

## CHAPTER 2014-198

### Committee Substitute for House Bill No. 227

An act relating to victims of wrongful incarceration; creating s. 961.055, F.S.; providing that a wrongfully incarcerated person who was convicted and sentenced to death on or before December 31, 1979, is exempt from certain application procedures for compensation if a special prosecutor issues a nolle prosequi after reviewing the defendant's conviction; creating s. 961.056, F.S.; providing alternative procedures for applying for compensation; requiring the claimant to file an application with the Department of Legal Affairs within a specified time; requiring the application to include certain information and documents; providing that the claimant is entitled to compensation if all requirements are met; prohibiting compensation from being used for specified attorney fees, lobbyist fees, and costs; providing criminal penalties; providing that the section is repealed on a specified date; amending s. 961.06, F.S.; requiring the Chief Financial Officer to issue payment to an insurance company or other financial institution authorized to issue annuity contracts to purchase an annuity or annuities selected by the wrongfully incarcerated person; requiring the Chief Financial Officer to execute all necessary agreements to implement compensation and to maximize the benefit to the wrongfully incarcerated person; requiring the wrongfully incarcerated person to sign a waiver before the department's approval of the application; providing an effective date.

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

Section 1. Section 961.055, Florida Statutes, is created 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.

(2) The nolle prosequi constitutes conclusive proof that the defendant is innocent of the offenses charged and is eligible to receive compensation under this chapter.

(3) This section is repealed July 1, 2018.

Section 2. Section 961.056, Florida Statutes, is created to read:

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

(1) A person who has been determined to be a wrongfully incarcerated person pursuant to s. 961.055 is eligible to apply to the department to receive compensation for such wrongful incarceration.

(a) Only the wrongfully incarcerated person may apply for compensation. The estate of, or personal representative for, a decedent may not apply on behalf of the decedent for compensation for wrongful incarceration.

(b) In order to receive compensation, the wrongfully incarcerated person shall, by July 1, 2016, submit to the Department of Legal Affairs an application for compensation irrespective of whether the person has previously sought compensation under this chapter. The application must include:

1. A certified copy of the nolle prosequi or nolle prosequi memorandum;

2. Certified copies of the original judgment and sentence;

3. Documentation demonstrating the length of the sentence served, including documentation from the Department of Corrections regarding the person’s admission into and release from the custody of the Department of Corrections;

4. Positive proof of identification, as evidenced by two full sets of fingerprints prepared by a law enforcement agency of this state and a current form of photo identification;

5. Supporting documentation of any fine, penalty, or court costs imposed on and paid by the wrongfully incarcerated person as described in s. 961.06(1);

6. Supporting documentation of any reasonable attorney fees and expenses as described in s. 961.06(1); and

7. Any other documentation, evidence, or information required by rules adopted by the department.

(2) The law enforcement agency that prepared the applicant’s set of fingerprints shall forward both full sets to the Department of Law Enforcement. The Department of Law Enforcement shall retain one set for statewide criminal records checks and forward the second set of fingerprints to the Federal Bureau of Investigation for national criminal records checks. The results of the state and national records checks shall be submitted to the department.

(3) Upon receipt of an application, the department shall examine the application and, within 30 days after receipt of the application, shall notify the claimant of any error or omission and request any additional information relevant to the review of the application.

(a) The claimant has 15 days after proper notification by the department to correct any identified error or omission in the application and to supply any additional information relevant to the application.

(b) The department may not deny an application for failure of the claimant to correct an error or omission or to supply additional information unless the department has notified the claimant of such error or omission and requested the additional information within the 30-day period specified in this subsection.

(c) The department shall process and review each complete application within 90 calendar days.

(d) Once the department determines whether a claim for compensation meets the requirements of this chapter, the department shall notify the claimant within 5 business days after that determination.

(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.

(5)(a) No portion of the compensation paid to a claimant making application under this section may be used for attorney fees, lobbyist fees, or costs relating to assisting the claimant in receiving such compensation.

(b) A person who accepts any portion of the compensation paid to a claimant making application under this section as payment for attorney fees, lobbyist fees, or costs relating to assisting the claimant in receiving such compensation commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(6) This section is repealed July 1, 2018.

Section 3. Subsections (4) and (5) of section 961.06, Florida Statutes, are amended to read:

961.06 Compensation for wrongful incarceration.—

(4) The Chief Financial Officer shall issue payment in the amount determined by the department to an insurance company or other financial institution admitted and authorized to issue purchase an annuity contracts in this state to purchase an annuity or annuities, selected by the wrongfully incarcerated person, on behalf of the claimant for a term of not less than 10 years. The Chief Financial Officer is directed to execute all necessary agreements to implement this act and to maximize the benefit to the wrongfully incarcerated person. The terms of the annuity or annuities shall:

(a) Provide that the annuity or annuities may not be sold, discounted, or used as security for a loan or mortgage by the wrongfully incarcerated person applicant.

(b) Contain beneficiary provisions for the continued disbursement of the annuity or annuities in the event of the death of the wrongfully incarcerated person applicant.

(5) Before the department approves the application for compensation Chief Financial Officer draws the warrant for the purchase of the annuity, the wrongfully incarcerated person claimant must sign a release and waiver on behalf of the wrongfully incarcerated person claimant and his or her heirs, successors, and assigns, forever releasing the state or any agency, instrumentality, or any political subdivision thereof, or any other entity subject to ~~the provisions of s. 768.28,~~ from all present or future claims that the wrongfully incarcerated person claimant or his or her heirs, successors, or assigns may have against such entities arising out of the facts in connection with the wrongful conviction for which compensation is being sought under the act. ~~The release and waiver must be provided to the department prior to the issuance of the warrant by the Chief Financial Officer.~~

Section 4. This act shall take effect July 1, 2014.

Approved by the Governor June 20, 2014.

Filed in Office Secretary of State June 20, 2014.