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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/RM

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03/13/2020 10:14 PM

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Senator Brandes moved the following:

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

3
4 After line 74

5 insert:

6 Section 3. Section 925.11, Florida Statutes, is amended to
7 read:

8 925.11 Postsentencing forensic analysis ~~DNA testing~~.—

9 (1) DEFINITIONS.—As used in this section, the term:

10 (a) "CODIS" has the same meaning as provided in s. 943.325.

11 (b) "Department" means the Department of Law Enforcement.



842180

12 (c) "Forensic analysis" means the process by which a
13 forensic or scientific technique is applied to physical evidence
14 or biological material to identify the perpetrator of, or
15 accomplice to, a crime. The term includes, but is not limited
16 to, deoxyribonucleic acid (DNA) testing.

17 (d) "Petitioner" means a defendant who has been convicted
18 of and sentenced for a felony.

19 (2) ~~(1)~~ PETITION FOR EXAMINATION.-

20 (a) ~~1.~~ A person who has been tried and found guilty of
21 committing a felony and has been sentenced by a court
22 established by the laws of ~~the~~ this state may petition that
23 court to order the forensic analysis ~~examination~~ of physical
24 evidence collected at the time of the investigation of the crime
25 for which he or she has been sentenced that may result in
26 evidence material to the identity of the perpetrator of, or
27 accomplice to, the crime that resulted in the person's
28 conviction ~~may contain DNA (deoxyribonucleic acid) and that~~
29 would exonerate that person or mitigate the sentence that person
30 received.

31 ~~2. A person who has entered a plea of guilty or nolo~~
32 ~~contendere to a felony prior to July 1, 2006, and has been~~
33 ~~sentenced by a court established by the laws of this state may~~
34 ~~petition that court to order the examination of physical~~
35 ~~evidence collected at the time of the investigation of the crime~~
36 ~~for which he or she has been sentenced that may contain DNA~~
37 ~~(deoxyribonucleic acid) and that would exonerate that person.~~

38 (b) A petition for postsentencing forensic analysis ~~DNA~~
39 ~~testing~~ under paragraph (a) may be filed or considered at any
40 time following the date that the judgment and sentence in the



842180

41 case becomes final.

42 (3)~~(2)~~ METHOD FOR SEEKING POSTSENTENCING FORENSIC ANALYSIS
43 DNA TESTING.—

44 (a) A ~~The~~ petition for postsentencing forensic analysis ~~DNA~~
45 ~~testing must be made under oath by the sentenced defendant and~~
46 must include the following:

47 1. A statement of the facts relied on in support of the
48 petition, including a description of the physical evidence
49 ~~containing DNA to be tested and, if known, the present location~~
50 ~~or the last known location of the evidence and how it was~~
51 ~~originally obtained.~~†

52 2. A statement that the evidence was not previously
53 subjected to forensic analysis ~~tested for DNA~~ or a statement
54 that the results of any previous forensic analysis ~~DNA testing~~
55 were inconclusive and that subsequent scientific developments in
56 forensic analysis ~~DNA testing techniques~~ would likely produce
57 evidence material to a definitive result establishing that the
58 identity of the perpetrator of, or accomplice to, ~~petitioner is~~
59 ~~not the person who committed the crime.~~†

60 3. A statement that the petitioner ~~sentenced defendant~~ is
61 innocent and how the forensic analysis ~~DNA testing~~ requested by
62 the petitioner may result in evidence that is material to
63 petition will exonerate the identity of the perpetrator of, or
64 accomplice to, the defendant of the crime for which the
65 ~~defendant was sentenced or will mitigate the sentence received~~
66 ~~by the defendant for that crime.~~†

67 4. A statement that identification of the defendant is a
68 genuinely disputed issue in the case, and why it is an issue.†

69 5. A statement that the petitioner will comply with any



842180

70 court order to provide a biological sample for the purpose of
71 conducting requested forensic analysis and acknowledging that
72 such analysis could produce exculpatory evidence or evidence
73 confirming the petitioner's identity as the perpetrator of, or
74 accomplice to, the crime or a separate crime.

75 ~~6.5.~~ Any other facts relevant to the petition. ~~and~~

76 ~~7.6.~~ A certificate that a copy of the petition has been
77 served on the prosecuting authority.

78 8. The petitioner's sworn statement attesting to the
79 contents of the petition.

80 (b) Upon receiving the petition, the clerk of the court
81 shall file it and deliver the court file to the assigned judge.

82 (c) The court shall review the petition and deny it if it
83 is insufficient. If the petition is sufficient, the prosecuting
84 authority shall be ordered to respond to the petition within 30
85 days.

86 (d) Upon receiving the response of the prosecuting
87 authority, the court shall review the response and enter an
88 order on the merits of the petition or set the petition for
89 hearing.

90 (e) Counsel may be appointed to assist the petitioner
91 ~~sentenced defendant~~ if the petition proceeds to a hearing and if
92 the court determines that the assistance of counsel is necessary
93 and makes the requisite finding of indigency.

