

By the Committee on Criminal Justice; and Senators Bradley, Brandes, Perry, Diaz, Gruters, Bracy, and Rouson

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1 A bill to be entitled
2 An act relating to criminal justice; amending s.
3 893.13, F.S.; prohibiting the imprisonment for longer
4 than a certain time for persons who possess, purchase,
5 or possess with the intent to purchase less than a
6 specified amount of a controlled substance; providing
7 exceptions; amending s. 893.135, F.S.; authorizing a
8 court to impose a sentence other than a mandatory
9 minimum term of imprisonment and mandatory fine for a
10 person convicted of trafficking if the court makes
11 certain findings on the record; creating s. 900.06,
12 F.S.; defining terms and specifying covered offenses;
13 requiring that a custodial interrogation conducted at
14 a place of detention in connection with certain
15 offenses be electronically recorded in its entirety;
16 requiring law enforcement officers who do not comply
17 with the electronic recording requirement or who
18 conduct custodial interrogations at a location other
19 than a place of detention to prepare a specified
20 report; providing exceptions to the electronic
21 recording requirement; requiring a court to consider a
22 law enforcement officer's failure to comply with the
23 electronic recording requirement in determining the
24 admissibility of a statement, unless an exception
25 applies; requiring a court, upon the request of a
26 defendant, to give certain cautionary instructions to
27 a jury under certain circumstances; providing immunity
28 from civil liability to law enforcement agencies that
29 enforce certain rules; providing that a cause of

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30 action is not created against a law enforcement
31 officer; amending s. 961.03, F.S.; revising the
32 circumstances under which a wrongfully incarcerated
33 person must file a petition with the court to
34 determine eligibility for compensation; authorizing
35 certain persons to petition the court to determine
36 eligibility for compensation within a specified
37 timeframe; amending s. 961.04, F.S.; revising the
38 circumstances under which a wrongfully incarcerated
39 person is eligible for compensation; amending s.
40 893.03, F.S.; conforming a cross-reference; reenacting
41 ss. 961.02(4) and 961.03(1)(a), (2), (3), and (4),
42 F.S., all relating to eligibility for compensation for
43 wrongfully incarcerated persons; providing an
44 effective date.

45
46 Be It Enacted by the Legislature of the State of Florida:

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48 Section 1. Present subsection (10) of section 893.13,
49 Florida Statutes, is redesignated as subsection (11), and a new
50 subsection (10) is added to that section, to read:

51 893.13 Prohibited acts; penalties.—

52 (10) Notwithstanding any provision of this section or any
53 other law relating to the punishment for possessing, purchasing,
54 or possessing with the intent to purchase a controlled
55 substance, a person who possesses, purchases, or possesses with
56 the intent to purchase less than 2 grams of a controlled
57 substance, other than fentanyl or any substance or mixture
58 described in s. 893.135(1)(c)4.a.(I)-(VII), may not be

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59 imprisoned for a term longer than 12 months.

60 Section 2. Present subsections (6) and (7) of section
61 893.135, Florida Statutes, are redesignated as subsections (7)
62 and (8), respectively, and a new subsection (6) is added to that
63 section, to read:

64 893.135 Trafficking; mandatory sentences; suspension or
65 reduction of sentences; conspiracy to engage in trafficking.—

66 (6) Notwithstanding any provision of this section, a court
67 may impose a sentence for a violation of this section other than
68 the mandatory minimum term of imprisonment and mandatory fine if
69 the court finds on the record that all of the following
70 circumstances exist:

71 (a) The defendant has no prior conviction for a forcible
72 felony as defined in s. 776.08.

73 (b) The defendant did not use violence or credible threats
74 of violence, or possess a firearm or other dangerous weapon, or
75 induce another participant to use violence or credible threats
76 of violence, in connection with the offense.

77 (c) The offense did not result in the death of or serious
78 bodily injury to any person.

79 (d) The defendant was not an organizer, leader, manager, or
80 supervisor of others in the offense and was not engaged in a
81 continuing criminal enterprise as defined in s. 893.20.

82 (e) At the time of the sentencing hearing or earlier, the
83 defendant has truthfully provided to the state all information
84 and evidence that he or she possesses concerning the offense or
85 offenses that were part of the same course of conduct or of a
86 common scheme or plan.

87 (f) The defendant has not previously benefited from the

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88 application of this subsection.

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90 A court may not apply this subsection to an offense under this
91 section which carries a mandatory minimum term of imprisonment
92 of 25 years.

