

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 326

INTRODUCER: Judiciary Committee and Senator Thompson

SUBJECT: Victims of Wrongful Incarceration

DATE: February 11, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Brown	Cibula	JU	Fav/CS
2.			CJ	
3.			AP	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 326 amends the “Victims of Wrongful Incarceration Compensation Act” to make a limited expansion in the type of evidence a claimant may use as proof of eligibility for compensation as a wrongfully incarcerated person. Under the bill, a claimant is “innocent of the offenses charged” and eligible for compensation if:

- The Governor by an executive order appointed a special prosecutor to review the claimant’s conviction;
- The special prosecutor entered a nolle prosequi for charges for which the claimant was convicted and sentenced to death; and
- The claimant was convicted and sentenced to death before January 1, 1980.

Under current law, a claimant’s eligibility for compensation is established through a court order vacating the claimant’s conviction and sentence as the result of exonerating evidence.

A claimant who is eligible for compensation under the criteria in the bill must apply to the Department of Legal Affairs for compensation. The same application documents currently required for compensation under the existing criteria are required for a claimant who is eligible for compensation under the bill, except that the certified copy of the nolle prosequi or nolle prosequi memorandum replaces the requirement of the court order vacating conviction and sentence.

Current amounts and forms of compensation, such as monetary compensation, an educational tuition and fee waiver, and the reimbursement of fines, penalties, court costs, and reasonable attorney's fees available to wrongfully incarcerated persons are equally available to wrongfully incarcerated persons qualifying for redress under the bill. Similarly, timelines for the Department of Legal Affairs to review an application and related decision-making are the same as in current law.

The bill does not affect the provision of existing law which makes a wrongfully incarcerated person ineligible for compensation as the result of a disqualifying felony conviction.

A claimant seeking compensation under the expanded eligibility criteria in the bill must apply to the DLA by July 1, 2016.

II. Present Situation:

Wrongful Incarceration Act

The Florida Legislature established the "Victims of Wrongful Incarceration Compensation Act" (Act) in 2008.¹ The Act defines a wrongfully incarcerated person as:

a person whose felony conviction and sentence have been vacated by a court of competent jurisdiction and ... 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.²

Disqualifying Felonies

To be eligible for compensation, a wrongfully incarcerated person must not have a disqualifying felony, which is one of the following situations:

- 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.³

Court Process of Establishing Status as a Wrongfully Incarcerated Person

The claimant first files a petition with the original sentencing court seeking status as a wrongfully incarcerated person eligible for compensation. The claimant must allege in

¹ Chapter 2008-39, L.O.F.

² Section 961.02(4), F.S.

³ Section 961.04, F.S.

the petition that verifiable and substantial evidence of actual innocence exists and that the claimant is not disqualified from seeking compensation.⁴

The prosecuting authority has 30 days to submit a response to the court.⁵

Based on the prosecuting attorney's response, the court will either find that the petitioner has met his or her burden through clear and convincing evidence of innocence, or that based on a preponderance of the evidence, that the petitioner is ineligible for compensation due to a separate disqualifying felony.⁶ If the court finds the petitioner ineligible, the court will dismiss the petition.⁷

If the prosecuting attorney contests the petition and raises issues of fact on the question of innocence, an administrative law judge must determine whether the petitioner is eligible for compensation.⁸ The original sentencing court will then review the administrative law judge's finding and issue its own order within 60 days.⁹

Application Requirements for the Department of Legal Affairs

After receiving a court order vacating the conviction and the sentence, the claimant must file an application with the Department of Legal Affairs (DLA) within 2 years after the original sentencing court enters its order finding that the person is a wrongfully incarcerated person eligible for compensation.¹⁰

The claimant must provide through application:

- 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 (meaning not disqualified);
- Certified copies of the original judgment and sentence;
- Documentation of the length of sentence served, including from the Department of Corrections (DOC) showing the person's admission and release from the custody of the DOC;
- Proof of identification, including two sets of fingerprints taken by a law enforcement agency and a current form of photo identification, showing that the applicant is the person wrongfully incarcerated;
- Supporting documentation of fines, penalties, and court costs imposed and paid by the wrongfully incarcerated person;
- Supporting documentation of reasonable attorney's fees and expenses; and
- Any documentation required by the DLA.¹¹

⁴ Section 961.03(1)(a)1. and 2., F.S.

⁵ Section 961.03(2), F.S.

⁶ Section 961.03(3) and (4), F.S.

⁷ Section 961.03(4)(a), F.S.

