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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  
6     specified amounts of certain substances; 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; amending s. 961.03,  
12    F.S.; extending the filing deadline for a petition  
13    claiming wrongful incarceration; providing limited  
14    retroactivity for filing a petition claiming wrongful  
15    incarceration; amending s. 961.04, F.S.; deleting  
16    eligibility requirements relating to a person's  
17    conduct before the person's wrongful conviction or  
18    incarceration; amending s. 961.06, F.S.; requiring the  
19    state to deduct the amount of a civil award from the  
20    state compensation amount owed if the claimant first  
21    receives a civil award; deleting a requirement that a  
22    wrongfully incarcerated person sign a liability  
23    release before receiving compensation; requiring a  
24    claimant to reimburse the state for any difference  
25    between state compensation and a civil award if the  
26    claimant receives statutory compensation prior to a  
27    civil award; deleting provisions prohibiting an  
28    application for compensation if the applicant has a  
29    pending civil suit requesting compensation; requiring

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30 a claimant to notify the Department of Legal Affairs  
31 upon filing a civil action; requiring the department  
32 to file a notice of payment of monetary compensation  
33 in the civil action; amending s. 893.03, F.S.;  
34 conforming a cross-reference; reenacting ss. 961.02(4)  
35 and 961.03(1)(a), (2), (3), and (4), F.S., all  
36 relating to eligibility for compensation for  
37 wrongfully incarcerated persons; providing an  
38 effective date.

39  
40 Be It Enacted by the Legislature of the State of Florida:

41  
42 Section 1. Present subsection (10) of section 893.13,  
43 Florida Statutes, is redesignated as subsection (11), and a new  
44 subsection (10) is added to that section, to read:

45 893.13 Prohibited acts; penalties.—

46 (10) Notwithstanding chapter 921, any provision of this  
47 section, or any other law relating to the punishment for  
48 possessing, purchasing, or possessing with the intent to  
49 purchase a controlled substance, a person who possesses,  
50 purchases, or possesses with the intent to purchase any of the  
51 following substances may not be imprisoned for a term longer  
52 than 12 months:

53 (a) One gram or less of a mixture or substance containing a  
54 detectable amount of heroin;

55 (b) One gram or less of a mixture or substance containing a  
56 detectable amount of:

57 1. Coca leaves, except coca leaves and extracts of coca  
58 leaves from which cocaine, ecgonine, and derivations of ecgonine

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59 or their salts have been removed;

60 2. Cocaine, its salts, optical and geometric isomers, and  
61 salts of its isomers;

62 3. Ecgonine, its derivatives, their salts, isomers, and  
63 salts of their isomers; or

64 4. Any compound, mixture, or preparation of any of the  
65 substances described in subparagraph 1., subparagraph 2., or  
66 subparagraph 3.

67 (c) One-tenth gram or less of a mixture or substance  
68 containing a detectable amount of phencyclidine (PCP);

69 (d) Five-hundred micrograms or less of a mixture or  
70 substance containing a detectable amount of lysergic acid  
71 diethylamide (LSD); or

72 (e) One gram or less of methamphetamine, its salts,  
73 isomers, and salts of its isomers, or one gram of a mixture or  
74 substance containing a detectable amount of methamphetamine, its  
75 salts, isomers, or salts of its isomers.

76 Section 2. Present subsections (6) and (7) of section  
77 893.135, Florida Statutes, are redesignated as subsections (7)  
78 and (8), respectively, and a new subsection (6) is added to that  
79 section, to read:

80 893.135 Trafficking; mandatory sentences; suspension or  
81 reduction of sentences; conspiracy to engage in trafficking.—

82 (6) Notwithstanding any provision of this section, a court  
83 may impose a sentence for a violation of this section other than  
84 the mandatory minimum term of imprisonment and mandatory fine  
85 if, after the state has been afforded an opportunity on the  
86 record to make a recommendation, the court finds on the record  
87 that all of the following circumstances exist:

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88 (a) The defendant has no prior conviction for a forcible  
89 felony as defined in s. 776.08, has no prior conviction for  
90 trafficking in a controlled substance, and has a total prior  
91 record score of less than four points on his or her sentencing  
92 scoresheet.

93 (b) The defendant did not use violence or credible threats  
94 of violence, or possess a firearm or other dangerous weapon, or  
95 induce another participant to use violence or credible threats  
96 of violence, in connection with the offense.

