

By Senator Rodriguez

40-00086-26

202610__

A bill to be entitled
An act relating to the relief of Maury Hernandez;
providing an appropriation to compensate former
Broward County Sheriff's Deputy Maury Hernandez for
injuries and damages sustained as a consequence of the
Department of Corrections' failures to enforce
probation laws, regulations, and policies; providing
legislative intent that certain liens be waived;
providing a limitation on the payment of compensation
and attorney fees; providing an effective date.

WHEREAS, at 11:45 a.m. on August 6, 2007, Broward County
Sheriff's Deputy Maury Hernandez, then 28 years of age, was
operating a vehicle assigned to him by the sheriff's office and
was within its jurisdiction when he observed David Maldonado,
then 23 years of age, the operator of a motorcycle, fail to stop
at three traffic signals on Pembroke Road, and

WHEREAS, Deputy Hernandez engaged his lights and stopped
Mr. Maldonado at a location within the 3700 block of Pembroke
Road, where he parked and got out of his vehicle, approached Mr.
Maldonado, identified himself as a deputy sheriff, and displayed
his badge, and

WHEREAS, Mr. Maldonado falsely identified himself as a
police officer from Opa-locka and, when asked to produce
identification, dropped his motorcycle, pushed Deputy Hernandez,
and fled on foot, at which time Deputy Hernandez gave chase,
also on foot, and

WHEREAS, during the chase, Mr. Maldonado suddenly turned
around and fired two rounds from a .45 caliber handgun, striking

40-00086-26

202610__

Deputy Hernandez in the head, and

WHEREAS, although Deputy Hernandez was critically wounded, he miraculously survived the shooting and was rushed to Memorial Regional Hospital in Hollywood, where he was in a coma and was placed on life support, and

WHEREAS, shortly after the shooting, Mr. Maldonado was apprehended by Hollywood police in a nearby condominium complex where he had attempted a carjacking, and

WHEREAS, Mr. Maldonado was ultimately charged and convicted of attempted murder in the first degree and numerous probation violations and is currently serving a life sentence, and

WHEREAS, four months before the shooting, on April 18, 2007, Mr. Maldonado, a habitual traffic offender with a history of multiple drug offenses and an illegal concealed weapon conviction, pled no contest to felony traffic charges and was placed on probation for 24 months, and

WHEREAS, the Department of Corrections' records document that in April and May of 2007, before the shooting of Deputy Hernandez, Mr. Maldonado twice admitted to his probation officers that he illegally possessed a firearm in violation of Florida law, the department's zero-tolerance policy, and the conditions of his probation supervision, but his probation officers simply warned him that he could not possess a weapon and did not report the violations to the state attorney or to the presiding circuit judge, and

WHEREAS, on June 28, 2007, Mr. Maldonado admitted a third probation violation for buying and using illegal drugs in violation of s. 948.03, Florida Statutes, which prohibits probationers from possessing drugs or narcotics unless

40-00086-26

202610__

59 prescribed by a physician, and violating the conditions of his
60 probation, but the probation officer failed to report the
61 violation, and

62 WHEREAS, under former s. 948.03, Florida Statutes (now s.
63 790.23, Florida Statutes), Mr. Maldonado was prohibited from
64 possessing, carrying, or owning any firearm unless authorized by
65 the court, and

66 WHEREAS, s. 944.09, Florida Statutes, requires the
67 Department of Corrections to supervise probationers, stay
68 informed about the probationers' conduct, and cooperate with
69 circuit courts exercising criminal jurisdiction over
70 probationers, and

71 WHEREAS, rule 33-302.1031, Florida Administrative Code,
72 implements s. 944.09, Florida Statutes, and provides that
73 probation officers under the authority of the Department of
74 Corrections are responsible for supervision and control of
75 offenders, including enforcing conditions of supervision,
76 conducting investigations, and initiating arrest of offenders
77 under their supervision, as appropriate, with or without a
78 warrant, and

79 WHEREAS, rule 33-302.1031, Florida Administrative Code,
80 further provides that a probation officer must notify the
81 sentencing or releasing authority whenever the officer has
82 reasonable grounds to believe that a willful violation of any
83 condition of supervision has occurred, and

84 WHEREAS, in 2003, the Department of Corrections established
85 a zero-tolerance policy requiring probation officers to report
86 all technical violations committed by offenders on community
87 control to the court, and the department extended this policy in

40-00086-26

202610__

2004 to all offenders under community supervision in response to several cases in which supervised offenders committed murders, and

WHEREAS, the Department of Corrections modified its zero-tolerance policy in August 2007 to require probation officers to report only willful violations, such as the violations committed by Mr. Maldonado, which are purposely committed by an offender or over which the offender had control, and

