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LEGISLATIVE ACTION

Senate

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House

Floor: 1/RE/3R

03/12/2020 05:19 PM

Senator Bradley moved the following:

Senate Amendment (with title amendment)

Before line 9

insert:

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

893.13 Prohibited acts; penalties.—

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



254366

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

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

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

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

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

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

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

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

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

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

39 Section 2. Present subsections (6) and (7) of section
40 893.135, Florida Statutes, are redesignated as subsections (7)



254366

41 and (8), respectively, and a new subsection (6) is added to that
42 section, to read:

43 893.135 Trafficking; mandatory sentences; suspension or
44 reduction of sentences; conspiracy to engage in trafficking.—

45 (6) Notwithstanding any provision of this section, a court
46 may impose a sentence for a violation of this section other than
47 the mandatory minimum term of imprisonment and mandatory fine
48 if, after the state has been afforded an opportunity on the
49 record to make a recommendation, the court finds on the record
50 that all of the following circumstances exist:

51 (a) The defendant has no prior conviction for a forcible
52 felony as defined in s. 776.08, has no prior conviction for
53 trafficking in a controlled substance, and has a total prior
54 record score of less than four points on his or her sentencing
55 scoresheet.

56 (b) The defendant did not use violence or credible threats
57 of violence, or possess a firearm or other dangerous weapon, or
58 induce another participant to use violence or credible threats
59 of violence, in connection with the offense.

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

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

65 (e) At the time of the sentencing hearing or earlier, the
66 defendant has truthfully provided to the state all information
67 and evidence that he or she possesses concerning the offense or
68 offenses that were part of the same course of conduct or of a
69 common scheme or plan.



254366

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

72
73 A court may not apply this subsection to an offense under this
74 section which carries a mandatory minimum term of imprisonment
75 of 7 years or more.

76 Section 3. Paragraph (b) of subsection (1) of section
77 961.03, Florida Statutes, is amended, and paragraph (c) is added
78 to that subsection, to read:

79 961.03 Determination of status as a wrongfully incarcerated
80 person; determination of eligibility for compensation.—

81 (1)

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

83 1. Within 2 years after the order vacating a conviction and
84 sentence becomes final and the criminal charges against the
85 person are dismissed or the person is retried and found not
86 guilty, if the person's conviction and sentence is vacated on or
87 after July 1, 2020.

88 2. By July 1, 2022, if the person's conviction and sentence
89 was vacated and the criminal charges against the person were
90 dismissed or the person was retried and found not guilty on or
91 after July 1, 2008, but before July 1, 2020, and he or she
92 previously filed a claim under this section that was dismissed
93 or did not file a claim under this section because the:

94 a. Date when the criminal charges against the person were
95 dismissed or the date the person was acquitted upon retrial
96 occurred more than 90 days after the date of the final order
97 vacating the conviction and sentence; or

98 b. Person was convicted of an unrelated felony before his



254366

99 or her wrongful conviction and incarceration and was previously
100 barred under s. 961.04.

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

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

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

109 Section 4. Section 961.04, Florida Statutes, is amended to
110 read:

111 961.04 Eligibility for compensation for wrongful
112 incarceration.—A wrongfully incarcerated person is not eligible
113 for compensation under the act if:

114 ~~(1) Before the person's wrongful conviction and~~
115 ~~incarceration, the person was convicted of, or pled guilty or~~
116 ~~nolo contendere to, regardless of adjudication, any violent~~
117 ~~felony, or a crime committed in another jurisdiction the~~
118 ~~elements of which would constitute a violent felony in this~~
119 ~~state, or a crime committed against the United States which is~~
120 ~~designated a violent felony, excluding any delinquency~~
121 ~~disposition;~~

122 ~~(2) Before the person's wrongful conviction and~~
123 ~~incarceration, the person was convicted of, or pled guilty or~~
124 ~~nolo contendere to, regardless of adjudication, more than one~~
125 ~~felony that is not a violent felony, or more than one crime~~
126 ~~committed in another jurisdiction, the elements of which would~~
127 ~~constitute a felony in this state, or more than one crime~~



