

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; amending
18 s. 961.07, F.S.; specifying that payments for certain
19 petitions filed under the Victims of Wrongful
20 Incarceration Compensation Act are subject to specific
21 appropriation; reenacting ss. 961.02(4) and
22 961.03(1)(a), (2), (3), and (4), F.S., relating to
23 eligibility for compensation for wrongfully
24 incarcerated persons, to incorporate the amendment
25 made to s. 961.04, F.S., in references thereto;

26 reenacting ss. 961.02(5) and 961.05(6), F.S., relating
 27 to receiving compensation, to incorporate the
 28 amendment made to s. 961.06, F.S., in references
 29 thereto; providing an effective date.
 30

31 Be It Enacted by the Legislature of the State of Florida:
 32

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

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

39 (1)

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

41 1. Within 2 years after the order vacating a conviction
 42 and sentence becomes final and the criminal charges against the
 43 person are dismissed or the person is retried and acquitted, if
 44 the person's conviction and sentence is vacated on or after July
 45 1, 2022.

46 2. By July 1, 2024, if the person's conviction and
 47 sentence was vacated and the criminal charges against the person
 48 were dismissed or the person was retried and acquitted on or
 49 after January 1, 2006, but before July 1, 2022, and he or she
 50 previously filed a petition under this section which was

51 dismissed or did not file a petition under this section because:

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

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

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

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

65 ~~2. By July 1, 2010, if the person's conviction and~~
 66 ~~sentence was vacated by an order that became final prior to July~~
 67 ~~1, 2008.~~

68 Section 2. Section 961.04, Florida Statutes, is amended to
 69 read:

70 961.04 Eligibility for compensation for wrongful
 71 incarceration.—A wrongfully incarcerated person is not eligible
 72 for compensation under the act for any period of incarceration
 73 during which the person was concurrently serving a sentence for
 74 a conviction of another crime for which such person was lawfully
 75 incarcerated if:

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

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

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

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

99 ~~(5) During the person's wrongful incarceration, the person~~
100 ~~was also serving a concurrent sentence for another felony for~~

101 ~~which the person was not wrongfully convicted.~~

102 Section 3. Section 961.06, Florida Statutes, is amended to
 103 read:

104 961.06 Compensation for wrongful incarceration.—

105 (1) Except as otherwise provided in this act and subject
 106 to the limitations and procedures prescribed in this section, a
 107 person who is found to be entitled to compensation under the
 108 provisions of this act is entitled to:

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

118 (b) A waiver of tuition and fees for up to 120 hours of
 119 instruction at any career center established under s. 1001.44,
 120 any Florida College System institution as defined in s.
 121 1000.21(3), or any state university as defined in s. 1000.21(6),
 122 if the wrongfully incarcerated person meets and maintains the
 123 regular admission requirements of such career center, Florida
 124 College System institution, or state university; remains
 125 registered at such educational institution; and makes

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126 satisfactory academic progress as defined by the educational
127 institution in which the claimant is enrolled;

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

130 (d) The amount of any reasonable attorney ~~attorney's~~ fees
131 and expenses incurred and paid by the wrongfully incarcerated
132 person in connection with all criminal proceedings and appeals
133 regarding the wrongful conviction, to be calculated by the
134 department based upon the supporting documentation submitted as
135 specified in s. 961.05; and

136 (e) Notwithstanding any provision to the contrary in s.
137 943.0583 or s. 943.0585, immediate administrative expunction of
138 the person's criminal record resulting from his or her wrongful
139 arrest, wrongful conviction, and wrongful incarceration. The
140 Department of Legal Affairs and the Department of Law
141 Enforcement shall, upon a determination that a claimant is
142 entitled to compensation, immediately take all action necessary
143 to administratively expunge the claimant's criminal record
144 arising from his or her wrongful arrest, wrongful conviction,
145 and wrongful incarceration. All fees for this process shall be
146 waived.

147
148 The total compensation awarded under paragraphs (a), (c), and
149 (d) may not exceed \$2 million. No further award for attorney
150 ~~attorney's~~ fees, lobbying fees, costs, or other similar expenses

151 shall be made by the state.

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

163 (2)~~(3)~~ Within 15 calendar days after issuing notice to the
164 claimant that his or her claim satisfies all of the requirements
165 under this act, the department shall notify the Chief Financial
166 Officer to draw a warrant from the General Revenue Fund or
167 another source designated by the Legislature in law for the
168 purchase of an annuity for the claimant based on the total
169 amount determined by the department under this act.

170 (3)~~(4)~~ The Chief Financial Officer shall issue payment in
171 the amount determined by the department to an insurance company
172 or other financial institution admitted and authorized to issue
173 annuity contracts in this state to purchase an annuity or
174 annuities, selected by the wrongfully incarcerated person, for a
175 term of not less than 10 years. The Chief Financial Officer is

176 | directed to execute all necessary agreements to implement this
 177 | act and to maximize the benefit to the wrongfully incarcerated
 178 | person. The terms of the annuity or annuities shall:

179 | (a) Provide that the annuity or annuities may not be sold,
 180 | discounted, or used as security for a loan or mortgage by the
 181 | wrongfully incarcerated person.

182 | (b) Contain beneficiary provisions for the continued
 183 | disbursement of the annuity or annuities in the event of the
 184 | death of the wrongfully incarcerated person.

185 | (4)~~(5)~~ Before the department approves the application for
 186 | compensation, the wrongfully incarcerated person must sign a
 187 | release and waiver on behalf of the wrongfully incarcerated
 188 | person and his or her heirs, successors, and assigns, forever
 189 | releasing the state or any agency, instrumentality, or any
 190 | political subdivision thereof, or any other entity subject to s.
 191 | 768.28, from all present or future claims that the wrongfully
 192 | incarcerated person or his or her heirs, successors, or assigns
 193 | may have against such entities arising out of the facts in
 194 | connection with the wrongful conviction for which compensation
 195 | is being sought under the act.

196 | (5)~~(6)~~(a) A wrongfully incarcerated person may not submit
 197 | an application for compensation under this act if the person has
 198 | a lawsuit pending against the state or any agency,
 199 | instrumentality, or any political subdivision thereof, or any
 200 | other entity subject to the provisions of s. 768.28, in state or

201 federal court requesting compensation arising out of the facts
202 in connection with the claimant's conviction and incarceration.

203 (b) A wrongfully incarcerated person may not submit an
204 application for compensation under this act if the person is the
205 subject of a claim bill pending for claims arising out of the
206 facts in connection with the claimant's conviction and
207 incarceration.

208 (c) Once an application is filed under this act, a
209 wrongfully incarcerated person may not pursue recovery under a
210 claim bill until the final disposition of the application.

211 (d) Any amount awarded under this act is intended to
212 provide the sole compensation for any and all present and future
213 claims arising out of the facts in connection with the
214 claimant's conviction and incarceration. Upon notification by
215 the department that an application meets the requirements of
216 this act, a wrongfully incarcerated person may not recover under
217 a claim bill.

218 (e) Any compensation awarded under a claim bill shall be
219 the sole redress for claims arising out of the facts in
220 connection with the claimant's conviction and incarceration and,
221 upon any award of compensation to a wrongfully incarcerated
222 person under a claim bill, the person may not receive
223 compensation under this act.

224 ~~(6)-(7)~~ Any payment made under this act does not constitute
225 a waiver of any defense of sovereign immunity or an increase in

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226 | the limits of liability on behalf of the state or any person
 227 | subject to the provisions of s. 768.28 or other law.

228 | Section 4. Section 961.07, Florida Statutes, is amended to
 229 | read:

230 | 961.07 Continuing appropriation.—

231 | (1) Beginning in the 2022-2023 ~~2008-2009~~ fiscal year and
 232 | continuing each fiscal year thereafter, a sum sufficient to pay
 233 | the approved payments under s. 961.03(1)(b)1. ~~this act~~ is
 234 | appropriated from the General Revenue Fund to the Chief
 235 | Financial Officer, which sum is further appropriated for
 236 | expenditure pursuant to the provisions of this act.

237 | (2) Payments for petitions filed pursuant to s.
 238 | 961.03(1)(b)2. are subject to specific appropriation.

239 | Section 5. For the purpose of incorporating the amendment
 240 | made by this act to section 961.04, Florida Statutes, in a
 241 | reference thereto, subsection (4) of section 961.02, Florida
 242 | Statutes, is reenacted to read:

243 | 961.02 Definitions.—As used in ss. 961.01-961.07, the
 244 | term:

245 | (4) "Eligible for compensation" means that a person meets
 246 | the definition of the term "wrongfully incarcerated person" and
 247 | is not disqualified from seeking compensation under the criteria
 248 | prescribed in s. 961.04.

