

By Senator Pizzo

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1                   A bill to be entitled  
2           An act relating to compensation for eligible victims  
3           of wrongful incarceration; amending s. 961.03, F.S.;  
4           extending the filing deadline for a petition claiming  
5           wrongful incarceration; providing limited  
6           retroactivity for filing a petition claiming wrongful  
7           incarceration; providing that a deceased person's  
8           heirs, successors, or assigns do not have standing to  
9           file a petition related to the wrongful incarceration  
10          of the deceased person; amending s. 961.04, F.S.;  
11          revising eligibility for compensation for wrongful  
12          incarceration for a wrongfully incarcerated person;  
13          amending s. 961.06, F.S.; authorizing the Chief  
14          Financial Officer to adjust compensation for inflation  
15          for persons found to be wrongfully incarcerated after  
16          a specified date; revising conditions for eligibility  
17          for compensation for wrongful incarceration; requiring  
18          the state to deduct the amount of a civil award from  
19          the state compensation amount owed if the claimant  
20          first receives a civil award; deleting a requirement  
21          that a wrongfully incarcerated person sign a liability  
22          release before receiving compensation; requiring a  
23          claimant to reimburse the state for any difference  
24          between state compensation and a civil award if the  
25          claimant receives statutory compensation before a  
26          civil award; requiring a claimant to notify the  
27          Department of Legal Affairs upon filing a civil  
28          action; requiring the department to file a notice of  
29          payment of monetary compensation in such civil action;

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30 deleting provisions prohibiting an application for  
31 compensation if the applicant has a pending civil suit  
32 requesting compensation; amending s. 961.07, F.S.;  
33 specifying that payments for certain petitions filed  
34 under the Victims of Wrongful Incarceration  
35 Compensation Act are subject to specific  
36 appropriation; reenacting ss. 961.02(4) and  
37 961.03(1)(a), (2), (3), and (4), F.S., relating to  
38 eligibility for compensation for wrongfully  
39 incarcerated persons to incorporate the amendment made  
40 to s. 961.04, F.S., in references thereto; reenacting  
41 ss. 961.02(5) and 961.05(6), F.S., relating to  
42 receiving compensation to incorporate the amendment  
43 made to s. 961.06, F.S., in references thereto;  
44 providing an effective date.

45  
46 Be It Enacted by the Legislature of the State of Florida:

47  
48 Section 1. Paragraph (b) of subsection (1) of section  
49 961.03, Florida Statutes, is amended, and paragraph (c) is added  
50 to that subsection, to read:

51 961.03 Determination of status as a wrongfully incarcerated  
52 person; determination of eligibility for compensation.—

53 (1)

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

55 1. Within 2 years after the order vacating a conviction and  
56 sentence becomes final and the criminal charges against the  
57 person are dismissed or the person is retried and acquitted, if  
58 the person's conviction and sentence is vacated on or after July

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59 1, 2021.

60 2. By July 1, 2023, if the person's conviction and sentence  
61 was vacated and the criminal charges against the person were  
62 dismissed or the person was retried and acquitted on or after  
63 January 1, 2006, but before July 1, 2021, and he or she  
64 previously filed a petition under this section which was  
65 dismissed or did not file a petition under this section because:

66 a. The date when the criminal charges against the person  
67 were dismissed or the date the person was acquitted upon retrial  
68 occurred more than 90 days after the date of the final order  
69 vacating the conviction and sentence; or

70 b. The person was convicted of an unrelated felony before  
71 or during his or her wrongful conviction and incarceration and  
72 was ineligible for compensation under former s. 961.04.

73 (c) A deceased person's heirs, successors, or assigns do  
74 not have standing to file a petition on the deceased person's  
75 behalf under this section

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

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

81 Section 2. Section 961.04, Florida Statutes, is amended to  
82 read:

83 961.04 Eligibility for compensation for wrongful  
84 incarceration.—A wrongfully incarcerated person is not eligible  
85 for compensation under the act for any period of incarceration  
86 during which the person was concurrently serving a sentence for  
87 a conviction of another crime for which such person was lawfully

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88 incarcerated if:

89 ~~(1) Before the person's wrongful conviction and~~  
90 ~~incarceration, the person was convicted of, or pled guilty or~~  
91 ~~nolo contendere to, regardless of adjudication, any violent~~  
92 ~~felony, or a crime committed in another jurisdiction the~~  
93 ~~elements of which would constitute a violent felony in this~~  
94 ~~state, or a crime committed against the United States which is~~  
95 ~~designated a violent felony, excluding any delinquency~~  
96 ~~disposition;~~

97 ~~(2) Before the person's wrongful conviction and~~  
98 ~~incarceration, the person was convicted of, or pled guilty or~~  
99 ~~nolo contendere to, regardless of adjudication, more than one~~  
100 ~~felony that is not a violent felony, or more than one crime~~  
101 ~~committed in another jurisdiction, the elements of which would~~  
102 ~~constitute a felony in this state, or more than one crime~~  
103 ~~committed against the United States which is designated a~~  
104 ~~felony, excluding any delinquency disposition;~~

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

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

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

115 Section 3. Section 961.06, Florida Statutes, is amended to  
116 read:

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117 961.06 Compensation for wrongful incarceration.-

118 (1) Except as otherwise provided in this act and subject to  
119 the limitations and procedures prescribed in this section, a  
120 person who is found to be entitled to compensation under the  
121 provisions of this act is entitled to:

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

131 (b) A waiver of tuition and fees for up to 120 hours of  
132 instruction at any career center established under s. 1001.44,  
133 any Florida College System institution as defined in s.  
134 1000.21(3), or any state university as defined in s. 1000.21(6),  
135 if the wrongfully incarcerated person meets and maintains the  
136 regular admission requirements of such career center, Florida  
137 College System institution, or state university; remains  
138 registered at such educational institution; and makes  
139 satisfactory academic progress as defined by the educational  
140 institution in which the claimant is enrolled;

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

143 (d) The amount of any reasonable attorney ~~attorney's~~ fees  
144 and expenses incurred and paid by the wrongfully incarcerated  
145 person in connection with all criminal proceedings and appeals

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146 regarding the wrongful conviction, to be calculated by the  
147 department based upon the supporting documentation submitted as  
148 specified in s. 961.05; and

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

160  
161 The total compensation awarded under paragraphs (a), (c), and  
162 (d) may not exceed \$2 million. No further award for attorney  
163 attorney's fees, lobbying fees, costs, or other similar expenses  
164 shall be made by the state.

165 ~~(2) In calculating monetary compensation under paragraph~~  
166 ~~(1)(a), a wrongfully incarcerated person who is placed on parole~~  
167 ~~or community supervision while serving the sentence resulting~~  
168 ~~from the wrongful conviction and who commits no more than one~~  
169 ~~felony that is not a violent felony which results in revocation~~  
170 ~~of the parole or community supervision is eligible for~~  
171 ~~compensation for the total number of years incarcerated. A~~  
172 ~~wrongfully incarcerated person who commits one violent felony or~~  
173 ~~more than one felony that is not a violent felony that results~~  
174 ~~in revocation of the parole or community supervision is~~

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175 ~~ineligible for any compensation under subsection (1).~~

176 (2)~~(3)~~ Within 15 calendar days after issuing notice to the  
177 claimant that his or her claim satisfies all of the requirements  
178 under this act, the department shall notify the Chief Financial  
179 Officer to draw a warrant from the General Revenue Fund or  
180 another source designated by the Legislature in law for the  
181 purchase of an annuity for the claimant based on the total  
182 amount determined by the department under this act.

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

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

195 (b) Contain beneficiary provisions for the continued  
196 disbursement of the annuity or annuities in the event of the  
197 death of the wrongfully incarcerated person.

198 (4)~~(5)~~ If, at the time monetary compensation is determined  
199 under paragraph (1) (a), a court has previously entered a  
200 monetary judgment in favor of the claimant in a civil action  
201 related to the claimant's wrongful incarceration, or the  
202 claimant has entered into a settlement agreement with the state  
203 or any political subdivision thereof related to the claimant's