254366

128 ~~committed against the United States which is designated a~~
129 ~~felony, excluding any delinquency disposition;~~

130 (1)~~(3)~~ During the person's wrongful incarceration, the
131 person was convicted of, or pled guilty or nolo contendere to,
132 regardless of adjudication, any violent felony;

133 (2)~~(4)~~ During the person's wrongful incarceration, the
134 person was convicted of, or pled guilty or nolo contendere to,
135 regardless of adjudication, more than one felony that is not a
136 violent felony; or

137 (3)~~(5)~~ During the person's wrongful incarceration, the
138 person was also serving a concurrent sentence for another felony
139 for which the person was not wrongfully convicted.

140 Section 5. Section 961.06, Florida Statutes, is amended to
141 read:

142 961.06 Compensation for wrongful incarceration.—

143 (1) Except as otherwise provided in this act and subject to
144 the limitations and procedures prescribed in this section, a
145 person who is found to be entitled to compensation under the
146 provisions of this act is entitled to:

147 (a) Monetary compensation for wrongful incarceration, which
148 shall be calculated at a rate of \$50,000 for each year of
149 wrongful incarceration, prorated as necessary to account for a
150 portion of a year. For persons found to be wrongfully
151 incarcerated after December 31, 2008, the Chief Financial
152 Officer may adjust the annual rate of compensation for inflation
153 using the change in the December-to-December "Consumer Price
154 Index for All Urban Consumers" of the Bureau of Labor Statistics
155 of the Department of Labor;

156 (b) A waiver of tuition and fees for up to 120 hours of



254366

157 instruction at any career center established under s. 1001.44,
158 any Florida College System institution as defined in s.
159 1000.21(3), or any state university as defined in s. 1000.21(6),
160 if the wrongfully incarcerated person meets and maintains the
161 regular admission requirements of such career center, Florida
162 College System institution, or state university; remains
163 registered at such educational institution; and makes
164 satisfactory academic progress as defined by the educational
165 institution in which the claimant is enrolled;

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

168 (d) The amount of any reasonable attorney ~~attorney's~~ fees
169 and expenses incurred and paid by the wrongfully incarcerated
170 person in connection with all criminal proceedings and appeals
171 regarding the wrongful conviction, to be calculated by the
172 department based upon the supporting documentation submitted as
173 specified in s. 961.05; and

174 (e) Notwithstanding any provision to the contrary in s.
175 943.0583 or s. 943.0585, immediate administrative expunction of
176 the person's criminal record resulting from his or her wrongful
177 arrest, wrongful conviction, and wrongful incarceration. The
178 Department of Legal Affairs and the Department of Law
179 Enforcement shall, upon a determination that a claimant is
180 entitled to compensation, immediately take all action necessary
181 to administratively expunge the claimant's criminal record
182 arising from his or her wrongful arrest, wrongful conviction,
183 and wrongful incarceration. All fees for this process shall be
184 waived.

185



254366

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

190 (2) In calculating monetary compensation under paragraph
191 (1) (a), a wrongfully incarcerated person who is placed on parole
192 or community supervision while serving the sentence resulting
193 from the wrongful conviction and who commits no more than one
194 felony that is not a violent felony which results in revocation
195 of the parole or community supervision is eligible for
196 compensation for the total number of years incarcerated. A
197 wrongfully incarcerated person who commits one violent felony or
198 more than one felony that is not a violent felony that results
199 in revocation of the parole or community supervision is
200 ineligible for any compensation under subsection (1).

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

208 (4) The Chief Financial Officer shall issue payment in the
209 amount determined by the department to an insurance company or
210 other financial institution admitted and authorized to issue
211 annuity contracts in this state to purchase an annuity or
212 annuities, selected by the wrongfully incarcerated person, for a
213 term of not less than 10 years. The Chief Financial Officer is
214 directed to execute all necessary agreements to implement this



254366

215 act and to maximize the benefit to the wrongfully incarcerated
216 person. The terms of the annuity or annuities shall:

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

220 (b) Contain beneficiary provisions for the continued
221 disbursement of the annuity or annuities in the event of the
222 death of the wrongfully incarcerated person.

