

1 A bill to be entitled
2 An act relating to compensation for wrongful
3 incarceration; amending s. 961.02, F.S.; defining the term
4 "actual innocence" for purposes of the Victims of Wrongful
5 Incarceration Compensation Act; redefining the term
6 "wrongfully incarcerated person" in order to conform;
7 amending s. 961.03, F.S.; requiring that a petition for
8 compensation include clear and convincing evidence of
9 actual innocence; requiring the petitioner to submit
10 fingerprints for criminal history records checks;
11 providing procedures for taking and submitting
12 fingerprints; providing that failure to submit
13 fingerprints within a specified time period is not grounds
14 for denial of compensation; requiring the Department of
15 Law Enforcement to bear the costs of state and national
16 criminal history records checks; requiring that the
17 results of the criminal history records checks be
18 submitted to the clerk of the court; providing for use of
19 the results by the court; amending s. 961.05, F.S.;
20 eliminating the requirement that a wrongfully incarcerated
21 person provide certain court records and documentation
22 from the Department of Corrections along with an
23 application for compensation; requiring the Department of
24 Legal Affairs to request certain records from the clerk of
25 the court and the Department of Corrections; amending s.
26 961.06, F.S.; precluding submission of an application for
27 compensation if the wrongfully incarcerated person has
28 received a prior favorable judgment from a civil action

29 | arising out of the wrongful incarceration; providing an
 30 | effective date.

31 |

32 | Be It Enacted by the Legislature of the State of Florida:

33 |

34 | Section 1. Section 961.02, Florida Statutes, is amended to
 35 | read:

36 | 961.02 Definitions.--As used in ss. 961.01-961.07, the
 37 | term:

38 | (1) "Act" means the Victims of Wrongful Incarceration
 39 | Compensation Act.

40 | (2) "Actual innocence" means that a person did not commit
 41 | the act or the offense that served as the basis for the
 42 | conviction and incarceration for which the person seeks
 43 | compensation, and that the person did not aid, abet, or act as
 44 | an accomplice to a person who committed the act or offense.

45 | (3)~~(2)~~ "Department" means the Department of Legal Affairs.

46 | (4)~~(3)~~ "Division" means the Division of Administrative
 47 | Hearings.

48 | (5)~~(4)~~ "Wrongfully incarcerated person" means a person
 49 | whose felony conviction and sentence have been vacated by a
 50 | court of competent jurisdiction and, with respect to whom
 51 | pursuant to the requirements of s. 961.03, the original
 52 | sentencing court has issued its order finding that the person
 53 | has proven actual innocence by clear and convincing evidence
 54 | ~~neither committed the act nor the offense that served as the~~
 55 | ~~basis for the conviction and incarceration and that the person~~
 56 | ~~did not aid, abet, or act as an accomplice or accessory to a~~

57 ~~person who committed the act or offense.~~

58 (6)~~(5)~~ "Eligible for compensation" means a person meets
 59 the definition of "wrongfully incarcerated person" and is not
 60 disqualified from seeking compensation under the criteria
 61 prescribed in s. 961.04.

62 (7)~~(6)~~ "Entitled to compensation" means a person meets the
 63 definition of "eligible for compensation" and satisfies the
 64 application requirements prescribed in s. 961.05, and may
 65 receive compensation pursuant to s. 961.06.

66 Section 2. Section 961.03, Florida Statutes, is amended to
 67 read:

68 961.03 Determination of status as a wrongfully
 69 incarcerated person; determination of eligibility for
 70 compensation.--

71 (1) (a) In order to meet the definition of a "wrongfully
 72 incarcerated person" and "eligible for compensation," upon entry
 73 of an order, based upon exonerating evidence, vacating a
 74 conviction and sentence, a person must set forth the claim of
 75 wrongful incarceration under oath and with particularity by
 76 filing a petition with the original sentencing court, with a
 77 copy of the petition and proper notice to the prosecuting
 78 authority in the underlying felony for which the person was
 79 incarcerated. At a minimum, the petition must:

- 80 1. State that clear and convincing ~~verifiable and~~
 81 ~~substantial~~ evidence of actual innocence exists and state with
 82 particularity the nature and significance of the clear and
 83 convincing ~~verifiable and substantial~~ evidence of actual
 84 innocence; and

85 2. State that the person is not disqualified, under ~~the~~
 86 ~~provisions of~~ s. 961.04, from seeking compensation under this
 87 act.

