

By the Committees on Rules; and Judiciary; and Senator Thompson

595-04434-14

2014326c2

1 A bill to be entitled
2 An act relating to victims of wrongful incarceration;
3 creating s. 961.055, F.S.; providing that a wrongfully
4 incarcerated person who was convicted and sentenced to
5 death on or before December 31, 1979, is exempt from
6 certain application procedures for compensation if a
7 special prosecutor issues a nolle prosequi after
8 reviewing the defendant's conviction; creating s.
9 961.056, F.S.; providing alternative procedures for
10 applying for compensation; requiring the claimant to
11 file an application with the Department of Legal
12 Affairs within a specified time; requiring the
13 application to include certain information and
14 documents; providing that the claimant is entitled to
15 compensation if all requirements are met; providing
16 that the section is repealed on a specified date;
17 amending s. 961.06, F.S.; requiring the Chief
18 Financial Officer to issue payment to an insurance
19 company or other financial institution authorized to
20 issue annuity contracts to purchase an annuity or
21 annuities selected by the wrongfully incarcerated
22 person; requiring the Chief Financial Officer to
23 execute all necessary agreements to implement
24 compensation and to maximize the benefit to the
25 wrongfully incarcerated person; requiring the
26 wrongfully incarcerated person to sign a waiver before
27 the department's approval of the application;
28 providing an effective date.
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30 Be It Enacted by the Legislature of the State of Florida:

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32 Section 1. Section 961.055, Florida Statutes, is created to
33 read:

34 961.055 Application for compensation for a wrongfully
35 incarcerated person; exemption from application by nolle
36 prosequi.-

37 (1) A person alleged to be a wrongfully incarcerated person
38 who was convicted and sentenced to death on or before December
39 31, 1979, is exempt from the application provisions of ss.
40 961.03 and 961.05 in the determination of wrongful incarceration
41 and eligibility to receive compensation pursuant to s. 961.06
42 if:

43 (a) The Governor issues an executive order appointing a
44 special prosecutor to review the defendant's conviction; and

45 (b) The special prosecutor thereafter enters a nolle
46 prosequi for the charges for which the defendant was convicted
47 and sentenced to death.

48 (2) The nolle prosequi constitutes conclusive proof that
49 the defendant is innocent of the offenses charged and is
50 eligible to receive compensation under this chapter.

51 (3) This section is repealed July 1, 2018.

52 Section 2. Section 961.056, Florida Statutes, is created to
53 read:

54 961.056 Alternative application for compensation for a
55 wrongfully incarcerated person.-

56 (1) A person who has been determined to be a wrongfully
57 incarcerated person pursuant to s. 961.055 is eligible to apply
58 to the department to receive compensation for such wrongful

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59 incarceration.

60 (a) Only the wrongfully incarcerated person may apply for
61 compensation. The estate of, or personal representative for, a
62 decedent may not apply on behalf of the decedent for
63 compensation for wrongful incarceration.

64 (b) In order to receive compensation, the wrongfully
65 incarcerated person shall, by July 1, 2016, submit to the
66 Department of Legal Affairs an application for compensation
67 irrespective of whether the person has previously sought
68 compensation under this chapter. The application must include:

69 1. A certified copy of the nolle prosequi or nolle prosequi
70 memorandum;

71 2. Certified copies of the original judgment and sentence;

72 3. Documentation demonstrating the length of the sentence
73 served, including documentation from the Department of
74 Corrections regarding the person's admission into and release
75 from the custody of the Department of Corrections;

76 4. Positive proof of identification, as evidenced by two
77 full sets of fingerprints prepared by a law enforcement agency
78 of this state and a current form of photo identification;

79 5. Supporting documentation of any fine, penalty, or court
80 costs imposed on and paid by the wrongfully incarcerated person
81 as described in s. 961.06(1);

82 6. Supporting documentation of any reasonable attorney fees
83 and expenses as described in s. 961.06(1); and

84 7. Any other documentation, evidence, or information
85 required by rules adopted by the department.

86 (2) The law enforcement agency that prepared the
87 applicant's set of fingerprints shall forward both full sets to

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88 the Department of Law Enforcement. The Department of Law
89 Enforcement shall retain one set for statewide criminal records
90 checks and forward the second set of fingerprints to the Federal
91 Bureau of Investigation for national criminal records checks.
92 The results of the state and national records checks shall be
93 submitted to the department.

94 (3) Upon receipt of an application, the department shall
95 examine the application and, within 30 days after receipt of the
96 application, shall notify the claimant of any error or omission
97 and request any additional information relevant to the review of
98 the application.

99 (a) The claimant has 15 days after proper notification by
100 the department to correct any identified error or omission in
101 the application and to supply any additional information
102 relevant to the application.

103 (b) The department may not deny an application for failure
104 of the claimant to correct an error or omission or to supply
105 additional information unless the department has notified the
106 claimant of such error or omission and requested the additional
107 information within the 30-day period specified in this
108 subsection.

109 (c) The department shall process and review each complete
110 application within 90 calendar days.

111 (d) Once the department determines whether a claim for
112 compensation meets the requirements of this chapter, the
113 department shall notify the claimant within 5 business days
114 after that determination.

115 (4) If the department determines that a claimant meets the
116 requirements of this chapter, the wrongfully incarcerated person

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117 is entitled to compensation under s. 961.06.

118 (5) This section is repealed July 1, 2018.

119 Section 3. Subsections (4) and (5) of section 961.06,
120 Florida Statutes, are amended to read:

121 961.06 Compensation for wrongful incarceration.—

122 (4) The Chief Financial Officer shall issue payment in the
123 amount determined by the department to an insurance company or
124 other financial institution admitted and authorized to issue
125 purchase an annuity contracts in this state to purchase an
126 annuity or annuities, selected by the wrongfully incarcerated
127 person, on behalf of the claimant for a term of not less than 10
128 years. The Chief Financial Officer is directed to execute all
129 necessary agreements to implement this act and to maximize the
130 benefit to the wrongfully incarcerated person. The terms of the
131 annuity or annuities shall:

132 (a) Provide that the annuity or annuities may not be sold,
133 discounted, or used as security for a loan or mortgage by the
134 wrongfully incarcerated person applicant.

135 (b) Contain beneficiary provisions for the continued
136 disbursement of the annuity or annuities in the event of the
137 death of the wrongfully incarcerated person applicant.

138 (5) Before the department approves the application for
139 compensation ~~Chief Financial Officer draws the warrant for the~~
140 ~~purchase of the annuity,~~ the wrongfully incarcerated person
141 ~~claimant~~ must sign a release and waiver on behalf of the
142 wrongfully incarcerated person claimant and his or her heirs,
143 successors, and assigns, forever releasing the state or any
144 agency, instrumentality, or any political subdivision thereof,
145 or any other entity subject to ~~the provisions of s. 768.28,~~ from

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146 all present or future claims that the wrongfully incarcerated
147 person ~~claimant~~ or his or her heirs, successors, or assigns may
148 have against such entities arising out of the facts in
149 connection with the wrongful conviction for which compensation
150 is being sought under the act. ~~The release and waiver must be~~
151 ~~provided to the department prior to the issuance of the warrant~~
152 ~~by the Chief Financial Officer.~~

153 Section 4. This act shall take effect July 1, 2014.