

By Senators Joyner and Bradley

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1 A bill to be entitled
2 An act relating to compensation of victims of wrongful
3 incarceration; amending s. 961.02, F.S.; defining the
4 term "violent felony"; amending s. 961.04, F.S.;
5 providing that a person is disqualified from receiving
6 compensation under the Victims of Wrongful
7 Incarceration Compensation Act if, before or during
8 the person's wrongful conviction and incarceration,
9 the person was convicted of, pled guilty or nolo
10 contendere to, or was serving a concurrent
11 incarceration for, another violent felony; amending s.
12 961.06, F.S.; providing that a wrongfully incarcerated
13 person who commits a violent felony law violation,
14 rather than a felony law violation, which results in
15 revocation of parole or community supervision is
16 ineligible for compensation; reenacting s.
17 961.03(1)(a), (2), (3), and (4), F.S., relating to
18 determination of status as a wrongfully incarcerated
19 person and determination of eligibility for
20 compensation, to incorporate the amendments made to s.
21 961.04, F.S., in references thereto; reenacting s.
22 961.055(1), F.S., relating to application for
23 compensation for a wrongfully incarcerated person and
24 exemption from application by nolle prosequi, to
25 incorporate the amendments made to s. 961.04, F.S., in
26 references thereto; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:
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30 Section 1. Section 961.02, Florida Statutes, is amended to
31 read:

32 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

33 (1) "Act" means the Victims of Wrongful Incarceration
34 Compensation Act.

35 (2) "Department" means the Department of Legal Affairs.

36 (3) "Division" means the Division of Administrative
37 Hearings.

38 ~~(4) "Wrongfully incarcerated person" means a person whose
39 felony conviction and sentence have been vacated by a court of
40 competent jurisdiction and, with respect to whom pursuant to the
41 requirements of s. 961.03, the original sentencing court has
42 issued its order finding that the person neither committed the
43 act nor the offense that served as the basis for the conviction
44 and incarceration and that the person did not aid, abet, or act
45 as an accomplice or accessory to a person who committed the act
46 or offense.~~

47 (4)~~(5)~~ "Eligible for compensation" means a person meets the
48 definition of the term "wrongfully incarcerated person" and is
49 not disqualified from seeking compensation under the criteria
50 prescribed in s. 961.04.

51 (5)~~(6)~~ "Entitled to compensation" means a person meets the
52 definition of the term "eligible for compensation" and satisfies
53 the application requirements prescribed in s. 961.05, and may
54 receive compensation pursuant to s. 961.06.

55 (6) "Violent felony" means a felony offense listed in s.
56 775.084(1)(c)1. or s. 948.06(8)(c).

57 (7) "Wrongfully incarcerated person" means a person whose
58 felony conviction and sentence have been vacated by a court of

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59 competent jurisdiction and the original sentencing court has
60 issued its order, pursuant to the requirements of s. 961.03,
61 finding that the person neither committed the act nor the
62 offense that served as the basis for the conviction and
63 incarceration and that the person did not aid, abet, or act as
64 an accomplice or accessory to a person who committed the act or
65 offense.

66 Section 2. Section 961.04, Florida Statutes, is amended to
67 read:

68 961.04 Eligibility for compensation for wrongful
69 incarceration.—A wrongfully incarcerated person is not eligible
70 for compensation under the act if:

71 (1) 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, any violent
74 felony offense, or a crime committed in another jurisdiction the
75 elements of which would constitute a violent felony in this
76 state, or a crime committed against the United States which is
77 designated a violent felony, excluding any delinquency
78 disposition;

79 (2) 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 offense; or

82 (3) During the person's wrongful incarceration, the person
83 was also serving a concurrent sentence for another felony for
84 which the person was not wrongfully convicted.

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

87 961.06 Compensation for wrongful incarceration.—

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88 (2) In calculating monetary compensation under paragraph
89 (1) (a), a wrongfully incarcerated person who is placed on parole
90 or community supervision while serving the sentence resulting
91 from the wrongful conviction and who commits anything less than
92 a violent felony law violation that results in revocation of the
93 parole or community supervision is eligible for compensation for
94 the total number of years incarcerated. A wrongfully
95 incarcerated person who commits a violent felony law violation
96 that results in revocation of the parole or community
97 supervision is ineligible for any compensation under subsection
98 (1).

