

By the Committee on Criminal Justice; and Senators Joyner and Bradley

591-01035-16

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1 A bill to be entitled
2 An act relating to compensation of victims of wrongful
3 incarceration; reordering and amending s. 961.02,
4 F.S.; defining the term "violent felony"; amending s.
5 961.04, F.S.; providing that a person is disqualified
6 from receiving compensation under the Victims of
7 Wrongful Incarceration Compensation Act if, before or
8 during the person's wrongful conviction and
9 incarceration, the person was convicted of, pled
10 guilty or nolo contendere to any violent felony, or
11 was serving a concurrent sentence for another felony;
12 amending s. 961.06, F.S.; providing that a wrongfully
13 incarcerated person who commits a violent felony,
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 eligibility for compensation, to
19 incorporate the amendments made to s. 961.04, F.S., in
20 references thereto; reenacting s. 961.055(1), F.S.,
21 relating to application for compensation for a
22 wrongfully incarcerated person and exemption from
23 application by nolle prosequi, to incorporate the
24 amendments made to s. 961.06, F.S., in references
25 thereto; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Section 961.02, Florida Statutes, is reordered

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30 and amended to read:

31 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

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

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

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

37 ~~(7)~~(4) "Wrongfully incarcerated person" means a person
38 whose felony conviction and sentence have been vacated by a
39 court of competent jurisdiction and who is the subject of an
40 order issued by the original sentencing court pursuant to s.
41 961.03, ~~with respect to whom pursuant to the requirements of s.~~
42 ~~961.03,~~ the original sentencing court has issued its order
43 finding that the person did not commit ~~neither committed~~ the act
44 or ~~nor~~ the offense that served as the basis for the conviction
45 and incarceration and that the person did not aid, abet, or act
46 as an accomplice or accessory to a person who committed the act
47 or offense.

48 ~~(4)~~(5) "Eligible for compensation" means that a person
49 meets the definition of the term "wrongfully incarcerated
50 person" and is not disqualified from seeking compensation under
51 the criteria prescribed in s. 961.04.

52 ~~(5)~~(6) "Entitled to compensation" means that a person meets
53 the definition of the term "eligible for compensation" and
54 satisfies the application requirements prescribed in s. 961.05,
55 and may receive compensation pursuant to s. 961.06.

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

58 Section 2. Section 961.04, Florida Statutes, is amended to

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59 read:

60 961.04 Eligibility for compensation for wrongful
61 incarceration.—A wrongfully incarcerated person is not eligible
62 for compensation under the act if:

63 (1) Before the person's wrongful conviction and
64 incarceration, the person was convicted of, or pled guilty or
65 nolo contendere to, regardless of adjudication, any violent
66 felony ~~offense~~, or a crime committed in another jurisdiction the
67 elements of which would constitute a violent felony in this
68 state, or a crime committed against the United States which is
69 designated a violent felony, excluding any delinquency
70 disposition;

71 (2) During the person's wrongful incarceration, the person
72 was convicted of, or pled guilty or nolo contendere to,
73 regardless of adjudication, any violent felony ~~offense~~; or

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

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

79 961.06 Compensation for wrongful incarceration.—

80 (2) In calculating monetary compensation under paragraph
81 (1) (a), a wrongfully incarcerated person who is placed on parole
82 or community supervision while serving the sentence resulting
83 from the wrongful conviction and who commits anything less than
84 a violent felony ~~law violation~~ that results in revocation of the
85 parole or community supervision is eligible for compensation for
86 the total number of years incarcerated. A wrongfully
87 incarcerated person who commits a violent felony ~~law violation~~

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88 that results in revocation of the parole or community
89 supervision is ineligible for any compensation under subsection
90 (1).

91 Section 4. For the purpose of incorporating the amendments
92 made by this act to section 961.04, Florida Statutes, in
93 references thereto, paragraph (a) of subsection (1) and
94 subsections (2), (3), and (4) of section 961.03, Florida
95 Statutes, are reenacted to read:

96 961.03 Determination of status as a wrongfully incarcerated
97 person; determination of eligibility for compensation.—

98 (1) (a) In order to meet the definition of a “wrongfully
99 incarcerated person” and “eligible for compensation,” upon entry
100 of an order, based upon exonerating evidence, vacating a
101 conviction and sentence, a person must set forth the claim of
102 wrongful incarceration under oath and with particularity by
103 filing a petition with the original sentencing court, with a
104 copy of the petition and proper notice to the prosecuting
105 authority in the underlying felony for which the person was
106 incarcerated. At a minimum, the petition must:

107 1. State that verifiable and substantial evidence of actual
108 innocence exists and state with particularity the nature and
109 significance of the verifiable and substantial evidence of
110 actual innocence; and

111 2. State that the person is not disqualified, under the
112 provisions of s. 961.04, from seeking compensation under this
113 act.

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

116 (a) By certifying to the court that, based upon the

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117 petition and verifiable and substantial evidence of actual
118 innocence, no further criminal proceedings in the case at bar
119 can or will be initiated by the prosecuting authority, that no
120 questions of fact remain as to the petitioner's wrongful
121 incarceration, and that the petitioner is not ineligible from
122 seeking compensation under the provisions of s. 961.04; or

123 (b) By contesting the nature, significance, or effect of
124 the evidence of actual innocence, the facts related to the
125 petitioner's alleged wrongful incarceration, or whether the
126 petitioner is ineligible from seeking compensation under the
127 provisions of s. 961.04.

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

142 (4) (a) If the prosecuting authority responds as set forth
143 in paragraph (2) (b), the original sentencing court shall make a
144 determination from the pleadings and supporting documentation
145 whether, by a preponderance of the evidence, the petitioner is

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146 ineligible for compensation under the provisions of s. 961.04,
147 regardless of his or her claim of wrongful incarceration. If the
148 court finds the petitioner ineligible under the provisions of s.
149 961.04, it shall dismiss the petition.

150 (b) If the prosecuting authority responds as set forth in
151 paragraph (2)(b), and the court determines that the petitioner
152 is eligible under the provisions of s. 961.04, but the
153 prosecuting authority contests the nature, significance or
154 effect of the evidence of actual innocence, or the facts related
155 to the petitioner's alleged wrongful incarceration, the court
156 shall set forth its findings and transfer the petition by
157 electronic means through the division's website to the division
158 for findings of fact and a recommended determination of whether
159 the petitioner has established that he or she is a wrongfully
160 incarcerated person who is eligible for compensation under this
161 act.

162 Section 5. For the purpose of incorporating the amendments
163 made by this act to section 961.06, Florida Statutes, in
164 references thereto, subsection (1) of section 961.055, Florida
165 Statutes, is reenacted to read:

166 961.055 Application for compensation for a wrongfully
167 incarcerated person; exemption from application by nolle
168 prosequi.—

169 (1) A person alleged to be a wrongfully incarcerated person
170 who was convicted and sentenced to death on or before December
171 31, 1979, is exempt from the application provisions of ss.
172 961.03, 961.04, and 961.05 in the determination of wrongful
173 incarceration and eligibility to receive compensation pursuant
174 to s. 961.06 if:

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

177 (b) The special prosecutor thereafter enters a nolle
178 prosequi for the charges for which the defendant was convicted
179 and sentenced to death.

180 Section 6. This act shall take effect October 1, 2016.