94 (f) The court shall make the following findings when ruling
95 on the petition:

96 1. Whether the petitioner ~~sentenced defendant~~ has shown
97 that ~~the~~ physical evidence that may be subjected to forensic
98 analysis contain DNA still exists. ~~and~~



842180

99 2. Whether the results of forensic analysis ~~DNA testing~~ of
100 that physical evidence would be admissible at trial and whether
101 there exists reliable proof to establish that the evidence has
102 not been materially altered and would be admissible at a future
103 hearing. ~~;~~ ~~and~~

104 3. Whether there is a reasonable probability that the
105 forensic analysis may result in evidence that is material to the
106 identity of the perpetrator of, or accomplice to, the crime
107 ~~there is a reasonable probability that the sentenced defendant~~
108 ~~would have been acquitted or would have received a lesser~~
109 ~~sentence if the DNA evidence had been admitted at trial.~~

110 (g) If the court orders forensic analysis ~~DNA testing~~ of
111 the physical evidence, the cost of such analysis ~~testing~~ may be
112 assessed against the petitioner ~~sentenced defendant~~ unless he or
113 she is indigent. If the petitioner ~~sentenced defendant~~ is
114 indigent, the state shall bear the cost of the forensic analysis
115 ~~DNA testing~~ ordered by the court, unless otherwise specified in
116 paragraph (i).

117 (h) Except as provided in paragraph (i), any forensic
118 analysis ~~DNA testing~~ ordered by the court shall be performed
119 ~~carried out~~ by the department of Law Enforcement or its
120 designee, as provided in s. 943.3251.

121 (i) The court may order forensic analysis to be performed
122 by a private laboratory when the petitioner is able to pay for
123 the cost of such analysis.

124 (j) Before the court may order a private laboratory to
125 perform forensic analysis in the form of DNA testing, the
126 petitioner must obtain and submit certification to the court of
127 the following:



842180

128 1. Proof of the private laboratory's accreditation by an
129 accreditation body that is a signatory to the International
130 Laboratory Accreditation Cooperation Mutual Recognition
131 Arrangement.

132 2. Proof that the private laboratory is designated by the
133 Federal Bureau of Investigation as possessing an accreditation
134 that includes DNA testing and the laboratory is compliant with
135 Federal Bureau of Investigation quality assurance standards
136 adopted in accordance with 34 U.S.C. s. 12591.

137 3. Verification by the department that the private
138 laboratory's operating procedures, testing kits, and
139 instrumentation meet CODIS requirements and submission standards
140 for inclusion in the statewide DNA database. The department must
141 comply with a court order to verify private laboratory
142 eligibility under this section.

143 (k) If the court orders forensic analysis in the form of
144 DNA testing and the resulting DNA sample meets statewide DNA
145 database submission standards established by the department, the
146 department must perform a DNA database search. A private
147 laboratory ordered to perform forensic analysis under paragraph
148 (i) must cooperate with the prosecuting authority and the
149 department for the purpose of carrying out this requirement.

150 1. The department shall compare any DNA profile obtained
151 from the testing to DNA profiles of known offenders and DNA
152 profiles from unsolved crimes maintained in the statewide DNA
153 database under s. 943.325.

154 2. If the testing complies with the Federal Bureau of
155 Investigation requirements and the data meets national DNA index
156 system criteria, the department shall request the national DNA



842180

157 index system to search its database of DNA profiles using any
158 profile obtained from the testing.

159 (1)(i) The results of the forensic analysis and the results
160 of any search of CODIS and the statewide DNA databases ~~DNA~~
161 ~~testing~~ ordered by the court shall be provided to the court, the
162 ~~petitioner sentenced defendant~~, and the prosecuting authority.
163 The petitioner or the state may use the information for any
164 lawful purpose.

165 (4)(3) RIGHT TO APPEAL; REHEARING.—

166 (a) An appeal from the court's order on the petition for
167 postsentencing forensic analysis ~~DNA testing~~ may be taken by any
168 adversely affected party.

169 (b) An order denying relief shall include a statement that
170 the petitioner sentenced defendant has the right to appeal
171 within 30 days after the order denying relief is entered.

172 (c) The petitioner sentenced defendant may file a motion
173 for rehearing of any order denying relief within 15 days after
174 service of the order denying relief. The time for filing an
175 appeal shall be tolled until an order on the motion for
176 rehearing has been entered.

177 (d) The clerk of the court shall serve on all parties a
178 copy of any order rendered with a certificate of service,
179 including the date of service.

180 (5)(4) PRESERVATION OF EVIDENCE.—

181 (a) Governmental entities that may be in possession of any
182 physical evidence in the case, including, but not limited to,
183 any investigating law enforcement agency, the clerk of the
184 court, the prosecuting authority, or the department ~~of Law~~
185 ~~Enforcement~~ shall maintain any physical evidence collected at



842180

186 the time of the crime for which a postsentencing testing of DNA
187 may be requested.

