

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 deputy, for injuries and
5 damages sustained as a consequence of the Department
6 of Corrections' failures to enforce probation laws,
7 regulations, and policies; providing legislative
8 intent that certain liens be waived; providing a
9 limitation on the payment of compensation and attorney
10 fees; providing an effective date.

11
12 WHEREAS, at 11:45 a.m. on August 6, 2007, Broward County
13 Sheriff's Deputy Maury Hernandez, then 28 years of age, was
14 operating a vehicle assigned to him by the sheriff's office and
15 within its jurisdiction when he observed David Maldonado, then
16 23 years of age, the operator of a motorcycle, fail to stop at
17 three traffic signals on Pembroke Road, and

18 WHEREAS, Deputy Hernandez engaged his lights and stopped
19 Mr. Maldonado at a location within the 3700 block of Pembroke
20 Road, where he parked and got out of his vehicle, approached Mr.
21 Maldonado, identified himself as a deputy sheriff, and displayed
22 his badge, and

23 WHEREAS, Mr. Maldonado falsely identified himself as a
24 police officer from Opa-locka and, when asked to produce
25 identification, dropped his motorcycle, pushed Deputy Hernandez,
26 and fled on foot, at which time Deputy Hernandez gave chase,
27 also on foot, and

28 WHEREAS, during the chase, Mr. Maldonado suddenly turned
29 around and fired two rounds from a .45 caliber handgun, striking

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30 Deputy Hernandez in the head, and

31 WHEREAS, although Deputy Hernandez was critically wounded,
32 he miraculously survived the shooting and was rushed to Memorial
33 Regional Hospital in Hollywood, where he was in a coma and was
34 placed on life support, and

35 WHEREAS, shortly after the shooting, Mr. Maldonado was
36 apprehended by Hollywood police in a nearby condominium complex
37 where he had attempted a carjacking, and

38 WHEREAS, Mr. Maldonado was ultimately charged and convicted
39 of attempted murder in the first degree and numerous probation
40 violations, and he is currently serving a life sentence, and

41 WHEREAS, 4 months before the shooting, on April 18, 2007,
42 Mr. Maldonado, a habitual traffic offender with a history of
43 multiple drug offenses and an illegal concealed weapon
44 conviction, pled no contest to felony traffic charges and was
45 placed on probation for 24 months, and

46 WHEREAS, the Department of Corrections' records document
47 that in April and May of 2007, before the shooting of Deputy
48 Hernandez, Mr. Maldonado twice admitted to his probation
49 officers that he illegally possessed a firearm in violation of
50 Florida law, the department's zero-tolerance policy, and the
51 conditions of his probation supervision, but his probation
52 officers simply warned him that he could not possess a weapon
53 and did not report the violations to the state attorney or to
54 the presiding circuit judge, and

55 WHEREAS, on June 28, 2007, Mr. Maldonado admitted a third
56 probation violation for buying and using illegal drugs in
57 violation of s. 948.03, Florida Statutes, which prohibits
58 probationers from possessing drugs or narcotics unless

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59 prescribed by a physician, and violating the conditions of his
60 probation, but the probation officer failed to report the
61 violation, and

62 WHEREAS, under s. 948.03, Florida Statutes (now s. 790.23,
63 Florida Statutes), Mr. Maldonado was prohibited from possessing,
64 carrying, or owning any firearm unless authorized by the court,
65 and

66 WHEREAS, s. 944.09, Florida Statutes, requires the
67 Department of Corrections to supervise probationers, stay
68 informed about the probationers' conduct, and cooperate with
69 circuit courts exercising criminal jurisdiction over
70 probationers, and

71 WHEREAS, rule 33-302.1031, Florida Administrative Code,
72 implements s. 944.09, Florida Statutes, and provides that
73 probation officers under the authority of the Department of
74 Corrections are responsible for supervision and control of
75 offenders, including enforcing conditions of supervision,
76 conducting investigations, and initiating arrest of offenders
77 under their supervision, as appropriate, with or without a
78 warrant, and

