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LEGISLATIVE ACTION

Senate

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House

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Senator Bradley moved the following:

**Senate Amendment (with title amendment)**

Before line 11  
insert:

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

893.13 Prohibited acts; penalties.—

(10) Notwithstanding chapter 921, any provision of this  
section, or any other law relating to the punishment for  
possessing, purchasing, or possessing with the intent to



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purchase a controlled substance, a person who possesses,  
purchases, or possesses with the intent to purchase any of the  
following substances may not be imprisoned for a term longer  
than 12 months:

(a) One gram or less of a mixture or substance containing a  
detectable amount of heroin;

(b) One gram or less of a mixture or substance containing a  
detectable amount of:

1. Coca leaves, except coca leaves and extracts of coca  
leaves from which cocaine, ecgonine, and derivations of ecgonine  
or their salts have been removed;

2. Cocaine, its salts, optical and geometric isomers, and  
salts of its isomers;

3. Ecgonine, its derivatives, their salts, isomers, and  
salts of their isomers; or

4. Any compound, mixture, or preparation of any of the  
substances described in subparagraph 1., subparagraph 2., or  
subparagraph 3.;

(c) One-tenth gram or less of a mixture or substance  
containing a detectable amount of phencyclidine (PCP);

(d) Five-hundred micrograms or less of a mixture or  
substance containing a detectable amount of lysergic acid  
diethylamide (LSD); or

(e) One gram or less of methamphetamine, its salts,  
isomers, and salts of its isomers, or one gram of a mixture or  
substance containing a detectable amount of methamphetamine, its  
salts, isomers, or salts of its isomers.

Section 2. Present subsections (6) and (7) of section  
893.135, Florida Statutes, are redesignated as subsections (7)



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and (8), respectively, and a new subsection (6) is added to that section, to read:

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

(6) Notwithstanding any provision of this section, a court may impose a sentence for a violation of this section other than the mandatory minimum term of imprisonment and mandatory fine if, after the state has been afforded an opportunity on the record to make a recommendation, the court finds on the record that all of the following circumstances exist:

(a) The defendant has no prior conviction for a forcible felony as defined in s. 776.08, has no prior conviction for trafficking in a controlled substance, and has a total prior record score of less than four points on his or her sentencing scoresheet.

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

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

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

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



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(f) The defendant has not previously benefited from the application of this subsection.

A court may not apply this subsection to an offense under this section which carries a mandatory minimum term of imprisonment of 7 years or more.

Section 3. Paragraph (b) of subsection (1) of section 961.03, Florida Statutes, is amended, and paragraph (c) is added to that subsection, to read:

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

(1)

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

1. Within 2 years after the order vacating a conviction and sentence becomes final and the criminal charges against the person are dismissed or the person is retried and found not guilty, if the person's conviction and sentence is vacated on or after July 1, 2020.

2. By July 1, 2022, if the person's conviction and sentence was vacated and the criminal charges against the person were dismissed or the person was retried and found not guilty on or after July 1, 2008, but before July 1, 2020, and he or she previously filed a claim under this section that was dismissed or did not file a claim under this section because the:

a. Date when the criminal charges against the person were dismissed or the date the person was acquitted upon retrial occurred more than 90 days after the date of the final order vacating the conviction and sentence; or

b. Person was convicted of an unrelated felony before his



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or her wrongful conviction and incarceration and was previously  
barred under s. 961.04.

(c) A deceased person's heirs, successors, or assigns do  
not have standing to file a claim on the deceased person's  
behalf under this section.

~~1. Within 90 days after the order vacating a conviction and  
sentence becomes final if the person's conviction and sentence  
is vacated on or after July 1, 2008.~~

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

Section 4. Section 961.04, Florida Statutes, is amended to  
read:

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

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

~~(2) Before the person's wrongful conviction and  
incarceration, the person was convicted of, or pled guilty or  
nolo contendere to, regardless of adjudication, more than one  
felony that is not a violent felony, or more than one crime  
committed in another jurisdiction, the elements of which would  
constitute a felony in this state, or more than one crime~~



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~~committed against the United States which is designated a  
felony, excluding any delinquency disposition;~~

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

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

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

Section 5. Section 961.06, Florida Statutes, is amended to  
read:

961.06 Compensation for wrongful incarceration.—

(1) Except as otherwise provided in this act and subject to  
the limitations and procedures prescribed in this section, a  
person who is found to be entitled to compensation under the  
provisions of this act is entitled to:

(a) Monetary compensation for wrongful incarceration, which  
shall be calculated at a rate of \$50,000 for each year of  
wrongful incarceration, prorated as necessary to account for a  
portion of a year. For persons found to be wrongfully  
incarcerated after December 31, 2008, the Chief Financial  
Officer may adjust the annual rate of compensation for inflation  
using the change in the December-to-December "Consumer Price  
Index for All Urban Consumers" of the Bureau of Labor Statistics  
of the Department of Labor;

