

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 43 Compensation for Wrongfully Incarcerated Persons

SPONSOR(S): Judiciary Committee, Criminal Justice Subcommittee, Koster, Driskell and others

TIED BILLS: IDEN./SIM. BILLS: SB 382

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	16 Y, 1 N, As CS	Frost	Hall
2) Appropriations Committee	29 Y, 0 N	Smith	Pridgeon
3) Judiciary Committee	20 Y, 1 N, As CS	Leshko	Kramer

SUMMARY ANALYSIS

In 2008, the Legislature passed the Victims of Wrongful Incarceration Compensation Act (Act) to compensate a person for his or her wrongful incarceration when he or she is determined to be actually innocent of a felony offense. Under s. 961.04, F.S., commonly known as the “clean hands” requirement, a person is ineligible for compensation if he or she was convicted of a violent felony or more than one nonviolent felony before or during his or her wrongful incarceration or during a term of parole or community supervision served for the wrongful conviction; or if he or she was serving a concurrent sentence for another felony for which he or she was not wrongfully incarcerated.

Under current law, a person must file a petition to determine eligibility for compensation within 90 days after the final order vacating his or her conviction and sentence. A person is prohibited from submitting a compensation application if he or she has a lawsuit pending against the state or other entity, and compensation awarded under the Act is intended to provide the sole compensation for any and all present and future claims.

CS/CS/HB 43 amends s. 961.04, F.S., to remove the “clean hands” requirement which makes a person ineligible to receive compensation if he or she was convicted of a violent felony or multiple nonviolent felonies before or during his or her wrongful incarceration or during a term of parole or community supervision, and allow such a person to be eligible to receive compensation under the Act. Under the bill, a person continues to be ineligible for compensation for any period of wrongful incarceration during which the person was serving a concurrent sentence for a felony offense for which he or she was legally incarcerated. The bill amends s. 961.02, F.S., to remove the definition for “violent felony” as the bill deletes every use of the term in the Act.

The bill also amends:

- Section 961.03, F.S., to:
 - Prospectively extend the petition filing deadline from 90 days to within two years after an order vacating a conviction and sentence is final and the criminal charges against a person are dismissed, or the person is retried and acquitted;
 - Retroactively extend the petition filing deadline to July 1, 2025, for specified persons whose conviction and sentence was vacated after July 1, 2006, but before July 1, 2023;
 - Prohibit a deceased person's heirs, successors, or assigns from filing a petition for compensation under the Act on the deceased person's behalf;
 - Add a requirement that a prosecuting authority petition the Governor to appoint a substitute prosecuting authority within 15 days of the filing of a petition for compensation if the prosecuting authority moved to vacate or did not otherwise object to the vacation of the claimant's conviction and sentence; and
 - Require the Governor to appoint a substitute prosecuting authority within 10 days and specify that the time period in which the prosecuting authority must respond to a petition for compensation under the Act is tolled until the date the Governor makes such an appointment.
- Section 961.06, F.S., to prohibit the Chief Financial Officer from drawing a warrant to purchase an annuity for a claimant who is incarcerated due to a felony conviction other than the wrongful incarceration conviction.

The bill may have an indeterminate fiscal impact on state government due to an increased number of eligible applicants under the expanded criteria.

The bill provides an effective date of July 1, 2023.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives .

STORAGE NAME: h0043e.JDC

DATE: 4/19/2023

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Victims of Wrongful Incarceration Compensation Act

Since 2000, 20 people in Florida have been exonerated or released from incarceration as a result of post-conviction DNA testing, false or misleading forensic evidence, mistaken identity, or perjury or false accusations.¹ In 2008 the Legislature created The Victims of Wrongful Incarceration Compensation Act (Act).² The Act provides a process by which a person whose conviction and sentence is vacated based upon exonerating evidence may petition the court to seek and obtain compensation as a “wrongfully incarcerated person.”³

A “wrongfully incarcerated person” is a person whose felony conviction and sentence has been vacated by a court and for whom 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.⁴

Petition Process

To receive compensation under the Act, an exonerated person must file a petition with the original sentencing court seeking status as a “wrongfully incarcerated person.” Section 961.03(1)(a), F.S., requires a petitioner to state:

- That verifiable and substantial evidence of actual innocence exists;
- With particularity, the nature and significance of the evidence of actual innocence; and
- That the person is not disqualified under s. 961.04, F.S., from seeking compensation because he or she has specified criminal history.

