

**By** the Committee on Criminal Justice; and Senators Bradley, Brandes, Perry, Diaz, Gruters, Bracy, and Rouson

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1                   A bill to be entitled  
2           An act relating to criminal justice; amending s.  
3           893.13, F.S.; prohibiting the imprisonment for longer  
4           than a certain time for persons who possess, purchase,  
5           or possess with the intent to purchase less than a  
6           specified amount of a controlled substance; providing  
7           exceptions; amending s. 893.135, F.S.; authorizing a  
8           court to impose a sentence other than a mandatory  
9           minimum term of imprisonment and mandatory fine for a  
10          person convicted of trafficking if the court makes  
11          certain findings on the record; creating s. 900.06,  
12          F.S.; defining terms and specifying covered offenses;  
13          requiring that a custodial interrogation conducted at  
14          a place of detention in connection with certain  
15          offenses be electronically recorded in its entirety;  
16          requiring law enforcement officers who do not comply  
17          with the electronic recording requirement or who  
18          conduct custodial interrogations at a location other  
19          than a place of detention to prepare a specified  
20          report; providing exceptions to the electronic  
21          recording requirement; requiring a court to consider a  
22          law enforcement officer's failure to comply with the  
23          electronic recording requirement in determining the  
24          admissibility of a statement, unless an exception  
25          applies; requiring a court, upon the request of a  
26          defendant, to give certain cautionary instructions to  
27          a jury under certain circumstances; providing immunity  
28          from civil liability to law enforcement agencies that  
29          enforce certain rules; providing that a cause of

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30 action is not created against a law enforcement  
31 officer; amending s. 961.03, F.S.; revising the  
32 circumstances under which a wrongfully incarcerated  
33 person must file a petition with the court to  
34 determine eligibility for compensation; authorizing  
35 certain persons to petition the court to determine  
36 eligibility for compensation within a specified  
37 timeframe; amending s. 961.04, F.S.; revising the  
38 circumstances under which a wrongfully incarcerated  
39 person is eligible for compensation; amending s.  
40 893.03, F.S.; conforming a cross-reference; reenacting  
41 ss. 961.02(4) and 961.03(1)(a), (2), (3), and (4),  
42 F.S., all relating to eligibility for compensation for  
43 wrongfully incarcerated persons; providing an  
44 effective date.

45  
46 Be It Enacted by the Legislature of the State of Florida:

47  
48 Section 1. Present subsection (10) of section 893.13,  
49 Florida Statutes, is redesignated as subsection (11), and a new  
50 subsection (10) is added to that section, to read:

51 893.13 Prohibited acts; penalties.—

52 (10) Notwithstanding any provision of this section or any  
53 other law relating to the punishment for possessing, purchasing,  
54 or possessing with the intent to purchase a controlled  
55 substance, a person who possesses, purchases, or possesses with  
56 the intent to purchase less than 2 grams of a controlled  
57 substance, other than fentanyl or any substance or mixture  
58 described in s. 893.135(1)(c)4.a.(I)-(VII), may not be

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59 imprisoned for a term longer than 12 months.

60 Section 2. Present subsections (6) and (7) of section  
61 893.135, Florida Statutes, are redesignated as subsections (7)  
62 and (8), respectively, and a new subsection (6) is added to that  
63 section, to read:

64 893.135 Trafficking; mandatory sentences; suspension or  
65 reduction of sentences; conspiracy to engage in trafficking.—

66 (6) Notwithstanding any provision of this section, a court  
67 may impose a sentence for a violation of this section other than  
68 the mandatory minimum term of imprisonment and mandatory fine if  
69 the court finds on the record that all of the following  
70 circumstances exist:

71 (a) The defendant has no prior conviction for a forcible  
72 felony as defined in s. 776.08.

73 (b) The defendant did not use violence or credible threats  
74 of violence, or possess a firearm or other dangerous weapon, or  
75 induce another participant to use violence or credible threats  
76 of violence, in connection with the offense.

