



320680

LEGISLATIVE ACTION

Senate

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House

Senator Bradley moved the following:

1 **Senate Amendment to House Amendment (601895) (with title**
2 **amendment)**

3
4 After line 74
5 insert:

6 Section 3. Present subsection (10) of section 893.13,
7 Florida Statutes, is redesignated as subsection (11), and a new
8 subsection (10) is added to that section, to read:

9 893.13 Prohibited acts; penalties.—

10 (10) Notwithstanding chapter 921, any provision of this
11 section, or any other law relating to the punishment for



320680

12 possessing, purchasing, or possessing with the intent to
13 purchase a controlled substance, a person who possesses,
14 purchases, or possesses with the intent to purchase any of the
15 following substances may not be imprisoned for a term longer
16 than 12 months:

17 (a) One gram or less of a mixture or substance containing a
18 detectable amount of heroin;

19 (b) One gram or less of a mixture or substance containing a
20 detectable amount of:

21 1. Coca leaves, except coca leaves and extracts of coca
22 leaves from which cocaine, ecgonine, and derivations of ecgonine
23 or their salts have been removed;

24 2. Cocaine, its salts, optical and geometric isomers, and
25 salts of its isomers;

26 3. Ecgonine, its derivatives, their salts, isomers, and
27 salts of their isomers; or

28 4. Any compound, mixture, or preparation of any of the
29 substances described in subparagraph 1., subparagraph 2., or
30 subparagraph 3.;

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

33 (d) Five-hundred micrograms or less of a mixture or
34 substance containing a detectable amount of lysergic acid
35 diethylamide (LSD); or

36 (e) One gram or less of methamphetamine, its salts,
37 isomers, and salts of its isomers, or one gram of a mixture or
38 substance containing a detectable amount of methamphetamine, its
39 salts, isomers, or salts of its isomers.

40 Section 4. Paragraph (b) of subsection (1) of section



320680

41 961.03, Florida Statutes, is amended, and paragraph (c) is added
42 to that subsection, to read:

43 961.03 Determination of status as a wrongfully incarcerated
44 person; determination of eligibility for compensation.—

45 (1)

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

47 1. Within 2 years after the order vacating a conviction and
48 sentence becomes final and the criminal charges against the
49 person are dismissed or the person is retried and acquitted, if
50 the person's conviction and sentence is vacated on or after July
51 1, 2020.

52 2. By July 1, 2022, if the person's conviction and sentence
53 was vacated and the criminal charges against the person were
54 dismissed or the person was retried and acquitted on or after
55 January 1, 2006, but before July 1, 2020, and he or she
56 previously filed a petition under this section that was
57 dismissed or did not file a petition under this section because
58 the:

59 a. Date when the criminal charges against the person were
60 dismissed or the date the person was acquitted upon retrial
61 occurred more than 90 days after the date of the final order
62 vacating the conviction and sentence; or

63 b. Person was convicted of an unrelated felony before or
64 during his or her wrongful conviction and incarceration and was
65 ineligible for compensation under former s. 961.04.

66 (c) A deceased person's heirs, successors, or assigns do
67 not have standing to file a petition on the deceased person's
68 behalf under this section.

69 ~~1. Within 90 days after the order vacating a conviction and~~



320680

70 ~~sentence becomes final if the person's conviction and sentence~~
71 ~~is vacated on or after July 1, 2008.~~

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

74 Section 5. Section 961.04, Florida Statutes, is amended to
75 read:

76 961.04 Eligibility for compensation for wrongful
77 incarceration.—A wrongfully incarcerated person is not eligible
78 for compensation under the act for any period of incarceration
79 during which the person was concurrently serving a sentence for
80 a conviction of another crime for which such person was lawfully
81 incarcerated if:

82 ~~(1) Before the person's wrongful conviction and~~
83 ~~incarceration, the person was convicted of, or pled guilty or~~
84 ~~nolo contendere to, regardless of adjudication, any violent~~
85 ~~felony, or a crime committed in another jurisdiction the~~
86 ~~elements of which would constitute a violent felony in this~~
87 ~~state, or a crime committed against the United States which is~~
88 ~~designated a violent felony, excluding any delinquency~~
89 ~~disposition;~~

