

By Senator Wright

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1 A bill to be entitled

2 An act for the relief of Maury Hernandez; providing an
3 appropriation to compensate Maury Hernandez, a former
4 Broward County Sheriff's Office deputy, for injuries
5 and damages sustained as a consequence of the alleged
6 negligence of the Department of Corrections in the
7 course of his employment; providing legislative intent
8 that certain liens be waived; providing a limitation
9 on the payment of compensation and attorney fees;
10 providing an effective date.

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12 WHEREAS, on August 6, 2007, Broward County Sheriff's Office
13 Deputy Maury Hernandez, then 28 years old, was operating a
14 vehicle assigned to him by the office within the office's
15 jurisdiction, and

16 WHEREAS, at approximately 11:45 a.m., Deputy Hernandez
17 observed David Maldonado as the operator of a motorcycle that
18 failed to stop at three traffic signals on Pembroke Road, and

19 WHEREAS, Deputy Hernandez followed Mr. Maldonado to a
20 location within the 3700 block of Pembroke Road, where he
21 approached Mr. Maldonado, still on the motorcycle, identified
22 himself as a deputy sheriff, and displayed his badge, and

23 WHEREAS, Mr. Maldonado, after falsely identifying himself
24 as a police officer from Opa-locka, suddenly pushed Deputy
25 Hernandez, jumped from his motorcycle, and fled the scene on
26 foot, at which time Deputy Hernandez gave chase, also on foot,
27 and

28 WHEREAS, within seconds, Mr. Maldonado turned and fired two
29 rounds from a .45 caliber handgun, hitting Deputy Hernandez in

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30 the head with one of those rounds, and

31 WHEREAS, critically wounded, Deputy Hernandez was rushed to
32 Memorial Regional Hospital in Hollywood, where he remained in a
33 coma and on life support for 3 weeks, underwent multiple
34 surgeries, and remained hospitalized for nearly 3 months before
35 being discharged to the care of a rehabilitation hospital, and

36 WHEREAS, after his discharge, Deputy Hernandez was confined
37 to a wheelchair, underwent daylong physical, occupational,
38 speech, visual, and cognitive therapy each weekday for a year,
39 and received regular painful Botox injections and other
40 medication to improve his muscle tone and reduce spasticity, and

41 WHEREAS, Deputy Hernandez continued to receive physical and
42 occupational therapies and other medical care on a daily basis
43 for more than 3 additional years until his insurance provider
44 discontinued payments to his health care providers, and

45 WHEREAS, after the shooting, Mr. Maldonado was apprehended
46 by Hollywood police in a nearby condominium complex where he
47 attempted a carjacking, and

48 WHEREAS, the Broward County Sheriff's Office, commonly
49 referred to as the BSO, began a full investigation into the
50 circumstances surrounding the shooting, later concluding that,
51 had the Department of Corrections, hereinafter referred to as
52 "the department," brought repeated violations of his probation
53 to the attention of the state attorney's office and the
54 presiding circuit judge, Mr. Maldonado would have been in jail
55 at the time of the shooting, and

56 WHEREAS, the investigation found that on April 18, 2007,
57 Mr. Maldonado, a habitual traffic offender, pled no contest to
58 felony traffic charges and was placed on probation for 24

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59 months, and

60 WHEREAS, at the time of his placement on probation, Mr.
61 Maldonado had accrued nearly 40 traffic and administrative
62 violations, including reckless driving, speeding, and driving
63 without a license, and

64 WHEREAS, Mr. Maldonado was advised in writing of the
65 department's zero-tolerance policy for the reporting of
66 violations of supervision conditions, which stated, "The
67 Department of Corrections has a zero-tolerance policy as to
68 reporting violations of supervision conditions. This is
69 notification to you that you are subject to proceedings,
70 including arrest, if you are not in compliance with all
71 conditions of supervision as required by the sentencing court or
72 releasing authority," and

73 WHEREAS, s. 948.03, Florida Statutes, then prohibited
74 probationers from possessing, carrying, or owning any firearm
75 unless authorized by the court and consented to by the probation
76 officer, and

77 WHEREAS, s. 948.03, Florida Statutes, then prohibited
78 probationers from using intoxicants to excess or possessing any
79 drugs or narcotics unless prescribed by a physician, and

80 WHEREAS, further, the terms of Mr. Maldonado's probation
81 specifically prohibited him from carrying a weapon absent a
82 court order allowing him to do so and from using alcohol in
83 excess and nonprescribed drugs, and required that he submit
84 complete and honest monthly reports to his probation officer,
85 and

86 WHEREAS, Mr. Maldonado failed to comply with any of these
87 terms of his probation, which was known or should have been

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88 known to his probation officer, an employee of the department,
89 and

90 WHEREAS, in fact, Mr. Maldonado admitted to his probation
91 officer that he possessed a firearm, which Mr. Maldonado
92 attempted to justify by falsely claiming that he was employed as
93 a security officer and serving in the military, and

94 WHEREAS, Mr. Maldonado admitted to using alcohol and
95 nonprescribed drugs, and

96 WHEREAS, the BSO investigation found that the department
97 unreasonably failed to verify any of Mr. Maldonado's statements
98 regarding his employment and military service or to otherwise
99 act on any of his probation violations, and

100 WHEREAS, the department knew or reasonably should have
101 known that Mr. Maldonado lied about his place of employment, his
102 military service, and the reasons he stated for possessing a
103 firearm, and

