

1 A bill to be entitled

2 An act relating to compensation for wrongful
3 incarceration; amending s. 961.03, F.S.; extending the
4 filing deadline for a petition claiming wrongful
5 incarceration; amending s. 961.04, F.S.; deleting
6 eligibility requirements relating to a person's
7 conduct before the person's wrongful conviction or
8 incarceration; amending s. 961.06, F.S.; authorizing
9 the state to deduct the amount of a civil award from
10 the state compensation amount owed if the claimant
11 first receives a civil award; deleting a requirement
12 that a wrongfully incarcerated person sign a liability
13 release before receiving compensation; requiring a
14 claimant to reimburse the state for any difference
15 between state compensation and a civil award if the
16 claimant receives statutory compensation prior to a
17 civil award; deleting provisions prohibiting an
18 application for compensation if the applicant has a
19 pending civil suit requesting compensation; requiring
20 a claimant to notify the Department of Legal Affairs
21 upon filing a civil action; requiring the department
22 to file a notice of payment of monetary compensation
23 in the civil action; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

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

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

(1)

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

1. Within 90 days after the order vacating a conviction and sentence becomes final if the person's conviction and sentence is vacated on or after July 1, 2008, but before July 1, 2020.

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

3. Within 2 years after the order vacating a conviction and sentence becomes final and the criminal charges against the person are dismissed, if the person's conviction and sentence is vacated on or after July 1, 2020.

Section 2. Subsections (3), (4), and (5) of section 961.04, Florida Statutes, are renumbered as subsections (1), (2), and (3), respectively, and present subsections (1) and (2) of that section are amended, to read:

961.04 Eligibility for compensation for wrongful incarceration.— A wrongfully incarcerated person is not eligible

51 for compensation under the act if:

52 ~~(1) Before the person's wrongful conviction and~~
 53 ~~incarceration, the person was convicted of, or pled guilty or~~
 54 ~~nolo contendere to, regardless of adjudication, any violent~~
 55 ~~felony, or a crime committed in another jurisdiction the~~
 56 ~~elements of which would constitute a violent felony in this~~
 57 ~~state, or a crime committed against the United States which is~~
 58 ~~designated a violent felony, excluding any delinquency~~
 59 ~~disposition;~~

60 ~~(2) Before the person's wrongful conviction and~~
 61 ~~incarceration, the person was convicted of, or pled guilty or~~
 62 ~~nolo contendere to, regardless of adjudication, more than one~~
 63 ~~felony that is not a violent felony, or more than one crime~~
 64 ~~committed in another jurisdiction, the elements of which would~~
 65 ~~constitute a felony in this state, or more than one crime~~
 66 ~~committed against the United States which is designated a~~
 67 ~~felony, excluding any delinquency disposition;~~

68 Section 3. Section 961.06, Florida Statutes, is amended,
 69 to read:

70 961.06 Compensation for wrongful incarceration.—

71 (1) Except as otherwise provided in this act and subject
 72 to the limitations and procedures prescribed in this section, a
 73 person who is found to be entitled to compensation under the
 74 provisions of this act is entitled to:

75 (a) Monetary compensation for wrongful incarceration,

76 | which shall be calculated at a rate of \$50,000 for each year of
77 | wrongful incarceration, prorated as necessary to account for a
78 | portion of a year. For persons found to be wrongfully
79 | incarcerated after December 31, 2008, the Chief Financial
80 | Officer may adjust the annual rate of compensation for inflation
81 | using the change in the December-to-December "Consumer Price
82 | Index for All Urban Consumers" of the Bureau of Labor Statistics
83 | of the Department of Labor;

84 | (b) A waiver of tuition and fees for up to 120 hours of
85 | instruction at any career center established under s. 1001.44,
86 | any Florida College System institution as defined in s.
87 | 1000.21(3), or any state university as defined in s. 1000.21(6),
88 | if the wrongfully incarcerated person meets and maintains the
89 | regular admission requirements of such career center, Florida
90 | College System institution, or state university; remains
91 | registered at such educational institution; and makes
92 | satisfactory academic progress as defined by the educational
93 | institution in which the claimant is enrolled;

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

96 | (d) The amount of any reasonable attorney ~~attorney's~~ fees
97 | and expenses incurred and paid by the wrongfully incarcerated
98 | person in connection with all criminal proceedings and appeals
99 | regarding the wrongful conviction, to be calculated by the
100 | department based upon the supporting documentation submitted as

101 specified in s. 961.05; and

102 (e) Notwithstanding any provision to the contrary in s.
103 943.0583 or s. 943.0585, immediate administrative expunction of
104 the person's criminal record resulting from his or her wrongful
105 arrest, wrongful conviction, and wrongful incarceration. The
106 Department of Legal Affairs and the Department of Law
107 Enforcement shall, upon a determination that a claimant is
108 entitled to compensation, immediately take all action necessary
109 to administratively expunge the claimant's criminal record
110 arising from his or her wrongful arrest, wrongful conviction,
111 and wrongful incarceration. All fees for this process shall be
112 waived.

113
114 The total compensation awarded under paragraphs (a), (c), and
115 (d) may not exceed \$2 million. No further award for attorney
116 ~~attorney's~~ fees, lobbying fees, costs, or other similar expenses
117 shall be made by the state.