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

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

102 (e) At the time of the sentencing hearing or earlier, the  
103 defendant has truthfully provided to the state all information  
104 and evidence that he or she possesses concerning the offense or  
105 offenses that were part of the same course of conduct or of a  
106 common scheme or plan.

107 (f) The defendant has not previously benefited from the  
108 application of this subsection.

109  
110 A court may not apply this subsection to an offense under this  
111 section which carries a mandatory minimum term of imprisonment  
112 of 7 years or more.

113 Section 3. Paragraph (b) of subsection (1) of section  
114 961.03, Florida Statutes, is amended, and paragraph (c) is added  
115 to that subsection, to read:

116 961.03 Determination of status as a wrongfully incarcerated

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117 person; determination of eligibility for compensation.—

118 (1)

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

120 1. Within 2 years after the order vacating a conviction and  
121 sentence becomes final and the criminal charges against the  
122 person are dismissed or the person is retried and found not  
123 guilty, if the person's conviction and sentence is vacated on or  
124 after July 1, 2020.

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

131 a. Date when the criminal charges against the person were  
132 dismissed or the date the person was acquitted upon retrial  
133 occurred more than 90 days after the date of the final order  
134 vacating the conviction and sentence; or

135 b. Person was convicted of an unrelated felony before his  
136 or her wrongful conviction and incarceration and was previously  
137 barred under s. 961.04.

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

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

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

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146 Section 4. Subsections (3), (4), and (5) of section 961.04,  
147 Florida Statutes, are renumbered as subsections (1), (2), and  
148 (3), respectively, and present subsections (1) and (2) of that  
149 section are amended, to read:

150 961.04 Eligibility for compensation for wrongful  
151 incarceration.—A wrongfully incarcerated person is not eligible  
152 for compensation under the act if:

153 ~~(1) Before the person's wrongful conviction and~~  
154 ~~incarceration, the person was convicted of, or pled guilty or~~  
155 ~~nolo contendere to, regardless of adjudication, any violent~~  
156 ~~felony, or a crime committed in another jurisdiction the~~  
157 ~~elements of which would constitute a violent felony in this~~  
158 ~~state, or a crime committed against the United States which is~~  
159 ~~designated a violent felony, excluding any delinquency~~  
160 ~~disposition;~~

161 ~~(2) Before the person's wrongful conviction and~~  
162 ~~incarceration, the person was convicted of, or pled guilty or~~  
163 ~~nolo contendere to, regardless of adjudication, more than one~~  
164 ~~felony that is not a violent felony, or more than one crime~~  
165 ~~committed in another jurisdiction, the elements of which would~~  
166 ~~constitute a felony in this state, or more than one crime~~  
167 ~~committed against the United States which is designated a~~  
168 ~~felony, excluding any delinquency disposition;~~

169 Section 5. Section 961.06, Florida Statutes, is amended to  
170 read:

171 961.06 Compensation for wrongful incarceration.—

172 (1) Except as otherwise provided in this act and subject to  
173 the limitations and procedures prescribed in this section, a  
174 person who is found to be entitled to compensation under the

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175 provisions of this act is entitled to:

176 (a) Monetary compensation for wrongful incarceration, which  
177 shall be calculated at a rate of \$50,000 for each year of  
178 wrongful incarceration, prorated as necessary to account for a  
179 portion of a year. For persons found to be wrongfully  
180 incarcerated after December 31, 2008, the Chief Financial  
181 Officer may adjust the annual rate of compensation for inflation  
182 using the change in the December-to-December "Consumer Price  
183 Index for All Urban Consumers" of the Bureau of Labor Statistics  
184 of the Department of Labor;

185 (b) A waiver of tuition and fees for up to 120 hours of  
186 instruction at any career center established under s. 1001.44,  
187 any Florida College System institution as defined in s.  
188 1000.21(3), or any state university as defined in s. 1000.21(6),  
189 if the wrongfully incarcerated person meets and maintains the  
190 regular admission requirements of such career center, Florida  
191 College System institution, or state university; remains  
192 registered at such educational institution; and makes  
193 satisfactory academic progress as defined by the educational  
194 institution in which the claimant is enrolled;

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

197 (d) The amount of any reasonable attorney ~~attorney's~~ fees  
198 and expenses incurred and paid by the wrongfully incarcerated  
199 person in connection with all criminal proceedings and appeals  
200 regarding the wrongful conviction, to be calculated by the  
201 department based upon the supporting documentation submitted as  
202 specified in s. 961.05; and

203 (e) Notwithstanding any provision to the contrary in s.

