

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 227 Victims of Wrongful Incarceration
SPONSOR(S): Criminal Justice Subcommittee; Kerner and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 326

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|----------------------------------|---------------------|---------|--|
| 1) Criminal Justice Subcommittee | 11 Y, 0 N, As CS | Aziz | Cunningham |
| 2) Appropriations Committee | 24 Y, 1 N | Kramer | Leznoff |

SUMMARY ANALYSIS

In 2008, the Legislature passed the "Victims of Wrongful Incarceration Compensation Act" (Act) to compensate persons determined to be actually innocent of a felony offense they were accused of committing and for which they were wrongfully convicted and imprisoned. The Act provides a process by which persons whose conviction and sentence has been vacated based upon exonerating evidence may petition the court to seek and obtain compensation.

Since 2008, three people have received compensation under the Act while others have struggled to show actual innocence because of the peculiar facts of their case. For example, James Richardson spent 21.5 years incarcerated for the murder of his daughter before he was released pending issuance of a final investigative report. Subsequently, a special prosecutor appointed by the Governor issued a nolle prosequi (whereby the prosecutor will not further prosecute the case) and the court vacated the judgment, conviction and sentence. When Richardson applied for compensation under the Act, he was denied because he was unable to prove his actual innocence even though an administrative law judge found there was a lack of evidence to prove him guilty beyond a reasonable doubt.

The bill exempts certain petitioners from being required to prove their actual innocence, and from complying with various other eligibility and procedural requirements when applying for compensation under the Act. A petitioner is exempted if: the petitioner was convicted and sentenced to death sentenced prior to December 31, 1979; the Governor issue an executive order appointing a special prosecutor to review the defendant's petition; and the special prosecutor issued a nolle prosequi. This exemption is repealed in 2018.

The bill makes it a first degree misdemeanor for a person to accept any portion of a claimant's compensation as payment for attorney's fees, lobbyist fees, or costs relating to assisting the claimant in receiving such compensation. In addition, the bill authorizes the Chief Financial Officer to purchase multiple annuities selected by a wrongfully incarcerated person, instead of a single annuity, for compensation awarded under the Act.

Current law contains a continuing appropriation from the General Revenue Fund to the Chief Financial Officer in an amount sufficient to pay the approved payments under the "Victims of Wrongful Incarceration Compensation Act". Under the provisions of this bill, it appears that James Richardson may be able to receive at least \$1,050,000 as compensation as a victim of wrongful incarceration as well as an amount for fines, penalties, court costs and attorney fees if any. It is unlikely any other person will qualify under the newly created exemption.

The bill is effective July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Victims of Wrongful Incarceration Compensation Act

In Florida, thirteen people have been exonerated or released from incarceration since 2000 as a result of post-conviction DNA testing.¹ During the regular session of 2008, the Legislature passed the “Victims of Wrongful Incarceration Compensation Act” (Act) to compensate persons determined to be actually innocent of a felony offense they were accused of committing and for which they were wrongfully convicted and imprisoned.²

The Act provides a process by which persons whose conviction and sentence has been vacated based upon exonerating evidence may petition the court to seek and obtain compensation as a “wrongfully incarcerated person”³ who is “eligible for compensation.”⁴

The Act has a definitions section found at s. 961.02, F.S., and four other primary components:

- The Petition Process: section 961.03, F.S., provides the process for determining whether a petitioner is a “wrongfully incarcerated person” and is “eligible for compensation.”
- Eligibility: section 961.04, F.S., specifies criteria that render a petitioner ineligible for compensation.
- Application: section 961.05, F.S., provides the process by which an eligible person may apply for compensation.
- Compensation: section 961.06, F.S., provides for the entitlement to compensation and other benefits for an eligible person and directs the Chief Financial Officer to purchase an annuity on behalf of the eligible person.