88 (b) The person must file the petition with the court:

89 1. Within 90 days after the order vacating a conviction
 90 and sentence becomes final if the person's conviction and
 91 sentence is vacated on or after July 1, 2008.

92 2. By July 1, 2010, if the person's conviction and
 93 sentence was vacated by an order that became final prior to July
 94 1, 2008.

95 (c)1. Within 30 days after filing the petition, the
 96 petitioner must submit fingerprints for a state and national
 97 criminal history records check. Failure to satisfy the
 98 requirements of this subparagraph within the prescribed time
 99 period shall not be grounds for denial of compensation under
 100 this act.

101 2. The clerk of the court shall inform the petitioner of
 102 the process for having his or her fingerprints taken and
 103 submitted and provide information concerning law enforcement
 104 agencies or service providers that are authorized to submit
 105 fingerprints electronically to the Department of Law
 106 Enforcement.

107 3. The petitioner's fingerprints shall be taken in a
 108 manner approved by the Department of Law Enforcement and shall
 109 be submitted electronically to the Department of Law Enforcement
 110 for state processing for a criminal history records check. The
 111 Department of Law Enforcement shall submit the fingerprints to
 112 the Federal Bureau of Investigation for national processing. The

113 Department of Law Enforcement shall submit the results of the
114 state and national records check to the clerk of the court. The
115 court shall consider the results in evaluating whether the
116 petitioner is eligible for compensation under s. 961.04.

117 4. The petitioner may not be charged for the cost of
118 conducting the state and national criminal history records
119 checks required under this paragraph. The costs of conducting
120 the state and national criminal history records checks shall be
121 borne by the Department of Law Enforcement.

122 (2) The prosecuting authority must respond to the petition
123 within 30 days. The prosecuting authority may respond:

124 (a) By certifying to the court that, based upon the
125 petition and ~~verifiable and substantial~~ evidence of actual
126 innocence, no further criminal proceedings in the case at bar
127 can or will be initiated by the prosecuting authority, and that
128 the prosecuting authority does not contest ~~no questions of fact~~
129 ~~remain as to the petitioner's actual innocence~~ wrongful
130 ~~incarceration, and that the petitioner is not ineligible from~~
131 ~~seeking compensation under the provisions of s. 961.04; or~~

132 (b) By certifying to the court that questions of fact
133 remain as to the petitioner's actual innocence, and that the
134 prosecuting authority contests ~~contesting~~ the nature,
135 significance, or effect of the evidence of actual innocence, ~~the~~
136 ~~facts related to the petitioner's alleged wrongful~~
137 ~~incarceration, or whether the petitioner is ineligible from~~
138 ~~seeking compensation under the provisions of s. 961.04.~~

139 (3) If the prosecuting authority responds as set forth in
140 paragraph (2) (a), the original sentencing court, based upon the

141 prosecuting authority's certification and the court's finding
 142 that the petitioner has proven actual innocence by clear and
 143 convincing evidence and that the petitioner is eligible for
 144 compensation under s. 961.04 ~~evidence of actual innocence, the~~
 145 ~~prosecuting authority's certification, and upon the court's~~
 146 ~~finding that the petitioner has presented clear and convincing~~
 147 ~~evidence that the petitioner committed neither the act nor the~~
 148 ~~offense that served as the basis for the conviction and~~
 149 ~~incarceration, and that the petitioner did not aid, abet, or act~~
 150 ~~as an accomplice to a person who committed the act or offense,~~
 151 shall certify to the department that the petitioner is a
 152 wrongfully incarcerated person who is eligible for compensation
 153 as defined by this act. ~~Based upon the prosecuting authority's~~
 154 ~~certification, the court shall also certify to the department~~
 155 ~~that the petitioner is eligible for compensation under the~~
 156 ~~provisions of s. 961.04.~~

157 (4) (a) If the prosecuting authority responds as set forth
 158 in paragraph (2) (b), the original sentencing court shall make a
 159 determination from the pleadings and supporting documentation
 160 whether, ~~by a preponderance of the evidence,~~ the petitioner is
 161 eligible ~~ineligible~~ for compensation under ~~the provisions of s.~~
 162 961.04, regardless of his or her claim of wrongful
 163 incarceration. If the court finds the petitioner ineligible
 164 under ~~the provisions of s. 961.04,~~ it shall dismiss the
 165 petition.