90 ~~(2) Before the person's wrongful conviction and~~
91 ~~incarceration, the person was convicted of, or pled guilty or~~
92 ~~nolo contendere to, regardless of adjudication, more than one~~
93 ~~felony that is not a violent felony, or more than one crime~~
94 ~~committed in another jurisdiction, the elements of which would~~
95 ~~constitute a felony in this state, or more than one crime~~
96 ~~committed against the United States which is designated a~~
97 ~~felony, excluding any delinquency disposition;~~

98 ~~(3) During the person's wrongful incarceration, the person~~



320680

99 ~~was convicted of, or pled guilty or nolo contendere to,~~
100 ~~regardless of adjudication, any violent felony;~~

101 ~~(4) During the person's wrongful incarceration, the person~~
102 ~~was convicted of, or pled guilty or nolo contendere to,~~
103 ~~regardless of adjudication, more than one felony that is not a~~
104 ~~violent felony; or~~

105 ~~(5) During the person's wrongful incarceration, the person~~
106 ~~was also serving a concurrent sentence for another felony for~~
107 ~~which the person was not wrongfully convicted.~~

108 Section 6. Section 961.06, Florida Statutes, is amended to
109 read:

110 961.06 Compensation for wrongful incarceration.-

111 (1) Except as otherwise provided in this act and subject to
112 the limitations and procedures prescribed in this section, a
113 person who is found to be entitled to compensation under the
114 provisions of this act is entitled to:

115 (a) Monetary compensation for wrongful incarceration, which
116 shall be calculated at a rate of \$50,000 for each year of
117 wrongful incarceration, prorated as necessary to account for a
118 portion of a year. For persons found to be wrongfully
119 incarcerated after December 31, 2005 ~~2008~~, the Chief Financial
120 Officer may adjust the annual rate of compensation for inflation
121 using the change in the December-to-December "Consumer Price
122 Index for All Urban Consumers" of the Bureau of Labor Statistics
123 of the Department of Labor;

124 (b) A waiver of tuition and fees for up to 120 hours of
125 instruction at any career center established under s. 1001.44,
126 any Florida College System institution as defined in s.
127 1000.21(3), or any state university as defined in s. 1000.21(6),



320680

128 if the wrongfully incarcerated person meets and maintains the
129 regular admission requirements of such career center, Florida
130 College System institution, or state university; remains
131 registered at such educational institution; and makes
132 satisfactory academic progress as defined by the educational
133 institution in which the claimant is enrolled;

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

136 (d) The amount of any reasonable attorney ~~attorney's~~ fees
137 and expenses incurred and paid by the wrongfully incarcerated
138 person in connection with all criminal proceedings and appeals
139 regarding the wrongful conviction, to be calculated by the
140 department based upon the supporting documentation submitted as
141 specified in s. 961.05; and

142 (e) Notwithstanding any provision to the contrary in s.
143 943.0583 or s. 943.0585, immediate administrative expunction of
144 the person's criminal record resulting from his or her wrongful
145 arrest, wrongful conviction, and wrongful incarceration. The
146 Department of Legal Affairs and the Department of Law
147 Enforcement shall, upon a determination that a claimant is
148 entitled to compensation, immediately take all action necessary
149 to administratively expunge the claimant's criminal record
150 arising from his or her wrongful arrest, wrongful conviction,
151 and wrongful incarceration. All fees for this process shall be
152 waived.

153
154 The total compensation awarded under paragraphs (a), (c), and
155 (d) may not exceed \$2 million. No further award for attorney
156 ~~attorney's~~ fees, lobbying fees, costs, or other similar expenses



320680

157 shall be made by the state.

158 ~~(2) In calculating monetary compensation under paragraph~~
159 ~~(1)(a), a wrongfully incarcerated person who is placed on parole~~
160 ~~or community supervision while serving the sentence resulting~~
161 ~~from the wrongful conviction and who commits no more than one~~
162 ~~felony that is not a violent felony which results in revocation~~
163 ~~of the parole or community supervision is eligible for~~
164 ~~compensation for the total number of years incarcerated. A~~
165 ~~wrongfully incarcerated person who commits one violent felony or~~
166 ~~more than one felony that is not a violent felony that results~~
167 ~~in revocation of the parole or community supervision is~~
168 ~~ineligible for any compensation under subsection (1).~~

169 ~~(2)~~(3) Within 15 calendar days after issuing notice to the
170 claimant that his or her claim satisfies all of the requirements
171 under this act, the department shall notify the Chief Financial
172 Officer to draw a warrant from the General Revenue Fund or
173 another source designated by the Legislature in law for the
174 purchase of an annuity for the claimant based on the total
175 amount determined by the department under this act.

