

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 259 Compensation for Wrongful Incarceration

**SPONSOR(S):** Criminal Justice Subcommittee, DuBose and others

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N, As CS	Rochester	Hall
2) Appropriations Committee	29 Y, 0 N	Jones	Pridgeon
3) Judiciary Committee			

### SUMMARY ANALYSIS

In 2008, the Legislature passed the Victims of Wrongful Incarceration Compensation Act (Act) to compensate a person who is determined to be actually innocent of a felony offense for his or her wrongful incarceration. The Act disqualifies a person with specified types of prior criminal convictions from eligibility for compensation. To be eligible for compensation, a person must not have been:

- Convicted of a violent felony or more than one nonviolent felony before or during the wrongful incarceration or during a term of parole or community supervision served for the wrongful conviction.
- Serving a concurrent sentence for another felony for which the person was not wrongfully incarcerated.

Under current law, a person must file a petition for compensation with the court within 90 days after the order vacating his or her conviction and sentence becomes final. Moreover, if a compensation claim is approved, the wrongfully incarcerated person is barred from bringing a civil lawsuit against the state. Similarly, a wrongfully incarcerated person with a pending lawsuit against the state may not apply for compensation.

CS/HB 259 removes the bar to compensation for a person who has been convicted of a violent felony or multiple nonviolent felonies prior to the person's wrongful conviction and incarceration. Accordingly, a claimant who was previously convicted of a violent felony or multiple nonviolent felonies will not be disqualified from receiving compensation under the Act.

The bill also:

- Extends the filing deadline for a petition from 90 days to within two years after an order vacating a conviction and sentence becomes final and the criminal charges against a person are dismissed, if the conviction and sentence is vacated on or after July 1, 2020;
- Removes the bar to applying for wrongful incarceration compensation if the person has a pending lawsuit against the state relating to the person's wrongful conviction and incarceration;
- Creates an "off-set provision" authorizing the state to deduct the amount of any civil award recovered in a lawsuit from the state compensation owed if the claimant receives a civil award first or requiring a claimant to reimburse the state for any difference between state compensation and a civil award if the claimant receives statutory compensation prior to a civil award; and
- Requires a claimant to notify the Department of Legal Affairs (DLA) upon filing a civil action and DLA to file a notice of payment of monetary compensation in such action to recover any amount owed for state compensation already awarded.

The bill may have an indeterminate fiscal impact on state government due to an increased number of eligible applicants under the expanded criteria. See Fiscal Analysis & Economic Impact Statement. The bill does not appear to have a fiscal impact on local governments.

The bill provides an effective date of July 1, 2020.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### 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> The Victims of Wrongful Incarceration Compensation Act (Act) has been in effect since July 1, 2008. The Act provides a process by which a person 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>2</sup> A “wrongfully incarcerated person” is a person whose felony conviction and sentence have been vacated by a court and the original sentencing court has issued an 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 the offense.<sup>3</sup>

##### *Petition Process*

To receive compensation under the Act, an exonerated person must file a petition in the court where the judgment and sentence were vacated seeking status as a “wrongfully incarcerated person.” Section 961.03(1)(a), F.S., requires a claimant to state:

- That verifiable and substantial evidence of actual innocence exists;
- The nature and significance of the evidence of actual innocence with particularity; and
- That the person is not disqualified from seeking compensation under ch. 961, F.S.

The person must file the petition with the court:

- Within 90 days after the order vacating a conviction and sentence becomes final, if the person’s conviction and sentence is vacated on or after July 1, 2008; or
- By July 1, 2010, if the person’s conviction and sentence was vacated by an order that became final prior to July 1, 2008.

Although a claimant must submit proof of actual innocence in his or her petition, after a conviction is overturned, the state may choose to retry the claimant. In some cases, a claimant must file a petition with proof of actual innocence while still in custody or facing retrial.

Once filed, a claimant must provide a copy of the petition to the prosecutor who must respond within 30 days by:

- Stipulating to the claimant’s innocence and eligibility for compensation;
- Contesting the evidence of actual innocence; or
- Contesting the claimant’s eligibility for compensation.<sup>4</sup>

If the prosecuting authority contests the claimant’s innocence or eligibility, the original sentencing court must determine whether the claimant has established eligibility for compensation by a preponderance

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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 have been released from prison or exonerated in Florida based on DNA testing. The National Registry of Exonerations, <https://www.law.umich.edu/special/exoneration/Pages/browse.aspx?View={B8342AE7-6520-4A32-8A06-4B326208BAF8}&FilterField1=State&FilterValue1=Florida&FilterField2=DNA&FilterValue2=8%5FDNA> (last visited on Jan. 15, 2020).