77 (c) The offense did not result in the death of or serious  
78 bodily injury to any person.

79 (d) The defendant was not an organizer, leader, manager, or  
80 supervisor of others in the offense and was not engaged in a  
81 continuing criminal enterprise as defined in s. 893.20.

82 (e) At the time of the sentencing hearing or earlier, the  
83 defendant has truthfully provided to the state all information  
84 and evidence that he or she possesses concerning the offense or  
85 offenses that were part of the same course of conduct or of a  
86 common scheme or plan.

87 (f) The defendant has not previously benefited from the

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88 application of this subsection.

89

90 A court may not apply this subsection to an offense under this  
91 section which carries a mandatory minimum term of imprisonment  
92 of 25 years.

93 Section 3. Section 900.06, Florida Statutes, is created to  
94 read:

95 900.06 Recording of custodial interrogations for certain  
96 offenses.—

97 (1) As used in this section, the term:

98 (a) "Custodial interrogation" means questioning or other  
99 conduct by a law enforcement officer which is reasonably likely  
100 to elicit an incriminating response from an individual and which  
101 occurs under circumstances in which a reasonable individual in  
102 the same circumstances would consider himself or herself to be  
103 in the custody of a law enforcement agency.

104 (b) "Electronic recording" means an audio recording or an  
105 audio and video recording that accurately records a custodial  
106 interrogation.

107 (c) "Covered offense" includes:

108 1. Arson.

109 2. Sexual battery.

110 3. Robbery.

111 4. Kidnapping.

112 5. Aggravated child abuse.

113 6. Aggravated abuse of an elderly person or disabled adult.

114 7. Aggravated assault with a deadly weapon.

115 8. Murder.

116 9. Manslaughter.

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117 10. Aggravated manslaughter of an elderly person or  
118 disabled adult.

119 11. Aggravated manslaughter of a child.

120 12. The unlawful throwing, placing, or discharging of a  
121 destructive device or bomb.

122 13. Armed burglary.

123 14. Aggravated battery.

124 15. Aggravated stalking.

125 16. Home-invasion robbery.

126 17. Carjacking.

127 (d) "Place of detention" means a police station, sheriff's  
128 office, correctional facility, prisoner holding facility, county  
129 detention facility, or other governmental facility where an  
130 individual may be held in connection with a criminal charge that  
131 has been or may be filed against the individual.

132 (e) "Statement" means a communication that is oral,  
133 written, electronic, nonverbal, or in sign language.

134 (2) (a) A custodial interrogation at a place of detention,  
135 including the giving of a required warning, the advisement of  
136 the rights of the individual being questioned, and the waiver of  
137 any rights by the individual, must be electronically recorded in  
138 its entirety if the interrogation is related to a covered  
139 offense.

140 (b) If a law enforcement officer conducts a custodial  
141 interrogation at a place of detention without electronically  
142 recording the interrogation, the officer must prepare a written  
143 report explaining why he or she did not record the  
144 interrogation.

145 (c) As soon as practicable, a law enforcement officer who

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146 conducts a custodial interrogation at a location other than a  
147 place of detention shall prepare a written report explaining the  
148 circumstances of the interrogation and summarizing the custodial  
149 interrogation process and the individual's statements.

150 (d) Paragraph (a) does not apply:

151 1. If an unforeseen equipment malfunction prevents  
152 recording the custodial interrogation in its entirety;

153 2. If a suspect refuses to participate in a custodial  
154 interrogation if his or her statements are to be electronically  
155 recorded;

156 3. If an equipment operator error prevents recording the  
157 custodial interrogation in its entirety;

158 4. If the statement is made spontaneously and not in  
159 response to a custodial interrogation question;

160 5. If the statement is made during the processing of the  
161 arrest of a suspect;

162 6. If the custodial interrogation occurs when the law  
163 enforcement officer participating in the interrogation does not  
164 have any knowledge of facts and circumstances that would lead an  
165 officer to reasonably believe that the individual being  
166 interrogated may have committed a covered offense;

167 7. If the law enforcement officer conducting the custodial  
168 interrogation reasonably believes that making an electronic  
169 recording would jeopardize the safety of the officer, the  
170 individual being interrogated, or others; or

171 8. If the custodial interrogation is conducted outside of  
172 this state.