⁸ Section 961.03(5), F.S.

⁹ Section 961.03(6)(d), F.S.

¹⁰ Section 961.05(1), F.S.

¹¹ Section 961.05(4), F.S.

The DLA forwards one set of fingerprints each to the Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) for a criminal records background check of the applicant.¹²

The DLA must notify the applicant of errors or omissions within 30 calendar of days after receipt of the application and provide an opportunity to correct the application within 15 days.¹³

The DLA has 90 days to process a claim and must notify the claimant within 5 business days after its determination. If the DLA determines that the applicant meets all requirements, the applicant is eligible for compensation.¹⁴

Compensation

Compensation consists of:

- Monetary compensation, at the rate of \$50,000 for each year of wrongful incarceration, subject to proration and inflation based on the Consumer Price Index;
- 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; and
- Immediate expunction, including administrative expunction, of the person's criminal record of the wrongful arrest, conviction, and incarceration.

Total compensation is capped at \$2 million.¹⁵

Wrongfully Incarcerated Persons Ineligible for Relief under Chapter 961, F.S.

Although the Wrongful Incarceration Act specifically provides compensation for wrongfully incarcerated persons, not all wrongfully incarcerated persons are eligible for relief under the Act. A case in point is that of James Joseph Richardson. He was sentenced to death for murdering one of his children in 1968 (during which time all of his seven children died of poisoning). His conviction was upheld by the Florida Supreme Court in 1971.¹⁶ Mr. Richardson filed a second appeal to the Florida Supreme Court in 1989, under a claim of a writ of error coram nobis.¹⁷ The court again upheld his conviction and sentence.

¹² Section 961.05(5), F.S.

¹³ Section 961.05(6), F.S.

¹⁴ Section 961.05(6) and (7), F.S.

¹⁵ Section 961.06(1), F.S.

¹⁶ *Richardson v. State*, 247 So. 2d 296 (Fla. 1971); Mr. Richardson's death sentence was later converted to life imprisonment without the possibility of parole for 25 years, due to the United States Supreme Court decision in *Furman v. Georgia*, 408 U.S. 238 (1972), which found unconstitutional procedural errors in capital cases and required conversion of all death penalty convictions to life sentences.

¹⁷ A writ of error coram nobis is a common law writ designed to correct errors of fact which do not appear in the record, but affect the validity of the judgment. 47 AM. JUR. 2D JUDGMENTS S. 656. The Florida Supreme Court ruled the writ of error coram nobis inadequate, as this common law writ was largely replaced by Rule 3.850, Fla. R. of Crim. Proc., as the preferred method for a defendant to challenge a conviction through a collateral attack. *Richardson v. State*, 546 So. 2d 1037, 1037-1038 (Fla. 1989).

Shortly thereafter, on July 31, 1989, through an Executive Order, the Governor appointed a special prosecutor to review Mr. Richardson's case.¹⁸ The special prosecutor found Mr. Richardson's case replete with errors, raising serious questions about his guilt.¹⁹ Because of this, the special prosecutor entered a Nolle Prose Memorandum in Mr. Richardson's case on May 5, 1989, vacating his conviction and sentence, and releasing Mr. Richardson from prison after 21 years of incarceration.

Mr. Richardson attempted to secure monetary relief for wrongful incarceration through filing a petition in circuit court under ch. 961, F.S. Mr. Richardson was the first person to file a claim under the Act.²⁰ Although the circuit judge found that Mr. Richardson was not ineligible based on a disqualifying felony conviction, the prosecutor challenged Mr. Richardson's claims of innocence. An administrative law judge appointed to determine whether Mr. Richardson was actually innocent, ruled in 2009 that Mr. Richardson failed to meet the burden of proving actual innocence through clear and convincing evidence.²¹ Specifically, the administrative law judge stated:

A review of the Nolle Prose Memorandum and the detailed evidence it discusses makes it clear that Petitioner was wrongfully accused based upon the evidence and lack of evidence the prosecution had gathered. It is further clear that Petitioner's conviction and sentence based upon that insufficient evidence should have been vacated, and they were. . . . A review of the two investigations of Petitioner's prosecution clearly shows an absence of evidence proving Petitioner guilty beyond a reasonable doubt. However, a review of the two investigations does not show that Petitioner is actually innocent.²²

III. Effect of Proposed Changes:

The bill makes a limited expansion in the type of evidence a claimant may use as proof of eligibility for compensation as a wrongfully incarcerated person under the "Victims of Wrongful Incarceration Compensation Act." Under the bill, a claimant is "innocent of the offenses charged" and eligible for compensation if:

- The Governor by an executive order appointed a special prosecutor to review the claimant's conviction;
- The special prosecutor entered a nolle prosequi for charges for which the claimant was convicted and sentenced to death; and
- The claimant was convicted and sentenced to death before January 1, 1980.