188 (b) In a case in which the death penalty is imposed, the
189 evidence shall be maintained for 60 days after execution of the
190 sentence. In all other cases, a governmental entity may dispose
191 of the physical evidence if the term of the sentence imposed in
192 the case has expired and no other provision of law or rule
193 requires that the physical evidence be preserved or retained.

194 (c) In a case in which physical evidence requested for
195 forensic analysis, last known to be in possession of a
196 governmental entity, is reported to be missing or destroyed in
197 violation of this section, the court may order the evidence
198 custodian to conduct a physical search for the evidence. If a
199 search is ordered, the governmental entity must produce a report
200 containing the following information:

201 1. The nature of the search conducted.

202 2. The date the search was conducted.

203 3. The results of the search.

204 4. Any records showing the physical evidence was lost or
205 destroyed.

206 5. The signature of the person who supervised the search,
207 attesting to the accuracy of the contents of the report.

208
209 The report must be provided to the court, the petitioner, and
210 the prosecuting authority.

211 Section 4. Section 925.12, Florida Statutes, is amended to
212 read:

213 925.12 Forensic analysis ~~DNA testing~~; defendants entering
214 pleas.-



842180

215 (1) As used in this section, the terms "forensic analysis"
216 and "petitioner" have the same meanings as provided in s.
217 925.11.

218 (2) A person ~~For defendants~~ who has have entered a plea of
219 guilty or nolo contendere to a felony and has been sentenced by
220 a court established by the laws of the state ~~on or after July 1,~~
221 ~~2006, a defendant~~ may petition that court for postsentencing
222 forensic analysis ~~DNA testing~~ under s. 925.11 under the
223 following circumstances:

224 (a) If the person entered a plea before July 1, 2006, the
225 person may petition for forensic analysis under s. 925.11.

226 (b) If the person entered a plea on or after July 1, 2006,
227 but before July 1, 2020, the person may petition for:

228 1. Forensic analysis, other than DNA testing, under s.
229 925.11.

230 2. DNA testing, when either of the following applies:

231 a. The facts on which the petition is predicated were
232 unknown to the petitioner or the petitioner's attorney at the
233 time the plea was entered and could not have been ascertained by
234 the exercise of due diligence; or

235 b. ~~(b)~~ The physical evidence for which DNA testing is sought
236 was not disclosed to the defense by the state before ~~prior to~~
237 the entry of the plea by the petitioner.

238 (c) If the person entered a plea on or after July 1, 2020,
239 the person may petition for forensic analysis when either of the
240 following applies:

241 1. The facts on which the petition is predicated were
242 unknown to the petitioner or the petitioner's attorney at the
243 time the plea was entered and could not have been ascertained by



842180

244 the exercise of due diligence; or

245 2. The physical evidence for which forensic analysis is
246 sought was not disclosed to the defense by the state before the
247 entry of the plea by the petitioner.

248 (3)(2) For defendants seeking to enter a plea of guilty or
249 nolo contendere to a felony on or after July 1, 2020 ~~July 1,~~
250 ~~2006~~, the court shall inquire of the defendant and of counsel
251 for the defendant and the state as to physical evidence
252 ~~containing DNA~~ known to exist that, if subjected to forensic
253 analysis, could produce evidence that is material to the
254 identification of the perpetrator of, or accomplice to, the
255 crime before ~~could exonerate the defendant prior to~~ accepting a
256 plea of guilty or nolo contendere. If no such physical evidence
257 ~~containing DNA that could exonerate the defendant~~ is known to
258 exist, the court may proceed with consideration of accepting the
259 plea. If such physical evidence ~~containing DNA that could~~
260 ~~exonerate the defendant~~ is known to exist, the court may
261 postpone the proceeding on the defendant's behalf and order
262 forensic analysis ~~DNA testing~~ upon motion of counsel specifying
263 the physical evidence to be tested.

264 (4)(3) It is the intent of the Legislature that the Supreme
265 Court adopt rules of procedure consistent with this section for
266 a court, before ~~prior to~~ the acceptance of a plea, to make an
267 inquiry into the following matters:

268 (a) Whether counsel for the defense has reviewed the
269 discovery disclosed by the state and whether such discovery
270 included a listing or description of physical items of evidence.

271 (b) Whether the nature of the evidence against the
272 defendant disclosed through discovery has been reviewed with the



842180

273 defendant.

274 (c) Whether the defendant or counsel for the defendant is
275 aware of any physical evidence disclosed by the state for which
276 forensic analysis could produce a result material to the
277 identification of the perpetrator of, or accomplice to, the
278 crime ~~DNA testing may exonerate the defendant.~~

279 (d) Whether the state is aware of any physical evidence for
280 which forensic analysis could produce a result material to the
281 identification of the perpetrator of, or accomplice to, the
282 crime ~~DNA testing may exonerate the defendant.~~

283 (5)~~(4)~~ It is the intent of the Legislature that the
284 postponement of the proceedings by the court on the defendant's
285 behalf under subsection (3) ~~(2)~~ constitute an extension
286 attributable to the defendant for purposes of the defendant's
287 right to a speedy trial.

