

By the Committee on Judiciary

590-1173-06

1 A bill to be entitled
2 An act relating to compensation for wrongfully
3 incarcerated persons; creating s. 961.01, F.S.,
4 the Wrongful Incarceration Compensation Act;
5 creating s. 961.02, F.S.; defining the term
6 "wrongfully incarcerated person"; requiring
7 courts to 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 by which a wrongfully
15 incarcerated person may apply to the Attorney
16 General for compensation; providing for presuit
17 negotiation of compensation; authorizing
18 lawsuits against the state for determination of
19 compensation; requiring a settlement offer and
20 providing for recovery of certain fees and
21 costs; providing for determination of such fees
22 and costs; limiting total compensation;
23 providing for the manner of payment of
24 compensation; providing restrictions on use of
25 compensation; providing timeframes for applying
26 for compensation; creating s. 961.05, F.S.;
27 providing rulemaking authority; providing an
28 effective date.

29
30 WHEREAS, the Legislature finds that wrongfully
31 incarcerated persons have been deprived of their liberty, and

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,

13
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 the compensation and reimbursement of
12 expenses authorized in subsection (1) directly resulting from
13 the wrongful incarceration.

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

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

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

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

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

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

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

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) Both the state and the applicant shall file an
14 offer of settlement within 30 days after the close of the
15 pleadings. If a judgment exceeds the offer of settlement by
16 the applicant by at least 25 percent, the state shall pay
17 reasonable attorney's fees, reasonable accounting fees, and
18 reasonable actuarial fees.

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, the nature of services performed, the time
24 spent 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.

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1 (d) In assessing costs to be paid by the state, the
2 court shall be guided by the amount the applicant would
3 ordinarily have been expected to pay for the services rendered
4 if the state were not responsible for the costs.

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

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

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

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

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

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

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

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

1 report the existence of a felony conviction to the issuer of
2 the annuity.

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

7 (7) An applicant for compensation under this section
8 must apply for compensation by July 1, 2008, or within 2 years
9 after he or she is ordered released from incarceration,
10 whichever occurs later.

11 Section 5. Section 961.05, Florida Statutes, is
12 created to read:

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

18 Section 6. This act shall take effect July 1, 2006.

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21 SENATE SUMMARY

22 Creates the Wrongful Incarceration Compensation Act.
23 Provides a procedure whereby a person who was wrongfully
24 incarcerated may apply to the Attorney General for
25 compensation. Provides requirements for documenting
26 expenses and losses. Requires that the Attorney General
27 negotiate with the wrongfully incarcerated person for the
28 amount of compensation. Authorizes the wrongfully
29 incarcerated person to reject the offer and file suit in
30 the circuit court. Provides requirements for the court in
31 assessing costs. Limits the maximum recovery that is
available to a single applicant to \$5 million. Requires
that a portion of that amount be paid by an annuity.
Limits the period during which a person may apply for
compensation. Authorizes the Department of Legal Affairs
to adopt rules.