

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1531

Compensation for Wrongful Incarceration

SPONSOR(S): Gibbons

TIED BILLS:

IDEN./SIM. BILLS: SB 2408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice & Courts Policy Committee		De La Paz	De La Paz
2) Criminal & Civil Justice Policy Council			
3) Criminal & Civil Justice Appropriations Committee			
4) Full Appropriations Council on General Government & Health Care			
5)			

SUMMARY ANALYSIS

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. 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 under the act as a "wrongfully incarcerated person" who is "eligible for compensation."

HB 1531 amends 961.03, F.S., of the act to add a requirement that the petitioner submit fingerprints for a state and national criminal history check after filing a petition with the court seeking compensation. Currently, the act requires FDLE to conduct a state criminal history check and to forward the petitioner's fingerprints to the FBI after a successful petitioner has applied for compensation.

HB 1531 amends the act to clarify that a determination of whether a petitioner is "eligible for compensation" is a judicial function as opposed to a conclusion that the prosecuting authority may stipulate to.

The bill also revises provisions relating to the standard of proof applicable to the proceedings. The effect of these changes is to have a single "clear and convincing" evidence standard of proof that applies solely for the purpose of making the determination of the petitioner's actual innocence.

HB 1531 also provides a definition for the term "actual innocence" which is substantially similar to the lengthy description of the concept of actual innocence currently found in various places in the act and substitutes the term for the lengthy description.

HB 1531 also revises provisions of the application process to require the Department of Legal Affairs to:

- (a) Request that the clerk of the court provide a certified copy of the order vacating the conviction and sentence and certified copies of the original judgment and sentence.
- (b) Request that the Department of Corrections provide documentation demonstrating the length of the sentence served, including the dates of the wrongfully incarcerated person's admission into and release from the custody of the Department of Corrections.

The bill appears to have an indeterminate fiscal impact related to the cost of requiring state and federal criminal history checks at no cost to the petitioner.

The bill appears to have no fiscal impact on local governments.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

In Florida, ten people have been exonerated or released from incarceration since 2,000 as a result of postconviction DNA testing.<sup>1</sup> 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>2</sup>

##### **Current Situation**

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 under the act as a "wrongfully incarcerated person" who is "eligible for compensation."

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

1. The Petition Process: section 961.03, F.S., provides the process for determining whether a petitioner is a "wrongfully incarcerated person" and is "eligible for compensation."
2. Eligibility: section 961.04, F.S., specifies criteria that render a petitioner ineligible for compensation.
3. Application: section 961.05, F.S., provides the process for an eligible person may apply for compensation. And,

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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, and William Dillon are ten people released from prison or exonerated in this state based on DNA testing. Florida Innocence Project, <http://www.floridainnocence.org/cases.html>. (visited on March 18, 2009); Sections 961.01 – 961.07, F.S.

<sup>2</sup> Ch. 2008-39, Laws of Florida.

4. Compensation: section 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.

Section 961.02, 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, 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.” This section 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.<sup>3</sup>

### **The Petition Process**

With respect to the contents of the petition, section 961.03(1)(a), F.S. requires that a petition must:

1. 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
2. State that the person is not disqualified, under the provisions of s. 961.04, 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 petitioner’s innocence and eligibility for compensation<sup>4</sup> or:

- a. contest the evidence of actual innocence, or
- b. 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 to make factual findings regarding the petitioner’s actual innocence and to draft a recommended order on the

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<sup>3</sup> See, Sections 961.02(4), 961.03(3) and(7).

<sup>4</sup> Section 961.03(2)(a), F.S.

<sup>5</sup> Section 961.03(2)(b), F.S.

<sup>6</sup> Section 961.03(4)(a), F.S. Section 961.04, F.S. Provides that a wrongfully incarcerated person is not eligible for compensation if: 1) Before the person's wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense, or a crime 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; (2) During the person's wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any felony offense; or 3) 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. In addition, section 961.06(2), F.S., renders ineligible for compensation a wrongfully incarcerated person who is placed on parole or community supervision while serving the sentence resulting from the wrongful conviction and who commits a felony law violation that results in revocation or the parole or community supervision.

