

2017494e1

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"; making technical changes;
5 amending s. 961.04, F.S.; revising the circumstances
6 under which a person is disqualified from receiving
7 compensation under the Victims of Wrongful
8 Incarceration Compensation Act; amending s. 961.06,
9 F.S.; specifying that a wrongfully incarcerated person
10 who commits no more than one felony that is not a
11 violent felony, rather than a felony law violation,
12 which results in revocation of parole or community
13 supervision is eligible for compensation; providing
14 applicability; reenacting s. 961.03(1)(a), (2), (3),
15 and (4), F.S., relating to determination of
16 eligibility for compensation, to incorporate the
17 amendments made by the act to s. 961.04, F.S., in
18 references thereto; reenacting ss. 961.05(6),
19 961.055(1), and 961.056(4), F.S., relating to the
20 determination of entitlement to compensation,
21 application for compensation for a wrongfully
22 incarcerated person and exemption from application by
23 nolle prosequi, and alternative application for
24 compensation for a wrongfully incarcerated person, to
25 incorporate the amendments made by the act to s.
26 961.06, F.S., in references thereto; providing an
27 effective date.

28
29 Be It Enacted by the Legislature of the State of Florida:

2017494e1

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31 Section 1. Section 961.02, Florida Statutes, is reordered
32 and amended to read:

33 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

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

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

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

39 (7)~~(4)~~ "Wrongfully incarcerated person" means a person
40 whose felony conviction and sentence have been vacated by a
41 court of competent jurisdiction and who is the subject of an
42 order issued by the original sentencing court pursuant to s.
43 961.03, ~~with respect to whom pursuant to the requirements of s.~~
44 ~~961.03,~~ ~~the original sentencing court has issued its order~~
45 ~~finding that the person did not commit ~~neither committed~~ the act~~
46 ~~or nor the offense that served as the basis for the conviction~~
47 ~~and incarceration and that the person did not aid, abet, or act~~
48 ~~as an accomplice or accessory to a person who committed the act~~
49 ~~or offense.~~

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

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

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

2017494e1

59 775.084(1)(c)1. or s. 948.06(8)(c).

60 Section 2. Section 961.04, Florida Statutes, is amended to
61 read:

62 961.04 Eligibility for compensation for wrongful
63 incarceration.—A wrongfully incarcerated person is not eligible
64 for compensation under the act if:

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

73 (2) Before the person's wrongful conviction and
74 incarceration, the person was convicted of, or pled guilty or
75 nolo contendere to, regardless of adjudication, more than one
76 felony that is not a violent felony, or more than one crime
77 committed in another jurisdiction, the elements of which would
78 constitute a felony in this state, or more than one crime
79 committed against the United States which is designated a
80 felony, excluding any delinquency disposition;

81 (3)~~(2)~~ During the person's wrongful incarceration, the
82 person was convicted of, or pled guilty or nolo contendere to,
83 regardless of adjudication, any violent felony ~~offense~~; ~~or~~

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

2017494e1

88 (5)~~(3)~~ During the person's wrongful incarceration, the
89 person was also serving a concurrent sentence for another felony
90 for which the person was not wrongfully convicted.

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

93 961.06 Compensation for wrongful incarceration.—

94 (2) In calculating monetary compensation under paragraph
95 (1) (a), a wrongfully incarcerated person who is placed on parole
96 or community supervision while serving the sentence resulting
97 from the wrongful conviction and who commits no more than one
98 felony that is not ~~anything less than~~ a violent felony which ~~law~~
99 ~~violation that~~ results in revocation of the parole or community
100 supervision is eligible for compensation for the total number of
101 years incarcerated. A wrongfully incarcerated person who commits
102 one violent a felony or more than one felony that is not a
103 violent felony ~~law violation~~ that results in revocation of the
104 parole or community supervision is ineligible for any
105 compensation under subsection (1).

106 Section 4. The changes made by this act to ss. 961.02,
107 961.04, and 961.06, Florida Statutes, apply only to persons who
108 are determined to be wrongfully incarcerated on or after the
109 effective date of this act.