173 (3) Unless a court finds that one or more of the  
174 circumstances specified in paragraph (2)(d) apply, the court

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175 must consider the circumstances of an interrogation conducted by  
176 a law enforcement officer in which he or she did not  
177 electronically record all or part of a custodial interrogation  
178 in determining whether a statement made during the interrogation  
179 is admissible. If the court admits into evidence a statement  
180 made during a custodial interrogation that was not  
181 electronically recorded as required under paragraph (2) (a), the  
182 court must, upon request of the defendant, give cautionary  
183 instructions to the jury regarding the law enforcement officer's  
184 failure to comply with that requirement.

185 (4) A law enforcement agency in this state which has  
186 enforced rules adopted pursuant to this section which are  
187 reasonably designed to ensure compliance with the requirements  
188 of this section is not subject to civil liability for damages  
189 arising from a violation of this section. This section does not  
190 create a cause of action against a law enforcement officer.

191 Section 4. Paragraph (b) of subsection (1) of section  
192 961.03, Florida Statutes, is amended to read:

193 961.03 Determination of status as a wrongfully incarcerated  
194 person; determination of eligibility for compensation.—

195 (1)

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

197 1. Within 2 years ~~90 days~~ after the order vacating a  
198 conviction and sentence becomes final and the criminal charges  
199 against the person are dismissed if the person's conviction and  
200 sentence is vacated, or the person is retried and found not  
201 guilty, on or after July 1, 2008. If a person had a claim  
202 dismissed or did not file a claim because of the former 90-day  
203 petition filing period under this subparagraph, he or she may

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204 file a petition with the court within 2 years after July 1,  
205 2020.

206 2. By July 1, 2010, if the person's conviction and sentence  
207 was vacated by an order that became final before ~~prior to~~ July  
208 1, 2008.

209 Section 5. Section 961.04, Florida Statutes, is amended to  
210 read:

211 961.04 Eligibility for compensation for wrongful  
212 incarceration.—A wrongfully incarcerated person is not eligible  
213 for compensation under the act if any of the following apply:

214 ~~(1) Before the person's wrongful conviction and~~  
215 ~~incarceration, the person was convicted of, or pled guilty or~~  
216 ~~nolo contendere to, regardless of adjudication, any violent~~  
217 ~~felony, or a crime committed in another jurisdiction the~~  
218 ~~elements of which would constitute a violent felony in this~~  
219 ~~state, or a crime committed against the United States which is~~  
220 ~~designated a violent felony, excluding any delinquency~~  
221 ~~disposition;~~

222 ~~(2) Before the person's wrongful conviction and~~  
223 ~~incarceration, the person was convicted of, or pled guilty or~~  
224 ~~nolo contendere to, regardless of adjudication, more than one~~  
225 ~~felony that is not a violent felony, or more than one crime~~  
226 ~~committed in another jurisdiction, the elements of which would~~  
227 ~~constitute a felony in this state, or more than one crime~~  
228 ~~committed against the United States which is designated a~~  
229 ~~felony, excluding any delinquency disposition;~~

230 (1)(3) During the person's wrongful incarceration, the  
231 person was convicted of, or pled guilty or nolo contendere to,  
232 regardless of adjudication, any violent felony.†

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233        (2)~~(4)~~ During the person's wrongful incarceration, the  
234 person was convicted of, or pled guilty or nolo contendere to,  
235 regardless of adjudication, more than one felony that is not a  
236 violent felony.~~;~~~~or~~

237        (3)~~(5)~~ During the person's wrongful incarceration, the  
238 person was also serving a concurrent sentence for another felony  
239 for which the person was not wrongfully convicted.