(b) A waiver of tuition and fees for up to 120 hours of



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instruction at any career center established under s. 1001.44, any Florida College System institution as defined in s. 1000.21(3), or any state university as defined in s. 1000.21(6), if the wrongfully incarcerated person meets and maintains the regular admission requirements of such career center, Florida College System institution, or state university; remains registered at such educational institution; and makes satisfactory academic progress as defined by the educational institution in which the claimant is enrolled;

(c) The amount of any fine, penalty, or court costs imposed and paid by the wrongfully incarcerated person;

(d) The amount of any reasonable attorney ~~attorney's~~ fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals regarding the wrongful conviction, to be calculated by the department based upon the supporting documentation submitted as specified in s. 961.05; and

(e) Notwithstanding any provision to the contrary in s. 943.0583 or s. 943.0585, immediate administrative expunction of the person's criminal record resulting from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. The Department of Legal Affairs and the Department of Law Enforcement shall, upon a determination that a claimant is entitled to compensation, immediately take all action necessary to administratively expunge the claimant's criminal record arising from his or her wrongful arrest, wrongful conviction, and wrongful incarceration. All fees for this process shall be waived.



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The total compensation awarded under paragraphs (a), (c), and (d) may not exceed \$2 million. No further award for attorney ~~attorney's~~ fees, lobbying fees, costs, or other similar expenses shall be made by the state.

(2) In calculating monetary compensation under paragraph (1)(a), a wrongfully incarcerated person who is placed on parole or community supervision while serving the sentence resulting from the wrongful conviction and who commits no more than one felony that is not a violent felony which results in revocation of the parole or community supervision is eligible for compensation for the total number of years incarcerated. A wrongfully incarcerated person who commits one violent felony or more than one felony that is not a violent felony that results in revocation of the parole or community supervision is ineligible for any compensation under subsection (1).

(3) Within 15 calendar days after issuing notice to the claimant that his or her claim satisfies all of the requirements under this act, the department shall notify the Chief Financial Officer to draw a warrant from the General Revenue Fund or another source designated by the Legislature in law for the purchase of an annuity for the claimant based on the total amount determined by the department under this act.

(4) The Chief Financial Officer shall issue payment in the amount determined by the department to an insurance company or other financial institution admitted and authorized to issue annuity contracts in this state to purchase an annuity or annuities, selected by the wrongfully incarcerated person, for a term of not less than 10 years. The Chief Financial Officer is directed to execute all necessary agreements to implement this





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act and to maximize the benefit to the wrongfully incarcerated person. The terms of the annuity or annuities shall:

(a) Provide that the annuity or annuities may not be sold, discounted, or used as security for a loan or mortgage by the wrongfully incarcerated person.

(b) Contain beneficiary provisions for the continued disbursement of the annuity or annuities in the event of the death of the wrongfully incarcerated person.

(5) If, at the time monetary compensation is determined under paragraph (1)(a), a court has previously entered a monetary judgment in favor of the claimant in a civil action related to the person's wrongful incarceration, or the claimant has entered into a settlement agreement with the state or any political subdivision thereof related to the person's wrongful incarceration, the amount of the damages in the civil action or settlement agreement, less any sums paid for attorney fees or for costs incurred in litigating the civil action or obtaining the settlement agreement, must be deducted from the total monetary compensation to which the claimant is entitled under this section ~~Before the department approves the application for compensation, the wrongfully incarcerated person must sign a release and waiver on behalf of the wrongfully incarcerated person and his or her heirs, successors, and assigns, forever releasing the state or any agency, instrumentality, or any political subdivision thereof, or any other entity subject to s. 768.28, from all present or future claims that the wrongfully incarcerated person or his or her heirs, successors, or assigns may have against such entities arising out of the facts in connection with the wrongful conviction for which compensation~~



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~~is being sought under the act.~~

(6) If subsection (5) does not apply, and if after the time monetary compensation is determined under paragraph (1)(a) the court enters a monetary judgment in favor of the claimant in a civil action related to the person's wrongful incarceration, or the claimant enters into a settlement agreement with the state or any political subdivision thereof related to the person's wrongful incarceration, the claimant must reimburse the state for the monetary compensation in paragraph (1)(a), less any sums paid for attorney fees or costs incurred in litigating the civil action or obtaining the settlement agreement. A reimbursement required under this subsection shall not exceed the amount of the monetary award the claimant received for damages in a civil action or settlement agreement. The court shall include in the order of judgment an award to the state of any amount required to be deducted under this subsection

~~(6)(a) A wrongfully incarcerated person may not submit an application for compensation under this act if the person has a lawsuit pending against the state or any agency, instrumentality, or any political subdivision thereof, or any other entity subject to the provisions of s. 768.28, in state or federal court requesting compensation arising out of the facts in connection with the claimant's conviction and incarceration.~~

(7)(a) The claimant shall notify the department upon filing a civil action against the state or any political subdivision thereof in which the claimant is seeking monetary damages related to the claimant's wrongful incarceration for which he or she previously received or is applying to receive compensation pursuant to paragraph (1)(a).



