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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; providing that a deceased person's
16 heirs, successors, or assigns do not have standing to
17 file a claim related to the wrongful incarceration of
18 the deceased person; amending s. 961.04, F.S.;
19 deleting eligibility requirements relating to a
20 person's conduct before the person's wrongful
21 conviction or incarceration; amending s. 961.06, F.S.;
22 requiring the state to deduct the amount of a civil
23 award from the state compensation amount owed if the
24 claimant first receives a civil award; deleting a
25 requirement that a wrongfully incarcerated person sign
26 a liability release before receiving compensation;
27 requiring a claimant to reimburse the state for any
28 difference between state compensation and a civil
29 award if the claimant receives statutory compensation

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30 prior to a civil award; deleting provisions
31 prohibiting an application for compensation if the
32 applicant has a pending civil suit requesting
33 compensation; requiring a claimant to notify the
34 Department of Legal Affairs upon filing a civil
35 action; requiring the department to file a notice of
36 payment of monetary compensation in the civil action;
37 amending s. 893.03, F.S.; conforming a cross-
38 reference; reenacting ss. 961.02(4) and 961.03(1)(a),
39 (2), (3), and (4), F.S., all relating to eligibility
40 for compensation for wrongfully incarcerated persons;
41 providing an effective date.

42
43 Be It Enacted by the Legislature of the State of Florida:

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

48 893.13 Prohibited acts; penalties.—

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

56 (a) One gram or less of a mixture or substance containing a
57 detectable amount of heroin;

58 (b) One gram or less of a mixture or substance containing a

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59 detectable amount of:

60 1. Coca leaves, except coca leaves and extracts of coca
61 leaves from which cocaine, ecgonine, and derivations of ecgonine
62 or their salts have been removed;

63 2. Cocaine, its salts, optical and geometric isomers, and
64 salts of its isomers;

65 3. Ecgonine, its derivatives, their salts, isomers, and
66 salts of their isomers; or

67 4. Any compound, mixture, or preparation of any of the
68 substances described in subparagraph 1., subparagraph 2., or
69 subparagraph 3.

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

72 (d) Five-hundred micrograms or less of a mixture or
73 substance containing a detectable amount of lysergic acid
74 diethylamide (LSD); or

75 (e) One gram or less of methamphetamine, its salts,
76 isomers, and salts of its isomers, or one gram of a mixture or
77 substance containing a detectable amount of methamphetamine, its
78 salts, isomers, or salts of its isomers.

79 Section 2. Present subsections (6) and (7) of section
80 893.135, Florida Statutes, are redesignated as subsections (7)
81 and (8), respectively, and a new subsection (6) is added to that
82 section, to read:

83 893.135 Trafficking; mandatory sentences; suspension or
84 reduction of sentences; conspiracy to engage in trafficking.—

85 (6) Notwithstanding any provision of this section, a court
86 may impose a sentence for a violation of this section other than
87 the mandatory minimum term of imprisonment and mandatory fine

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88 if, after the state has been afforded an opportunity on the
89 record to make a recommendation, the court finds on the record
90 that all of the following circumstances exist:

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

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

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

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

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

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

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

116 Section 3. Paragraph (b) of subsection (1) of section

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117 961.03, Florida Statutes, is amended, and paragraph (c) is added
118 to that subsection, to read:

119 961.03 Determination of status as a wrongfully incarcerated
120 person; determination of eligibility for compensation.—

121 (1)

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

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

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

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

138 b. Person was convicted of an unrelated felony before his
139 or her wrongful conviction and incarceration and was previously
140 barred under s. 961.04.

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

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

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

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

153 961.04 Eligibility for compensation for wrongful
154 incarceration.—A wrongfully incarcerated person is not eligible
155 for compensation under the act if:

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

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

172 Section 5. Section 961.06, Florida Statutes, is amended to
173 read:

174 961.06 Compensation for wrongful incarceration.—

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175 (1) Except as otherwise provided in this act and subject to
176 the limitations and procedures prescribed in this section, a
177 person who is found to be entitled to compensation under the
178 provisions of this act is entitled to:

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

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

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

200 (d) The amount of any reasonable attorney ~~attorney's~~ fees
201 and expenses incurred and paid by the wrongfully incarcerated
202 person in connection with all criminal proceedings and appeals
203 regarding the wrongful conviction, to be calculated by the

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204 department based upon the supporting documentation submitted as
205 specified in s. 961.05; and

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

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

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

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

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

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

252 (b) Contain beneficiary provisions for the continued
253 disbursement of the annuity or annuities in the event of the
254 death of the wrongfully incarcerated person.

255 (5) If, at the time monetary compensation is determined
256 under paragraph (1) (a), a court has previously entered a
257 monetary judgment in favor of the claimant in a civil action
258 related to the person's wrongful incarceration, or the claimant
259 has entered into a settlement agreement with the state or any
260 political subdivision thereof related to the person's wrongful
261 incarceration, the amount of the damages in the civil action or

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

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

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291 to be deducted under this subsection.

292 ~~(6) (a) A wrongfully incarcerated person may not submit an~~
293 ~~application for compensation under this act if the person has a~~
294 ~~lawsuit pending against the state or any agency,~~
295 ~~instrumentality, or any political subdivision thereof, or any~~
296 ~~other entity subject to the provisions of s. 768.28, in state or~~
297 ~~federal court requesting compensation arising out of the facts~~
298 ~~in connection with the claimant's conviction and incarceration.~~

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

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

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

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

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320 (c)~~(d)~~ Any amount awarded under this act is intended to
321 provide the sole compensation for any and all present and future
322 claims arising out of the facts in connection with the
323 claimant's conviction and incarceration. Upon notification by
324 the department that an application meets the requirements of
325 this act, a wrongfully incarcerated person may not recover under
326 a claim bill.

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

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

337 Section 6. Paragraph (c) of subsection (3) of section
338 893.03, Florida Statutes, is amended to read:

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

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349 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
350 Anabolic Steroid Products."

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

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

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

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

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

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

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378 5. Not more than 1.8 grams of dihydrocodeine per 100
379 milliliters or not more than 90 milligrams per dosage unit, with
380 recognized therapeutic amounts of one or more active ingredients
381 which are not controlled substances.

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

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

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

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

403 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

404 (4) "Eligible for compensation" means that a person meets
405 the definition of the term "wrongfully incarcerated person" and
406 is not disqualified from seeking compensation under the criteria

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407 prescribed in s. 961.04.

408 Section 8. For the purpose of incorporating the amendments
409 made by this act to section 961.04, Florida Statutes, in
410 references thereto, paragraph (a) of subsection (1) and
411 subsections (2), (3), and (4) of section 961.03, Florida
412 Statutes, are reenacted to read:

413 961.03 Determination of status as a wrongfully incarcerated
414 person; determination of eligibility for compensation.—

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

424 1. State that verifiable and substantial evidence of actual
425 innocence exists and state with particularity the nature and
426 significance of the verifiable and substantial evidence of
427 actual innocence; and

428 2. State that the person is not disqualified, under the
429 provisions of s. 961.04, from seeking compensation under this
430 act.

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

433 (a) By certifying to the court that, based upon the
434 petition and verifiable and substantial evidence of actual
435 innocence, no further criminal proceedings in the case at bar

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436 can or will be initiated by the prosecuting authority, that no
437 questions of fact remain as to the petitioner's wrongful
438 incarceration, and that the petitioner is not ineligible from
439 seeking compensation under the provisions of s. 961.04; or

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

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

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

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465 court finds the petitioner ineligible under the provisions of s.
466 961.04, it shall dismiss the petition.

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

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