

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

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

Section 1. Paragraph (b) of subsection (1) of section 961.03, Florida Statutes, is amended, and paragraph (c) is added to that subsection, 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 2 years after the order vacating a conviction and sentence becomes final and the criminal charges against the person are dismissed or the person is retried and found not guilty, if the person's conviction and sentence is vacated on or after July 1, 2020.

2. By July 1, 2022, if the person's conviction and sentence was vacated and the criminal charges against the person were dismissed or the person was retried and found not guilty after July 1, 2008, but before July 1, 2020, and he or she previously filed a claim under this section that was dismissed or did not file a claim under this section because the:

a. Date when the criminal charges against the person were dismissed or the date the person was acquitted upon retrial occurred more than 90 days after the date of the final order

51 vacating the conviction and sentence; or

52 b. Person was convicted of an unrelated felony before his
53 or her wrongful conviction and incarceration and was previously
54 barred under s. 961.04.

55 ~~1. Within 90 days after the order vacating a conviction~~
56 ~~and sentence becomes final if the person's conviction and~~
57 ~~sentence is vacated on or after July 1, 2008.~~

58 ~~2. By July 1, 2010, if the person's conviction and~~
59 ~~sentence was vacated by an order that became final prior to July~~
60 ~~1, 2008.~~

61 (c) A deceased person's heirs, successors, or assigns do
62 not have standing to file a claim on the deceased person's
63 behalf under this section.

64 Section 2. Subsections (3), (4), and (5) of section
65 961.04, Florida Statutes, are renumbered as subsections (1),
66 (2), and (3), respectively, and present subsections (1) and (2)
67 of that section are amended, to read:

68 961.04 Eligibility for compensation for wrongful
69 incarceration.— A wrongfully incarcerated person is not eligible
70 for compensation under the act if:

71 ~~(1) Before the person's wrongful conviction and~~
72 ~~incarceration, the person was convicted of, or pled guilty or~~
73 ~~nolo contendere to, regardless of adjudication, any violent~~
74 ~~felony, or a crime committed in another jurisdiction the~~
75 ~~elements of which would constitute a violent felony in this~~

76 | ~~state, or a crime committed against the United States which is~~
 77 | ~~designated a violent felony, excluding any delinquency~~
 78 | ~~disposition;~~

79 | ~~(2) Before the person's wrongful conviction and~~
 80 | ~~incarceration, the person was convicted of, or pled guilty or~~
 81 | ~~nolo contendere to, regardless of adjudication, more than one~~
 82 | ~~felony that is not a violent felony, or more than one crime~~
 83 | ~~committed in another jurisdiction, the elements of which would~~
 84 | ~~constitute a felony in this state, or more than one crime~~
 85 | ~~committed against the United States which is designated a~~
 86 | ~~felony, excluding any delinquency disposition;~~

87 | Section 3. Section 961.06, Florida Statutes, is amended,
 88 | to read:

89 | 961.06 Compensation for wrongful incarceration.—

90 | (1) Except as otherwise provided in this act and subject
 91 | to the limitations and procedures prescribed in this section, a
 92 | person who is found to be entitled to compensation under the
 93 | provisions of this act is entitled to:

94 | (a) Monetary compensation for wrongful incarceration,
 95 | which shall be calculated at a rate of \$50,000 for each year of
 96 | wrongful incarceration, prorated as necessary to account for a
 97 | portion of a year. For persons found to be wrongfully
 98 | incarcerated after December 31, 2008, the Chief Financial
 99 | Officer may adjust the annual rate of compensation for inflation
 100 | using the change in the December-to-December "Consumer Price

101 Index for All Urban Consumers" of the Bureau of Labor Statistics
 102 of the Department of Labor;

103 (b) A waiver of tuition and fees for up to 120 hours of
 104 instruction at any career center established under s. 1001.44,
 105 any Florida College System institution as defined in s.
 106 1000.21(3), or any state university as defined in s. 1000.21(6),
 107 if the wrongfully incarcerated person meets and maintains the
 108 regular admission requirements of such career center, Florida
 109 College System institution, or state university; remains
 110 registered at such educational institution; and makes
 111 satisfactory academic progress as defined by the educational
 112 institution in which the claimant is enrolled;

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

115 (d) The amount of any reasonable attorney ~~attorney's~~ fees
 116 and expenses incurred and paid by the wrongfully incarcerated
 117 person in connection with all criminal proceedings and appeals
 118 regarding the wrongful conviction, to be calculated by the
 119 department based upon the supporting documentation submitted as
 120 specified in s. 961.05; and

121 (e) Notwithstanding any provision to the contrary in s.
 122 943.0583 or s. 943.0585, immediate administrative expunction of
 123 the person's criminal record resulting from his or her wrongful
 124 arrest, wrongful conviction, and wrongful incarceration. The
 125 Department of Legal Affairs and the Department of Law

126 Enforcement shall, upon a determination that a claimant is
127 entitled to compensation, immediately take all action necessary
128 to administratively expunge the claimant's criminal record
129 arising from his or her wrongful arrest, wrongful conviction,
130 and wrongful incarceration. All fees for this process shall be
131 waived.

