

## CHAPTER 2017-120

### Committee Substitute for Senate Bill No. 494

An act relating to compensation of victims of wrongful incarceration; amending s. 961.02, F.S.; defining the term “violent felony”; making technical changes; amending s. 961.04, F.S.; revising the circumstances under which a person is disqualified from receiving compensation under the Victims of Wrongful Incarceration Compensation Act; amending s. 961.06, F.S.; specifying that a wrongfully incarcerated person who commits no more than one felony that is not a violent felony, rather than a felony law violation, which results in revocation of parole or community supervision is eligible for compensation; providing applicability; reenacting s. 961.03(1)(a), (2), (3), and (4), F.S., relating to determination of eligibility for compensation, to incorporate the amendments made by the act to s. 961.04, F.S., in references thereto; reenacting ss. 961.05(6), 961.055(1), and 961.056(4), F.S., relating to the determination of entitlement to compensation, application for compensation for a wrongfully incarcerated person and exemption from application by nolle prosequi, and alternative application for compensation for a wrongfully incarcerated person, to incorporate the amendments made by the act to s. 961.06, F.S., in references thereto; providing an effective date.

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

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

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

(1) “Act” means the Victims of Wrongful Incarceration Compensation Act.

(2) “Department” means the Department of Legal Affairs.

(3) “Division” means the Division of Administrative Hearings.

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

~~(4)~~(5) “Eligible for compensation” means that a person meets the definition of the term “wrongfully incarcerated person” and is not

disqualified from seeking compensation under the criteria prescribed in s. 961.04.

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

(6) “Violent felony” means a felony listed in s. 775.084(1)(c)1. or s. 948.06(8)(c).

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

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

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

(2) Before the person’s wrongful conviction and incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, more than one felony that is not a violent felony, or more than one crime committed in another jurisdiction, the elements of which would constitute a felony in this state, or more than one crime committed against the United States which is designated a felony, excluding any delinquency disposition;

(3)(2) During the person’s wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, any violent felony offense; or

(4) During the person’s wrongful incarceration, the person was convicted of, or pled guilty or nolo contendere to, regardless of adjudication, more than one felony that is not a violent felony; or

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

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

961.06 Compensation for wrongful incarceration.—

(2) In calculating monetary compensation under paragraph (1)(a), a wrongfully incarcerated person who is placed on parole or community

supervision while serving the sentence resulting from the wrongful conviction and who commits no more than one felony that is not anything less than a violent felony which law violation~~that~~ results in revocation of the parole or community supervision is eligible for compensation for the total number of years incarcerated. A wrongfully incarcerated person who commits one violent a felony or more than one felony that is not a violent felony law violation~~that~~ results in revocation of the parole or community supervision is ineligible for any compensation under subsection (1).

Section 4. The changes made by this act to ss. 961.02, 961.04, and 961.06, Florida Statutes, apply only to persons who are determined to be wrongfully incarcerated on or after the effective date of this act.

Section 5. For the purpose of incorporating the amendments made by this act to section 961.04, Florida Statutes, in references thereto, paragraph (a) of subsection (1) and subsections (2), (3), and (4) of section 961.03, Florida Statutes, are reenacted to read:

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

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

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

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

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

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

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

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

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

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

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

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

(6) If the department determines that a claimant meets the requirements of this act, the wrongfully incarcerated person who is the subject of the claim becomes entitled to compensation, subject to the provisions in s. 961.06.

Section 7. For the purpose of incorporating the amendments made by this act to section 961.06, Florida Statutes, in references thereto, subsection (1) of section 961.055, Florida Statutes, is reenacted to read:

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

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

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

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

Section 8. For the purpose of incorporating the amendment made by this act to section 961.06, Florida Statutes, in a reference thereto, subsection (4) of section 961.056, Florida Statutes, is reenacted to read:

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

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

Section 9. This act shall take effect October 1, 2017.

Approved by the Governor June 16, 2017.

Filed in Office Secretary of State June 16, 2017.