

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED (Y/N)
ADOPTED AS AMENDED (Y/N)
ADOPTED W/O OBJECTION (Y/N)
FAILED TO ADOPT (Y/N)
WITHDRAWN (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Criminal Justice
2 Subcommittee

3 Representative DuBose offered the following:

4

5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

7 Section 1. Paragraph (b) of subsection (1) of section
8 961.03, Florida Statutes, is amended to read:

9 961.03 Determination of status as a wrongfully
10 incarcerated person; determination of eligibility for
11 compensation.—

12 (1)

13 (b) The person must file the petition with the court:

14 1. Within 90 days after the order vacating a conviction
15 and sentence becomes final if the person's conviction and

Amendment No.

16 sentence is vacated on or after July 1, 2008, but before July 1,
17 2020.

18 2. By July 1, 2010, if the person's conviction and
19 sentence was vacated by an order that became final prior to July
20 1, 2008.

21 3. Within two years after the order vacating a conviction
22 and sentence becomes final and the criminal charges against the
23 person are dismissed, if the person's conviction and sentence is
24 vacated on or after July 1, 2020.

25 Section 2. Subsections (1) and (2) of section 961.04,
26 Florida Statutes, are amended, and current subsections (3)
27 through (5) of that section are renumbered as subsections (1)
28 through (3), respectively, to read:

29 961.04 Eligibility for compensation for wrongful
30 incarceration.— A wrongfully incarcerated person is not eligible
31 for compensation under the act if:

32 ~~(1) Before the person's wrongful conviction and~~
33 ~~incarceration, the person was convicted of, or pled guilty or~~
34 ~~nolo contendere to, regardless of adjudication, any violent~~
35 ~~felony, or a crime committed in another jurisdiction the~~
36 ~~elements of which would constitute a violent felony in this~~
37 ~~state, or a crime committed against the United States which is~~
38 ~~designated a violent felony, excluding any delinquency~~
39 ~~disposition;~~

Amendment No.

40 ~~(2) Before the person's wrongful conviction and~~
41 ~~incarceration, the person was convicted of, or pled guilty or~~
42 ~~nolo contendere to, regardless of adjudication, more than one~~
43 ~~felony that is not a violent felony, or more than one crime~~
44 ~~committed in another jurisdiction, the elements of which would~~
45 ~~constitute a felony in this state, or more than one crime~~
46 ~~committed against the United States which is designated a~~
47 ~~felony, excluding any delinquency disposition;~~

48 Section 3. Section 961.06, Florida Statutes, is amended,
49 to read:

50 961.06 Compensation for wrongful incarceration.—

51 (1) Except as otherwise provided in this act and subject
52 to the limitations and procedures prescribed in this section, a
53 person who is found to be entitled to compensation under the
54 provisions of this act is entitled to:

55 (a) Monetary compensation for wrongful incarceration,
56 which shall be calculated at a rate of \$50,000 for each year of
57 wrongful incarceration, prorated as necessary to account for a
58 portion of a year. For persons found to be wrongfully
59 incarcerated after December 31, 2008, the Chief Financial
60 Officer may adjust the annual rate of compensation for inflation
61 using the change in the December-to-December "Consumer Price
62 Index for All Urban Consumers" of the Bureau of Labor Statistics
63 of the Department of Labor;

Amendment No.

64 (b) A waiver of tuition and fees for up to 120 hours of
65 instruction at any career center established under s. 1001.44,
66 any Florida College System institution as defined in s.
67 1000.21(3), or any state university as defined in s. 1000.21(6),
68 if the wrongfully incarcerated person meets and maintains the
69 regular admission requirements of such career center, Florida
70 College System institution, or state university; remains
71 registered at such educational institution; and makes
72 satisfactory academic progress as defined by the educational
73 institution in which the claimant is enrolled;

74 (c) The amount of any fine, penalty, or court costs
75 imposed and paid by the wrongfully incarcerated person;

76 (d) The amount of any reasonable attorney's fees and
77 expenses incurred and paid by the wrongfully incarcerated person
78 in connection with all criminal proceedings and appeals
79 regarding the wrongful conviction, to be calculated by the
80 department based upon the supporting documentation submitted as
81 specified in s. 961.05; and

82 (e) Notwithstanding any provision to the contrary in s.
83 943.0583 or s. 943.0585, immediate administrative expunction of
84 the person's criminal record resulting from his or her wrongful
85 arrest, wrongful conviction, and wrongful incarceration. The
86 Department of Legal Affairs and the Department of Law
87 Enforcement shall, upon a determination that a claimant is
88 entitled to compensation, immediately take all action necessary

551247 - h0259-strike.docx

Published On: 1/14/2020 6:43:56 PM

Amendment No.

