

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: SB 1114

INTRODUCER: Senator Pizzo

SUBJECT: Compensation for Eligible Victims of Wrongful Incarceration

DATE: March 9, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Favorable
2.			AP	
3.			RC	

I. Summary:

SB 1114 amends the Victims of Wrongful Incarceration Act to increase eligibility for relief. The bill repeals most of the clean hands provisions in current law that deny relief to a claimant who has committed certain other offenses, including a violent felony, leaving only the prohibition on collecting for time served concurrently with an unrelated offense. The bill extends the deadline to establish one's status as a wrongfully incarcerated person and eligible for compensation from 90 days to 2 years. The bill also allows persons previously ineligible due to the clean hands provisions or inability to meet the 90-day filing deadline until July 1, 2023, to file a new claim for compensation for wrongful incarceration.

The bill repeals the current law requirement that relief under the Act is an exclusive remedy. Accordingly, a claimant under the Act may additionally elect to pursue civil actions and a claim bill related to the wrongful incarceration. While multiple actions are allowed, a claimant who receives compensation in a civil action in an amount less than that authorized as administrative compensation may recover the difference from the state. However, if the claimant recovers more in a civil action than in compensation under the administrative process, the claimant may retain the compensation from the civil action but must return the administrative compensation to the state.

The bill also prohibits the filing of a petition by heirs, successors and assigns, thereby limiting relief under the Act to living persons who were wrongfully incarcerated.

The fiscal impact of this bill is indeterminate.

The bill is effective July 1, 2021.

II. Present Situation:

The Victims of Wrongful Incarceration Compensation Act (the Act) has been in effect since July 1, 2008.¹ 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 from the state.

The Department of Legal Affairs administers the eligible person's application process and verifies the validity of the claim.² 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. A successful claimant receives the following benefits:

- Cash compensation calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.
- Waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any state 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 certain requirements.
- 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.
- Immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration.³

An individual claiming to be a wrongfully incarcerated person eligible for compensation must file a petition with the original sentencing court, with a copy of the petition and proper notice to the prosecuting authority in the underlying felony for which the person was incarcerated. The petition must be filed with the court within 90 days after the order vacating a conviction and sentence becomes final. The original enactment in 2008 gave a 2 year window for filing a claim that would otherwise be untimely.⁴

The petition must state that verifiable and substantial evidence of actual innocence exists, must state with particularity the nature and significance of the verifiable and substantial evidence of actual innocence, and must state that the person is not disqualified by reason of other felony convictions. The prosecuting authority must respond within 30 days, either confirming the petition or contesting it. If the prosecuting authority contests the petition, the claimant must prove actual innocence by clear and convincing evidence. Actual innocence means 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.⁵

¹ Chapter 961, F.S. (ch. 2008-39, Laws of Fla.).

² Section 961.05, F.S.

³ Section 961.06, F.S.

⁴ Section 961.03(1)(b), F.S.

⁵ Section 961.03(3), F.S. The hearing process is complicated and is split between the sentencing court and the Division of Administrative Hearings. The process is not affected by this bill.

Current law contains a requirement for compensation known as the “clean hands” doctrine. 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 single violent felony*, or *more than one nonviolent felony*, or a crime or crimes 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 violent felony offense* or *more than one nonviolent felony*; 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.⁶

Also, 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.⁷ 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, no more than one nonviolent felony, or some technical violation of his or her supervision that results in the revocation of parole or community supervision, the person is still eligible for compensation. If, however, any single violent felony law violation or multiple nonviolent felony law violations result in revocation, the person is ineligible for compensation.⁸

The term “violent felony” is defined in s. 961.02(6), F.S., by cross-referencing felonies listed in s. 775.084(1)(c)1. or s. 948.06(8)(c), F.S. The combined list of those violent felony 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 felonies referenced in s. 961.02(6), F.S., 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;
- Robbery;
- Carjacking;
- Home invasion robbery;

⁶ Section 961.04, F.S.

⁷ 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. Chapter 82-171, Laws of Fla., and s. 947.16, F.S. The term “community supervision” as used in s. 961.06(2), F.S., could include control release, conditional medical release, or conditional release under the authority of the Florida 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.).

⁸ Section 961.06(2), F.S.

- 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.