A person seeking compensation under the Act must file a 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, 2008.⁵

Although a petitioner must submit proof of actual innocence in his or her petition, in some cases, after a conviction is overturned, the state may choose to retry the person. In these cases, the 90-day filing deadline may require a petitioner to file a petition with proof of actual innocence while he or she is still in custody or facing retrial. According to the Innocence Project, six exonerates in Florida are barred from receiving compensation as a result of missing the 90-day filing deadline.⁶

Once the petition is filed, the prosecuting authority must respond to the petition within 30 days by:

- Certifying to the court that, based upon the petition and verifiable and substantial evidence of the petitioner’s actual innocence, no further criminal proceedings can or will be initiated against

¹ Frank Lee Smith, Jerry Townsend, Rudolph Holton, Wilton Dedge, Luis Diaz, Orlando Boquete, Alan Crotzer, Larry Bostic, Cody Davis, Chad Heins, William Dillon, James Bain, Anthony Caravella, Derrick Williams, Cheydrick Britt, Narcisse Antoine, Clemente Aguirre-Jarquín, Dean McKee, Ronald Stewart, and Robert Duboise have been released from prison or exonerated in Florida. 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 Apr. 19, 2023).

² Ch. 08–39, Laws of Fla.

³ 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 because of disqualifying criminal history. S. 961.02(4), F.S.

⁴ S. 961.02(7), F.S.

⁵ 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. S. 961.03(1)(b), F.S.

⁶ Jeffrey Gutman, *Compensation Under the Microscope*, George Washington University Law School (2022) <https://www.law.umich.edu/special/exoneration/Documents/UTM%20Florida.pdf> (last visited Apr. 19, 2023).

the petitioner, that no questions of fact remain as to the petitioner's wrongful incarceration, and that the petitioner is not ineligible from seeking compensation under s. 961.04, F.S.; or

- Contesting 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 s. 961.04, F.S.⁷

If the prosecuting authority certifies the petitioner's innocence and that no further charges can or will be filed and that he or she is otherwise eligible for compensation, the original sentencing court⁸ must certify to the Department of Legal Affairs (DLA) that the petitioner qualifies as a wrongfully incarcerated person and is eligible for compensation under s. 961.04, F.S.⁹

If the prosecuting authority contests the petitioner's actual innocence or eligibility for compensation based on his or her prior criminal history:

- The original sentencing court must use the pleadings and supporting documents to determine whether, by a preponderance of the evidence, the petitioner is ineligible for compensation under s. 961.04, F.S., regardless of his or her claim of wrongful incarceration.
 - If the court finds that the petitioner is ineligible under s. 961.04, F.S., it must dismiss the petition.¹⁰
- And the court determines that the petitioner is eligible under s. 961.04, F.S., but the prosecuting authority also contests the nature, significance or effect of the evidence of the petitioner's actual innocence, or the facts related to the petitioner's alleged wrongful incarceration, the court is required to set forth its findings on eligibility and transfer the petition to the Division of Administrative Hearings (DOAH).¹¹

When a petition is transferred to DOAH, a hearing before an administrative law judge (ALJ) must take place within 120 days after the transfer.¹² At the hearing, the petitioner must establish, by clear and convincing evidence, any questions of fact, the nature, significance or effect of the evidence of actual innocence, and his or her eligibility for compensation under the Act.¹³ The prosecuting authority must appear at the hearing to contest any evidence of actual innocence presented by the petitioner.¹⁴ When the hearing concludes, the ALJ is required to file an order with the original sentencing court within 45 days setting forth his or her findings and recommendation as to whether the petitioner established by clear and convincing evidence that he or she qualifies as a wrongfully incarcerated person.¹⁵

