

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 162

INTRODUCER: Senators Joyner and Bradley

SUBJECT: Compensation of Victims of Wrongful Incarceration

DATE: April 14, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>ACJ</u>	_____
4.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 162 amends ch. 961, F.S., the Victims of Wrongful Incarceration Compensation Act. Chapter 961, F.S., provides an administrative process for an eligible person who has been wrongfully incarcerated for a felony conviction to seek compensation. Under current law, a person is not eligible for compensation through the administrative process if the person has another valid felony conviction.¹ For these ineligible individuals, their only remedy may be a claim bill which must be approved by the Legislature. The bill narrows the disqualifying criminal offenses to felonies which are violent in nature, and thereby expands the pool of potential applicants for compensation through the administrative process.

II. Present Situation:

The Legislature passed the Victims of Wrongful Incarceration Compensation Act (Act) in 2008.² The Act authorizes a person who has been wrongfully incarcerated for a felony conviction to petition the court for a determination that the person was a wrongfully incarcerated person who is eligible for compensation.

The petition must:

- Allege that verifiable and substantial evidence of actual innocence exists and state with particularity the nature and significance of the evidence of actual innocence; and

¹ Section 961.04, F.S.

² Chapter 961, F.S., (2008-39, Laws of Florida). To date, 3 persons have been compensated under the Act and one claim has recently been approved and forwarded to the Chief Financial Officer. The claim recently forwarded was for James Joseph Richardson, who became newly eligible under a change to ch. 961, F.S., adopted in 2014 (ch. 2014-198, Laws of Fla.) Correspondence with the Office of the Attorney General (February 18, 2015) (on file with the Senate Judiciary Committee).

- Allege that the person is not disqualified from seeking compensation based on criminal history.³

The prosecutor must respond within 30 days either concurring that the petitioner is not ineligible or objecting to the petition.⁴

“Clean Hands” Provision of the Act – Section 961.04, Florida Statutes

To be eligible for compensation, a wrongfully incarcerated person must not have a disqualifying felony conviction, which is one of the following:

- The person had a prior conviction 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;
- The person was convicted of, or pled guilty or nolo contendere to, a felony offense while wrongfully incarcerated; or
- While wrongfully incarcerated, the person was serving a concurrent sentence for another felony for which the person was not wrongfully convicted.⁵

Regardless of the validity of the wrongful incarceration claim, if the court finds the petitioner ineligible for compensation under s. 961.04, F.S., based on a preponderance of the evidence, the court must dismiss the petition.⁶ If, however, the court does not dismiss the petition but the prosecutor objects, the case proceeds to a hearing before an administrative law judge.⁷ At the hearing, the petitioner must establish by clear and convincing evidence actual innocence and eligibility for compensation.⁸

Once the court determines that the petitioner is eligible for compensation, the petitioner must, within 2 years, apply to the Department of Legal Affairs.⁹ 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, calculated at a rate of \$50,000 for each year of wrongful incarceration up to a total of \$2 million.¹⁰

³ Section 961.03(1), F.S.

⁴ Section 961.03(2), F.S.

⁵ Section 961.04, F.S.

⁶ Section 961.03 (2)-(4), F.S.

⁷ Section 961.03(5), F.S.

⁸ Section 961.03(5), F.S. Ultimately, the original sentencing court will either adopt or decline to adopt the findings and recommendation of the administrative law judge. The court must then enter its final order in the matter either certifying the petitioner to be a wrongfully incarcerated person or denying the petition. s. 961.03(6)(d) and (7), F.S. If the order is favorable, the petitioner may apply to the Department of Legal Affairs for compensation.

⁹ Section 961.05, F.S.

¹⁰ Section 961.06(1)(a), F.S. The \$50,000 annual rate of compensation must be adjusted for inflation since 2008. Additionally, the person is entitled to waiver of tuition and fees for up to 120 hours of instruction at any career center established under s. 1001.44, F.S., any Florida College System institution listed in 1000.21(3), F.S., or any state university listed in s. 1000.21(6), F.S., if the person meets and maintains the regular admission requirements; remains registered; and makes satisfactory academic progress; the amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person; reasonable attorney’s fees and expenses incurred and paid in connection with criminal proceedings and appeals regarding the wrongful conviction, and immediate administrative expunction of the person’s criminal record resulting from the wrongful arrest, wrongful conviction, and wrongful incarceration. s. 961.06, F.S.