223 (5) If, at the time monetary compensation is determined
224 under paragraph (1) (a), a court has previously entered a
225 monetary judgment in favor of the claimant in a civil action
226 related to the person's wrongful incarceration, or the claimant
227 has entered into a settlement agreement with the state or any
228 political subdivision thereof related to the person's wrongful
229 incarceration, the amount of the damages in the civil action or
230 settlement agreement, less any sums paid for attorney fees or
231 for costs incurred in litigating the civil action or obtaining
232 the settlement agreement, must be deducted from the total
233 monetary compensation to which the claimant is entitled under
234 this section ~~Before the department approves the application for~~
235 ~~compensation, the wrongfully incarcerated person must sign a~~
236 ~~release and waiver on behalf of the wrongfully incarcerated~~
237 ~~person and his or her heirs, successors, and assigns, forever~~
238 ~~releasing the state or any agency, instrumentality, or any~~
239 ~~political subdivision thereof, or any other entity subject to s.~~
240 ~~768.28, from all present or future claims that the wrongfully~~
241 ~~incarcerated person or his or her heirs, successors, or assigns~~
242 ~~may have against such entities arising out of the facts in~~
243 ~~connection with the wrongful conviction for which compensation~~



254366

244 ~~is being sought under the act.~~

245 (6) If subsection (5) does not apply, and if after the time
246 monetary compensation is determined under paragraph (1)(a) the
247 court enters a monetary judgment in favor of the claimant in a
248 civil action related to the person's wrongful incarceration, or
249 the claimant enters into a settlement agreement with the state
250 or any political subdivision thereof related to the person's
251 wrongful incarceration, the claimant must reimburse the state
252 for the monetary compensation in paragraph (1)(a), less any sums
253 paid for attorney fees or costs incurred in litigating the civil
254 action or obtaining the settlement agreement. A reimbursement
255 required under this subsection shall not exceed the amount of
256 the monetary award the claimant received for damages in a civil
257 action or settlement agreement. The court shall include in the
258 order of judgment an award to the state of any amount required
259 to be deducted under this subsection

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

267 (7)(a) The claimant shall notify the department upon filing
268 a civil action against the state or any political subdivision
269 thereof in which the claimant is seeking monetary damages
270 related to the claimant's wrongful incarceration for which he or
271 she previously received or is applying to receive compensation
272 pursuant to paragraph (1)(a).



254366

273 (b) Upon notice of the claimant's civil action, the
274 department shall file in the case a notice of payment of
275 monetary compensation to the claimant under paragraph (1) (a).
276 The notice shall constitute a lien upon any judgment or
277 settlement recovered under the civil action that is equal to the
278 sum of monetary compensation paid to the claimant under
279 paragraph (1) (a), less any attorney fees and litigation costs.

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

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

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

295 (d) ~~(e)~~ Any compensation awarded under a claim bill shall be
296 the sole redress for claims arising out of the facts in
297 connection with the claimant's conviction and incarceration and,
298 upon any award of compensation to a wrongfully incarcerated
299 person under a claim bill, the person may not receive
300 compensation under this act.

301 (9) ~~(7)~~ Any payment made under this act does not constitute



254366

302 a waiver of any defense of sovereign immunity or an increase in
303 the limits of liability on behalf of the state or any person
304 subject to the provisions of s. 768.28 or other law.

305 Section 6. Paragraph (c) of subsection (3) of section
306 893.03, Florida Statutes, is amended to read:

307 893.03 Standards and schedules.—The substances enumerated
308 in this section are controlled by this chapter. The controlled
309 substances listed or to be listed in Schedules I, II, III, IV,
310 and V are included by whatever official, common, usual,
311 chemical, trade name, or class designated. The provisions of
312 this section shall not be construed to include within any of the
313 schedules contained in this section any excluded drugs listed
314 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
315 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
316 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
317 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
318 Anabolic Steroid Products."