99 Section 4. For the purpose of incorporating the amendments
100 made by this act to section 961.04, Florida Statutes, in
101 references thereto, paragraph (a) of subsection (1) and
102 subsections (2), (3), and (4) of section 961.03, Florida
103 Statutes, are reenacted to read:

104 961.03 Determination of status as a wrongfully incarcerated
105 person; determination of eligibility for compensation.—

106 (1) (a) In order to meet the definition of a "wrongfully
107 incarcerated person" and "eligible for compensation," upon entry
108 of an order, based upon exonerating evidence, vacating a
109 conviction and sentence, a person must set forth the claim of
110 wrongful incarceration under oath and with particularity by
111 filing a petition with the original sentencing court, with a
112 copy of the petition and proper notice to the prosecuting
113 authority in the underlying felony for which the person was
114 incarcerated. At a minimum, the petition must:

115 1. State that verifiable and substantial evidence of actual
116 innocence exists and state with particularity the nature and

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117 significance of the verifiable and substantial evidence of
118 actual innocence; and

119 2. State that the person is not disqualified, under the
120 provisions of s. 961.04, from seeking compensation under this
121 act.

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

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

131 (b) By contesting the nature, significance, or effect of
132 the evidence of actual innocence, the facts related to the
133 petitioner's alleged wrongful incarceration, or whether the
134 petitioner is ineligible from seeking compensation under the
135 provisions of s. 961.04.

136 (3) If the prosecuting authority responds as set forth in
137 paragraph (2)(a), the original sentencing court, based upon the
138 evidence of actual innocence, the prosecuting authority's
139 certification, and upon the court's finding that the petitioner
140 has presented clear and convincing evidence that the petitioner
141 committed neither the act nor the offense that served as the
142 basis for the conviction and incarceration, and that the
143 petitioner did not aid, abet, or act as an accomplice to a
144 person who committed the act or offense, shall certify to the
145 department that the petitioner is a wrongfully incarcerated

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146 person as defined by this act. Based upon the prosecuting
147 authority's certification, the court shall also certify to the
148 department that the petitioner is eligible for compensation
149 under the provisions of s. 961.04.

150 (4) (a) If the prosecuting authority responds as set forth
151 in paragraph (2) (b), the original sentencing court shall make a
152 determination from the pleadings and supporting documentation
153 whether, by a preponderance of the evidence, the petitioner is
154 ineligible for compensation under the provisions of s. 961.04,
155 regardless of his or her claim of wrongful incarceration. If the
156 court finds the petitioner ineligible under the provisions of s.
157 961.04, it shall dismiss the petition.

158 (b) If the prosecuting authority responds as set forth in
159 paragraph (2) (b), and the court determines that the petitioner
160 is eligible under the provisions of s. 961.04, but the
161 prosecuting authority contests the nature, significance or
162 effect of the evidence of actual innocence, or the facts related
163 to the petitioner's alleged wrongful incarceration, the court
164 shall set forth its findings and transfer the petition by
165 electronic means through the division's website to the division
166 for findings of fact and a recommended determination of whether
167 the petitioner has established that he or she is a wrongfully
168 incarcerated person who is eligible for compensation under this
169 act.

170 Section 5. For the purpose of incorporating the amendments
171 made by this act to section 961.04, Florida Statutes, in
172 references thereto, subsection (1) of section 961.055, Florida
173 Statutes, is reenacted to read:

174 961.055 Application for compensation for a wrongfully

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175 incarcerated person; exemption from application by nolle
176 prosequi.—

177 (1) A person alleged to be a wrongfully incarcerated person
178 who was convicted and sentenced to death on or before December
179 31, 1979, is exempt from the application provisions of ss.
180 961.03, 961.04, and 961.05 in the determination of wrongful
181 incarceration and eligibility to receive compensation pursuant
182 to s. 961.06 if:

183 (a) The Governor issues an executive order appointing a
184 special prosecutor to review the defendant's conviction; and

185 (b) The special prosecutor thereafter enters a nolle
186 prosequi for the charges for which the defendant was convicted
187 and sentenced to death.

188 Section 6. This act shall take effect October 1, 2015.