

By the Committee on Judiciary; and Senator Joyner

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

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30 wrongful incarceration; providing an 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 term:

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

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

44 (3)~~(2)~~ "Department" means the Department of Legal Affairs.

45 (4)~~(3)~~ "Division" means the Division of Administrative
46 Hearings.

47 (5)~~(4)~~ "Wrongfully incarcerated person" means a person
48 whose felony conviction and sentence have been vacated by a
49 court of competent jurisdiction and, with respect to whom
50 pursuant to the requirements of s. 961.03, the original
51 sentencing court has issued its order finding that the person
52 has proven actual innocence by clear and convincing evidence
53 ~~neither committed the act nor the offense that served as the~~
54 ~~basis for the conviction and incarceration and that the person~~
55 ~~did not aid, abet, or act as an accomplice or accessory to a~~
56 ~~person who committed the act or offense.~~

57 (6)~~(5)~~ "Eligible for compensation" means a person meets the
58 definition of "wrongfully incarcerated person" and is not

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59 disqualified from seeking compensation under the criteria
60 prescribed in s. 961.04.

61 ~~(7)(6)~~ "Entitled to compensation" means a person meets the
62 definition of "eligible for compensation" and satisfies the
63 application requirements prescribed in s. 961.05, and may
64 receive compensation pursuant to s. 961.06.

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

67 961.03 Determination of status as a wrongfully incarcerated
68 person; determination of eligibility for compensation.—

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

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

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

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

87 1. Within 90 days after the order vacating a conviction and

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88 sentence becomes final if the person's conviction and sentence
89 is vacated on or after July 1, 2008.

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

92 (c)1. Within 30 days after filing the petition, the
93 petitioner must submit fingerprints for a state and national
94 criminal history records check. Failure to satisfy this
95 subparagraph within the prescribed timeframe is not grounds for
96 denial of compensation under this act.

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

103 3. The petitioner's fingerprints shall be taken in a manner
104 approved by the Department of Law Enforcement and shall be
105 submitted electronically to the Department of Law Enforcement
106 for state processing for a criminal history records check. The
107 Department of Law Enforcement shall submit the fingerprints to
108 the Federal Bureau of Investigation for national processing. The
109 Department of Law Enforcement shall submit the results of the
110 state and national records check to the clerk of the court. The
111 court shall consider the results in evaluating whether the
112 petitioner is eligible for compensation under s. 961.04.

113 4. The petitioner may not be charged for the cost of
114 conducting the state and national criminal history records
115 checks required under this paragraph. The cost of state and
116 national processing shall be absorbed by the Department of Law

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117 Enforcement.

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

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

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

135 (3) If the prosecuting authority responds as set forth in
136 paragraph (2) (a), the original sentencing court, based upon the
137 prosecuting authority's certification and the court's finding
138 that the petitioner has proven actual innocence by clear and
139 convincing evidence and that the petitioner is eligible for
140 compensation under s. 961.04 ~~evidence of actual innocence, the~~
141 ~~prosecuting authority's certification, and upon the court's~~
142 ~~finding that the petitioner has presented clear and convincing~~
143 ~~evidence that the petitioner committed neither the act nor the~~
144 ~~offense that served as the basis for the conviction and~~
145 ~~incarceration, and that the petitioner did not aid, abet, or act~~

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146 ~~as an accomplice to a person who committed the act or offense,~~
147 shall certify to the department that the petitioner is a
148 wrongfully incarcerated person who is eligible for compensation
149 as defined by this act. ~~Based upon the prosecuting authority's~~
150 ~~certification, the court shall also certify to the department~~
151 ~~that the petitioner is eligible for compensation under the~~
152 ~~provisions of s. 961.04.~~

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

162 (b) If the prosecuting authority responds as set forth in
163 paragraph (2) (b), and the court determines that the petitioner
164 is eligible under ~~the provisions of s. 961.04,~~ but the
165 prosecuting authority contests the nature, significance, or
166 effect of the evidence of actual innocence, ~~or the facts related~~
167 ~~to the petitioner's alleged wrongful incarceration,~~ the court
168 shall set forth its findings and transfer the petition to the
169 division for findings of fact and a recommended determination of
170 whether the petitioner has proven actual innocence ~~established~~
171 ~~that he or she is a wrongfully incarcerated person who is~~
172 ~~eligible for compensation~~ under this act.

173 (5) The petitioner must prove actual innocence before the
174 administrative law judge by clear and convincing evidence. Any

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175 ~~questions of fact, the nature, significance or effect of the~~
176 ~~evidence of actual innocence, and the petitioner's eligibility~~
177 ~~for compensation under this act must be established by clear and~~
178 ~~convincing evidence by the petitioner before an administrative~~
179 ~~law judge.~~

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

184 (b) The prosecuting authority shall appear for the purpose
185 of contesting, as necessary, the facts, the nature, and
186 significance or effect of the evidence of actual innocence as
187 presented by the petitioner.