176 ~~(3)~~(4) The Chief Financial Officer shall issue payment in
177 the amount determined by the department to an insurance company
178 or other financial institution admitted and authorized to issue
179 annuity contracts in this state to purchase an annuity or
180 annuities, selected by the wrongfully incarcerated person, for a
181 term of not less than 10 years. The Chief Financial Officer is
182 directed to execute all necessary agreements to implement this
183 act and to maximize the benefit to the wrongfully incarcerated
184 person. The terms of the annuity or annuities shall:

185 (a) Provide that the annuity or annuities may not be sold,



320680

186 discounted, or used as security for a loan or mortgage by the
187 wrongfully incarcerated person.

188 (b) Contain beneficiary provisions for the continued
189 disbursement of the annuity or annuities in the event of the
190 death of the wrongfully incarcerated person.

191 (4)-(5) If, at the time monetary compensation is determined
192 under paragraph (1) (a), a court has previously entered a
193 monetary judgment in favor of the claimant in a civil action
194 related to the claimant's wrongful incarceration, or the
195 claimant has entered into a settlement agreement with the state
196 or any political subdivision thereof related to the claimant's
197 wrongful incarceration, the amount of the damages in the civil
198 action or settlement agreement, less any sums paid for attorney
199 fees or for costs incurred in litigating the civil action or
200 obtaining the settlement agreement, shall be deducted from the
201 total monetary compensation to which the claimant is entitled
202 under this section ~~Before the department approves the~~
203 ~~application for compensation, the wrongfully incarcerated person~~
204 ~~must sign a release and waiver on behalf of the wrongfully~~
205 ~~incarcerated person and his or her heirs, successors, and~~
206 ~~assigns, forever releasing the state or any agency,~~
207 ~~instrumentality, or any political subdivision thereof, or any~~
208 ~~other entity subject to s. 768.28, from all present or future~~
209 ~~claims that the wrongfully incarcerated person or his or her~~
210 ~~heirs, successors, or assigns may have against such entities~~
211 ~~arising out of the facts in connection with the wrongful~~
212 ~~conviction for which compensation is being sought under the act.~~

213 (5) If subsection (4) does not apply, and if after the time
214 monetary compensation is determined under paragraph (1) (a) the



320680

215 court enters a monetary judgment in favor of the claimant in a
216 civil action related to the claimant's wrongful incarceration,
217 or the claimant enters into a settlement agreement with the
218 state or any political subdivision thereof related to the
219 claimant's wrongful incarceration, the claimant shall reimburse
220 the state for the monetary compensation in paragraph (1) (a),
221 less any sums paid for attorney fees or for costs incurred in
222 litigating the civil action or obtaining the settlement
223 agreement. A reimbursement required under this subsection shall
224 not exceed the amount of the monetary award the claimant
225 received for damages in a civil action or settlement agreement.
226 In the order of judgment, the court shall award to the state any
227 amount required to be deducted under this subsection.

228 (6) (a) The claimant shall notify the department upon filing
229 a civil action against the state or any political subdivision
230 thereof in which the claimant is seeking monetary damages
231 related to the claimant's wrongful incarceration for which he or
232 she previously received or is applying to receive compensation
233 under paragraph (1) (a).

234 (b) Upon notice of the claimant's civil action, the
235 department shall file in the case a notice of payment of
236 monetary compensation to the claimant under paragraph (1) (a).
237 The notice shall constitute a lien upon any monetary judgment or
238 settlement recovered under the civil action that is equal to the
239 sum of monetary compensation paid to the claimant under
240 paragraph (1) (a), less any attorney fees and costs incurred in
241 litigating the civil action or obtaining the settlement
242 agreement ~~A wrongfully incarcerated person may not submit an~~
243 ~~application for compensation under this act if the person has a~~



320680

244 ~~lawsuit pending against the state or any agency,~~
245 ~~instrumentality, or any political subdivision thereof, or any~~
246 ~~other entity subject to the provisions of s. 768.28, in state or~~
247 ~~federal court requesting compensation arising out of the facts~~
248 ~~in connection with the claimant's conviction and incarceration.~~

249 (7) (a) ~~(b)~~ A wrongfully incarcerated person may not submit
250 an application for compensation under this act if the person is
251 the subject of a claim bill pending for claims arising out of
252 the facts in connection with the claimant's conviction and
253 incarceration.

