

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 during  
8           the person's wrongful conviction and incarceration,  
9           the person was convicted of, pled guilty or nolo  
10          contendere to, or was serving a concurrent  
11          incarceration for, another violent felony; amending s.  
12          961.06, F.S.; providing that a wrongfully incarcerated  
13          person who commits a violent felony law violation,  
14          rather than a felony law violation, which results in  
15          revocation of parole or community supervision is  
16          ineligible for compensation; reenacting s.  
17          961.03(1)(a), (2), (3), and (4), F.S., relating to  
18          determination of status as a wrongfully incarcerated  
19          person and determination of eligibility for  
20          compensation, to incorporate the amendments made to s.  
21          961.04, F.S., in references thereto; reenacting s.  
22          961.055(1), F.S., relating to application for  
23          compensation for a wrongfully incarcerated person and  
24          exemption from application by nolle prosequi, to  
25          incorporate the amendments made to s. 961.04, F.S., in  
26          references thereto; providing an effective date.

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

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

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

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

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

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

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

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

(5)~~(6)~~ "Entitled to compensation" means a person meets the

53 definition of the term "eligible for compensation" and satisfies  
54 the application requirements prescribed in s. 961.05, and may  
55 receive compensation pursuant to s. 961.06.

56 (6) "Violent felony" means a felony offense listed in s.  
57 775.084(1)(c)1. or s. 948.06(8)(c).

58 (7) "Wrongfully incarcerated person" means a person whose  
59 felony conviction and sentence have been vacated by a court of  
60 competent jurisdiction and the original sentencing court has  
61 issued its order, pursuant to the requirements of s. 961.03,  
62 finding that the person neither committed the act nor the  
63 offense that served as the basis for the conviction and  
64 incarceration and that the person did not aid, abet, or act as  
65 an accomplice or accessory to a person who committed the act or  
66 offense.

67 Section 2. Section 961.04, Florida Statutes, is amended to  
68 read:

69 961.04 Eligibility for compensation for wrongful  
70 incarceration.—A wrongfully incarcerated person is not eligible  
71 for compensation under the act if:

72 (1) Before the person's wrongful conviction and  
73 incarceration, the person was convicted of, or pled guilty or  
74 nolo contendere to, regardless of adjudication, any violent  
75 felony offense, or a crime committed in another jurisdiction the  
76 elements of which would constitute a violent felony in this  
77 state, or a crime committed against the United States which is  
78 designated a violent felony, excluding any delinquency

79 disposition;

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

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

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

88 961.06 Compensation for wrongful incarceration.—

89 (2) In calculating monetary compensation under paragraph  
90 (1)(a), a wrongfully incarcerated person who is placed on parole  
91 or community supervision while serving the sentence resulting  
92 from the wrongful conviction and who commits anything less than  
93 a violent felony law violation that results in revocation of the  
94 parole or community supervision is eligible for compensation for  
95 the total number of years incarcerated. A wrongfully  
96 incarcerated person who commits a violent felony law violation  
97 that results in revocation of the parole or community  
98 supervision is ineligible for any compensation under subsection  
99 (1).

100 Section 4. For the purpose of incorporating the amendments  
101 made by this act to section 961.04, Florida Statutes, in  
102 references thereto, paragraph (a) of subsection (1) and  
103 subsections (2), (3), and (4) of section 961.03, Florida  
104 Statutes, are reenacted to read:

105           961.03 Determination of status as a wrongfully  
106 incarcerated person; determination of eligibility for  
107 compensation.—

108           (1) (a) In order to meet the definition of a "wrongfully  
109 incarcerated person" and "eligible for compensation," upon entry  
110 of an order, based upon exonerating evidence, vacating a  
111 conviction and sentence, a person must set forth the claim of  
112 wrongful incarceration under oath and with particularity by  
113 filing a petition with the original sentencing court, with a  
114 copy of the petition and proper notice to the prosecuting  
115 authority in the underlying felony for which the person was  
116 incarcerated. At a minimum, the petition must:

117           1. State that verifiable and substantial evidence of  
118 actual innocence exists and state with particularity the nature  
119 and significance of the verifiable and substantial evidence of  
120 actual innocence; and

121           2. State that the person is not disqualified, under the  
122 provisions of s. 961.04, from seeking compensation under this  
123 act.

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

126           (a) By certifying to the court that, based upon the  
127 petition and verifiable and substantial evidence of actual  
128 innocence, no further criminal proceedings in the case at bar  
129 can or will be initiated by the prosecuting authority, that no  
130 questions of fact remain as to the petitioner's wrongful

131 incarceration, and that the petitioner is not ineligible from  
132 seeking compensation under the provisions of s. 961.04; or

133 (b) By contesting the nature, significance, or effect of  
134 the evidence of actual innocence, the facts related to the  
135 petitioner's alleged wrongful incarceration, or whether the  
136 petitioner is ineligible from seeking compensation under the  
137 provisions of s. 961.04.

138 (3) If the prosecuting authority responds as set forth in  
139 paragraph (2)(a), the original sentencing court, based upon the  
140 evidence of actual innocence, the prosecuting authority's  
141 certification, and upon the court's finding that the petitioner  
142 has presented clear and convincing evidence that the petitioner  
143 committed neither the act nor the offense that served as the  
144 basis for the conviction and incarceration, and that the  
145 petitioner did not aid, abet, or act as an accomplice to a  
146 person who committed the act or offense, shall certify to the  
147 department that the petitioner is a wrongfully incarcerated  
148 person as defined by this act. Based upon the prosecuting  
149 authority's certification, the court shall also certify to the  
150 department that the petitioner is eligible for compensation  
151 under the provisions of s. 961.04.

152 (4)(a) If the prosecuting authority responds as set forth  
153 in paragraph (2)(b), the original sentencing court shall make a  
154 determination from the pleadings and supporting documentation  
155 whether, by a preponderance of the evidence, the petitioner is  
156 ineligible for compensation under the provisions of s. 961.04,

157 regardless of his or her claim of wrongful incarceration. If the  
158 court finds the petitioner ineligible under the provisions of s.  
159 961.04, it shall dismiss the petition.

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

172 Section 5. For the purpose of incorporating the amendments  
173 made by this act to section 961.04, Florida Statutes, in  
174 references thereto, subsection (1) of section 961.055, Florida  
175 Statutes, is reenacted to read:

176 961.055 Application for compensation for a wrongfully  
177 incarcerated person; exemption from application by nolle  
178 prosequi.—

179 (1) A person alleged to be a wrongfully incarcerated  
180 person who was convicted and sentenced to death on or before  
181 December 31, 1979, is exempt from the application provisions of  
182 ss. 961.03, 961.04, and 961.05 in the determination of wrongful

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183 incarceration and eligibility to receive compensation pursuant  
184 to s. 961.06 if:

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

187 (b) The special prosecutor thereafter enters a nolle  
188 prosequi for the charges for which the defendant was convicted  
189 and sentenced to death.

190 Section 6. This act shall take effect October 1, 2015.