

HB 6507

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1                   A bill to be entitled  
2           An act for the relief of Scotty Bartek; providing an  
3           appropriation to compensate Scotty Bartek for being  
4           wrongfully incarcerated; providing a limitation on  
5           compensation and the payment of attorney fees;  
6           providing an effective date.

7  
8           WHEREAS, on September 9, 1991, Scotty Bartek was convicted  
9           of two counts of sexual battery upon a child under 12 years of  
10          age and was sentenced to two life sentences with a 25-year  
11          mandatory minimum term of imprisonment on each count, and

12          WHEREAS, on October 5, 2009, Mr. Bartek filed a motion for  
13          postconviction relief, claiming newly discovered evidence in the  
14          form of the victim's recantation, and

15          WHEREAS, the victim informed the state that she had no  
16          recollection of Mr. Bartek, her father, committing sexual  
17          battery and that her mother had coached her to fabricate  
18          testimony against Mr. Bartek, and

19          WHEREAS, on May 15, 2012, the Circuit Court for the Fifth  
20          Judicial Circuit, in and for Marion County, granted Mr. Bartek's  
21          petition of postconviction relief in Case No. 1991-CF-376, and  
22          the State of Florida then appealed the circuit court's order,  
23          and

24          WHEREAS, if a circuit court's order vacating a conviction  
25          and sentence is appealed by the State of Florida, the order

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26 | becomes final upon the issuance of a mandate by the appellate  
27 | court, and

28 |       WHEREAS, on November 26, 2013, the Fifth District Court of  
29 | Appeal *per curiam* affirmed the circuit court's order granting  
30 | Mr. Bartek's petition and vacating the judgment and sentence in  
31 | Case No. 5D12-2399, and

32 |       WHEREAS, section 961.03(1)(b)1., Florida Statutes (2014),  
33 | requires a wrongfully convicted person to file a petition  
34 | seeking compensation within 90 days after the order vacating a  
35 | conviction and sentence becomes final, and

36 |       WHEREAS, on December 20, 2013, after more than 22 years of  
37 | wrongful incarceration, Mr. Bartek was exonerated and the  
38 | mandate was issued by the District Court of Appeal, giving him  
39 | until March 20, 2014, to timely file his petition seeking a  
40 | determination of eligibility for compensation, and

41 |       WHEREAS, Mr. Bartek's case was scheduled for a retrial in  
42 | March 2014, and

43 |       WHEREAS, on February 27, 2014, the state entered a *nolle*  
44 | *prosequi*, dismissing its charges against Mr. Bartek, and  
45 | indicated that it did not have sufficient evidence to establish  
46 | beyond a reasonable doubt that Mr. Bartek committed sexual  
47 | battery, and

48 |       WHEREAS, on May 20, 2014, within 90 days after the state's  
49 | filing of the *nolle prosequi*, Mr. Bartek filed a petition  
50 | seeking compensation for wrongful incarceration, and

51           WHEREAS, on September 8, 2014, counsel for Mr. Bartek filed  
 52 a supplemental memorandum of law alleging that Mr. Bartek is  
 53 "eligible for compensation" under chapter 961, Florida Statutes  
 54 (2014), and

55           WHEREAS, counsel for Mr. Bartek alleged that although Mr.  
 56 Bartek was disqualified from seeking compensation by s.  
 57 961.04(1), Florida Statutes (2014), the statute did not afford  
 58 him equal protection under the law, in violation of the United  
 59 States Constitution and the State Constitution, because the  
 60 statute unconstitutionally discriminated between persons  
 61 wrongfully incarcerated who had prior felony convictions and  
 62 those persons who did not have prior felony convictions, and

63           WHEREAS, Mr. Bartek was convicted before his wrongful  
 64 sexual battery conviction and incarceration on one count of the  
 65 sale of cannabis, a nonviolent felony of the third degree, and

66           WHEREAS, the courts did not consider Mr. Bartek's equal  
 67 protection argument, but the Legislature narrowed the types of  
 68 disqualifying felonies in its passage of chapter 2017-120, Laws  
 69 of Florida, so that wrongfully incarcerated persons would be  
 70 disqualified if they committed a violent felony before their  
 71 wrongful conviction and incarceration and so that those persons  
 72 who committed a nonviolent felony would no longer be  
 73 disqualified, and

74           WHEREAS, Mr. Bartek's counsel argued that the Legislature  
 75 did not intend to require a defendant seeking compensation for

76 wrongful incarceration to file a petition while the state could  
 77 pursue charges against him or her, and

78 WHEREAS, on March 3, 2015, the circuit court dismissed Mr.  
 79 Bartek's petition seeking compensation because it was not timely  
 80 filed, and on August 12, 2016, the District Court of Appeal  
 81 affirmed the trial court's dismissal, and

82 WHEREAS, the Legislature has determined that it is  
 83 appropriate to compensate individuals who have been wrongly  
 84 incarcerated, and

85 WHEREAS, if Mr. Bartek had met the requirements of chapter  
 86 961, Florida Statutes (2014), he would have been entitled to  
 87 compensation at a rate of \$50,000 for each year of wrongful  
 88 incarceration, prorated to account for a portion of a year  
 89 served; a waiver of tuition and fees for up to 120 hours of  
 90 instruction at a career center, community college, or state  
 91 university; a refund of the amount of any fine, penalty, or  
 92 court costs imposed which he paid; and a refund of the amount of  
 93 reasonable attorney fees and expenses which he incurred and  
 94 paid, and

95 WHEREAS, Mr. Bartek was wrongfully incarcerated for 22  
 96 years and 242 days, which amounts to \$1,133,150.69, and

97 WHEREAS, the estimated cost of attendance for a full-time  
 98 undergraduate Florida resident to attend a state university for  
 99 4 years is approximately \$24,000, and

100 WHEREAS, Mr. Bartek paid an estimated \$500 in court costs

101 and fines, and

102 WHEREAS, Mr. Bartek's defense attorney charged him \$40,000  
 103 for legal services relating to the charges described in this  
 104 case, and

105 WHEREAS, these figures amount to an estimated total of  
 106 \$1,197,650.69, which is the amount Mr. Bartek seeks under this  
 107 claim bill, NOW, THEREFORE,

108

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

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111 Section 1. The facts stated in the preamble to this act  
 112 are found and declared to be true.

113 Section 2. The sum of \$1,197,650.69 is appropriated from  
 114 the General Revenue Fund to the Department of Legal Affairs for  
 115 the relief of Scotty Bartek for his wrongful incarceration.

116 Section 3. The Chief Financial Officer is directed to draw  
 117 a warrant in favor of Scotty Bartek in the sum of \$1,197,650.69  
 118 upon funds of the Department of Legal Affairs in the State  
 119 Treasury and to pay the same out of such funds in the State  
 120 Treasury.

121 Section 4. The amount awarded under this act is intended  
 122 to provide the sole compensation for all present and future  
 123 claims arising out of the wrongful incarceration of Scotty  
 124 Bartek as described in this act. The total amount paid for  
 125 attorney fees, including the \$40,000 reimbursement for Mr.

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126 | Bartek's defense attorney fees, may not exceed 25 percent of the  
127 | amount awarded under this act.

128 |       Section 5. This act shall take effect upon becoming a law.