Once the ALJ issues his or her findings and recommendation, the original sentencing court must, within 60 days, issue its own order adopting or declining to adopt the ALJ's findings and recommendation.¹⁶ If the original sentencing court concludes that the petitioner qualifies as a wrongfully incarcerated person who is eligible for compensation under the Act, the court must issue an order certifying its findings to DLA.¹⁷

"Clean Hands" Requirement

When the Act was passed in 2008,¹⁸ a person was ineligible to receive compensation under s. 961.04, F.S., if he or she was previously convicted of any other felony. As such, s. 961.04, F.S., became

⁷ S. 961.03(2), F.S.

⁸ Based upon the evidence of actual innocence, the prosecuting authority's certification, and upon the court's finding that the petitioner has presented 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. S. 961.03(3), F.S.

⁹ S. 961.03(3), F.S.

¹⁰ S. 961.03(4)(a), F.S.

¹¹ S. 961.03(4)(b), F.S.

¹² S. 961.03(6)(a), F.S.

¹³ S. 961.03(5), F.S.

¹⁴ S. 961.03(6)(b), F.S.

¹⁵ S. 961.03(6)(c), F.S.

¹⁶ S. 961.03(6)(d), F.S.

¹⁷ The order must indicate that the ALJ's findings are correct and the petitioner has met his or her burden of proof to establish status as a wrongfully convicted person or if the ALJ findings indicate that the petitioner has not met his or her burden of proof, that the court is declining to adopt the findings of the ALJ. S. 961.03(7), F.S.

¹⁸ Ch. 2008-39, Laws of Fla.

commonly known as the “clean hands” requirement. The Act was amended in 2017,¹⁹ to expand eligibility under the “clean hands” requirement, making a petitioner ineligible to receive compensation if he or she was:

- Convicted of any violent felony, or any crime committed in another jurisdiction the elements of which would constitute a violent felony in Florida, or a federal crime designated a violent felony, excluding any delinquency disposition, before or during his or her wrongful conviction and incarceration;
- Convicted of more than one nonviolent felony, or more than one crime committed in another jurisdiction the elements of which would constitute a felony in Florida, or more than one federal crime designated a felony, excluding any delinquency disposition, before or during his or her wrongful conviction and incarceration; or
- Serving a concurrent sentence for another felony for which he or she was not wrongfully convicted during the period of wrongful incarceration.²⁰

Additionally, under 961.06(2), F.S., a wrongfully incarcerated person who is placed on parole or community supervision as a part of the sentence he or she is serving for his or her wrongful conviction and who commits:

- One violent felony or more than one nonviolent felony that results in revocation of the parole or community supervision is ineligible for any compensation under the Act.
- No more than one nonviolent felony which results in revocation of the parole or community supervision is eligible for compensation for the total number of years he or she was incarcerated.²¹

For the purpose of determining a person’s eligibility, s. 961.02(6), F.S., defines a violent felony as any felony listed in:

- Section 755.084(1)(c)1., F.S., which includes: arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; aggravated stalking; home invasion/robbery; carjacking; or an offense committed in another jurisdiction which has substantially similar elements to a listed crime; or
- Section 948.06(8)(c), F.S., which includes: kidnapping or attempted kidnapping, false imprisonment of a child under 13, or luring or enticing a child; murder or attempted murder, attempted felony murder, or manslaughter; aggravated battery or attempted aggravated battery; sexual battery or attempted sexual battery; lewd or lascivious battery or attempted lewd or lascivious battery; lewd or lascivious molestation, lewd or lascivious conduct, lewd or lascivious exhibition, or lewd or lascivious exhibition on a computer; robbery or attempted robbery, carjacking or attempted carjacking, or home invasion robbery or attempted home invasion robbery; lewd or lascivious offense upon or in the presence of an elderly or disabled person or attempted lewd or lascivious offense upon or in the presence of an elderly or disabled person; sexual performance by a child or attempted sexual performance by a child; computer pornography, transmission of child pornography, or selling or buying of minors; poisoning food or water; abuse of a dead human body; any burglary offense or attempted burglary offense that is a first or second degree felony; arson or attempted arson; aggravated assault; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; treason under s. 876.32; or any offense committed in another jurisdiction which would be a listed offense if it were committed in Florida.²²

