

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 331 Compensation of Victims of Wrongful Incarceration

**SPONSOR(S):** Appropriations Committee; DuBose

**TIED BILLS:** None **IDEN./SIM. BILLS:** CS/SB 122

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N	Aziz	White
2) Appropriations Committee	21 Y, 3 N, As CS	McAuliffe	Leznoff
3) Judiciary Committee			

### 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. In order to apply for compensation, an applicant must not have a prior felony conviction, pled guilty to a felony, or entered a plea of nole contedere to a felony. In addition, the applicant must not have received a felony conviction while incarcerated or while serving parole or supervised release for the wrongful incarceration.

Because of the provision barring applicants with prior felonies, several wrongfully incarcerated individuals have filed claim bills which may be granted in the Legislature's discretion. For example, in 2012, William Dillon received a claim bill for his 27 years of wrongful incarceration. Because Dillon had a single felony conviction for possession of a quaalaud, he was ineligible for compensation under the Act.

This bill changes the eligibility requirement under the Act to bar only applicants who have any prior violent felonies or more than one prior nonviolent felony, or any violent felonies or more than one nonviolent felony while wrongfully incarcerated. The Act defines violent felony as a felony listed under s. 775.084(1)(c)1. or s. 948.06(8)(c), F.S. These felonies include violent acts such as: murder, robbery, kidnapping and sexual battery. Thus, an applicant who has only one felony conviction that is not defined as a violent felony would be able to apply for compensation under the Act. However, the applicant still must demonstrate actual innocence before a Department of Administrative Hearings judge if the prosecution objects to the application. The bill also provides that changes made by the bill apply only to persons who are determined to be wrongfully incarcerated after the effective date of this act.

This bill expands the pool of persons who could be determined to be a wrongfully incarcerated person and therefore could increase the number of persons seeking compensation from the state. The number of persons who may qualify as a wrongfully incarcerated person and the amount of funding required to compensate them, cannot be determined. (See Fiscal Impact Statement) The bill does not appear to have a fiscal impact on local governments.

The bill is effective October 1, 2016.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Victims of Wrongful Incarceration Compensation Act**

In Florida, 13 people have been exonerated or released from incarceration since 2000 as a result of post-conviction DNA testing.<sup>1</sup> According to the National Registry of Exonerations<sup>2</sup> 57 people have been exonerated in Florida, and according to the Department of Corrections, 53 of those have served time in state prison of which 13 have already been compensated. 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.<sup>3</sup>

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”<sup>4</sup> who is “eligible for compensation.”<sup>5</sup>

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

- The Petition Process: s. 961.03, F.S., provides the process for determining whether a petitioner is a “wrongfully incarcerated person” and is “eligible for compensation.”
- Eligibility: s. 961.04, F.S., specifies criteria that render a petitioner ineligible for compensation.
- Application: s. 961.05, F.S., provides the process by which an eligible person may apply for compensation.
- Compensation: s. 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.

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<sup>1</sup> 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](http://floridainnocence.org/content/?page_id=34). (last visited on February 2, 2016).

<sup>2</sup> The National Registry of Exonerations, A project of the University of Michigan Law School. <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={b8342ae7-6520-4a32-8a06-4b326208baf8}&SortField=State&SortDir=Asc>

<sup>3</sup> Ch. 2008-39, Laws of Fla.

<sup>4</sup> 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.”

<sup>5</sup> 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.

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
- Contest the eligibility of the petitioner to compensation.<sup>6</sup>

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.<sup>7</sup>

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.<sup>8</sup> The administrative law judge must file its findings and recommended order within 45 days of the hearing's adjournment.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup>

### *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.<sup>12</sup>

### *The Application Process*

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<sup>6</sup> s. 961.03(2)(a) and (b), F.S.

<sup>7</sup> s. 961.03(4)(a), F.S.

<sup>8</sup> s. 961.03(4)(b), F.S.

<sup>9</sup> s. 961.03 (5)(c), F.S.

<sup>10</sup> s. 961.03(5)(d), F.S.

<sup>11</sup> s. 961.03(7), F.S.