166 (b) If the prosecuting authority responds as set forth in
 167 paragraph (2) (b), and the court determines that the petitioner
 168 is eligible under ~~the provisions of s. 961.04,~~ but the

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169 prosecuting authority contests the nature, significance, or
170 effect of the evidence of actual innocence, ~~or the facts related~~
171 ~~to the petitioner's alleged wrongful incarceration,~~ the court
172 shall set forth its findings and transfer the petition to the
173 division for findings of fact and a recommended determination of
174 whether the petitioner has proven actual innocence ~~established~~
175 ~~that he or she is a wrongfully incarcerated person who is~~
176 ~~eligible for compensation~~ under this act.

177 (5) The petitioner must prove actual innocence before the
178 administrative law judge by clear and convincing evidence. ~~Any~~
179 ~~questions of fact, the nature, significance or effect of the~~
180 ~~evidence of actual innocence, and the petitioner's eligibility~~
181 ~~for compensation under this act must be established by clear and~~
182 ~~convincing evidence by the petitioner before an administrative~~
183 ~~law judge.~~

184 (6) (a) Pursuant to division rules and any additional rules
185 set forth by the administrative law judge, a hearing shall be
186 conducted no later than 120 days after the transfer of the
187 petition to the division.

188 (b) The prosecuting authority shall appear for the purpose
189 of contesting, as necessary, the facts, the nature, and
190 significance or effect of the evidence of actual innocence as
191 presented by the petitioner.

192 (c) No later than 45 days after the adjournment of the
193 hearing, the administrative law judge shall issue an order
194 setting forth his or her findings and recommendation and shall
195 file the order with the original sentencing court.

196 (d) The original sentencing court shall review the

197 findings and recommendation contained in the order of the
 198 administrative law judge and, within 60 days, shall issue its
 199 own order adopting or declining to adopt the findings and
 200 recommendation of the administrative law judge.

201 (7) If the court concludes that the petitioner is a
 202 wrongfully incarcerated person as defined by this act and is
 203 eligible for compensation as defined in this act, the court
 204 shall include in its order a certification to the department
 205 that:

206 (a)1. The order of the administrative law judge finds that
 207 the petitioner has met his or her burden of proving actual
 208 innocence ~~establishing~~ by clear and convincing evidence ~~that the~~
 209 ~~petitioner committed neither the act nor the offense that served~~
 210 ~~as the basis for the conviction and incarceration and that the~~
 211 ~~petitioner did not aid, abet, or act as an accomplice to a~~
 212 ~~person who committed the act or offense;~~

213 2. The findings and recommendation of the administrative
 214 law judge on which its order is based are supported by
 215 competent, substantial evidence; and

216 3. The petitioner is a wrongfully incarcerated person who
 217 is eligible for compensation; or

218 (b)2. That The court has declined to adopt the findings
 219 and recommendation ~~recommendations~~ of the administrative law
 220 judge that the petitioner failed to prove actual innocence by
 221 clear and convincing evidence and finds that the petitioner has
 222 met his or her burden of proving actual innocence ~~establishing~~
 223 by clear and convincing evidence, and that the petitioner is a
 224 wrongfully incarcerated person who is eligible for compensation.

225 ~~that the petitioner committed neither the act nor the offense~~
 226 ~~that served as the basis for the conviction and incarceration~~
 227 ~~and that the petitioner did not aid, abet, or act as an~~
 228 ~~accomplice to a person who committed the act or offense; and~~

229 ~~(b) The original sentencing court determines the findings~~
 230 ~~and recommendations on which its order is based are supported by~~
 231 ~~competent, substantial evidence.~~

232 (8) The establishment of the method by which a person may
 233 seek the status of a wrongfully incarcerated person and a
 234 finding as to eligibility for compensation under this act in no
 235 way creates any rights of due process beyond those set forth in
 236 this act herein, nor is there created any right to further
 237 petition or appeal beyond the scope of the method set forth in
 238 this act herein.