Chapter 961, F.S., effectively contains a choice of remedy requirement. A person seeking compensation through this process is ineligible for compensation if there is a pending federal or state civil action regarding the wrongful incarceration, or if there is a pending claim bill. Payment of compensation is intended to be the sole redress for claims related to a wrongful incarceration.⁹ A previously passed claim bill makes a person ineligible for compensation under the Act.¹⁰ A successful claimant must sign a release to qualify for payment,¹¹ thereby foreclosing the future filing of a civil action and likely foreclosing pursuit of a future claim bill.

Through 2019, four persons have been compensated under the Act for a total of \$4,276,901.¹²

III. Effect of Proposed Changes:

Section 1 of the bill extends the deadlines for a person who was wrongfully incarcerated to file the petition with the court for a determination of eligibility for compensation. For a person whose conviction and sentence is vacated on or after July 1, 2021, a petition must be filed within 2 years after the time the order vacating a conviction and sentence becomes final and the criminal charges against the person are dismissed or the person is retried and found not guilty. Payment of these claims are available to claimants pursuant to a continuing appropriation.

⁹ Section 961.06(6), F.S.

¹⁰ Section 961.06(6)(c), F.S. The Act also says that one compensated under the Act may not thereafter pursue a claim bill, but this is not binding, as one Legislature cannot by statute bind the actions of a future Legislature.

¹¹ Section 961.06(5), F.S.

¹² E-mail and documentation received from the Office of the Attorney General, October 16, 2019 (on file with the Senate Committee on Criminal Justice).

For a person whose conviction and sentence was vacated on or after January 1, 2006, but before July 1, 2021, then the person must file a petition for eligibility between July 1, 2021 and July 1, 2023, and any payment is subject to a specific appropriation made for this purpose:

- If the person previously filed a petition that was dismissed, the person may re-file for compensation.
- If the person did not previously file a petition because he or she was ineligible to file because the date when the criminal charges against the person were dismissed or the date the person was acquitted upon retrial occurred more than 90 days after the date of the final order vacating the conviction and sentence, the person may file an original petition.
- If the person did not previously file a petition because he or she was ineligible to file due to unrelated felony convictions (the “clean hands” restriction), the person may file an original petition.

Section 1 of the bill also limits the filing of any petition for compensation to the living. A deceased person’s heirs, successors, or assigns may not file a petition for compensation on behalf of the deceased.

Section 2 of the bill amends s. 961.04, F.S., to repeal ineligibility for compensation for wrongful incarceration based on the commission of an unrelated past felony. Section 3 of the bill amends s. 961.06, F.S., to repeal ineligibility based on offenses committed while on probation, parole or conditional release. The bill, however, retains the provision by which a person is not eligible for compensation for time incarcerated for a different offense served concurrently with the wrongful conviction.

Section 3 of the bill amends s. 961.06, F.S., to repeal the choice of remedy provisions. A claimant may seek an award for wrongful incarceration in addition to filing a civil action or while pursuing a claim bill. The requirement that a successful claimant sign a release is repealed.

While multiple civil actions are allowed, excess civil recovery by the claimant is prohibited. The amount of a prior civil judgment or settlement, less attorney fees and costs, is a deduction from the award made pursuant to the Act. If the claimant receives a later civil judgment or settlement, the amount of such judgment or settlement, less attorney fees and costs, must be refunded to the state, up to the amount paid under the Act. A claimant must notify the Department of Legal Affairs of any civil action related to the wrongful incarceration, and the department must give notice to the trial court of the state’s interest. The bill retains the current law prohibition on receiving compensation under the Act by someone who has previously received compensation through a claim bill.

Section 4 of the bill amends s. 961.07, F.S., to provide that future payments of regular compensation for wrongful incarceration is payable from a continuing appropriation. However, payment of claims barred by current law but revived by this bill are payable from a specific appropriation.

Sections 5, 6, 7, and 8 of the bill reenact portions of ss. 961.02, 961.03, and 961.05, F.S., which relate to eligibility for compensation of wrongfully incarcerated persons.

The bill is effective July 1, 2021.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Indeterminate. The number of individuals eligible for compensation because of SB 1114 is unknown.

VI. Technical Deficiencies:

The catchline for s. 961.07, F.S., at line 283 of the bill should perhaps be amended to reflect the changes made by this bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 961.03, 961.04, 961.06, and 961.07.

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.

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