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

192 (d) The original sentencing court shall review the findings
193 and recommendation contained in the order of the administrative
194 law judge and, within 60 days, shall issue its own order
195 adopting or declining to adopt the findings and recommendation
196 of the administrative law judge.

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

202 (a)1. The order of the administrative law judge finds that
203 the petitioner has met his or her burden of proving actual

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204 innocence establishing by clear and convincing evidence ~~that the~~
205 ~~petitioner committed neither the act nor the offense that served~~
206 ~~as the basis for the conviction and incarceration and that the~~
207 ~~petitioner did not aid, abet, or act as an accomplice to a~~
208 ~~person who committed the act or offense;~~

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

212 3. The petitioner is a wrongfully incarcerated person who
213 is eligible for compensation; or

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

221 ~~that the petitioner committed neither the act nor the offense~~
222 ~~that served as the basis for the conviction and incarceration~~
223 ~~and that the petitioner did not aid, abet, or act as an~~
224 ~~accomplice to a person who committed the act or offense; and~~

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

228 (8) The establishment of the method by which a person may
229 seek the status of a wrongfully incarcerated person and a
230 finding as to eligibility for compensation under this act in no
231 way creates any rights of due process beyond those set forth in
232 this act herein, nor is there created any right to further

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233 petition or appeal beyond the scope of the method set forth in
234 this act herein.

235 Section 3. Section 961.05, Florida Statutes, is amended to
236 read:

237 961.05 Application for compensation for wrongful
238 incarceration; administrative expunction; determination of
239 entitlement to compensation.—

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

247 (2) A wrongfully incarcerated person who is eligible for
248 compensation under the act must apply to the Department of Legal
249 Affairs. No estate of, or personal representative for, a
250 decedent is entitled to apply on behalf of the decedent for
251 compensation for wrongful incarceration.

252 (3) The Department of Legal Affairs may adopt rules
253 regarding the forms and procedures related to applications for
254 compensation under this act ~~the Victims of Wrongful~~
255 ~~Incarceration Compensation Act.~~

256 (4) The application must include:

257 (a) Identification of the original sentencing court and the
258 criminal case number of the case or cases for which the person
259 was wrongfully incarcerated ~~A certified copy of the order~~
260 ~~vacating the conviction and sentence;~~

261 ~~(b) A certified copy of the original sentencing court's~~

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262 ~~order finding the claimant to be a wrongfully incarcerated~~
263 ~~person who is eligible for compensation under this act;~~

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

265 ~~(d) Documentation demonstrating the length of the sentence~~
266 ~~served, including documentation from the Department of~~
267 ~~Corrections regarding the person's admission into and release~~
268 ~~from the custody of the Department of Corrections;~~

269 ~~(b)(e)~~ Positive proof of identification, including ~~two full~~
270 ~~sets of fingerprints administered by a law enforcement agency~~
271 ~~and~~ a current form of photo identification, demonstrating that
272 the person seeking compensation is the same individual who was
273 wrongfully incarcerated;

274 ~~(c)(f)~~ All supporting documentation of any fine, penalty,
275 or court costs imposed and paid by the wrongfully incarcerated
276 person as described in s. 961.06(1)(c);

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

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

282 (5) Upon receipt of the application, the department shall:
283 ~~forward one full set of fingerprints of the applicant to the~~
284 ~~Department of Law Enforcement for statewide criminal records~~
285 ~~checks. The Department of Law Enforcement shall forward the~~
286 ~~second set of fingerprints to the Federal Bureau of~~
287 ~~Investigation for national criminal records checks. The results~~
288 ~~of the state and national records checks shall be submitted to~~
289 ~~the department.~~

290 (a) Request that the clerk of the court provide a certified

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291 copy of the order vacating the conviction and sentence and
292 certified copies of the original judgment and sentence. The
293 clerk shall provide these records at no charge.

294 (b) Request that the Department of Corrections provide
295 documentation demonstrating the length of the sentence served,
296 including the dates of the wrongfully incarcerated person's
297 admission into and release from the custody of the Department of
298 Corrections. The Department of Corrections shall provide this
299 documentation at no charge.

300 (c) ~~(6)~~ Upon receipt of an application, the department shall
301 Examine the application and notify the wrongfully incarcerated
302 person ~~claimant~~ within 30 calendar days of any errors or
303 omissions, and request any additional information relevant to
304 the review of the application. The wrongfully incarcerated
305 person ~~claimant~~ shall have 15 days after proper notification of
306 any existing errors or omissions to supplement the application.
307 The department may not deny an application for failure of the
308 wrongfully incarcerated person ~~claimant~~ to correct an error or
309 omission or supply additional information unless the department
310 timely notified the person ~~claimant~~ of such errors or omissions
311 or requested the additional information within the 30-day period
312 specified in this subsection. The department shall process and
313 review each completed application within 90 calendar days. Once
314 the department determines whether a claim for compensation meets
315 the requirements of this act, the department shall notify the
316 wrongfully incarcerated person ~~claimant~~ within 5 business days
317 of that determination.