118 (2) In calculating monetary compensation under paragraph
119 (1) (a), a wrongfully incarcerated person who is placed on parole
120 or community supervision while serving the sentence resulting
121 from the wrongful conviction and who commits no more than one
122 felony that is not a violent felony which results in revocation
123 of the parole or community supervision is eligible for
124 compensation for the total number of years incarcerated. A
125 wrongfully incarcerated person who commits one violent felony or

126 | more than one felony that is not a violent felony that results
127 | in revocation of the parole or community supervision is
128 | ineligible for any compensation under subsection (1).

129 | (3) Within 15 calendar days after issuing notice to the
130 | claimant that his or her claim satisfies all of the requirements
131 | under this act, the department shall notify the Chief Financial
132 | Officer to draw a warrant from the General Revenue Fund or
133 | another source designated by the Legislature in law for the
134 | purchase of an annuity for the claimant based on the total
135 | amount determined by the department under this act.

136 | (4) The Chief Financial Officer shall issue payment in the
137 | amount determined by the department to an insurance company or
138 | other financial institution admitted and authorized to issue
139 | annuity contracts in this state to purchase an annuity or
140 | annuities, selected by the wrongfully incarcerated person, for a
141 | term of not less than 10 years. The Chief Financial Officer is
142 | directed to execute all necessary agreements to implement this
143 | act and to maximize the benefit to the wrongfully incarcerated
144 | person. The terms of the annuity or annuities shall:

145 | (a) Provide that the annuity or annuities may not be sold,
146 | discounted, or used as security for a loan or mortgage by the
147 | wrongfully incarcerated person.

148 | (b) Contain beneficiary provisions for the continued
149 | disbursement of the annuity or annuities in the event of the
150 | death of the wrongfully incarcerated person.

151 (5) If, at the time monetary compensation is determined
152 under paragraph (1) (a), a court has previously entered a
153 monetary judgment in favor of the claimant in a civil action
154 related to the person's wrongful incarceration, or the claimant
155 has entered into a settlement agreement with the state or any
156 political subdivision thereof related to the person's wrongful
157 incarceration, the amount of the damages in the civil action or
158 settlement agreement, less any sums paid for attorney fees or
159 for costs incurred in litigating the civil action or obtaining
160 the settlement agreement, shall be deducted from the total
161 monetary compensation to which the claimant is entitled under
162 this section ~~Before the department approves the application for~~
163 ~~compensation, the wrongfully incarcerated person must sign a~~
164 ~~release and waiver on behalf of the wrongfully incarcerated~~
165 ~~person and his or her heirs, successors, and assigns, forever~~
166 ~~releasing the state or any agency, instrumentality, or any~~
167 ~~political subdivision thereof, or any other entity subject to s.~~
168 ~~768.28, from all present or future claims that the wrongfully~~
169 ~~incarcerated person or his or her heirs, successors, or assigns~~
170 ~~may have against such entities arising out of the facts in~~
171 ~~connection with the wrongful conviction for which compensation~~
172 ~~is being sought under the act.~~

173 (6) If subsection (5) does not apply, and if after the
174 time monetary compensation is determined under paragraph (1) (a)
175 the court enters a monetary judgment in favor of the claimant in

176 a civil action related to the person's wrongful incarceration,
177 or the claimant enters into a settlement agreement with the
178 state or any political subdivision thereof related to the
179 person's wrongful incarceration, the claimant shall reimburse
180 the state for the monetary compensation in paragraph (1) (a),
181 less any sums paid for attorney fees or costs incurred in
182 litigating the civil action or obtaining the settlement
183 agreement. A reimbursement required under this subsection shall
184 not exceed the amount of the monetary award the claimant
185 received for damages in a civil action or settlement agreement.
186 The court shall include in the order of judgment an award to the
187 state of any amount required to be deducted under this
188 subsection.

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

196 (7) (a) The claimant shall notify the department upon
197 filing a civil action against the state or any political
198 subdivision thereof in which the claimant is seeking monetary
199 damages related to the claimant's wrongful incarceration for
200 which he or she previously received or is applying to receive

201 compensation pursuant to paragraph (1) (a).

202 (b) Upon notice of the claimant's civil action, the
203 department shall file in the case a notice of payment of
204 monetary compensation to the claimant under paragraph (1) (a).
205 The notice shall constitute a lien upon any judgment or
206 settlement recovered under the civil action that is equal to the
207 sum of monetary compensation paid to the claimant under
208 paragraph (1) (a), less any attorney fees and litigation costs.

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

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

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

224 (d) ~~(e)~~ Any compensation awarded under a claim bill shall
225 be the sole redress for claims arising out of the facts in

226 | connection with the claimant's conviction and incarceration and,
227 | upon any award of compensation to a wrongfully incarcerated
228 | person under a claim bill, the person may not receive
229 | compensation under this act.

230 | (9)~~(7)~~ Any payment made under this act does not constitute
231 | a waiver of any defense of sovereign immunity or an increase in
232 | the limits of liability on behalf of the state or any person
233 | subject to the provisions of s. 768.28 or other law.

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