288 Section 5. Subsections (6) and (14) of section 943.325,
289 Florida Statutes, are amended to read:

290 943.325 DNA database.—

291 (6) SAMPLES.—The statewide DNA database may contain DNA
292 data obtained from the following types of biological samples:

293 (a) Crime scene samples.

294 (b) Samples obtained from qualifying offenders required by
295 this section to provide a biological sample for DNA analysis and
296 inclusion in the statewide DNA database.

297 (c) Samples lawfully obtained during the course of a
298 criminal investigation.

299 (d) Samples from deceased victims or suspects that were
300 lawfully obtained during the course of a criminal investigation.

301 (e) Samples from unidentified human remains.



842180

302 (f) Samples from persons reported missing.
303 (g) Samples voluntarily contributed by relatives of missing
304 persons.
305 (h) Samples obtained from DNA testing ordered under s.
306 925.11.
307 (i) ~~(h)~~ Other samples approved by the department.
308 (14) RESULTS.—The results of a DNA analysis and the
309 comparison of analytic results shall be released only to
310 criminal justice agencies as defined in s. 943.045 at the
311 request of the agency or as required by s. 925.11. Otherwise,
312 such information is confidential and exempt from s. 119.07(1)
313 and s. 24(a), Art. I of the State Constitution.
314 Section 6. Section 943.3251, Florida Statutes, is amended
315 to read:
316 943.3251 Postsentencing forensic analysis and DNA database
317 searches ~~DNA testing.~~—
318 (1) When a court orders postsentencing forensic analysis
319 ~~DNA testing~~ of physical evidence, pursuant to s. 925.11, the
320 ~~Florida~~ Department of Law Enforcement, ~~or~~ its designee, or a
321 private laboratory shall carry out the analysis. If the forensic
322 analysis produces a DNA sample meeting statewide DNA database
323 submission standards, the department shall conduct a DNA
324 database search ~~testing.~~
325 (2) The cost of forensic analysis and any database search
326 ~~such testing~~ may be assessed against the petitioner sentenced
327 ~~defendant,~~ pursuant to s. 925.11, unless he or she is indigent.
328 (3) The results of postsentencing forensic analysis and any
329 database search ~~DNA testing~~ shall be provided to the court, the
330 petitioner sentenced defendant, and the prosecuting authority.



842180

331 Section 7. Paragraph (f) of subsection (2) of section
332 948.06, Florida Statutes, is amended to read:

333 948.06 Violation of probation or community control;
334 revocation; modification; continuance; failure to pay
335 restitution or cost of supervision.—

336 (2)

337 (f)1. Except as provided in subparagraph 3. or upon waiver
338 by the probationer, the court shall modify or continue a
339 probationary term upon finding a probationer in violation when
340 all any of the following apply applies:

341 a. The term of supervision is probation.

342 b. The probationer does not qualify as a violent felony
343 offender of special concern, as defined in paragraph (8)(b).

344 c. The violation is a low-risk technical violation, as
345 defined in paragraph (9)(b).

346 d. The court has not previously found the probationer in
347 violation of his or her probation pursuant to a filed violation
348 of probation affidavit during the current term of supervision. A
349 probationer who has successfully completed sanctions through the
350 alternative sanctioning program is eligible for mandatory
351 modification or continuation of his or her probation.

352 2. Upon modifying probation under subparagraph 1., the
353 court may include in the sentence a maximum of 90 days in county
354 jail as a special condition of probation.

355 3. Notwithstanding s. 921.0024, if a probationer has less
356 than 90 days of supervision remaining on his or her term of
357 probation and meets the criteria for mandatory modification or
358 continuation in subparagraph 1., the court may revoke probation
359 and sentence the probationer to a maximum of 90 days in county



842180

360 jail.

361 4. For purposes of imposing a jail sentence under this
362 paragraph only, the court may grant credit only for time served
363 in the county jail since the probationer's most recent arrest
364 for the violation. However, the court may not order the
365 probationer to a total term of incarceration greater than the
366 maximum provided by s. 775.082.

367 Section 8. Paragraph (b) of subsection (1) of section
368 961.03, Florida Statutes, is amended, and paragraph (c) is added
369 to that subsection, to read:

370 961.03 Determination of status as a wrongfully incarcerated
371 person; determination of eligibility for compensation.—

372 (1)

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

374 1. Within 2 years after the order vacating a conviction and
375 sentence becomes final and the criminal charges against the
376 person are dismissed or the person is retried and acquitted, if
377 the person's conviction and sentence is vacated on or after July
378 1, 2020.

