

By Senator Braynon

35-00051-17

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1 A bill to be entitled

2 An act for the relief of Maury Hernandez; providing an  
3 appropriation to compensate him for injuries and  
4 damages sustained as a result of the alleged  
5 negligence of the Department of Corrections; providing  
6 legislative intent for the waiver of certain liens;  
7 providing a limitation on the payment of fees and  
8 costs; providing an effective date.  
9

10 WHEREAS, on August 6, 2007, at approximately 11:45 a.m.,  
11 Broward County Sheriff's Office (BSO) Deputy Maury Hernandez,  
12 then 28 years of age, was operating a BSO-assigned vehicle, and

13 WHEREAS, Deputy Hernandez observed David Maldonado, who was  
14 operating a motorcycle, run through three traffic lights on  
15 Pembroke Road in Pembroke Park, and

16 WHEREAS, Deputy Hernandez followed Mr. Maldonado to a  
17 location in the 3700 block of Pembroke Road and, displaying his  
18 badge, approached Mr. Maldonado and identified himself as a  
19 deputy sheriff, and

20 WHEREAS, Mr. Maldonado told Deputy Hernandez that he was a  
21 police officer from Opa-Locka, but then pushed Deputy Hernandez,  
22 jumped from his motorcycle, and ran, at which time Deputy  
23 Hernandez gave chase on foot, and

24 WHEREAS, within seconds, Mr. Maldonado turned around and  
25 fired two shots from a .45 caliber handgun, striking Deputy  
26 Hernandez in the head with one of the bullets, and

27 WHEREAS, Deputy Hernandez was rushed to Memorial Regional  
28 Hospital in Hollywood in critical condition, and

29 WHEREAS, Mr. Maldonado was subsequently apprehended by  
30 Hollywood police in a nearby condominium complex after he  
31 attempted a carjacking, and

32 WHEREAS, the BSO conducted an investigation that concluded

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33 that Mr. Maldonado should have been in jail at the time of the  
34 shooting because he was serving 2 years' probation and had  
35 repeatedly violated the terms of his probation, but the  
36 Department of Corrections had failed to bring the violations to  
37 the attention of the State Attorney's Office and the presiding  
38 circuit judge, and

39 WHEREAS, the investigation found that on April 18, 2007,  
40 Mr. Maldonado, a habitual traffic offender, pled no contest to  
41 felony driving charges and was placed on probation for 24  
42 months, and

43 WHEREAS, at that time, Mr. Maldonado had nearly 40 traffic  
44 and administrative violations, including reckless driving,  
45 speeding, and repeatedly driving without a license, and

46 WHEREAS, Mr. Maldonado was advised in writing of the  
47 department's zero-tolerance policy, which stated, "The  
48 Department of Corrections has a zero tolerance policy as to  
49 reporting violations of supervision conditions. This is  
50 notification to you that you are subject to violations  
51 proceeding, including arrest, if you are not in compliance with  
52 all conditions of supervision as required by the sentencing  
53 court or releasing authority," and

54 WHEREAS, under s. 948.03(1)(m)1., Florida Statutes, Mr.  
55 Maldonado was prohibited from possessing, carrying, or owning  
56 any firearm unless authorized by the court, and under s.  
57 948.03(1)(n), Florida Statutes, was banned from using  
58 intoxicants to excess or possessing any drugs or narcotics  
59 unless prescribed by a physician, and

60 WHEREAS, the department had a nondiscretionary duty to  
61 report Mr. Maldonado's violations of these laws to the assistant

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62 state attorney and presiding circuit judge without delay, and

63 WHEREAS, Mr. Maldonado's probation strictly prohibited him  
64 from carrying a weapon without a court order, from using alcohol  
65 in excess and prescription drugs that he had not been  
66 prescribed, and required him to complete and submit honest  
67 monthly reports to his probation officer, all of which he  
68 violated over the course of the 4 months before he shot Deputy  
69 Hernandez, and

70 WHEREAS, the BSO investigation found that despite  
71 Maldonado's admissions to carrying a weapon, his deceit  
72 concerning the place of his employment, his false claim that he  
73 was a United States Marine, his lies that he had a concealed  
74 weapons permit and he needed his gun to be a security officer  
75 and for his military service, and his confession to using  
76 alcohol and nonprescribed drugs, the department unreasonably  
77 failed to verify any of his statements regarding his employment,  
78 military service, or otherwise act on any of Maldonado's  
79 probation violations, and

80 WHEREAS, the department knew or should have known that Mr.  
81 Maldonado lied about his place of employment, his military  
82 service, and the reasons he stated for possessing a firearm, and

83 WHEREAS, the department was on notice that Mr. Maldonado  
84 had used alcohol and nonprescribed drugs but it did not act on  
85 his self-confessed probation violations, and

86 WHEREAS, the department had a nondiscretionary duty to  
87 enforce its zero-tolerance policy and report Mr. Maldonado's  
88 probation violations to the assistant state attorney and the  
89 presiding circuit judge without delay, and

90 WHEREAS, although the department admitted that Mr.

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91 Maldonado had violated the terms of his probation before he shot  
92 Deputy Hernandez, it has never explained why it did not enforce  
93 its own zero-tolerance policy as to Mr. Maldonado, and

94 WHEREAS, after the shooting incident, the state attorney's  
95 office announced that Mr. Maldonado's probation violations  
96 should have been reported to the assistant state attorney and  
97 the presiding circuit judge assigned to the case, and that, if  
98 the violations had been reported, Mr. Maldonado would have been  
99 jailed without bond and would not have been on the streets at  
100 the time he shot Deputy Hernandez, and