110 Section 5. For the purpose of incorporating the amendments
111 made by this act to section 961.04, Florida Statutes, in
112 references thereto, paragraph (a) of subsection (1) and
113 subsections (2), (3), and (4) of section 961.03, Florida
114 Statutes, are reenacted to read:

115 961.03 Determination of status as a wrongfully incarcerated
116 person; determination of eligibility for compensation.—

2017494e1

117 (1) (a) In order to meet the definition of a "wrongfully
118 incarcerated person" and "eligible for compensation," upon entry
119 of an order, based upon exonerating evidence, vacating a
120 conviction and sentence, a person must set forth the claim of
121 wrongful incarceration under oath and with particularity by
122 filing a petition with the original sentencing court, with a
123 copy of the petition and proper notice to the prosecuting
124 authority in the underlying felony for which the person was
125 incarcerated. At a minimum, the petition must:

126 1. State that verifiable and substantial evidence of actual
127 innocence exists and state with particularity the nature and
128 significance of the verifiable and substantial evidence of
129 actual innocence; and

130 2. State that the person is not disqualified, under the
131 provisions of s. 961.04, from seeking compensation under this
132 act.

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

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

142 (b) By contesting the nature, significance, or effect of
143 the evidence of actual innocence, the facts related to the
144 petitioner's alleged wrongful incarceration, or whether the
145 petitioner is ineligible from seeking compensation under the

2017494e1

146 provisions of s. 961.04.

147 (3) If the prosecuting authority responds as set forth in
148 paragraph (2) (a), the original sentencing court, based upon the
149 evidence of actual innocence, the prosecuting authority's
150 certification, and upon the court's finding that the petitioner
151 has presented clear and convincing evidence that the petitioner
152 committed neither the act nor the offense that served as the
153 basis for the conviction and incarceration, and that the
154 petitioner did not aid, abet, or act as an accomplice to a
155 person who committed the act or offense, shall certify to the
156 department that the petitioner is a wrongfully incarcerated
157 person as defined by this act. Based upon the prosecuting
158 authority's certification, the court shall also certify to the
159 department that the petitioner is eligible for compensation
160 under the provisions of s. 961.04.

161 (4) (a) If the prosecuting authority responds as set forth
162 in paragraph (2) (b), the original sentencing court shall make a
163 determination from the pleadings and supporting documentation
164 whether, by a preponderance of the evidence, the petitioner is
165 ineligible for compensation under the provisions of s. 961.04,
166 regardless of his or her claim of wrongful incarceration. If the
167 court finds the petitioner ineligible under the provisions of s.
168 961.04, it shall dismiss the petition.

169 (b) If the prosecuting authority responds as set forth in
170 paragraph (2) (b), and the court determines that the petitioner
171 is eligible under the provisions of s. 961.04, but the
172 prosecuting authority contests the nature, significance or
173 effect of the evidence of actual innocence, or the facts related
174 to the petitioner's alleged wrongful incarceration, the court

2017494e1

175 shall set forth its findings and transfer the petition by
176 electronic means through the division's website to the division
177 for findings of fact and a recommended determination of whether
178 the petitioner has established that he or she is a wrongfully
179 incarcerated person who is eligible for compensation under this
180 act.

181 Section 6. For the purpose of incorporating the amendment
182 made by this act to section 961.06, Florida Statutes, in a
183 reference thereto, subsection (6) of section 961.05, Florida
184 Statutes, is reenacted to read:

185 961.05 Application for compensation for wrongful
186 incarceration; administrative expunction; determination of
187 entitlement to compensation.—

188 (6) If the department determines that a claimant meets the
189 requirements of this act, the wrongfully incarcerated person who
190 is the subject of the claim becomes entitled to compensation,
191 subject to the provisions in s. 961.06.

192 Section 7. For the purpose of incorporating the amendments
193 made by this act to section 961.06, Florida Statutes, in
194 references thereto, subsection (1) of section 961.055, Florida
195 Statutes, is reenacted to read:

196 961.055 Application for compensation for a wrongfully
197 incarcerated person; exemption from application by nolle
198 prosequi.—

199 (1) A person alleged to be a wrongfully incarcerated person
200 who was convicted and sentenced to death on or before December
201 31, 1979, is exempt from the application provisions of ss.
202 961.03, 961.04, and 961.05 in the determination of wrongful
203 incarceration and eligibility to receive compensation pursuant

2017494e1

204 to s. 961.06 if:

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

207 (b) The special prosecutor thereafter enters a nolle
208 prosequi for the charges for which the defendant was convicted
209 and sentenced to death.

210 Section 8. For the purpose of incorporating the amendment
211 made by this act to section 961.06, Florida Statutes, in a
212 reference thereto, subsection (4) of section 961.056, Florida
213 Statutes, is reenacted to read:

214 961.056 Alternative application for compensation for a
215 wrongfully incarcerated person.—

216 (4) If the department determines that a claimant making
217 application under this section meets the requirements of this
218 chapter, the wrongfully incarcerated person is entitled to
219 compensation under s. 961.06.

220 Section 9. This act shall take effect October 1, 2017.