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204 943.0583 or s. 943.0585, immediate administrative expunction of  
205 the person's criminal record resulting from his or her wrongful  
206 arrest, wrongful conviction, and wrongful incarceration. The  
207 Department of Legal Affairs and the Department of Law  
208 Enforcement shall, upon a determination that a claimant is  
209 entitled to compensation, immediately take all action necessary  
210 to administratively expunge the claimant's criminal record  
211 arising from his or her wrongful arrest, wrongful conviction,  
212 and wrongful incarceration. All fees for this process shall be  
213 waived.

214  
215 The total compensation awarded under paragraphs (a), (c), and  
216 (d) may not exceed \$2 million. No further award for attorney  
217 ~~attorney's~~ fees, lobbying fees, costs, or other similar expenses  
218 shall be made by the state.

219 (2) In calculating monetary compensation under paragraph  
220 (1) (a), a wrongfully incarcerated person who is placed on parole  
221 or community supervision while serving the sentence resulting  
222 from the wrongful conviction and who commits no more than one  
223 felony that is not a violent felony which results in revocation  
224 of the parole or community supervision is eligible for  
225 compensation for the total number of years incarcerated. A  
226 wrongfully incarcerated person who commits one violent felony or  
227 more than one felony that is not a violent felony that results  
228 in revocation of the parole or community supervision is  
229 ineligible for any compensation under subsection (1).

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

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

237 (4) The Chief Financial Officer shall issue payment in the  
238 amount determined by the department to an insurance company or  
239 other financial institution admitted and authorized to issue  
240 annuity contracts in this state to purchase an annuity or  
241 annuities, selected by the wrongfully incarcerated person, for a  
242 term of not less than 10 years. The Chief Financial Officer is  
243 directed to execute all necessary agreements to implement this  
244 act and to maximize the benefit to the wrongfully incarcerated  
245 person. The terms of the annuity or annuities shall:

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

249 (b) Contain beneficiary provisions for the continued  
250 disbursement of the annuity or annuities in the event of the  
251 death of the wrongfully incarcerated person.

252 (5) If, at the time monetary compensation is determined  
253 under paragraph (1)(a), a court has previously entered a  
254 monetary judgment in favor of the claimant in a civil action  
255 related to the person's wrongful incarceration, or the claimant  
256 has entered into a settlement agreement with the state or any  
257 political subdivision thereof related to the person's wrongful  
258 incarceration, the amount of the damages in the civil action or  
259 settlement agreement, less any sums paid for attorney fees or  
260 for costs incurred in litigating the civil action or obtaining  
261 the settlement agreement, must be deducted from the total

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262 monetary compensation to which the claimant is entitled under  
263 this section ~~Before the department approves the application for~~  
264 ~~compensation, the wrongfully incarcerated person must sign a~~  
265 ~~release and waiver on behalf of the wrongfully incarcerated~~  
266 ~~person and his or her heirs, successors, and assigns, forever~~  
267 ~~releasing the state or any agency, instrumentality, or any~~  
268 ~~political subdivision thereof, or any other entity subject to s.~~  
269 ~~768.28, from all present or future claims that the wrongfully~~  
270 ~~incarcerated person or his or her heirs, successors, or assigns~~  
271 ~~may have against such entities arising out of the facts in~~  
272 ~~connection with the wrongful conviction for which compensation~~  
273 ~~is being sought under the act.~~

274 (6) If subsection (5) does not apply, and if after the time  
275 monetary compensation is determined under paragraph (1) (a) the  
276 court enters a monetary judgment in favor of the claimant in a  
277 civil action related to the person's wrongful incarceration, or  
278 the claimant enters into a settlement agreement with the state  
279 or any political subdivision thereof related to the person's  
280 wrongful incarceration, the claimant must reimburse the state  
281 for the monetary compensation in paragraph (1) (a), less any sums  
282 paid for attorney fees or costs incurred in litigating the civil  
283 action or obtaining the settlement agreement. A reimbursement  
284 required under this subsection shall not exceed the amount of  
285 the monetary award the claimant received for damages in a civil  
286 action or settlement agreement. The court shall include in the  
287 order of judgment an award to the state of any amount required  
288 to be deducted under this subsection.

