

By the Committee on Judiciary; and Senator Bradley

590-02191-17

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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:

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).

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

61 961.04 Eligibility for compensation for wrongful
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 felony~~
67 ~~offense, or a crime committed in another jurisdiction the~~
68 ~~elements of which would constitute a felony in this state, or a~~
69 ~~crime committed against the United States which is designated a~~
70 ~~felony, excluding any delinquency disposition;~~

71 (1)~~(2)~~ During the person's wrongful incarceration, the
72 person was convicted of, or pled guilty or nolo contendere to,
73 regardless of adjudication, any violent felony offense; or

74 (2)~~(3)~~ During the person's wrongful incarceration, the
75 person was also serving a concurrent sentence for another felony
76 for 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 amendment
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 amendment
163 made by this act to section 961.06, Florida Statutes, in a
164 reference thereto, subsection (6) of section 961.05, Florida
165 Statutes, is reenacted to read:

166 961.05 Application for compensation for wrongful
167 incarceration; administrative expunction; determination of
168 entitlement to compensation.—

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

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

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175 reference thereto, subsection (1) of section 961.055, Florida
176 Statutes, is reenacted to read:

177 961.055 Application for compensation for a wrongfully
178 incarcerated person; exemption from application by nolle
179 prosequi.—

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

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

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

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

195 961.056 Alternative application for compensation for a
196 wrongfully incarcerated person.—

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

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