WHEREAS, shortly after the shooting, and while Deputy Hernandez remained hospitalized and struggling for his life, a Department of Corrections' spokesperson defended the probation officers' actions as "errors in judgment," stating that "everything was done by the book," the department had counseled the probation officer to "keep his case notes and records complete and up to date," and the probation officer had the support of, and remained employed by, the department despite his clear violations of the department's zero-tolerance policy, and

WHEREAS, by virtue of its zero-tolerance policy in effect at the time of Deputy Hernandez's shooting, the Department of Corrections had a nondiscretionary duty to timely report Mr. Maldonado's violations of law and the conditions of his probation to the state attorney's office and the presiding circuit judge, but failed to act on his repeated probation violations, and

WHEREAS, not only did the Department of Corrections fail to report Mr. Maldonado's illegal possession of a firearm, but his probation file showed the use of illegal drugs and was replete with omissions and false statements, including claims that Mr. Maldonado was a United States Marine headed to Iraq and worked

40-00086-26

202610__

as an armed security guard, even though it is illegal for felons and probationers to use drugs or possess a weapon, and

WHEREAS, Mr. Maldonado's 70-page probation file contained no evidence that the probation officers ever contacted his alleged employers to confirm his job status or made sure he had given up his weapons, and

WHEREAS, the Broward County Sheriff's investigation of Deputy Hernandez's shooting concluded that, had the Department of Corrections brought the repeated violations of Mr. Maldonado's probation to the attention of the state attorney and presiding circuit judge, Mr. Maldonado would have been in jail at the time of the shooting, and

WHEREAS, the state attorney's office for the Seventeenth Judicial Circuit, in and for Broward County, concurred that Mr. Maldonado's violations were "serious" and should have been reported by the Department of Corrections to the state attorney and the presiding circuit judge and, had Mr. Maldonado's violations been reported, he would have been jailed without bail and would not have been on the streets when he shot Deputy Hernandez, and

WHEREAS, after the shooting, the Department of Corrections announced that Mr. Maldonado's probation file had been turned over to the department's Office of Inspector General for review, but no report or any record of a department review exist, nor to this day has the department explained why Mr. Maldonado's multiple violations of law, department policy, and the terms of his probation were not enforced and reported to the state attorney and presiding circuit judge as required by law, and

WHEREAS, a lawsuit was filed on behalf of Deputy Hernandez

40-00086-26

202610__

146 in the Seventeenth Judicial Circuit which sought relief under s.
147 768.28, Florida Statutes, but was dismissed by the trial court
148 on January 27, 2016, the court holding that under existing
149 Florida case law, the Department of Corrections owed no specific
150 or special legal duty of care to Deputy Hernandez, who is
151 without a legal or administrative remedy for his claim, and

152 WHEREAS, despite the court's ruling that Deputy Hernandez
153 is without a legal remedy, Florida legislative precedent dating
154 back to 1831, as stated in the Legislative Claim Bill Manual
155 (2022), defines a claim bill to be "a means by which an injured
156 party may recover damages even though the public officer or
157 agency involved may be immune from suit," and

158 WHEREAS, the Florida Supreme Court and appellate courts
159 acknowledge relief for "equitable claims filed without an
160 underlying excess judgment" or settlement, and the far-reaching
161 circumstances under which the Legislature may extend equitable
162 relief for an injured party even though the public officer or
163 agency may be immune from suit, and

164 WHEREAS, these cases include *Gamble v. Wells*, 450 So.2d 850
165 (Fla. 1984), holding that any claim bill, whether based on an
166 existing judgment, a settlement, or an equitable claim, is an
167 "act of legislative grace" and "a voluntary recognition of its
168 moral obligation by the legislature," and is "firmly entrenched
169 in legislative discretion"; *Searcy Denney, et al. vs. State of*
170 *Fla.*, 209 So.3d 1181 (Fla. 2017), citing *Noel v. Schlesinger,*
171 *P.A.*, 984 So.2d 1265 (Fla. 4th DCA 2008) and *Gamble v. Wells,*
172 *supra*; *Dickinson v. Bradley*, 298 So.2d 352 (Fla. 1974), in which
173 the Florida Supreme Court stated that the "purpose" of any
174 legislative relief act is to "discharge the state's moral

40-00086-26

202610__

obligation to any individual or entity whom or which the legislature recognizes as being entitled to such"; and *Jetton v. Jacksonville Electric Authority*, 399 So.2d 396, 397 (Fla. 1st DCA 1981), holding that while the Legislature has placed limits on recovery, "claimants remain free to seek legislative relief bills, as they did during days of complete sovereign immunity," and

WHEREAS, the facts as set forth herein establish that the Department of Corrections failed to follow state law, regulations, and policies and take action to prevent a convicted felon on probation from possessing a weapon; to enforce numerous other serious and willful probation violations committed by a probationer who falsely claimed to be a United States Marine; and to supervise, investigate, enforce, and report any of these probation violations to the state attorney and presiding circuit judge as required by law, and