The Petition Process

In order to receive compensation under the Act, a person must return to the court where the judgment and sentence were vacated and file a petition seeking status as a “wrongfully incarcerated person.” Section 961.03(1)(a), F.S., requires that a petition must:

- State that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence; and
- State that the person is not disqualified, under the provisions of s. 961.04, F.S., from seeking compensation under the Act.

A copy of the petition must be provided to the prosecuting authority of the felony for which the petitioner was incarcerated. In response to the petition, the prosecuting authority may either:

- Stipulate to the petitioner’s innocence and eligibility for compensation;
- Contest the evidence of actual innocence; or

¹ Frank Lee Smith, Jerry Townsend, Wilton Dedge, Luis Diaz, Alan Crotzer, Orlando Boquete, Larry Bostic, Chad Heins, Cody Davis, William Dillon, James Bain, Anthony Caravella, and Derrick Williams are the thirteen people released from prison or exonerated in this state based on DNA testing. Florida Innocence Project, http://floridainnocence.org/content/?page_id=34. (last visited on April 4, 2014).

² Chapter 2008-39, L.O.F.

³ Section 961.02(4), F.S., defines a “wrongfully incarcerated person” as a “person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and, with respect to whom pursuant to the requirements of s. 961.03, F.S., the original sentencing court has issued its order finding that the person neither committed the act nor the offense that served as the basis for the conviction and incarceration and that the person did not aid, abet, or act as an accomplice or accessory to a person who committed the act or offense.”

⁴ Section 961.02(5), F.S., defines “eligible for compensation” to mean “a person who meets the definition of ‘wrongfully incarcerated person’ and is not disqualified from seeking compensation under the criteria prescribed in s. 961.04.” The Act does not currently provide a definition of “actual innocence”; instead some provisions of the Act repeat a lengthy description of a concept of actual innocence. See ss. 961.02(4), 961.03(3), and (7), F.S.

- Contest the eligibility of the petitioner to compensation.⁵

Without a stipulation from the prosecuting authority of the petitioner's innocence and eligibility, the original sentencing court, based on the pleadings and the supporting documents, must determine whether the petitioner's eligibility for compensation has been established by a preponderance of the evidence. If the court finds the petitioner is not eligible for compensation it must dismiss the petition.⁶

If the court finds the petitioner is eligible for compensation and the prosecuting authority contests the actual innocence of the petitioner, the court must set forth its findings and transfer the petition to the Division of Administrative Hearings (DOAH) for a hearing before an administrative law judge. The administrative law judge must make factual findings regarding the petitioner's actual innocence and draft a recommended order on the determination of whether the petitioner has established by clear and convincing evidence that he or she is a wrongfully incarcerated person.⁷ The administrative law judge must file its findings and recommended order within 45 days of the hearing's adjournment.⁸ The original sentencing court must review the findings and recommendation of the administrative law judge and issue its own order declining or adopting the recommended order within 60 days.⁹

If, after review of the administrative law judge's findings and recommendations, the court determines that the person is a wrongfully incarcerated person eligible for compensation, the court must include in its order a certification stating:

- That:
 - The administrative law judge found that the petitioner met his or her burden required under the act by clear and convincing evidence; or
 - The court declines to adopt the findings and recommendation of the administrative law judge that the petitioner did not meet his or her burden and that the court makes its own findings that the petitioner has met his or her burden as required under the act; and
- That the findings and recommendations on which its order is based is supported by competent, substantial evidence.¹⁰

Eligibility

To be eligible for compensation, a wrongfully incarcerated person must not have a disqualifying felony, which is:

- The person had a prior conviction or pled guilty or nolo contendere to a felony offense in this state, a federal offense that is a felony, or to an offense in another state that would be a felony in this state;
- The person was convicted of, or pled guilty or nolo contendere to, a felony offense while wrongfully incarcerated; or
- While wrongfully incarcerated, the person was serving a concurrent sentence for another felony for which the person was not wrongfully convicted.¹¹

The Application Process

A petitioner who is found to be a "wrongfully incarcerated person" under the Act has two years to initiate an application for compensation with the Department of Legal Affairs after the original sentencing court enters its order.¹² Only the petitioner, not his or her estate or personal representative

⁵ Section 961.03(2)(a) and (b), F.S.