318 (6) ~~(7)~~ If the department determines that a wrongfully
319 incarcerated person ~~claimant~~ meets the requirements of this act,

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320 the wrongfully incarcerated person ~~who is the subject of the~~
321 ~~claim~~ becomes entitled to compensation, subject to ~~the~~
322 ~~provisions in s. 961.06.~~

323 Section 4. Section 961.06, Florida Statutes, is amended to
324 read:

325 961.06 Compensation for wrongful incarceration.—

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

330 (a) Monetary compensation for wrongful incarceration, which
331 shall be calculated at a rate of \$50,000 for each year of
332 wrongful incarceration, prorated as necessary to account for a
333 portion of a year. For persons found to be wrongfully
334 incarcerated after December 31, 2008, the Chief Financial
335 Officer may adjust the annual rate of compensation for inflation
336 using the change in the December-to-December "Consumer Price
337 Index for All Urban Consumers" of the Bureau of Labor Statistics
338 of the Department of Labor;

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

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

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

357 (e) Notwithstanding any provision to the contrary in s.
358 943.0585, immediate administrative expunction of the wrongfully
359 incarcerated person's criminal record resulting from his or her
360 wrongful arrest, wrongful conviction, and wrongful
361 incarceration. The Department of Legal Affairs and the
362 Department of Law Enforcement shall, upon a determination that a
363 person claimant is entitled to compensation, immediately take
364 all action necessary to administratively expunge the person's
365 claimant's criminal record arising from his or her wrongful
366 arrest, wrongful conviction, and wrongful incarceration. All
367 fees for this process shall be waived.

368
369 The total compensation awarded under paragraphs (a), (c), and
370 (d) may not exceed \$2 million. No further award for attorney's
371 fees, lobbying fees, costs, or other similar expenses shall be
372 made by the state.

373 (2) In calculating monetary compensation under paragraph
374 (1)(a), a wrongfully incarcerated person who is placed on parole
375 or community supervision while serving the sentence resulting
376 from the wrongful conviction and who commits anything less than
377 a felony law violation that results in revocation of the parole

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378 or community supervision is eligible for compensation for the
379 total number of years incarcerated. A wrongfully incarcerated
380 person who commits a felony law violation that results in
381 revocation of the parole or community supervision is ineligible
382 for any compensation under subsection (1).

383 (3) Within 15 calendar days after issuing notice to the
384 wrongfully incarcerated person ~~claimant~~ that his or her claim
385 satisfies all of the requirements under this act, the department
386 shall notify the Chief Financial Officer to draw a warrant from
387 the General Revenue Fund or another source designated by the
388 Legislature in law for the purchase of an annuity for the
389 wrongfully incarcerated person ~~claimant~~ based on the total
390 amount determined by the department under this act.

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

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

397 (b) Contain beneficiary provisions for the continued
398 disbursement of the annuity in the event of the death of the
399 wrongfully incarcerated person ~~applicant~~.

400 (5) Before the Chief Financial Officer draws the warrant
401 for the purchase of the annuity, the wrongfully incarcerated
402 person ~~claimant~~ must sign a release and waiver on behalf of the
403 wrongfully incarcerated person ~~claimant~~ and his or her heirs,
404 successors, and assigns, forever releasing the state or any
405 agency, instrumentality, or any political subdivision thereof,
406 or any other entity subject to ~~the provisions of s. 768.28, from~~

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407 all present or future claims that the wrongfully incarcerated
408 person claimant or his or her heirs, successors, or assigns may
409 have against such entities arising out of the facts in
410 connection with the wrongful conviction for which compensation
411 is being sought under the act. The release and waiver must be
412 provided to the department prior to the issuance of the warrant
413 by the Chief Financial Officer.

414 (6) (a) A wrongfully incarcerated person may not submit an
415 application for compensation under this act if the person has a
416 civil action lawsuit pending against the state or any agency,
417 instrumentality, or any political subdivision thereof, or any
418 other entity subject to ~~the provisions of~~ s. 768.28, in state or
419 federal court requesting compensation arising out of ~~the facts~~
420 ~~in connection with~~ the wrongfully incarcerated person's
421 ~~claimant's~~ conviction and incarceration.

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

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

435 (d) ~~(c)~~ Once an application is filed under this act, a

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436 wrongfully incarcerated person may not pursue recovery under a
437 claim bill until the final disposition of the application.

438 (e)~~(d)~~ Any amount awarded under this act is intended to
439 provide the sole compensation for any and all present and future
440 claims arising out of ~~the facts in connection with the~~
441 wrongfully incarcerated person's claimant's conviction and
442 incarceration. Upon notification by the department that an
443 application meets the requirements of this act, a wrongfully
444 incarcerated person may not recover under a claim bill.

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

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

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