WHEREAS, this claim bill is supported by the Broward County Sheriff's Office, the Florida Police Benevolent Association, and the International Union of Police Associations, and

WHEREAS, given the unique and tragic circumstances of this case, including the attempted murder and permanent disability of a sworn Florida police officer who was critically and permanently injured in the line of duty, Deputy Hernandez is deserving of legislative grace and the Legislature's exercise of its exclusive authority to appropriate funds to compensate him for his injuries and economic damages, and

WHEREAS, Deputy Hernandez's injuries include permanent brain injuries and impairment, including hemiparesis to the entire left side of his body, severe motor and sensory nerve

40-00086-26

202610__

204 damage, spasticity, numbness and muscle weakness, impaired
205 walking and balance, cognitive impairment, hydrocephalus treated
206 with the insertion of a ventriculoperitoneal shunt that drains
207 excess cerebrospinal fluid from his brain's ventricles into his
208 abdomen, a silicone plate that covers a third of his skull, and
209 fragments of the .45 caliber bullet which remain permanently
210 lodged in his brain, and

211 WHEREAS, Deputy Hernandez has endured multiple surgeries,
212 including a tracheostomy, multiple brain surgeries,
213 hydrocephalus shunt surgery, and months of inpatient hospital
214 care, followed by a year of daylong physical, occupational,
215 speech, visual, cognitive, and psychological therapy, and

216 WHEREAS, Deputy Hernandez continued to receive various
217 therapies and medical care on a daily basis for more than 3
218 years until his insurance provider discontinued payments to
219 health care providers, and

220 WHEREAS, to regain and restore maximum medical stability,
221 Deputy Hernandez needs to resume the medical care and
222 professional therapy treatments he no longer receives, but he is
223 without financial resources to do so, and

224 WHEREAS, at the time of his injury, Deputy Hernandez was
225 earning an annual salary of approximately \$60,000, in addition
226 to medical and retirement benefits, and

227 WHEREAS, Deputy Hernandez attempted to return to work at
228 the Broward County Sheriff's Office but was unable to perform to
229 minimum standards, and

230 WHEREAS, Deputy Hernandez has been declared by his
231 physicians to be totally and permanently disabled, and he is
232 unable to earn a living, and

40-00086-26

202610__

WHEREAS, Deputy Hernandez has suffered economic damages, including lost income and the capacity to earn income and related benefits, including medical insurance and retirement benefits, and

WHEREAS, a life care plan and vocational impact report formulated by an independent certified comprehensive care plan company with more than 35 years of experience providing medical case management, vocational services, and rehabilitative services to individuals and insurance companies, in consultation with and reliance upon the opinions of Deputy Hernandez's physicians, assessed his future medical and life care needs, which will amount to \$2,243,981.97, and

WHEREAS, the study found that Deputy Hernandez's wage losses and earning capacity amount to \$3,353,924.70 had he remained in law enforcement, and

WHEREAS, a lien has been filed against Deputy Hernandez in the amount of \$1,133,448.06 by the workers' compensation insurer that paid benefits for past medical and wage-related expenses, and

WHEREAS, Deputy Hernandez's total economic damages amount to approximately \$6,731,354.73, and

WHEREAS, in addition to his economic damages, Deputy Hernandez has suffered devastating permanent injuries and damages, including severe bodily injury, excruciating pain and suffering, total disability, physical and mental impairment, disfigurement, mental anguish, inconvenience, loss of enjoyment of life, and financial hardship, and

WHEREAS, Deputy Hernandez, without a legal or administrative remedy to seek redress for his injuries and

40-00086-26

202610__

damages, seeks equitable relief from the Legislature, NOW,
THEREFORE,

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

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

Section 2. The Legislature acknowledges that the state's system of justice yielded an imperfect result in this case and that former Broward County Sheriff's Deputy Maury Hernandez should be granted relief for the injuries and damages he suffered while in the line of duty as a consequence of the Department of Corrections' failure to enforce probation regulations and policies then in place, in violation of state law.

Section 3. The sum of \$5 million is appropriated from the General Revenue Fund to the Department of Corrections for the relief of Maury Hernandez for injuries and damages sustained.

Section 4. The Chief Financial Officer is directed to draw a warrant in favor of Maury Hernandez in the amount of \$5 million upon funds of the Department of Corrections in the State Treasury, and the Chief Financial Officer is directed to pay the same out of such funds in the State Treasury.

Section 5. It is the intent of the Legislature that any lien interests held by the state arising from the treatment and care of Maury Hernandez for the occurrences described in this act be waived.

Section 6. The amount awarded under this act is intended to provide the sole compensation for all present and future claims

40-00086-26

202610__

291 arising out of the factual situation described in this act. The
292 total amount paid for attorney fees relating to this claim may
293 not exceed 25 percent of the amount awarded under this act.

294 Section 7. This act shall take effect upon becoming a law.