

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative(s) Quinones offered the following:

2
3 **Amendment (with title amendments)**

4 Remove everything after the enacting clause

5
6 and insert:

7
8 Section 1. Section 961.01, Florida Statutes, is created to
9 read:

10 961.01 Short title.--Sections 961.01-961.07 may be cited
11 as the "Wrongful Incarceration Compensation Act."

12 Section 2. Section 961.02, Florida Statutes, is created to
13 read:

14 961.02 Definition; finding of wrongful incarceration upon
15 release from incarceration for felony offenses.--

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16 (1) As used in ss. 961.01-961.07, a wrongfully
17 incarcerated person means a person who is actually innocent and
18 who has been ordered released from incarceration for a felony
19 conviction. As used in this act, "actually innocent" means:

20 (a) The person was charged, by indictment or information,
21 with the commission of an offense classified as a felony; and

22 (b) The person did not plead guilty or no contest to the
23 offense charged or to any lesser included offense, unless the
24 person was charged with a capital offense; and

25 (c) The person was convicted of the offense; and

26 (d) The person was sentenced to incarceration for a term
27 of imprisonment as a result of the conviction; and

28 (e) The person was imprisoned solely on the basis of the
29 conviction for the offense; and

30 (f) The person did not, by his or her misconduct or
31 neglect, bring about the prosecution; and

32 (g) The person's acts did not constitute a crime; and

33 (h) A court of competent jurisdiction found by clear and
34 convincing evidence that the offense for which the person was
35 convicted, sentenced, and imprisoned, including any lesser
36 included offenses, was not committed by the person and issued an
37 order vacating, dismissing, or reversing the conviction and
38 sentence and providing that no further proceedings can be or
39 will be held against the person on any facts and circumstances
40 alleged in the proceedings which had resulted in the conviction.

41 Section 3. Section 961.03, Florida Statutes, is created to
42 read:

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43 961.03 Compensation for wrongful incarceration.--

44 (1) Except as otherwise provided in this section, and
45 subject to the limitations and procedures prescribed in s.
46 961.04, a person who is found to be a wrongfully incarcerated
47 person may petition the Legislature for reasonable compensation.

48 In determining reasonable compensation, the Legislature may
49 consider the following options:

50 (a) Loss of wages, salary, or other earned income;

51 (b) The amount of any fine or court costs imposed and
52 paid;

53 (c) The amount of any fees paid to the Department of
54 Corrections for any required goods or services received during
55 incarceration;

56 (d) Loss of assets due to foreclosure, repossession, or
57 other methods of recovery by a creditor;

58 (e) Loss of savings and interest;

59 (f) Lost earnings capacity;

60 (g) The value of services performed for the state while
61 incarcerated;

62 (h) The reasonable cost of future psychological
63 counseling; and

64 (i) The reasonable amount of any other losses.

65 (2) Compensation to a wrongfully incarcerated person may
66 not include punitive or exemplary damages or compensation for
67 pain and suffering, humiliation, loss of consortium, emotional
68 distress, or similar damages. It is the intent of the
69 Legislature to limit compensation of a wrongfully incarcerated

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70 person to the compensation and reimbursement of expenses
71 authorized in subsection (1) directly resulting from the
72 wrongful incarceration.

73 (3) A claimant shall not be eligible for compensation if
74 the claimant was also serving a concurrent felony sentence.

75 (4) Any person awarded compensation pursuant to this Act
76 who is subsequently convicted of a felony shall, immediately
77 upon such conviction, not be eligible to receive any unpaid
78 amounts or benefits from any compensation awarded. Any amount
79 from an annuity that is forfeited pursuant to this section shall
80 revert to the state General Revenue Fund.

81 Section 4. Section 961.04, Florida Statutes, is created to
82 read:

83 961.04 Petition for compensation for wrongful
84 incarceration.--

85 (1) A wrongfully incarcerated person may petition the
86 Legislature for compensation for losses caused by the
87 incarceration. The petition, at a minimum, must include:

88 (a) A certified copy of the order finding the applicant to
89 be a wrongfully incarcerated person;

90 (b) Documentation of the length of the sentence served;

91 (c) Available documentation of employment prior to
92 incarceration;

93 (d) Documentation of education attained prior to and
94 during incarceration;

95 (e) Available documentation of income earned prior to
96 incarceration;

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97 (f) Documentation of encumbrances placed on real property
98 or loans used to pay attorney's fees to defend against or seek
99 release from incarceration;

100 (g) Documentation of real property in which the applicant
101 owned an interest which has been foreclosed upon due to the
102 incarceration;

103 (h) Documentation of family status prior to incarceration;

104 (i) Documentation of criminal history;

105 (j) Other documentation that the applicant believes should
106 be considered for determining compensation; and

107 (k) Other documentation, evidence, or information required
108 or requested by the Special Master or the Legislature.

109 Section 5. Section 961.05, Florida Statutes, is created to
110 read:

111 961.05 Holistic relief.—The Legislature may make an award
112 of compensation that includes, but is not limited to, any of the
113 following:

114 (1) HEALTH CARE PLAN.—The Legislature may direct the
115 appropriate state agency to purchase a comprehensive health care
116 plan, including dental and mental health coverage.

117 (2) EDUCATIONAL ASSISTANCE.—The Legislature may waive
118 tuition and fees for up to a total of 4 years of instruction at
119 any career center established pursuant to section 1001.44,
120 Florida Statutes, at any community college established under
121 part III of chapter 1004, Florida Statutes, or any state
122 university. The Legislature shall require that for any
123 educational benefit made, the person shall be required to meet

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124 and maintain the regular admission requirements of, and be
125 registered at, such career center, community college, or state
126 university and make satisfactory academic progress as defined by
127 the educational institution in which the person is enrolled.