79 WHEREAS, rule 33-302.1031, Florida Administrative Code,
80 further provides that a probation officer must notify the
81 sentencing or releasing authority whenever the officer has
82 reasonable grounds to believe that a willful violation of any
83 condition of supervision has occurred, and

84 WHEREAS, in 2003, the Department of Corrections established
85 a zero-tolerance policy requiring probation officers to report
86 all technical violations committed by offenders on community
87 control to the court, and the department extended this policy in

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88 2004 to all offenders under community supervision in response to
89 several cases in which supervised offenders committed murders,
90 and

91 WHEREAS, the Department of Corrections modified its zero-
92 tolerance policy in August 2007 to require probation officers to
93 report only willful violations, such as the violations committed
94 by Mr. Maldonado, that are purposely committed by an offender or
95 over which the offender had control, and

96 WHEREAS, shortly after the shooting, and while Deputy
97 Hernandez remained hospitalized and struggling for his life, a
98 Department of Corrections spokesperson defended the probation
99 officer's actions as "errors in judgment," stating that
100 "everything was done by the book," the department had counseled
101 the probation officer to "keep his case notes and records
102 complete and up to date," and the probation officer had the
103 support of, and remained employed by, the department despite his
104 clear violations of the department's zero-tolerance policy, and

105 WHEREAS, by virtue of its zero-tolerance policy in effect
106 at the time of Deputy Hernandez's shooting, the Department of
107 Corrections had a nondiscretionary duty to timely report Mr.
108 Maldonado's violations of law and the conditions of his
109 probation to the state attorney's office and the presiding
110 circuit judge, but failed to act on his repeated probation
111 violations, and

112 WHEREAS, not only did the Department of Corrections fail to
113 report Mr. Maldonado's illegal possession of a firearm, but his
114 probation file showed the use of illegal drugs and was replete
115 with omissions and false statements, including claims that Mr.
116 Maldonado was a United States Marine headed to Iraq and worked

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117 as an armed security guard, even though it is illegal for felons
118 and probationers to use drugs or possess a weapon, and

119 WHEREAS, Mr. Maldonado's 70-page probation file contained
120 no evidence that the probation officers ever contacted his
121 alleged employers to confirm his job status or made sure he had
122 given up his weapons, and

123 WHEREAS, the Broward County Sheriff's investigation of
124 Deputy Hernandez's shooting concluded that, had the Department
125 of Corrections brought the repeated violations of Mr.
126 Maldonado's probation to the attention of the state attorney and
127 presiding circuit judge, Mr. Maldonado would have been in jail
128 at the time of the shooting, and

129 WHEREAS, the state attorney's office for the Seventeenth
130 Judicial Circuit in and for Broward County concurred that Mr.
131 Maldonado's violations were "serious" and should have been
132 reported by the Department of Corrections to the state attorney
133 and the presiding circuit judge and, had Mr. Maldonado's
134 violations been reported, he would have been jailed without bail
135 and would not have been on the streets when he shot Deputy
136 Hernandez, and

137 WHEREAS, after the shooting, the Department of Corrections
138 announced that Mr. Maldonado's probation file had been turned
139 over to the department's Office of Inspector General for review,
140 but no report or any records of a department review exist, nor
141 to this day has the department explained why Mr. Maldonado's
142 multiple violations of law, department policy, and the terms of
143 his probation were not enforced and reported to the state
144 attorney and presiding circuit judge as required by law, and

145 WHEREAS, a lawsuit was filed on behalf of Deputy Hernandez

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146 in the Seventeenth Judicial Circuit which sought relief under s.
147 768.28, Florida Statutes, but was dismissed by the trial court
148 on January 27, 2016, the court holding that under existing
149 Florida case law, the Department of Corrections owed no specific
150 or special legal duty of care to Deputy Hernandez, who is
151 without a legal or administrative remedy for his claim, and

