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LEGISLATIVE ACTION

Senate

.

House

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Floor: 3/AD/2R

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02/19/2020 04:30 PM

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Senator Bradley moved the following:

Senate Amendment (with title amendment)

Delete lines 193 - 244

and insert:

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



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12 sentence becomes final and the criminal charges against the
13 person are dismissed or the person is retried and found not
14 guilty, if the person's conviction and sentence is vacated on or
15 after July 1, 2020.

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

22 a. Date when the criminal charges against the person were
23 dismissed or the date the person was acquitted upon retrial
24 occurred more than 90 days after the date of the final order
25 vacating the conviction and sentence; or

26 b. Person was convicted of an unrelated felony before his
27 or her wrongful conviction and incarceration and was previously
28 barred under s. 961.04.

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

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

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

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



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41 961.04 Eligibility for compensation for wrongful
42 incarceration.—A wrongfully incarcerated person is not eligible
43 for compensation under the act if:

44 ~~(1) Before the person's wrongful conviction and~~
45 ~~incarceration, the person was convicted of, or pled guilty or~~
46 ~~nolo contendere to, regardless of adjudication, any violent~~
47 ~~felony, or a crime committed in another jurisdiction the~~
48 ~~elements of which would constitute a violent felony in this~~
49 ~~state, or a crime committed against the United States which is~~
50 ~~designated a violent felony, excluding any delinquency~~
51 ~~disposition;~~

52 ~~(2) 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, more than one~~
55 ~~felony that is not a violent felony, or more than one crime~~
56 ~~committed in another jurisdiction, the elements of which would~~
57 ~~constitute a felony in this state, or more than one crime~~
58 ~~committed against the United States which is designated a~~
59 ~~felony, excluding any delinquency disposition;~~

60 Section 6. Section 961.06, Florida Statutes, is amended, to
61 read:

62 961.06 Compensation for wrongful incarceration.—

63 (1) Except as otherwise provided in this act and subject to
64 the limitations and procedures prescribed in this section, a
65 person who is found to be entitled to compensation under the
66 provisions of this act is entitled to:

67 (a) Monetary compensation for wrongful incarceration, which
68 shall be calculated at a rate of \$50,000 for each year of
69 wrongful incarceration, prorated as necessary to account for a



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70 portion of a year. For persons found to be wrongfully
71 incarcerated after December 31, 2008, the Chief Financial
72 Officer may adjust the annual rate of compensation for inflation
73 using the change in the December-to-December "Consumer Price
74 Index for All Urban Consumers" of the Bureau of Labor Statistics
75 of the Department of Labor;

76 (b) A waiver of tuition and fees for up to 120 hours of
77 instruction at any career center established under s. 1001.44,
78 any Florida College System institution as defined in s.
79 1000.21(3), or any state university as defined in s. 1000.21(6),
80 if the wrongfully incarcerated person meets and maintains the
81 regular admission requirements of such career center, Florida
82 College System institution, or state university; remains
83 registered at such educational institution; and makes
84 satisfactory academic progress as defined by the educational
85 institution in which the claimant is enrolled;

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

88 (d) The amount of any reasonable attorney ~~attorney's~~ fees
89 and expenses incurred and paid by the wrongfully incarcerated
90 person in connection with all criminal proceedings and appeals
91 regarding the wrongful conviction, to be calculated by the
92 department based upon the supporting documentation submitted as
93 specified in s. 961.05; and

94 (e) Notwithstanding any provision to the contrary in s.
95 943.0583 or s. 943.0585, immediate administrative expunction of
96 the person's criminal record resulting from his or her wrongful
97 arrest, wrongful conviction, and wrongful incarceration. The
98 Department of Legal Affairs and the Department of Law



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99 Enforcement shall, upon a determination that a claimant is
100 entitled to compensation, immediately take all action necessary
101 to administratively expunge the claimant's criminal record
102 arising from his or her wrongful arrest, wrongful conviction,
103 and wrongful incarceration. All fees for this process shall be
104 waived.

105
106 The total compensation awarded under paragraphs (a), (c), and
107 (d) may not exceed \$2 million. No further award for attorney
108 ~~attorney's~~ fees, lobbying fees, costs, or other similar expenses
109 shall be made by the state.

110 (2) In calculating monetary compensation under paragraph
111 (1) (a), a wrongfully incarcerated person who is placed on parole
112 or community supervision while serving the sentence resulting
113 from the wrongful conviction and who commits no more than one
114 felony that is not a violent felony which results in revocation
115 of the parole or community supervision is eligible for
116 compensation for the total number of years incarcerated. A
117 wrongfully incarcerated person who commits one violent felony or
118 more than one felony that is not a violent felony that results
119 in revocation of the parole or community supervision is
120 ineligible for any compensation under subsection (1).

121 (3) Within 15 calendar days after issuing notice to the
122 claimant that his or her claim satisfies all of the requirements
123 under this act, the department shall notify the Chief Financial
124 Officer to draw a warrant from the General Revenue Fund or
125 another source designated by the Legislature in law for the
126 purchase of an annuity for the claimant based on the total
127 amount determined by the department under this act.



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128 (4) The Chief Financial Officer shall issue payment in the
129 amount determined by the department to an insurance company or
130 other financial institution admitted and authorized to issue
131 annuity contracts in this state to purchase an annuity or
132 annuities, selected by the wrongfully incarcerated person, for a
133 term of not less than 10 years. The Chief Financial Officer is
134 directed to execute all necessary agreements to implement this
135 act and to maximize the benefit to the wrongfully incarcerated
136 person. The terms of the annuity or annuities shall:

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

140 (b) Contain beneficiary provisions for the continued
141 disbursement of the annuity or annuities in the event of the
142 death of the wrongfully incarcerated person.