⁶ Section 961.03(4)(a), F.S.

⁷ Section 961.03(4)(b), F.S.

⁸ Section 961.03 (5)(c), F.S.

⁹ Section 961.03(5)(d), F.S.

¹⁰ Section 961.03(7), F.S.

¹¹ Section 961.04, F.S.

¹² Section 961.05(1) and (2), F.S.

of the estate, may apply for compensation.¹³ Section 961.05(4), F.S., lists the content requirements of an application for compensation. In part, it requires that the application include:

- A certified copy of the order vacating the conviction and sentence;
- A certified copy of the original sentencing court's order finding the claimant to be a wrongfully incarcerated person who is eligible for compensation under the Act;
- Certified copies of the original judgment and sentence; and
- Documentation demonstrating the length of the sentence served, including documentation from the Department of Corrections regarding the person's admission into and release from the custody of the Department of Corrections.¹⁴

Compensation

Under s. 961.06, F.S., a “wrongfully incarcerated person” is entitled to:

- Monetary compensation, at the rate of \$50,000 for each year of wrongful incarceration¹⁵;
- A waiver of tuition and fees for up to 120 hours of instruction at a public career center, community college, or state university;
- A refund of fines, penalties, and court costs imposed and paid;
- Reasonable attorney’s fees and expenses incurred and paid in connection with all criminal proceedings and appeals; and
- Immediate expunction, including administrative expunction, of the person’s criminal record of the wrongful arrest, conviction, and incarceration.¹⁶

Total compensation awarded may not exceed \$2 million.¹⁷ Any compensation awarded is paid through an annuity purchased by the Chief Financial Officer on behalf of the “wrongfully incarcerated person” to be paid out over a ten year term.¹⁸

Claims Made Under Chapter 961, F.S.

Since 2008, three petitioners have been compensated under the Act.¹⁹ Several petitioners have been denied compensation due to the peculiarity of their case and the requirements of the Act. For example, James J. Richardson filed a petition for compensation under the Act on August 25, 2008. The state attorney’s office filed a response contesting the petition. The facts of Mr. Richardson’s case are detailed below.

On October 25-26, 1967, the seven children of James Joseph Richardson died in Arcadia, Florida, after eating food laced with the pesticide parathion.²⁰ Mr. Richardson was convicted of first-degree murder in May 1968 and sentenced to death. In 1972, the sentence was commuted to life in prison. Thereafter, in August 1988, the Sarasota Herald Tribune revealed that the children’s former babysitter, Betsy Reese, admitted to killing all seven of Mr. Richardson’s children.²¹

In October 1988, evidence was provided to Governor Bob Martinez which indicated that exculpatory evidence was not provided to Mr. Richardson’s counsel prior to trial. Pursuant to the Governor’s

¹³ Section 961.05(2), F.S.

¹⁴ Section 961.05(4), F.S.

¹⁵ “For persons found to be wrongfully incarcerated after December 31, 2008, the Chief Financial Officer may adjust the annual rate of compensation for inflation using the change in the December-to-December ‘Consumer Price Index for All Urban Consumers’ of the Bureau of Labor Statistics of the Department of Labor.” Section 961.06(1)(a), F.S. Thus, \$50,000 in 2008 adjusted for inflation is \$54,523.39 in 2014. See CPI Inflation Calculator, Bureau of Labor Statistics, http://www.bls.gov/data/inflation_calculator.htm (last visited April 9, 2014).

¹⁶ Section 961.06(1), F.S.

¹⁷ *Id.*

¹⁸ Section 961.06(4), F.S. The Chief Financial Officer shall purchase the annuity using general revenue funds or another source designated by the Legislature. Section 961.06(3), F.S.

¹⁹ <http://floridainnocence.org/content/?p=8971> (last visited on April 4, 2014).