89 to administratively expunge the claimant's criminal record
90 arising from his or her wrongful arrest, wrongful conviction,
91 and wrongful incarceration. All fees for this process shall be
92 waived.

93

94 The total compensation awarded under paragraphs (a), (c), and
95 (d) may not exceed \$2 million. No further award for attorney's
96 fees, lobbying fees, costs, or other similar expenses shall be
97 made by the state.

98 (2) In calculating monetary compensation under paragraph
99 (1) (a), a wrongfully incarcerated person who is placed on parole
100 or community supervision while serving the sentence resulting
101 from the wrongful conviction and who commits no more than one
102 felony that is not a violent felony which results in revocation
103 of the parole or community supervision is eligible for
104 compensation for the total number of years incarcerated. A
105 wrongfully incarcerated person who commits one violent felony or
106 more than one felony that is not a violent felony that results
107 in revocation of the parole or community supervision is
108 ineligible for any compensation under subsection (1).

109 (3) Within 15 calendar days after issuing notice to the
110 claimant that his or her claim satisfies all of the requirements
111 under this act, the department shall notify the Chief Financial
112 Officer to draw a warrant from the General Revenue Fund or
113 another source designated by the Legislature in law for the

551247 - h0259-strike.docx

Published On: 1/14/2020 6:43:56 PM

Amendment No.

114 purchase of an annuity for the claimant based on the total
115 amount determined by the department under this act.

116 (4) The Chief Financial Officer shall issue payment in the
117 amount determined by the department to an insurance company or
118 other financial institution admitted and authorized to issue
119 annuity contracts in this state to purchase an annuity or
120 annuities, selected by the wrongfully incarcerated person, for a
121 term of not less than 10 years. The Chief Financial Officer is
122 directed to execute all necessary agreements to implement this
123 act and to maximize the benefit to the wrongfully incarcerated
124 person. The terms of the annuity or annuities shall:

125 (a) Provide that the annuity or annuities may not be sold,
126 discounted, or used as security for a loan or mortgage by the
127 wrongfully incarcerated person.

128 (b) Contain beneficiary provisions for the continued
129 disbursement of the annuity or annuities in the event of the
130 death of the wrongfully incarcerated person.

131 (5) If, at the time monetary compensation is determined
132 under paragraph (1)(a), a court has previously entered a
133 monetary judgment in favor of the claimant in a civil action
134 related to the person's wrongful incarceration, or the claimant
135 has entered into a settlement agreement with the state or any
136 political subdivision thereof related to the person's wrongful
137 incarceration, the amount of the damages in the civil action or
138 settlement agreement, less any sums paid for attorney's fees or

551247 - h0259-strike.docx

Published On: 1/14/2020 6:43:56 PM

Amendment No.

139 for costs incurred in litigating the civil action or obtaining
140 the settlement agreement, shall be deducted from the total
141 monetary compensation to which the claimant is entitled under
142 this section. ~~Before the department approves the application for~~
143 ~~compensation, the wrongfully incarcerated person must sign a~~
144 ~~release and waiver on behalf of the wrongfully incarcerated~~
145 ~~person and his or her heirs, successors, and assigns, forever~~
146 ~~releasing the state or any agency, instrumentality, or any~~
147 ~~political subdivision thereof, or any other entity subject to s.~~
148 ~~768.28, from all present or future claims that the wrongfully~~
149 ~~incarcerated person or his or her heirs, successors, or assigns~~
150 ~~may have against such entities arising out of the facts in~~
151 ~~connection with the wrongful conviction for which compensation~~
152 ~~is being sought under the act.~~

153 (6) If subsection (5) does not apply, and if after the
154 time monetary compensation is determined under paragraph (1) (a)
155 the court enters a monetary judgment in favor of the claimant in
156 a civil action related to the person's wrongful incarceration,
157 or the claimant enters into a settlement agreement with the
158 state or any political subdivision thereof related to the
159 person's wrongful incarceration, the claimant shall reimburse
160 the state for the monetary compensation in paragraph (1) (a),
161 less any sums paid for attorney's fees or costs incurred in
162 litigating the civil action or obtaining the settlement
163 agreement. A reimbursement required under this subsection shall

551247 - h0259-strike.docx

Published On: 1/14/2020 6:43:56 PM

Amendment No.

