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LEGISLATIVE ACTION

Senate

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House

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Floor: 1a/RE/3R

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03/12/2020 05:19 PM

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Senator Bradley moved the following:

1 **Senate Amendment to Amendment (254366) (with title**
2 **amendment)**

3
4 Delete lines 39 - 366

5 and insert:

6 Section 2. Paragraph (b) of subsection (1) of section
7 961.03, Florida Statutes, is amended, and paragraph (c) is added
8 to that subsection, to read:

9 961.03 Determination of status as a wrongfully incarcerated
10 person; determination of eligibility for compensation.—

11 (1)



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

13 1. Within 2 years after the order vacating a conviction and
14 sentence becomes final and the criminal charges against the
15 person are dismissed or the person is retried and acquitted, if
16 the person's conviction and sentence is vacated on or after July
17 1, 2020.

18 2. By July 1, 2022, if the person's conviction and sentence
19 was vacated and the criminal charges against the person were
20 dismissed or the person was retried and acquitted on or after
21 January 1, 2006, but before July 1, 2020, and he or she
22 previously filed a petition under this section that was
23 dismissed or did not file a petition under this section because
24 the:

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

29 b. Person was convicted of an unrelated felony before or
30 during his or her wrongful conviction and incarceration and was
31 ineligible for compensation under former s. 961.04.

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

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

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

40 Section 3. Section 961.04, Florida Statutes, is amended to



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41 read:

42 961.04 Eligibility for compensation for wrongful
43 incarceration.—A wrongfully incarcerated person is not eligible
44 for compensation under the act for any period of incarceration
45 during which the person was concurrently serving a sentence for
46 a conviction of another crime for which such person was lawfully
47 incarcerated if:

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

56 ~~(2) Before the person's wrongful conviction and~~
57 ~~incarceration, the person was convicted of, or pled guilty or~~
58 ~~nolo contendere to, regardless of adjudication, more than one~~
59 ~~felony that is not a violent felony, or more than one crime~~
60 ~~committed in another jurisdiction, the elements of which would~~
61 ~~constitute a felony in this state, or more than one crime~~
62 ~~committed against the United States which is designated a~~
63 ~~felony, excluding any delinquency disposition;~~

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

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



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70 ~~violent felony; or~~

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

74 Section 4. Section 961.06, Florida Statutes, is amended to
75 read:

76 961.06 Compensation for wrongful incarceration.-

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

81 (a) Monetary compensation for wrongful incarceration, which
82 shall be calculated at a rate of \$50,000 for each year of
83 wrongful incarceration, prorated as necessary to account for a
84 portion of a year. For persons found to be wrongfully
85 incarcerated after December 31, 2005 ~~2008~~, the Chief Financial
86 Officer may adjust the annual rate of compensation for inflation
87 using the change in the December-to-December "Consumer Price
88 Index for All Urban Consumers" of the Bureau of Labor Statistics
89 of the Department of Labor;

90 (b) A waiver of tuition and fees for up to 120 hours of
91 instruction at any career center established under s. 1001.44,
92 any Florida College System institution as defined in s.
93 1000.21(3), or any state university as defined in s. 1000.21(6),
94 if the wrongfully incarcerated person meets and maintains the
95 regular admission requirements of such career center, Florida
96 College System institution, or state university; remains
97 registered at such educational institution; and makes
98 satisfactory academic progress as defined by the educational



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99 institution in which the claimant is enrolled;

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

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

108 (e) Notwithstanding any provision to the contrary in s.
109 943.0583 or s. 943.0585, immediate administrative expunction of
110 the person's criminal record resulting from his or her wrongful
111 arrest, wrongful conviction, and wrongful incarceration. The
112 Department of Legal Affairs and the Department of Law
113 Enforcement shall, upon a determination that a claimant is
114 entitled to compensation, immediately take all action necessary
115 to administratively expunge the claimant's criminal record
116 arising from his or her wrongful arrest, wrongful conviction,
117 and wrongful incarceration. All fees for this process shall be
118 waived.

119
120 The total compensation awarded under paragraphs (a), (c), and
121 (d) may not exceed \$2 million. No further award for attorney
122 ~~attorney's~~ fees, lobbying fees, costs, or other similar expenses
123 shall be made by the state.

124 ~~(2) In calculating monetary compensation under paragraph~~
125 ~~(1)(a), a wrongfully incarcerated person who is placed on parole~~
126 ~~or community supervision while serving the sentence resulting~~
127 ~~from the wrongful conviction and who commits no more than one~~



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128 ~~felony that is not a violent felony which results in revocation~~
129 ~~of the parole or community supervision is eligible for~~
130 ~~compensation for the total number of years incarcerated. A~~
131 ~~wrongfully incarcerated person who commits one violent felony or~~
132 ~~more than one felony that is not a violent felony that results~~
133 ~~in revocation of the parole or community supervision is~~
134 ~~ineligible for any compensation under subsection (1).~~

135 (2)~~(3)~~ Within 15 calendar days after issuing notice to the
136 claimant that his or her claim satisfies all of the requirements
137 under this act, the department shall notify the Chief Financial
138 Officer to draw a warrant from the General Revenue Fund or
139 another source designated by the Legislature in law for the
140 purchase of an annuity for the claimant based on the total
141 amount determined by the department under this act.

