

# COMPENSATION UNDER THE MICROSCOPE:

## FLORIDA

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### *Introduction*

Of the states with more than ten exonerees and with long-standing wrongful compensation statutes, Florida has the second-lowest percentage of exonerees who apply for compensation after Missouri. This edition of “Compensation Under the Microscope” explores some explanations for the low rate of filing and, thus, the low level of compensation awarded in Florida.

Florida passed the Victims of Wrongful Incarceration Compensation Act in 2008 (“the Act”). Fla. Stat. § 961.01, *et seq.* It took effect on July 1, 2008. Under Florida law, the road to compensation is complicated. The central requirement is that the petitioner ultimately demonstrate that they are “entitled to compensation.” Id. § 961.02(5). That requires the petitioner to show first that they are “eligible for compensation.” Id. § 961.02(4). To meet that requirement,” the petitioner must, in turn, show that they are a) a “wrongfully incarcerated person” as defined in Section 961.02(7), and b) that they are not statutorily disqualified from seeking compensation by Section 961.04.

A “wrongfully incarcerated person” is a person whose felony conviction and sentence have been vacated and who has received an order issued by the sentencing court that they did not commit the act or offense for which they were convicted and incarcerated, and that they did not “aid, abet, or act as an accomplice or accessory to a person who committed the act or offense. Id. § 961.02(7). Notably, there is no provision in Florida law entitling those pardoned by the Governor to seek compensation.

To make the showing of being a “wrongfully incarcerated person,” the individual must file a petition with the court that sentenced them and to provide a copy of that petition to the prosecutor. Id. § 961.03(1)(a). That petition must state with particularity that “verifiable and substantial” evidence of innocence exists. Id. § 961.03(1)(a)(1). It must also state that the petitioner is not disqualified from compensation for any reason set forth in Section 961.04. 961.03(1)(a)(2).

Significantly, that petition must be filed quickly – within 90 days (we will call this the “90-day rule”) of the entry of a final order vacating the conviction and sentence. Id. § 961.03(1)(b)(1). An exception exists, however, for petitioners whose final order was entered prior to the effective date of the Act (July 1, 2008), in which case they had two years to file the petition. The prosecutor is required to respond to a petition within 30 days. Id. § 961.03(2). They can, in effect, either concede the petition or oppose it.

If the prosecutor agrees with the petition, he or she certifies that the petitioner meets the definition of a “wrongfully incarcerated person” and that they are not ineligible from seeking compensation. Id. § 961.03(2)(a). Based on the prosecutor’s certification, the court then certifies to the Florida Department of Legal Affairs that the petitioner meets the definition of being “eligible for compensation.” Id. § 961.03(3).

Alternatively, the prosecutor can oppose the petition. In that event, they would contend either that the petitioner did not meet the definition of a “wrongfully incarcerated person,” or that they are disqualified by a provision in Section 961.04, or both.

There are five reasons set forth in Section 961.04 to disqualify the petitioner from receiving compensation. These provisions, often called “clean hands provisions,” concern criminal convictions unrelated to a petitioner’s wrongful conviction. Four of these clean hands provisions exist only in Florida’s compensation law.

The first of these disqualifies the petitioner if he or she was, prior to the wrongful conviction, convicted of any “violent felony” in Florida, a crime in another state that would be a “violent felony” in Florida, or a federal crime that is designated as a “violent felony.” Id. § 961.04(1). Violent felonies are defined as those crimes listed in Sections 775.084(1)(c)(1) or 948.06(8)(c). Id. § Section 961.02(6). These crimes include murder, manslaughter, and sexual assault, as well as robbery, armed burglary, burglary offenses that are first- or second-degree felonies, aggravated battery, aggravated stalking, and attempts to commit those crimes.

Second, the petitioner is disqualified if he or she was, prior to the wrongful conviction, convicted of more than one *non-violent* felony in Florida, a crime in another state that would be a *non-violent* felony in Florida or *non-violent* federal felony. Id. § 961.04(2).

These two “clean hands” provisions, made effective October 1, 2017, relaxed the prior provision. Prior to the passage of Senate Bill 494 in 2017, a conviction of a single felony prior to or during a wrongful incarceration, whether violent or not, was disqualifying.

The third and fourth disqualifying conditions mirror the first and second, except that the felony conviction occurs during, rather than prior to, the wrongful incarceration. Id. § 961.04(3), (4).