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

- a. that the administrative law judge found that the petitioner met his burden required under the act by clear and convincing evidence; or
- b. that 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
- c. that the findings and recommendations on which its order is based is supported by competent, substantial evidence.<sup>10</sup>

### **Effect of HB 1531**

HB 1531 amends 961.03, F.S., regarding the petition process to add a requirement that the petitioner submit fingerprints for a state and national criminal history check after filing a petition. The bill requires that the fingerprints be submitted electronically to the Florida Department of Law Enforcement (FDLE) for state processing of a criminal history check. FDLE must forward the fingerprints to the Federal Bureau of Investigation (FBI) for a national criminal history check. The results of the two checks are to be considered by the court in determining whether a petitioner satisfies the requirements for eligibility of compensation. The criminal history checks required under this provision are to be done at no cost to the petitioner. Currently, the act requires FDLE to conduct a state criminal history check and to forward the petitioner's fingerprints to the FBI after a successful petitioner has applied for compensation.<sup>11</sup>

HB 1531 also amends this section with respect to the effect of a prosecuting authority's stipulation to a petition. Currently under this section, a stipulation applies to both to the question of a petitioner's actual innocence and eligibility for compensation. The bill amends this section to remove the aspect of the stipulation relating to the petitioner's eligibility for compensation, and provides in a subsequent subsection that it is a judicial function to determine the petitioner's eligibility for compensation.

HB 1531 also removes the current provision requiring the petitioner's eligibility for compensation to be established by a preponderance of the evidence standard when made in connection with a stipulation by the prosecuting authority. The bill further inserts the term "clear and convincing evidence" in various places in the bill limiting the application of a "clear and convincing" evidence standard to the question of the petitioner's actual innocence. Currently, section 961.03(5), F.S., applies a clear and convincing evidence standard to the issues of actual innocence *and* eligibility for compensation. The effect of these changes is to have one standard of proof that applies solely to the determination of a petitioner's actual innocence.

With respect to an order of the original sentencing court finding that the petitioner has satisfied his or her burden under the act, HB 1531 adds a requirement that the order include a finding that the petitioner is eligible for compensation.

HB 1531 also provides a definition for the term "actual innocence" which is substantially similar to the lengthy description of the concept of actual innocence currently found in the act and substitutes the

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

<sup>8</sup> Section 961.03 (5)(c), F.S.

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

<sup>10</sup> Section 961.03(7), F.S.

<sup>11</sup> Section 961.05(5), F.S.

term for the lengthy description. The bill additionally makes several revisions to the act inserting the term 'actual innocence' for the sake of clarity and consistency in construing the act's provisions.

### **The Application Process**

Section 961.05(4), F.S., lists the content requirements of an application for compensation. In part, it requires that the application include:

- (a) A certified copy of the order vacating the conviction and sentence;
- (b) 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 this act;
- (c) Certified copies of the original judgment and sentence;
- (d) 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;

HB 1531 deletes these requirements which are currently the responsibility of the petitioner to obtain, and revises them with direction that the Department of Legal Affairs:

- (a) Request that the clerk of the court provide a certified copy of the order vacating the conviction and sentence and certified copies of the original judgment and sentence.
- (b) Request that the Department of Corrections provide documentation demonstrating the length of the sentence served, including the dates of the wrongfully incarcerated person's admission into and release from the custody of the Department of Corrections.

HB 1531 also requires the application to include identification of the original sentencing court and the criminal case number of the case or cases for which the person was wrongfully incarcerated.

In addition, the bill contains a provision which expressly prohibits a person from submitting an application under the act if the person has received a prior judgment in his or her favor in a civil action against the state or other entity subject to s. 768.28, F.S., arising out of the person's wrongful incarceration.

#### **B. SECTION DIRECTORY:**

Section 1. Amends section 961.02, F.S., providing a definition of "actual innocence" and amending the definition of "wrongfully incarcerated person."

Section 2. Amends section 961.03, F.S., amending provisions relating to the petition process and requiring fingerprint submission for criminal history background checks.

Section 3. Amends section 961.05, F.S., revising provisions relating to the application process.

Section 4. Amends section 961.06, F.S., amending provisions relating to compensation and barring application if a prior judgment has been obtained in a claimant's favor for his or her wrongful incarceration.

Section 5. Providing and effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill does not allow a petitioner to be charged for the cost of having a state and federal criminal history records check. The bill does not specify who is to pay for the cost of such checks. The Florida Department of Law Enforcement (FDLE) noted in its analysis of this bill that the cost of a state check is \$24 and the cost of a federal criminal history check through the Federal Bureau of Investigation is \$19.25 for electronically submitted fingerprints. While the Legislature can waive the state fee, it cannot waive the federally imposed fee. (See Drafting Issues or Other Comments)

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce 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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As noted in the Fiscal Comments section, the cost of federal criminal history records checks cannot be waived by the Legislature. If FDLE or another entity is to pay for or absorb the cost of the federal criminal history records checks, the bill should be amended to expressly provide for it.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES