

By Senator Perry

8-00124A-22

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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; 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.

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31 Be It Enacted by the Legislature of the State of Florida:
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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 incarcerated
37 person; determination of eligibility for 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 and
41 sentence becomes final and the criminal charges against the
42 person are dismissed or the person is retried and acquitted, if
43 the person's conviction and sentence is vacated on or after July
44 1, 2022.

45 2. By July 1, 2024, if the person's conviction and sentence
46 was vacated and the criminal charges against the person were
47 dismissed or the person was retried and acquitted on or after
48 January 1, 2006, but before July 1, 2022, and he or she
49 previously filed a petition under this section which was
50 dismissed or did not file a petition under this section because:

51 a. The date when the criminal charges against the person
52 were 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. The person was convicted of an unrelated felony before
56 or during his or her wrongful conviction and incarceration and
57 was ineligible for compensation under former s. 961.04.

58 (c) A deceased person's heirs, successors, or assigns do

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59 not have standing to file a petition on the deceased person's
60 behalf under this section

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

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

66 Section 2. Section 961.04, Florida Statutes, is amended to
67 read:

68 961.04 Eligibility for compensation for wrongful
69 incarceration.—A wrongfully incarcerated person is not eligible
70 for compensation under the act for any period of incarceration
71 during which the person was concurrently serving a sentence for
72 a conviction of another crime for which such person was lawfully
73 incarcerated if:

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

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

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

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

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

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

100 Section 3. Subsections (1) and (2) of section 961.06,
101 Florida Statutes, are amended to read:

102 961.06 Compensation for wrongful incarceration.—

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

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

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

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117 instruction at any career center established under s. 1001.44,
118 any Florida College System institution as defined in s.
119 1000.21(3), or any state university as defined in s. 1000.21(6),
120 if the wrongfully incarcerated person meets and maintains the
121 regular admission requirements of such career center, Florida
122 College System institution, or state university; remains
123 registered at such educational institution; and makes
124 satisfactory academic progress as defined by the educational
125 institution in which the claimant is enrolled;

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

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

134 (e) Notwithstanding any provision to the contrary in s.
135 943.0583 or s. 943.0585, immediate administrative expunction of
136 the person's criminal record resulting from his or her wrongful
137 arrest, wrongful conviction, and wrongful incarceration. The
138 Department of Legal Affairs and the Department of Law
139 Enforcement shall, upon a determination that a claimant is
140 entitled to compensation, immediately take all action necessary
141 to administratively expunge the claimant's criminal record
142 arising from his or her wrongful arrest, wrongful conviction,
143 and wrongful incarceration. All fees for this process shall be
144 waived.

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

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

161 Section 4. Section 961.07, Florida Statutes, is amended to
162 read:

163 961.07 Continuing appropriation.—

164 (1) Beginning in the 2022-2023 ~~2008-2009~~ fiscal year and
165 continuing each fiscal year thereafter, a sum sufficient to pay
166 the approved payments under s. 961.03(1)(b)1. ~~this act~~ is
167 appropriated from the General Revenue Fund to the Chief
168 Financial Officer, which sum is further appropriated for
169 expenditure pursuant to the provisions of this act.

170 (2) Payments for petitions filed pursuant to s.
171 961.03(1)(b)2. are subject to specific appropriation.

172 Section 5. For the purpose of incorporating the amendment
173 made by this act to section 961.04, Florida Statutes, in a
174 reference thereto, subsection (4) of section 961.02, Florida

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175 Statutes, is reenacted to read:

176 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

177 (4) "Eligible for compensation" means that a person meets
178 the definition of the term "wrongfully incarcerated person" and
179 is not disqualified from seeking compensation under the criteria
180 prescribed in s. 961.04.

181 Section 6. For the purpose of incorporating the amendment
182 made by this act to section 961.04, Florida Statutes, in
183 references thereto, paragraph (a) of subsection (1) and
184 subsections (2), (3), and (4) of section 961.03, Florida
185 Statutes, are reenacted to read:

186 961.03 Determination of status as a wrongfully incarcerated
187 person; determination of eligibility for compensation.—

188 (1) (a) In order to meet the definition of a "wrongfully
189 incarcerated person" and "eligible for compensation," upon entry
190 of an order, based upon exonerating evidence, vacating a
191 conviction and sentence, a person must set forth the claim of
192 wrongful incarceration under oath and with particularity by
193 filing a petition with the original sentencing court, with a
194 copy of the petition and proper notice to the prosecuting
195 authority in the underlying felony for which the person was
196 incarcerated. At a minimum, the petition must:

197 1. State that verifiable and substantial evidence of actual
198 innocence exists and state with particularity the nature and
199 significance of the verifiable and substantial evidence of
200 actual innocence; and

201 2. State that the person is not disqualified, under the
202 provisions of s. 961.04, from seeking compensation under this
203 act.

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

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

213 (b) By contesting the nature, significance, or effect of
214 the evidence of actual innocence, the facts related to the
215 petitioner's alleged wrongful incarceration, or whether the
216 petitioner is ineligible from seeking compensation under the
217 provisions of s. 961.04.

218 (3) If the prosecuting authority responds as set forth in
219 paragraph (2) (a), the original sentencing court, based upon the
220 evidence of actual innocence, the prosecuting authority's
221 certification, and upon the court's finding that the petitioner
222 has presented clear and convincing evidence that the petitioner
223 committed neither the act nor the offense that served as the
224 basis for the conviction and incarceration, and that the
225 petitioner did not aid, abet, or act as an accomplice to a
226 person who committed the act or offense, shall certify to the
227 department that the petitioner is a wrongfully incarcerated
228 person as defined by this act. Based upon the prosecuting
229 authority's certification, the court shall also certify to the
230 department that the petitioner is eligible for compensation
231 under the provisions of s. 961.04.

232 (4) (a) If the prosecuting authority responds as set forth

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233 in paragraph (2) (b), the original sentencing court shall make a
234 determination from the pleadings and supporting documentation
235 whether, by a preponderance of the evidence, the petitioner is
236 ineligible for compensation under the provisions of s. 961.04,
237 regardless of his or her claim of wrongful incarceration. If the
238 court finds the petitioner ineligible under the provisions of s.
239 961.04, it shall dismiss the petition.

240 (b) If the prosecuting authority responds as set forth in
241 paragraph (2) (b), and the court determines that the petitioner
242 is eligible under the provisions of s. 961.04, but the
243 prosecuting authority contests the nature, significance or
244 effect of the evidence of actual innocence, or the facts related
245 to the petitioner's alleged wrongful incarceration, the court
246 shall set forth its findings and transfer the petition by
247 electronic means through the division's website to the division
248 for findings of fact and a recommended determination of whether
249 the petitioner has established that he or she is a wrongfully
250 incarcerated person who is eligible for compensation under this
251 act.

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

256 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

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

261 Section 8. For the purpose of incorporating the amendment

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262 made by this act to section 961.06, Florida Statutes, in a
263 reference thereto, subsection (6) of section 961.05, Florida
264 Statutes, is reenacted to read:

265 961.05 Application for compensation for wrongful
266 incarceration; administrative expunction; determination of
267 entitlement to compensation.—

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

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