Fifth, a petitioner is disqualified from seeking compensation, if, during their wrongful incarceration, they were also serving a concurrent sentence for another crime for which they were not wrongfully convicted. Id. § 961.04(5). This fifth provision, in contrast to the first four, is quite common in state compensation statutes.

The statute does not prohibit those who have been convicted of felonies subsequent to their exoneration from seeking and obtaining compensation.

If the prosecutor opposes the petition, then the court decides whether, by a preponderance of the evidence, the petitioner is disqualified by one of the five “clean hands” provisions in Section 961.04. Id. § 961.03(4)(a). If the court finds that the petitioner is disqualified for one of

these reasons, then the petition must be dismissed. If the court finds that none of the “clean hands” provisions apply, but the prosecutor contends that the petitioner is not a “wrongfully incarcerated person,” then the court must transfer that issue to a State Administrative Law judge (ALJ). Id. § 961.03(4)(b). The ALJ is required to make findings of fact and recommend a determination.

The petitioner is required to demonstrate to the ALJ that they are a wrongfully incarcerated person by clear and convincing evidence. Id. § 961.03(5). The evidentiary hearing before the ALJ, at which the prosecutor is required to appear, must take place within 120 days of the transfer of the petitioner to the ALJ. Id. § 961.03(6)(a). The ALJ’s findings and recommendation are to be issued within 45 days of the hearing. Id. § 961.03(6)(c). Once issued, the trial court judge has 60 days to decide whether to adopt or reject the ALJ’s findings and recommended conclusion. Id. § 961.03(6)(d). These deadlines are intended so this proceeding is concluded reasonably quickly. As we see below, only one such proceeding has been conducted.

If the trial judge finds that the petitioner is a wrongfully convicted person, either because he or she adopted the ALJ’s recommended decision to that effect or declined to accept a contrary decision, the trial judge certifies their findings to the Department of Legal Affairs. Id. § 931.03(7)(a).

In short, a petitioner becomes “eligible for compensation” either because the prosecutor conceded that they were or because the court rejected the prosecutor’s opposition to the petition. Such a decision in favor of the petitioner does not conclude the process. Instead, the petitioner must next show that they are “entitled to compensation.” Id. § 961.05. That requires the filing of an application.

The petitioner has two years after the court finds that they are “eligible for compensation” to file an application with the Department of Legal Affairs. Id. § 961.05(1)-(3). Only the exoneree may file such an application. Estates or personal representatives may not do so on their behalf. Id. Section 961.05(3) sets forth what must be included in the application. This includes certified copies of the order finding the petitioner a wrongly incarcerated person, the order setting aside the conviction, the original judgment of conviction, proof of identification, including fingerprints, and documentation of fines, penalties, court costs, and attorney’s fees paid.

The Department of Legal Affairs has 30 calendar days to inform the applicant of any errors or omissions or to require additional information. Id. § 961.05(5). The applicant has 15 days to respond. The Department then has 90 days to review the claim for compensation. If it satisfies the statute, the Department must notify the petitioner within five business days. Id. If approved, the petitioner is found to be “entitled to compensation.” Id. § 961.02(5).

A successful claimant is entitled to \$50,000 per year of wrongful incarceration, adjusted for inflation. Id. § 961.06(1)(a). They are also entitled to certain educational benefits, reimbursement for fines, penalties and court costs, reasonable attorney’s fees incurred during the criminal case, and expungement. Id. § 961.06(1)(b)-(e). There is no entitlement to recover

attorney’s fees incurred in connection with the petition for compensation. Total compensation may not exceed \$2 million. Id. § 961.06(1). That cap is not adjusted for inflation.

The payment is made to a company capable of issuing an annuity contract for a term selected by the petitioner that is not less than 10 years. Id. § 961.06(4). Before payment is made, the petitioner must waive their right to file a civil rights lawsuit or other case arising from the wrongful conviction. Id. § 961.06(5). A person may not file a claim for compensation if there is a pending suit for damages or a pending “claim bill.” Id. § 961.06(6)(a)-(b). A claim bill is a private bill introduced in the legislature which, if passed, would compensate the subject of the bill for their wrongful conviction. If the exoneree has already received compensation pursuant to a claim bill, they may not file a claim for statutory compensation. Id. § 961.06(6)(e). There is no provision barring those who received a recovery from a civil rights or other case from seeking state compensation.

*Florida by the Numbers*

As of October 15, 2022, the National Registry of Exonerations recorded 83 exonerees who were wrongly convicted of crimes in Florida. Of those 83, 11 were not incarcerated and thus not entitled to compensation, leaving 72 persons who are potentially eligible for compensation. Collectively, they were incarcerated for over 923 years. How many of those 72 exonerees have been compensated by the state of Florida? The answer is only 10.