289 ~~(6) (a) A wrongfully incarcerated person may not submit an~~  
290 ~~application for compensation under this act if the person has a~~

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291 ~~lawsuit pending against the state or any agency,~~  
292 ~~instrumentality, or any political subdivision thereof, or any~~  
293 ~~other entity subject to the provisions of s. 768.28, in state or~~  
294 ~~federal court requesting compensation arising out of the facts~~  
295 ~~in connection with the claimant's conviction and incarceration.~~

296 (7) (a) The claimant shall notify the department upon filing  
297 a civil action against the state or any political subdivision  
298 thereof in which the claimant is seeking monetary damages  
299 related to the claimant's wrongful incarceration for which he or  
300 she previously received or is applying to receive compensation  
301 pursuant to paragraph (1) (a).

302 (b) Upon notice of the claimant's civil action, the  
303 department shall file in the case a notice of payment of  
304 monetary compensation to the claimant under paragraph (1) (a).  
305 The notice shall constitute a lien upon any judgment or  
306 settlement recovered under the civil action that is equal to the  
307 sum of monetary compensation paid to the claimant under  
308 paragraph (1) (a), less any attorney fees and litigation costs.

309 ~~(8) (a) (b)~~ A wrongfully incarcerated person may not submit  
310 an application for compensation under this act if the person is  
311 the subject of a claim bill pending for claims arising out of  
312 the facts in connection with the claimant's conviction and  
313 incarceration.

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

317 ~~(c) (d)~~ Any amount awarded under this act is intended to  
318 provide the sole compensation for any and all present and future  
319 claims arising out of the facts in connection with the

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320 ~~claimant's conviction and incarceration.~~ Upon notification by  
321 the department that an application meets the requirements of  
322 this act, a wrongfully incarcerated person may not recover under  
323 a claim bill.

324 (d)~~(e)~~ Any compensation awarded under a claim bill shall be  
325 the sole redress for claims arising out of the facts in  
326 connection with the claimant's conviction and incarceration and,  
327 upon any award of compensation to a wrongfully incarcerated  
328 person under a claim bill, the person may not receive  
329 compensation under this act.

330 (9)~~(7)~~ Any payment made under this act does not constitute  
331 a waiver of any defense of sovereign immunity or an increase in  
332 the limits of liability on behalf of the state or any person  
333 subject to the provisions of s. 768.28 or other law.

334 Section 6. Paragraph (c) of subsection (3) of section  
335 893.03, Florida Statutes, is amended to read:

336 893.03 Standards and schedules.—The substances enumerated  
337 in this section are controlled by this chapter. The controlled  
338 substances listed or to be listed in Schedules I, II, III, IV,  
339 and V are included by whatever official, common, usual,  
340 chemical, trade name, or class designated. The provisions of  
341 this section shall not be construed to include within any of the  
342 schedules contained in this section any excluded drugs listed  
343 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded  
344 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical  
345 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted  
346 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt  
347 Anabolic Steroid Products."

348 (3) SCHEDULE III.—A substance in Schedule III has a

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349 potential for abuse less than the substances contained in  
350 Schedules I and II and has a currently accepted medical use in  
351 treatment in the United States, and abuse of the substance may  
352 lead to moderate or low physical dependence or high  
353 psychological dependence or, in the case of anabolic steroids,  
354 may lead to physical damage. The following substances are  
355 controlled in Schedule III:

356 (c) Unless specifically excepted or unless listed in  
357 another schedule, any material, compound, mixture, or  
358 preparation containing limited quantities of any of the  
359 following controlled substances or any salts thereof:

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

363 2. Not more than 1.8 grams of codeine per 100 milliliters  
364 or not more than 90 milligrams per dosage unit, with recognized  
365 therapeutic amounts of one or more active ingredients which are  
366 not controlled substances.

367 3. Not more than 300 milligrams of hydrocodone per 100  
368 milliliters or not more than 15 milligrams per dosage unit, with  
369 a fourfold or greater quantity of an isoquinoline alkaloid of  
370 opium.

371 4. Not more than 300 milligrams of hydrocodone per 100  
372 milliliters or not more than 15 milligrams per dosage unit, with  
373 recognized therapeutic amounts of one or more active ingredients  
374 that are not controlled substances.

375 5. Not more than 1.8 grams of dihydrocodeine per 100  
376 milliliters or not more than 90 milligrams per dosage unit, with  
377 recognized therapeutic amounts of one or more active ingredients

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378 which are not controlled substances.

379 6. Not more than 300 milligrams of ethylmorphine per 100  
380 milliliters or not more than 15 milligrams per dosage unit, with  
381 one or more active, nonnarcotic ingredients in recognized  
382 therapeutic amounts.

383 7. Not more than 50 milligrams of morphine per 100  
384 milliliters or per 100 grams, with recognized therapeutic  
385 amounts of one or more active ingredients which are not  
386 controlled substances.