164 not exceed the amount of the monetary award the claimant
165 received for damages in a civil action or settlement agreement.
166 The court shall include in the order of judgment an award to the
167 state of any amount required to be deducted under this
168 subsection.

169 ~~(6) (a) A wrongfully incarcerated person may not submit an~~
170 ~~application for compensation under this act if the person has a~~
171 ~~lawsuit pending against the state or any agency,~~
172 ~~instrumentality, or any political subdivision thereof, or any~~
173 ~~other entity subject to the provisions of s. 768.28, in state or~~
174 ~~federal court requesting compensation arising out of the facts~~
175 ~~in connection with the claimant's conviction and incarceration.~~

176 (7) (a) The claimant shall notify the department upon filing
177 a civil action against the state or any political subdivision
178 thereof in which the claimant is seeking monetary damages
179 related to the claimant's wrongful incarceration for which he or
180 she previously received or is applying to receive compensation
181 pursuant to subsection (1) (a).

182 (b) Upon notice of the claimant's civil action, the
183 department shall file in the case a notice of payment of
184 monetary compensation to the claimant under subsection (1) (a).
185 The notice shall constitute a lien upon any judgment or
186 settlement recovered under the civil action that is equal to the
187 sum of monetary compensation paid to the claimant under
188 subsection (1) (a), less any attorney's fees and litigation

551247 - h0259-strike.docx

Published On: 1/14/2020 6:43:56 PM

Amendment No.

189 costs.

190 (8) (a) ~~(b)~~ A wrongfully incarcerated person may not submit
191 an application for compensation under this act if the person is
192 the subject of a claim bill pending for claims arising out of
193 the facts in connection with the claimant's conviction and
194 incarceration.

195 (b) ~~(e)~~ Once an application is filed under this act, a
196 wrongfully incarcerated person may not pursue recovery under a
197 claim bill until the final disposition of the application.

198 (c) ~~(d)~~ ~~Any amount awarded under this act is intended to~~
199 ~~provide the sole compensation for any and all present and future~~
200 ~~claims arising out of the facts in connection with the~~
201 ~~claimant's conviction and incarceration.~~ Upon notification by
202 the department that an application meets the requirements of
203 this act, a wrongfully incarcerated person may not recover under
204 a claim bill.

205 (d) ~~(e)~~ Any compensation awarded under a claim bill shall be
206 the sole redress for claims arising out of the facts in
207 connection with the claimant's conviction and incarceration and,
208 upon any award of compensation to a wrongfully incarcerated
209 person under a claim bill, the person may not receive
210 compensation under this act.

211 (9) ~~(7)~~ Any payment made under this act does not constitute
212 a waiver of any defense of sovereign immunity or an increase in

Amendment No.

213 the limits of liability on behalf of the state or any person
214 subject to the provisions of s. 768.28 or other law.

215 Section 4. This act shall take effect July 1, 2020.

216

217

218

T I T L E A M E N D M E N T

219

Remove everything before the enacting clause and insert:

220

An act relating to compensation for wrongful incarceration;

221

amending s. 961.03, F.S.; extending the filing deadline for a

222

petition claiming wrongful incarceration; amending s. 961.04,

223

F.S; deleting eligibility requirements relating to a person's

224

conduct before the person's wrongful conviction or

225

incarceration; amending s. 961.06, F.S.; authorizing the state

226

to deduct the amount of a civil award from the state

227

compensation amount owed if the claimant first receives a civil

228

award; requiring a claimant to reimburse the state for any

229

difference between state compensation and a civil award if the

230

claimant receives statutory compensation prior to a civil award;

231

requiring a claimant to notify the Department of Legal Affairs

232

upon filing a civil action; requiring the department to file a

233

notice of payment of monetary compensation in the civil action;

234

providing an effective date.