²⁰ *State v. James Joseph Richardson*, Sworn Petition Seeking Status as a Wrongfully Incarcerated Person Who Is Eligible for Compensation, Case No. 3302-D (Fla. 12th Cir. Tr. Ct. 2008).

²¹ *Id.*

executive order, State Attorney Janet Reno of the Eleventh Judicial Circuit was assigned to conduct an investigation into the murder. State Attorney Reno concluded that “[i]t is apparent, after a review of all evidence obtained in the original investigation and ensuing investigations, that not only couldn’t the State prove James Richardson was guilty beyond a reasonable doubt, but James Richardson was probably wrongfully accused.”²²

In April 1989, Mr. Richardson was released from incarceration pending the final investigative report of State Attorney Reno. Subsequent to the conclusion of the investigation, all charges against Mr. Richardson arising out of the death of his children were nolle prossed²³ by the State Attorney, and Mr. Richardson’s judgment, conviction, and sentence were vacated by the court in 1989. Altogether, Mr. Richardson served 21.5 years of incarceration.

Because the state attorney’s office contested the petition, the petition was referred to the Division of Administrative Hearings (DOAH) for an evidentiary hearing. The hearing, by way of video teleconference with sites in Miami and Tallahassee, was conducted on July 17, 2009.²⁴ The administrative law judge determined that there was a clear “absence of evidence proving the Petitioner guilty beyond a reasonable doubt.”²⁵ However, the administrative law judge concluded that the Petitioner failed to meet his burden of proving actual innocence by clear and convincing evidence and denied the petition for compensation.²⁶

Effect of the Bill

The bill exempts certain petitioners from being required to prove their actual innocence, and from complying with various other eligibility and procedural requirements, when applying for compensation under the Act.²⁷ The exemption applies if:

- The petitioner was convicted and sentenced to death prior to December 31, 1979;
- The Governor issues an executive order appointing a special prosecutor to review the petitioner’s conviction; and
- The special prosecutor enters a nolle prosequi for the charges for which the petitioner was convicted.

Under the bill, just as for other claims for compensation under ch. 961, F.S., only the wrongfully incarcerated person may pursue a claim. An estate or a personal representative of an estate is prohibited from filing a claim on behalf of a wrongfully incarcerated person. The bill also exempts eligible petitioners from s. 961.04, F.S., which denies compensation for any petitioner who has a disqualifying felony.²⁸

The bill creates an alternate application process for those petitioners eligible for the exemption. The application process set forth in the bill requires that only the wrongfully incarcerated petitioner can apply for compensation and has to do so by July 1, 2016. The application process in the bill mirrors the existing application process in s. 961.05, F.S., except that instead of submitting “a certified copy of the order vacating the conviction and sentence,”²⁹ the petitioner must submit a certified copy of the nolle prosequi or nolle prosequi memorandum. The petitioner has to adhere to similar existing application requirements, such as providing fingerprints and being subject to a criminal records check.

²² *Id.* at 4-5.

²³ A nolle prosequi means “to abandon a suit or prosecution.” BLACK’S LAW DICTIONARY (9th ed. 2009). A nolle prosequi, unlike a judgment of acquittal, has no probative value as to a defendant’s guilt or innocence. *Holland v. State*, 432 So.2d 60 (Fla. 1st DCA 1983).

²⁴ *James Joseph Richardson v. State*, Case No. 09-2718VWI (Fla. DOAH 2009).

²⁵ *Id.* at 21.

²⁶ *Id.*

²⁷ Sections 961.03, 961.04, 961.05, F.S.

²⁸ It appears that Richardson would pass this “clean hands” provision even without the exemption. See *James Joseph Richardson v. State*, Case No. 09-2718VWI (Fla. DOAH 2009).

²⁹ Section 961.05(4)(a), F.S.

