

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: CS/CS/SB 1964

SPONSOR: Criminal Justice Committee, Judiciary Committee and Senator Webster and others

SUBJECT: Compensation for Wrongfully Incarcerated Persons

DATE: April 27, 2005

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|------------------|
| 1. | <u>Cibula</u> | <u>Maclure</u> | <u>JU</u> | <u>Fav/CS</u> |
| 2. | <u>Cellon</u> | <u>Cannon</u> | <u>CJ</u> | <u>Fav/CS</u> |
| 3. | _____ | _____ | <u>JA</u> | <u>Withdrawn</u> |
| 4. | _____ | _____ | <u>WM</u> | <u>Withdrawn</u> |
| 5. | _____ | _____ | <u>RC</u> | <u>Withdrawn</u> |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

The committee substitute requires a judge to find whether a person has been wrongfully incarcerated whenever a person serving a sentence for a felony conviction is released based on exonerating evidence. The committee substitute also permits a wrongfully incarcerated person to apply to the Attorney General for compensation for losses and expenses incurred that are directly related to the incarceration. If an agreement for compensation cannot be reached with the Attorney General, the wrongfully incarcerated person may seek compensation in court. This committee substitute does not authorize compensation to a person who pled guilty to the offense for which he or she was wrongfully incarcerated or to a person who was convicted of a felony other than the felony for which he or she was wrongfully incarcerated.

The committee substitute creates the following sections of the Florida Statutes: 961.01, 961.02, 961.03, 961.04, and 961.05.

II. Present Situation:

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,¹

¹ Sovereign immunity is a doctrine that prohibits suits against the government without the government's consent. Section 13, Article X 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)).

absolute immunity,² and qualified immunity.³ Thus, there are individuals who have been incarcerated for crimes that they did not commit, with no avenue for compensation. Presently, 20 states and the federal government provide some kind of compensation mechanism for the wrongfully convicted.⁴ Of these states, only two provide compensation in a form other than monetary.⁵ The other states provide monetary compensation for the wrongfully convicted at a wide range of levels and formulas, ranging from a low of \$20,000⁶ to a high of \$1 million.⁷ In New York there are no limits on compensation. There are states that award compensation for each day of incarceration;⁸ New Jersey allows twice the amount of the claimant's income in the year prior to incarceration or \$20,000 per year of incarceration (whichever is greater);⁹ and Virginia ties the award to 90 percent 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.¹⁰

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.¹¹ 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.

Senate Rule 4.81 and House Rule 5.6 allow the Senate President and the Speaker of the House 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 nor 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 claim bills must 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.

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

³ 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).

⁴ Summary of statutes discussed in *When Justice Fails: Indemnification for Unjust Conviction*, 6 U. Chi. L. Sch. Roundtable 73 (1999).

⁵ 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).

⁶ New Hampshire (NH Stat s. 541-B:14).

⁷ Tennessee (Tenn Code s. 9-8-108).

⁸ California (\$100 per day); Iowa (\$50 per day up to \$25,000 per year).

⁹ NJ Stat 52:4C-1 to 4C-6.

¹⁰ Virginia Code ss. 8.01-195.10 & 19.2-327.1.

¹¹ LEGISLATIVE CLAIM BILL MANUAL: POLICIES, PROCEDURES, AND INFORMATION CONCERNING INTRODUCTION AND PASSAGE 2 (Revised for 2005).

Claim bills have been used in the past to compensate wrongfully incarcerated persons. Under ch. 45-468, L.O.F., the Legislature directed the City of Fort Lauderdale to pay \$85,000 to Tyler Fontaine. Under ch. 98-431, L.O.F., the Legislature created a process by which an administrative law judge would determine whether the trial at which Freddie Pitts and Wilbert Lee were imprisoned for murder was fundamentally unfair. If the trial was judged to be unfair, they were to be awarded \$1,250,000. Mr. Pitts and Mr. Lee were imprisoned for 12 years until they were pardoned in 1975 by the Governor.

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.¹² 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.¹³ In claim bill matters, attorneys are entitled to an attorney's fee that does not exceed 25 percent of the judgment or settlement against a government entity.¹⁴ Only two other states expressly provide for the reimbursement of attorney's fees spent to defend against wrongful incarceration.¹⁵

III. Effect of Proposed Changes:

The committee substitute requires a judge to find whether a person has been wrongfully incarcerated whenever a person serving a sentence for a felony conviction is released based on exonerating evidence. The finding that a person was a wrongfully incarcerated person must be by clear and convincing evidence. The committee substitute also permits a wrongfully incarcerated person to seek compensation from the state for wrongful incarceration. This committee substitute does not authorize compensation to a person who pled guilty to the offense for which he or she was wrongfully incarcerated or to a person who was convicted of a felony other than the felony for which he or she was wrongfully incarcerated.

Available Compensation

Compensation is limited to \$5 million per applicant. The compensation is calculated by examining losses incurred, services performed for the state while the applicant was incarcerated, and expenses incurred or likely to be incurred. Compensable losses include losses such as lost wages or salary, assets lost to creditors, lost earnings capacity, and the reasonable amount of other losses. Compensation also is available to reimburse an applicant for fines and court costs, fees paid to the Department of Corrections, attorney's fees, and the cost of future psychological counseling. No compensation is available for punitive or exemplary damages, pain and suffering, emotional distress, humiliation, or similar damages.

¹² Section 939.06, F.S.

¹³ *Goldberg v. Watts*, 864 So. 2d 59 (Fla. 2d DCA 2003).

¹⁴ Section 768.28(8), F.S.

¹⁵ Iowa and Ohio.

Compensation Procedure

A wrongfully incarcerated person may apply to the Attorney General for compensation. The application for compensation must include all available documentation of compensable items. Upon receipt of the application, the Attorney General must attempt to negotiate with the applicant and provide the applicant with a written offer to settle the claim for compensation. If the applicant rejects the offer by the Attorney General, the applicant may sue the state for compensation in court. If the award of compensation is greater in court than the offer by the Attorney General, the state must pay the applicant's attorney's fees and costs. Otherwise, the committee substitute prohibits the payment of attorney's fees for the pursuit of compensation.

Payment Structure

The first \$500,000 of any compensation award to an applicant is payable in a lump sum. The remainder is payable over 10 years through an annuity. The annuity is payable to the state in the event that the wrongfully incarcerated person is convicted of a subsequent felony. Compensation as reimbursement of attorney's fees and related costs paid by a family member of the wrongfully incarcerated person are payable directly to the family member.

Effective Date

The committee substitute takes effect on July 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the Attorney General may incur some fiscal impact from the implementation of the bill; however, the estimated impact has not been ascertained.

The fiscal impact of the committee substitute is unknown. Few people, however, are likely to be eligible for compensation as a wrongfully incarcerated person. A finding that a person is a wrongfully incarcerated person must be by clear and convincing evidence.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Legislature may wish to clarify that reimbursement to family members for attorney's fees and related expenses paid on behalf of a wrongfully incarcerated person are not subtracted from a lump sum payment to a wrongfully incarcerated person.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