Prior to the passage of the statute described above, three individuals received compensation through a private legislative or claims bill:

Name	Year	Compensation	Years Lost
Todd Neely	1992 (1989 exon)	\$150,000 attorney’s fees reimbursement	.2
Wilton Dedge	2005 (2004 exon)	\$2,000,000	22.2
Alan Crotzer	2008 (2006 exon)	\$1,250,000	23.8

Following the passage of the statute, only five received compensation pursuant to it.

Name	Year of Pmt/Exon	Amount of Comp	Years Lost
Leroy McGee	2010 (1995 exon)	\$179,167.00	3.6 years
James Bain	2011 (2009 exon)	\$1,754,794.51	35.1
Luis Diaz	2012 (2005 exon)	\$1,297,569.28	25.9
James Richardson <sup>1</sup>	2015 (1989 exon)	\$1,045,370.45	20.9
Hubert Myers	2020 (2019 exon)	\$2,000,000.00	42.6

As noted above, in 2017, the Florida legislature modestly relaxed the “clean hands” provision. Hubert Myers is the only exoneree to receive state statutory compensation following that

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<sup>1</sup> James Richardson’s earlier state compensation claim was denied.

amendment, but he would have been eligible under the prior version of the statute. Thus, the 2017 amendment does not appear to have helped any exoneree obtain compensation.

After the 2008 statute was passed, two exonerees did not qualify for compensation under it, but received compensation through a claims bill.

William Dillon	2012 (2008 exon)	\$1,350,000.00	27
Clifford Williams	2020 (2019 exon)	\$2,150,000.00	42.6

In sum, only 13.9% of Florida exonerees who were incarcerated received compensation. That's about one-third of the national average. The total amount paid was \$13,176,901.24, which covered exonerees who had 243.9 lost years or 26.4% of the total lost years of all Florida exonerees. This higher percentage of lost years for which compensation was paid reflects that many of those paid experienced very lengthy incarcerations.

Four additional exonerees were not eligible for compensation under the statute, but were the subjects of private compensation bills filed in 2021:

Clemente Aguirre-Jarquin (12.7 years)  
Scotty Bartek (22.3 years)  
Leonard Cure (15.6 years)  
Robert DuBoise (33.5 years)

As of October, 2022, these bills have not been passed and have been tabled. Refiling of them is uncertain.<sup>2</sup>

One exoneree, [Andrew Taylor](#), sought compensation through the statutory route described above. His petition was denied after a trial judge affirmed the decision of an ALJ that Wilson had not proven his innocence by clear and convincing evidence. Taylor was incarcerated for 24 ½ years for child sex abuse. The victim recanted and a judge vacated his conviction and ordered a new trial. The prosecution declined to retry him. A month after Taylor sought compensation under the Florida statute, the prosecution re-indicted him on the same charges and offered to dismiss them if he dropped his claim for compensation. He refused and the charges were eventually dropped. Subsequently, his claim for compensation was denied.

The 10 exonerees compensated, the four with bills filed in 2021, the two with prior claims bills that were not passed, and Andrew Taylor, account for the 17 claims for state compensation made in Florida by individuals listed in the Registry. Only six of those claims were made under the statute. The percentage of exonerees seeking compensation in Florida, either under the statute or by claims bill is 23.6%.

Florida is unique in having a very short 90-day window to file a petition in court after the vacatur of a conviction. In some cases, like Clemente Aguirre-Jarquin's, there was post-vacatur

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<sup>2</sup> Claims bills were earlier introduced for and Larry Bostic (2010), and Clinton Treadway (2016), but were not passed. They have been coded as filed but denied.

criminal litigation that lasted beyond that 90-day window. It is also unique in having the “clean hands” provisions. [Clifford Williams, Jr.](#), for example, was wrongly convicted of a murder and an attempted murder. He was incarcerated for over 42 years before his exoneration, but two felony convictions as a young man precluded his claim for statutory compensation. The Florida legislature, instead, unanimously passed a private bill compensating him.

These statutory barriers account for a significant portion of the non-filings. According to the Innocence Project, six Florida exonerees are barred from compensation by the 90-day rule.<sup>3</sup> The Innocence Project and our independent research identified at least 17 others barred by the clean hands provisions.<sup>4</sup> These bars then account for 17 of the 55 exonerees who are coded as non-filers and for six who have unsuccessfully filed claims bills. Thus, of the 55 Florida non-filers and six unsuccessful claims bill filers, these statutory barriers have stood in the way of at least 37% of the exonerees from receiving compensation.<sup>5</sup> Together, they account for approximately 352 lost years.

