

1 A bill to be entitled
2 An act relating to compensation of victims of wrongful
3 incarceration; amending s. 961.02, F.S.; making
4 technical changes; defining the term "disqualifying
5 felony"; amending s. 961.04, F.S.; revising the
6 circumstances under which a wrongfully incarcerated
7 person is ineligible for compensation under the
8 Victims of Wrongful Incarceration Compensation Act;
9 amending s. 961.06, F.S.; providing that a wrongfully
10 incarcerated person who commits a disqualifying
11 felony, rather than any felony law violation, which
12 results in revocation of parole or community
13 supervision is ineligible for compensation; reenacting
14 s. 961.03(1)(a), (2), (3), and (4), F.S., relating to
15 determination of status as a wrongfully incarcerated
16 person and of eligibility for compensation, to
17 incorporate the amendment made to s. 961.04, F.S., in
18 references thereto; reenacting ss. 961.05(6),
19 961.055(1), and 961.056(4), F.S., relating to
20 determination of entitlement to compensation,
21 application for compensation for a wrongfully
22 incarcerated person, and an alternative application
23 for compensation for a wrongfully incarcerated person,
24 respectively, to incorporate the amendments made to s.
25 961.06, F.S., in references thereto; providing an

26 | effective date.

27 |

28 | Be It Enacted by the Legislature of the State of Florida:

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30 | Section 1. Section 961.02, Florida Statutes, is reordered
31 | and amended to read:

32 | 961.02 Definitions.—As used in ss. 961.01-961.07, the
33 | term:

34 | (1) "Act" means the Victims of Wrongful Incarceration
35 | Compensation Act.

36 | (2) "Department" means the Department of Legal Affairs.

37 | (3) "Disqualifying felony" means any felony other than
38 | one or more felonies of the third degree which arise from a
39 | single criminal act, transaction, or episode.

40 | (4)~~(3)~~ "Division" means the Division of Administrative
41 | Hearings.

42 | (7)~~(4)~~ "Wrongfully incarcerated person" means a person
43 | whose felony conviction and sentence have been vacated by a
44 | court of competent jurisdiction and who is the subject of an
45 | order issued by the original sentencing court pursuant to s.
46 | 961.03, with respect to whom pursuant to the requirements of s.
47 | 961.03, the original sentencing court has issued its order
48 | finding that the person did not commit neither committed the act
49 | or ~~nor~~ the offense that served as the basis for the conviction
50 | and incarceration and that the person did not aid, abet, or act

51 as an accomplice or accessory to a person who committed the act
 52 or offense.

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

57 (6) "Entitled to compensation" means that a person meets
 58 the definition of the term "eligible for compensation" and
 59 satisfies the application requirements prescribed in s. 961.05,
 60 and may receive compensation pursuant to s. 961.06.

61 Section 2. Section 961.04, Florida Statutes, is amended to
 62 read:

63 961.04 Eligibility for compensation for wrongful
 64 incarceration.—A wrongfully incarcerated person is not eligible
 65 for compensation under the act if:

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

74 (2) During the person's wrongful incarceration, the person
 75 was convicted of, or pled guilty or nolo contendere to,

76 | regardless of adjudication, any disqualifying felony ~~offense~~; or
 77 | (3) During the person's wrongful incarceration, the person
 78 | was also serving a concurrent sentence for another felony for
 79 | which the person was not wrongfully convicted.

80 | Section 3. Subsection (2) of section 961.06, Florida
 81 | Statutes, is amended to read:

82 | 961.06 Compensation for wrongful incarceration.—

83 | (2) In calculating monetary compensation under paragraph
 84 | (1)(a), a wrongfully incarcerated person who is placed on parole
 85 | or community supervision while serving the sentence resulting
 86 | from the wrongful conviction and who commits anything less than
 87 | a disqualifying felony ~~law violation~~ that results in revocation
 88 | of the parole or community supervision is eligible for
 89 | compensation for the total number of years incarcerated. A
 90 | wrongfully incarcerated person who commits a disqualifying
 91 | felony ~~law violation~~ that results in revocation of the parole or
 92 | community supervision is ineligible for any compensation under
 93 | subsection (1).