¹⁸ Executive Order Number 89-23.

¹⁹ Special Prosecutor Janet Reno noted in support in the Nolle Prose Memorandum conflicting evidence, apparent perjured testimony, prosecutorial suppression of exculpatory evidence, and a failure of law enforcement to follow standard investigative procedure. The Memorandum concluded that the complainant "was probably wrongfully accused." Janet Reno, Special Prosecutor, Nolle Prose Memorandum in *State v. Richardson* (Case Number 3302-D) (May 5, 1989).

²⁰ The Florida Senate, Issue Brief 2012-215, *Victims of Wrongful Incarceration Act Implementation and Claims*, p. 2 (September 2011).

²¹ *Richardson v. State*, 2009 WL 2588851 (Fla. Div. Admin. Hrgs.) (August 21, 2009).

²² *Richardson v. State*, 2009 WL 2588851, p. 7, 9 (Fla. Div. Admin. Hrgs.) (August 21, 2009).

Under current law, a claimant's eligibility for compensation is established through a court order vacating the claimant's conviction and sentence as the result of exonerating evidence.

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.

To receive compensation, the wrongfully incarcerated person must submit an application to the DLA which includes:

- A certified copy of the nolle prosequi or nolle prosequi memorandum;
- Certified copies of the original judgment and sentence;
- Documentation of the length of sentence served, including from the Department of Corrections (DOC) showing the person's admission and release from the custody of the DOC;
- Proof of identification, including two sets of fingerprints taken by a law enforcement agency of this state and a current form of photo identification;
- Supporting documentation of fines, penalties, and courts costs imposed and paid by the wrongfully incarcerated person;
- Supporting documentation of reasonable attorney's fees and expenses; and
- Any documentation required by the Department of Legal Affairs.

Application requirements are identical to the current requirements under s. 961.05, F.S., except that, instead of requiring a court order vacating conviction and sentence, the nolle prosequi entered into by the special prosecutor is required. Likewise, a mandatory background check confirming an absence of disqualifying felonies remains in place. And the timelines for the DLA to process applications are the same.

If the DLA determines that a claimant meets the requirements of the Act, the wrongfully incarcerated person is entitled to the same forms and amounts of compensation currently provided in law.

This bill clarifies that the Chief Financial Officer (CFO) may purchase multiple annuities selected by a wrongfully incarcerated person, instead of a single annuity, with the compensation awarded under the Victims of Wrongful Incarceration Compensation Act. In purchasing the annuities, the CFO must maximize the benefits to the wrongfully incarcerated person.

A claimant seeking compensation under the expanded eligibility criteria in the bill must apply to the DLA by July 1, 2016.

The bill takes effect July 1, 2014 and is repealed July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Office of the State Courts Administrator does not expect a fiscal impact.²³

The Department of Legal Affairs (DLA) does not expect a fiscal impact. To date, the DLA indicates that seven claims have been made since the inception of ch. 961, F.S., in 2008. Of these, three claims have been paid in the cases of Leroy McGee (2010), James Bain (2011), and Luis Diaz (2012). The DLA denied 1 claim, that of Jarvis McBride (2012). Three other claims resulted in findings of ineligibility or incomplete submission of application: Robert Lewis (2011), Edwin Lampkin (2012), and Ricardo Johnson (2013).

The DLA has incurred insignificant costs to process applications for compensation due to the scarcity of claims to date and because the claimant is responsible for providing necessary documentation.²⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 961.055 and 961.056 of the Florida Statutes.

²³ Office of the State Courts Administrator, *2014 Judicial Impact Statement SB 326* (February 6, 2014).

²⁴ Email correspondence with Rob Johnson, Director of Legislative and Cabinet Affairs, Office of the Attorney General (February 5, 2014).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on February 11, 2014:

The committee substitute:

- Clarifies that the Chief Financial Officer (CFO) may purchase multiple annuities selected by a wrongfully incarcerated person instead of a single annuity.
- Specifies that in entering into annuity contracts for the compensation awarded under the Victims of Wrongful Incarceration Compensation Act, the CFO must maximize the benefit to the wrongfully incarcerated person.

- B. **Amendments:**

None.