

By Senator Joyner

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1 A bill to be entitled
2 An act relating to compensation of victims of wrongful
3 incarceration; amending s. 961.02, F.S.; defining the
4 term "violent felony"; amending s. 961.04, F.S.;
5 providing that a person is disqualified from receiving
6 compensation under the Victims of Wrongful
7 Incarceration Compensation Act if, before or after the
8 person's wrongful conviction and incarceration, the
9 person was convicted of or pled guilty or nolo
10 contendere to a violent felony; amending s. 961.06,
11 F.S.; providing that a wrongfully incarcerated person
12 who commits a violent felony law violation that
13 results in revocation of parole or community
14 supervision is ineligible for compensation; reenacting
15 s. 961.03(1)(a), (2), (3), and (4), F.S., relating to
16 determination of status as a wrongfully incarcerated
17 person and determination of eligibility for
18 compensation; providing an effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

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22 Section 1. Section 961.02, Florida Statutes, is amended to
23 read:

24 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

25 (1) "Act" means the Victims of Wrongful Incarceration
26 Compensation Act.

27 (2) "Department" means the Department of Legal Affairs.

28 (3) "Division" means the Division of Administrative
29 Hearings.

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30 (4) "Wrongfully incarcerated person" means a person whose
31 felony conviction and sentence have been vacated by a court of
32 competent jurisdiction and, with respect to whom pursuant to the
33 requirements of s. 961.03, the original sentencing court has
34 issued its order finding that the person neither committed the
35 act nor the offense that served as the basis for the conviction
36 and incarceration and that the person did not aid, abet, or act
37 as an accomplice or accessory to a person who committed the act
38 or offense.

39 (5) "Eligible for compensation" means a person meets the
40 definition of the term "wrongfully incarcerated person" and is
41 not disqualified from seeking compensation under the criteria
42 prescribed in s. 961.04.

43 (6) "Entitled to compensation" means a person meets the
44 definition of the term "eligible for compensation" and satisfies
45 the application requirements prescribed in s. 961.05, and may
46 receive compensation pursuant to s. 961.06.

47 (7) "Violent felony" means a felony offense enumerated in
48 s. 775.084(1)(c)1. or s. 948.06(8)(c).

49 Section 2. Section 961.04, Florida Statutes, is amended to
50 read:

51 961.04 Eligibility for compensation for wrongful
52 incarceration.—A wrongfully incarcerated person is not eligible
53 for compensation under the act if:

54 (1) Before the person's wrongful conviction and
55 incarceration, the person was convicted of, or pled guilty or
56 nolo contendere to, regardless of adjudication, any violent
57 felony offense, or a crime committed in another jurisdiction the
58 elements of which would constitute a violent felony in this

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59 state, or a crime committed against the United States which is
60 designated a violent felony, excluding any delinquency
61 disposition;

62 (2) During the person's wrongful incarceration, the person
63 was convicted of, or pled guilty or nolo contendere to,
64 regardless of adjudication, any violent felony offense; or

65 (3) During the person's wrongful incarceration, the person
66 was also serving a concurrent sentence for another felony for
67 which the person was not wrongfully convicted.

68 Section 3. Subsection (2) of section 961.06, Florida
69 Statutes, is amended to read:

70 961.06 Compensation for wrongful incarceration.—

71 (2) In calculating monetary compensation under paragraph
72 (1) (a), a wrongfully incarcerated person who is placed on parole
73 or community supervision while serving the sentence resulting
74 from the wrongful conviction and who commits anything less than
75 a violent felony law violation that results in revocation of the
76 parole or community supervision is eligible for compensation for
77 the total number of years incarcerated. A wrongfully
78 incarcerated person who commits a violent felony law violation
79 that results in revocation of the parole or community
80 supervision is ineligible for any compensation under subsection
81 (1).

82 Section 4. For the purpose of incorporating the amendment
83 made by this act to section 961.04, Florida Statutes, in a
84 reference thereto, paragraph (a) of subsection (1) and
85 subsections (2), (3), and (4) of section 961.03, Florida
86 Statutes, are reenacted to read:

87 961.03 Determination of status as a wrongfully incarcerated

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88 person; determination of eligibility for compensation.—

89 (1) (a) In order to meet the definition of a “wrongfully
90 incarcerated person” and “eligible for compensation,” upon entry
91 of an order, based upon exonerating evidence, vacating a
92 conviction and sentence, a person must set forth the claim of
93 wrongful incarceration under oath and with particularity by
94 filing a petition with the original sentencing court, with a
95 copy of the petition and proper notice to the prosecuting
96 authority in the underlying felony for which the person was
97 incarcerated. At a minimum, the petition must:

98 1. State that verifiable and substantial evidence of actual
99 innocence exists and state with particularity the nature and
100 significance of the verifiable and substantial evidence of
101 actual innocence; and

102 2. State that the person is not disqualified, under the
103 provisions of s. 961.04, from seeking compensation under this
104 act.

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

107 (a) By certifying to the court that, based upon the
108 petition and verifiable and substantial evidence of actual
109 innocence, no further criminal proceedings in the case at bar
110 can or will be initiated by the prosecuting authority, that no
111 questions of fact remain as to the petitioner’s wrongful
112 incarceration, and that the petitioner is not ineligible from
113 seeking compensation under the provisions of s. 961.04; or

114 (b) By contesting the nature, significance, or effect of
115 the evidence of actual innocence, the facts related to the
116 petitioner’s alleged wrongful incarceration, or whether the

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117 petitioner is ineligible from seeking compensation under the
118 provisions of s. 961.04.

119 (3) If the prosecuting authority responds as set forth in
120 paragraph (2)(a), the original sentencing court, based upon the
121 evidence of actual innocence, the prosecuting authority's
122 certification, and upon the court's finding that the petitioner
123 has presented clear and convincing evidence that the petitioner
124 committed neither the act nor the offense that served as the
125 basis for the conviction and incarceration, and that the
126 petitioner did not aid, abet, or act as an accomplice to a
127 person who committed the act or offense, shall certify to the
128 department that the petitioner is a wrongfully incarcerated
129 person as defined by this act. Based upon the prosecuting
130 authority's certification, the court shall also certify to the
131 department that the petitioner is eligible for compensation
132 under the provisions of s. 961.04.

133 (4)(a) If the prosecuting authority responds as set forth
134 in paragraph (2)(b), the original sentencing court shall make a
135 determination from the pleadings and supporting documentation
136 whether, by a preponderance of the evidence, the petitioner is
137 ineligible for compensation under the provisions of s. 961.04,
138 regardless of his or her claim of wrongful incarceration. If the
139 court finds the petitioner ineligible under the provisions of s.
140 961.04, it shall dismiss the petition.

141 (b) If the prosecuting authority responds as set forth in
142 paragraph (2)(b), and the court determines that the petitioner
143 is eligible under the provisions of s. 961.04, but the
144 prosecuting authority contests the nature, significance or
145 effect of the evidence of actual innocence, or the facts related

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146 to the petitioner's alleged wrongful incarceration, the court
147 shall set forth its findings and transfer the petition by
148 electronic means through the division's website to the division
149 for findings of fact and a recommended determination of whether
150 the petitioner has established that he or she is a wrongfully
151 incarcerated person who is eligible for compensation under this
152 act.

153 Section 5. This act shall take effect July 1, 2012.