

Amendment No.

CHAMBER ACTION

Senate

House

.



1 Representative DuBose offered the following:

2

3 **Amendment (with title amendment)**

4 Remove lines 37-162 and insert:

5 (4)-(5) "Eligible for compensation" means that a person  
6 meets the definition of the term "wrongfully incarcerated  
7 person" and is not disqualified from seeking compensation under  
8 the criteria prescribed in s. 961.04.

9 (5)-(6) "Entitled to compensation" means that a person  
10 meets the definition of the term "eligible for compensation" and  
11 satisfies the application requirements prescribed in s. 961.05,  
12 and may receive compensation pursuant to s. 961.06.

13 (6) "Violent felony" means a felony listed in s.  
14 775.084(1)(c)1. or s. 948.06(8)(c).

248585

Approved For Filing: 3/9/2016 2:53:14 PM

Amendment No.

15        ~~(7)(4)~~ "Wrongfully incarcerated person" means a person  
16 whose felony conviction and sentence have been vacated by a  
17 court of competent jurisdiction and who is the subject of an  
18 order issued by the original sentencing court pursuant to s.  
19 961.03, ~~with respect to whom pursuant to the requirements of s.~~  
20 ~~961.03,~~ ~~the original sentencing court has issued its order~~  
21 finding that the person did not commit ~~neither committed~~ the act  
22 or ~~nor the~~ offense that served as the basis for the conviction  
23 and incarceration and that the person did not aid, abet, or act  
24 as an accomplice or accessory to a person who committed the act  
25 or offense.

26        Section 2. Section 961.04, Florida Statutes, is amended to  
27 read:

28        961.04 Eligibility for compensation for wrongful  
29 incarceration.—A wrongfully incarcerated person is not eligible  
30 for compensation under the act if:

31        (1) Before the person's wrongful conviction and  
32 incarceration, the person was convicted of, or pled guilty or  
33 nolo contendere to, regardless of adjudication, any violent  
34 felony offense, or a crime committed in another jurisdiction the  
35 elements of which would constitute a violent felony in this  
36 state, or a crime committed against the United States which is  
37 designated a violent felony, excluding any delinquency  
38 disposition;

39        (2) Before the person's wrongful conviction and  
40 incarceration, the person was convicted of, or pled guilty or

248585

Approved For Filing: 3/9/2016 2:53:14 PM

Amendment No.

41 nolo contendere to, regardless of adjudication, more than one  
42 felony that is not a violent felony, or more than one crime  
43 committed in another jurisdiction the elements of which would  
44 constitute a felony in this state, or more than one crime  
45 committed against the United States which is designated a  
46 felony, excluding any delinquency disposition;

47 ~~(3)-(2)~~ During the person's wrongful incarceration, the  
48 person was convicted of, or pled guilty or nolo contendere to,  
49 regardless of adjudication, any violent felony offense; ~~or~~

50 (4) During the person's wrongful incarceration, the person  
51 was convicted of, or pled guilty or nolo contendere to,  
52 regardless of adjudication, more than one felony that is not a  
53 violent felony; or

54 ~~(5)-(3)~~ During the person's wrongful incarceration, the  
55 person was also serving a concurrent sentence for another felony  
56 for which the person was not wrongfully convicted.

57 Section 3. Subsection (2) of section 961.06, Florida  
58 Statutes, is amended to read:

59 961.06 Compensation for wrongful incarceration.—

60 (2) In calculating monetary compensation under paragraph  
61 (1)(a), a wrongfully incarcerated person who is placed on parole  
62 or community supervision while serving the sentence resulting  
63 from the wrongful conviction and who commits one violation that  
64 is anything less than a violent felony ~~law violation~~ that  
65 results in revocation of the parole or community supervision is  
66 eligible for compensation for the total number of years

248585

Approved For Filing: 3/9/2016 2:53:14 PM

Amendment No.

67 incarcerated. A wrongfully incarcerated person who commits one  
68 violent a felony law-violation that results in revocation of the  
69 parole or community supervision is ineligible for any  
70 compensation under subsection (1).

71 Section 4. The changes made by this act to ss. 961.02,  
72 961.04, and 961.06, Florida Statutes, apply only to persons who  
73 are determined to be wrongfully incarcerated on or after the  
74 effective date of this act.