152 WHEREAS, despite the court's ruling that Deputy Hernandez
153 is without a legal remedy, Florida legislative precedent dating
154 back to 1831, as stated in the Legislative Claim Bill Manual
155 (2022), defines a claim bill to be "a means by which an injured
156 party may recover damages even though the public officer or
157 agency involved may be immune from suit," and

158 WHEREAS, the Florida Supreme Court and appellate courts
159 acknowledge relief for "equitable claims filed without an
160 underlying excess judgment" or settlement, and the far-reaching
161 circumstances under which the Legislature may extend equitable
162 relief for an injured party even though the public officer or
163 agency may be immune from suit, and

164 WHEREAS, these cases include *Gamble v. Wells*, 450 So.2d 850
165 (Fla. 1984), holding that any claim bill, whether based on an
166 existing judgment, a settlement, or an equitable claim, is an
167 "act of legislative grace" and "a voluntary recognition of its
168 moral obligation by the legislature," and is "firmly entrenched
169 in legislative discretion"; *Searcy Denney, et al. vs. State of*
170 *Fla.*, 209 So.3d 1181 (Fla. 2017), citing *Noel v. Schlesinger,*
171 *P.A.*, 984 So.2d 1265 (Fla. 4th DCA 2008) and *Gamble v. Wells,*
172 *supra*; *Dickinson v. Bradley*, 298 So.2d 352 (Fla. 1974), in which
173 the Florida Supreme Court stated that the "purpose" of any
174 legislative relief act is to "discharge the state's moral

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175 obligation to any individual or entity whom or which the
176 legislature recognizes as being entitled to such"; and *Jetton v.*
177 *Jacksonville Electric Authority*, 399 So.2d 396, 397 (Fla. 1st
178 DCA 1981), holding that while the Legislature has placed limits
179 on recovery, "claimants remain free to seek legislative relief
180 bills, as they did during days of complete sovereign immunity,"
181 and

182 WHEREAS, the facts as set forth herein establish that the
183 Department of Corrections failed to follow Florida statutes,
184 regulations, and policies and take action to prevent a convicted
185 felon on probation from possessing a weapon; enforce numerous
186 other serious and willful probation violations committed by a
187 probationer who falsely claimed to be a United States Marine;
188 and supervise, investigate, enforce, and report any of these
189 probation violations to the state attorney and presiding circuit
190 judge as required by law, and

191 WHEREAS, this claim bill is supported by the Broward County
192 Sheriff's Office, the Florida Police Benevolent Association, and
193 the International Union of Police Associations, and

194 WHEREAS, given the unique and tragic set of circumstances
195 of this case, including the attempted murder and permanent
196 disability of a sworn Florida police officer who was critically
197 and permanently injured in the line of duty, Deputy Hernandez is
198 deserving of legislative grace and the Legislature's exercise of
199 its exclusive authority to appropriate funds to compensate him
200 for his injuries and economic damages, and

201 WHEREAS, these injuries include permanent brain injuries
202 and impairment, including hemiparesis to the entire left side of
203 his body, severe motor and sensory nerve damage, spasticity,

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204 numbness and muscle weakness, impaired walking and balance,
205 cognitive impairment, hydrocephalus treated with the insertion
206 of a ventriculoperitoneal shunt that drains excess cerebrospinal
207 fluid from his brain's ventricles into his abdomen, a silicone
208 plate that covers a third of his skull, and fragments of the .45
209 caliber bullet which remain permanently lodged in his brain, and

210 WHEREAS, Deputy Hernandez has endured multiple surgeries,
211 including a tracheostomy, multiple brain surgeries,
212 hydrocephalus shunt surgery, and months of in-patient hospital
213 care, followed by a year of daylong physical, occupational,
214 speech, visual, cognitive, and psychological therapy, and

