

1                   A bill to be entitled  
2           An act relating to compensation for wrongful  
3           incarceration; amending s. 961.03, F.S.; extending the  
4           filing deadline for a petition claiming wrongful  
5           incarceration; providing limited retroactivity for  
6           filing a petition claiming wrongful incarceration;  
7           providing certain heirs, successors, or assigns do not  
8           have standing to file a specified claim; amending s.  
9           961.04, F.S.; removing eligibility requirements  
10          relating to a person's conduct before the person's  
11          wrongful conviction or incarceration; amending s.  
12          961.06, F.S.; authorizing the state to deduct the  
13          amount of a civil award from the state compensation  
14          amount owed if the claimant first receives a civil  
15          award; removing a requirement that a wrongfully  
16          incarcerated person sign a liability release before  
17          receiving compensation; requiring a claimant to  
18          reimburse the state for any difference between state  
19          compensation and a civil award if the claimant  
20          receives statutory compensation before a civil award;  
21          provisions prohibiting an application for compensation  
22          if the applicant has a pending civil suit requesting  
23          compensation; requiring a claimant to notify the  
24          Department of Legal Affairs upon filing a civil  
25          action; requiring the department to file a notice of

26 payment of monetary compensation in the civil action;  
 27 deleting language concerning the intent of awards;  
 28 providing an effective date.

30 Be It Enacted by the Legislature of the State of Florida:

32 Section 1. Paragraph (b) of subsection (1) of section  
 33 961.03, Florida Statutes, is amended, and paragraph (c) is added  
 34 to that subsection, to read:

35 961.03 Determination of status as a wrongfully  
 36 incarcerated person; determination of eligibility for  
 37 compensation.—

38 (1)

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

40 1. Within 2 years after the order vacating a conviction  
 41 and sentence becomes final and the criminal charges against the  
 42 person are dismissed or the person is retried and found not  
 43 guilty, if the person's conviction and sentence is vacated on or  
 44 after July 1, 2021.

45 2. By July 1, 2023, if the person's conviction and  
 46 sentence was vacated and the criminal charges against the person  
 47 were dismissed or the person was retried and found not guilty  
 48 after July 1, 2008, but before July 1, 2021, and he or she  
 49 previously filed a claim under this section that was dismissed  
 50 or did not file a claim under this section because the:

51 a. Date when the criminal charges against the person were  
 52 dismissed or the date the person was acquitted upon retrial  
 53 occurred more than 90 days after the date of the final order  
 54 vacating the conviction and sentence; or

55 b. Person was convicted of an unrelated felony before his  
 56 or her wrongful conviction and incarceration and was previously  
 57 barred under s. 961.04.

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

61 ~~2. By July 1, 2010, if the person's conviction and~~  
 62 ~~sentence was vacated by an order that became final prior to July~~  
 63 ~~1, 2008.~~

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

67 Section 2. Subsections (1) and (2) of section 961.04,  
 68 Florida Statutes, are amended, to read:

69 961.04 Eligibility for compensation for wrongful  
 70 incarceration.— A wrongfully incarcerated person is not eligible  
 71 for compensation under the act if:

72 ~~(1) Before the person's wrongful conviction and~~  
 73 ~~incarceration, the person was convicted of, or pled guilty or~~  
 74 ~~nolo contendere to, regardless of adjudication, any violent~~  
 75 ~~felony, or a crime committed in another jurisdiction the~~

76 ~~elements of which would constitute a violent felony in this~~  
77 ~~state, or a crime committed against the United States which is~~  
78 ~~designated a violent felony, excluding any delinquency~~  
79 ~~disposition;~~

80 ~~(2) Before the person's wrongful conviction and~~  
81 ~~incarceration, the person was convicted of, or pled guilty or~~  
82 ~~nolo contendere to, regardless of adjudication, more than one~~  
83 ~~felony that is not a violent felony, or more than one crime~~  
84 ~~committed in another jurisdiction, the elements of which would~~  
85 ~~constitute a felony in this state, or more than one crime~~  
86 ~~committed against the United States which is designated a~~  
87 ~~felony, excluding any delinquency disposition;~~

