

## ELIGIBILITY

Joint Rule 9.1 provides that in order to be eligible for relief, a person who has been wrongfully convicted of a felony must be actually innocent. 'Actually innocent' means:

- the claimant was charged, by indictment or information, with the commission of an offense classified as a felony;
- the claimant did not plead guilty or no contest to the offense charged or to any lesser included offense, unless the claimant was charged with a capital offense;<sup>9</sup>
- the claimant was convicted of the offense;
- the claimant was sentenced to incarceration for a term of imprisonment as a result of the conviction;
- the claimant was imprisoned solely on the basis of the conviction for the offense;

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<sup>7</sup> Rule 4.81(1) of the Rules of the Florida Senate. The rule also provides that members elected during a general election may have 60 days from the date of that election to file a claim bill. This claim bill filing deadline may only be waived upon a determination by the Committee on Rules and Calendar that an emergency exists, and then upon motion adopted by 2/3 vote. The Senate rule further provides that the Senate will not consider a House claim bill which does not have a Senate companion timely filed.

<sup>8</sup> Montana and Virginia.

<sup>9</sup> Five other states require that the claimant did not plead guilty: Iowa (Iowa Code s. 663A.1); Massachusetts (Ma. Ch. 258D ss 1-9); Ohio (Ohio Rev. Code s. 2305.02 & 2743.48); Oklahoma (Ok. Stat. s. 51-154); and Virginia (Va. Code s. 8.01-195.11). Virginia makes an exception for a person charged with a capital offense.

- the claimant did not, by his or her misconduct or neglect, bring about the prosecution;<sup>10</sup>
- the claimant's acts did not constitute a crime; and
- a court of competent jurisdiction found by clear and convincing evidence that the offense for which the claimant was convicted, sentenced, and imprisoned, including any lesser included offenses, was not committed by the claimant and issued an order vacating, dismissing, or reversing the conviction and sentence and providing that no further proceedings can be or will be held against the claimant on any facts and circumstances alleged in the proceedings which had resulted in the conviction.<sup>11</sup>

Further, a claimant is not eligible for compensation if the claimant was also serving a concurrent felony sentence, nor if the claimant was awarded a final judgment or received any funds pursuant to a settlement agreement for compensation or damages arising out of the same factual situation in connection with the conviction for which compensation is sought under the Joint Rule. The claim may not be filed later than two years after the order vacating, reversing, or dismissing the sentence.<sup>12</sup>

#### RELIEF:

Joint Rule 9.2 provides for either holistic benefits, or monetary compensation, but not both. The holistic compensation options at Joint Rule 9.3 are designed to assist the claimant to assimilate back into society, and include health insurance, waiver of tuition and fees at specified state educational institutions, job preference, and waiver of fees for expungement of any arrest or court records as otherwise subject to expunction by law or court rule.<sup>13</sup> The Joint Rule also allows the Legislature to make an official apology on behalf of the State.

As an alternative, Joint Rule 9.4 allows the payment of a maximum of \$200,000, which is payable either in a lump sum or in a lump sum equal to 20% with the remaining 80% of the principal being used by the Chief Financial Officer to purchase an annuity. If the Legislature directs the purchase of an annuity, the relief act must state that the annuity be purchased from an A+ company; provide equal monthly installments over a stated period of years; provide that the annuity shall not be sold, discounted, or used as security for loans or mortgages; and that the annuity shall contain beneficiary provisions.

The other 20 states provide monetary compensation for the wrongfully convicted at a wide range of levels and formulas, ranging from a low of \$20,000<sup>14</sup> to a high of \$1 million.<sup>15</sup> There are states that award compensation for each day of incarceration;<sup>16</sup> New Jersey allows twice

<sup>10</sup> Five other states and the federal government require that the claimant show that he or she did not, by his or her misconduct or neglect, bring about the prosecution: Federal (28 USC 1495 & 2513); California (Cal. Pen. Code s. 4900-4906); Washington DC (DC Code s. 2-421); New Jersey (NJ Stat. 52:4C1-4C-6); West Virginia (W.Va. Code s. 14-2-13a); and Wisconsin (Wis. Stat. s. 775.05).

<sup>11</sup> Eleven other states and the federal government require innocence to be found by a court: Alabama (Al. Stat. s. 29-2-150 – 165); Washington D.C., Iowa, Massachusetts, Montana, New York (NY Ct. of Claims Act s. 8b), Ohio, Oklahoma, Texas, Virginia, and West Virginia. Eleven states also allow compensation for a person who was pardoned for innocence.

<sup>12</sup> A majority of the other states with wrongful conviction compensation statutes include a 2-year time limit for filing the claim.