215 WHEREAS, Deputy Hernandez continued to receive various
216 therapies and medical care on a daily basis for more than 3
217 years until his insurance provider discontinued payments to
218 health care providers, and

219 WHEREAS, to regain and restore maximum medical stability,
220 Deputy Hernandez needs to resume the medical care and
221 professional therapy treatments he no longer receives, but he is
222 without the financial resources to do so, and

223 WHEREAS, at the time of his injury, Deputy Hernandez was
224 earning a salary of approximately \$60,000 annually with
225 benefits, including medical and retirement benefits, and

226 WHEREAS, Deputy Hernandez attempted to return to work at
227 the Broward County Sheriff's Office but was unable to perform to
228 minimum standards, and

229 WHEREAS, Deputy Hernandez has been declared by his
230 physicians to be totally and permanently disabled, and he is
231 unable to earn a living, and

232 WHEREAS, Deputy Hernandez has suffered economic damages,

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233 including lost income and the capacity to earn income and
234 related benefits, including medical insurance and retirement
235 benefits, and

236 WHEREAS, a life care plan and vocational impact report
237 formulated by an independent certified comprehensive care plan
238 company with more than 35 years of experience providing medical
239 case management, vocational services, and rehabilitative
240 services to individuals and insurance companies, in consultation
241 with and reliance upon the opinions of Deputy Hernandez's
242 physicians, assessed his future medical and life care needs,
243 which will amount to \$2,243,981.97, and

244 WHEREAS, the study found that Deputy Hernandez's wage
245 losses and earning capacity amount to \$3,353,924.70 had he
246 remained in law enforcement and \$4,649,658.54 had he completed
247 law school, which he had started at the time he sustained his
248 injury, and had he become a lawyer as he planned, and

249 WHEREAS, a lien has been filed against Deputy Hernandez in
250 the amount of \$1,133,448.06 by the workers' compensation insurer
251 that paid benefits for past medical and wage-related expenses,
252 and

253 WHEREAS, Deputy Hernandez's total economic damages amount
254 to between \$6,731,354.73 and \$8,027,088.56, and

255 WHEREAS, in addition to his economic damages, Deputy
256 Hernandez has suffered devastating permanent injuries and
257 damages, including severe bodily injury, excruciating pain and
258 suffering, total disability, physical and mental impairment,
259 disfigurement, mental anguish, inconvenience, loss of enjoyment
260 of life, and financial hardship, and

261 WHEREAS, Deputy Hernandez, without a legal or

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262 administrative remedy to seek redress for his injuries and
263 damages, seeks equitable relief from the Legislature, NOW,
264 THEREFORE,

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

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

270 Section 2. The Legislature acknowledges that the state's
271 system of justice yielded an imperfect result in this case and
272 that Maury Hernandez should be granted relief for the injuries
273 and damages he suffered while in the line of duty as a
274 consequence of the Department of Corrections' failure to enforce
275 probation regulations and policies then in place, in violation
276 of state law.

277 Section 3. The sum of \$10 million is appropriated from the
278 General Revenue Fund to the Department of Corrections for the
279 relief of Maury Hernandez for injuries and damages sustained.

280 Section 4. The Chief Financial Officer is directed to draw
281 a warrant in favor of Maury Hernandez in the amount of \$10
282 million upon funds of the Department of Corrections in the State
283 Treasury, and the Chief Financial Officer is directed to pay the
284 same out of such funds in the State Treasury.

285 Section 5. It is the intent of the Legislature that any
286 lien interests held by the state arising from the treatment and
287 care of Maury Hernandez for the occurrences described in this
288 act be waived.

289 Section 6. The amount awarded under this act is intended to
290 provide the sole compensation for all present and future claims

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291 arising out of the factual situation described in this act. The
292 total amount paid for attorney fees relating to this claim may
293 not exceed 25 percent of the amount awarded under this act.

294 Section 7. This act shall take effect upon becoming a law.