What about the other non-filers? When there is a low percentage of exonerees who receive state compensation, one explanation could be that non-filers have filed civil rights lawsuits that may result in more compensation. Doing so does not necessarily bar seeking state compensation. In fact, a fair reading of the Florida statute is that it precludes people from receiving state statutory compensation if they have a *pending* civil case arising from the wrongful conviction, but it does not expressly preclude those whose civil cases were resolved with a judgment or settlement in their favor. The Florida courts have not yet had occasion to interpret the extent of this preclusion. There is some reason to doubt that they would adopt this reasoning. Although the statute language supports it, logic does not.

In Florida, however, only 19 of the 83 exonerees filed civil compensation cases. That percentage of civil filers, 23%, is also well below the national average of 43%. Of those 19 filers, 12 so far have received compensation as a result of their civil lawsuits.<sup>6</sup> Most, but not all, of

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<sup>3</sup> Clemente Aguirre-Jarquin, Scotty Bartek, Cheydrick Britt, Damon Corner, Dean McKee, and Vishnu Persad.

<sup>4</sup> Orlando Boquette, Larry Bostic, Tony Brown, Andre Bryant (died in 2017), Leonard Cure, Robert DuBoise, Dustin Duty, Tony Hopps, Peter Jean-Gilles, Darrian Lawrence, Jules Letemps, Juan Roberto Melendez, Seth Penlaver, Willie Lee Slater, Clinton Treadway, Derrick Raphael Williams, and Jerron Williams.

<sup>5</sup> Another exoneree, Richard Peay, did not seek compensation and would not appear to be eligible to do so since he was pardoned by the Governor and did not receive a court order vacating his conviction.

<sup>6</sup> There are also five pending civil rights cases in Florida. Aguirre-Jarquin and DuBoise are plaintiffs in two. The plaintiffs in the other three were either not incarcerated or briefly jailed after their wrongful convictions. Two other civil rights cases, brought by Rudolph Holton and Michael Porter, were dismissed.

those compensated, however, received only modest settlements,<sup>7</sup> some likely because the duration of their wrongful incarceration was relatively small:

Name	Amount Received	Years Lost
Peter Dallas	\$225,000	1
Clarens Desrouleaux	\$90,000	3.9
Joseph Green	Unknown but believed nominal	6
Theodis Hagans	\$10,000	2.4
Malenne Joseph	\$60,000	.2
Todd Neely	\$229,000	.2
John Purvis	\$500,000	7.7
James Richardson <sup>8</sup>	\$150,000	20.9
Frank Lee Smith	\$340,000	14
Sarah Smith	\$100,000	0

Only two Florida exonerees have received substantial civil rights settlements: Anthony Caravella (\$7 million; 25.1 years lost) and Jerry Townsend (\$4.2 million; 20.9 years lost). Whether Caravella will actually get paid is uncertain. In 2021, six years after the settlement, the Florida Court of Appeals ruled that an insurer had no duty to indemnify the officers who caused Caravella's wrongful conviction. *Certain Underwriters at Lloyd's v. Pierson*, 322 So.3d 106 (Fla. App. 2021).

Even including Caravella, this accounting helps demonstrate why the average civil rights recovery per year of incarceration is nearly \$200,000 less in Florida than the national average. Compared to other states with a significant number of exonerees, there is simply not a history of widespread and substantial wrongful conviction compensation in Florida. In any event, while the Florida statute does not appear to bar claims from those who have recovered following civil litigation, the fact that these exonerees did recover some compensation under those lawsuits could explain why they did not seek compensation under the state statute.

The 2008 law offered prior exonerees two years to file a claim. Nevertheless, it is common for pre-statute exonerees not to file. Fourteen people fall into this category.<sup>9</sup> They or their attorneys may not have been aware of the statute, they may have passed away prior to

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<sup>7</sup> Six received amounts less than they would have under the compensation statute.

<sup>8</sup> Richardson, who was wrongly convicted of killing his seven children, also received compensation pursuant to claims bill many years after getting this modest settlement. Neely also received an attorney's fees reimbursement through a claim bill.

