

HB 37

2024

26 961.03 Determination of status as a wrongfully
27 incarcerated person; determination of eligibility for
28 compensation.—

29 (1)

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

31 1. Within 2 years ~~90 days~~ after the order vacating a
32 conviction and sentence becomes final and the criminal charges
33 against the person are dismissed or the person is retried and
34 acquitted if the person's conviction and sentence is vacated on
35 or after July 1, 2024 ~~2008~~.

36 2. By July 1, 2026 ~~2010~~, if the person's conviction and
37 sentence was vacated and the criminal charges against the person
38 were dismissed or the person was retried and acquitted on or
39 after January 1, 2006, but before July 1, 2024, and he or she
40 previously filed a petition under this section that was
41 dismissed or he or she did not file a petition under this
42 section because:

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

47 b. The person was convicted of an unrelated felony before
48 or during his or her wrongful conviction and incarceration and
49 was ineligible for compensation under s. 961.04 as it existed
50 before July 1, 2024.

51 (c) A deceased person's heirs, successors, or assigns do
 52 not have standing to file a petition on the deceased person's
 53 behalf under this section ~~by an order that became final prior to~~
 54 ~~July 1, 2008.~~

55 Section 3. Section 961.04, Florida Statutes, is amended to
 56 read:

57 961.04 Eligibility for compensation for wrongful
 58 incarceration.—A wrongfully incarcerated person is not eligible
 59 for compensation under the act for any period of incarceration
 60 during which the person was concurrently serving a sentence for
 61 a conviction of another felony for which such person was
 62 lawfully incarcerated if:

63 ~~(1) Before the person's wrongful conviction and~~
 64 ~~incarceration, the person was convicted of, or pled guilty or~~
 65 ~~nolo contendere to, regardless of adjudication, any violent~~
 66 ~~felony, or a crime committed in another jurisdiction the~~
 67 ~~elements of which would constitute a violent felony in this~~
 68 ~~state, or a crime committed against the United States which is~~
 69 ~~designated a violent felony, excluding any delinquency~~
 70 ~~disposition;~~

71 ~~(2) Before the person's wrongful conviction and~~
 72 ~~incarceration, the person was convicted of, or pled guilty or~~
 73 ~~nolo contendere to, regardless of adjudication, more than one~~
 74 ~~felony that is not a violent felony, or more than one crime~~
 75 ~~committed in another jurisdiction, the elements of which would~~

76 ~~constitute a felony in this state, or more than one crime~~
 77 ~~committed against the United States which is designated a~~
 78 ~~felony, excluding any delinquency disposition;~~

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

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

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

89 Section 4. Section 961.06, Florida Statutes, is amended to
 90 read:

91 961.06 Compensation for wrongful incarceration.—

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

96 (a) Monetary compensation for wrongful incarceration,
 97 which shall be calculated at a rate of \$50,000 for each year of
 98 wrongful incarceration, prorated as necessary to account for a
 99 portion of a year. For persons found to be wrongfully
 100 incarcerated after December 31, 2005 ~~2008~~, the Chief Financial

101 Officer may adjust the annual rate of compensation for inflation
 102 using the change in the December-to-December "Consumer Price
 103 Index for All Urban Consumers" of the Bureau of Labor Statistics
 104 of the Department of Labor.†

105 (b) A waiver of tuition and fees for up to 120 hours of
 106 instruction at any career center established under s. 1001.44,
 107 any Florida College System institution as defined in s.
 108 1000.21(5), or any state university as defined in s. 1000.21(8) ~~†~~
 109 if the wrongfully incarcerated person meets and maintains the
 110 regular admission requirements of such career center, Florida
 111 College System institution, or state university; remains
 112 registered at such educational institution; and makes
 113 satisfactory academic progress as defined by the educational
 114 institution in which the claimant is enrolled.†

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

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

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

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

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

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

150 | (2)-(3) Except as provided in subsection (4), within 15

151 calendar days after issuing notice to the claimant that his or
152 her claim satisfies all of the requirements under this act, the
153 department shall notify the Chief Financial Officer to draw a
154 warrant from the General Revenue Fund or another source
155 designated by the Legislature in law for the purchase of an
156 annuity for the claimant based on the total amount determined by
157 the department under this act.

158 (3)~~(4)~~ The Chief Financial Officer shall issue payment in
159 the amount determined by the department to an insurance company
160 or other financial institution admitted and authorized to issue
161 annuity contracts in this state to purchase an annuity or
162 annuities, selected by the wrongfully incarcerated person, for a
163 term of not less than 10 years. The Chief Financial Officer is
164 directed to execute all necessary agreements to implement this
165 act and to maximize the benefit to the wrongfully incarcerated
166 person. The terms of the annuity or annuities shall:

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

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

173 (4) (a) The Chief Financial Officer may not draw a warrant
174 to purchase an annuity for a claimant who is currently
175 incarcerated:

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

180 2. Due to the revocation of parole or probation for a
181 felony conviction other than a crime for which the claimant was
182 wrongfully convicted.

183 (b) After a term of incarceration described in
184 subparagraph (a)1. or subparagraph (a)2. has concluded, the
185 Chief Financial Officer shall commence with the drawing of a
186 warrant as described in this section.

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

198 (6) (a) A wrongfully incarcerated person may not submit an
199 application for compensation under this act if the person has a
200 lawsuit pending against the state or any agency,

201 instrumentality, or any political subdivision thereof, or any
202 other entity subject to the provisions of s. 768.28, in state or
203 federal court requesting compensation arising out of the facts
204 in connection with the claimant's conviction and incarceration.

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

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

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

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

226 (7) Any payment made under this act does not constitute a
 227 waiver of any defense of sovereign immunity or an increase in
 228 the limits of liability on behalf of the state or any person
 229 subject to ~~the provisions of~~ s. 768.28 or any other law.

230 Section 5. Section 961.07, Florida Statutes, is amended to
 231 read:

232 961.07 Continuing appropriation.—Beginning in the 2024-
 233 2025 ~~2008-2009~~ fiscal year and continuing each fiscal year
 234 thereafter, a sum sufficient to pay the approved payments under
 235 s. 961.03(1)(b) ~~this act~~ is appropriated from the General
 236 Revenue Fund to the Chief Financial Officer, which sum is
 237 further appropriated for expenditure pursuant to ~~the provisions~~
 238 ~~of~~ this act.

239 Section 6. This act shall take effect July 1, 2024.