

1 A bill to be entitled
 2 An act relating to compensation of victims of wrongful
 3 incarceration; amending s. 961.02, F.S.; defining the
 4 term "violent felony"; amending s. 961.04, F.S.;
 5 providing that a person is disqualified from receiving
 6 compensation under the Victims of Wrongful
 7 Incarceration Compensation Act if, before or after the
 8 person's wrongful conviction and incarceration, the
 9 person was convicted of or pled guilty or nolo
 10 contendere to a violent felony; amending s. 961.06,
 11 F.S.; providing that a wrongfully incarcerated person
 12 who commits a violent felony law violation that
 13 results in revocation of parole or community
 14 supervision is ineligible for compensation; reenacting
 15 s. 961.03(1)(a), (2), (3), and (4), F.S., relating to
 16 determination of status as a wrongfully incarcerated
 17 person and determination of eligibility for
 18 compensation; providing an effective date.

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

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 22 Section 1. Section 961.02, Florida Statutes, is amended to
 23 read:

24 961.02 Definitions.—As used in ss. 961.01-961.07, the
 25 term:

26 (1) "Act" means the Victims of Wrongful Incarceration
 27 Compensation Act.

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

29 (3) "Division" means the Division of Administrative
 30 Hearings.

31 (4) "Wrongfully incarcerated person" means a person whose
 32 felony conviction and sentence have been vacated by a court of
 33 competent jurisdiction and, with respect to whom pursuant to the
 34 requirements of s. 961.03, the original sentencing court has
 35 issued its order finding that the person neither committed the
 36 act nor the offense that served as the basis for the conviction
 37 and incarceration and that the person did not aid, abet, or act
 38 as an accomplice or accessory to a person who committed the act
 39 or offense.

40 (5) "Eligible for compensation" means a person meets the
 41 definition of the term "wrongfully incarcerated person" and is
 42 not disqualified from seeking compensation under the criteria
 43 prescribed in s. 961.04.

44 (6) "Entitled to compensation" means a person meets the
 45 definition of the term "eligible for compensation" and satisfies
 46 the application requirements prescribed in s. 961.05, and may
 47 receive compensation pursuant to s. 961.06.

48 (7) "Violent felony" means a felony offense enumerated in
 49 s. 775.084(1)(c)1. or s. 948.06(8)(c).

50 Section 2. Section 961.04, Florida Statutes, is amended to
 51 read:

52 961.04 Eligibility for compensation for wrongful
 53 incarceration.—A wrongfully incarcerated person is not eligible
 54 for compensation under the act if:

55 (1) Before the person's wrongful conviction and
 56 incarceration, the person was convicted of, or pled guilty or

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57 | nolo contendere to, regardless of adjudication, any violent
58 | felony offense, or a crime committed in another jurisdiction the
59 | elements of which would constitute a violent felony in this
60 | state, or a crime committed against the United States which is
61 | designated a violent felony, excluding any delinquency
62 | disposition;

63 | (2) During the person's wrongful incarceration, the person
64 | was convicted of, or pled guilty or nolo contendere to,
65 | regardless of adjudication, any violent felony offense; or

66 | (3) During the person's wrongful incarceration, the person
67 | was also serving a concurrent sentence for another felony for
68 | which the person was not wrongfully convicted.

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

71 | 961.06 Compensation for wrongful incarceration.—

72 | (2) In calculating monetary compensation under paragraph
73 | (1)(a), a wrongfully incarcerated person who is placed on parole
74 | or community supervision while serving the sentence resulting
75 | from the wrongful conviction and who commits anything less than
76 | a violent felony law violation that results in revocation of the
77 | parole or community supervision is eligible for compensation for
78 | the total number of years incarcerated. A wrongfully
79 | incarcerated person who commits a violent felony law violation
80 | that results in revocation of the parole or community
81 | supervision is ineligible for any compensation under subsection
82 | (1).

83 | Section 4. For the purpose of incorporating the amendment
84 | made by this act to section 961.04, Florida Statutes, in a

85 reference thereto, paragraph (a) of subsection (1) and
 86 subsections (2), (3), and (4) of section 961.03, Florida
 87 Statutes, are reenacted to read:

88 961.03 Determination of status as a wrongfully
 89 incarcerated person; determination of eligibility for
 90 compensation.—

91 (1) (a) In order to meet the definition of a "wrongfully
 92 incarcerated person" and "eligible for compensation," upon entry
 93 of an order, based upon exonerating evidence, vacating a
 94 conviction and sentence, a person must set forth the claim of
 95 wrongful incarceration under oath and with particularity by
 96 filing a petition with the original sentencing court, with a
 97 copy of the petition and proper notice to the prosecuting
 98 authority in the underlying felony for which the person was
 99 incarcerated. At a minimum, the petition must:

100 1. State that verifiable and substantial evidence of
 101 actual innocence exists and state with particularity the nature
 102 and significance of the verifiable and substantial evidence of
 103 actual innocence; and

104 2. State that the person is not disqualified, under the
 105 provisions of s. 961.04, from seeking compensation under this
 106 act.

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

109 (a) By certifying to the court that, based upon the
 110 petition and verifiable and substantial evidence of actual
 111 innocence, no further criminal proceedings in the case at bar
 112 can or will be initiated by the prosecuting authority, that no

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113 questions of fact remain as to the petitioner's wrongful
114 incarceration, and that the petitioner is not ineligible from
115 seeking compensation under the provisions of s. 961.04; or

116 (b) By contesting the nature, significance, or effect of
117 the evidence of actual innocence, the facts related to the
118 petitioner's alleged wrongful incarceration, or whether the
119 petitioner is ineligible from seeking compensation under the
120 provisions of s. 961.04.

121 (3) If the prosecuting authority responds as set forth in
122 paragraph (2)(a), the original sentencing court, based upon the
123 evidence of actual innocence, the prosecuting authority's
124 certification, and upon the court's finding that the petitioner
125 has presented clear and convincing evidence that the petitioner
126 committed neither the act nor the offense that served as the
127 basis for the conviction and incarceration, and that the
128 petitioner did not aid, abet, or act as an accomplice to a
129 person who committed the act or offense, shall certify to the
130 department that the petitioner is a wrongfully incarcerated
131 person as defined by this act. Based upon the prosecuting
132 authority's certification, the court shall also certify to the
133 department that the petitioner is eligible for compensation
134 under the provisions of s. 961.04.

135 (4)(a) If the prosecuting authority responds as set forth
136 in paragraph (2)(b), the original sentencing court shall make a
137 determination from the pleadings and supporting documentation
138 whether, by a preponderance of the evidence, the petitioner is
139 ineligible for compensation under the provisions of s. 961.04,
140 regardless of his or her claim of wrongful incarceration. If the

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141 court finds the petitioner ineligible under the provisions of s.
142 961.04, it shall dismiss the petition.

143 (b) If the prosecuting authority responds as set forth in
144 paragraph (2)(b), and the court determines that the petitioner
145 is eligible under the provisions of s. 961.04, but the
146 prosecuting authority contests the nature, significance or
147 effect of the evidence of actual innocence, or the facts related
148 to the petitioner's alleged wrongful incarceration, the court
149 shall set forth its findings and transfer the petition by
150 electronic means through the division's website to the division
151 for findings of fact and a recommended determination of whether
152 the petitioner has established that he or she is a wrongfully
153 incarcerated person who is eligible for compensation under this
154 act.

155 Section 5. This act shall take effect July 1, 2012.