

1 A bill to be entitled

2 An act for the relief of Maury Hernandez; providing an
3 appropriation to compensate him for injuries and
4 damages sustained as a result of the alleged
5 negligence of the Department of Corrections; providing
6 legislative intent for the waiver of certain liens;
7 providing a limitation on the payment of fees and
8 costs; providing an effective date.
9

10 WHEREAS, on August 6, 2007, at approximately 11:45 a.m.,
11 Broward County Sheriff's Office (BSO) Deputy Maury Hernandez,
12 then 28 years of age, was operating a BSO-assigned vehicle, and

13 WHEREAS, Deputy Hernandez observed David Maldonado, who was
14 operating a motorcycle, run through three traffic lights on
15 Pembroke Road in Pembroke Park, and

16 WHEREAS, Deputy Hernandez followed Mr. Maldonado to a
17 location in the 3700 block of Pembroke Road and, displaying his
18 badge, approached Mr. Maldonado and identified himself as a
19 deputy sheriff, and

20 WHEREAS, Mr. Maldonado told Deputy Hernandez that he was a
21 police officer from Opa-Locka, but then pushed Deputy Hernandez,
22 jumped from his motorcycle, and ran, at which time Deputy
23 Hernandez gave chase on foot, and

24 WHEREAS, within seconds, Mr. Maldonado turned around and
25 fired two shots from a .45 caliber handgun, striking Deputy

HB 6507

2018

26 | Hernandez in the head with one of the bullets, and

27 | WHEREAS, Deputy Hernandez was rushed to Memorial Regional
28 | Hospital in Hollywood in critical condition, and

29 | WHEREAS, Mr. Maldonado was subsequently apprehended by
30 | Hollywood police in a nearby condominium complex after he
31 | attempted a carjacking, and

32 | WHEREAS, the BSO conducted an investigation that concluded
33 | that Mr. Maldonado should have been in jail at the time of the
34 | shooting because he was serving 2 years' probation and had
35 | repeatedly violated the terms of his probation, but the
36 | Department of Corrections had failed to bring the violations to
37 | the attention of the State Attorney's Office and the presiding
38 | circuit judge, and

39 | WHEREAS, the investigation found that on April 18, 2007,
40 | Mr. Maldonado, a habitual traffic offender, pled no contest to
41 | felony driving charges and was placed on probation for 24
42 | months, and

43 | WHEREAS, at that time, Mr. Maldonado had nearly 40 traffic
44 | and administrative violations, including reckless driving,
45 | speeding, and repeatedly driving without a license, and

46 | WHEREAS, Mr. Maldonado was advised in writing of the
47 | department's zero-tolerance policy, which stated, "The
48 | Department of Corrections has a zero tolerance policy as to
49 | reporting violations of supervision conditions. This is
50 | notification to you that you are subject to violations

51 proceeding, including arrest, if you are not in compliance with
52 all conditions of supervision as required by the sentencing
53 court or releasing authority," and

54 WHEREAS, under s. 948.03(1)(m)1., Florida Statutes, Mr.
55 Maldonado was prohibited from possessing, carrying, or owning
56 any firearm unless authorized by the court, and under s.
57 948.03(1)(n), Florida Statutes, was banned from using
58 intoxicants to excess or possessing any drugs or narcotics
59 unless prescribed by a physician, and

60 WHEREAS, the department had a nondiscretionary duty to
61 report Mr. Maldonado's violations of these laws to the assistant
62 state attorney and presiding circuit judge without delay, and

63 WHEREAS, Mr. Maldonado's probation strictly prohibited him
64 from carrying a weapon without a court order, prohibited him
65 from using alcohol in excess and prescription drugs that he had
66 not been prescribed, and required him to complete and submit
67 honest monthly reports to his probation officer, all of which he
68 violated over the course of the 4 months before he shot Deputy
69 Hernandez, and

70 WHEREAS, the BSO investigation found that despite
71 Maldonado's admissions to carrying a weapon, his deceit
72 concerning the place of his employment, his false claim that he
73 was a United States Marine, his lies that he had a concealed
74 weapons permit and he needed his gun to be a security officer
75 and for his military service, and his confession to using

HB 6507

2018

76 alcohol and nonprescribed drugs, the department unreasonably
77 failed to verify any of his statements regarding his employment
78 or military service or otherwise act on any of Maldonado's
79 probation violations, and

80 WHEREAS, the department knew or should have known that Mr.
81 Maldonado lied about his place of employment, his military
82 service, and the reasons he stated for possessing a firearm, and

83 WHEREAS, the department was on notice that Mr. Maldonado
84 had used alcohol and nonprescribed drugs, but it did not act on
85 his self-confessed probation violations, and

86 WHEREAS, the department had a nondiscretionary duty to
87 enforce its zero-tolerance policy and report Mr. Maldonado's
88 probation violations to the assistant state attorney and the
89 presiding circuit judge without delay, and

90 WHEREAS, although the department admitted that Mr.
91 Maldonado had violated the terms of his probation before he shot
92 Deputy Hernandez, it has never explained why it did not enforce
93 its own zero-tolerance policy as to Mr. Maldonado, and

94 WHEREAS, after the shooting incident, the state attorney's
95 office announced that Mr. Maldonado's probation violations
96 should have been reported to the assistant state attorney and
97 the presiding circuit judge assigned to the case and that, if
98 the violations had been reported, Mr. Maldonado would have been
99 jailed without bond and would not have been on the streets at
100 the time he shot Deputy Hernandez, and

