

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 393 Compensation of Victims of Wrongful Incarceration  
**SPONSOR(S):** Criminal Justice Subcommittee; DuBose  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 556

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Aziz	White
2) Justice Appropriations Subcommittee	12 Y, 0 N	Welty	Gusky
3) Judiciary Committee			

### SUMMARY ANALYSIS

In 2008, the Legislature passed the "Victims of Wrongful Incarceration Compensation Act" (Act) which establishes an administrative process to compensate a person who is determined to have been wrongfully incarcerated. Under current law, a person is not eligible for compensation for wrongful incarceration if he or she has a criminal history that includes any felony.<sup>1</sup> This is commonly known as the "clean hands" provision of Florida's wrongful incarceration compensation law.

The bill amends the above-described eligibility requirements to narrow the types of felonies which disqualify a person from receiving compensation for a wrongful incarceration. The bill provides a definition of the term "disqualifying felony" to mean, "any felony other than one or more felonies of the third degree that arise from a single criminal act, transaction, or episode." Accordingly, only persons who have a first or second degree felony conviction or who have a third degree felony conviction arising from a second or subsequent criminal act, transaction, or episode will be disqualified from receiving compensation under the Act.

The bill has an indeterminate fiscal impact on state government as it is unknown how many applicants would be eligible under the expanded criteria. The bill does not appear to have a fiscal impact on local governments.

The bill provides an effective date of October 1, 2017.

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

## 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>2</sup> The Victims of Wrongful Incarceration Compensation Act (Act) has been in effect since July 1, 2008. 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>3</sup> who is “eligible for compensation.”<sup>4</sup>

##### *Petition Process*

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
- Contest the eligibility of the petitioner to compensation.<sup>5</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>6</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 (ALJ). The ALJ 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>7</sup> The ALJ must file its findings and recommended

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<sup>2</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 March 22, 2017).

<sup>3</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>4</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.

<sup>5</sup> s. 961.03(2)(a) and (b), F.S.

<sup>6</sup> s. 961.03(4)(a), F.S.

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

order within 45 days of the hearing's adjournment.<sup>8</sup> The original sentencing court must review the findings and recommendation of the ALJ and issue its own order declining or adopting the recommended order within 60 days.<sup>9</sup>

### *Eligibility*

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

- Was convicted 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 before his or her wrongful conviction or incarceration.
- Was convicted of, or pled guilty or nolo contendere to, a felony offense while wrongfully incarcerated;
- Was serving a concurrent sentence for another felony for which the person was not wrongfully convicted while wrongfully incarcerated; or
- Committed a felony while serving on parole or community supervision for the wrongful conviction.<sup>10</sup>

These eligibility requirements are commonly referred to as the "Clean Hands" requirements.

### *Application Process*

A petitioner who is found to be a "wrongfully incarcerated person" has two years to initiate an application for compensation with the Department of Legal Affairs after the original sentencing court enters its order.<sup>11</sup> Only the petitioner, not his or her estate or personal representative of the estate, may apply for compensation.<sup>12</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>13</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>14</sup>

Total compensation awarded may not exceed \$2 million.<sup>15</sup>

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<sup>8</sup> s. 961.03 (5)(c) and (d), F.S.

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

<sup>10</sup> ss. 961.04 and 961.06(2), F.S.

<sup>11</sup> s. 961.05(1) and (2), F.S.

<sup>12</sup> s. 961.05(2), F.S.

<sup>13</sup> s. 961.05(4), F.S.

<sup>14</sup> s. 961.06(1), F.S.