88 Section 3. Section 961.06, Florida Statutes, is amended,  
89 to read:

90 961.06 Compensation for wrongful incarceration.—

91 (1) Except as otherwise provided in this act and subject  
92 to the limitations and procedures prescribed in this section, a  
93 person who is found to be entitled to compensation under the  
94 provisions of this act is entitled to:

95 (a) Monetary compensation for wrongful incarceration,  
96 which shall be calculated at a rate of \$50,000 for each year of  
97 wrongful incarceration, prorated as necessary to account for a  
98 portion of a year. For persons found to be wrongfully  
99 incarcerated after December 31, 2008, the Chief Financial  
100 Officer may adjust the annual rate of compensation for inflation

101 using the change in the December-to-December "Consumer Price  
102 Index for All Urban Consumers" of the Bureau of Labor Statistics  
103 of the Department of Labor;

104 (b) A waiver of tuition and fees for up to 120 hours of  
105 instruction at any career center established under s. 1001.44,  
106 any Florida College System institution as defined in s.  
107 1000.21(3), or any state university as defined in s. 1000.21(6),  
108 if the wrongfully incarcerated person meets and maintains the  
109 regular admission requirements of such career center, Florida  
110 College System institution, or state university; remains  
111 registered at such educational institution; and makes  
112 satisfactory academic progress as defined by the educational  
113 institution in which the claimant is enrolled;

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

116 (d) The amount of any reasonable attorney ~~attorney's~~ fees  
117 and expenses incurred and paid by the wrongfully incarcerated  
118 person in connection with all criminal proceedings and appeals  
119 regarding the wrongful conviction, to be calculated by the  
120 department based upon the supporting documentation submitted as  
121 specified in s. 961.05; and

122 (e) Notwithstanding any provision to the contrary in s.  
123 943.0583 or s. 943.0585, immediate administrative expunction of  
124 the person's criminal record resulting from his or her wrongful  
125 arrest, wrongful conviction, and wrongful incarceration. The

126 Department of Legal Affairs and the Department of Law  
127 Enforcement shall, upon a determination that a claimant is  
128 entitled to compensation, immediately take all action necessary  
129 to administratively expunge the claimant's criminal record  
130 arising from his or her wrongful arrest, wrongful conviction,  
131 and wrongful incarceration. All fees for this process shall be  
132 waived.

133  
134 The total compensation awarded under paragraphs (a), (c), and  
135 (d) may not exceed \$2 million. No further award for attorney  
136 ~~attorney's~~ fees, lobbying fees, costs, or other similar expenses  
137 shall be made by the state.

138 (2) In calculating monetary compensation under paragraph  
139 (1) (a), a wrongfully incarcerated person who is placed on parole  
140 or community supervision while serving the sentence resulting  
141 from the wrongful conviction and who commits no more than one  
142 felony that is not a violent felony which results in revocation  
143 of the parole or community supervision is eligible for  
144 compensation for the total number of years incarcerated. A  
145 wrongfully incarcerated person who commits one violent felony or  
146 more than one felony that is not a violent felony that results  
147 in revocation of the parole or community supervision is  
148 ineligible for any compensation under subsection (1).

149 (3) Within 15 calendar days after issuing notice to the  
150 claimant that his or her claim satisfies all of the requirements

151 under this act, the department shall notify the Chief Financial  
152 Officer to draw a warrant from the General Revenue Fund or  
153 another source designated by the Legislature in law for the  
154 purchase of an annuity for the claimant based on the total  
155 amount determined by the department under this act.

156 (4) The Chief Financial Officer shall issue payment in the  
157 amount determined by the department to an insurance company or  
158 other financial institution admitted and authorized to issue  
159 annuity contracts in this state to purchase an annuity or  
160 annuities, selected by the wrongfully incarcerated person, for a  
161 term of not less than 10 years. The Chief Financial Officer is  
162 directed to execute all necessary agreements to implement this  
163 act and to maximize the benefit to the wrongfully incarcerated  
164 person. The terms of the annuity or annuities shall:

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

168 (b) Contain beneficiary provisions for the continued  
169 disbursement of the annuity or annuities in the event of the  
170 death of the wrongfully incarcerated person.