101 WHEREAS, the shooting of Deputy Hernandez by Mr. Maldonado  
102 was a reasonably foreseeable consequence of the department's  
103 failure to enforce the conditions of Mr. Maldonado's probation,  
104 comply with the laws of Florida, and follow its own policies and  
105 procedures, and

106 WHEREAS, Deputy Hernandez survived the shooting, was in a  
107 coma and on life support for 3 weeks, underwent multiple  
108 surgeries, and remained hospitalized for almost 3 months before  
109 being discharged to the care of a rehabilitation hospital, and

110 WHEREAS, Deputy Hernandez was confined to a wheelchair and  
111 underwent physical, occupational, speech, visual, and cognitive  
112 therapies all day each weekday for a year, and

113 WHEREAS, Deputy Hernandez continued to receive physical and  
114 occupational therapies and other medical care on a daily basis  
115 until 3 years ago, when his insurance provider discontinued  
116 payments to his health care providers, and

117 WHEREAS, as a result of the shooting, Deputy Hernandez  
118 suffers from permanent brain injury and resulting hemiparesis to  
119 the entire left side of his body, motor and sensory nerve

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120 damage, spasticity, numbness, severe muscle weakness, impaired  
121 abilities in walking and balance, hydrocephalous that is treated  
122 with a permanent ventriculoperitoneal shunt, cognitive deficits,  
123 and fragments of the bullet that are permanently lodged in his  
124 brain, and

125 WHEREAS, Deputy Hernandez has continued, on his own, to  
126 engage in physical and occupational therapies to improve his  
127 hemiparesis, but still requires medical care and professional  
128 therapy treatments to maintain maximum medical stability, and

129 WHEREAS, Deputy Hernandez has regularly received painful  
130 Botox injections and other medications to improve muscle tone  
131 and reduce spasticity, and

132 WHEREAS, at the time of his injury, Deputy Hernandez was  
133 earning an annual salary of approximately \$60,000, plus generous  
134 benefits, including medical and retirement, and

135 WHEREAS, Deputy Hernandez's injuries have catastrophically  
136 changed his life and impaired his ability to earn a living, and

137 WHEREAS, Deputy Hernandez attempted to return to work at  
138 the BSO, but was unable to perform to minimum standards, and

139 WHEREAS, Deputy Hernandez has suffered significant economic  
140 damages, including lost income and the capacity to earn income  
141 and job related benefits, including medical insurance and  
142 retirement benefits, and

143 WHEREAS, Deputy Hernandez has received workers'  
144 compensation benefits that have partially covered his loss of  
145 income and medical care costs, but liens have been filed  
146 amounting to hundreds of thousands of dollars, and

147 WHEREAS, Deputy Hernandez is 37 years old and has a life  
148 expectancy of 42.6 years according to the Centers for Disease

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149 Control and Prevention's United States Life Tables, 2008, and

150 WHEREAS, Deputy Hernandez has suffered devastating and  
151 permanent injuries and damages, including pain and suffering;  
152 total disability; physical and mental impairment; disfigurement;  
153 mental anguish; inconvenience; loss of enjoyment of life;  
154 hospital and medical care expenses; the loss of earnings and  
155 earning capacity; the loss of benefits, including medical and  
156 retirement income benefits; liens; and other economic and  
157 noneconomic losses, and

158 WHEREAS, a lawsuit filed on behalf of Deputy Hernandez in  
159 the 17th Judicial Circuit in and for Broward County which sought  
160 relief under s. 768.28, Florida Statutes, was dismissed by the  
161 trial court based on the department's argument that, despite its  
162 failure to follow Florida law, its own policies and procedures,  
163 and the terms of Maldonado's probation, the department owed no  
164 duty of care to Deputy Hernandez, and

165 WHEREAS, appeals of the court's ruling would be fruitless  
166 and would only cause further delay in bringing financial relief  
167 to Deputy Hernandez, and

168 WHEREAS, despite the court's ruling that he is legally  
169 remediless to seek damages, Deputy Hernandez respectfully  
170 requests that the Legislature find that a moral obligation  
171 exists in this particular instance based on the Legislature's  
172 view of justice and fair treatment, and

173 WHEREAS, Deputy Hernandez respectfully requests that, as a  
174 matter of grace, the Legislature exercise its lawful powers to  
175 appropriate a sum of monetary compensation that fully recognizes  
176 the magnitude of his injuries, disabilities, and economic  
177 damages, and

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178 WHEREAS, given the facts and circumstances that resulted in  
179 his injuries and damages, Hernandez seeks equitable relief from  
180 the Legislature, NOW, THEREFORE,  
181

182 Be It Enacted by the Legislature of the State of Florida:  
183

184 Section 1. The facts stated in the preamble to this act are  
185 found and declared to be true.

186 Section 2. There is appropriated from the General Revenue  
187 Fund to the Department of Corrections the sum of \$10 million for  
188 the relief of Maury Hernandez for injuries and damages  
189 sustained.

190 Section 3. The Chief Financial Officer is directed to draw  
191 a warrant in the sum of \$10 million payable to Maury Hernandez  
192 upon funds in the State Treasury to the credit of the Department  
193 of Corrections, and the Chief Financial Officer is directed to  
194 pay the same out of such funds in the State Treasury not  
195 otherwise appropriated.

196 Section 4. It is the intent of the Legislature that all  
197 lien interests held by the state, if any, arising from the  
198 treatment and care of Maury Hernandez for the occurrences  
199 described in this act are waived.

200 Section 5. The amount awarded under this act is intended to  
201 provide the sole compensation for all present and future claims  
202 arising out of the factual situation described in the preamble  
203 to this act. The total amount paid for attorney fees, lobbying  
204 fees, costs, and other similar expenses relating to this claim  
205 may not exceed 25 percent of the total amount awarded under this  
206 act.

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Section 6. This act shall take effect upon becoming a law.