

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 162

INTRODUCER: Senators Joyner and Bradley

SUBJECT: Compensation of Victims of Wrongful Incarceration

DATE: February 27, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Favorable</b>
2.			JU	
3.			ACJ	
4.			FP	

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**I. Summary:**

SB 162 amends ch. 961, F.S. Chapter 961, F.S., provides a process whereby a person who has been incarcerated due to a felony conviction may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation.

Under current law, regardless of the fact of his or her wrongful incarceration, the person is not eligible for compensation if he or she has a criminal history that includes a felony.<sup>1</sup>

He or she is also ineligible for compensation if during the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense.<sup>2</sup> Likewise, a felony law violation leading to revocation of parole or community supervision being served on the sentence that resulted in the wrongful incarceration, means the person is not eligible for compensation.<sup>3</sup>

The bill creates a definition of the term "violent felony" in s. 961.02, F.S. The bill provides that in order to be found ineligible for compensation under ss. 961.04(1), (2), or 961.06(2), F.S., the person must have committed a violent felony, not a simple felony, under the circumstances set forth in those sections.

The practical effect of the bill cannot be determined with any certainty. It appears the bill would increase the pool of people who could seek compensation under the statute based upon the relaxation of the ineligibility standard from "simple felony" to "violent felony." However, it

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<sup>1</sup> Section 961.04(1), F.S.

<sup>2</sup> Section 961.04(2), F.S.

<sup>3</sup> Section 961.06(2), F.S.

cannot be known or predicted how many cases of wrongful incarceration currently exist or may occur in the future or whether a person in the expanded pool will be or currently is wrongfully incarcerated. Without the existence of a wrongful incarceration, the standard for seeking redress is immaterial.

## II. Present Situation:

The Victims of Wrongful Incarceration Compensation Act (the Act) has been in effect since July 1, 2008.<sup>4</sup> The Act provides a process whereby a person may petition the original sentencing court for an order finding the petitioner to be a wrongfully incarcerated person who is eligible for compensation.

The 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.<sup>5</sup>

The prosecuting authority's response to the petition may be to either:

- Certify to the court that, based upon the petition and verifiable and substantial evidence of actual innocence, no further criminal proceedings in the case can or will be initiated by the prosecuting authority, that no questions of fact remain as to the petitioner's wrongful incarceration, and that the petitioner is not ineligible from seeking compensation under the provisions of s. 961.04, F.S.; or
- Contest the nature, significance, or effect of the evidence of actual innocence, the facts related to the petitioner's alleged wrongful incarceration, or whether the petitioner is ineligible from seeking compensation under the provisions of s. 961.04, F.S.

If the court finds the petitioner ineligible for compensation under s. 961.04, F.S., regardless of his or her wrongful incarceration claim, the court must dismiss the petition.<sup>6</sup> If, however, the petition is not dismissed but the petition is contested by the prosecutor, the matter proceeds to a hearing before an administrative law judge.<sup>7</sup>

At the hearing, the petitioner must establish by clear and convincing evidence that the petitioner committed neither the act nor the offense that served as the basis for the conviction and incarceration and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense.<sup>8</sup>

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<sup>4</sup> Chapter 961, F.S. (2008-39, Laws of Florida). To date, three persons have been compensated under the Act; one claim has recently been approved and forwarded to the Chief Financial Officer. (correspondence with the Office of the Attorney General, February 18, 2015.)

<sup>5</sup> Section 961.03(1), F.S.

<sup>6</sup> Section 961.03 (2)-(4), F.S.

<sup>7</sup> Section 961.03(5), F.S.

<sup>8</sup> Section 961.03(5) and (6), F.S. Ultimately, the original sentencing court will either adopt or decline to adopt the findings and recommendation of the administrative law judge. The court must then enter its final order in the matter either certifying the petitioner to be a wrongfully incarcerated person or denying the petition. s. 961.03(6)(d) and (7), F.S. If the order is favorable, the petitioner may apply to the Department of Legal Affairs for compensation.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.<sup>9</sup> The Chief Financial Officer arranges for payment of the claim by securing an annuity or annuities payable to the claimant over at least 10 years, calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.<sup>10</sup>

To date, three persons have been compensated under the Act. One additional claim has recently been through the application process and forwarded to the Chief Financial Officer.<sup>11</sup>

### **“Clean Hands” Provision of the Act – Section 961.04, Florida Statutes**

In cases where sufficient evidence of actual innocence exists, a person is nonetheless *ineligible* for compensation if:

- *Before* the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any felony offense*, or a crime committed in another jurisdiction the elements of which would constitute a felony in this state, or a crime committed against the United States which is designated a felony, excluding any delinquency disposition;
- *During* the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, *any felony offense*; or
- *During* the person's wrongful incarceration, the person was also serving a *concurrent sentence for another felony* for which the person was not wrongfully convicted.<sup>12</sup>

Of the 30 states that have statutes that provide for compensation for wrongfully incarcerated persons, Florida is the only state with a “clean hands” provision.<sup>13</sup>

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<sup>9</sup> Section 961.05, F.S.

<sup>10</sup> Additionally, the wrongfully incarcerated person is entitled to: waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any community college as defined in s. 1000.21(3), F.S., or any state university as defined in s. 1000.21(6), F.S., if the wrongfully incarcerated person meets and maintains the regular admission requirements of such career center, community college, or state university; remains registered at such educational institution; and makes satisfactory academic progress as defined by the educational institution in which the claimant is enrolled; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; the amount of any reasonable attorney's fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals regarding the wrongful conviction, to be calculated by the department based upon the supporting documentation submitted as specified in s. 961.05, F.S.; and notwithstanding any provision to the contrary in s. 943.0583, F.S., or s. 943.0585, F.S., immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. s. 961.06, F.S.