379 2. By July 1, 2022, if the person's conviction and sentence
380 was vacated and the criminal charges against the person were
381 dismissed or the person was retried and acquitted on or after
382 January 1, 2006, but before July 1, 2020, and he or she
383 previously filed a petition under this section that was
384 dismissed or did not file a petition under this section because
385 the:

386 a. Date when the criminal charges against the person were
387 dismissed or the date the person was acquitted upon retrial
388 occurred more than 90 days after the date of the final order



842180

389 vacating the conviction and sentence; or

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

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

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

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

401 Section 9. Section 961.04, Florida Statutes, is amended to
402 read:

403 961.04 Eligibility for compensation for wrongful
404 incarceration.—A wrongfully incarcerated person is not eligible
405 for compensation under the act for any period of incarceration
406 during which the person was concurrently serving a sentence for
407 a conviction of another crime for which such person was lawfully
408 incarcerated if:

409 ~~(1) Before the person's wrongful conviction and~~
410 ~~incarceration, the person was convicted of, or pled guilty or~~
411 ~~nolo contendere to, regardless of adjudication, any violent~~
412 ~~felony, or a crime committed in another jurisdiction the~~
413 ~~elements of which would constitute a violent felony in this~~
414 ~~state, or a crime committed against the United States which is~~
415 ~~designated a violent felony, excluding any delinquency~~
416 ~~disposition;~~

417 ~~(2) Before the person's wrongful conviction and~~



842180

418 ~~incarceration, the person was convicted of, or pled guilty or~~
419 ~~nolo contendere to, regardless of adjudication, more than one~~
420 ~~felony that is not a violent felony, or more than one crime~~
421 ~~committed in another jurisdiction, the elements of which would~~
422 ~~constitute a felony in this state, or more than one crime~~
423 ~~committed against the United States which is designated a~~
424 ~~felony, excluding any delinquency disposition;~~

425 ~~(3) During the person's wrongful incarceration, the person~~
426 ~~was convicted of, or pled guilty or nolo contendere to,~~
427 ~~regardless of adjudication, any violent felony;~~

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

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

435 Section 10. Section 961.06, Florida Statutes, is amended to
436 read:

437 961.06 Compensation for wrongful incarceration.—

438 (1) Except as otherwise provided in this act and subject to
439 the limitations and procedures prescribed in this section, a
440 person who is found to be entitled to compensation under the
441 provisions of this act is entitled to:

442 (a) Monetary compensation for wrongful incarceration, which
443 shall be calculated at a rate of \$50,000 for each year of
444 wrongful incarceration, prorated as necessary to account for a
445 portion of a year. For persons found to be wrongfully
446 incarcerated after December 31, 2005 ~~2008~~, the Chief Financial



842180

447 Officer may adjust the annual rate of compensation for inflation
448 using the change in the December-to-December "Consumer Price
449 Index for All Urban Consumers" of the Bureau of Labor Statistics
450 of the Department of Labor;

451 (b) A waiver of tuition and fees for up to 120 hours of
452 instruction at any career center established under s. 1001.44,
453 any Florida College System institution as defined in s.
454 1000.21(3), or any state university as defined in s. 1000.21(6),
455 if the wrongfully incarcerated person meets and maintains the
456 regular admission requirements of such career center, Florida
457 College System institution, or state university; remains
458 registered at such educational institution; and makes
459 satisfactory academic progress as defined by the educational
460 institution in which the claimant is enrolled;

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

463 (d) The amount of any reasonable attorney ~~attorney's~~ fees
464 and expenses incurred and paid by the wrongfully incarcerated
465 person in connection with all criminal proceedings and appeals
466 regarding the wrongful conviction, to be calculated by the
467 department based upon the supporting documentation submitted as
468 specified in s. 961.05; and

469 (e) Notwithstanding any provision to the contrary in s.
470 943.0583 or s. 943.0585, immediate administrative expunction of
471 the person's criminal record resulting from his or her wrongful
472 arrest, wrongful conviction, and wrongful incarceration. The
473 Department of Legal Affairs and the Department of Law
474 Enforcement shall, upon a determination that a claimant is
475 entitled to compensation, immediately take all action necessary



842180

476 to administratively expunge the claimant's criminal record
477 arising from his or her wrongful arrest, wrongful conviction,
478 and wrongful incarceration. All fees for this process shall be
479 waived.

480

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

485 ~~(2) In calculating monetary compensation under paragraph~~
486 ~~(1) (a), a wrongfully incarcerated person who is placed on parole~~
487 ~~or community supervision while serving the sentence resulting~~
488 ~~from the wrongful conviction and who commits no more than one~~
489 ~~felony that is not a violent felony which results in revocation~~
490 ~~of the parole or community supervision is eligible for~~
491 ~~compensation for the total number of years incarcerated. A~~
492 ~~wrongfully incarcerated person who commits one violent felony or~~
493 ~~more than one felony that is not a violent felony that results~~
494 ~~in revocation of the parole or community supervision is~~
495 ~~ineligible for any compensation under subsection (1).~~

496 (2)~~(3)~~ Within 15 calendar days after issuing notice to the
497 claimant that his or her claim satisfies all of the requirements
498 under this act, the department shall notify the Chief Financial
499 Officer to draw a warrant from the General Revenue Fund or
500 another source designated by the Legislature in law for the
501 purchase of an annuity for the claimant based on the total
502 amount determined by the department under this act.