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

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

264 (d) ~~(e)~~ Any compensation awarded under a claim bill shall be
265 the sole redress for claims arising out of the facts in
266 connection with the claimant's conviction and incarceration and,
267 upon any award of compensation to a wrongfully incarcerated
268 person under a claim bill, the person may not receive
269 compensation under this act.

270 (8) ~~(7)~~ Any payment made under this act does not constitute
271 a waiver of any defense of sovereign immunity or an increase in
272 the limits of liability on behalf of the state or any person



320680

273 subject to the provisions of s. 768.28 or other law.

274 Section 7. Section 961.07, Florida Statutes, is amended to
275 read:

276 961.07 Continuing appropriation.—

277 (1) Beginning in the 2020-2021 ~~2008-2009~~ fiscal year and
278 continuing each fiscal year thereafter, a sum sufficient to pay
279 the approved payments under s. 961.03(1)(b)1. ~~this act~~ is
280 appropriated from the General Revenue Fund to the Chief
281 Financial Officer, which sum is further appropriated for
282 expenditure pursuant to the provisions of this act.

283 (2) Payments for petitions filed pursuant to s.
284 961.03(1)(b)2. are subject to specific appropriation.

285 Section 8. For the purpose of incorporating the amendment
286 made by this act to section 961.04, Florida Statutes, in a
287 reference thereto, subsection (4) of section 961.02, Florida
288 Statutes, is reenacted to read:

289 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

290 (4) "Eligible for compensation" means that a person meets
291 the definition of the term "wrongfully incarcerated person" and
292 is not disqualified from seeking compensation under the criteria
293 prescribed in s. 961.04.

294 Section 9. For the purpose of incorporating the amendment
295 made by this act to section 961.04, Florida Statutes, in
296 references thereto, paragraph (a) of subsection (1) and
297 subsections (2), (3), and (4) of section 961.03, Florida
298 Statutes, are reenacted to read:

299 961.03 Determination of status as a wrongfully incarcerated
300 person; determination of eligibility for compensation.—

301 (1) (a) In order to meet the definition of a "wrongfully



320680

302 incarcerated person" and "eligible for compensation," upon entry
303 of an order, based upon exonerating evidence, vacating a
304 conviction and sentence, a person must set forth the claim of
305 wrongful incarceration under oath and with particularity by
306 filing a petition with the original sentencing court, with a
307 copy of the petition and proper notice to the prosecuting
308 authority in the underlying felony for which the person was
309 incarcerated. At a minimum, the petition must:

310 1. State that verifiable and substantial evidence of actual
311 innocence exists and state with particularity the nature and
312 significance of the verifiable and substantial evidence of
313 actual innocence; and

314 2. State that the person is not disqualified, under the
315 provisions of s. 961.04, from seeking compensation under this
316 act.

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

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

326 (b) By contesting the nature, significance, or effect of
327 the evidence of actual innocence, the facts related to the
328 petitioner's alleged wrongful incarceration, or whether the
329 petitioner is ineligible from seeking compensation under the
330 provisions of s. 961.04.



320680

331 (3) If the prosecuting authority responds as set forth in
332 paragraph (2) (a), the original sentencing court, based upon the
333 evidence of actual innocence, the prosecuting authority's
334 certification, and upon the court's finding that the petitioner
335 has presented clear and convincing evidence that the petitioner
336 committed neither the act nor the offense that served as the
337 basis for the conviction and incarceration, and that the
338 petitioner did not aid, abet, or act as an accomplice to a
339 person who committed the act or offense, shall certify to the
340 department that the petitioner is a wrongfully incarcerated
341 person as defined by this act. Based upon the prosecuting
342 authority's certification, the court shall also certify to the
343 department that the petitioner is eligible for compensation
344 under the provisions of s. 961.04.

345 (4) (a) If the prosecuting authority responds as set forth
346 in paragraph (2) (b), the original sentencing court shall make a
347 determination from the pleadings and supporting documentation
348 whether, by a preponderance of the evidence, the petitioner is
349 ineligible for compensation under the provisions of s. 961.04,
350 regardless of his or her claim of wrongful incarceration. If the
351 court finds the petitioner ineligible under the provisions of s.
352 961.04, it shall dismiss the petition.

