

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 494

INTRODUCER: Senator Bradley

SUBJECT: Compensation of Victims of Wrongful Incarceration

DATE: February 20, 2017

REVISED: \_\_\_\_\_

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Hrdlicka	CJ	<b>Pre-meeting</b>
2.	_____	_____	JU	_____
3.	_____	_____	AP	_____

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**I. Summary:**

SB 494 amends ch. 961, F.S., which provides a process whereby a person who has been wrongfully incarcerated may, under limited circumstances, seek a court order finding the person to be eligible for compensation.

Under current law, regardless of the fact of his or her wrongful incarceration, the person is not eligible for compensation if he or she has a criminal history that includes any felony.<sup>1</sup> This is commonly called the “clean hands” provision of Florida’s wrongful incarceration compensation law.

The bill creates a definition of the term “violent felony” in s. 961.02, F.S. The bill provides that in order to be ineligible for compensation under ss. 961.04(1) or (2), or 961.06(2), F.S., the person must have committed a violent felony, not a simple felony, under the circumstances set forth in those sections.

The practical effect of the bill cannot be determined with any certainty. It appears the bill could increase the pool of people who could seek compensation under the statute based upon the relaxation of the ineligibility standard from “simple felony” to “violent felony.” However, it cannot be predicted how many cases of wrongful incarceration currently exist or may occur in the future, or whether a person in the expanded pool will be or currently is wrongfully incarcerated. Without the existence of a wrongful incarceration, the standard for seeking redress is immaterial.

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<sup>1</sup> Section 961.04, F.S.

## II. Present Situation:

The Victims of Wrongful Incarceration Compensation Act (the Act) has been in effect since July 1, 2008.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

To date, four persons have been compensated under the Act for a total of \$4,276,901.<sup>5</sup>

### “Clean Hands” Provision of the Act – Section 961.04, F.S.

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 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;
- *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
- *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.<sup>6</sup>

Of the states that have statutes that provide for compensation for wrongfully incarcerated persons, Florida is the only state with a “clean hands” provision.<sup>7</sup>

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<sup>2</sup> Chapter 961, F.S. (2008-39, Laws of Florida). To date, four persons have been compensated under the Act. (February 10, 2017, e-mail from Attorney General's Office staff on file with Criminal Justice staff.)

<sup>3</sup> Section 961.05, F.S.

<sup>4</sup> Additionally, the wrongfully incarcerated 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 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; and notwithstanding any provision to the contrary in s. 943.0583, F.S., or s. 943.0585, F.S., immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. s. 961.06, F.S.

<sup>5</sup> Correspondence with the Office of the Attorney General, February 18, 2015; Chief Financial Officer, October 23, 2015.

<sup>6</sup> Section 961.04, F.S.

<sup>7</sup> *Making Up for Lost Time*, page 19, (2009), The Innocence Project, Benjamin N. Cardozo School of Law.

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

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.<sup>8</sup>

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 or some technical violation of his or her supervision that results in revocation of the community supervision or parole, the person is still eligible for compensation. If, however, any felony law violation results in revocation, the person is no longer eligible for compensation.<sup>9</sup>

### **III. Effect of Proposed Changes:**

The bill amends the Wrongful Incarceration Compensation Act so that a person who otherwise meets the statutory criteria<sup>10</sup> for compensation is no longer ineligible due to a prior nonviolent felony, a nonviolent felony committed while wrongfully incarcerated, or a nonviolent felony committed while on parole or community supervision.<sup>11</sup>

“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 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 felony offenses that would 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;

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<sup>8</sup> 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 Florida; 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 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.).

<sup>9</sup> Section 961.06(2), F.S.

<sup>10</sup> The person 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) and (7), F.S.

<sup>11</sup> Sections 961.04 and 961.06, F.S.

- 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 reorganizes s. 961.02, F.S., the “definitions” section of the Act and adds a definition of “violent felony.” Additionally, the bill reenacts s. 961.03(1)(a), (2), (3), and (4), F.S., s. 961.05(6), F.S., s. 961.055(1), F.S., and s. 961.056(4) F.S., to incorporate the amendments made by the bill.

The bill takes effect October 1, 2017.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

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:**

It is possible that more persons will be eligible for compensation under the provisions of the bill. 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.

**C. Government Sector Impact:**

More persons are potentially eligible for compensation under the provisions of the bill. 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.<sup>12</sup> Payment is made from an annuity or annuities purchased by the Chief Financial Officer for the benefit of the wrongfully incarcerated person. The Victims of Wrongful Incarceration Compensation Act is funded through a continuing appropriation pursuant to s. 961.07, F.S.

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. Four successful claims since the Act became effective total \$4,276,901.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

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

The bill reenacts the following sections of the Florida Statutes: 961.03, 961.05, 961.055, and 961.056.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>12</sup> The Chief Financial Officer may adjust the annual rate of compensation for inflation for persons found to be wrongfully incarcerated after December 31, 2008. s. 961.06(1)(a), F.S.

B. Amendments:

None.

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

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