<sup>2</sup>To be eligible for compensation, a person must meet the definition of a “wrongfully incarcerated person” and not be otherwise disqualified from seeking compensation under the Act. S. 961.02(5), F.S.

<sup>3</sup> S. 961.02(4), F.S.

<sup>4</sup> Ss. 961.03(2)(a) and (b), F.S.

of the evidence based on the pleadings and the supporting documents. If the court finds the claimant is not eligible for compensation, it must dismiss the petition.<sup>5</sup>

If the court finds the claimant is eligible for compensation, but the prosecuting authority contests the claimant's actual innocence, the court must enter its findings on eligibility 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 claimant's actual innocence and draft a recommended order determining whether the claimant has established by clear and convincing evidence that he or she is a wrongfully incarcerated person.<sup>6</sup> The ALJ must file his or her findings and recommended order within 45 days of the hearing.<sup>7</sup> The original sentencing court must review the ALJ's findings and recommendation and issue its own order declining or adopting the recommended order within 60 days.

### *Eligibility*

Florida has the only wrongful incarceration compensation law in the country that bars eligibility if a person was previously convicted of certain unrelated crimes, referred to as the "clean hands provision."<sup>8</sup> When the Act was passed, a person was barred from receiving compensation if he or she had any prior felony conviction.

Under current law, a claimant is barred from receiving compensation if he or she was:

- Convicted of any violent felony, a similar crime in another jurisdiction, or a federal crime designated a violent felony, excluding any delinquency disposition, before or during the wrongful conviction and incarceration;
- Convicted of more than one nonviolent felony, or more than one crime committed in another jurisdiction that would constitute a felony in Florida, or more than one federal crime designated a felony, excluding any delinquency disposition, before or during the wrongful conviction and incarceration; or
- Serving a concurrent sentence for another felony for which he or she was not wrongfully convicted during the wrongful incarceration.<sup>9</sup>

Under ch. 961, F.S., a violent felony means any felony listed in ss. 755.084(1)(c)1. or 948.06(8)(c), F.S., including:

- The commission of, or attempt to commit:
  - Kidnapping (s. 787.01, F.S.);
  - Murder (s. 782.04, F.S.);
  - Felony murder (s. 782.051, F.S.);
  - Aggravated battery (s. 784.045, F.S.);
  - Sexual battery (ss. 794.011(2), (3), (4), or (8)(b) or (c), F.S.);
  - Lewd or lascivious battery (s. 800.04(4), F.S.);
  - Robbery (s. 812.13, F.S.);
  - Carjacking (s. 812.133, F.S.);
  - Home invasion robbery (s. 812.135, F.S.);
  - Lewd or lascivious offense upon or in the presence of an elderly or disabled person (s. 825.1025, F.S.);
  - Sexual performance by a child (s. 827.071, F.S.);
  - Any burglary offense that is a first or second degree felony (s. 810.02(2) or (3), F.S.);
  - Arson (s. 806.01(1), F.S.);
- Manslaughter (s. 782.07, F.S.);
- False imprisonment of a child under the age of 13 (s. 787.02(3), F.S.);
- Luring or enticing a child (s. 787.025(2)(b) or (c), F.S.);

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<sup>5</sup> S. 961.03(4)(a), F.S.

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

<sup>7</sup> Ss. 961.03 (5)(c) and (d), F.S.

<sup>8</sup> Kansas Legislative Research Department, *Compensation for Wrongful Conviction, Wrongful Incarceration, and Exoneration* (Dec. 27, 2017), <http://www.kslegresearch.org/KLRD-web/Publications/JudiciaryCorrectionsJuvJustice/WrongfulIncarcerationCompensationMemo.pdf> (last visited Jan. 15, 2020).

<sup>9</sup> Ss. 961.04 and 961.06(2), F.S.