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204 wrongful incarceration, the amount of the damages in the civil  
205 action or settlement agreement, less any sums paid for attorney  
206 fees or for costs incurred in litigating the civil action or  
207 obtaining the settlement agreement, shall be deducted from the  
208 total monetary compensation to which the claimant is entitled  
209 under this section ~~Before the department approves the~~  
210 ~~application for compensation, the wrongfully incarcerated person~~  
211 ~~must sign a release and waiver on behalf of the wrongfully~~  
212 ~~incarcerated person and his or her heirs, successors, and~~  
213 ~~assigns, forever releasing the state or any agency,~~  
214 ~~instrumentality, or any political subdivision thereof, or any~~  
215 ~~other entity subject to s. 768.28, from all present or future~~  
216 ~~claims that the wrongfully incarcerated person or his or her~~  
217 ~~heirs, successors, or assigns may have against such entities~~  
218 ~~arising out of the facts in connection with the wrongful~~  
219 ~~conviction for which compensation is being sought under the act.~~

220 (5) If subsection (4) does not apply, and if after the time  
221 monetary compensation is determined under paragraph (1)(a) the  
222 court enters a monetary judgment in favor of the claimant in a  
223 civil action related to the claimant's wrongful incarceration,  
224 or the claimant enters into a settlement agreement with the  
225 state or any political subdivision thereof related to the  
226 claimant's wrongful incarceration, the claimant shall reimburse  
227 the state for the monetary compensation in paragraph (1)(a),  
228 less any sums paid for attorney fees or for costs incurred in  
229 litigating the civil action or obtaining the settlement  
230 agreement. A reimbursement required under this subsection shall  
231 not exceed the amount of the monetary award the claimant  
232 received for damages in a civil action or settlement agreement.



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233 In the order of judgment, the court shall award to the state any  
234 amount required to be deducted under this subsection.

235 (6) (a) The claimant shall notify the department upon filing  
236 a civil action against the state or any political subdivision  
237 thereof in which the claimant is seeking monetary damages  
238 related to the claimant's wrongful incarceration for which he or  
239 she previously received or is applying to receive compensation  
240 under paragraph (1) (a).

241 (b) Upon notice of the claimant's civil action, the  
242 department shall file in the case a notice of payment of  
243 monetary compensation to the claimant under paragraph (1) (a).  
244 The notice shall constitute a lien upon any monetary judgment or  
245 settlement recovered under the civil action which is equal to  
246 the sum of monetary compensation paid to the claimant under  
247 paragraph (1) (a), less any attorney fees and costs incurred in  
248 litigating the civil action or obtaining the settlement  
249 agreement ~~A wrongfully incarcerated person may not submit an~~  
250 ~~application for compensation under this act if the person has a~~  
251 ~~lawsuit pending against the state or any agency,~~  
252 ~~instrumentality, or any political subdivision thereof, or any~~  
253 ~~other entity subject to the provisions of s. 768.28, in state or~~  
254 ~~federal court requesting compensation arising out of the facts~~  
255 ~~in connection with the claimant's conviction and incarceration.~~

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

261 (b) ~~(e)~~ Once an application is filed under this act, a

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262 wrongfully incarcerated person may not pursue recovery under a  
263 claim bill until the final disposition of the application.

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

271 ~~(d)(e)~~ Any compensation awarded under a claim bill shall be  
272 the sole redress for claims arising out of the facts in  
273 connection with the claimant's conviction and incarceration and,  
274 upon any award of compensation to a wrongfully incarcerated  
275 person under a claim bill, the person may not receive  
276 compensation under this act.

277 ~~(8)(7)~~ Any payment made under this act does not constitute  
278 a waiver of any defense of sovereign immunity or an increase in  
279 the limits of liability on behalf of the state or any person  
280 subject to the provisions of s. 768.28 or other law.

281 Section 4. Section 961.07, Florida Statutes, is amended to  
282 read:

283 961.07 Continuing appropriation.—

284 (1) Beginning in the 2021-2022 ~~2008-2009~~ fiscal year and  
285 continuing each fiscal year thereafter, a sum sufficient to pay  
286 the approved payments under s. 961.03(1)(b)1. ~~this act is~~  
287 appropriated from the General Revenue Fund to the Chief  
288 Financial Officer, which sum is further appropriated for  
289 expenditure pursuant to the provisions of this act.

290 (2) Payments for petitions filed pursuant to s.

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291 961.03(1)(b)2. are subject to specific appropriation.