Currently, the federal government, the District of Columbia, and 38 states have a process to compensate wrongfully incarcerated individuals.²³ Florida’s wrongful incarceration compensation law is

¹⁹ Ch. 2017-120, Laws of Fla.

²⁰ S. 961.04, F.S.

²¹ S. 961.06(2), F.S.

²² S. 961.02(6), F.S.

²³ Alaska, Arizona, Arkansas, Delaware, Georgia, Kentucky, New Mexico, North Dakota, Pennsylvania, South Carolina, South Dakota, and Wyoming do not have compensation laws. Innocence Project, *Compensating the Wrongly Convicted*

the only one in the country that makes a person ineligible for compensation if he or she was previously convicted of certain unrelated crimes.²⁴ At least 17 exonerees in Florida are currently ineligible to receive compensation under the Act because of the “clean hands” requirement.²⁵

Application Process

After the original sentencing court enters an order finding that the claimant meets the definition of a wrongfully incarcerated person who is eligible for compensation, the claimant must submit an application to DLA for compensation, if he or she is otherwise eligible to apply, within two years.²⁶ Section 961.06, F.S., prohibits a wrongfully incarcerated person from applying for compensation if he or she is the subject of a pending claim bill²⁷ which is based on his or her wrongful conviction and incarceration. Similarly, once a claimant files an application for compensation, he or she may not pursue recovery under a claim bill until the final disposition of his or her application,²⁸ and once DLA notifies a claimant that his or her application meets the requirements of the Act, he or she is prohibited from seeking additional compensation under a claim bill.^{29, 30}

Only the claimant, not the claimant’s estate or its personal representative, may apply for compensation.³¹ Section 961.05(3), F.S., requires, in part, that a claimant’s 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;
- 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.

DLA is required to review the application, and within 30 days, notify the claimant of any errors or omissions and request any additional information relevant to the review of the application. The claimant has 15 days after notification of existing errors or omissions to supplement the application. DLA must process and review each completed application within 90 days.³²

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

<https://innocenceproject.org/compensating-wrongly-convicted/#:~:text=The%20federal%20government%2C%20the%20District,%2C%20South%20Dakota%2C%20and%20Wyoming> (last visited Apr. 19, 2023).

²⁴ Kansas Legislative Research Department, *Compensation for Wrongful Conviction, Wrongful Incarceration, and Exoneration* (Dec. 27, 2017) <http://www.kslegresearch.org/KLRD-web/Publications/JudiciaryCorrectionsJuvJustice/WrongfulIncarcerationCompensationMem o.pdf> (last visited on Apr. 19, 2023).

²⁵ According to the Innocence Project and independent research conducted at George Washington University Law School. Jeffrey Gutman, *supra* note 6.

²⁶ S. 961.05(1) and (2), F.S.

²⁷ A claim bill is not an action at law, but rather is a legislative measure that directs the CFO, or if appropriate, a unit of local government, to pay a specific sum of money to a claimant to satisfy an equitable or moral obligation. The amount awarded under a claim bill is based on the Legislature’s concept of fair treatment of a person who has been injured or damaged but who is without a complete judicial remedy or who is not otherwise compensable. *Wagner v. Orange Cty.*, 960 So. 2d 785, 788 (Fla. 5th DCA 2007).

²⁸ S. 961.06(6)(c), F.S.

²⁹ Any amount awarded under the Act is intended to provide the sole compensation for any and all present and future claims arising out of the facts in connection with the claimant’s wrongful conviction and incarceration. S. 961.06(6)(d), F.S.