- Lewd or lascivious molestation (ss. 800.04(5)(b) or (c)2., F.S.);
- Lewd or lascivious conduct (s. 800.04(6)(b), F.S.);
- Lewd or lascivious exhibition (s. 800.04(7)(b), F.S.);
- Lewd or lascivious exhibition on computer (s. 847.0135(5)(b), F.S.);
- Computer pornography (ss. 847.0135(2) or (3), F.S.);
- Transmission of child pornography (s. 847.0137, F.S.);
- Selling or buying of minors (s. 847.0145, F.S.);
- Poisoning food or water (s. 859.01, F.S.);
- Abuse of a dead human body (s. 872.06, F.S.);
- Aggravated assault (s. 784.021, F.S.);
- Aggravated stalking (ss. 784.048(3), (4), (5), or (7), F.S.);
- Aircraft piracy (s. 860.16, F.S.);
- Unlawful throwing, placing, or discharging of a destructive device or bomb (ss. 790.161(2), (3), or (4), F.S.);
- Treason (s. 876.32, F.S.);
- Aggravated child abuse (s. 827.03, F.S.);
- Aggravated abuse of an elderly person or disabled adult (s. 825.102, F.S.); or
- Any offense committed in another jurisdiction which would be a violent felony if that offense had been committed in Florida.<sup>10</sup>

Currently, 34 states have a process to compensate wrongfully incarcerated individuals. Nine of these states have some form of clean hands provision that prohibits compensation for persons with related convictions for which the claimant was not wrongfully incarcerated.<sup>11</sup> Three of the nine states revoke compensation if the person is convicted of a felony after receiving an award.<sup>12</sup> Florida, however, is the only state that bars compensation for certain prior, unrelated felony convictions.

#### *Application Process*

After the original sentencing court enters an order finding that the person meets the definition of a wrongfully incarcerated person who is eligible for compensation, a claimant has two years to apply to the Department of Legal Affairs (DLA) for compensation.<sup>13</sup> Only the claimant, not the claimant's estate or its personal representative, may apply for compensation.<sup>14</sup> Section 961.05(3), F.S., requires, in part, that an 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;
- Certified copies of the original judgment and sentence;
- Documentation demonstrating the length of the sentence served, including documentation from the Department of Corrections (DOC) regarding the person's admission into and release from the custody of DOC;
- Proof of identification demonstrating that the person seeking compensation is the same individual who was wrongfully incarcerated;
- All supporting documentation of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; and
- All supporting documentation of any reasonable attorney's fees and expenses.<sup>15</sup>

DLA is required to review the application, and within 30 days, notify the claimant of any errors or omissions and request any relevant additional information. The claimant has 15 days after notification of existing errors to supplement the application. DLA must process and review each completed application within 90 days.

<sup>10</sup> Ss. 961.02, 775.084(1)(c)1., and 948.06(8)(c), F.S.

<sup>11</sup> Kansas Legislative Research Department, *supra* note 8.

<sup>12</sup> Alabama, Texas, and Virginia. *Id.*

<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(3), F.S.

Before DLA approves an application, the wrongfully incarcerated person must sign a release and waiver on behalf of himself or herself and his or her heirs, successors, and assigns, forever releasing the state or any agency, or any political subdivision thereof, from all present or future claims that may arise out of the facts in connection with the wrongful conviction for which compensation is being sought.<sup>16</sup> Once DLA determines whether a claim meets the Act's requirements, it must notify the claimant within five business days of its determination.<sup>17</sup> If DLA determines that a claimant meets the Act's requirements, the wrongfully incarcerated person becomes entitled to compensation.<sup>18</sup>

### *Compensation*

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

- Monetary compensation, at a 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 administrative expunction of the person's criminal record resulting from the wrongful arrest, conviction, and incarceration.<sup>19</sup>

The total compensation awarded may not exceed \$2 million.<sup>20</sup> The Chief Financial Officer is required to issue the purchase of an annuity for a term not less than 10 years to distribute such compensation.<sup>21</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 because of a felony conviction prior to the person's wrongful incarceration. At least two such persons have received compensation for wrongful incarceration through the claim bill process.