To date, three persons have been compensated under the Act. One additional claim has recently been through the application process and forwarded to the Chief Financial Officer.¹¹

Of the 27 states that have statutes establishing a process for compensation for wrongfully incarcerated persons, Florida is the only state with a “clean hands” provision.¹² A few other states, however, do exclude persons from compensation who confessed or pled guilty, unless the person can establish coercion by a law enforcement officer.¹³

Wrongfully Incarcerated - Placed on Parole or Community Supervision for the Offense

A person who is wrongfully incarcerated could be placed on parole or community supervision as part of the sentence.¹⁴ If a person commits a misdemeanor or a technical violation of supervision which results in revocation of the community supervision or parole, the person remains eligible for compensation. If, however, the basis for revocation was a felony, the person is ineligible for any compensation.¹⁵

III. Effect of Proposed Changes:

The bill amends the Victims of Wrongful Incarceration Compensation Act to narrow the class of individuals who are ineligible for compensation for wrongful incarceration through the administrative process. Wrongfully incarcerated persons will now be found ineligible for compensation only if:

- Before the person’s wrongful incarceration, he or she committed a violent felony;
- During the person’s wrongful incarceration, he or she committed a violent felony; or
- During a period of parole or community supervision on the sentence that led to wrongful incarceration, the person committed a violent felony which resulted in the revocation of parole or community supervision.

Limiting disqualifying offenses to violent felonies potentially increases the pool of wrongfully incarcerated persons who may seek compensation through the administrative process.

“Violent felony” is defined in the bill by cross-referencing ss. 775.084(1)(c)1. and 948.06(8)(c), F.S. The combined list of those offenses includes attempts to commit the crimes as well as offenses committed in other jurisdictions if the elements of the crimes are substantially similar.

¹¹ Correspondence with the Office of the Attorney General, February 18, 2015.

¹² *Making Up for Lost Time, What the Wrongfully Convicted Endure and How to Provide Fair Compensation*, The Innocence Project, Benjamin N. Cardozo School of Law, www.innocenceproject.org, pg. 19. Hawaii is currently considering a wrongful incarceration statute. Other states generally take these matters up by “personal bills,” a process much like Florida’s claim bill process.

¹³ *Id.* at 18.

¹⁴ 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. Ch. 82-171, Laws of Fla; s. 947.16, F.S. The term “community supervision” as used in s. 961.06(2), F.S., includes controlled release, conditional medical or conditional release under the authority of the 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.).

¹⁵ Section 961.06(2), F.S.

Thus, the violent felony offenses that preclude a wrongfully incarcerated person from being eligible for compensation under the bill 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;
- 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.

The bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to 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. 10 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A person who is entitled to compensation under the Act will 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. More persons may qualify for compensation under the provisions of the bill.

C. Government Sector Impact:

Although the statutory limits on compensation under the Act are clear, actual fiscal impact of the bill is unquantifiable. The possibility that a person will be compensated for wrongful incarceration is based upon variables that cannot be known, such as the number of wrongful incarcerations that currently or may exist in the future.

There have been three successful claims since the Act became effective. An additional claim is currently in the Office of the Chief Financial Officer awaiting payment arrangements.

The Office of the Attorney General reports that applications of two persons claiming to be eligible for compensation were actually not eligible. Two other claims lack complete documentation and are currently being investigated. Since the Act became effective, there have been an additional 22 inquiries to the Office of the Attorney General but no further communication from those persons.

The Office of the State Courts Administrator expects that the bill may result in more petition filings based on wrongful incarceration. Still, the OSCA expects any potential impact to be insignificant.¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹⁶ Office of the State Courts Administrator, *2015 Judicial Impact Statement* (March 2, 2015).

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 961.02, 961.04, 961.06, 961.03, and 961.055.

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.