104 WHEREAS, the department failed to act on Mr. Maldonado's
105 admitted use of alcohol and nonprescribed drugs or to note his
106 false statements to his probation officer, and

107 WHEREAS, by virtue of its own zero-tolerance policy, the
108 department had a nondiscretionary duty to timely report Mr.
109 Maldonado's violations of these laws and the terms of his
110 probation to the state attorney's office and the presiding
111 circuit judge, and

112 WHEREAS, to this day, the department has never explained
113 why its zero-tolerance policy on reporting violations of
114 supervision conditions was not enforced with regard to Mr.
115 Maldonado, and the state attorney's office has stated publicly
116 that his violations should have been reported to the office and

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117 the presiding circuit judge, and

118 WHEREAS, the State Attorney's office maintains that if Mr.
119 Maldonado's violations had been so reported, he would have been
120 jailed without bail and not on the streets at the time that he
121 shot Deputy Hernandez, and

122 WHEREAS, as a result of the shooting, Deputy Hernandez
123 suffers from permanent brain injury and resulting hemiparesis to
124 the entire left side of his body, motor and sensory nerve
125 damage, spasticity, numbness and severe muscle weakness,
126 impaired walking and balance abilities, hydrocephalus that is
127 treated with a permanent ventriculoperitoneal shunt, and
128 cognitive deficits, and fragments of the bullet are permanently
129 lodged in his brain, and

130 WHEREAS, without professional assistance, Deputy Hernandez
131 continues to engage in physical and occupational therapy to
132 improve his hemiparesis, but continues to require medical care
133 and professional therapy treatments to maintain maximum medical
134 stability, and

135 WHEREAS, at the time of his injury Deputy Hernandez was
136 earning a salary of approximately \$60,000 annually and generous
137 benefits, including medical and retirement benefits, and

138 WHEREAS, Deputy Hernandez attempted to return to work at
139 the BSO but was unable to perform to minimum standards, and

140 WHEREAS, Deputy Hernandez's injuries have catastrophically
141 changed his life, and he is unable to earn a living, and

142 WHEREAS, Deputy Hernandez has suffered significant economic
143 damages, including lost income and the capacity to earn income
144 and related benefits, including medical insurance and retirement
145 benefits, and

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146 WHEREAS, Deputy Hernandez received worker compensation
147 benefits that have covered a portion of his lost income and
148 medical care costs, but liens have been filed amounting to
149 hundreds of thousands of dollars, and

150 WHEREAS, Deputy Hernandez is now 43 years old and has a
151 life expectancy of 42.6 years according to the United States
152 Life Tables, 2008, of the United States Centers for Disease
153 Control and Prevention, and

154 WHEREAS, Deputy Hernandez has suffered devastating and
155 permanent injuries and damages, including pain and suffering,
156 total disability, physical and mental impairment, disfigurement,
157 mental anguish, inconvenience, loss of enjoyment of life,
158 hospital and medical care expenses, loss of earnings and earning
159 capacity, loss of benefits, including medical and retirement
160 income benefits, financial ruin, and other economic and
161 noneconomic losses, and

162 WHEREAS, a lawsuit was filed on behalf of Deputy Hernandez
163 in the 17th Judicial Circuit in and for Broward County which
164 sought relief under s. 768.28, Florida Statutes, but it was
165 dismissed by the trial court, which held that, despite the
166 department's failure to follow its own policies and procedures
167 and state law, the department owed no duty of care to Deputy
168 Hernandez, and

169 WHEREAS, appeals of the court's ruling would be fruitless
170 and only cause further delay in addressing the wrongs that have
171 been inflicted on Deputy Hernandez, and

172 WHEREAS, despite the ruling by the court that he is without
173 legal remedy to seek damages, Deputy Hernandez respectfully
174 requests that the Legislature find that, based on its commitment

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175 to justice being served, a moral obligation exists in this
176 unique and tragic set of circumstances to provide relief, and

177 WHEREAS, Deputy Hernandez respectfully requests that, as a
178 matter of grace, the Legislature exercise its authority to
179 appropriate funds to compensate him for his injuries,
180 disabilities, and economic damages, and

181 WHEREAS, given the facts and circumstances that resulted in
182 his injuries and damages, Deputy Hernandez seeks equitable
183 relief from the Legislature, NOW, THEREFORE,

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185 Be It Enacted by the Legislature of the State of Florida:

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187 Section 1. The facts stated in the preamble to this act are
188 found and declared to be true.

189 Section 2. The sum of \$10 million is appropriated from the
190 General Revenue Fund to the Department of Corrections for the
191 relief of Maury Hernandez for injuries and damages sustained.

192 Section 3. The Chief Financial Officer is directed to draw
193 a warrant in favor of Maury Hernandez in the amount of \$10
194 million upon funds of the Department of Corrections in the State
195 Treasury, and the Chief Financial Officer is directed to pay the
196 same out of such funds in the State Treasury.

197 Section 4. It is the intent of the Legislature that any
198 lien interests held by the state arising from the treatment and
199 care of Maury Hernandez for the occurrences described in this
200 act be waived.

201 Section 5. The amount awarded under this act is intended to
202 provide the sole compensation for all present and future claims
203 arising out of the factual situation described in the preamble

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204 to this act. The total amount paid for attorney fees relating to
205 this claim may not exceed 25 percent of the amount awarded under
206 this act.

207 Section 6. This act shall take effect upon becoming a law.