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LEGISLATIVE ACTION

Senate

.

House

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03/12/2020 05:19 PM

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Senator Bradley moved the following:

Senate Amendment (with title amendment)

Before line 9

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

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

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

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

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

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

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

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

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

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

39 Section 2. Paragraph (b) of subsection (1) of section
40 961.03, Florida Statutes, is amended, and paragraph (c) is added



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41 to that subsection, to read:

42 961.03 Determination of status as a wrongfully incarcerated
43 person; determination of eligibility for compensation.—

44 (1)

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

46 1. Within 2 years after the order vacating a conviction and
47 sentence becomes final and the criminal charges against the
48 person are dismissed or the person is retried and acquitted, if
49 the person's conviction and sentence is vacated on or after July
50 1, 2020.

51 2. By July 1, 2022, if the person's conviction and sentence
52 was vacated and the criminal charges against the person were
53 dismissed or the person was retried and acquitted on or after
54 January 1, 2006, but before July 1, 2020, and he or she
55 previously filed a petition under this section that was
56 dismissed or did not file a petition under this section because
57 the:

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

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

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

68 ~~1. Within 90 days after the order vacating a conviction and~~
69 ~~sentence becomes final if the person's conviction and sentence~~



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70 ~~is vacated on or after July 1, 2008.~~

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

73 Section 3. Section 961.04, Florida Statutes, is amended to
74 read:

75 961.04 Eligibility for compensation for wrongful
76 incarceration.—A wrongfully incarcerated person is not eligible
77 for compensation under the act for any period of incarceration
78 during which the person was concurrently serving a sentence for
79 a conviction of another crime for which such person was lawfully
80 incarcerated if:

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

89 ~~(2) Before the person's wrongful conviction and~~
90 ~~incarceration, the person was convicted of, or pled guilty or~~
91 ~~nolo contendere to, regardless of adjudication, more than one~~
92 ~~felony that is not a violent felony, or more than one crime~~
93 ~~committed in another jurisdiction, the elements of which would~~
94 ~~constitute a felony in this state, or more than one crime~~
95 ~~committed against the United States which is designated a~~
96 ~~felony, excluding any delinquency disposition;~~

97 ~~(3) During the person's wrongful incarceration, the person~~
98 ~~was convicted of, or pled guilty or nolo contendere to,~~



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99 ~~regardless of adjudication, any violent felony;~~

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

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

107 Section 4. Section 961.06, Florida Statutes, is amended to
108 read:

109 961.06 Compensation for wrongful incarceration.-

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

114 (a) Monetary compensation for wrongful incarceration, which
115 shall be calculated at a rate of \$50,000 for each year of
116 wrongful incarceration, prorated as necessary to account for a
117 portion of a year. For persons found to be wrongfully
118 incarcerated after December 31, 2005 ~~2008~~, the Chief Financial
119 Officer may adjust the annual rate of compensation for inflation
120 using the change in the December-to-December "Consumer Price
121 Index for All Urban Consumers" of the Bureau of Labor Statistics
122 of the Department of Labor;

123 (b) A waiver of tuition and fees for up to 120 hours of
124 instruction at any career center established under s. 1001.44,
125 any Florida College System institution as defined in s.
126 1000.21(3), or any state university as defined in s. 1000.21(6),
127 if the wrongfully incarcerated person meets and maintains the



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128 regular admission requirements of such career center, Florida
129 College System institution, or state university; remains
130 registered at such educational institution; and makes
131 satisfactory academic progress as defined by the educational
132 institution in which the claimant is enrolled;

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

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

141 (e) Notwithstanding any provision to the contrary in s.
142 943.0583 or s. 943.0585, immediate administrative expunction of
143 the person's criminal record resulting from his or her wrongful
144 arrest, wrongful conviction, and wrongful incarceration. The
145 Department of Legal Affairs and the Department of Law
146 Enforcement shall, upon a determination that a claimant is
147 entitled to compensation, immediately take all action necessary
148 to administratively expunge the claimant's criminal record
149 arising from his or her wrongful arrest, wrongful conviction,
150 and wrongful incarceration. All fees for this process shall be
151 waived.

152
153 The total compensation awarded under paragraphs (a), (c), and
154 (d) may not exceed \$2 million. No further award for attorney
155 ~~attorney's~~ fees, lobbying fees, costs, or other similar expenses
156 shall be made by the state.



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

168 (2)~~(3)~~ Within 15 calendar days after issuing notice to the
169 claimant that his or her claim satisfies all of the requirements
170 under this act, the department shall notify the Chief Financial
171 Officer to draw a warrant from the General Revenue Fund or
172 another source designated by the Legislature in law for the
173 purchase of an annuity for the claimant based on the total
174 amount determined by the department under this act.