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(b) Upon notice of the claimant's civil action, the department shall file in the case a notice of payment of monetary compensation to the claimant under paragraph (1)(a). The notice shall constitute a lien upon any judgment or settlement recovered under the civil action that is equal to the sum of monetary compensation paid to the claimant under paragraph (1)(a), less any attorney fees and litigation costs.

(8)(a) ~~(b)~~ A wrongfully incarcerated person may not submit an application for compensation under this act if the person is the subject of a claim bill pending for claims arising out of the facts in connection with the claimant's conviction and incarceration.

(b) ~~(e)~~ Once an application is filed under this act, a wrongfully incarcerated person may not pursue recovery under a claim bill until the final disposition of the application.

(c) ~~(d)~~ ~~Any amount awarded under this act is intended to provide the sole compensation for any and all present and future claims arising out of the facts in connection with the claimant's conviction and incarceration.~~ Upon notification by the department that an application meets the requirements of this act, a wrongfully incarcerated person may not recover under a claim bill.

(d) ~~(e)~~ Any compensation awarded under a claim bill shall be the sole redress for claims arising out of the facts in connection with the claimant's conviction and incarceration and, upon any award of compensation to a wrongfully incarcerated person under a claim bill, the person may not receive compensation under this act.

(9) ~~(7)~~ Any payment made under this act does not constitute



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a waiver of any defense of sovereign immunity or an increase in the limits of liability on behalf of the state or any person subject to the provisions of s. 768.28 or other law.

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

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

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

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



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

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

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

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

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

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

7. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams, with recognized therapeutic amounts of one or more active ingredients which are not controlled substances.

For purposes of charging a person with a violation of s. 893.135



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involving any controlled substance described in subparagraph 3. or subparagraph 4., the controlled substance is a Schedule III controlled substance pursuant to this paragraph but the weight of the controlled substance per milliliters or per dosage unit is not relevant to the charging of a violation of s. 893.135. The weight of the controlled substance shall be determined pursuant to s. 893.135(7) ~~s. 893.135(6)~~.

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

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

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

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

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

(1)(a) In order to meet the definition of a "wrongfully incarcerated person" and "eligible for compensation," upon entry of an order, based upon exonerating evidence, vacating a conviction and sentence, a person must set forth the claim of wrongful incarceration under oath and with particularity by filing a petition with the original sentencing court, with a



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copy of the petition and proper notice to the prosecuting authority in the underlying felony for which the person was incarcerated. At a minimum, the petition must:

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

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

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

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

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

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



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

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

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





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

And the title is amended as follows:

Delete line 2

and insert:

An act relating to criminal justice; amending s.  
893.13, F.S.; prohibiting the imprisonment for longer  
than a certain time for persons who possess, purchase,  
or possess with the intent to purchase less than  
specified amounts of certain substances; providing  
exceptions; amending s. 893.135, F.S.; authorizing a  
court to impose a sentence other than the mandatory  
minimum term of imprisonment and mandatory fine for a  
person convicted of trafficking if the court makes  
certain findings on the record; amending s. 961.03,  
F.S.; extending the filing deadline for a petition  
claiming wrongful incarceration; providing limited  
retroactivity for filing a petition claiming wrongful  
incarceration; providing that a deceased person's  
heirs, successors, or assigns do not have standing to  
file a claim related to the wrongful incarceration of  
the deceased person; amending s. 961.04, F.S.;  
deleting eligibility requirements relating to a  
person's conduct before the person's wrongful  
conviction or incarceration; amending s. 961.06, F.S.;  
requiring the state to deduct the amount of a civil  
award from the state compensation amount owed if the  
claimant first receives a civil award; deleting a  
requirement that a wrongfully incarcerated person sign



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a liability release before receiving compensation;  
requiring a claimant to reimburse the state for any  
difference between state compensation and a civil  
award if the claimant receives statutory compensation  
prior to a civil award; deleting provisions  
prohibiting an application for compensation if the  
applicant has a pending civil suit requesting  
compensation; requiring a claimant to notify the  
Department of Legal Affairs upon filing a civil  
action; requiring the department to file a notice of  
payment of monetary compensation in the civil action;  
amending s. 893.03, F.S.; conforming a cross-  
reference; reenacting ss. 961.02(4) and 961.03(1)(a),  
(2), (3), and (4), F.S., all relating to eligibility  
for compensation for wrongfully incarcerated persons,  
to incorporate the amendment made to s. 961.04, F.S.,  
in references thereto; amending s.