

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.; revising the circumstances under which a
6 person is disqualified from receiving compensation
7 under the Victims of Wrongful Incarceration
8 Compensation Act; amending s. 961.06, F.S.; providing
9 that a wrongfully incarcerated person who commits a
10 violent felony, rather than a felony law violation,
11 which results in revocation of parole or community
12 supervision is ineligible for compensation; providing
13 applicability; reenacting s. 961.03(1)(a), (2), (3),
14 and (4), F.S., relating to determination of
15 eligibility for compensation, to incorporate the
16 amendments made by the act to s. 961.04, F.S., in
17 references thereto; reenacting s. 961.055(1), F.S.,
18 relating to application for compensation for a
19 wrongfully incarcerated person and exemption from
20 application by nolle prosequi, to incorporate the
21 amendments made by the act to s. 961.06, F.S., in
22 references thereto; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 961.02, Florida Statutes, is reordered

27 and amended to read:

28 961.02 Definitions.—As used in ss. 961.01-961.07, the
29 term:

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

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

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

35 (4)~~(5)~~ "Eligible for compensation" means that a person
36 meets the definition of the term "wrongfully incarcerated
37 person" and is not disqualified from seeking compensation under
38 the criteria prescribed in s. 961.04.

39 (5)~~(6)~~ "Entitled to compensation" means that a person
40 meets the definition of the term "eligible for compensation" and
41 satisfies the application requirements prescribed in s. 961.05,
42 and may receive compensation pursuant to s. 961.06.

43 (6) "Violent felony" means a felony listed in s.
44 775.084(1)(c)1. or s. 948.06(8)(c).

45 (7)~~(4)~~ "Wrongfully incarcerated person" means a person
46 whose felony conviction and sentence have been vacated by a
47 court of competent jurisdiction and who is the subject of an
48 order issued by the original sentencing court pursuant to s.
49 961.03, ~~with respect to whom pursuant to the requirements of s.~~
50 ~~961.03,~~ ~~the original sentencing court has issued its order~~
51 finding that the person did not commit ~~neither committed~~ the act
52 or ~~nor~~ the offense that served as the basis for the conviction

53 and incarceration and that the person did not aid, abet, or act
 54 as an accomplice or accessory to a person who committed the act
 55 or offense.

56 Section 2. Section 961.04, Florida Statutes, is amended to
 57 read:

58 961.04 Eligibility for compensation for wrongful
 59 incarceration.—A wrongfully incarcerated person is not eligible
 60 for compensation under the act if:

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

69 (2) Before the person's wrongful conviction and
 70 incarceration, the person was convicted of, or pled guilty or
 71 nolo contendere to, regardless of adjudication, more than one
 72 felony that is not a violent felony, or more than one crime
 73 committed in another jurisdiction the elements of which would
 74 constitute a felony in this state, or more than one crime
 75 committed against the United States which is designated a
 76 felony, excluding any delinquency disposition;

77 (3)~~(2)~~ During the person's wrongful incarceration, the
 78 person was convicted of, or pled guilty or nolo contendere to,

79 | regardless of adjudication, any violent felony ~~offense~~; ~~or~~

80 | (4) During the person's wrongful incarceration, the person
 81 | was convicted of, or pled guilty or nolo contendere to,
 82 | regardless of adjudication, more than one felony that is not a
 83 | violent felony; or

84 | ~~(5)(3)~~ During the person's wrongful incarceration, the
 85 | person was also serving a concurrent sentence for another felony
 86 | for which the person was not wrongfully convicted.

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

89 | 961.06 Compensation for wrongful incarceration.—

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

101 | Section 4. The changes made by this act to ss. 961.02,
 102 | 961.04, and 961.06, Florida Statutes, apply only to persons who
 103 | are determined to be wrongfully incarcerated on or after the
 104 | effective date of this act.

105 Section 5. For the purpose of incorporating the amendments
106 made by this act to section 961.04, Florida Statutes, in
107 references thereto, paragraph (a) of subsection (1) and
108 subsections (2), (3), and (4) of section 961.03, Florida
109 Statutes, are reenacted to read:

110 961.03 Determination of status as a wrongfully
111 incarcerated person; determination of eligibility for
112 compensation.—

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

122 1. State that verifiable and substantial evidence of
123 actual innocence exists and state with particularity the nature
124 and significance of the verifiable and substantial evidence of
125 actual innocence; and

126 2. State that the person is not disqualified, under the
127 provisions of s. 961.04, from seeking compensation under this
128 act.

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

131 (a) By certifying to the court that, based upon the
132 petition and verifiable and substantial evidence of actual
133 innocence, no further criminal proceedings in the case at bar
134 can or will be initiated by the prosecuting authority, that no
135 questions of fact remain as to the petitioner's wrongful
136 incarceration, and that the petitioner is not ineligible from
137 seeking compensation under the provisions of s. 961.04; or

138 (b) By contesting the nature, significance, or effect of
139 the evidence of actual innocence, the facts related to the
140 petitioner's alleged wrongful incarceration, or whether the
141 petitioner is ineligible from seeking compensation under the
142 provisions of s. 961.04.

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

157 (4) (a) If the prosecuting authority responds as set forth
158 in paragraph (2) (b), the original sentencing court shall make a
159 determination from the pleadings and supporting documentation
160 whether, by a preponderance of the evidence, the petitioner is
161 ineligible for compensation under the provisions of s. 961.04,
162 regardless of his or her claim of wrongful incarceration. If the
163 court finds the petitioner ineligible under the provisions of s.
164 961.04, it shall dismiss the petition.

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

177 Section 6. For the purpose of incorporating the amendments
178 made by this act to section 961.06, Florida Statutes, in
179 references thereto, subsection (1) of section 961.055, Florida
180 Statutes, is reenacted to read:

181 961.055 Application for compensation for a wrongfully
182 incarcerated person; exemption from application by nolle

183 | prosequi.—

184 | (1) A person alleged to be a wrongfully incarcerated
185 | person who was convicted and sentenced to death on or before
186 | December 31, 1979, is exempt from the application provisions of
187 | ss. 961.03, 961.04, and 961.05 in the determination of wrongful
188 | incarceration and eligibility to receive compensation pursuant
189 | to s. 961.06 if:

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

192 | (b) The special prosecutor thereafter enters a nolle
193 | prosequi for the charges for which the defendant was convicted
194 | and sentenced to death.

195 | Section 7. This act shall take effect October 1, 2016.