<sup>11</sup> Correspondence with the Office of the Attorney General, February 18, 2015.

<sup>12</sup> Section 961.04, F.S.

<sup>13</sup> *Making Up for Lost Time*, page 19, The Innocence Project, Benjamin N. Cardozo School of Law, [www.innocenceproject.org](http://www.innocenceproject.org); (“Clean hands” meaning that a person is ineligible for compensation if he or she has prior felony offenses to the one for which compensation is being sought.). Note that Hawaii is currently considering a statute. Other states generally take these matters up by “personal bills,” a process much like Florida's claim bill process.

### **Wrongfully Incarcerated - Placed on Parole or Community Supervision for the Offense**

A person could be wrongfully incarcerated for a crime and then placed on parole or community supervision for that crime after the incarcerative part of the sentence is served.<sup>14</sup>

Section 961.06(2), F.S., addresses this situation in terms of eligibility for compensation for the period of wrongful incarceration. Under this provision if a person commits a misdemeanor or some technical violation of his or her supervision that results in revocation of the community supervision or parole, the person is still eligible for compensation. If, however, it is a felony law violation resulting in revocation, the person is no longer eligible for compensation.<sup>15</sup>

### **III. Effect of Proposed Changes:**

The bill amends the Wrongful Incarceration Act so that a person who otherwise meets the statutory criteria<sup>16</sup> for compensation is not ineligible due to a prior felony, a felony committed while wrongfully incarcerated, or a felony committed while on parole or community supervision.

The bill provides that in order to be found ineligible for compensation under ss. 961.04(1), (2), or 961.06(2), F.S., the person must have committed a violent felony, not a simple felony, under the circumstances set forth in those sections. Specifically,

- Before the person's wrongful incarceration, he or she committed a violent felony;
- During the person's wrongful incarceration, he or she committed a violent felony; or
- During a period of parole or community supervision on the sentence that led to his or her wrongful incarceration, the person committed a violent felony which resulted in the revocation of the parole or community supervision.

"Violent felony" is defined in the bill by cross-referencing ss. 775.084(1)(c)1. and 948.06(8)(c), F.S. The combined list of those offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar. The violent felony offenses which would preclude a wrongfully incarcerated person from being eligible for compensation under the bill are:

- Kidnapping
- False imprisonment of a child
- Luring or enticing a child
- Murder
- Manslaughter
- Aggravated manslaughter of a child
- Aggravated manslaughter of an elderly person or disabled adult

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<sup>14</sup> Persons are not eligible for parole in Florida unless they were sentenced prior to the effective date of the sentencing guidelines which was October 1, 1983, and only then if they meet the statutory criteria. Ch. 82-171, Laws of Florida; s. 947.16, F.S. The term "community supervision" as used in s. 961.06(2), F.S., could include control release, conditional medical or conditional release under the authority of the Commission on Offender Review (ch. 947, F.S.) or community control or probation under the supervision of the Department of Corrections (ch. 948, F.S.).

<sup>15</sup> Section 961.06(2), F.S.

<sup>16</sup> The person committed neither the act nor the offense that served as the basis for the conviction and incarceration and that the petitioner did not aid, abet, or act as an accomplice to a person who committed the act or offense. s. 961.03(5) and (6), F.S.

- Robbery
- Carjacking
- Home invasion robbery
- Sexual Battery
- Aggravated battery
- Armed burglary and other burglary offenses that are first or second degree felonies
- Aggravated child abuse
- Aggravated abuse of an elderly person or disabled adult
- Arson
- Aggravated assault
- Unlawful throwing, placing, or discharging of a destructive device or bomb
- Treason
- Aggravated stalking
- Aircraft piracy
- Abuse of a dead human body
- Poisoning food or water
- Lewd or lascivious battery, molestation, conduct, exhibition, or exhibition on computer
- Lewd or lascivious offense upon or in the presence of an elderly or disabled person
- Sexual performance by a child
- Computer pornography
- Transmission of child pornography and
- Selling or buying of minors.

The bill reorganizes s. 961.02, F.S., the “definitions” section of the Act so the definitions are in alphabetical order. Additionally, the bill reenacts ss. 961.03(1)(a), (2), (3), and (4), F.S., and s. 961.055(1), F.S., to incorporate the amendments to s. 961.04, F.S., made by the bill.

The bill will become effective October 1, 2015.

#### **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:**

A person who is entitled to compensation under the Act will be paid at the rate of \$50,000 per year of wrongful incarceration up to a limit of \$2 million. Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. It is possible that more persons will be eligible for compensation under the provisions of the bill.

**C. Government Sector Impact:**

Although the statutory limits on compensation under the Act are clear, the actual fiscal impact of the bill is unquantifiable. The possibility that a person will be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently exist or might exist in the future.

There have been three successful claims since the Act became effective. An additional claim is currently in the Office of the Chief Financial Officer awaiting payment arrangements.

The Office of the Attorney General, the office that processes applications for compensation, reports that applications of two persons claiming to be eligible for compensation were actually not eligible. Two other claims lack complete documentation and are currently being investigated. Since the Act became effective, there have been an additional 22 inquiries to the Office of the Attorney General but no further communication from those persons.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 961.02, 961.04, 961.06, 961.03, and 961.055.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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