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

99 | 961.03 Determination of status as a wrongfully
 100 | incarcerated person; determination of eligibility for

101 compensation.—

102 (1) (a) In order to meet the definition of a "wrongfully
103 incarcerated person" and "eligible for compensation," upon entry
104 of an order, based upon exonerating evidence, vacating a
105 conviction and sentence, a person must set forth the claim of
106 wrongful incarceration under oath and with particularity by
107 filing a petition with the original sentencing court, with a
108 copy of the petition and proper notice to the prosecuting
109 authority in the underlying felony for which the person was
110 incarcerated. At a minimum, the petition must:

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

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

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

120 (a) By certifying to the court that, based upon the
121 petition and verifiable and substantial evidence of actual
122 innocence, no further criminal proceedings in the case at bar
123 can or will be initiated by the prosecuting authority, that no
124 questions of fact remain as to the petitioner's wrongful
125 incarceration, and that the petitioner is not ineligible from

126 seeking compensation under the provisions of s. 961.04; or

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

132 (3) If the prosecuting authority responds as set forth in
133 paragraph (2) (a), the original sentencing court, based upon the
134 evidence of actual innocence, the prosecuting authority's
135 certification, and upon the court's finding that the petitioner
136 has presented clear and convincing evidence that the petitioner
137 committed neither the act nor the offense that served as the
138 basis for the conviction and incarceration, and that the
139 petitioner did not aid, abet, or act as an accomplice to a
140 person who committed the act or offense, shall certify to the
141 department that the petitioner is a wrongfully incarcerated
142 person as defined by this act. Based upon the prosecuting
143 authority's certification, the court shall also certify to the
144 department that the petitioner is eligible for compensation
145 under the provisions of s. 961.04.

146 (4) (a) If the prosecuting authority responds as set forth
147 in paragraph (2) (b), the original sentencing court shall make a
148 determination from the pleadings and supporting documentation
149 whether, by a preponderance of the evidence, the petitioner is
150 ineligible for compensation under the provisions of s. 961.04,

151 regardless of his or her claim of wrongful incarceration. If the
 152 court finds the petitioner ineligible under the provisions of s.
 153 961.04, it shall dismiss the petition.

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

166 Section 5. For the purpose of incorporating the amendment
 167 made by this act to section 961.06, Florida Statutes, in a
 168 reference thereto, subsection (6) of section 961.05, Florida
 169 Statutes, is reenacted to read:

170 961.05 Application for compensation for wrongful
 171 incarceration; administrative expunction; determination of
 172 entitlement to compensation.—

173 (6) If the department determines that a claimant meets the
 174 requirements of this act, the wrongfully incarcerated person who
 175 is the subject of the claim becomes entitled to compensation,

176 subject to the provisions in s. 961.06.

177 Section 6. For the purpose of incorporating the amendment
 178 made by this act to section 961.06, Florida Statutes, in a
 179 reference thereto, subsection (1) of section 961.055, Florida
 180 Statutes, is reenacted to read:

181 961.055 Application for compensation for a wrongfully
 182 incarcerated person; exemption from application by nolle
 183 prosequi.—

184 (1) A person alleged to be a wrongfully incarcerated
 185 person who was convicted and sentenced to death on or before
 186 December 31, 1979, is exempt from the application provisions of
 187 ss. 961.03, 961.04, and 961.05 in the determination of wrongful
 188 incarceration and eligibility to receive compensation pursuant
 189 to s. 961.06 if:

190 (a) The Governor issues an executive order appointing a
 191 special prosecutor to review the defendant's conviction; and

192 (b) The special prosecutor thereafter enters a nolle
 193 prosequi for the charges for which the defendant was convicted
 194 and sentenced to death.

195 Section 7. For the purpose of incorporating the amendment
 196 made by this act to section 961.06, Florida Statutes, in a
 197 reference thereto, subsection (4) of section 961.056, Florida
 198 Statutes, is reenacted to read:

199 961.056 Alternative application for compensation for a
 200 wrongfully incarcerated person.—

201 (4) If the department determines that a claimant making
202 application under this section meets the requirements of this
203 chapter, the wrongfully incarcerated person is entitled to
204 compensation under s. 961.06.

205 Section 8. This act shall take effect October 1, 2017.