175 (3)~~(4)~~ The Chief Financial Officer shall issue payment in
176 the amount determined by the department to an insurance company
177 or other financial institution admitted and authorized to issue
178 annuity contracts in this state to purchase an annuity or
179 annuities, selected by the wrongfully incarcerated person, for a
180 term of not less than 10 years. The Chief Financial Officer is
181 directed to execute all necessary agreements to implement this
182 act and to maximize the benefit to the wrongfully incarcerated
183 person. The terms of the annuity or annuities shall:

184 (a) Provide that the annuity or annuities may not be sold,
185 discounted, or used as security for a loan or mortgage by the



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186 wrongfully incarcerated person.

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

190 (4)-(5) If, at the time monetary compensation is determined
191 under paragraph (1) (a), a court has previously entered a
192 monetary judgment in favor of the claimant in a civil action
193 related to the claimant's wrongful incarceration, or the
194 claimant has entered into a settlement agreement with the state
195 or any political subdivision thereof related to the claimant's
196 wrongful incarceration, the amount of the damages in the civil
197 action or settlement agreement, less any sums paid for attorney
198 fees or for costs incurred in litigating the civil action or
199 obtaining the settlement agreement, shall be deducted from the
200 total monetary compensation to which the claimant is entitled
201 under this section ~~Before the department approves the~~
202 ~~application for compensation, the wrongfully incarcerated person~~
203 ~~must sign a release and waiver on behalf of the wrongfully~~
204 ~~incarcerated person and his or her heirs, successors, and~~
205 ~~assigns, forever releasing the state or any agency,~~
206 ~~instrumentality, or any political subdivision thereof, or any~~
207 ~~other entity subject to s. 768.28, from all present or future~~
208 ~~claims that the wrongfully incarcerated person or his or her~~
209 ~~heirs, successors, or assigns may have against such entities~~
210 ~~arising out of the facts in connection with the wrongful~~
211 ~~conviction for which compensation is being sought under the act.~~

212 (5) If subsection (4) does not apply, and if after the time
213 monetary compensation is determined under paragraph (1) (a) the
214 court enters a monetary judgment in favor of the claimant in a



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215 civil action related to the claimant's wrongful incarceration,
216 or the claimant enters into a settlement agreement with the
217 state or any political subdivision thereof related to the
218 claimant's wrongful incarceration, the claimant shall reimburse
219 the state for the monetary compensation in paragraph (1) (a),
220 less any sums paid for attorney fees or for costs incurred in
221 litigating the civil action or obtaining the settlement
222 agreement. A reimbursement required under this subsection shall
223 not exceed the amount of the monetary award the claimant
224 received for damages in a civil action or settlement agreement.
225 In the order of judgment, the court shall award to the state any
226 amount required to be deducted under this subsection.

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

233 (b) Upon notice of the claimant's civil action, the
234 department shall file in the case a notice of payment of
235 monetary compensation to the claimant under paragraph (1) (a).
236 The notice shall constitute a lien upon any monetary judgment or
237 settlement recovered under the civil action that is equal to the
238 sum of monetary compensation paid to the claimant under
239 paragraph (1) (a), less any attorney fees and costs incurred in
240 litigating the civil action or obtaining the settlement
241 agreement ~~A wrongfully incarcerated person may not submit an~~
242 ~~application for compensation under this act if the person has a~~
243 ~~lawsuit pending against the state or any agency,~~



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244 ~~instrumentality, or any political subdivision thereof, or any~~
245 ~~other entity subject to the provisions of s. 768.28, in state or~~
246 ~~federal court requesting compensation arising out of the facts~~
247 ~~in connection with the claimant's conviction and incarceration.~~

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

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

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

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

269 (8) ~~(7)~~ Any payment made under this act does not constitute
270 a waiver of any defense of sovereign immunity or an increase in
271 the limits of liability on behalf of the state or any person
272 subject to the provisions of s. 768.28 or other law.



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273 Section 5. Section 961.07, Florida Statutes, is amended to
274 read:

275 961.07 Continuing appropriation.—

276 (1) Beginning in the 2020-2021 ~~2008-2009~~ fiscal year and
277 continuing each fiscal year thereafter, a sum sufficient to pay
278 the approved payments under s. 961.03(1)(b)1. ~~this act~~ is
279 appropriated from the General Revenue Fund to the Chief
280 Financial Officer, which sum is further appropriated for
281 expenditure pursuant to the provisions of this act.

282 (2) Payments for petitions filed pursuant to s.
283 961.03(1)(b)2. are subject to specific appropriation.