³⁰ Since 2008, numerous claim bills have been filed on behalf of wrongfully incarcerated persons who were ineligible for compensation under the Act because of the “clean hands” requirement. At least three such persons have received compensation for wrongful incarceration through the claim bill process – Alan Crotzer (2008), William Dillon (2017), and Clifford Williams (2020).

³¹ S. 961.05(2), F.S.

³² S. 961.05(5), F.S.

arise out of the facts in connection with the wrongful conviction for which compensation is being sought.³³ Once DLA determines whether a claim meets the Act's requirements, it must notify the claimant within five business days of its determination.³⁴ If DLA determines that a claimant meets the Act's requirements, the wrongfully incarcerated person becomes entitled to compensation.³⁵

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 in connection with all criminal proceedings and appeals regarding the wrongful conviction; and
- Immediate administrative expunction of the person's criminal record resulting from the wrongful arrest, conviction, and incarceration.³⁶

Within 15 calendar days after DLA issues notice to the claimant that his or her claim satisfies all of the requirements under the Act, DLA must notify the Chief Financial Officer (CFO) to draw a warrant from the General Revenue Fund or another source designated by the Legislature in law for the purchase of an annuity for the claimant based on the total amount determined by DLA.³⁷ Section 961.07, F.S., currently provides for a continuing appropriation from the General Revenue Fund to the CFO for payments under the Act.³⁸

The total compensation awarded to a claimant may not exceed \$2 million.³⁹ The CFO is required to issue payment in the amount determined by DLA to an insurance company or other financial institution admitted and authorized to issue annuity contracts to purchase an annuity or annuities, selected by the claimant, for a term not less than 10 years to distribute such compensation.⁴⁰

Effect of Proposed Changes

CS/CS/HB 43 amends s. 961.03, F.S., to prospectively extend the filing deadline for a petition under the Act 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 or the person is retried and acquitted, if the person's conviction and sentence is vacated on or after July 1, 2023.

The bill also amends s. 961.03, F.S., to retroactively authorize a person to file a petition for determination of status as a wrongfully incarcerated person and determination of eligibility for compensation by July 1, 2025, if the:

- Person's conviction and sentence was vacated and the criminal charges against the person were dismissed, or the person was retried and acquitted, after January 1, 2006, but before July 1, 2023; and
- Person previously filed a petition that was dismissed or did not file a petition, because the:
 - Date when the criminal charges against the person were dismissed or the date the person was acquitted occurred more than 90 days after the date of the final order vacating his or her conviction and sentence; or
 - Person was convicted of an unrelated felony before or during his or her wrongful conviction and incarceration and was ineligible to receive compensation under s. 961.04, F.S., i.e. the "clean hands" requirement.

³³ S. 961.06(5), F.S.

³⁴ S. 961.05(5), F.S.

³⁵ S. 961.05(6), F.S.

³⁶ S. 961.06(1), F.S.

³⁷ S. 961.06(3), F.S.

³⁸ S. 961.06(1), F.S.

³⁹ *Id.*

⁴⁰ S. 961.06(4), F.S.

The bill amends s. 961.03, F.S., to prohibit a deceased persons heirs, successors, or assigns from filing a petition for compensation under the Act on the deceased person's behalf.

The bill further amends s. 961.03, F.S., to require a prosecuting authority to petition the Governor within 15 days of the filing of a petition for compensation for wrongful incarceration to appoint a substitute prosecuting authority from another judicial circuit for the purposes of complying with the requirements of the Act if the original prosecuting authority:

- Moved to vacate the claimant's conviction and sentence in the original sentencing court; or
- Otherwise did not object to the original sentencing court vacating the claimant's conviction and sentence.

The bill requires the Governor to make such an appointment within 10 days of the prosecuting authority filing a petition and tolls the time period in which the prosecuting authority must respond to the petition for compensation for wrongful incarceration until the date the Governor appoints a substitute prosecuting authority.