240        Section 6. Paragraph (c) of subsection (3) of section  
241 893.03, Florida Statutes, is amended to read:

242        893.03 Standards and schedules.—The substances enumerated  
243 in this section are controlled by this chapter. The controlled  
244 substances listed or to be listed in Schedules I, II, III, IV,  
245 and V are included by whatever official, common, usual,  
246 chemical, trade name, or class designated. The provisions of  
247 this section shall not be construed to include within any of the  
248 schedules contained in this section any excluded drugs listed  
249 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
250 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
251 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
252 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
253 Anabolic Steroid Products."

254        (3) SCHEDULE III.—A substance in Schedule III has a  
255 potential for abuse less than the substances contained in  
256 Schedules I and II and has a currently accepted medical use in  
257 treatment in the United States, and abuse of the substance may  
258 lead to moderate or low physical dependence or high  
259 psychological dependence or, in the case of anabolic steroids,  
260 may lead to physical damage. The following substances are  
261 controlled in Schedule III:

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262 (c) Unless specifically excepted or unless listed in  
263 another schedule, any material, compound, mixture, or  
264 preparation containing limited quantities of any of the  
265 following controlled substances or any salts thereof:

266 1. Not more than 1.8 grams of codeine per 100 milliliters  
267 or not more than 90 milligrams per dosage unit, with an equal or  
268 greater quantity of an isoquinoline alkaloid of opium.

269 2. Not more than 1.8 grams of codeine per 100 milliliters  
270 or not more than 90 milligrams per dosage unit, with recognized  
271 therapeutic amounts of one or more active ingredients which are  
272 not controlled substances.

273 3. Not more than 300 milligrams of hydrocodone per 100  
274 milliliters or not more than 15 milligrams per dosage unit, with  
275 a fourfold or greater quantity of an isoquinoline alkaloid of  
276 opium.

277 4. Not more than 300 milligrams of hydrocodone per 100  
278 milliliters or not more than 15 milligrams per dosage unit, with  
279 recognized therapeutic amounts of one or more active ingredients  
280 that are not controlled substances.

281 5. Not more than 1.8 grams of dihydrocodeine per 100  
282 milliliters or not more than 90 milligrams per dosage unit, with  
283 recognized therapeutic amounts of one or more active ingredients  
284 which are not controlled substances.

285 6. Not more than 300 milligrams of ethylmorphine per 100  
286 milliliters or not more than 15 milligrams per dosage unit, with  
287 one or more active, nonnarcotic ingredients in recognized  
288 therapeutic amounts.

289 7. Not more than 50 milligrams of morphine per 100  
290 milliliters or per 100 grams, with recognized therapeutic

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291 amounts of one or more active ingredients which are not  
292 controlled substances.

293

294 For purposes of charging a person with a violation of s. 893.135  
295 involving any controlled substance described in subparagraph 3.  
296 or subparagraph 4., the controlled substance is a Schedule III  
297 controlled substance pursuant to this paragraph but the weight  
298 of the controlled substance per milliliters or per dosage unit  
299 is not relevant to the charging of a violation of s. 893.135.  
300 The weight of the controlled substance shall be determined  
301 pursuant to s. 893.135(7) ~~s. 893.135(6)~~.

302 Section 7. For the purpose of incorporating the amendment  
303 made by this act to section 961.04, Florida Statutes, in a  
304 reference thereto, subsection (4) of section 961.02, Florida  
305 Statutes, is reenacted to read:

306 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

307 (4) "Eligible for compensation" means that a person meets  
308 the definition of the term "wrongfully incarcerated person" and  
309 is not disqualified from seeking compensation under the criteria  
310 prescribed in s. 961.04.

