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LEGISLATIVE ACTION

Senate

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House

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Floor: 1/AD/2R

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04/27/2017 10:25 AM

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Senator Bradley moved the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 961.02, Florida Statutes, is reordered  
and 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



908054

12 Hearings.

13 ~~(7)(4)~~ "Wrongfully incarcerated person" means a person  
14 whose felony conviction and sentence have been vacated by a  
15 court of competent jurisdiction and who is the subject of an  
16 order issued by the original sentencing court pursuant to s.  
17 961.03, ~~with respect to whom pursuant to the requirements of s.~~  
18 ~~961.03,~~ the original sentencing court has issued its order  
19 finding that the person did not commit ~~neither committed~~ the act  
20 or ~~nor~~ the offense that served as the basis for the conviction  
21 and incarceration and that the person did not aid, abet, or act  
22 as an accomplice or accessory to a person who committed the act  
23 or offense.

24 ~~(4)(5)~~ "Eligible for compensation" means that a person  
25 meets the definition of the term "wrongfully incarcerated  
26 person" and is not disqualified from seeking compensation under  
27 the criteria prescribed in s. 961.04.

28 ~~(5)(6)~~ "Entitled to compensation" means that a person meets  
29 the definition of the term "eligible for compensation" and  
30 satisfies the application requirements prescribed in s. 961.05,  
31 and may receive compensation pursuant to s. 961.06.

32 ~~(6)~~ "Violent felony" means a felony listed in s.  
33 775.084(1)(c)1. or s. 948.06(8)(c).

34 Section 2. Section 961.04, Florida Statutes, is amended to  
35 read:

36 961.04 Eligibility for compensation for wrongful  
37 incarceration.—A wrongfully incarcerated person is not eligible  
38 for compensation under the act if:

39 (1) Before the person's wrongful conviction and  
40 incarceration, the person was convicted of, or pled guilty or



908054

41 nolo contendere to, regardless of adjudication, any violent  
42 felony ~~offense~~, or a crime committed in another jurisdiction the  
43 elements of which would constitute a violent felony in this  
44 state, or a crime committed against the United States which is  
45 designated a violent felony, excluding any delinquency  
46 disposition;

47 (2) Before the person's wrongful conviction and  
48 incarceration, the person was convicted of, or pled guilty or  
49 nolo contendere to, regardless of adjudication, more than one  
50 felony that is not a violent felony, or more than one crime  
51 committed in another jurisdiction, the elements of which would  
52 constitute a felony in this state, or more than one crime  
53 committed against the United States which is designated a  
54 felony, excluding any delinquency disposition;

55 (3)~~(2)~~ During the person's wrongful incarceration, the  
56 person was convicted of, or pled guilty or nolo contendere to,  
57 regardless of adjudication, any violent felony ~~offense~~; ~~or~~

58 (4) During the person's wrongful incarceration, the person  
59 was convicted of, or pled guilty or nolo contendere to,  
60 regardless of adjudication, more than one felony that is not a  
61 violent felony; or

62 (5)~~(3)~~ During the person's wrongful incarceration, the  
63 person was also serving a concurrent sentence for another felony  
64 for which the person was not wrongfully convicted.

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

67 961.06 Compensation for wrongful incarceration.—

68 (2) In calculating monetary compensation under paragraph  
69 (1) (a), a wrongfully incarcerated person who is placed on parole



908054

70 or community supervision while serving the sentence resulting  
71 from the wrongful conviction and who commits no more than one  
72 felony that is not anything less than a violent felony which law  
73 violation that results in revocation of the parole or community  
74 supervision is eligible for compensation for the total number of  
75 years incarcerated. A wrongfully incarcerated person who commits  
76 one violent a felony or more than one felony that is not a  
77 violent felony law violation that results in revocation of the  
78 parole or community supervision is ineligible for any  
79 compensation under subsection (1).

80 Section 4. The changes made by this act to ss. 961.02,  
81 961.04, and 961.06, Florida Statutes, apply only to persons who  
82 are determined to be wrongfully incarcerated on or after the  
83 effective date of this act.

84 Section 5. For the purpose of incorporating the amendments  
85 made by this act to section 961.04, Florida Statutes, in  
86 references thereto, paragraph (a) of subsection (1) and  
87 subsections (2), (3), and (4) of section 961.03, Florida  
88 Statutes, are reenacted to read:

89 961.03 Determination of status as a wrongfully incarcerated  
90 person; determination of eligibility for compensation.—

91 (1) (a) In order to meet the definition of a "wrongfully  
92 incarcerated person" and "eligible for compensation," upon entry  
93 of an order, based upon exonerating evidence, vacating a  
94 conviction and sentence, a person must set forth the claim of  
95 wrongful incarceration under oath and with particularity by  
96 filing a petition with the original sentencing court, with a  
97 copy of the petition and proper notice to the prosecuting  
98 authority in the underlying felony for which the person was



908054

99 incarcerated. At a minimum, the petition must:

100 1. State that verifiable and substantial evidence of actual  
101 innocence exists and state with particularity the nature and  
102 significance of the verifiable and substantial evidence of  
103 actual innocence; and

104 2. State that the person is not disqualified, under the  
105 provisions of s. 961.04, from seeking compensation under this  
106 act.