239 Section 3. Section 961.05, Florida Statutes, is amended to
 240 read:

241 961.05 Application for compensation for wrongful
 242 incarceration; administrative expunction; determination of
 243 entitlement to compensation.--

244 (1) A wrongfully incarcerated person who is eligible for
 245 compensation as defined in this act must initiate his or her
 246 application for compensation as required in this section no more
 247 than 2 years after the original sentencing court enters its
 248 order finding that the person meets the definition of a
 249 wrongfully incarcerated person and is eligible for compensation
 250 as defined in this act.

251 (2) A wrongfully incarcerated person who is eligible for
 252 compensation under the act must apply to the Department of Legal

253 Affairs. No estate of, or personal representative for, a
254 decedent is entitled to apply on behalf of the decedent for
255 compensation for wrongful incarceration.

256 (3) The Department of Legal Affairs may adopt rules
257 regarding the forms and procedures related to applications for
258 compensation under this act ~~the Victims of Wrongful~~
259 ~~Incarceration Compensation Act.~~

260 (4) The application must include:

261 (a) Identification of the original sentencing court and
262 the criminal case number of the case or cases for which the
263 person was wrongfully incarcerated ~~A certified copy of the order~~
264 ~~vacating the conviction and sentence;~~

265 ~~(b) A certified copy of the original sentencing court's~~
266 ~~order finding the claimant to be a wrongfully incarcerated~~
267 ~~person who is eligible for compensation under this act;~~

268 ~~(c) Certified copies of the original judgment and~~
269 ~~sentence;~~

270 ~~(d) Documentation demonstrating the length of the sentence~~
271 ~~served, including documentation from the Department of~~
272 ~~Corrections regarding the person's admission into and release~~
273 ~~from the custody of the Department of Corrections;~~

274 (b)(e) Positive proof of identification, including ~~two~~
275 ~~full sets of fingerprints administered by a law enforcement~~
276 ~~agency and~~ a current form of photo identification, demonstrating
277 that the person seeking compensation is the same individual who
278 was wrongfully incarcerated;

279 (c)(f) All supporting documentation of any fine, penalty,
280 or court costs imposed and paid by the wrongfully incarcerated

281 person as described in s. 961.06(1)(c);

282 (d)~~(g)~~ All supporting documentation of any reasonable
 283 attorney's fees and expenses as described in s. 961.06(1)(d);
 284 and

285 (e)~~(h)~~ Any other documentation, evidence, or information
 286 required by rules adopted by the department.

287 (5) Upon receipt of the application, the department shall;
 288 ~~forward one full set of fingerprints of the applicant to the~~
 289 ~~Department of Law Enforcement for statewide criminal records~~
 290 ~~checks. The Department of Law Enforcement shall forward the~~
 291 ~~second set of fingerprints to the Federal Bureau of~~
 292 ~~Investigation for national criminal records checks. The results~~
 293 ~~of the state and national records checks shall be submitted to~~
 294 ~~the department.~~

295 (a) Request that the clerk of the court provide a
 296 certified copy of the order vacating the conviction and sentence
 297 and certified copies of the original judgment and sentence. The
 298 clerk shall provide these records at no charge.

299 (b) Request that the Department of Corrections provide
 300 documentation demonstrating the length of the sentence served,
 301 including the dates of the wrongfully incarcerated person's
 302 admission into and release from the custody of the Department of
 303 Corrections. The Department of Corrections shall provide this
 304 documentation at no charge.