142 (3)~~(4)~~ The Chief Financial Officer shall issue payment in
143 the amount determined by the department to an insurance company
144 or other financial institution admitted and authorized to issue
145 annuity contracts in this state to purchase an annuity or
146 annuities, selected by the wrongfully incarcerated person, for a
147 term of not less than 10 years. The Chief Financial Officer is
148 directed to execute all necessary agreements to implement this
149 act and to maximize the benefit to the wrongfully incarcerated
150 person. The terms of the annuity or annuities shall:

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

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



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157 (4)-(5) If, at the time monetary compensation is determined
158 under paragraph (1) (a), a court has previously entered a
159 monetary judgment in favor of the claimant in a civil action
160 related to the claimant's wrongful incarceration, or the
161 claimant has entered into a settlement agreement with the state
162 or any political subdivision thereof related to the claimant's
163 wrongful incarceration, the amount of the damages in the civil
164 action or settlement agreement, less any sums paid for attorney
165 fees or for costs incurred in litigating the civil action or
166 obtaining the settlement agreement, shall be deducted from the
167 total monetary compensation to which the claimant is entitled
168 under this section ~~Before the department approves the~~
169 ~~application for compensation, the wrongfully incarcerated person~~
170 ~~must sign a release and waiver on behalf of the wrongfully~~
171 ~~incarcerated person and his or her heirs, successors, and~~
172 ~~assigns, forever releasing the state or any agency,~~
173 ~~instrumentality, or any political subdivision thereof, or any~~
174 ~~other entity subject to s. 768.28, from all present or future~~
175 ~~claims that the wrongfully incarcerated person or his or her~~
176 ~~heirs, successors, or assigns may have against such entities~~
177 ~~arising out of the facts in connection with the wrongful~~
178 ~~conviction for which compensation is being sought under the act.~~

179 (5) If subsection (4) does not apply, and if after the time
180 monetary compensation is determined under paragraph (1) (a) the
181 court enters a monetary judgment in favor of the claimant in a
182 civil action related to the claimant's wrongful incarceration,
183 or the claimant enters into a settlement agreement with the
184 state or any political subdivision thereof related to the
185 claimant's wrongful incarceration, the claimant shall reimburse



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186 the state for the monetary compensation in paragraph (1) (a),
187 less any sums paid for attorney fees or for costs incurred in
188 litigating the civil action or obtaining the settlement
189 agreement. A reimbursement required under this subsection shall
190 not exceed the amount of the monetary award the claimant
191 received for damages in a civil action or settlement agreement.
192 In the order of judgment, the court shall award to the state any
193 amount required to be deducted under this subsection.

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

200 (b) Upon notice of the claimant's civil action, the
201 department shall file in the case a notice of payment of
202 monetary compensation to the claimant under paragraph (1) (a).
203 The notice shall constitute a lien upon any monetary judgment or
204 settlement recovered under the civil action that is equal to the
205 sum of monetary compensation paid to the claimant under
206 paragraph (1) (a), less any attorney fees and costs incurred in
207 litigating the civil action or obtaining the settlement
208 agreement ~~A wrongfully incarcerated person may not submit an~~
209 ~~application for compensation under this act if the person has a~~
210 ~~lawsuit pending against the state or any agency,~~
211 ~~instrumentality, or any political subdivision thereof, or any~~
212 ~~other entity subject to the provisions of s. 768.28, in state or~~
213 ~~federal court requesting compensation arising out of the facts~~
214 ~~in connection with the claimant's conviction and incarceration.~~



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

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

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

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

236 (8) ~~(7)~~ Any payment made under this act does not constitute
237 a waiver of any defense of sovereign immunity or an increase in
238 the limits of liability on behalf of the state or any person
239 subject to the provisions of s. 768.28 or other law.

240 Section 5. Section 961.07, Florida Statutes, is amended to
241 read:

242 961.07 Continuing appropriation.—

243 (1) Beginning in the 2020-2021 ~~2008-2009~~ fiscal year and



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244 continuing each fiscal year thereafter, a sum sufficient to pay
245 the approved payments under s. 961.03(1)(b)1. ~~this act~~ is
246 appropriated from the General Revenue Fund to the Chief
247 Financial Officer, which sum is further appropriated for
248 expenditure pursuant to the provisions of this act.

249 (2) Payments for petitions filed pursuant to s.
250 961.03(1)(b)2. are subject to specific appropriation.

251
252 ===== T I T L E A M E N D M E N T =====

253 And the title is amended as follows:

254 Delete lines 457 - 488

255 and insert:

256 exceptions; amending s. 961.03, F.S.; extending the
257 filing deadline for a petition claiming wrongful
258 incarceration; providing limited retroactivity for
259 filing a petition claiming wrongful incarceration;
260 providing that a deceased person's heirs, successors,
261 or assigns do not have standing to file a claim
262 related to the wrongful incarceration of the deceased
263 person; amending s. 961.04, F.S.; revising eligibility
264 for compensation for wrongful incarceration for a
265 wrongfully incarcerated person; amending s. 961.06,
266 F.S.; authorizing the Chief Financial Officer to
267 adjust compensation for inflation for additional
268 wrongfully incarcerated persons; revising conditions
269 for eligibility for compensation for wrongful
270 incarceration; requiring the state to deduct the
271 amount of a civil award from the state compensation
272 amount owed if the claimant first receives a civil



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273 award; deleting a requirement that a wrongfully
274 incarcerated person sign a liability release before
275 receiving compensation; requiring a claimant to
276 reimburse the state for any difference between state
277 compensation and a civil award if the claimant
278 receives statutory compensation before a civil award;
279 deleting provisions prohibiting an application for
280 compensation if the applicant has a pending civil suit
281 requesting compensation; requiring a claimant to
282 notify the Department of Legal Affairs upon filing a
283 civil action; requiring the department to file a
284 notice of payment of monetary compensation in the
285 civil action; amending s. 961.07, F.S.; specifying
286 that payments for certain petitions filed under the
287 Victims of Wrongful Incarceration Act are subject to
288 specific appropriation; reenacting ss. 961.02(4) and
289 961.03(1) (a),