503 (3)~~(4)~~ The Chief Financial Officer shall issue payment in
504 the amount determined by the department to an insurance company



842180

505 or other financial institution admitted and authorized to issue
506 annuity contracts in this state to purchase an annuity or
507 annuities, selected by the wrongfully incarcerated person, for a
508 term of not less than 10 years. The Chief Financial Officer is
509 directed to execute all necessary agreements to implement this
510 act and to maximize the benefit to the wrongfully incarcerated
511 person. The terms of the annuity or annuities shall:

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

515 (b) Contain beneficiary provisions for the continued
516 disbursement of the annuity or annuities in the event of the
517 death of the wrongfully incarcerated person.

518 (4)-(5) If, at the time monetary compensation is determined
519 under paragraph (1) (a), a court has previously entered a
520 monetary judgment in favor of the claimant in a civil action
521 related to the claimant's wrongful incarceration, or the
522 claimant has entered into a settlement agreement with the state
523 or any political subdivision thereof related to the claimant's
524 wrongful incarceration, the amount of the damages in the civil
525 action or settlement agreement, less any sums paid for attorney
526 fees or for costs incurred in litigating the civil action or
527 obtaining the settlement agreement, shall be deducted from the
528 total monetary compensation to which the claimant is entitled
529 under this section ~~Before the department approves the~~
530 ~~application for compensation, the wrongfully incarcerated person~~
531 ~~must sign a release and waiver on behalf of the wrongfully~~
532 ~~incarcerated person and his or her heirs, successors, and~~
533 ~~assigns, forever releasing the state or any agency,~~



842180

534 ~~instrumentality, or any political subdivision thereof, or any~~
535 ~~other entity subject to s. 768.28, from all present or future~~
536 ~~claims that the wrongfully incarcerated person or his or her~~
537 ~~heirs, successors, or assigns may have against such entities~~
538 ~~arising out of the facts in connection with the wrongful~~
539 ~~conviction for which compensation is being sought under the act.~~

540 (5) If subsection (4) does not apply, and if after the time
541 monetary compensation is determined under paragraph (1) (a) the
542 court enters a monetary judgment in favor of the claimant in a
543 civil action related to the claimant's wrongful incarceration,
544 or the claimant enters into a settlement agreement with the
545 state or any political subdivision thereof related to the
546 claimant's wrongful incarceration, the claimant shall reimburse
547 the state for the monetary compensation in paragraph (1) (a),
548 less any sums paid for attorney fees or for costs incurred in
549 litigating the civil action or obtaining the settlement
550 agreement. A reimbursement required under this subsection shall
551 not exceed the amount of the monetary award the claimant
552 received for damages in a civil action or settlement agreement.
553 In the order of judgment, the court shall award to the state any
554 amount required to be deducted under this subsection.

555 (6) (a) The claimant shall notify the department upon filing
556 a civil action against the state or any political subdivision
557 thereof in which the claimant is seeking monetary damages
558 related to the claimant's wrongful incarceration for which he or
559 she previously received or is applying to receive compensation
560 under paragraph (1) (a).

561 (b) Upon notice of the claimant's civil action, the
562 department shall file in the case a notice of payment of



842180

563 monetary compensation to the claimant under paragraph (1) (a).
564 The notice shall constitute a lien upon any monetary judgment or
565 settlement recovered under the civil action that is equal to the
566 sum of monetary compensation paid to the claimant under
567 paragraph (1) (a), less any attorney fees and costs incurred in
568 litigating the civil action or obtaining the settlement
569 agreement ~~A wrongfully incarcerated person may not submit an~~
570 ~~application for compensation under this act if the person has a~~
571 ~~lawsuit pending against the state or any agency,~~
572 ~~instrumentality, or any political subdivision thereof, or any~~
573 ~~other entity subject to the provisions of s. 768.28, in state or~~
574 ~~federal court requesting compensation arising out of the facts~~
575 ~~in connection with the claimant's conviction and incarceration.~~
576 (7) (a) (b) A wrongfully incarcerated person may not submit
577 an application for compensation under this act if the person is
578 the subject of a claim bill pending for claims arising out of
579 the facts in connection with the claimant's conviction and
580 incarceration.
581 (b) (e) Once an application is filed under this act, a
582 wrongfully incarcerated person may not pursue recovery under a
583 claim bill until the final disposition of the application.
584 (c) (d) ~~Any amount awarded under this act is intended to~~
585 ~~provide the sole compensation for any and all present and future~~
586 ~~claims arising out of the facts in connection with the~~
587 ~~claimant's conviction and incarceration.~~ Upon notification by
588 the department that an application meets the requirements of
589 this act, a wrongfully incarcerated person may not recover under
590 a claim bill.
591 (d) (e) Any compensation awarded under a claim bill shall be



842180

592 the sole redress for claims arising out of the facts in
593 connection with the claimant's conviction and incarceration and,
594 upon any award of compensation to a wrongfully incarcerated
595 person under a claim bill, the person may not receive
596 compensation under this act.

