

Bill No. SB 1964

Barcode 514364

CHAMBER ACTION

Senate

House

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The Committee on Judiciary (Webster) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

961.01 Short title.--Sections 961.01-961.05 may be cited as the "Wrongful Incarceration Compensation Act."

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

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

(1) As used in ss 961.01-961.05, a "wrongfully incarcerated person" is a person who has been ordered released from incarceration for a felony conviction upon a finding by a court, under clear and convincing evidence, that:

(a) the person did not commit the offense that resulted in the conviction and incarceration; and

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1 (b) the person did not aid, abet, or act as an
2 accomplice to a person who committed the offense.

3 (2) Whenever a court, based on exonerating evidence,
4 enters an order releasing a person serving a sentence for a
5 felony conviction, the court must find whether the person is a
6 wrongfully incarcerated person. The court must describe in
7 detail the evidence on which the finding is based.

8 (3) A person who has been ordered released from
9 incarceration for a felony conviction by a court based on
10 exonerating evidence on or after October 1, 2001, may petition
11 the court for a determination of whether the person is a
12 wrongfully incarcerated person.

13 Section 3. Section 961.03, Florida Statutes, is
14 created to read:

15 961.03 Compensation for wrongful incarceration.--

16 (1) Except as otherwise provided in this section, and
17 subject to the limitations and procedures prescribed in s.
18 961.04, a person who is found to be a wrongfully incarcerated
19 person is entitled to reasonable compensation for:

20 (a) loss of wages, salary, or other earned income;

21 (b) the amount of any fine or court costs imposed and
22 paid;

23 (c) actual costs of attorney's fees and other expenses
24 incurred by the wrongfully incarcerated person or his or her
25 family for all associated criminal proceedings and appeals,
26 and, if applicable, for obtaining release from incarceration;

27 (d) the amount of any fees paid to the Department of
28 Corrections for any required goods or services received during
29 incarceration;

30 (e) loss of assets due to foreclosure, repossession,
31 or other methods of recovery by a creditor;

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1 (f) loss of savings and interest;

2 (g) lost earnings capacity;

3 (h) the value of services performed for the state

4 while incarcerated;

5 (i) the reasonable cost of future psychological

6 counseling; and

7 (j) the reasonable amount of any other losses.

8 (2) Compensation to a wrongfully incarcerated person

9 may not include punitive or exemplary damages or compensation

10 for pain and suffering, humiliation, loss of consortium,

11 emotional distress, or similar damages. It is the intent of

12 the Legislature to limit compensation of a wrongfully

13 incarcerated person to actual financial losses and expenses

14 directly resulting from the wrongful incarceration.

15 (3) A person who has been convicted of a felony other

16 than a felony for which he or she has been found to be a

17 wrongfully incarcerated person is not entitled to

18 compensation.

19 (4) A person is not entitled to compensation if he or

20 she pled guilty to the offense for which he or she was

21 wrongfully convicted.

22 Section 4. Section 961.04, Florida Statutes, is

23 created to read:

24 961.04 Application for compensation for wrongful

25 incarceration.--

26 (1) A wrongfully incarcerated person may apply to the

27 Attorney General for compensation for losses caused by the

28 incarceration. The application, at a minimum, must include:

29 (a) a certified copy of the order finding the

30 applicant to be a wrongfully incarcerated person;

31 (b) documentation of the length of the sentence

1 served;

2 (c) available documentation of employment prior to
3 incarceration;

4 (d) documentation of education attained prior to and
5 during incarceration;

6 (e) available documentation of income earned prior to
7 incarceration;

8 (f) available documentation of costs of defense and
9 other expenses that were paid by the wrongfully incarcerated
10 person or his or her family;

11 (g) documentation of encumbrances placed on real
12 property or loans used to pay attorney's fees to defend
13 against or seek release from incarceration;

14 (h) documentation of real property in which the
15 applicant owned an interest that has been foreclosed upon due
16 to the incarceration;

17 (i) documentation of family status prior to
18 incarceration;

19 (j) documentation of criminal history;

20 (k) other documentation that the applicant believes
21 should to be considered for determining compensation; and

22 (1) other documentation, evidence, or information
23 required by rules adopted by the Department of Legal Affairs
24 on behalf of the Attorney General.

25 (2) Upon receipt of an application for compensation,
26 the Attorney General shall examine the application and, within
27 30 days after such receipt, notify the applicant of any
28 apparent errors or omissions and request any additional
29 information the Office of the Attorney General may by law
30 require. The applicant shall have 30 days from the receipt of
31 a request for additional information to provide the

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1 information to the Attorney General. Within 60 days after the
2 time for completion of an application has expired, the
3 Attorney General must negotiate in good faith with the
4 wrongfully incarcerated person for the amount of compensation.
5 The Attorney General must provide the wrongfully incarcerated
6 person with a written offer and, if requested, a copy of the
7 information on which the offer is based. The applicant must be
8 given at least 30 days to respond to the offer.

9 (3) If the applicant rejects the offer to settle his
10 or her claim for compensation, the applicant may file suit
11 against the state for compensation in the circuit court in
12 which the applicant was convicted. The jury shall determine
13 solely the amount of compensation to be paid.