171 (5) If, at the time monetary compensation is determined  
172 under paragraph (1) (a), a court has previously entered a  
173 monetary judgment in favor of the claimant in a civil action  
174 related to the person's wrongful incarceration, or the claimant  
175 has entered into a settlement agreement with the state or any

176 political subdivision thereof related to the person's wrongful  
177 incarceration, the amount of the damages in the civil action or  
178 settlement agreement, less any sums paid for attorney fees or  
179 for costs incurred in litigating the civil action or obtaining  
180 the settlement agreement, shall be deducted from the total  
181 monetary compensation to which the claimant is entitled under  
182 this section ~~Before the department approves the application for~~  
183 ~~compensation, the wrongfully incarcerated person must sign a~~  
184 ~~release and waiver on behalf of the wrongfully incarcerated~~  
185 ~~person and his or her heirs, successors, and assigns, forever~~  
186 ~~releasing the state or any agency, instrumentality, or any~~  
187 ~~political subdivision thereof, or any other entity subject to s.~~  
188 ~~768.28, from all present or future claims that the wrongfully~~  
189 ~~incarcerated person or his or her heirs, successors, or assigns~~  
190 ~~may have against such entities arising out of the facts in~~  
191 ~~connection with the wrongful conviction for which compensation~~  
192 ~~is being sought under the act.~~

193 (6) If subsection (5) does not apply, and if after the  
194 time monetary compensation is determined under paragraph (1) (a)  
195 the court enters a monetary judgment in favor of the claimant in  
196 a civil action related to the person's wrongful incarceration,  
197 or the claimant enters into a settlement agreement with the  
198 state or any political subdivision thereof related to the  
199 person's wrongful incarceration, the claimant shall reimburse  
200 the state for the monetary compensation in paragraph (1) (a),



201 less any sums paid for attorney fees or costs incurred in  
202 litigating the civil action or obtaining the settlement  
203 agreement. A reimbursement required under this subsection shall  
204 not exceed the amount of the monetary award the claimant  
205 received for damages in a civil action or settlement agreement.  
206 The court shall include in the order of judgment an award to the  
207 state of any amount required to be deducted under this  
208 subsection.

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

216 (7) (a) The claimant shall notify the department upon  
217 filing a civil action against the state or any political  
218 subdivision thereof in which the claimant is seeking monetary  
219 damages related to the claimant's wrongful incarceration for  
220 which he or she previously received or is applying to receive  
221 compensation pursuant to paragraph (1) (a).

222 (b) Upon notice of the claimant's civil action, the  
223 department shall file in the case a notice of payment of  
224 monetary compensation to the claimant under paragraph (1) (a).  
225 The notice shall constitute a lien upon any judgment or

226 settlement recovered under the civil action that is equal to the  
227 sum of monetary compensation paid to the claimant under  
228 paragraph (1) (a), less any attorney fees and litigation costs.

229 (8) (a) (b) A wrongfully incarcerated person may not submit  
230 an application for compensation under this act if the person is  
231 the subject of a claim bill pending for claims arising out of  
232 the facts in connection with the claimant's conviction and  
233 incarceration.

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

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

244 (d) (e) Any compensation awarded under a claim bill shall  
245 be the sole redress for claims arising out of the facts in  
246 connection with the claimant's conviction and incarceration and,  
247 upon any award of compensation to a wrongfully incarcerated  
248 person under a claim bill, the person may not receive  
249 compensation under this act.

250 (9) (7) Any payment made under this act does not constitute

251 | a waiver of any defense of sovereign immunity or an increase in  
252 | the limits of liability on behalf of the state or any person  
253 | subject to the provisions of s. 768.28 or other law.

254 |       Section 4. This act shall take effect July 1, 2021.