305 (c)~~(6)~~ ~~Upon receipt of an application, the department~~
 306 ~~shall~~ Examine the application and notify the wrongfully
 307 incarcerated person ~~claimant~~ within 30 calendar days of any
 308 errors or omissions, and request any additional information

309 relevant to the review of the application. The wrongfully
 310 incarcerated person ~~claimant~~ shall have 15 days after proper
 311 notification of any existing errors or omissions to supplement
 312 the application. The department may not deny an application for
 313 failure of the wrongfully incarcerated person ~~claimant~~ to
 314 correct an error or omission or supply additional information
 315 unless the department timely notified the person ~~claimant~~ of
 316 such errors or omissions or requested the additional information
 317 within the 30-day period specified in this subsection. The
 318 department shall process and review each completed application
 319 within 90 calendar days. Once the department determines whether
 320 a claim for compensation meets the requirements of this act, the
 321 department shall notify the wrongfully incarcerated person
 322 ~~claimant~~ within 5 business days of that determination.

323 ~~(6)(7)~~ If the department determines that a wrongfully
 324 incarcerated person ~~claimant~~ meets the requirements of this act,
 325 the wrongfully incarcerated person ~~who is the subject of the~~
 326 ~~claim~~ becomes entitled to compensation, subject to ~~the~~
 327 ~~provisions in~~ s. 961.06.

328 Section 4. Section 961.06, Florida Statutes, is amended to
 329 read:

330 961.06 Compensation for wrongful incarceration.--

331 (1) Except as otherwise provided in this act and subject
 332 to the limitations and procedures prescribed in this section, a
 333 person who is found to be entitled to compensation under ~~the~~
 334 ~~provisions of~~ this act is entitled to:

335 (a) Monetary compensation for wrongful incarceration,
 336 which shall be calculated at a rate of \$50,000 for each year of

337 wrongful incarceration, prorated as necessary to account for a
 338 portion of a year. For persons found to be wrongfully
 339 incarcerated after December 31, 2008, the Chief Financial
 340 Officer may adjust the annual rate of compensation for inflation
 341 using the change in the December-to-December "Consumer Price
 342 Index for All Urban Consumers" of the Bureau of Labor Statistics
 343 of the Department of Labor;

344 (b) A waiver of tuition and fees for up to 120 hours of
 345 instruction at any career center established under s. 1001.44,
 346 any community college as defined in s. 1000.21(3), or any state
 347 university as defined in s. 1000.21(6), if the wrongfully
 348 incarcerated person meets and maintains the regular admission
 349 requirements of such career center, community college, or state
 350 university; remains registered at such educational institution;
 351 and makes satisfactory academic progress as defined by the
 352 educational institution in which the wrongfully incarcerated
 353 person claimant is enrolled;

354 (c) The amount of any fine, penalty, or court costs
 355 ~~imposed and~~ paid by the wrongfully incarcerated person;

356 (d) The amount of any reasonable attorney's fees and
 357 expenses incurred and paid by the wrongfully incarcerated person
 358 in connection with all criminal proceedings and appeals
 359 regarding the wrongful conviction, to be calculated by the
 360 department based upon the supporting documentation submitted as
 361 specified in s. 961.05; and

362 (e) Notwithstanding any provision to the contrary in s.
 363 943.0585, immediate administrative expunction of the wrongfully
 364 incarcerated person's criminal record resulting from his or her

365 wrongful arrest, wrongful conviction, and wrongful
 366 incarceration. The Department of Legal Affairs and the
 367 Department of Law Enforcement shall, upon a determination that a
 368 person ~~claimant~~ is entitled to compensation, immediately take
 369 all action necessary to administratively expunge the person's
 370 ~~claimant's~~ criminal record arising from his or her wrongful
 371 arrest, wrongful conviction, and wrongful incarceration. All
 372 fees for this process shall be waived.

373
 374 The total compensation awarded under paragraphs (a), (c), and
 375 (d) may not exceed \$2 million. No further award for attorney's
 376 fees, lobbying fees, costs, or other similar expenses shall be
 377 made by the state.

378 (2) In calculating monetary compensation under paragraph
 379 (1) (a), a wrongfully incarcerated person who is placed on parole
 380 or community supervision while serving the sentence resulting
 381 from the wrongful conviction and who commits anything less than
 382 a felony law violation that results in revocation of the parole
 383 or community supervision is eligible for compensation for the
 384 total number of years incarcerated. A wrongfully incarcerated
 385 person who commits a felony law violation that results in
 386 revocation of the parole or community supervision is ineligible
 387 for any compensation under subsection (1).