249 | Section 6. For the purpose of incorporating the amendment
 250 | made by this act to section 961.04, Florida Statutes, in

251 references thereto, paragraph (a) of subsection (1) and
 252 subsections (2), (3), and (4) of section 961.03, Florida
 253 Statutes, are reenacted to read:

254 961.03 Determination of status as a wrongfully
 255 incarcerated person; determination of eligibility for
 256 compensation.—

257 (1)(a) In order to meet the definition of a "wrongfully
 258 incarcerated person" and "eligible for compensation," upon entry
 259 of an order, based upon exonerating evidence, vacating a
 260 conviction and sentence, a person must set forth the claim of
 261 wrongful incarceration under oath and with particularity by
 262 filing a petition with the original sentencing court, with a
 263 copy of the petition and proper notice to the prosecuting
 264 authority in the underlying felony for which the person was
 265 incarcerated. At a minimum, the petition must:

266 1. State that verifiable and substantial evidence of
 267 actual innocence exists and state with particularity the nature
 268 and significance of the verifiable and substantial evidence of
 269 actual innocence; and

270 2. State that the person is not disqualified, under the
 271 provisions of s. 961.04, from seeking compensation under this
 272 act.

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

275 (a) By certifying to the court that, based upon the

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276 petition and verifiable and substantial evidence of actual
277 innocence, no further criminal proceedings in the case at bar
278 can or will be initiated by the prosecuting authority, that no
279 questions of fact remain as to the petitioner's wrongful
280 incarceration, and that the petitioner is not ineligible from
281 seeking compensation under the provisions of s. 961.04; or

282 (b) By contesting the nature, significance, or effect of
283 the evidence of actual innocence, the facts related to the
284 petitioner's alleged wrongful incarceration, or whether the
285 petitioner is ineligible from seeking compensation under the
286 provisions of s. 961.04.

287 (3) If the prosecuting authority responds as set forth in
288 paragraph (2)(a), the original sentencing court, based upon the
289 evidence of actual innocence, the prosecuting authority's
290 certification, and upon the court's finding that the petitioner
291 has presented clear and convincing evidence that the petitioner
292 committed neither the act nor the offense that served as the
293 basis for the conviction and incarceration, and that the
294 petitioner did not aid, abet, or act as an accomplice to a
295 person who committed the act or offense, shall certify to the
296 department that the petitioner is a wrongfully incarcerated
297 person as defined by this act. Based upon the prosecuting
298 authority's certification, the court shall also certify to the
299 department that the petitioner is eligible for compensation
300 under the provisions of s. 961.04.

301 (4) (a) If the prosecuting authority responds as set forth
 302 in paragraph (2) (b), the original sentencing court shall make a
 303 determination from the pleadings and supporting documentation
 304 whether, by a preponderance of the evidence, the petitioner is
 305 ineligible for compensation under the provisions of s. 961.04,
 306 regardless of his or her claim of wrongful incarceration. If the
 307 court finds the petitioner ineligible under the provisions of s.
 308 961.04, it shall dismiss the petition.

309 (b) If the prosecuting authority responds as set forth in
 310 paragraph (2) (b), and the court determines that the petitioner
 311 is eligible under the provisions of s. 961.04, but the
 312 prosecuting authority contests the nature, significance or
 313 effect of the evidence of actual innocence, or the facts related
 314 to the petitioner's alleged wrongful incarceration, the court
 315 shall set forth its findings and transfer the petition by
 316 electronic means through the division's website to the division
 317 for findings of fact and a recommended determination of whether
 318 the petitioner has established that he or she is a wrongfully
 319 incarcerated person who is eligible for compensation under this
 320 act.

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

325 961.02 Definitions.—As used in ss. 961.01–961.07, the

326 term:

327 (5) "Entitled to compensation" means that a person meets
 328 the definition of the term "eligible for compensation" and
 329 satisfies the application requirements prescribed in s. 961.05,
 330 and may receive compensation pursuant to s. 961.06.

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

335 961.05 Application for compensation for wrongful
 336 incarceration; administrative expunction; determination of
 337 entitlement to compensation.—

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

342 Section 9. This act shall take effect July 1, 2022.