

By the Committees on Criminal Justice; Judiciary; and Senators  
Webster, Haridopolos and Lynn

591-2327-05

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; limiting total  
21                    compensation; providing for the manner of  
22                    payment of compensation; providing restrictions  
23                    on use of compensation; providing timeframes  
24                    for applying for compensation; creating s.  
25                    961.05, F.S.; providing rulemaking authority;  
26                    providing an effective date.

27  
28                    WHEREAS, the Legislature finds that wrongfully  
29                    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) Compensation for attorney's fees and other  
6 expenses paid by a family member of the wrongfully  
7 incarcerated person for all associated criminal proceedings  
8 and appeals and, if applicable, for obtaining the release from  
9 incarceration must be paid to the family member who paid the  
10 expenses.

11 (5) The maximum recovery available to a single  
12 applicant is \$5 million.

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

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

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

23 2. The annuity shall contain beneficiary provisions  
24 providing for the continued disbursement of the annuity in the  
25 event of the death of the applicant.

26 3. The annuity must also contain a provision providing  
27 that the annuity becomes payable to the state in the event  
28 that the applicant is convicted of a felony after an award of  
29 compensation. The Attorney General and the applicant must  
30 report the existence of a felony conviction to the issuer of  
31 the annuity.

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

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

9           Section 5. Section 961.05, Florida Statutes, is  
10 created to read:

11           961.05 Rules.--The Department of Legal Affairs, on  
12 behalf of the Attorney General, may adopt rules under ss.  
13 120.536(1) and 120.54 governing the forms and procedures  
14 related to applications for compensation under the Wrongful  
15 Incarceration Compensation Act.

16           Section 6. This act shall take effect July 1, 2005.

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18           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
19           COMMITTEE SUBSTITUTE FOR  
20           CS/SB 1964

21 Eliminates the provision in the bill which would off-set  
22 compensation for the wrongfully incarcerated person for  
23 education and medical services he or she received while  
24 incarcerated.  
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