143 (5) If, at the time monetary compensation is determined
144 under paragraph (1)(a), a court has previously entered a
145 monetary judgment in favor of the claimant in a civil action
146 related to the person's wrongful incarceration, or the claimant
147 has entered into a settlement agreement with the state or any
148 political subdivision thereof related to the person's wrongful
149 incarceration, the amount of the damages in the civil action or
150 settlement agreement, less any sums paid for attorney fees or
151 for costs incurred in litigating the civil action or obtaining
152 the settlement agreement, must be deducted from the total
153 monetary compensation to which the claimant is entitled under
154 this section ~~Before the department approves the application for~~
155 ~~compensation, the wrongfully incarcerated person must sign a~~
156 ~~release and waiver on behalf of the wrongfully incarcerated~~



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157 ~~person and his or her heirs, successors, and assigns, forever~~
158 ~~releasing the state or any agency, instrumentality, or any~~
159 ~~political subdivision thereof, or any other entity subject to s.~~
160 ~~768.28, from all present or future claims that the wrongfully~~
161 ~~incarcerated person or his or her heirs, successors, or assigns~~
162 ~~may have against such entities arising out of the facts in~~
163 ~~connection with the wrongful conviction for which compensation~~
164 ~~is being sought under the act.~~

165 (6) If subsection (5) does not apply, and if after the time
166 monetary compensation is determined under paragraph (1) (a) the
167 court enters a monetary judgment in favor of the claimant in a
168 civil action related to the person's wrongful incarceration, or
169 the claimant enters into a settlement agreement with the state
170 or any political subdivision thereof related to the person's
171 wrongful incarceration, the claimant must reimburse the state
172 for the monetary compensation in paragraph (1) (a), less any sums
173 paid for attorney fees or costs incurred in litigating the civil
174 action or obtaining the settlement agreement. A reimbursement
175 required under this subsection shall not exceed the amount of
176 the monetary award the claimant received for damages in a civil
177 action or settlement agreement. The court shall include in the
178 order of judgment an award to the state of any amount required
179 to be deducted under this subsection.

180 ~~(6) (a) A wrongfully incarcerated person may not submit an~~
181 ~~application for compensation under this act if the person has a~~
182 ~~lawsuit pending against the state or any agency,~~
183 ~~instrumentality, or any political subdivision thereof, or any~~
184 ~~other entity subject to the provisions of s. 768.28, in state or~~
185 ~~federal court requesting compensation arising out of the facts~~



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186 ~~in connection with the claimant's conviction and incarceration.~~
187 (7) (a) The claimant shall notify the department upon filing
188 a civil action against the state or any political subdivision
189 thereof in which the claimant is seeking monetary damages
190 related to the claimant's wrongful incarceration for which he or
191 she previously received or is applying to receive compensation
192 pursuant to paragraph (1) (a).
193 (b) Upon notice of the claimant's civil action, the
194 department shall file in the case a notice of payment of
195 monetary compensation to the claimant under paragraph (1) (a).
196 The notice shall constitute a lien upon any judgment or
197 settlement recovered under the civil action that is equal to the
198 sum of monetary compensation paid to the claimant under
199 paragraph (1) (a), less any attorney fees and litigation costs.
200 (8) (a) ~~(b)~~ A wrongfully incarcerated person may not submit
201 an application for compensation under this act if the person is
202 the subject of a claim bill pending for claims arising out of
203 the facts in connection with the claimant's conviction and
204 incarceration.
205 (b) ~~(e)~~ Once an application is filed under this act, a
206 wrongfully incarcerated person may not pursue recovery under a
207 claim bill until the final disposition of the application.
208 (c) ~~(d)~~ Any amount awarded under this act is intended to
209 provide the sole compensation for any and all present and future
210 claims arising out of the facts in connection with the
211 claimant's conviction and incarceration. Upon notification by
212 the department that an application meets the requirements of
213 this act, a wrongfully incarcerated person may not recover under
214 a claim bill.



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215 (d)~~(e)~~ Any compensation awarded under a claim bill shall be
216 the sole redress for claims arising out of the facts in
217 connection with the claimant's conviction and incarceration and,
218 upon any award of compensation to a wrongfully incarcerated
219 person under a claim bill, the person may not receive
220 compensation under this act.

221 (9)~~(7)~~ Any payment made under this act does not constitute
222 a waiver of any defense of sovereign immunity or an increase in
223 the limits of liability on behalf of the state or any person
224 subject to the provisions of s. 768.28 or other law.

225
226 ===== T I T L E A M E N D M E N T =====

227 And the title is amended as follows:

228 Delete lines 31 - 39

229 and insert:

230 officer; amending s. 961.03, F.S.; extending the
231 filing deadline for a petition claiming wrongful
232 incarceration; providing limited retroactivity for
233 filing a petition claiming wrongful incarceration;
234 amending s. 961.04, F.S.; deleting eligibility
235 requirements relating to a person's conduct before the
236 person's wrongful conviction or incarceration;
237 amending s. 961.06, F.S.; requiring the state to
238 deduct the amount of a civil award from the state
239 compensation amount owed if the claimant first
240 receives a civil award; deleting a requirement that a
241 wrongfully incarcerated person sign a liability
242 release before receiving compensation; requiring a
243 claimant to reimburse the state for any difference



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244 between state compensation and a civil award if the
245 claimant receives statutory compensation prior to a
246 civil award; deleting provisions prohibiting an
247 application for compensation if the applicant has a
248 pending civil suit requesting compensation; requiring
249 a claimant to notify the Department of Legal Affairs
250 upon filing a civil action; requiring the department
251 to file a notice of payment of monetary compensation
252 in the civil action; amending s.