

**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.