311 Section 8. For the purpose of incorporating the amendments  
312 made by this act to section 961.04, Florida Statutes, in  
313 references thereto, paragraph (a) of subsection (1) and  
314 subsections (2), (3), and (4) of section 961.03, Florida  
315 Statutes, are reenacted to read:

316 961.03 Determination of status as a wrongfully incarcerated  
317 person; determination of eligibility for compensation.—

318 (1)(a) In order to meet the definition of a "wrongfully  
319 incarcerated person" and "eligible for compensation," upon entry

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320 of an order, based upon exonerating evidence, vacating a  
321 conviction and sentence, a person must set forth the claim of  
322 wrongful incarceration under oath and with particularity by  
323 filing a petition with the original sentencing court, with a  
324 copy of the petition and proper notice to the prosecuting  
325 authority in the underlying felony for which the person was  
326 incarcerated. At a minimum, the petition must:

327 1. State that verifiable and substantial evidence of actual  
328 innocence exists and state with particularity the nature and  
329 significance of the verifiable and substantial evidence of  
330 actual innocence; and

331 2. State that the person is not disqualified, under the  
332 provisions of s. 961.04, from seeking compensation under this  
333 act.

334 (2) The prosecuting authority must respond to the petition  
335 within 30 days. The prosecuting authority may respond:

336 (a) By certifying to the court that, based upon the  
337 petition and verifiable and substantial evidence of actual  
338 innocence, no further criminal proceedings in the case at bar  
339 can or will be initiated by the prosecuting authority, that no  
340 questions of fact remain as to the petitioner's wrongful  
341 incarceration, and that the petitioner is not ineligible from  
342 seeking compensation under the provisions of s. 961.04; or

343 (b) By contesting the nature, significance, or effect of  
344 the evidence of actual innocence, the facts related to the  
345 petitioner's alleged wrongful incarceration, or whether the  
346 petitioner is ineligible from seeking compensation under the  
347 provisions of s. 961.04.

348 (3) If the prosecuting authority responds as set forth in

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349 paragraph (2) (a), the original sentencing court, based upon the  
350 evidence of actual innocence, the prosecuting authority's  
351 certification, and upon the court's finding that the petitioner  
352 has presented clear and convincing evidence that the petitioner  
353 committed neither the act nor the offense that served as the  
354 basis for the conviction and incarceration, and that the  
355 petitioner did not aid, abet, or act as an accomplice to a  
356 person who committed the act or offense, shall certify to the  
357 department that the petitioner is a wrongfully incarcerated  
358 person as defined by this act. Based upon the prosecuting  
359 authority's certification, the court shall also certify to the  
360 department that the petitioner is eligible for compensation  
361 under the provisions of s. 961.04.

362 (4) (a) If the prosecuting authority responds as set forth  
363 in paragraph (2) (b), the original sentencing court shall make a  
364 determination from the pleadings and supporting documentation  
365 whether, by a preponderance of the evidence, the petitioner is  
366 ineligible for compensation under the provisions of s. 961.04,  
367 regardless of his or her claim of wrongful incarceration. If the  
368 court finds the petitioner ineligible under the provisions of s.  
369 961.04, it shall dismiss the petition.

370 (b) If the prosecuting authority responds as set forth in  
371 paragraph (2) (b), and the court determines that the petitioner  
372 is eligible under the provisions of s. 961.04, but the  
373 prosecuting authority contests the nature, significance or  
374 effect of the evidence of actual innocence, or the facts related  
375 to the petitioner's alleged wrongful incarceration, the court  
376 shall set forth its findings and transfer the petition by  
377 electronic means through the division's website to the division

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378 for findings of fact and a recommended determination of whether  
379 the petitioner has established that he or she is a wrongfully  
380 incarcerated person who is eligible for compensation under this  
381 act.

382 Section 9. This act shall take effect July 1, 2020.