128 (3) JOB PREFERENCE.—The Legislature may award first
129 preference in employment by the state and its political
130 subdivisions.

131 (a) If awarded, the Legislature must require that the
132 person must be otherwise eligible for employment with the hiring
133 agency or political subdivision.

134 (b) If awarded, the Legislature must require that the job
135 preference benefits awarded do not apply to positions that are
136 exempt from the State Career Service System under section
137 110.205(2), Florida Statutes, positions which are filled by
138 officers elected by popular vote or persons appointed to fill
139 vacancies in such offices, members of boards and commissions,
140 persons employed on a temporary basis without benefits, heads of
141 departments, and positions that require licensure as a
142 physician, osteopathic physician, chiropractic physician,
143 engineer, or membership in The Florida Bar.

144 (4) WAIVER OF FEES.—The Legislature may waive any
145 statutory fees required to expunge any arrest or court records
146 as otherwise subject to expunction by law or court rule and
147 shall waive any fees for copying costs or other costs of
148 obtaining public records in furtherance of such expunction.

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149 (5) MONETARY COMPENSATION.--Reasonable compensation as
150 provided in s. 961.03, may be provided in an amount to be
151 determined by the Legislature.

152 (6) Any compensation computed pursuant to subsection (5)
153 may be awarded in a lump sum or may be paid in an initial lump
154 sum equal to 20 percent of the compensation award with the
155 remaining 80 percent of the principal of the compensation award
156 to be used by the Chief Financial Officer to purchase an
157 annuity. If the Legislature directs that an annuity be
158 purchased, the Legislature must provide for the following:

159 (a) That any annuity purchased shall be purchased from any
160 A+ rated company, to provide equal monthly installments to the
161 claimant for a period certain of a stated number of years
162 commencing no later than 1 year after the effective date of the
163 appropriation;

164 (b) That the annuity shall provide that it shall not be
165 sold, discounted, or used as security for loans and mortgages by
166 the claimant; and

167 (c) That the annuity shall contain beneficiary provisions
168 providing for the annuity's continued disbursement in the event
169 of the death of the claimant, subject to the provisions of s.
170 961.03(4).

171 (7) An applicant for compensation under this section must
172 apply for compensation by July 1, 2007, or within 2 years after
173 he or she is ordered released from incarceration, whichever
174 occurs later.

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175 Section 6. Section 961.06, Florida Statutes, is created to
176 read:

177 961.06 Sovereign immunity; limits of liability; release
178 and waiver; collateral sources.-

179 (1) Any award of relief pursuant to this Act shall not be
180 deemed to have waived any defense of sovereign immunity or to
181 have increased the limits of liability on behalf of the state or
182 any person or entity subject to the provisions of s. 768.28,
183 Florida Statutes.

184 (2) As a condition of receiving any compensation under
185 this Act, a person shall execute a release and waiver on behalf
186 of the person or his or her heirs, successors, and/or assigns
187 forever releasing the State of Florida or any agency,
188 instrumentality, officer, employee, or political subdivision
189 thereof, or any other entity subject to the provisions of s.
190 768.28, Florida Statutes, from any and all present or future
191 claims the person or his or her heirs, successors, and/or
192 assigns may have against such enumerated entities and arising
193 out of the factual situation in connection with the conviction
194 for which the compensation is being sought under this Act.

195 (3) The person is not eligible for compensation if the
196 person was awarded a final judgment in a court of law, or has
197 received any funds pursuant to a settlement agreement for
198 compensation or damages arising out of the factual situation in
199 connection with the conviction for which compensation is sought
200 under this Act.

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Amendment No. (for drafter's use only)

201 Section 7. Section 961.07, Florida Statutes, is created to
202 read:

203 961.07 Attorney's and Lobbyist's Fees.--
204 Attorney's and lobbyist's fees are subject to the
205 provisions of section 768.28(8), Florida Statutes. No
206 compensation shall be made for attorney's fees charged for legal
207 services relating to a finding of actual innocence as defined by
208 this Act.

209 Section 8. This act shall take effect July 1, 2005.

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211
212 ===== T I T L E A M E N D M E N T =====

213 Remove the entire title

214
215 and insert:

216
217 A bill to be entitled
218 An act relating to compensation for wrongfully
219 incarcerated persons; creating s. 961.01, F.S.; providing
220 a short title; creating s. 961.02, F.S.; defining the term
221 "actually innocent"; requiring court findings; creating s.
222 961.03, F.S.; authorizing petitions to the Legislature for
223 reasonable compensation; authorizing compensation for
224 certain wrongfully incarcerated persons; providing
225 exceptions and limitations; creating s. 961.04, F.S. ;
226 providing procedures to petition the Legislature for
227 compensation; creating s. 961.05, F.S.; providing for non-

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HOUSE AMENDMENT

Bill No. CS/CS/SB 1964

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228 | monetary and monetary relief; providing for the manner of
229 | payment of compensation; providing timeframes for applying
230 | for compensation; creating s. 961.06, F.S.; providing for
231 | the preservation of sovereign immunity; providing for
232 | release and waiver; providing for collateral sources;
233 | creating s. 961.07, F.S.; providing for attorney's and
234 | lobbyist's fees; providing an effective date.

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