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

137 (2) In calculating monetary compensation under paragraph
138 (1) (a), a wrongfully incarcerated person who is placed on parole
139 or community supervision while serving the sentence resulting
140 from the wrongful conviction and who commits no more than one
141 felony that is not a violent felony which results in revocation
142 of the parole or community supervision is eligible for
143 compensation for the total number of years incarcerated. A
144 wrongfully incarcerated person who commits one violent felony or
145 more than one felony that is not a violent felony that results
146 in revocation of the parole or community supervision is
147 ineligible for any compensation under subsection (1).

148 (3) Within 15 calendar days after issuing notice to the
149 claimant that his or her claim satisfies all of the requirements
150 under this act, the department shall notify the Chief Financial

151 Officer to draw a warrant from the General Revenue Fund or
152 another source designated by the Legislature in law for the
153 purchase of an annuity for the claimant based on the total
154 amount determined by the department under this act.

155 (4) The Chief Financial Officer shall issue payment in the
156 amount determined by the department to an insurance company or
157 other financial institution admitted and authorized to issue
158 annuity contracts in this state to purchase an annuity or
159 annuities, selected by the wrongfully incarcerated person, for a
160 term of not less than 10 years. The Chief Financial Officer is
161 directed to execute all necessary agreements to implement this
162 act and to maximize the benefit to the wrongfully incarcerated
163 person. The terms of the annuity or annuities shall:

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

167 (b) Contain beneficiary provisions for the continued
168 disbursement of the annuity or annuities in the event of the
169 death of the wrongfully incarcerated person.

170 (5) If, at the time monetary compensation is determined
171 under paragraph (1) (a), a court has previously entered a
172 monetary judgment in favor of the claimant in a civil action
173 related to the person's wrongful incarceration, or the claimant
174 has entered into a settlement agreement with the state or any
175 political subdivision thereof related to the person's wrongful

176 incarceration, the amount of the damages in the civil action or
177 settlement agreement, less any sums paid for attorney fees or
178 for costs incurred in litigating the civil action or obtaining
179 the settlement agreement, shall be deducted from the total
180 monetary compensation to which the claimant is entitled under
181 this section ~~Before the department approves the application for~~
182 ~~compensation, the wrongfully incarcerated person must sign a~~
183 ~~release and waiver on behalf of the wrongfully incarcerated~~
184 ~~person and his or her heirs, successors, and assigns, forever~~
185 ~~releasing the state or any agency, instrumentality, or any~~
186 ~~political subdivision thereof, or any other entity subject to s.~~
187 ~~768.28, from all present or future claims that the wrongfully~~
188 ~~incarcerated person or his or her heirs, successors, or assigns~~
189 ~~may have against such entities arising out of the facts in~~
190 ~~connection with the wrongful conviction for which compensation~~
191 ~~is being sought under the act.~~

192 (6) If subsection (5) does not apply, and if after the
193 time monetary compensation is determined under paragraph (1) (a)
194 the court enters a monetary judgment in favor of the claimant in
195 a civil action related to the person's wrongful incarceration,
196 or the claimant enters into a settlement agreement with the
197 state or any political subdivision thereof related to the
198 person's wrongful incarceration, the claimant shall reimburse
199 the state for the monetary compensation in paragraph (1) (a),
200 less any sums paid for attorney fees or costs incurred in

201 litigating the civil action or obtaining the settlement
202 agreement. A reimbursement required under this subsection shall
203 not exceed the amount of the monetary award the claimant
204 received for damages in a civil action or settlement agreement.
205 The court shall include in the order of judgment an award to the
206 state of any amount required to be deducted under this
207 subsection.

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

215 (7) (a) The claimant shall notify the department upon
216 filing a civil action against the state or any political
217 subdivision thereof in which the claimant is seeking monetary
218 damages related to the claimant's wrongful incarceration for
219 which he or she previously received or is applying to receive
220 compensation pursuant to paragraph (1) (a).

221 (b) Upon notice of the claimant's civil action, the
222 department shall file in the case a notice of payment of
223 monetary compensation to the claimant under paragraph (1) (a).
224 The notice shall constitute a lien upon any judgment or
225 settlement recovered under the civil action that is equal to the

226 sum of monetary compensation paid to the claimant under
227 paragraph (1) (a), less any attorney fees and litigation costs.

228 (8) (a) (b) A wrongfully incarcerated person may not submit
229 an application for compensation under this act if the person is
230 the subject of a claim bill pending for claims arising out of
231 the facts in connection with the claimant's conviction and
232 incarceration.

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

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

243 (d) (e) Any compensation awarded under a claim bill shall
244 be the sole redress for claims arising out of the facts in
245 connection with the claimant's conviction and incarceration and,
246 upon any award of compensation to a wrongfully incarcerated
247 person under a claim bill, the person may not receive
248 compensation under this act.

249 (9) (7) Any payment made under this act does not constitute
250 a waiver of any defense of sovereign immunity or an increase in

251 | the limits of liability on behalf of the state or any person
252 | subject to the provisions of s. 768.28 or other law.

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