

1                   A bill to be entitled  
2           An act relating to compensation of victims of wrongful  
3           incarceration; amending s. 961.02, F.S.; making  
4           technical changes; defining the term "disqualifying  
5           felony"; amending s. 961.04, F.S.; revising the  
6           circumstances under which a wrongfully incarcerated  
7           person is ineligible for compensation under the  
8           Victims of Wrongful Incarceration Compensation Act;  
9           amending s. 961.06, F.S.; providing that a wrongfully  
10          incarcerated person who commits a disqualifying  
11          felony, rather than any felony law violation, which  
12          results in revocation of parole or community  
13          supervision is ineligible for compensation; reenacting  
14          s. 961.03(1)(a), (2), (3), and (4), F.S., relating to  
15          determination of status as a wrongfully incarcerated  
16          person and of eligibility for compensation, to  
17          incorporate the amendment made to s. 961.04, F.S., in  
18          references thereto; reenacting ss. 961.05(6),  
19          961.055(1), and 961.056(4), F.S., relating to  
20          determination of entitlement to compensation,  
21          application for compensation for a wrongfully  
22          incarcerated person, and an alternative application  
23          for compensation for a wrongfully incarcerated person,  
24          respectively, to incorporate the amendments made to s.  
25          961.06, F.S., in references thereto; providing an

26 |           effective date.

27 |

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

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

32 |           961.02 Definitions.—As used in ss. 961.01-961.07, the  
33 | term:

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

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

37 |           (3) "Disqualifying felony" means any felony other than one  
38 | or more felonies of the third degree that arise from a single  
39 | criminal act, transaction, or episode.

40 |           (4)~~(3)~~ "Division" means the Division of Administrative  
41 | Hearings.

42 |           (5) "Eligible for compensation" means that a person meets  
43 | the definition of the term "wrongfully incarcerated person" and  
44 | is not disqualified from seeking compensation under the criteria  
45 | prescribed in s. 961.04.

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

50 |           (7)~~(4)~~ "Wrongfully incarcerated person" means a person

51 whose felony conviction and sentence have been vacated by a  
 52 court of competent jurisdiction and who is the subject of an  
 53 order issued by the original sentencing court pursuant to s.  
 54 961.03, ~~with respect to whom pursuant to the requirements of s.~~  
 55 ~~961.03,~~ the original sentencing court has issued its order  
 56 finding that the person did not commit ~~neither committed~~ the act  
 57 or ~~nor~~ the offense that served as the basis for the conviction  
 58 and incarceration and that the person did not aid, abet, or act  
 59 as an accomplice or accessory to a person who committed the act  
 60 or offense.

61 Section 2. Section 961.04, Florida Statutes, is amended to  
 62 read:

63 961.04 Eligibility for compensation for wrongful  
 64 incarceration.—A wrongfully incarcerated person is not eligible  
 65 for compensation under the act if:

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

74 (2) During the person's wrongful incarceration, the person  
 75 was convicted of, or pled guilty or nolo contendere to,

76 | regardless of adjudication, any disqualifying felony ~~offense~~; or  
 77 |       (3) During the person's wrongful incarceration, the person  
 78 | was also serving a concurrent sentence for another felony for  
 79 | which the person was not wrongfully convicted.

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

82 |       961.06 Compensation for wrongful incarceration.—

83 |       (2) In calculating monetary compensation under paragraph  
 84 | (1)(a), a wrongfully incarcerated person who is placed on parole  
 85 | or community supervision while serving the sentence resulting  
 86 | from the wrongful conviction and who commits anything less than  
 87 | a disqualifying felony ~~law violation~~ that results in revocation  
 88 | of the parole or community supervision is eligible for  
 89 | compensation for the total number of years incarcerated. A  
 90 | wrongfully incarcerated person who commits a disqualifying  
 91 | felony ~~law violation~~ that results in revocation of the parole or  
 92 | community supervision is ineligible for any compensation under  
 93 | subsection (1).

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

99 |       961.03 Determination of status as a wrongfully  
 100 | incarcerated person; determination of eligibility for

101 compensation.—

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

111 1. State that verifiable and substantial evidence of  
112 actual innocence exists and state with particularity the nature  
113 and significance of the verifiable and substantial evidence of  
114 actual innocence; and

115 2. State that the person is not disqualified, under the  
116 provisions of s. 961.04, from seeking compensation under this  
117 act.

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

120 (a) By certifying to the court that, based upon the  
121 petition and verifiable and substantial evidence of actual  
122 innocence, no further criminal proceedings in the case at bar  
123 can or will be initiated by the prosecuting authority, that no  
124 questions of fact remain as to the petitioner's wrongful  
125 incarceration, and that the petitioner is not ineligible from

126 seeking compensation under the provisions of s. 961.04; or

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

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

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

151 regardless of his or her claim of wrongful incarceration. If the  
152 court finds the petitioner ineligible under the provisions of s.  
153 961.04, it shall dismiss the petition.

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

166 Section 5. For the purpose of incorporating the amendment  
167 made by this act to section 961.06, Florida Statutes, in a  
168 reference thereto, subsection (6) of section 961.05, Florida  
169 Statutes, is reenacted to read:

170 961.05 Application for compensation for wrongful  
171 incarceration; administrative expunction; determination of  
172 entitlement to compensation.—

173 (6) If the department determines that a claimant meets the  
174 requirements of this act, the wrongfully incarcerated person who  
175 is the subject of the claim becomes entitled to compensation,

176 subject to the provisions in s. 961.06.

177 Section 6. For the purpose of incorporating the amendment  
178 made by this act to section 961.06, Florida Statutes, in a  
179 reference 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. For the purpose of incorporating the amendment  
196 made by this act to section 961.06, Florida Statutes, in a  
197 reference thereto, subsection (4) of section 961.056, Florida  
198 Statutes, is reenacted to read:

199 961.056 Alternative application for compensation for a  
200 wrongfully incarcerated person.—



201 (4) If the department determines that a claimant making  
202 application under this section meets the requirements of this  
203 chapter, the wrongfully incarcerated person is entitled to  
204 compensation under s. 961.06.

205 Section 8. This act shall take effect October 1, 2017.