

By Senator Bradley

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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.; making technical changes; defining the term
5 "violent felony"; amending s. 961.04, F.S.; revising
6 the circumstances under which a wrongfully
7 incarcerated person is not eligible for compensation
8 under the Victims of Wrongful Incarceration
9 Compensation Act; amending s. 961.06, F.S.; providing
10 that a wrongfully incarcerated person who commits a
11 violent felony, rather than a felony law violation,
12 which 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 amendment 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 reordered
31 and amended to read:

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

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

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

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

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

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

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

57 (6) "Violent felony" means a felony listed in s.
58 775.084(1)(c)1. or s. 948.06(8)(c).

59 Section 2. Section 961.04, Florida Statutes, is amended to
60 read:

61 961.04 Eligibility for compensation for wrongful

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62 incarceration.—A wrongfully incarcerated person is not eligible
63 for compensation under the act if:

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

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

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

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

80 961.06 Compensation for wrongful incarceration.—

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

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91 (1).

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

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

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

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

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

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

117 (a) By certifying to the court that, based upon the
118 petition and verifiable and substantial evidence of actual
119 innocence, no further criminal proceedings in the case at bar

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120 can or will be initiated by the prosecuting authority, that no
121 questions of fact remain as to the petitioner's wrongful
122 incarceration, and that the petitioner is not ineligible from
123 seeking compensation under the provisions of s. 961.04; or

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

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

143 (4) (a) If the prosecuting authority responds as set forth
144 in paragraph (2) (b), the original sentencing court shall make a
145 determination from the pleadings and supporting documentation
146 whether, by a preponderance of the evidence, the petitioner is
147 ineligible for compensation under the provisions of s. 961.04,
148 regardless of his or her claim of wrongful incarceration. If the

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149 court finds the petitioner ineligible under the provisions of s.
150 961.04, it shall dismiss the petition.

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

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

167 961.05 Application for compensation for wrongful
168 incarceration; administrative expunction; determination of
169 entitlement to compensation.—

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

174 Section 6. For the purpose of incorporating the amendment
175 made by this act to section 961.06, Florida Statutes, in a
176 reference thereto, subsection (1) of section 961.055, Florida
177 Statutes, is reenacted to read:

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

181 (1) A person alleged to be a wrongfully incarcerated person
182 who was convicted and sentenced to death on or before December
183 31, 1979, is exempt from the application provisions of ss.
184 961.03, 961.04, and 961.05 in the determination of wrongful
185 incarceration and eligibility to receive compensation pursuant
186 to s. 961.06 if:

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

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

192 Section 7. For the purpose of incorporating the amendment
193 made by this act to section 961.06, Florida Statutes, in a
194 reference thereto, subsection (4) of section 961.056, Florida
195 Statutes, is reenacted to read:

196 961.056 Alternative application for compensation for a
197 wrongfully incarcerated person.—

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

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