<sup>13</sup> Section 943.0581, F.S., provides for the administrative expunction of any nonjudicial record of an arrest made contrary to law or mistake. Regarding court records, the expunction of judicial records is a judicial function, acknowledged by statute. Section 943.0585 provides that the courts of this state have jurisdiction over their own procedures, including the expunction of judicial records containing criminal history information. Thus it would appear that the Legislature is restricted by the separation of powers doctrine from actually ordering the expunction. Expunction requires application to the Department of Law Enforcement for a certificate of eligibility, and pay a \$75 processing fee. Other costs might include filing fees and the costs to obtain public records.

<sup>14</sup> New Hampshire (NH Stat s. 541-B:14).

<sup>15</sup> Tennessee (Tenn Code s.9-8-108).

<sup>16</sup> California (\$100 per day), Iowa (\$50 per day up to \$25000 per year)

the amount of the claimant's income in the year prior to incarceration or \$20,000 per year of incarceration (whichever is greater)<sup>17</sup>; and Virginia ties the award to 90% of the Virginia per capita personal income as reported by the Economic Analysis of the U.S. Department of Commerce, for up to 20 years.<sup>18</sup>

#### ATTORNEY'S FEES:

Current law provides that a defendant in a criminal prosecution who is acquitted or discharged shall not be liable for any costs or fees of the court or any ministerial office, or for any charge of subsistence while detained in custody.<sup>19</sup> However, there is no statutory authority for an acquitted defendant to be awarded attorney's fees. In fact, the prevailing party is not entitled to attorney's fees absent a statutory or contractual basis.<sup>20</sup> In claim bill matters, attorneys are entitled to an attorney's fee that does not exceed 25% of the judgment or settlement against a government entity.<sup>21</sup> Only two other states expressly provide for the payment of attorney's fees.<sup>22</sup>

The bill provides at Joint Rule 9.4, that attorney's and lobbyist's fees are subject to the 25% limitation as statutorily required for other claim bills, and provides that no compensation shall be made for attorney's fees charged for legal services relating to a finding of actual innocence.

#### MISCELLANEOUS PROVISIONS:

Joint Rule 9.5 provides that as a condition of receiving any compensation, the claimant is required to execute a release and waiver forever releasing the State of Florida, or any entity subject to the limited waiver of sovereign immunity provisions by statute, from any and all present or future claims on behalf of the claimant, his or her heirs, successors, or assigns.

Joint Rule 9.7 provides that the passage of a relief act pursuant to the Joint Rule shall not be deemed to have waived any defense of sovereign immunity, nor to have increased the limits of liability on behalf of the state or governmental entity. The current limits of liability on governmental entities are \$100,000 per person or \$200,000 per occurrence pursuant to s. 768.28(5), F.S.

#### JOINT RULES, GENERALLY:

All joint rules adopted by concurrent resolution, and amendments thereto, are continued in effect from session to session or Legislature to Legislature, until repealed by concurrent resolution.<sup>23</sup>

#### C. SECTION DIRECTORY:

Joint Rule 9.1 provides for eligibility to file a claim bill for wrongful conviction and provides a definition of 'actual innocence.'

Joint Rule 9.2 provides for relief.

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<sup>17</sup> NJ Stat 52:4C-1 to 4C-6.

<sup>18</sup> Virginia Code ss0. 8.01-195.10 & 19.2-327.1.

<sup>19</sup> Section 939.06, F.S.

<sup>20</sup> Goldberg v. Watts, 864 So.2d 59 (Fla. 2<sup>nd</sup> DCA 2003).

<sup>21</sup> Section 768.28(8), F.S.

<sup>22</sup> Iowa and Ohio.

<sup>23</sup> Joint Rule 8, Joint Rules of the Florida Legislature.

Joint Rule 9.3 provides for non-monetary compensation.

Joint Rule 9.4 provides for monetary compensation.

Joint Rule 9.5 provides for release and waiver.

Joint Rule 9.6 provides for collateral sources.

Joint Rule 9.7 provides for attorney's and lobbyist's fees.

Joint Rule 9.8 pertains to the waiver of the defense of sovereign immunity and the increase on the statutory limits of liability.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

There is a claim bill process in place through which compensation for wrongful incarceration may be requested by an individual and approved by the Legislature. There are no limits to the monetary award that the Legislature can approve under the existing process. Any expenditure under the proposed process will continue to be subject to approval by the Legislature.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2005, the Claims Committee adopted two amendments to the PCB.

- Amendment 1 by Representative Taylor (lines 97 and 99) – makes the waiver of statutory fees to expunge arrest or court records mandatory, rather than discretionary.
- Amendment 2 by Representative Hukill (lines 128 and 132) – delineates that the release and waiver of liability is on behalf of the claimant, his or her heirs, successors and/or assigns.