

By the Committee on Judiciary; and Senators Webster and Haridopolos

590-2025-05

1 A bill to be entitled
2 An act relating to compensation for wrongfully
3 incarcerated persons; creating s. 961.01, F.S.;
4 providing a short title; creating s. 961.02,
5 F.S.; defining the term "wrongfully
6 incarcerated person"; requiring courts to
7 determine whether certain persons are
8 wrongfully incarcerated persons; authorizing
9 petitions to the court for a determination of
10 wrongful conviction; creating s. 961.03, F.S.;
11 authorizing compensation for certain wrongfully
12 incarcerated persons; providing exceptions and
13 limitations; creating s. 961.04, F.S.;
14 providing procedures to apply to the Attorney
15 General for compensation; providing for presuit
16 negotiation of compensation; authorizing
17 lawsuits against the state for determination of
18 compensation; providing for recovery of certain
19 fees and costs; providing for determination of
20 such fees and costs; reducing compensation
21 based on services received while incarcerated;
22 limiting total compensation; providing for the
23 manner of payment of compensation; providing
24 restrictions on use of compensation; providing
25 timeframes for applying for compensation;
26 creating s. 961.05, F.S.; providing rulemaking
27 authority; providing an effective date.

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29 WHEREAS, the Legislature finds that wrongfully
30 incarcerated persons have been deprived of their liberty, and
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1 WHEREAS, the Legislature finds that innocent persons
2 who have been wrongfully incarcerated should have the
3 opportunity to lead normal lives, and

4 WHEREAS, wrongfully incarcerated persons or their
5 families may have expended large sums of money and encumbered
6 real property to defend against wrongful incarceration, and

7 WHEREAS, the Legislature finds that the incarceration
8 of an innocent person is a taking of a person's liberty for
9 which compensation is due, and

10 WHEREAS, the Legislature has a responsibility to manage
11 state resources for the benefit of all residents of the state,
12 NOW, THEREFORE,

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14 Be It Enacted by the Legislature of the State of Florida:

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

18 961.01 Short title.--Sections 961.01-961.05 may be
19 cited as the "Wrongful Incarceration Compensation Act."

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

22 961.02 Definition; finding of wrongful incarceration
23 upon release from incarceration for felony offenses.--

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

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

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

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

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

11 Section 3. Section 961.03, Florida Statutes, is
12 created to read:

13 961.03 Compensation for wrongful incarceration.--

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

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

19 (b) The amount of any fine or court costs imposed and
20 paid;

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

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

28 (e) Loss of assets due to foreclosure, repossession,
29 or other methods of recovery by a creditor;

30 (f) Loss of savings and interest;

31 (g) Lost earnings capacity;

1 (h) The value of services performed for the state
2 while incarcerated;

3 (i) The reasonable cost of future psychological
4 counseling; and

5 (j) The reasonable amount of any other losses.

6 (2) Compensation to a wrongfully incarcerated person
7 may not include punitive or exemplary damages or compensation
8 for pain and suffering, humiliation, loss of consortium,
9 emotional distress, or similar damages. It is the intent of
10 the Legislature to limit compensation of a wrongfully
11 incarcerated person to actual financial losses and expenses
12 directly resulting from the wrongful incarceration.

13 (3) A person who has been convicted of a felony other
14 than a felony for which he or she has been found to be a
15 wrongfully incarcerated person is not entitled to
16 compensation.

17 (4) A person is not entitled to compensation if he or
18 she pled guilty to the offense for which he or she was
19 wrongfully convicted.

20 Section 4. Section 961.04, Florida Statutes, is
21 created to read:

22 961.04 Application for compensation for wrongful
23 incarceration.--

24 (1) A wrongfully incarcerated person may apply to the
25 Attorney General for compensation for losses caused by the
26 incarceration. The application, at a minimum, must include:

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

29 (b) Documentation of the length of the sentence
30 served;

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1 (c) Available documentation of employment prior to
2 incarceration;

3 (d) Documentation of education attained prior to and
4 during incarceration;

5 (e) Available documentation of income earned prior to
6 incarceration;

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

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

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

16 (i) Documentation of family status prior to
17 incarceration;

18 (j) Documentation of criminal history;

19 (k) Other documentation that the applicant believes
20 should be considered for determining compensation; and

21 (l) Other documentation, evidence, or information
22 required by rules adopted by the Department of Legal Affairs
23 on behalf of the Attorney General.

24 (2) Upon receipt of an application for compensation,
25 the Attorney General shall examine the application and, within
26 30 days after such receipt, notify the applicant of any
27 apparent errors or omissions and request any additional
28 information the Office of the Attorney General may by law
29 require. The applicant shall have 30 days following the
30 receipt of a request for additional information to provide the
31 information to the Attorney General. Within 60 days after the

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

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

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

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

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

30 (d) In assessing costs to be paid by the state, the
31 court shall be guided by the amount the applicant would

1 ordinarily have been expected to pay for the services rendered
2 if the state were not responsible for the costs.

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

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

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

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

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

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

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

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

29 3. The annuity must also contain a provision providing
30 that the annuity becomes payable to the state in the event
31 that the applicant is convicted of a felony after an award of

1 compensation. The Attorney General and the applicant must
2 report the existence of a felony conviction to the issuer of
3 the annuity.

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

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

12 Section 5. Section 961.05, Florida Statutes, is
13 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 6. This act shall take effect July 1, 2005.

21 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
22 COMMITTEE SUBSTITUTE FOR
23 Senate Bill 1964

24 The committee substitute replaced the substance of the
25 underlying shell bill with the Wrongful Incarceration
26 Compensation Act (Act). Under the Act, when a judge, based on
27 exonerating evidence, orders the release of a person serving a
28 sentence for a felony conviction from incarceration, the judge
29 must decide whether the person was a wrongfully incarcerated
30 person. A person who has been found to be a wrongfully
31 incarcerated person may apply to the Attorney General for
compensation for losses and expenditures that directly
resulted from the incarceration. If an agreement for
compensation cannot be reached with the Attorney General, the
wrongfully incarcerated person may sue the state in a court
for compensation.