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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/06/2023	.	
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	.	
	.	

The Committee on Criminal Justice (Bradley) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (6) of section 961.02, Florida
Statutes, is amended to read:

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

~~(6) "Violent felony" means a felony listed in s.~~

~~775.084(1)(c)1. or s. 948.06(8)(c).~~

Section 2. Paragraph (b) of subsection (1) of section



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11 961.03, Florida Statutes, is amended, and paragraph (c) is added
12 to that subsection, to read:

13 961.03 Determination of status as a wrongfully incarcerated
14 person; determination of eligibility for compensation.—

15 (1)

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

17 1. Within 2 years ~~90 days~~ after the order vacating a
18 conviction and sentence becomes final and the criminal charges
19 against the person are dismissed or the person is retried and
20 acquitted if the person's conviction and sentence is vacated on
21 or after July 1, 2023 ~~2008~~.

22 2. By July 1, 2025 ~~2010~~, if the person's conviction and
23 sentence was vacated and the criminal charges against the person
24 were dismissed or the person was retried and acquitted on or
25 after January 1, 2006, but before July 1, 2023, and he or she
26 previously filed a petition under this section that was
27 dismissed or he or she did not file a petition under this
28 section because:

29 a. The date on which the criminal charges against the
30 person were dismissed or the date on which the person was
31 acquitted upon retrial occurred more than 90 days after the date
32 of the final order vacating the conviction and sentence; or

33 b. The person was convicted of an unrelated felony before
34 or during his or her wrongful conviction and incarceration and
35 was ineligible for compensation under s. 961.04 as it existed
36 before July 1, 2023.

37 (c) A deceased person's heirs, successors, or assigns do
38 not have standing to file a petition on the deceased person's
39 behalf under this section ~~by an order that became final prior to~~



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40 ~~July 1, 2008.~~

41 Section 3. Section 961.04, Florida Statutes, is amended to
42 read:

43 961.04 Eligibility for compensation for wrongful
44 incarceration.—A wrongfully incarcerated person is not eligible
45 for compensation under the act for any period of incarceration
46 during which the person was concurrently serving a sentence for
47 a conviction of another felony for which such person was
48 lawfully incarcerated if:

49 ~~(1) Before the person's wrongful conviction and~~
50 ~~incarceration, the person was convicted of, or pled guilty or~~
51 ~~nolo contendere to, regardless of adjudication, any violent~~
52 ~~felony, or a crime committed in another jurisdiction the~~
53 ~~elements of which would constitute a violent felony in this~~
54 ~~state, or a crime committed against the United States which is~~
55 ~~designated a violent felony, excluding any delinquency~~
56 ~~disposition;~~

57 ~~(2) Before the person's wrongful conviction and~~
58 ~~incarceration, the person was convicted of, or pled guilty or~~
59 ~~nolo contendere to, regardless of adjudication, more than one~~
60 ~~felony that is not a violent felony, or more than one crime~~
61 ~~committed in another jurisdiction, the elements of which would~~
62 ~~constitute a felony in this state, or more than one crime~~
63 ~~committed against the United States which is designated a~~
64 ~~felony, excluding any delinquency disposition;~~

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

68 ~~(4) During the person's wrongful incarceration, the person~~



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69 ~~was convicted of, or pled guilty or nolo contendere to,~~
70 ~~regardless of adjudication, more than one felony that is not a~~
71 ~~violent felony; or~~

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

75 Section 4. Section 961.06, Florida Statutes, is amended to
76 read:

77 961.06 Compensation for wrongful incarceration.—

78 (1) Except as otherwise provided in this act and subject to
79 the limitations and procedures prescribed in this section, a
80 person who is found to be entitled to compensation under ~~the~~
81 ~~provisions of~~ this act is entitled to all of the following:

82 (a) Monetary compensation for wrongful incarceration, which
83 shall be calculated at a rate of \$50,000 for each year of
84 wrongful incarceration, prorated as necessary to account for a
85 portion of a year. For persons found to be wrongfully
86 incarcerated after December 31, 2005 ~~2008~~, the Chief Financial
87 Officer may adjust the annual rate of compensation for inflation
88 using the change in the December-to-December "Consumer Price
89 Index for All Urban Consumers" of the Bureau of Labor Statistics
90 of the Department of Labor.~~†~~

91 (b) A waiver of tuition and fees for up to 120 hours of
92 instruction at any career center established under s. 1001.44,
93 any Florida College System institution as defined in s.
94 1000.21(3), or any state university as defined in s. 1000.21(6)~~†~~
95 if the wrongfully incarcerated person meets and maintains the
96 regular admission requirements of such career center, Florida
97 College System institution, or state university; remains



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98 registered at such educational institution; and makes
99 satisfactory academic progress as defined by the educational
100 institution in which the claimant is enrolled.~~†~~

101 (c) The amount of any fine, penalty, or court costs imposed
102 and paid by the wrongfully incarcerated person.~~†~~

103 (d) The amount of any reasonable attorney ~~attorney's~~ fees
104 and expenses incurred and paid by the wrongfully incarcerated
105 person in connection with all criminal proceedings and appeals
106 regarding the wrongful conviction, to be calculated by the
107 department based upon the supporting documentation submitted as
108 specified in s. 961.05.~~†and~~

109 (e) Notwithstanding any provision to the contrary in s.
110 943.0583 or s. 943.0585, immediate administrative expunction of
111 the person's criminal record resulting from his or her wrongful
112 arrest, wrongful conviction, and wrongful incarceration. The
113 Department of Legal Affairs and the Department of Law
114 Enforcement shall, upon a determination that a claimant is
115 entitled to compensation, immediately take all action necessary
116 to administratively expunge the claimant's criminal record
117 arising from his or her wrongful arrest, wrongful conviction,
118 and wrongful incarceration. All fees for this process shall be
119 waived.

120
121 The total compensation awarded under paragraphs (a), (c), and
122 (d) may not exceed \$2 million. No further award for attorney
123 ~~attorney's~~ fees, lobbying fees, costs, or other similar expenses
124 shall be made by the state.

125 ~~(2) In calculating monetary compensation under paragraph~~
126 ~~(1)(a), a wrongfully incarcerated person who is placed on parole~~



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127 ~~or community supervision while serving the sentence resulting~~
128 ~~from the wrongful conviction and who commits no more than one~~
129 ~~felony that is not a violent felony which results in revocation~~
130 ~~of the parole or community supervision is eligible for~~
131 ~~compensation for the total number of years incarcerated. A~~
132 ~~wrongfully incarcerated person who commits one violent felony or~~
133 ~~more than one felony that is not a violent felony that results~~
134 ~~in revocation of the parole or community supervision is~~
135 ~~ineligible for any compensation under subsection (1).~~

136 (2)~~(3)~~ Except as provided in subsection (4), within 15
137 calendar days after issuing notice to the claimant that his or
138 her claim satisfies all of the requirements under this act, the
139 department shall notify the Chief Financial Officer to draw a
140 warrant from the General Revenue Fund or another source
141 designated by the Legislature in law for the purchase of an
142 annuity for the claimant based on the total amount determined by
143 the department under this act.

144 (3)~~(4)~~ The Chief Financial Officer shall issue payment in
145 the amount determined by the department to an insurance company
146 or other financial institution admitted and authorized to issue
147 annuity contracts in this state to purchase an annuity or
148 annuities, selected by the wrongfully incarcerated person, for a
149 term of not less than 10 years. The Chief Financial Officer is
150 directed to execute all necessary agreements to implement this
151 act and to maximize the benefit to the wrongfully incarcerated
152 person. The terms of the annuity or annuities shall:

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



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156 (b) Contain beneficiary provisions for the continued
157 disbursement of the annuity or annuities in the event of the
158 death of the wrongfully incarcerated person.