292 Section 5. For the purpose of incorporating the amendment  
293 made by this act to section 961.04, Florida Statutes, in a  
294 reference thereto, subsection (4) of section 961.02, Florida  
295 Statutes, is reenacted to read:

296 961.02 Definitions.—As used in ss. 961.01–961.07, the term:

297 (4) “Eligible for compensation” means that a person meets  
298 the definition of the term “wrongfully incarcerated person” and  
299 is not disqualified from seeking compensation under the criteria  
300 prescribed in s. 961.04.

301 Section 6. For the purpose of incorporating the amendment  
302 made by this act to section 961.04, Florida Statutes, in  
303 references thereto, paragraph (a) of subsection (1) and  
304 subsections (2), (3), and (4) of section 961.03, Florida  
305 Statutes, are reenacted to read:

306 961.03 Determination of status as a wrongfully incarcerated  
307 person; determination of eligibility for compensation.—

308 (1)(a) In order to meet the definition of a “wrongfully  
309 incarcerated person” and “eligible for compensation,” upon entry  
310 of an order, based upon exonerating evidence, vacating a  
311 conviction and sentence, a person must set forth the claim of  
312 wrongful incarceration under oath and with particularity by  
313 filing a petition with the original sentencing court, with a  
314 copy of the petition and proper notice to the prosecuting  
315 authority in the underlying felony for which the person was  
316 incarcerated. At a minimum, the petition must:

317 1. State that verifiable and substantial evidence of actual  
318 innocence exists and state with particularity the nature and  
319 significance of the verifiable and substantial evidence of

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320 actual innocence; and

321 2. State that the person is not disqualified, under the  
322 provisions of s. 961.04, from seeking compensation under this  
323 act.

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

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

333 (b) By contesting the nature, significance, or effect of  
334 the evidence of actual innocence, the facts related to the  
335 petitioner's alleged wrongful incarceration, or whether the  
336 petitioner is ineligible from seeking compensation under the  
337 provisions of s. 961.04.

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

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349 authority's certification, the court shall also certify to the  
350 department that the petitioner is eligible for compensation  
351 under the provisions of s. 961.04.

352 (4) (a) If the prosecuting authority responds as set forth  
353 in paragraph (2) (b), the original sentencing court shall make a  
354 determination from the pleadings and supporting documentation  
355 whether, by a preponderance of the evidence, the petitioner is  
356 ineligible for compensation under the provisions of s. 961.04,  
357 regardless of his or her claim of wrongful incarceration. If the  
358 court finds the petitioner ineligible under the provisions of s.  
359 961.04, it shall dismiss the petition.

360 (b) If the prosecuting authority responds as set forth in  
361 paragraph (2) (b), and the court determines that the petitioner  
362 is eligible under the provisions of s. 961.04, but the  
363 prosecuting authority contests the nature, significance or  
364 effect of the evidence of actual innocence, or the facts related  
365 to the petitioner's alleged wrongful incarceration, the court  
366 shall set forth its findings and transfer the petition by  
367 electronic means through the division's website to the division  
368 for findings of fact and a recommended determination of whether  
369 the petitioner has established that he or she is a wrongfully  
370 incarcerated person who is eligible for compensation under this  
371 act.

372 Section 7. For the purpose of incorporating the amendment  
373 made by this act to section 961.06, Florida Statutes, in a  
374 reference thereto, subsection (5) of section 961.02, Florida  
375 Statutes, is reenacted to read:

376 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

377 (5) "Entitled to compensation" means that a person meets

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378 the definition of the term "eligible for compensation" and  
379 satisfies the application requirements prescribed in s. 961.05,  
380 and may receive compensation pursuant to s. 961.06.

381 Section 8. For the purpose of incorporating the amendment  
382 made by this act to section 961.06, Florida Statutes, in a  
383 reference thereto, subsection (6) of section 961.05, Florida  
384 Statutes, is reenacted to read:

385 961.05 Application for compensation for wrongful  
386 incarceration; administrative expunction; determination of  
387 entitlement to compensation.—

388 (6) If the department determines that a claimant meets the  
389 requirements of this act, the wrongfully incarcerated person who  
390 is the subject of the claim becomes entitled to compensation,  
391 subject to the provisions in s. 961.06.

392 Section 9. This act shall take effect July 1, 2021.