388 (3) Within 15 calendar days after issuing notice to the
 389 wrongfully incarcerated person ~~claimant~~ that his or her claim
 390 satisfies all of the requirements under this act, the department
 391 shall notify the Chief Financial Officer to draw a warrant from
 392 the General Revenue Fund or another source designated by the

393 Legislature in law for the purchase of an annuity for the
 394 wrongfully incarcerated person ~~claimant~~ based on the total
 395 amount determined by the department under this act.

396 (4) The Chief Financial Officer shall purchase an annuity
 397 on behalf of the wrongfully incarcerated person ~~claimant~~ for a
 398 term of not less than 10 years. The terms of the annuity shall:

399 (a) Provide that the annuity may not be sold, discounted,
 400 or used as security for a loan or mortgage by the wrongfully
 401 incarcerated person ~~applicant~~.

402 (b) Contain beneficiary provisions for the continued
 403 disbursement of the annuity in the event of the death of the
 404 wrongfully incarcerated person ~~applicant~~.

405 (5) Before the Chief Financial Officer draws the warrant
 406 for the purchase of the annuity, the wrongfully incarcerated
 407 person ~~claimant~~ must sign a release and waiver on behalf of the
 408 wrongfully incarcerated person ~~claimant~~ and his or her heirs,
 409 successors, and assigns, forever releasing the state or any
 410 agency, instrumentality, or any political subdivision thereof,
 411 or any other entity subject to ~~the provisions of~~ s. 768.28, from
 412 all present or future claims that the wrongfully incarcerated
 413 person ~~claimant~~ or his or her heirs, successors, or assigns may
 414 have against such entities arising out of the facts in
 415 connection with the wrongful conviction for which compensation
 416 is being sought under the act. The release and waiver must be
 417 provided to the department prior to the issuance of the warrant
 418 by the Chief Financial Officer.

419 (6) (a) A wrongfully incarcerated person may not submit an
 420 application for compensation under this act if the person has a

421 civil action lawsuit pending against the state or any agency,
422 instrumentality, or any political subdivision thereof, or any
423 other entity subject to ~~the provisions of~~ s. 768.28, in state or
424 federal court requesting compensation arising out of ~~the facts~~
425 ~~in connection with~~ the wrongfully incarcerated person's
426 ~~claimant's~~ conviction and incarceration.

427 (b) A wrongfully incarcerated person may not submit an
428 application for compensation under this act if the person has
429 received a prior judgment in his or her favor in a civil action
430 against the state or any agency, instrumentality, or any
431 political subdivision thereof, or against any other entity
432 subject to s. 768.28, in state or federal court arising out of
433 the wrongfully incarcerated person's conviction and
434 incarceration.

435 (c) ~~(b)~~ A wrongfully incarcerated person may not submit an
436 application for compensation under this act if the person is the
437 subject of a claim bill pending for claims arising out of ~~the~~
438 ~~facts in connection with~~ the wrongfully incarcerated person's
439 ~~claimant's~~ conviction and incarceration.

440 (d) ~~(e)~~ Once an application is filed under this act, a
441 wrongfully incarcerated person may not pursue recovery under a
442 claim bill until the final disposition of the application.

443 (e) ~~(d)~~ Any amount awarded under this act is intended to
444 provide the sole compensation for any and all present and future
445 claims arising out of ~~the facts in connection with~~ the
446 wrongfully incarcerated person's ~~claimant's~~ conviction and
447 incarceration. Upon notification by the department that an
448 application meets the requirements of this act, a wrongfully

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449 incarcerated person may not recover under a claim bill.

450 (f)~~(e)~~ Any compensation awarded under a claim bill shall
451 be the sole redress for claims arising out of ~~the facts in~~
452 ~~connection with the~~ wrongfully incarcerated person's ~~claimant's~~
453 conviction and incarceration and, upon any award of compensation
454 to a wrongfully incarcerated person under a claim bill, the
455 person may not receive compensation under this act.

456 (7) Any payment made under this act does not constitute a
457 waiver of any defense of sovereign immunity or an increase in
458 the limits of liability on behalf of the state or any person
459 subject to ~~the provisions of~~ s. 768.28 or other law.

460 Section 5. This act shall take effect July 1, 2009.