284 Section 6. For the purpose of incorporating the amendment
285 made by this act to section 961.04, Florida Statutes, in a
286 reference thereto, subsection (4) of section 961.02, Florida
287 Statutes, is reenacted to read:

288 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

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

293 Section 7. For the purpose of incorporating the amendment
294 made by this act to section 961.04, Florida Statutes, in
295 references thereto, paragraph (a) of subsection (1) and
296 subsections (2), (3), and (4) of section 961.03, Florida
297 Statutes, are reenacted to read:

298 961.03 Determination of status as a wrongfully incarcerated
299 person; determination of eligibility for compensation.—

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



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302 of an order, based upon exonerating evidence, vacating a
303 conviction and sentence, a person must set forth the claim of
304 wrongful incarceration under oath and with particularity by
305 filing a petition with the original sentencing court, with a
306 copy of the petition and proper notice to the prosecuting
307 authority in the underlying felony for which the person was
308 incarcerated. At a minimum, the petition must:

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

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

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

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

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

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



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331 paragraph (2) (a), the original sentencing court, based upon the
332 evidence of actual innocence, the prosecuting authority's
333 certification, and upon the court's finding that the petitioner
334 has presented clear and convincing evidence that the petitioner
335 committed neither the act nor the offense that served as the
336 basis for the conviction and incarceration, and that the
337 petitioner did not aid, abet, or act as an accomplice to a
338 person who committed the act or offense, shall certify to the
339 department that the petitioner is a wrongfully incarcerated
340 person as defined by this act. Based upon the prosecuting
341 authority's certification, the court shall also certify to the
342 department that the petitioner is eligible for compensation
343 under the provisions of s. 961.04.

344 (4) (a) If the prosecuting authority responds as set forth
345 in paragraph (2) (b), the original sentencing court shall make a
346 determination from the pleadings and supporting documentation
347 whether, by a preponderance of the evidence, the petitioner is
348 ineligible for compensation under the provisions of s. 961.04,
349 regardless of his or her claim of wrongful incarceration. If the
350 court finds the petitioner ineligible under the provisions of s.
351 961.04, it shall dismiss the petition.

352 (b) If the prosecuting authority responds as set forth in
353 paragraph (2) (b), and the court determines that the petitioner
354 is eligible under the provisions of s. 961.04, but the
355 prosecuting authority contests the nature, significance or
356 effect of the evidence of actual innocence, or the facts related
357 to the petitioner's alleged wrongful incarceration, the court
358 shall set forth its findings and transfer the petition by
359 electronic means through the division's website to the division



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360 for findings of fact and a recommended determination of whether
361 the petitioner has established that he or she is a wrongfully
362 incarcerated person who is eligible for compensation under this
363 act.

364

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

366 And the title is amended as follows:

367 Delete line 2

368 and insert:

369 An act relating to criminal justice; amending s.
370 893.13, F.S.; prohibiting the imprisonment for longer
371 than a certain time for persons who possess, purchase,
372 or possess with the intent to purchase less than
373 specified amounts of certain substances; providing
374 exceptions; amending s. 961.03, F.S.; extending the
375 filing deadline for a petition claiming wrongful
376 incarceration; providing limited retroactivity for
377 filing a petition claiming wrongful incarceration;
378 providing that a deceased person's heirs, successors,
379 or assigns do not have standing to file a claim
380 related to the wrongful incarceration of the deceased
381 person; amending s. 961.04, F.S.; revising eligibility
382 for compensation for wrongful incarceration for a
383 wrongfully incarcerated person; amending s. 961.06,
384 F.S.; authorizing the Chief Financial Officer to
385 adjust compensation for inflation for additional
386 wrongfully incarcerated persons; revising conditions
387 for eligibility for compensation for wrongful
388 incarceration; requiring the state to deduct the



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389 amount of a civil award from the state compensation
390 amount owed if the claimant first receives a civil
391 award; deleting a requirement that a wrongfully
392 incarcerated person sign a liability release before
393 receiving compensation; requiring a claimant to
394 reimburse the state for any difference between state
395 compensation and a civil award if the claimant
396 receives statutory compensation before a civil award;
397 deleting provisions prohibiting an application for
398 compensation if the applicant has a pending civil suit
399 requesting compensation; requiring a claimant to
400 notify the Department of Legal Affairs upon filing a
401 civil action; requiring the department to file a
402 notice of payment of monetary compensation in the
403 civil action; amending s. 961.07, F.S.; specifying
404 that payments for certain petitions filed under the
405 Victims of Wrongful Incarceration Act are subject to
406 specific appropriation; reenacting ss. 961.02(4) and
407 961.03(1)(a), (2), (3), and (4), F.S., all relating to
408 eligibility for compensation for wrongfully
409 incarcerated persons, to incorporate the amendment
410 made to s. 961.04, F.S., in references thereto;
411 amending s.