

By the Committees on Appropriations; and Criminal Justice; and Senators Bradley, Brandes, Perry, Diaz, Gruters, Bracy, Rouson, Berman, Taddeo, and Stewart

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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 the 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 specified
20 reports; 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 chapter 921, any provision of this
53 section, or any other law relating to the punishment for
54 possessing, purchasing, or possessing with the intent to
55 purchase a controlled substance, a person who possesses,
56 purchases, or possesses with the intent to purchase less than 2
57 grams of a controlled substance, other than fentanyl or any
58 substance or mixture described in s. 893.135(1)(c)4.a.(I)-(VII),

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59 may not be 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) "Covered offense" includes:

99 1. Arson.

100 2. Sexual battery.

101 3. Robbery.

102 4. Kidnapping.

103 5. Aggravated child abuse.

104 6. Aggravated abuse of an elderly person or a disabled
105 adult.

106 7. Aggravated assault with a deadly weapon.

107 8. Murder.

108 9. Manslaughter.

109 10. Aggravated manslaughter of an elderly person or a
110 disabled adult.

111 11. Aggravated manslaughter of a child.

112 12. The unlawful throwing, placing, or discharging of a
113 destructive device or bomb.

114 13. Armed burglary.

115 14. Aggravated battery.

116 15. Aggravated stalking.

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117 16. Home-invasion robbery.

118 17. Carjacking.

119 (b) "Custodial interrogation" means questioning or other
120 conduct by a law enforcement officer which is reasonably likely
121 to elicit an incriminating response from an individual and which
122 occurs under circumstances in which a reasonable individual in
123 the same circumstances would consider himself or herself to be
124 in the custody of a law enforcement agency.

125 (c) "Electronic recording" means an audio recording or an
126 audio and video recording that accurately records a custodial
127 interrogation.

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

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

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

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

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146 (c) As soon as practicable, a law enforcement officer who
147 conducts a custodial interrogation at a location other than a
148 place of detention shall prepare a written report explaining the
149 circumstances of the interrogation and summarizing the custodial
150 interrogation process and the individual's statements.

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

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

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

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

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

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

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

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

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

174 (3) Unless a court finds that one or more of the

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

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

192 Section 4. Paragraph (b) of subsection (1) of section
193 961.03, Florida Statutes, is amended to read:

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

196 (1)

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

198 1. Within 2 years ~~90 days~~ after the order vacating a
199 conviction and sentence becomes final and the criminal charges
200 against the person are dismissed or the person is retried and
201 found not guilty, if the person's conviction was ~~and sentence is~~
202 vacated on or after July 1, 2008. A person may file a petition
203 with the court within 2 years after July 1, 2020, if the person

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204 had a claim dismissed or did not file a claim because the date
205 when the criminal charges against the person were dismissed or
206 the person was acquitted upon retrial occurred more than 90 days
207 after the date when the order vacating the conviction or
208 sentence became final, and the state of the law before July 1,
209 2020, would have barred the claim or made the claim appear to be
210 futile.

211 2. By July 1, 2010, if the person's conviction and sentence
212 was vacated by an order that became final before ~~prior to~~ July
213 1, 2008.

214 Section 5. Section 961.04, Florida Statutes, is amended to
215 read:

216 961.04 Eligibility for compensation for wrongful
217 incarceration.—A wrongfully incarcerated person is not eligible
218 for compensation under the act if any of the following apply:

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

227 ~~(2) Before the person's wrongful conviction and~~
228 ~~incarceration, the person was convicted of, or pled guilty or~~
229 ~~nolo contendere to, regardless of adjudication, more than one~~
230 ~~felony that is not a violent felony, or more than one crime~~
231 ~~committed in another jurisdiction, the elements of which would~~
232 ~~constitute a felony in this state, or more than one crime~~

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233 ~~committed against the United States which is designated a~~
234 ~~felony, excluding any delinquency disposition;~~

235 (1)~~(3)~~ During the person's wrongful incarceration, the
236 person was convicted of, or pled guilty or nolo contendere to,
237 regardless of adjudication, any violent felony.~~†~~

238 (2)~~(4)~~ During the person's wrongful incarceration, the
239 person was convicted of, or pled guilty or nolo contendere to,
240 regardless of adjudication, more than one felony that is not a
241 violent felony.~~†~~~~or~~

242 (3)~~(5)~~ During the person's wrongful incarceration, the
243 person was also serving a concurrent sentence for another felony
244 for which the person was not wrongfully convicted.