In 2008, Alan Crotzer prevailed in a claim bill for his wrongful incarceration. Crotzer was ineligible for compensation under the Act because of a prior violent felony conviction for armed robbery when he was 18 years old.<sup>22</sup> In 2012, prior to the eligibility expansion in 2017, William Dillon prevailed in a claim bill for his wrongful incarceration. Dillon was barred from seeking compensation under the Act because of a prior felony conviction for possession of a single Quaalude.<sup>23</sup>

### **Effect of Proposed Changes**

CS/HB 259 extends the filing deadline for a petition from 90 days to within two years after an order vacating a conviction and sentence becomes final and the criminal charges against a person are dismissed, if the person's conviction and sentence is vacated on or after July 1, 2020.

The bill removes the bar to compensation for a claimant who has been convicted of a prior violent felony or multiple nonviolent felonies. Accordingly, an otherwise eligible claimant who was previously convicted of a violent felony or multiple nonviolent felonies will not be disqualified from receiving compensation under the Act for their unrelated wrongful conviction and incarceration.

A person will continue to be barred from receiving compensation if he or she was:

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<sup>16</sup> S. 960.06(5), F.S.

<sup>17</sup> S. 960.05(5), F.S.

<sup>18</sup> S. 960.05(6), F.S.

<sup>19</sup> S. 961.06(1), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> S. 961.06(3), F.S.

<sup>22</sup> Florida House of Representatives, Special Master's Final Report of 2008 House Bill 7037, p. 6 (Mar. 14, 2008). Ch. 2008-259, L.O.F.

<sup>23</sup> Ch. 2012-229, L.O.F. (compensating William Dillon for wrongful incarceration despite ineligibility for compensation under the Act).

- Convicted of a violent felony or more than one nonviolent felony during the wrongful incarceration or during a term of parole or community supervision served for the wrongful conviction.
- Serving a concurrent sentence for another felony during the wrongful incarceration.

CS/HB 259 removes the requirement for a wrongfully incarcerated person to release the state or any agency from all claims arising out of the facts relating to the person's wrongful conviction and incarceration. The bill also removes the bar to applying for wrongful incarceration compensation if the person has a pending lawsuit against the state or any agency, or any political subdivision thereof for damages relating to the person's wrongful conviction and incarceration.

Finally, the bill replaces the bar on civil litigation with an "offset provision" that:

- Authorizes the state to deduct the amount of a civil award recovered in a lawsuit from the state compensation owed if the claimant receives a civil award first;
- Requires a claimant to reimburse the state for any difference between state compensation and a civil award if the claimant receives statutory compensation prior to a civil award; and
- Requires a claimant to notify the Department of Legal Affairs (DLA) upon filing a civil action and DLA to file a notice of payment of monetary compensation in such action to recover any amount owed for state compensation already awarded.

The bill provides an effective date of July 1, 2020.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 961.03, F.S., relating to determination of status as a wrongfully incarcerated person; determination of eligibility for compensation.

**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:** Provides an effective date of July 1, 2020.

## 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 may have an indeterminate fiscal impact on state government. The bill may expand the number of persons eligible for compensation due to wrongful incarceration, which could increase state expenditures to provide such compensation. A person who is entitled to compensation based on wrongful incarceration would 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. The Act is funded through a continuing appropriation.<sup>24</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.

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<sup>24</sup> S. 961.07, F.S.  
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**DATE:** 1/29/2020

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive fiscal impact on persons who will be eligible for compensation under the Act as amended.

D. FISCAL COMMENTS:

Although statutory limits on compensation under the Act are clear, the fiscal impact of the bill is unquantifiable. The possibility that a person would 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.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

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 January 15, 2020, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Extended the filing deadline for a petition from 90 days to within two years after an order vacating a conviction and sentence becomes final and the criminal charges against a person are dismissed, if the conviction and sentence is vacated on or after July 1, 2020.
- Removed the requirement for a wrongfully incarcerated person to sign a liability release before receiving compensation.
- Removed the bar to applying for wrongful incarceration compensation if the person has a pending lawsuit against the state or any agency, or any political subdivision thereof for damages relating to the person's wrongful conviction and incarceration.
- Created an "offset provision" authorizing the state to deduct the amount of any civil award recovered in a lawsuit from the state compensation owed if the claimant receives a civil award first and requiring a claimant to reimburse the state for any difference between state compensation and a civil award if the claimant receives statutory compensation prior to a civil award.
- Required a claimant to notify the Department of Legal Affairs (DLA) upon filing a civil action and DLA to file a notice of payment of monetary compensation in such action to recover any amount owed for state compensation already awarded.

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