597 (8)~~(7)~~ Any payment made under this act does not constitute
598 a waiver of any defense of sovereign immunity or an increase in
599 the limits of liability on behalf of the state or any person
600 subject to the provisions of s. 768.28 or other law.

601 Section 11. Section 961.07, Florida Statutes, is amended to
602 read:

603 961.07 Continuing appropriation.—

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

610 (2) Payments for petitions filed pursuant to s.
611 961.03(1)(b)2. are subject to specific appropriation.

612 Section 12. For the purpose of incorporating the amendment
613 made by this act to section 961.04, Florida Statutes, in a
614 reference thereto, subsection (4) of section 961.02, Florida
615 Statutes, is reenacted to read:

616 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

617 (4) "Eligible for compensation" means that a person meets
618 the definition of the term "wrongfully incarcerated person" and
619 is not disqualified from seeking compensation under the criteria
620 prescribed in s. 961.04.



842180

621 Section 13. For the purpose of incorporating the amendment
622 made by this act to section 961.04, Florida Statutes, in
623 references thereto, paragraph (a) of subsection (1) and
624 subsections (2), (3), and (4) of section 961.03, Florida
625 Statutes, are reenacted to read:

626 961.03 Determination of status as a wrongfully incarcerated
627 person; determination of eligibility for compensation.—

628 (1) (a) In order to meet the definition of a "wrongfully
629 incarcerated person" and "eligible for compensation," upon entry
630 of an order, based upon exonerating evidence, vacating a
631 conviction and sentence, a person must set forth the claim of
632 wrongful incarceration under oath and with particularity by
633 filing a petition with the original sentencing court, with a
634 copy of the petition and proper notice to the prosecuting
635 authority in the underlying felony for which the person was
636 incarcerated. At a minimum, the petition must:

637 1. State that verifiable and substantial evidence of actual
638 innocence exists and state with particularity the nature and
639 significance of the verifiable and substantial evidence of
640 actual innocence; and

641 2. State that the person is not disqualified, under the
642 provisions of s. 961.04, from seeking compensation under this
643 act.

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

646 (a) By certifying to the court that, based upon the
647 petition and verifiable and substantial evidence of actual
648 innocence, no further criminal proceedings in the case at bar
649 can or will be initiated by the prosecuting authority, that no



842180

650 questions of fact remain as to the petitioner's wrongful
651 incarceration, and that the petitioner is not ineligible from
652 seeking compensation under the provisions of s. 961.04; or

653 (b) By contesting the nature, significance, or effect of
654 the evidence of actual innocence, the facts related to the
655 petitioner's alleged wrongful incarceration, or whether the
656 petitioner is ineligible from seeking compensation under the
657 provisions of s. 961.04.

658 (3) If the prosecuting authority responds as set forth in
659 paragraph (2) (a), the original sentencing court, based upon the
660 evidence of actual innocence, the prosecuting authority's
661 certification, and upon the court's finding that the petitioner
662 has presented clear and convincing evidence that the petitioner
663 committed neither the act nor the offense that served as the
664 basis for the conviction and incarceration, and that the
665 petitioner did not aid, abet, or act as an accomplice to a
666 person who committed the act or offense, shall certify to the
667 department that the petitioner is a wrongfully incarcerated
668 person as defined by this act. Based upon the prosecuting
669 authority's certification, the court shall also certify to the
670 department that the petitioner is eligible for compensation
671 under the provisions of s. 961.04.

672 (4) (a) If the prosecuting authority responds as set forth
673 in paragraph (2) (b), the original sentencing court shall make a
674 determination from the pleadings and supporting documentation
675 whether, by a preponderance of the evidence, the petitioner is
676 ineligible for compensation under the provisions of s. 961.04,
677 regardless of his or her claim of wrongful incarceration. If the
678 court finds the petitioner ineligible under the provisions of s.



679 961.04, it shall dismiss the petition.

680 (b) If the prosecuting authority responds as set forth in
681 paragraph (2)(b), and the court determines that the petitioner
682 is eligible under the provisions of s. 961.04, but the
683 prosecuting authority contests the nature, significance or
684 effect of the evidence of actual innocence, or the facts related
685 to the petitioner's alleged wrongful incarceration, the court
686 shall set forth its findings and transfer the petition by
687 electronic means through the division's website to the division
688 for findings of fact and a recommended determination of whether
689 the petitioner has established that he or she is a wrongfully
690 incarcerated person who is eligible for compensation under this
691 act.