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

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.<sup>13</sup> Only the petitioner, not his or her estate or personal representative of the estate, may apply for compensation.<sup>14</sup> 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.<sup>15</sup>

### *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 incarceration;
- 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.<sup>16</sup>

Total compensation awarded may not exceed \$2 million.<sup>17</sup>

### *The Problem with Clean Hands*

Since its inception, the Act has been scrutinized for its stringent eligibility requirement of blocking any claimant from applying if they have a prior felony or a felony while incarcerated. This eligibility requirement is known as “Clean Hands” for requiring the claimant to have clean hands before receiving compensation. For example, a claim bill was passed in 2012 for the wrongful incarceration of William Dillon.<sup>18</sup> Because of a prior felony conviction for a single quaalude, Dillon was barred from seeking compensation under the Act and instead had to come before the Legislature for passage of a claim bill.

Currently, there are 29 states that have a system to compensate wrongfully incarcerated individuals. Out of these states, only nine states have some form of clean hands provision blocking compensation for convictions, including three states that revoke compensation if the person is later convicted of a felony.<sup>19</sup> However, Florida is the only state that bars applicants for a prior felony.

### **Effect of the Bill**

This bill changes the eligibility requirement under the Act to bar only applicants who have any prior violent felonies or more than one prior nonviolent felony, or any violent felonies or more than one nonviolent felony while wrongfully incarcerated. The Act defines violent felony as a felony listed under s. 775.084(1)(c)1. or s. 948.06(8)(c), F.S. These felonies include

- Kidnapping;
- False imprisonment of a child;
- Luring or enticing a child;

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<sup>13</sup> s. 961.05(1) and (2), F.S.

<sup>14</sup> s. 961.05(2), F.S.

<sup>15</sup> s. 961.05(4), F.S.

<sup>16</sup> s. 961.06(1), F.S.

<sup>17</sup> *Id.*

<sup>18</sup> Ch. 2012-229, Laws of Fla.

<sup>19</sup> Alabama, Texas, and Virginia.

- Murder;
- Manslaughter;
- Aggravated manslaughter of a child;
- Aggravated manslaughter of an elderly person or disabled adult;
- 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.<sup>20</sup>

Under the bill, 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 any violent felony offense or more than one nonviolent felony in this state, a federal offense that is a violent felony or more than one nonviolent felony, or to an offense in another state that would be a violent felony or more than one nonviolent felony in this state;
- The person was convicted of, or pled guilty or nolo contendere to, a violent felony offense or more than one nonviolent felony 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.

Additionally, if a wrongfully incarcerated person is placed on parole or community supervision while serving the sentence resulting from the wrongful incarceration, the wrongfully incarcerated person is ineligible for compensation if he or she commits a violent felony or more than one nonviolent felony that results in revocation of the parole or community supervision.

Even if a claimant has only one non-violent felony they still have to follow the application procedures under the Act. This includes the opportunity for the State's Attorney to object to the compensation and force the claimant to prove actual innocence to a DOAH judge. The bill also provides that changes made by the bill apply only to persons who are determined to be wrongfully incarcerated after the effective date of this act.

## B. SECTION DIRECTORY:

Section 1. Amends s. 961.02, F.S., relating to definitions.

<sup>20</sup> ss. 775.084(1)(c)(1). 948.06(8)(c), F.S.

Section 2. Amends s. 961.04, F.S., relating to eligibility for compensation for wrongful incarceration.

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

Section 4. Reenacts s. 961.03, F.S., relating to determination of status as a wrongfully incarcerated person; determination of eligibility for compensation.

Section 5. Reenacts s. 961.055, F.S., relating to application for compensation for a wrongfully incarcerated person; exemption from application by nolle prosequi.

Section 6. Providing an effective date of October 1, 2016.

## **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:**

This bill expands the pool of persons who could be determined to be a wrongfully incarcerated person and therefore could increase the number of persons seeking compensation from the state. The number of persons who may qualify as a wrongfully incarcerated person after the effective date of this act and the amount of funding required to compensate them, cannot be determined.

The Office of the State Courts Administrator states "it is unknown how many additional petitions will be filed because of the broadened eligibility criteria. . .the fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the bill's impact on judicial workload."<sup>21</sup>

### **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:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

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<sup>21</sup> Office of the State Courts Administrator, Agency Analysis of 2016 Senate Bill 122 (Jan. 16, 2016).  
**STORAGE NAME:** h0331c.APC  
**DATE:** 2/17/2016

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:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 16, 2016, the House Appropriations Committee met and adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides:

- That a person is not eligible for compensation for wrongful incarceration if they were convicted of more than one felony that is not a violent felony; and
- The changes made by the bill apply only to persons who are determined to be wrongfully incarcerated after the effective date of this act.

This analysis is drafted to the committee substitute as passed by the House Appropriations Committee.