159 (4) (a) The Chief Financial Officer may not draw a warrant
160 to purchase an annuity for a claimant who is currently
161 incarcerated:

162 1. In a county, city, or federal jail or other correctional
163 facility or an institution operated by the Department of
164 Corrections for a felony conviction other than a crime for which
165 the claimant was wrongfully convicted; or

166 2. Due to the revocation of parole or probation for a
167 felony conviction other than a crime for which the claimant was
168 wrongfully convicted.

169 (b) After a term of incarceration described in subparagraph
170 (a)1. or subparagraph (a)2. has concluded, the Chief Financial
171 Officer shall commence with the drawing of a warrant as
172 described in this section.

173 (5) Before the department approves the application for
174 compensation, the wrongfully incarcerated person must sign a
175 release and waiver on behalf of the wrongfully incarcerated
176 person and his or her heirs, successors, and assigns, forever
177 releasing the state or any agency, instrumentality, or any
178 political subdivision thereof, or any other entity subject to s.
179 768.28, from all present or future claims that the wrongfully
180 incarcerated person or his or her heirs, successors, or assigns
181 may have against such entities arising out of the facts in
182 connection with the wrongful conviction for which compensation
183 is being sought under the act.

184 (6) (a) A wrongfully incarcerated person may not submit an



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185 application for compensation under this act if the person has a
186 lawsuit pending against the state or any agency,
187 instrumentality, or any political subdivision thereof, or any
188 other entity subject to the provisions of s. 768.28, in state or
189 federal court requesting compensation arising out of the facts
190 in connection with the claimant's conviction and incarceration.

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

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

199 (d) Any amount awarded under this act is intended to
200 provide the sole compensation for any and all present and future
201 claims arising out of the facts in connection with the
202 claimant's conviction and incarceration. Upon notification by
203 the department that an application meets the requirements of
204 this act, a wrongfully incarcerated person may not recover under
205 a claim bill.

206 (e) Any compensation awarded under a claim bill shall be
207 the sole redress for claims arising out of the facts in
208 connection with the claimant's conviction and incarceration and,
209 upon any award of compensation to a wrongfully incarcerated
210 person under a claim bill, the person may not receive
211 compensation under this act.

212 (7) Any payment made under this act does not constitute a
213 waiver of any defense of sovereign immunity or an increase in



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214 the limits of liability on behalf of the state or any person
215 subject to ~~the provisions of~~ s. 768.28 or any other law.

216 Section 5. Section 961.07, Florida Statutes, is amended to
217 read:

218 961.07 Continuing appropriation.—Beginning in the 2023-2024
219 ~~2008-2009~~ fiscal year and continuing each fiscal year
220 thereafter, a sum sufficient to pay the approved payments under
221 s. 961.03(1)(b) ~~this act~~ is appropriated from the General
222 Revenue Fund to the Chief Financial Officer, which sum is
223 further appropriated for expenditure pursuant to ~~the provisions~~
224 ~~of~~ this act.

225 Section 6. This act shall take effect July 1, 2023.

226
227 ===== T I T L E A M E N D M E N T =====

228 And the title is amended as follows:

229 Delete everything before the enacting clause
230 and insert:

231 A bill to be entitled
232 An act relating to compensation for wrongfully
233 incarcerated persons; amending s. 961.02, F.S.;
234 deleting an obsolete definition; amending s. 961.03,
235 F.S.; revising requirements for when a petition
236 seeking compensation must be filed; providing that a
237 deceased person's heirs, successors, or assigns do not
238 have standing to file such a petition; amending s.
239 961.04, F.S.; revising compensation eligibility
240 requirements; amending s. 961.06, F.S.; revising
241 requirements for awarding compensation; amending s.
242 961.07, F.S.; revising requirements for continuing



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appropriations; providing an effective date.