692
693 ===== T I T L E A M E N D M E N T =====

694 And the title is amended as follows:

695 Delete lines 78 - 85

696 and insert:

697 Remove lines 2-27 and insert:

698 An act relating to criminal justice; amending s.
699 20.316, F.S.; revising the name of a program and
700 creating an additional program within the Department
701 of Juvenile Justice; conforming a provision to changes
702 made by the act; amending and reenacting s. 943.0585,
703 F.S.; expanding an exception to an eligibility
704 requirement for expunction of a criminal history
705 record to allow a prior expunction of a criminal
706 history record granted for an offense committed when
707 the person was a minor; providing an exception;



842180

708 amending s. 925.11, F.S.; providing definitions;
709 authorizing specified persons to petition a court for
710 postsentencing forensic analysis that may result in
711 evidence of the identity of a perpetrator or
712 accomplice to a crime; providing requirements for such
713 a petition; requiring a court to make specified
714 findings before entering an order for forensic
715 analysis; requiring the forensic analysis to be
716 performed by the Department of Law Enforcement;
717 providing an exception; requiring the department to
718 submit a DNA profile meeting submission standards to
719 certain DNA databases; requiring the results of the
720 DNA database search to be provided to specified
721 parties; authorizing a court to order specified
722 persons to conduct a search for physical evidence
723 reported to be missing or destroyed in violation of
724 law; requiring a report of the results of such a
725 search; amending s. 925.12, F.S.; authorizing
726 specified persons to petition for forensic analysis
727 after entering a plea of guilty or nolo contendere;
728 requiring a court to inquire of a defendant about
729 specified information relating to physical evidence
730 before accepting a plea; amending s. 943.325, F.S.;
731 authorizing certain samples obtained from
732 postsentencing forensic analysis to be entered into
733 the statewide DNA database; authorizing DNA analysis
734 and results to be released to specified entities;
735 amending s. 943.3251, F.S.; requiring the department
736 to perform forensic analysis and searches of the



842180

737 statewide DNA database; providing an exception;
738 requiring the results of forensic analysis and a DNA
739 database search to be provided to specified entities;
740 amending s. 948.06, F.S.; requiring a court to modify
741 or continue a probationary term upon finding that a
742 probationer has met all specified conditions, rather
743 than any of the conditions, after a violation of
744 probation; amending s. 961.03, F.S.; extending the
745 filing deadline for a petition claiming wrongful
746 incarceration; providing limited retroactivity for
747 filing a petition claiming wrongful incarceration;
748 providing that a deceased person's heirs, successors,
749 or assigns do not have standing to file a claim
750 related to the wrongful incarceration of the deceased
751 person; amending s. 961.04, F.S.; revising eligibility
752 for compensation for wrongful incarceration for a
753 wrongfully incarcerated person; amending s. 961.06,
754 F.S.; authorizing the Chief Financial Officer to
755 adjust compensation for inflation for additional
756 wrongfully incarcerated persons; revising conditions
757 for eligibility for compensation for wrongful
758 incarceration; requiring the state to deduct the
759 amount of a civil award from the state compensation
760 amount owed if the claimant first receives a civil
761 award; deleting a requirement that a wrongfully
762 incarcerated person sign a liability release before
763 receiving compensation; requiring a claimant to
764 reimburse the state for any difference between state
765 compensation and a civil award if the claimant



842180

766 receives statutory compensation before a civil award;
767 deleting provisions prohibiting an application for
768 compensation if the applicant has a pending civil suit
769 requesting compensation; requiring a claimant to
770 notify the Department of Legal Affairs upon filing a
771 civil action; requiring the department to file a
772 notice of payment of monetary compensation in the
773 civil action; amending s. 961.07, F.S.; specifying
774 that payments for certain petitions filed under the
775 Victims of Wrongful Incarceration Act are subject to
776 specific appropriation; reenacting ss. 961.02(4) and
777 961.03(1)(a), (2), (3), and (4), F.S., all relating to
778 eligibility for compensation for wrongfully
779 incarcerated persons, to incorporate the amendment
780 made to s. 961.04, F.S., in references thereto;
781 repealing s. 985.686, F.S., relating to shared county
782 and state responsibility for juvenile detention;
783 amending s. 985.6865, F.S.; deleting provisions
784 relating to legislative findings and legislative
785 intent; deleting a provision requiring each county
786 that is not a fiscally constrained county to pay its
787 annual percentage share of the total shared detention
788 costs; requiring the Department of Juvenile Justice to
789 calculate and provide to each county that is not a
790 fiscally constrained county and that does not provide
791 its own detention care for juveniles its annual
792 percentage share; requiring each county that is not a
793 fiscally constrained county and that does not provide
794 its own detention care for juveniles to incorporate



842180

795 into its annual budget sufficient funds to pay its
796 annual percentage share; conforming a provision to
797 changes made by the act; conforming a cross-reference;
798 amending s. 943.0582, F.S.; deleting a requirement
799 that limits diversion program expunction to programs
800 for misdemeanor offenses; amending s. 985.126, F.S.;
801 conforming a provision to changes made by the act;
802 providing an effective date.