353 (b) If the prosecuting authority responds as set forth in
354 paragraph (2) (b), and the court determines that the petitioner
355 is eligible under the provisions of s. 961.04, but the
356 prosecuting authority contests the nature, significance or
357 effect of the evidence of actual innocence, or the facts related
358 to the petitioner's alleged wrongful incarceration, the court
359 shall set forth its findings and transfer the petition by



320680

360 electronic means through the division's website to the division
361 for findings of fact and a recommended determination of whether
362 the petitioner has established that he or she is a wrongfully
363 incarcerated person who is eligible for compensation under this
364 act.

365
366 ===== T I T L E A M E N D M E N T =====

367 And the title is amended as follows:

368 Delete lines 78 - 85

369 and insert:

370 Remove lines 2-27 and insert:

371 An act relating to criminal justice; amending s.
372 20.316, F.S.; revising the name of a program and
373 creating an additional program within the Department
374 of Juvenile Justice; conforming a provision to changes
375 made by the act; amending and reenacting s. 943.0585,
376 F.S.; expanding an exception to an eligibility
377 requirement for expunction of a criminal history
378 record to allow a prior expunction of a criminal
379 history record granted for an offense committed when
380 the person was a minor; providing an exception;
381 amending s. 893.13, F.S.; prohibiting the imprisonment
382 for longer than a certain time for persons who
383 possess, purchase, or possess with the intent to
384 purchase less than specified amounts of certain
385 substances; providing exceptions; amending s. 961.03,
386 F.S.; extending the filing deadline for a petition
387 claiming wrongful incarceration; providing limited
388 retroactivity for filing a petition claiming wrongful



320680

389 incarceration; providing that a deceased person's
390 heirs, successors, or assigns do not have standing to
391 file a claim related to the wrongful incarceration of
392 the deceased person; amending s. 961.04, F.S.;

393 revising eligibility for compensation for wrongful
394 incarceration for a wrongfully incarcerated person;
395 amending s. 961.06, F.S.; authorizing the Chief
396 Financial Officer to adjust compensation for inflation
397 for additional wrongfully incarcerated persons;

398 revising conditions for eligibility for compensation
399 for wrongful incarceration; requiring the state to
400 deduct the amount of a civil award from the state
401 compensation amount owed if the claimant first
402 receives a civil award; deleting a requirement that a
403 wrongfully incarcerated person sign a liability
404 release before receiving compensation; requiring a
405 claimant to reimburse the state for any difference
406 between state compensation and a civil award if the
407 claimant receives statutory compensation before a
408 civil award; deleting provisions prohibiting an
409 application for compensation if the applicant has a
410 pending civil suit requesting compensation; requiring
411 a claimant to notify the Department of Legal Affairs
412 upon filing a civil action; requiring the department
413 to file a notice of payment of monetary compensation
414 in the civil action; amending s. 961.07, F.S.;

415 specifying that payments for certain petitions filed
416 under the Victims of Wrongful Incarceration Act are
417 subject to specific appropriation; reenacting ss.



320680

418 961.02(4) and 961.03(1)(a), (2), (3), and (4), F.S.,
419 all relating to eligibility for compensation for
420 wrongfully incarcerated persons, to incorporate the
421 amendment made to s. 961.04, F.S., in references
422 thereto; repealing s. 985.686, F.S., relating to
423 shared county and state responsibility for juvenile
424 detention; amending s. 985.6865, F.S.; deleting
425 provisions relating to legislative findings and
426 legislative intent; deleting a provision requiring
427 each county that is not a fiscally constrained county
428 to pay its annual percentage share of the total shared
429 detention costs; requiring the Department of Juvenile
430 Justice to calculate and provide to each county that
431 is not a fiscally constrained county and that does not
432 provide its own detention care for juveniles its
433 annual percentage share; requiring each county that is
434 not a fiscally constrained county and that does not
435 provide its own detention care for juveniles to
436 incorporate into its annual budget sufficient funds to
437 pay its annual percentage share; conforming a
438 provision to changes made by the act; conforming a
439 cross-reference; amending s. 943.0582, F.S.; deleting
440 a requirement that limits diversion program expunction
441 to programs for misdemeanor offenses; amending s.
442 985.126, F.S.; conforming a provision to changes made
443 by the act; providing an effective date.