93 Section 3. Section 900.06, Florida Statutes, is created to
94 read:

95 900.06 Recording of custodial interrogations for certain
96 offenses.—

97 (1) As used in this section, the term:

98 (a) "Custodial interrogation" means questioning or other
99 conduct by a law enforcement officer which is reasonably likely
100 to elicit an incriminating response from an individual and which
101 occurs under circumstances in which a reasonable individual in
102 the same circumstances would consider himself or herself to be
103 in the custody of a law enforcement agency.

104 (b) "Electronic recording" means an audio recording or an
105 audio and video recording that accurately records a custodial
106 interrogation.

107 (c) "Covered offense" includes:

108 1. Arson.

109 2. Sexual battery.

110 3. Robbery.

111 4. Kidnapping.

112 5. Aggravated child abuse.

113 6. Aggravated abuse of an elderly person or disabled adult.

114 7. Aggravated assault with a deadly weapon.

115 8. Murder.

116 9. Manslaughter.

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117 10. Aggravated manslaughter of an elderly person or
118 disabled adult.

119 11. Aggravated manslaughter of a child.

120 12. The unlawful throwing, placing, or discharging of a
121 destructive device or bomb.

122 13. Armed burglary.

123 14. Aggravated battery.

124 15. Aggravated stalking.

125 16. Home-invasion robbery.

126 17. Carjacking.

127 (d) "Place of detention" means a police station, sheriff's
128 office, correctional facility, prisoner holding facility, county
129 detention facility, or other governmental facility where an
130 individual may be held in connection with a criminal charge that
131 has been or may be filed against the individual.

132 (e) "Statement" means a communication that is oral,
133 written, electronic, nonverbal, or in sign language.

134 (2) (a) A custodial interrogation at a place of detention,
135 including the giving of a required warning, the advisement of
136 the rights of the individual being questioned, and the waiver of
137 any rights by the individual, must be electronically recorded in
138 its entirety if the interrogation is related to a covered
139 offense.

140 (b) If a law enforcement officer conducts a custodial
141 interrogation at a place of detention without electronically
142 recording the interrogation, the officer must prepare a written
143 report explaining why he or she did not record the
144 interrogation.

145 (c) As soon as practicable, a law enforcement officer who

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146 conducts a custodial interrogation at a location other than a
147 place of detention shall prepare a written report explaining the
148 circumstances of the interrogation and summarizing the custodial
149 interrogation process and the individual's statements.

150 (d) Paragraph (a) does not apply:

151 1. If an unforeseen equipment malfunction prevents
152 recording the custodial interrogation in its entirety;

153 2. If a suspect refuses to participate in a custodial
154 interrogation if his or her statements are to be electronically
155 recorded;

156 3. If an equipment operator error prevents recording the
157 custodial interrogation in its entirety;

158 4. If the statement is made spontaneously and not in
159 response to a custodial interrogation question;

160 5. If the statement is made during the processing of the
161 arrest of a suspect;

162 6. If the custodial interrogation occurs when the law
163 enforcement officer participating in the interrogation does not
164 have any knowledge of facts and circumstances that would lead an
165 officer to reasonably believe that the individual being
166 interrogated may have committed a covered offense;

167 7. If the law enforcement officer conducting the custodial
168 interrogation reasonably believes that making an electronic
169 recording would jeopardize the safety of the officer, the
170 individual being interrogated, or others; or

171 8. If the custodial interrogation is conducted outside of
172 this state.

173 (3) Unless a court finds that one or more of the
174 circumstances specified in paragraph (2)(d) apply, the court

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175 must consider the circumstances of an interrogation conducted by
176 a law enforcement officer in which he or she did not
177 electronically record all or part of a custodial interrogation
178 in determining whether a statement made during the interrogation
179 is admissible. If the court admits into evidence a statement
180 made during a custodial interrogation that was not
181 electronically recorded as required under paragraph (2) (a), the
182 court must, upon request of the defendant, give cautionary
183 instructions to the jury regarding the law enforcement officer's
184 failure to comply with that requirement.

185 (4) A law enforcement agency in this state which has
186 enforced rules adopted pursuant to this section which are
187 reasonably designed to ensure compliance with the requirements
188 of this section is not subject to civil liability for damages
189 arising from a violation of this section. This section does not
190 create a cause of action against a law enforcement officer.

191 Section 4. Paragraph (b) of subsection (1) of section
192 961.03, Florida Statutes, is amended to read:

193 961.03 Determination of status as a wrongfully incarcerated
194 person; determination of eligibility for compensation.—

195 (1)

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

197 1. Within 2 years ~~90 days~~ after the order vacating a
198 conviction and sentence becomes final and the criminal charges
199 against the person are dismissed if the person's conviction and
200 sentence is vacated, or the person is retried and found not
201 guilty, on or after July 1, 2008. If a person had a claim
202 dismissed or did not file a claim because of the former 90-day
203 petition filing period under this subparagraph, he or she may

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204 file a petition with the court within 2 years after July 1,
205 2020.