14 (a) The state shall pay attorney's fees as well as all
15 reasonable costs incurred by the applicant in proceedings in
16 circuit court, including, but not limited to, reasonable
17 accountant and actuary fees, if the judgment of the court is
18 greater than a final written offer by the Attorney General.

19 (b) At least 30 days prior to a hearing to assess
20 costs under this subsection, the applicant's attorney shall
21 submit to the Attorney General, for each expert witness,
22 complete time records and a detailed statement of services
23 rendered by date, nature of services performed, time spent
24 performing such services, and costs incurred.

25 (c) In assessing costs, the court shall consider all
26 factors relevant to the reasonableness of the costs,
27 including, but not limited to, the fees paid to similar
28 experts retained in the case by the Attorney General and the
29 reasonable costs of similar services by similarly qualified
30 persons.

31 (d) In assessing costs to be paid by the state, the

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1 court shall be guided by the amount the applicant would
2 ordinarily have been expected to pay for the services rendered
3 if the state were not responsible for the costs.

4 (e) The court shall make specific findings that
5 justify each sum awarded as an expert witness fee.

6 (4) Any compensation awarded under this section must
7 be offset by the costs of education and health care received
8 by the applicant while the applicant was incarcerated.

9 (5) Compensation for attorney's fees and other
10 expenses paid by a family member of the wrongfully
11 incarcerated person for all associated criminal proceedings
12 and appeals, and, if applicable, for obtaining the release
13 from incarceration must be paid to the family member who paid
14 the expenses.

15 (6) The maximum recovery available to a single
16 applicant is \$5 million.

17 (a) The first \$500,000 of any recovery shall be paid
18 by lump sum.

19 (b) The portion of any recovery above \$500,000 shall
20 be used to purchase an annuity to provide equal monthly
21 installments to the applicant for 10 years beginning 1 year
22 after a settlement is reached or a final judgment is entered
23 awarding compensation.

24 1. The annuity shall provide that it may not be sold,
25 discounted, or used as security for loans and mortgages by the
26 applicant.

27 2. The annuity shall contain beneficiary provisions
28 providing for the continued disbursement of the annuity in the
29 event of the death of the applicant.

30 3. The annuity must also contain a provision providing
31 that the annuity becomes payable to the state in the event

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1 that the applicant is convicted of a felony after an award of
2 compensation. The Attorney General and the applicant must
3 report the existence of a felony conviction to the issuer of
4 the annuity.

5 (7) Except as provided in subsection (3), no part of a
6 settlement or judgment providing compensation to a wrongfully
7 incarcerated person may be used to pay attorney's fees for
8 services to obtain the compensation.

9 (8) An applicant for compensation under this section
10 must apply for compensation by July 1, 2007, or within 2 years
11 after he or she is ordered released from incarceration,
12 whichever is later.

13 Section 961.05, Florida Statutes, is created to read:

14 961.05 Rules.--The Department of Legal Affairs, on
15 behalf of the Attorney General, may adopt rules under ss.
16 120.536(1) and 120.54 governing the forms and procedures
17 related to applications for compensation under the Wrongful
18 Incarceration Compensation Act.

19 Section 5. This act shall take effect on July 1, 2005.

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22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete everything before the enacting clause

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26 and insert:

27 An act relating to compensation for wrongfully
28 incarcerated persons; creating s. 961.01, F.S.; providing a
29 short title; creating s. 961.02, F.S.; defining the term
30 "wrongfully incarcerated person"; requiring courts to
31 determine whether certain persons are wrongfully incarcerated

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1 persons; authorizing petitions to the court for a
 2 determination of wrongful conviction; creating s. 961.03,
 3 F.S.; authorizing compensation for certain wrongfully
 4 incarcerated persons; providing exceptions and limitations;
 5 creating s. 961.04, F.S.; providing procedures to apply to the
 6 Attorney General for compensation; providing for presuit
 7 negotiation of compensation; authorizing lawsuits against the
 8 state for determination of compensation; providing for
 9 recovery of certain fees and costs; providing for
 10 determination of such fees and costs; reducing compensation
 11 based on services received while incarcerated; limiting total
 12 compensation; providing for the manner of payment of
 13 compensation; providing restrictions on use of compensation;
 14 providing time frames for applying for compensation; creating
 15 s. 961.05, F.S.; providing rule-making authority; providing an
 16 effective date.

17 WHEREAS, the Legislature finds that wrongfully
 18 incarcerated persons have been deprived of their liberty, and

19 WHEREAS, the Legislature finds that innocent persons
 20 who have been wrongfully incarcerated should have the
 21 opportunity to lead normal lives, and

22 WHEREAS, wrongfully incarcerated persons or their
 23 families may have expended larges sums of money and encumbered
 24 real property to defend against wrongful incarceration, and

25 WHEREAS, the Legislature finds that the incarceration
 26 of an innocent person is a taking of a person's liberty for
 27 which compensation is due, and

28 WHEREAS, the Legislature has a responsibility to manage
 29 state resources for the benefit of all residents of the state,

30 NOW, THEREFORE,

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