

1 A bill to be entitled

2 An act relating to compensation of victims of wrongful
3 incarceration; reordering and amending s. 961.02,
4 F.S.; defining the term "violent felony"; amending s.
5 961.04, F.S.; providing that a person is disqualified
6 from receiving compensation under the Victims of
7 Wrongful Incarceration Compensation Act if, before or
8 during the person's wrongful conviction and
9 incarceration, the person was convicted of, pled
10 guilty or nolo contendere to, or was serving a
11 concurrent incarceration for, another violent felony;
12 amending s. 961.06, F.S.; providing that a wrongfully
13 incarcerated person who commits a violent felony,
14 rather than a felony law violation, which results in
15 revocation of parole or community supervision is
16 ineligible for compensation; reenacting s.
17 961.03(1)(a), (2), (3), and (4), F.S., relating to
18 determination of eligibility for compensation, to
19 incorporate the amendments made to s. 961.04, F.S., in
20 references thereto; reenacting s. 961.055(1), F.S.,
21 relating to application for compensation for a
22 wrongfully incarcerated person and exemption from
23 application by nolle prosequi, to incorporate the
24 amendments made to s. 961.06, F.S., in references
25 thereto; providing an effective date.
26

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

28

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

31 961.02 Definitions.—As used in ss. 961.01-961.07, the
32 term:

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

35 (2) "Department" means the Department of Legal Affairs.

36 (3) "Division" means the Division of Administrative
37 Hearings.

38 (7)-(4) "Wrongfully incarcerated person" means a person
39 whose felony conviction and sentence have been vacated by a
40 court of competent jurisdiction and who is the subject of an
41 order issued by the original sentencing court pursuant to s.
42 961.03, with respect to whom pursuant to the requirements of s.
43 961.03, the original sentencing court has issued its order
44 finding that the person did not commit ~~neither committed~~ the act
45 or ~~nor~~ the offense that served as the basis for the conviction
46 and incarceration and that the person did not aid, abet, or act
47 as an accomplice or accessory to a person who committed the act
48 or offense.

49 (4)-(5) "Eligible for compensation" means that a person
50 meets the definition of the term "wrongfully incarcerated
51 person" and is not disqualified from seeking compensation under
52 the criteria prescribed in s. 961.04.

53 ~~(5)~~ ~~(6)~~ "Entitled to compensation" means that a person
54 meets the definition of the term "eligible for compensation" and
55 satisfies the application requirements prescribed in s. 961.05,
56 and may receive compensation pursuant to s. 961.06.

57 (6) "Violent felony" means a felony listed in s.
58 775.084(1)(c)1. or s. 948.06(8)(c).

59 Section 2. Section 961.04, Florida Statutes, is amended to
60 read:

61 961.04 Eligibility for compensation for wrongful
62 incarceration.—A wrongfully incarcerated person is not eligible
63 for compensation under the act if:

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

72 (2) During the person's wrongful incarceration, the person
73 was convicted of, or pled guilty or nolo contendere to,
74 regardless of adjudication, any violent felony ~~offense~~; or

75 (3) During the person's wrongful incarceration, the person
76 was also serving a concurrent sentence for another felony for
77 which the person was not wrongfully convicted.

78 Section 3. Subsection (2) of section 961.06, Florida

79 Statutes, is amended to read:

80 961.06 Compensation for wrongful incarceration.—

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

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

97 961.03 Determination of status as a wrongfully
98 incarcerated person; determination of eligibility for
99 compensation.—

100 (1) (a) In order to meet the definition of a "wrongfully
101 incarcerated person" and "eligible for compensation," upon entry
102 of an order, based upon exonerating evidence, vacating a
103 conviction and sentence, a person must set forth the claim of
104 wrongful incarceration under oath and with particularity by

105 filing a petition with the original sentencing court, with a
106 copy of the petition and proper notice to the prosecuting
107 authority in the underlying felony for which the person was
108 incarcerated. At a minimum, the petition must:

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

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

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

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

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

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

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

144 (4) (a) If the prosecuting authority responds as set forth
145 in paragraph (2) (b), the original sentencing court shall make a
146 determination from the pleadings and supporting documentation
147 whether, by a preponderance of the evidence, the petitioner is
148 ineligible for compensation under the provisions of s. 961.04,
149 regardless of his or her claim of wrongful incarceration. If the
150 court finds the petitioner ineligible under the provisions of s.
151 961.04, it shall dismiss the petition.

152 (b) If the prosecuting authority responds as set forth in
153 paragraph (2) (b), and the court determines that the petitioner
154 is eligible under the provisions of s. 961.04, but the
155 prosecuting authority contests the nature, significance or
156 effect of the evidence of actual innocence, or the facts related

157 to the petitioner's alleged wrongful incarceration, the court
158 shall set forth its findings and transfer the petition by
159 electronic means through the division's website to the division
160 for findings of fact and a recommended determination of whether
161 the petitioner has established that he or she is a wrongfully
162 incarcerated person who is eligible for compensation under this
163 act.

164 Section 5. For the purpose of incorporating the amendments
165 made by this act to section 961.06, Florida Statutes, in
166 references thereto, subsection (1) of section 961.055, Florida
167 Statutes, is reenacted to read:

168 961.055 Application for compensation for a wrongfully
169 incarcerated person; exemption from application by nolle
170 prosequi.—

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

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

179 (b) The special prosecutor thereafter enters a nolle
180 prosequi for the charges for which the defendant was convicted
181 and sentenced to death.

182 Section 6. This act shall take effect October 1, 2016.