245 Section 6. Paragraph (c) of subsection (3) of section
246 893.03, Florida Statutes, is amended to read:

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

259 (3) SCHEDULE III.—A substance in Schedule III has a
260 potential for abuse less than the substances contained in
261 Schedules I and II and has a currently accepted medical use in

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262 treatment in the United States, and abuse of the substance may
263 lead to moderate or low physical dependence or high
264 psychological dependence or, in the case of anabolic steroids,
265 may lead to physical damage. The following substances are
266 controlled in Schedule III:

267 (c) Unless specifically excepted or unless listed in
268 another schedule, any material, compound, mixture, or
269 preparation containing limited quantities of any of the
270 following controlled substances or any salts thereof:

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

274 2. Not more than 1.8 grams of codeine per 100 milliliters
275 or not more than 90 milligrams per dosage unit, with recognized
276 therapeutic amounts of one or more active ingredients which are
277 not controlled substances.

278 3. Not more than 300 milligrams of hydrocodone per 100
279 milliliters or not more than 15 milligrams per dosage unit, with
280 a fourfold or greater quantity of an isoquinoline alkaloid of
281 opium.

282 4. Not more than 300 milligrams of hydrocodone per 100
283 milliliters or not more than 15 milligrams per dosage unit, with
284 recognized therapeutic amounts of one or more active ingredients
285 that are not controlled substances.

286 5. Not more than 1.8 grams of dihydrocodeine per 100
287 milliliters or not more than 90 milligrams per dosage unit, with
288 recognized therapeutic amounts of one or more active ingredients
289 which are not controlled substances.

290 6. Not more than 300 milligrams of ethylmorphine per 100

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291 milliliters or not more than 15 milligrams per dosage unit, with
292 one or more active, nonnarcotic ingredients in recognized
293 therapeutic amounts.

294 7. Not more than 50 milligrams of morphine per 100
295 milliliters or per 100 grams, with recognized therapeutic
296 amounts of one or more active ingredients which are not
297 controlled substances.

298

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

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

311 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

312 (4) "Eligible for compensation" means that a person meets
313 the definition of the term "wrongfully incarcerated person" and
314 is not disqualified from seeking compensation under the criteria
315 prescribed in s. 961.04.

316 Section 8. For the purpose of incorporating the amendments
317 made by this act to section 961.04, Florida Statutes, in
318 references thereto, paragraph (a) of subsection (1) and
319 subsections (2), (3), and (4) of section 961.03, Florida

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320 Statutes, are reenacted to read:

321 961.03 Determination of status as a wrongfully incarcerated
322 person; determination of eligibility for compensation.—

323 (1) (a) In order to meet the definition of a “wrongfully
324 incarcerated person” and “eligible for compensation,” upon entry
325 of an order, based upon exonerating evidence, vacating a
326 conviction and sentence, a person must set forth the claim of
327 wrongful incarceration under oath and with particularity by
328 filing a petition with the original sentencing court, with a
329 copy of the petition and proper notice to the prosecuting
330 authority in the underlying felony for which the person was
331 incarcerated. At a minimum, the petition must:

332 1. State that verifiable and substantial evidence of actual
333 innocence exists and state with particularity the nature and
334 significance of the verifiable and substantial evidence of
335 actual innocence; and

336 2. State that the person is not disqualified, under the
337 provisions of s. 961.04, from seeking compensation under this
338 act.

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

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

348 (b) By contesting the nature, significance, or effect of

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349 the evidence of actual innocence, the facts related to the
350 petitioner's alleged wrongful incarceration, or whether the
351 petitioner is ineligible from seeking compensation under the
352 provisions of s. 961.04.

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

367 (4)(a) If the prosecuting authority responds as set forth
368 in paragraph (2)(b), the original sentencing court shall make a
369 determination from the pleadings and supporting documentation
370 whether, by a preponderance of the evidence, the petitioner is
371 ineligible for compensation under the provisions of s. 961.04,
372 regardless of his or her claim of wrongful incarceration. If the
373 court finds the petitioner ineligible under the provisions of s.
374 961.04, it shall dismiss the petition.

375 (b) If the prosecuting authority responds as set forth in
376 paragraph (2)(b), and the court determines that the petitioner
377 is eligible under the provisions of s. 961.04, but the

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378 prosecuting authority contests the nature, significance or
379 effect of the evidence of actual innocence, or the facts related
380 to the petitioner's alleged wrongful incarceration, the court
381 shall set forth its findings and transfer the petition by
382 electronic means through the division's website to the division
383 for findings of fact and a recommended determination of whether
384 the petitioner has established that he or she is a wrongfully
385 incarcerated person who is eligible for compensation under this
386 act.

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