<sup>9</sup> Timothy Brown, Christopher Clugston (died 2015), Joaquin Martinez, John Peel, Derrick Robinson, Harold Grant Snowden and Terrance Washington. *See also* fns 10-12.

passage,<sup>10</sup> experienced short incarcerations,<sup>11</sup> were convicted of later crimes before passage of the statute,<sup>12</sup> or simply chosen not to reopen that part of their lives.

There are 14 people exonerated shortly before or after the bill passed who did not file for compensation. Seven were convicted of crimes after their exonerations, although this does not explain why they did not file for compensation in the interim.<sup>13</sup> If the Florida statute were amended in the future, it could be written to preclude these exonerees from compensation. One exoneree was incarcerated briefly.<sup>14</sup> There is no obvious explanation for five others not filing.<sup>15</sup>

### *Conclusion*

There can be little question that Florida's 90-day rule and clean hands bar explains some, but not all, of the low filing and compensation rates in Florida. Florida does have an escape valve – the private bill – and it is used with some frequency. An equal number of Florida exonerees have been compensated through claims bills as through the compensation statute, but, again, the numbers are small. Claims bills are, in all states, difficult to pass. They require a persuasive legislative backer and a good narrative. They depend on a moral argument. Clifford Williams, incarcerated for more than 42 years, is a good example. However, in general, bills are not an effective substitute for a well-operating state statutory compensation system.

We have tried to surmise why some exonerees have not sought compensation under either the statute or a private bill. Definitive explanations are simply not possible in some cases, and it is not reasonable to expect filing and compensation rates approaching 100%. The Florida statute is somewhat cumbersome in that one must proceed through the court and then to an administrative body for compensation. But that is true in other states with much higher rates of filing and compensation.

In Florida, half of the exonerees who were incarcerated were exonerated prior to the passage of the statute. We have not studied this empirically, but a fair hypothesis is that filing

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<sup>10</sup> Steven Carter and Ronald Stewart.

<sup>11</sup> Cody Davis and Lafayette Green.

<sup>12</sup> William Farnbaugh, Andrew Golden, and Rudolph Holton. This would not preclude them from filing, because the clean hands bar applies to convictions prior to or during the wrongful conviction, not after it. Even so, the pre-passage convictions may well explain the non-filing.

<sup>13</sup> Narcisse Antoine, Dennis Devlin, Chad Heins, Darrian Lawrence, Jesse Miller, Jr., Michael Porter, and Sergio Radillo, Jr.

<sup>14</sup> Melissa Morales.

<sup>15</sup> Kenneth Atkins, Donald Barnes, Jr., Jacob Cash, Gregory Council and Harleme Larry. As noted in footnote 5, Richard Paey was not eligible for compensation because he was pardoned by the Governor.



rates for people exonerated prior to passage of a compensation statute are lower than after. Lawyers with active post-conviction cases sometimes handle the compensation case or refer them to attorneys that do. And, after a statute has been passed, in some states, a fairly small group of lawyers emerge and develop an expertise in these cases. That does not seem to have developed as clearly in Florida as it has in other states of comparable size, such as Michigan and Ohio.

It is difficult to explain the low rates of filing and compensation in Florida in civil rights cases. It may be the attorneys have looked at possible cases and found them to be without merit. However, it seems odd that the percentage of non-meritorious cases would be so much higher in Florida than elsewhere.<sup>16</sup> It may be that the history of quite modest settlements in Florida has discouraged civil rights attorneys from suing in Florida. For its size, there have been fewer large verdicts and settlements in Florida than in many comparably sized states.

The Gutman/Sun study in the *Northeastern Law Review* showed a strong correlation between the presence of an innocence organization and, to a lesser degree, a Conviction Integrity Unit on the rates of filing civil rights cases. In Florida, the Innocence Project of Florida's website shows that it has represented 25 exonerees on the Registry. A large number of them have been involved in some compensatory efforts – claims bills, state compensation or civil rights cases. The Registry shows only six Florida exonerees received assistance from a Conviction Integrity Unit. So far, five of the six of them have sought or received compensation.

That does leave many Florida exonerees, many of whom have not filed, without a connection to an innocence organization or a CIU. The barriers to state compensation discussed above also contributes to Florida's low compensation rates.

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<sup>16</sup> Those with Official Misconduct (OM) tags in the Registry should, in theory, have a better chance of winning a civil rights case. The percentage of those with OM tags in Florida is, however, only a bit less than the national average. It does not appear that race is a factor. The percentage of Whites and Blacks wrongfully convicted in a Florida state court is about the same, as is the racial make-up of those who did not seek any compensation of any kind in Florida.