75 Section 5. For the purpose of incorporating the amendments  
76 made by this act to section 961.04, Florida Statutes, in  
77 references thereto, paragraph (a) of subsection (1) and  
78 subsections (2), (3), and (4) of section 961.03, Florida  
79 Statutes, are reenacted to read:

80 961.03 Determination of status as a wrongfully  
81 incarcerated person; determination of eligibility for  
82 compensation.—

83 (1) (a) In order to meet the definition of a "wrongfully  
84 incarcerated person" and "eligible for compensation," upon entry  
85 of an order, based upon exonerating evidence, vacating a  
86 conviction and sentence, a person must set forth the claim of  
87 wrongful incarceration under oath and with particularity by  
88 filing a petition with the original sentencing court, with a  
89 copy of the petition and proper notice to the prosecuting  
90 authority in the underlying felony for which the person was  
91 incarcerated. At a minimum, the petition must:

248585

Approved For Filing: 3/9/2016 2:53:14 PM

Amendment No.

92 1. State that verifiable and substantial evidence of  
93 actual innocence exists and state with particularity the nature  
94 and significance of the verifiable and substantial evidence of  
95 actual innocence; and

96 2. State that the person is not disqualified, under the  
97 provisions of s. 961.04, from seeking compensation under this  
98 act.

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

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

108 (b) By contesting the nature, significance, or effect of  
109 the evidence of actual innocence, the facts related to the  
110 petitioner's alleged wrongful incarceration, or whether the  
111 petitioner is ineligible from seeking compensation under the  
112 provisions of s. 961.04.

113 (3) If the prosecuting authority responds as set forth in  
114 paragraph (2) (a), the original sentencing court, based upon the  
115 evidence of actual innocence, the prosecuting authority's  
116 certification, and upon the court's finding that the petitioner  
117 has presented clear and convincing evidence that the petitioner

248585

Approved For Filing: 3/9/2016 2:53:14 PM

Amendment No.

118 committed neither the act nor the offense that served as the  
119 basis for the conviction and incarceration, and that the  
120 petitioner did not aid, abet, or act as an accomplice to a  
121 person who committed the act or offense, shall certify to the  
122 department that the petitioner is a wrongfully incarcerated  
123 person as defined by this act. Based upon the prosecuting  
124 authority's certification, the court shall also certify to the  
125 department that the petitioner is eligible for compensation  
126 under the provisions of s. 961.04.

127 (4) (a) If the prosecuting authority responds as set forth  
128 in paragraph (2) (b), the original sentencing court shall make a  
129 determination from the pleadings and supporting documentation  
130 whether, by a preponderance of the evidence, the petitioner is  
131 ineligible for compensation under the provisions of s. 961.04,  
132 regardless of his or her claim of wrongful incarceration. If the  
133 court finds the petitioner ineligible under the provisions of s.  
134 961.04, it shall dismiss the petition.

135 (b) If the prosecuting authority responds as set forth in  
136 paragraph (2) (b), and the court determines that the petitioner  
137 is eligible under the provisions of s. 961.04, but the  
138 prosecuting authority contests the nature, significance or  
139 effect of the evidence of actual innocence, or the facts related  
140 to the petitioner's alleged wrongful incarceration, the court  
141 shall set forth its findings and transfer the petition by  
142 electronic means through the division's website to the division  
143 for findings of fact and a recommended determination of whether

248585

Approved For Filing: 3/9/2016 2:53:14 PM

Amendment No.

144 the petitioner has established that he or she is a wrongfully  
145 incarcerated person who is eligible for compensation under this  
146 act.

147 Section 6. For the purpose of incorporating the amendments

148

149

-----

150

**T I T L E A M E N D M E N T**

151

Remove lines 5-24 and insert:

152

961.04, F.S.; revising the circumstances under which a

153

person is disqualified from receiving compensation under

154

the Victims of Wrongful Incarceration Compensation Act;

155

amending s. 961.06, F.S.; providing that a wrongfully

156

incarcerated person who commits a violent felony, rather

157

than a felony law violation, which results in revocation of

158

parole or community supervision is ineligible for

159

compensation; providing applicability; reenacting s.

160

961.03(1)(a), (2), (3), and (4), F.S., relating to

161

determination of eligibility for compensation, to

162

incorporate the amendments made by the act to s. 961.04,

163

F.S., in references thereto; reenacting s. 961.055(1),

164

F.S., relating to application for compensation for a

165

wrongfully incarcerated person and exemption from

166

application by nolle prosequi, to incorporate the

167

amendments made by the act to s. 961.06, F.S., in

168

references

248585

Approved For Filing: 3/9/2016 2:53:14 PM