The bill makes it a first degree misdemeanor for a person to accept any portion of the claimant's compensation as payment for attorney's fees, lobbyist fees, or costs relating to assisting the claimant in receiving such compensation.³⁰

It appears that James Richardson would be entitled to receive compensation as a victim of wrongful incarceration pursuant to the provisions of this bill. It is unlikely any other person will qualify under the newly created exemption.

The bill permits the Chief Financial Officer (CFO) to purchase multiple annuities selected by a wrongfully incarcerated person, instead of a single annuity, for compensation awarded under chapter 961. In purchasing the annuities, the CFO must maximize the benefits to the wrongfully incarcerated person.

Both the exemption and alternate application process created in the bill are repealed on July 1, 2018.

B. SECTION DIRECTORY:

Section 1. Creates section 961.055, F.S., relating to application for compensation for a wrongfully incarcerated person; exemption from application by nolle prosequi.

Section 2. Creates section 961.056, F.S., relating to alternative application for compensation for a wrongfully incarcerated person.

Section 3. Amends section 961.06, F.S., relating to compensation for wrongful incarceration.

Section 4. Provides an effective date of July 1, 2014.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

Current law contains a continuing appropriation from the General Revenue Fund to the Chief Financial Officer in an amount sufficient to pay the approved payments under the "Victims of Wrongful Incarceration Compensation Act".³¹

It is unknown how many petitioners would receive compensation under the bill or which fiscal year state funds would be paid, however, it is likely to apply only to James Richardson. Mr. Richardson could be eligible under the provisions of the bill to receive \$1.05 million (\$50,000 per year for 21.5 years he spent in prison).³² The Chief Financial Officer is authorized to adjust the annual amount of compensation for inflation using the Consumer Price Index.³³ If this adjustment is made, Mr. Richardson could be eligible to receive at least \$1,172,252.89. He could also be entitled to a refund of any fines, penalties, and court costs he paid as well as reasonable attorney's fees and expenses incurred and paid in connection with all criminal proceedings and appeals regarding the wrongful conviction.

³⁰ A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

³¹ Section 961.07, F.S.

³² See s. 961.06, F.S.

³³ Section 961.06(1)(a). F.S.

The Office of the State Courts Administrator does not expect a fiscal impact on the courts.³⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of the bill may result in at least one individual receiving compensation for wrongful incarceration.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, Section 10 of the Florida Constitution provides that “no . . . law impairing the obligation of contracts shall be passed.” Furthermore, the Contract Clause of Article I, Section 10 of the United States Constitution prohibits states from passing laws which impair contract rights. These provisions empower courts to strike laws that retroactively burden or alter contractual relations.³⁵ The bill prohibits any person from accepting any portion of the claimant’s compensation as payment for any attorney’s fees, lobbyist fees, or costs associated with assisting the claimant receiving such compensation. While it is already illegal for a lobbyist to accept compensation contingent on enactment of specific legislation,³⁶ this prohibition in the bill may impair existing contracts. This provision could be challenged as a violation of the contracts clause of the state and federal constitution.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill exempts eligible petitioners from s. 961.04, F.S., which denies compensation for any petitioner who was convicted of a felony prior or during their wrongful incarceration. Thus, an eligible petitioner under the bill would be able to receive compensation even if they had a felony prior to their wrongful incarceration whereas a petitioner with a disqualifying felony not fitting the exception created by the bill would be barred because of the “clean hands” provision.

³⁴ Office of the State Courts Administrator, *2014 Judicial Impact Statement HB 227* (January 9, 2014)(on file with House Criminal Justice Subcommittee).

³⁵ *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978); *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So.2d 774 (Fla. 1979).

³⁶ Section 11.047(2), F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 8, 2014, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Authorize the Chief Financial Officer (CFO) to purchase multiple annuities selected by a wrongfully incarcerated person instead of a single annuity; and
- Make it a first degree misdemeanor to accept any portion of the claimant's compensation as payment for attorney's fees, lobbyist fees, or costs relating to assisting the claimant in receiving such compensation.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.