319 (3) SCHEDULE III.—A substance in Schedule III has a
320 potential for abuse less than the substances contained in
321 Schedules I and II and has a currently accepted medical use in
322 treatment in the United States, and abuse of the substance may
323 lead to moderate or low physical dependence or high
324 psychological dependence or, in the case of anabolic steroids,
325 may lead to physical damage. The following substances are
326 controlled in Schedule III:

327 (c) Unless specifically excepted or unless listed in
328 another schedule, any material, compound, mixture, or
329 preparation containing limited quantities of any of the
330 following controlled substances or any salts thereof:



254366

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

334 2. Not more than 1.8 grams of codeine per 100 milliliters
335 or not more than 90 milligrams per dosage unit, with recognized
336 therapeutic amounts of one or more active ingredients which are
337 not controlled substances.

338 3. Not more than 300 milligrams of hydrocodone per 100
339 milliliters or not more than 15 milligrams per dosage unit, with
340 a fourfold or greater quantity of an isoquinoline alkaloid of
341 opium.

342 4. Not more than 300 milligrams of hydrocodone per 100
343 milliliters or not more than 15 milligrams per dosage unit, with
344 recognized therapeutic amounts of one or more active ingredients
345 that are not controlled substances.

346 5. Not more than 1.8 grams of dihydrocodeine per 100
347 milliliters or not more than 90 milligrams per dosage unit, with
348 recognized therapeutic amounts of one or more active ingredients
349 which are not controlled substances.

350 6. Not more than 300 milligrams of ethylmorphine per 100
351 milliliters or not more than 15 milligrams per dosage unit, with
352 one or more active, nonnarcotic ingredients in recognized
353 therapeutic amounts.

354 7. Not more than 50 milligrams of morphine per 100
355 milliliters or per 100 grams, with recognized therapeutic
356 amounts of one or more active ingredients which are not
357 controlled substances.

358
359 For purposes of charging a person with a violation of s. 893.135



254366

360 involving any controlled substance described in subparagraph 3.
361 or subparagraph 4., the controlled substance is a Schedule III
362 controlled substance pursuant to this paragraph but the weight
363 of the controlled substance per milliliters or per dosage unit
364 is not relevant to the charging of a violation of s. 893.135.
365 The weight of the controlled substance shall be determined
366 pursuant to s. 893.135(7) ~~s. 893.135(6)~~.

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

371 961.02 Definitions.—As used in ss. 961.01-961.07, the term:
372 (4) "Eligible for compensation" means that a person meets
373 the definition of the term "wrongfully incarcerated person" and
374 is not disqualified from seeking compensation under the criteria
375 prescribed in s. 961.04.

376 Section 8. For the purpose of incorporating the amendment
377 made by this act to section 961.04, Florida Statutes, in
378 references thereto, paragraph (a) of subsection (1) and
379 subsections (2), (3), and (4) of section 961.03, Florida
380 Statutes, are reenacted to read:

381 961.03 Determination of status as a wrongfully incarcerated
382 person; determination of eligibility for compensation.—

383 (1) (a) In order to meet the definition of a "wrongfully
384 incarcerated person" and "eligible for compensation," upon entry
385 of an order, based upon exonerating evidence, vacating a
386 conviction and sentence, a person must set forth the claim of
387 wrongful incarceration under oath and with particularity by
388 filing a petition with the original sentencing court, with a



254366

389 copy of the petition and proper notice to the prosecuting
390 authority in the underlying felony for which the person was
391 incarcerated. At a minimum, the petition must:

392 1. State that verifiable and substantial evidence of actual
393 innocence exists and state with particularity the nature and
394 significance of the verifiable and substantial evidence of
395 actual innocence; and

396 2. State that the person is not disqualified, under the
397 provisions of s. 961.04, from seeking compensation under this
398 act.