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

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

116 (b) By contesting the nature, significance, or effect of  
117 the evidence of actual innocence, the facts related to the  
118 petitioner's alleged wrongful incarceration, or whether the  
119 petitioner is ineligible from seeking compensation under the  
120 provisions of s. 961.04.

121 (3) If the prosecuting authority responds as set forth in  
122 paragraph (2) (a), the original sentencing court, based upon the  
123 evidence of actual innocence, the prosecuting authority's  
124 certification, and upon the court's finding that the petitioner  
125 has presented clear and convincing evidence that the petitioner  
126 committed neither the act nor the offense that served as the  
127 basis for the conviction and incarceration, and that the



908054

128 petitioner did not aid, abet, or act as an accomplice to a  
129 person who committed the act or offense, shall certify to the  
130 department that the petitioner is a wrongfully incarcerated  
131 person as defined by this act. Based upon the prosecuting  
132 authority's certification, the court shall also certify to the  
133 department that the petitioner is eligible for compensation  
134 under the provisions of s. 961.04.

135 (4) (a) If the prosecuting authority responds as set forth  
136 in paragraph (2) (b), the original sentencing court shall make a  
137 determination from the pleadings and supporting documentation  
138 whether, by a preponderance of the evidence, the petitioner is  
139 ineligible for compensation under the provisions of s. 961.04,  
140 regardless of his or her claim of wrongful incarceration. If the  
141 court finds the petitioner ineligible under the provisions of s.  
142 961.04, it shall dismiss the petition.

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

155 Section 6. For the purpose of incorporating the amendment  
156 made by this act to section 961.06, Florida Statutes, in a



908054

157 reference thereto, subsection (6) of section 961.05, Florida  
158 Statutes, is reenacted to read:

159 961.05 Application for compensation for wrongful  
160 incarceration; administrative expunction; determination of  
161 entitlement to compensation.—

162 (6) If the department determines that a claimant meets the  
163 requirements of this act, the wrongfully incarcerated person who  
164 is the subject of the claim becomes entitled to compensation,  
165 subject to the provisions in s. 961.06.

166 Section 7. For the purpose of incorporating the amendments  
167 made by this act to section 961.06, Florida Statutes, in  
168 references thereto, subsection (1) of section 961.055, Florida  
169 Statutes, is reenacted to read:

170 961.055 Application for compensation for a wrongfully  
171 incarcerated person; exemption from application by nolle  
172 prosequi.—

173 (1) A person alleged to be a wrongfully incarcerated person  
174 who was convicted and sentenced to death on or before December  
175 31, 1979, is exempt from the application provisions of ss.  
176 961.03, 961.04, and 961.05 in the determination of wrongful  
177 incarceration and eligibility to receive compensation pursuant  
178 to s. 961.06 if:

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

181 (b) The special prosecutor thereafter enters a nolle  
182 prosequi for the charges for which the defendant was convicted  
183 and sentenced to death.

184 Section 8. For the purpose of incorporating the amendment  
185 made by this act to section 961.06, Florida Statutes, in a



908054

186 reference thereto, subsection (4) of section 961.056, Florida  
187 Statutes, is reenacted to read:

188 961.056 Alternative application for compensation for a  
189 wrongfully incarcerated person.—

190 (4) If the department determines that a claimant making  
191 application under this section meets the requirements of this  
192 chapter, the wrongfully incarcerated person is entitled to  
193 compensation under s. 961.06.

194 Section 9. This act shall take effect October 1, 2016.

195  
196 ===== T I T L E A M E N D M E N T =====

197 And the title is amended as follows:

198 Delete everything before the enacting clause  
199 and insert:

200 A bill to be entitled  
201 An act relating to compensation of victims of wrongful  
202 incarceration; amending s. 961.02, F.S.; defining the  
203 term "violent felony"; making technical changes;  
204 amending s. 961.04, F.S.; revising the circumstances  
205 under which a person is disqualified from receiving  
206 compensation under the Victims of Wrongful  
207 Incarceration Compensation Act; amending s. 961.06,  
208 F.S.; specifying that a wrongfully incarcerated person  
209 who commits no more than one felony that is not a  
210 violent felony, rather than a felony law violation,  
211 which results in revocation of parole or community  
212 supervision is eligible for compensation; providing  
213 applicability; reenacting s. 961.03(1)(a), (2), (3),  
214 and (4), F.S., relating to determination of





908054

215 eligibility for compensation, to incorporate the  
216 amendments made by the act to s. 961.04, F.S., in  
217 references thereto; reenacting ss. 961.05(6),  
218 961.055(1), and 961.056(4), F.S., relating to the  
219 determination of entitlement to compensation,  
220 application for compensation for a wrongfully  
221 incarcerated person and exemption from application by  
222 nolle prosequi, and alternative application for  
223 compensation for a wrongfully incarcerated person, to  
224 incorporate the amendments made by the act to s.  
225 961.06, F.S., in references thereto; providing an  
226 effective date.