<sup>15</sup> *Id.*

### *Wrongful Incarceration Claims in Florida*

To date, four persons have been compensated under the administrative process for a total of \$4,276,901. Six other claimants had their claims denied, based on either ineligibility or incomplete applications.<sup>16</sup>

### *Claim Bills*

Since the Act's inception, a number of claim bills have been filed on behalf of wrongfully incarcerated persons who are ineligible for compensation under the Act due to a felony conviction before or during the wrongful incarceration. At least two such persons have received compensation for a wrongful incarceration through the claim bill process. For example in 2012, a claims bill was adopted for the wrongful incarceration of William Dillon. Due to a prior felony conviction for a single Quaalude, Dillon was barred from seeking compensation under the Act.<sup>17, 18</sup>

### *Other States - Clean Hands Requirements*

Currently, there are 29 states that have a process to compensate wrongfully incarcerated individuals. Of this number, nine states have some form of clean hands provision that prohibits compensation for convictions.<sup>19</sup> Three of the nine states revoke compensation if the person is later convicted of a felony.<sup>20</sup> Florida, however, is the only state that bars applicants for a prior felony conviction.

### **Effect of the Bill**

The bill amends the eligibility requirements of the Act in ss. 961.04 and 961.06, F.S., to narrow the types of felonies which disqualify a person from receiving compensation for a wrongful incarceration. The bill defines the term "disqualifying felony" to mean, "any felony other than one or more felonies of the third degree which arise from a single criminal act, transaction, or episode."<sup>21</sup> Accordingly, only persons with a first<sup>22</sup> or second degree felony<sup>23</sup> conviction or with a third degree felony<sup>24</sup> conviction arising from a *second or subsequent* criminal act, transaction, or episode will be disqualified from receiving compensation under the Act.

The bill reenacts ss. 961.03, 961.05, 961.055, and 961.056, F.S., to incorporate the amendments made by the act.

The bill provides an effective date of October 1, 2017.

## **B. SECTION DIRECTORY:**

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

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<sup>16</sup> Email correspondence with the Office of the Attorney General (Jan. 14, 2016 and March 1, 2017) (on file with House of Representatives Criminal Justice Subcommittee). Persons whose claims have been successful are Leroy McGee (2010), James Bain (2011), Luis Diaz (2012), and James Richardson (2015). Jarvis McBride's claim was denied (2012). Three persons had their claims rejected based on incomplete applications. These are Robert Lewis (2011), Edwin Lampkin (2012), and Robert Glenn Mosley (2014). Two other claimants were determined to be ineligible for compensation (Ricardo Johnson (2013) and Joseph McGowan (2015)).

<sup>17</sup> Chapter 2012-229, L.O.F. (compensating William Dillon for wrongful incarceration despite ineligibility for compensation under the Act).

<sup>18</sup> See also ch. 2008-259, L.O.F. (compensating Alan Crotzer for wrongful incarceration despite ineligibility for compensation under the Act).

<sup>19</sup> 50 State Survey of Wrongful Incarceration Compensation Law, June 2014 (on file with the House of Representatives Criminal Justice Subcommittee).

<sup>20</sup> Alabama, Texas, and Virginia. *Id.*

<sup>21</sup> To determine whether offenses arose out of the same criminal episode, a reviewing court must consider whether: (a) there are multiple victims; (b) the offenses occurred in multiple locations, and (c) there has been a 'temporal break' between offenses. *State v. Paul*, 934 So. 2d 1167, 1173 (Fla.2006) (overruled on other grounds by *Valdes*, 3 So. 3d 1067).

<sup>22</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>23</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>24</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, 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. 961.05, F.S., relating to application for compensation or a wrongful incarceration; administrative expunction; determination of entitlement to compensation.

Section 6. Reenacts s. 961.055, F.S., relating to application for compensation for a wrongfully incarcerated person; exemption from application by nolle prosequi.

Section 7. Reenacts s. 961.056, F.S., relating to alternative application for compensation for a wrongful incarcerated person.

Section 8. Provides an effective date of October 1, 2017.

## **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: The bill expands the pool of persons eligible for compensation due to wrongful incarceration, which could increase state expenditures to provide such compensation. The increase is indeterminate because data regarding the number of wrongfully incarcerated persons who may now qualify for compensation under the Act is unavailable. The Act is funded through a continuing appropriation.<sup>25</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: 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.

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<sup>25</sup> s. 961.07, F.S.

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 March 28, 2017, the Criminal Justice Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute (CS). The PCS substituted the newly defined term “disqualifying felony” for the term “violent felony” in the original bill.

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