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

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

408 (b) By contesting the nature, significance, or effect of
409 the evidence of actual innocence, the facts related to the
410 petitioner's alleged wrongful incarceration, or whether the
411 petitioner is ineligible from seeking compensation under the
412 provisions of s. 961.04.

413 (3) If the prosecuting authority responds as set forth in
414 paragraph (2) (a), the original sentencing court, based upon the
415 evidence of actual innocence, the prosecuting authority's
416 certification, and upon the court's finding that the petitioner
417 has presented clear and convincing evidence that the petitioner



254366

418 committed neither the act nor the offense that served as the
419 basis for the conviction and incarceration, and that the
420 petitioner did not aid, abet, or act as an accomplice to a
421 person who committed the act or offense, shall certify to the
422 department that the petitioner is a wrongfully incarcerated
423 person as defined by this act. Based upon the prosecuting
424 authority's certification, the court shall also certify to the
425 department that the petitioner is eligible for compensation
426 under the provisions of s. 961.04.

427 (4) (a) If the prosecuting authority responds as set forth
428 in paragraph (2) (b), the original sentencing court shall make a
429 determination from the pleadings and supporting documentation
430 whether, by a preponderance of the evidence, the petitioner is
431 ineligible for compensation under the provisions of s. 961.04,
432 regardless of his or her claim of wrongful incarceration. If the
433 court finds the petitioner ineligible under the provisions of s.
434 961.04, it shall dismiss the petition.

435 (b) If the prosecuting authority responds as set forth in
436 paragraph (2) (b), and the court determines that the petitioner
437 is eligible under the provisions of s. 961.04, but the
438 prosecuting authority contests the nature, significance or
439 effect of the evidence of actual innocence, or the facts related
440 to the petitioner's alleged wrongful incarceration, the court
441 shall set forth its findings and transfer the petition by
442 electronic means through the division's website to the division
443 for findings of fact and a recommended determination of whether
444 the petitioner has established that he or she is a wrongfully
445 incarcerated person who is eligible for compensation under this
446 act.



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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to criminal justice; amending s. 893.13, F.S.; prohibiting the imprisonment for longer than a certain time for persons who possess, purchase, or possess with the intent to purchase less than specified amounts of certain substances; providing exceptions; amending s. 893.135, F.S.; authorizing a court to impose a sentence other than the mandatory minimum term of imprisonment and mandatory fine for a person convicted of trafficking if the court makes certain findings on the record; amending s. 961.03, F.S.; extending the filing deadline for a petition claiming wrongful incarceration; providing limited retroactivity for filing a petition claiming wrongful incarceration; providing that a deceased person's heirs, successors, or assigns do not have standing to file a claim related to the wrongful incarceration of the deceased person; amending s. 961.04, F.S.; deleting eligibility requirements relating to a person's conduct before the person's wrongful conviction or incarceration; amending s. 961.06, F.S.; requiring the state to deduct the amount of a civil award from the state compensation amount owed if the claimant first receives a civil award; deleting a requirement that a wrongfully incarcerated person sign



254366

476 a liability release before receiving compensation;
477 requiring a claimant to reimburse the state for any
478 difference between state compensation and a civil
479 award if the claimant receives statutory compensation
480 prior to a civil award; deleting provisions
481 prohibiting an application for compensation if the
482 applicant has a pending civil suit requesting
483 compensation; requiring a claimant to notify the
484 Department of Legal Affairs upon filing a civil
485 action; requiring the department to file a notice of
486 payment of monetary compensation in the civil action;
487 amending s. 893.03, F.S.; conforming a cross-
488 reference; reenacting ss. 961.02(4) and 961.03(1)(a),
489 (2), (3), and (4), F.S., all relating to eligibility
490 for compensation for wrongfully incarcerated persons,
491 to incorporate the amendment made to s. 961.04, F.S.,
492 in references thereto; amending s.