206 2. By July 1, 2010, if the person's conviction and sentence
207 was vacated by an order that became final before ~~prior to~~ July
208 1, 2008.

209 Section 5. Section 961.04, Florida Statutes, is amended to
210 read:

211 961.04 Eligibility for compensation for wrongful
212 incarceration.—A wrongfully incarcerated person is not eligible
213 for compensation under the act if any of the following apply:

214 ~~(1) Before the person's wrongful conviction and~~
215 ~~incarceration, the person was convicted of, or pled guilty or~~
216 ~~nolo contendere to, regardless of adjudication, any violent~~
217 ~~felony, or a crime committed in another jurisdiction the~~
218 ~~elements of which would constitute a violent felony in this~~
219 ~~state, or a crime committed against the United States which is~~
220 ~~designated a violent felony, excluding any delinquency~~
221 ~~disposition;~~

222 ~~(2) Before the person's wrongful conviction and~~
223 ~~incarceration, the person was convicted of, or pled guilty or~~
224 ~~nolo contendere to, regardless of adjudication, more than one~~
225 ~~felony that is not a violent felony, or more than one crime~~
226 ~~committed in another jurisdiction, the elements of which would~~
227 ~~constitute a felony in this state, or more than one crime~~
228 ~~committed against the United States which is designated a~~
229 ~~felony, excluding any delinquency disposition;~~

230 (1)(3) During the person's wrongful incarceration, the
231 person was convicted of, or pled guilty or nolo contendere to,
232 regardless of adjudication, any violent felony.†

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233 (2)~~(4)~~ During the person's wrongful incarceration, the
234 person was convicted of, or pled guilty or nolo contendere to,
235 regardless of adjudication, more than one felony that is not a
236 violent felony.~~;~~~~or~~

237 (3)~~(5)~~ During the person's wrongful incarceration, the
238 person was also serving a concurrent sentence for another felony
239 for which the person was not wrongfully convicted.

240 Section 6. Paragraph (c) of subsection (3) of section
241 893.03, Florida Statutes, is amended to read:

242 893.03 Standards and schedules.—The substances enumerated
243 in this section are controlled by this chapter. The controlled
244 substances listed or to be listed in Schedules I, II, III, IV,
245 and V are included by whatever official, common, usual,
246 chemical, trade name, or class designated. The provisions of
247 this section shall not be construed to include within any of the
248 schedules contained in this section any excluded drugs listed
249 within the purview of 21 C.F.R. s. 1308.22, styled "Excluded
250 Substances"; 21 C.F.R. s. 1308.24, styled "Exempt Chemical
251 Preparations"; 21 C.F.R. s. 1308.32, styled "Exempted
252 Prescription Products"; or 21 C.F.R. s. 1308.34, styled "Exempt
253 Anabolic Steroid Products."

254 (3) SCHEDULE III.—A substance in Schedule III has a
255 potential for abuse less than the substances contained in
256 Schedules I and II and has a currently accepted medical use in
257 treatment in the United States, and abuse of the substance may
258 lead to moderate or low physical dependence or high
259 psychological dependence or, in the case of anabolic steroids,
260 may lead to physical damage. The following substances are
261 controlled in Schedule III:

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262 (c) Unless specifically excepted or unless listed in
263 another schedule, any material, compound, mixture, or
264 preparation containing limited quantities of any of the
265 following controlled substances or any salts thereof:

266 1. Not more than 1.8 grams of codeine per 100 milliliters
267 or not more than 90 milligrams per dosage unit, with an equal or
268 greater quantity of an isoquinoline alkaloid of opium.

269 2. Not more than 1.8 grams of codeine per 100 milliliters
270 or not more than 90 milligrams per dosage unit, with recognized
271 therapeutic amounts of one or more active ingredients which are
272 not controlled substances.

273 3. Not more than 300 milligrams of hydrocodone per 100
274 milliliters or not more than 15 milligrams per dosage unit, with
275 a fourfold or greater quantity of an isoquinoline alkaloid of
276 opium.

277 4. Not more than 300 milligrams of hydrocodone per 100
278 milliliters or not more than 15 milligrams per dosage unit, with
279 recognized therapeutic amounts of one or more active ingredients
280 that are not controlled substances.

281 5. Not more than 1.8 grams of dihydrocodeine per 100
282 milliliters or not more than 90 milligrams per dosage unit, with
283 recognized therapeutic amounts of one or more active ingredients
284 which are not controlled substances.