387

388 For purposes of charging a person with a violation of s. 893.135  
389 involving any controlled substance described in subparagraph 3.  
390 or subparagraph 4., the controlled substance is a Schedule III  
391 controlled substance pursuant to this paragraph but the weight  
392 of the controlled substance per milliliters or per dosage unit  
393 is not relevant to the charging of a violation of s. 893.135.  
394 The weight of the controlled substance shall be determined  
395 pursuant to s. 893.135(7) ~~s. 893.135(6)~~.

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

400 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

401 (4) "Eligible for compensation" means that a person meets  
402 the definition of the term "wrongfully incarcerated person" and  
403 is not disqualified from seeking compensation under the criteria  
404 prescribed in s. 961.04.

405 Section 8. For the purpose of incorporating the amendments  
406 made by this act to section 961.04, Florida Statutes, in

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407 references thereto, paragraph (a) of subsection (1) and  
408 subsections (2), (3), and (4) of section 961.03, Florida  
409 Statutes, are reenacted to read:

410 961.03 Determination of status as a wrongfully incarcerated  
411 person; determination of eligibility for compensation.—

412 (1) (a) In order to meet the definition of a "wrongfully  
413 incarcerated person" and "eligible for compensation," upon entry  
414 of an order, based upon exonerating evidence, vacating a  
415 conviction and sentence, a person must set forth the claim of  
416 wrongful incarceration under oath and with particularity by  
417 filing a petition with the original sentencing court, with a  
418 copy of the petition and proper notice to the prosecuting  
419 authority in the underlying felony for which the person was  
420 incarcerated. At a minimum, the petition must:

421 1. State that verifiable and substantial evidence of actual  
422 innocence exists and state with particularity the nature and  
423 significance of the verifiable and substantial evidence of  
424 actual innocence; and

425 2. State that the person is not disqualified, under the  
426 provisions of s. 961.04, from seeking compensation under this  
427 act.

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

430 (a) By certifying to the court that, based upon the  
431 petition and verifiable and substantial evidence of actual  
432 innocence, no further criminal proceedings in the case at bar  
433 can or will be initiated by the prosecuting authority, that no  
434 questions of fact remain as to the petitioner's wrongful  
435 incarceration, and that the petitioner is not ineligible from

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436 seeking compensation under the provisions of s. 961.04; or

437 (b) By contesting the nature, significance, or effect of  
438 the evidence of actual innocence, the facts related to the  
439 petitioner's alleged wrongful incarceration, or whether the  
440 petitioner is ineligible from seeking compensation under the  
441 provisions of s. 961.04.

442 (3) If the prosecuting authority responds as set forth in  
443 paragraph (2)(a), the original sentencing court, based upon the  
444 evidence of actual innocence, the prosecuting authority's  
445 certification, and upon the court's finding that the petitioner  
446 has presented clear and convincing evidence that the petitioner  
447 committed neither the act nor the offense that served as the  
448 basis for the conviction and incarceration, and that the  
449 petitioner did not aid, abet, or act as an accomplice to a  
450 person who committed the act or offense, shall certify to the  
451 department that the petitioner is a wrongfully incarcerated  
452 person as defined by this act. Based upon the prosecuting  
453 authority's certification, the court shall also certify to the  
454 department that the petitioner is eligible for compensation  
455 under the provisions of s. 961.04.

456 (4)(a) If the prosecuting authority responds as set forth  
457 in paragraph (2)(b), the original sentencing court shall make a  
458 determination from the pleadings and supporting documentation  
459 whether, by a preponderance of the evidence, the petitioner is  
460 ineligible for compensation under the provisions of s. 961.04,  
461 regardless of his or her claim of wrongful incarceration. If the  
462 court finds the petitioner ineligible under the provisions of s.  
463 961.04, it shall dismiss the petition.

464 (b) If the prosecuting authority responds as set forth in

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465 paragraph (2)(b), and the court determines that the petitioner  
466 is eligible under the provisions of s. 961.04, but the  
467 prosecuting authority contests the nature, significance or  
468 effect of the evidence of actual innocence, or the facts related  
469 to the petitioner's alleged wrongful incarceration, the court  
470 shall set forth its findings and transfer the petition by  
471 electronic means through the division's website to the division  
472 for findings of fact and a recommended determination of whether  
473 the petitioner has established that he or she is a wrongfully  
474 incarcerated person who is eligible for compensation under this  
475 act.

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