

By Senator Baxley

12-00251-22

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1 A bill to be entitled
2 An act for the relief of Scotty Bartek; providing an
3 appropriation to compensate Scotty Bartek for being
4 wrongfully incarcerated; providing a limitation on
5 compensation and the payment of attorney fees;
6 providing an effective date.
7
8 WHEREAS, on September 9, 1991, Scotty Bartek was convicted
9 of two counts of sexual battery upon a child under 12 years of
10 age and was sentenced to two life sentences with a 25-year
11 mandatory minimum term of imprisonment on each count, and
12 WHEREAS, on October 5, 2009, Mr. Bartek filed a motion for
13 postconviction relief, claiming newly discovered evidence in the
14 form of the victim's recantation, and
15 WHEREAS, the victim informed the state that she had no
16 recollection of Mr. Bartek, her father, committing sexual
17 battery and that her mother had coached her to fabricate
18 testimony against Mr. Bartek, and
19 WHEREAS, on May 15, 2012, the Circuit Court for the Fifth
20 Judicial Circuit, in and for Marion County, granted Mr. Bartek's
21 petition of postconviction relief in Case No. 1991-CF-376, and
22 the State of Florida then appealed the circuit court's order,
23 and
24 WHEREAS, if a circuit court's order vacating a conviction
25 and sentence is appealed by the State of Florida, the order
26 becomes final upon the issuance of a mandate by the appellate
27 court, and
28 WHEREAS, on November 26, 2013, the Fifth District Court of
29 Appeal *per curiam* affirmed the circuit court's order granting

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30 Mr. Bartek's petition and vacating the judgment and sentence in
31 Case No. 5D12-2399, and

32 WHEREAS, section 961.03(1)(b)1., Florida Statutes (2014),
33 requires a wrongfully convicted person to file a petition
34 seeking compensation within 90 days after the order vacating a
35 conviction and sentence becomes final, and

36 WHEREAS, on December 20, 2013, after more than 22 years of
37 wrongful incarceration, Mr. Bartek was exonerated and the
38 mandate was issued by the District Court of Appeal, giving him
39 until March 20, 2014, to timely file his petition seeking a
40 determination of eligibility for compensation, and

41 WHEREAS, Mr. Bartek's case was scheduled for a retrial in
42 March 2014, and

43 WHEREAS, on February 27, 2014, the state entered a *nolle*
44 *prosequi*, dismissing its charges against Mr. Bartek, and
45 indicated that it did not have sufficient evidence to establish
46 beyond a reasonable doubt that Mr. Bartek committed sexual
47 battery, and

48 WHEREAS, on May 20, 2014, within 90 days after the state's
49 filing of the *nolle prosequi*, Mr. Bartek filed a petition
50 seeking compensation for wrongful incarceration, and

51 WHEREAS, on September 8, 2014, counsel for Mr. Bartek filed
52 a supplemental memorandum of law alleging that Mr. Bartek is
53 "eligible for compensation" under chapter 961, Florida Statutes
54 (2014), and

55 WHEREAS, counsel for Mr. Bartek alleged that although Mr.
56 Bartek was disqualified from seeking compensation by s.
57 961.04(1), Florida Statutes (2014), the statute did not afford
58 him equal protection under the law, in violation of the United

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59 States Constitution and the State Constitution, because the
60 statute unconstitutionally discriminated between persons
61 wrongfully incarcerated who had prior felony convictions and
62 those persons who did not have prior felony convictions, and

63 WHEREAS, Mr. Bartek was convicted before his wrongful
64 sexual battery conviction and incarceration on one count of the
65 sale of cannabis, a nonviolent felony of the third degree, and

66 WHEREAS, the courts did not consider Mr. Bartek's equal
67 protection argument, but the Legislature narrowed the types of
68 disqualifying felonies in its passage of chapter 2017-120, Laws
69 of Florida, so that wrongfully incarcerated persons would be
70 disqualified if they committed a violent felony before their
71 wrongful conviction and incarceration and so that those persons
72 who committed a nonviolent felony would no longer be
73 disqualified, and

74 WHEREAS, Mr. Bartek's counsel argued that the Legislature
75 did not intend to require a defendant seeking compensation for
76 wrongful incarceration to file a petition while the state could
77 pursue charges against him or her, and

78 WHEREAS, on March 3, 2015, the circuit court dismissed Mr.
79 Bartek's petition seeking compensation because it was not timely
80 filed, and on August 12, 2016, the District Court of Appeal
81 affirmed the trial court's dismissal, and

82 WHEREAS, the Legislature has determined that it is
83 appropriate to compensate individuals who have been wrongly
84 incarcerated, and

85 WHEREAS, if Mr. Bartek had met the requirements of chapter
86 961, Florida Statutes (2014), he would have been entitled to
87 compensation at a rate of \$50,000 for each year of wrongful

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88 incarceration, prorated to account for a portion of a year
89 served; a waiver of tuition and fees for up to 120 hours of
90 instruction at a career center, community college, or state
91 university; a refund of the amount of any fine, penalty, or
92 court costs imposed which he paid; and a refund of the amount of
93 reasonable attorney fees and expenses which he incurred and
94 paid, and

95 WHEREAS, Mr. Bartek was wrongfully incarcerated for 22
96 years and 242 days, which amounts to \$1,133,150.69, and

97 WHEREAS, the estimated cost of attendance for a full-time
98 undergraduate Florida resident to attend a state university for
99 4 years is approximately \$24,000, and

100 WHEREAS, Mr. Bartek paid an estimated \$500 in court costs
101 and fines, and

102 WHEREAS, Mr. Bartek's defense attorney charged him \$40,000
103 for legal services relating to the charges described in this
104 case, and

105 WHEREAS, these figures amount to an estimated total of
106 \$1,197,650.69, which is the amount Mr. Bartek seeks under this
107 claim bill, NOW, THEREFORE,

108

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

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111 Section 1. The facts stated in the preamble to this act are
112 found and declared to be true.

113 Section 2. The sum of \$1,197,650.69 is appropriated from
114 the General Revenue Fund to the Department of Legal Affairs for
115 the relief of Scotty Bartek for his wrongful incarceration.

116 Section 3. The Chief Financial Officer is directed to draw

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117 a warrant in favor of Scotty Bartek in the sum of \$1,197,650.69
118 upon funds of the Department of Legal Affairs in the State
119 Treasury and to pay the same out of such funds in the State
120 Treasury.

121 Section 4. The amount awarded under this act is intended to
122 provide the sole compensation for all present and future claims
123 arising out of the wrongful incarceration of Scotty Bartek as
124 described in this act. The total amount paid for attorney fees,
125 including the \$40,000 reimbursement for Mr. Bartek's defense
126 attorney fees, may not exceed 25 percent of the amount awarded
127 under this act.

128 Section 5. This act shall take effect upon becoming a law.