285 6. Not more than 300 milligrams of ethylmorphine per 100
286 milliliters or not more than 15 milligrams per dosage unit, with
287 one or more active, nonnarcotic ingredients in recognized
288 therapeutic amounts.

289 7. Not more than 50 milligrams of morphine per 100
290 milliliters or per 100 grams, with recognized therapeutic

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291 amounts of one or more active ingredients which are not
292 controlled substances.

293

294 For purposes of charging a person with a violation of s. 893.135
295 involving any controlled substance described in subparagraph 3.
296 or subparagraph 4., the controlled substance is a Schedule III
297 controlled substance pursuant to this paragraph but the weight
298 of the controlled substance per milliliters or per dosage unit
299 is not relevant to the charging of a violation of s. 893.135.
300 The weight of the controlled substance shall be determined
301 pursuant to s. 893.135(7) ~~s. 893.135(6)~~.

302 Section 7. For the purpose of incorporating the amendment
303 made by this act to section 961.04, Florida Statutes, in a
304 reference thereto, subsection (4) of section 961.02, Florida
305 Statutes, is reenacted to read:

306 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

307 (4) "Eligible for compensation" means that a person meets
308 the definition of the term "wrongfully incarcerated person" and
309 is not disqualified from seeking compensation under the criteria
310 prescribed in s. 961.04.

311 Section 8. For the purpose of incorporating the amendments
312 made by this act to section 961.04, Florida Statutes, in
313 references thereto, paragraph (a) of subsection (1) and
314 subsections (2), (3), and (4) of section 961.03, Florida
315 Statutes, are reenacted to read:

316 961.03 Determination of status as a wrongfully incarcerated
317 person; determination of eligibility for compensation.—

318 (1)(a) In order to meet the definition of a "wrongfully
319 incarcerated person" and "eligible for compensation," upon entry

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320 of an order, based upon exonerating evidence, vacating a
321 conviction and sentence, a person must set forth the claim of
322 wrongful incarceration under oath and with particularity by
323 filing a petition with the original sentencing court, with a
324 copy of the petition and proper notice to the prosecuting
325 authority in the underlying felony for which the person was
326 incarcerated. At a minimum, the petition must:

327 1. State that verifiable and substantial evidence of actual
328 innocence exists and state with particularity the nature and
329 significance of the verifiable and substantial evidence of
330 actual innocence; and

331 2. State that the person is not disqualified, under the
332 provisions of s. 961.04, from seeking compensation under this
333 act.

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

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

343 (b) By contesting the nature, significance, or effect of
344 the evidence of actual innocence, the facts related to the
345 petitioner's alleged wrongful incarceration, or whether the
346 petitioner is ineligible from seeking compensation under the
347 provisions of s. 961.04.

348 (3) If the prosecuting authority responds as set forth in

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349 paragraph (2) (a), the original sentencing court, based upon the
350 evidence of actual innocence, the prosecuting authority's
351 certification, and upon the court's finding that the petitioner
352 has presented clear and convincing evidence that the petitioner
353 committed neither the act nor the offense that served as the
354 basis for the conviction and incarceration, and that the
355 petitioner did not aid, abet, or act as an accomplice to a
356 person who committed the act or offense, shall certify to the
357 department that the petitioner is a wrongfully incarcerated
358 person as defined by this act. Based upon the prosecuting
359 authority's certification, the court shall also certify to the
360 department that the petitioner is eligible for compensation
361 under the provisions of s. 961.04.

362 (4) (a) If the prosecuting authority responds as set forth
363 in paragraph (2) (b), the original sentencing court shall make a
364 determination from the pleadings and supporting documentation
365 whether, by a preponderance of the evidence, the petitioner is
366 ineligible for compensation under the provisions of s. 961.04,
367 regardless of his or her claim of wrongful incarceration. If the
368 court finds the petitioner ineligible under the provisions of s.
369 961.04, it shall dismiss the petition.

370 (b) If the prosecuting authority responds as set forth in
371 paragraph (2) (b), and the court determines that the petitioner
372 is eligible under the provisions of s. 961.04, but the
373 prosecuting authority contests the nature, significance or
374 effect of the evidence of actual innocence, or the facts related
375 to the petitioner's alleged wrongful incarceration, the court
376 shall set forth its findings and transfer the petition by
377 electronic means through the division's website to the division

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378 for findings of fact and a recommended determination of whether
379 the petitioner has established that he or she is a wrongfully
380 incarcerated person who is eligible for compensation under this
381 act.

382 Section 9. This act shall take effect July 1, 2020.