The bill amends s. 961.04, F.S., to remove the "clean hands" requirement which bars compensation for a petitioner who has been convicted of a violent felony or multiple nonviolent felonies before or during his or her wrongful conviction and incarceration or during a term of parole or community supervision, thereby making such a person eligible to seek compensation under the Act. Under the bill, a person continues to be ineligible for compensation for any period of wrongful incarceration during which the person was serving a concurrent sentence for a felony offense for which he or she was legally incarcerated. The bill also amends s. 961.02, F.S., to remove the definition of the term "violent felony," because every use of the term within the Act is deleted by the bill's removal of the "clean hands" requirement.

The bill amends s. 961.06, F.S., to prohibit the CFO from drawing a warrant to purchase an annuity to pay a claimant for his or her wrongful incarceration if the claimant is currently incarcerated:

- For a felony conviction other than the crime for which the compensation is owed; or
- Due to the revocation of parole or probation for a felony conviction other than a crime for which the compensation is owed.
 - The CFO must commence with drawing a warrant to pay the claimant after any such term of imprisonment concludes.

The bill also amends s. 961.07, F.S., to provide that payments of compensation awarded to claimants under either the retroactive provision or prospective provision of the bill are to be awarded from funds appropriated from the General Revenue Fund.

The bill provides an effective date of July 1, 2023.

B. SECTION DIRECTORY:

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

Section 2: Amends s. 961.03, F.S., relating to determination of status as a wrongfully convicted person; determination of eligibility for compensation.

Section 3: Amends s. 961.04, F.S., relating to eligibility for compensation for wrongful incarceration.

Section 4: Amends s. 961.06, F.S., relating to compensation for wrongful incarceration.

Section 5: Amends s. 961.07, F.S., relating to continuing appropriation.

Section 6: Provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an indeterminate fiscal impact on state government. The bill may expand the number of persons eligible for wrongful incarceration compensation, which could require an increase in state expenditures to provide such compensation. A person who is entitled to compensation may be compensated at the rate of \$50,000 per year of wrongful incarceration, including any fine, penalty, imposed court costs, reasonable attorney fees and expenses incurred and paid by the wrongfully incarcerated person, up to a limit of \$2 million. The bill funds all eligible petitions under the Act through a continuing appropriation from the General Revenue Fund to the CFO.⁴¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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 bill's expanded eligibility criteria by allowing them to receive statutory compensation rather than pursuing a claim bill or civil lawsuit.

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 may be compensated for wrongful incarceration is based upon unknown variables, such as the number of wrongful incarcerations that currently exist or might exist in the future.

Additionally, the bill may have an indeterminate negative fiscal impact on prosecuting authorities by increasing the workload of any substitute prosecuting authority that is appointed by the Governor to fulfill the requirements of the Act for a case in another judicial circuit.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

⁴¹ S. 961.07, F.S.
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C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On February 9, 2023, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Removed an obsolete definition, corrected grammatical and drafting errors, and made other technical and stylistic changes; and
- Removed the “off-set” provision created by the bill, and restored original statutory language which:
 - Prohibits a claimant from seeking compensation under the Act if he or she has a pending civil lawsuit and provides that any amount awarded under the Act is intended to provide the sole compensation relating to his or her wrongful incarceration; and
 - Requires a claimant to sign a release and waiver releasing the state or any agency, instrumentality, or any political subdivision, etc. from all present and future claims arising from the facts related to the claimant’s wrongful conviction and incarceration.

On April 19, 2023, the Judiciary Committee adopted two amendments and reported the bill favorably as a committee substitute. The amendments:

- Removed the requirement for payments of compensation awarded to claimants under the retroactive provision of the bill to be subject to specific appropriation, rather than paid from funds appropriated from the General Revenue Fund.
- Added a requirement that a prosecuting authority petition the Governor to appoint a substitute prosecuting authority in certain circumstances within a certain period of time.
- Required the Governor to appoint a substitute prosecuting authority within a certain period of time and tolled the time period in which the prosecuting authority must respond to a petition under the Act until the date the Governor makes such an appointment.

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