101 WHEREAS, the shooting of Deputy Hernandez by Mr. Maldonado
 102 was a reasonably foreseeable consequence of the department's
 103 failure to enforce the conditions of Mr. Maldonado's probation,
 104 comply with the laws of Florida, and follow its own policies and
 105 procedures, and

106 WHEREAS, Deputy Hernandez survived the shooting, was in a
 107 coma and on life support for 3 weeks, underwent multiple
 108 surgeries, and remained hospitalized for almost 3 months before
 109 being discharged to the care of a rehabilitation hospital, and

110 WHEREAS, Deputy Hernandez was confined to a wheelchair and
 111 underwent physical, occupational, speech, visual, and cognitive
 112 therapies all day each weekday for a year, and

113 WHEREAS, Deputy Hernandez continued to receive physical and
 114 occupational therapies and other medical care on a daily basis
 115 until 3 years ago, when his insurance provider discontinued
 116 payments to his health care providers, and

117 WHEREAS, as a result of the shooting, Deputy Hernandez
 118 suffers from permanent brain injury and resulting hemiparesis to
 119 the entire left side of his body, motor and sensory nerve
 120 damage, spasticity, numbness, severe muscle weakness, impaired
 121 abilities in walking and balance, hydrocephalous that is treated
 122 with a permanent ventriculoperitoneal shunt, cognitive deficits,
 123 and fragments of the bullet that are permanently lodged in his
 124 brain, and

125 WHEREAS, Deputy Hernandez has continued, on his own, to

126 engage in physical and occupational therapies to improve his
127 hemiparesis, but still requires medical care and professional
128 therapy treatments to maintain maximum medical stability, and

129 WHEREAS, Deputy Hernandez has regularly received painful
130 Botox injections and other medications to improve muscle tone
131 and reduce spasticity, and

132 WHEREAS, at the time of his injury, Deputy Hernandez was
133 earning an annual salary of approximately \$60,000, plus generous
134 benefits, including medical and retirement, and

135 WHEREAS, Deputy Hernandez's injuries have catastrophically
136 changed his life and impaired his ability to earn a living, and

137 WHEREAS, Deputy Hernandez attempted to return to work at
138 the BSO, but was unable to perform to minimum standards, and

139 WHEREAS, Deputy Hernandez has suffered significant economic
140 damages, including lost income and the capacity to earn income
141 and job-related benefits, including medical insurance and
142 retirement benefits, and

143 WHEREAS, Deputy Hernandez has received workers'
144 compensation benefits that have partially covered his loss of
145 income and medical care costs, but liens have been filed
146 amounting to hundreds of thousands of dollars, and

147 WHEREAS, Deputy Hernandez is 37 years old and has a life
148 expectancy of 42.6 years according to the Centers for Disease
149 Control and Prevention's United States Life Tables, 2008, and

150 WHEREAS, Deputy Hernandez has suffered devastating and

151 permanent injuries and damages, including pain and suffering;
152 total disability; physical and mental impairment; disfigurement;
153 mental anguish; inconvenience; loss of enjoyment of life;
154 hospital and medical care expenses; the loss of earnings and
155 earning capacity; the loss of benefits, including medical and
156 retirement income benefits; liens; and other economic and
157 noneconomic losses, and

158 WHEREAS, a lawsuit filed on behalf of Deputy Hernandez in
159 the 17th Judicial Circuit in and for Broward County which sought
160 relief under s. 768.28, Florida Statutes, was dismissed by the
161 trial court based on the department's argument that, despite its
162 failure to follow Florida law, its own policies and procedures,
163 and the terms of Maldonado's probation, the department owed no
164 duty of care to Deputy Hernandez, and

165 WHEREAS, appeals of the court's ruling would be fruitless
166 and would only cause further delay in bringing financial relief
167 to Deputy Hernandez, and

168 WHEREAS, despite the court's ruling that he is legally
169 remediless to seek damages, Deputy Hernandez respectfully
170 requests that the Legislature find that a moral obligation
171 exists in this particular instance based on the Legislature's
172 view of justice and fair treatment, and

173 WHEREAS, Deputy Hernandez respectfully requests that, as a
174 matter of grace, the Legislature exercise its lawful powers to
175 appropriate a sum of monetary compensation that fully recognizes

176 the magnitude of his injuries, disabilities, and economic
 177 damages, and

178 WHEREAS, given the facts and circumstances that resulted in
 179 his injuries and damages, Hernandez seeks equitable relief from
 180 the Legislature, NOW, THEREFORE,

181
 182 Be It Enacted by the Legislature of the State of Florida:

183
 184 Section 1. The facts stated in the preamble to this act
 185 are found and declared to be true.

186 Section 2. There is appropriated from the General Revenue
 187 Fund to the Department of Corrections the sum of \$10 million for
 188 the relief of Maury Hernandez for injuries and damages
 189 sustained.

190 Section 3. The Chief Financial Officer is directed to draw
 191 a warrant in the sum of \$10 million payable to Maury Hernandez
 192 upon funds in the State Treasury to the credit of the Department
 193 of Corrections, and the Chief Financial Officer is directed to
 194 pay the same out of such funds in the State Treasury not
 195 otherwise appropriated.

196 Section 4. It is the intent of the Legislature that all
 197 lien interests held by the state, if any, arising from the
 198 treatment and care of Maury Hernandez for the occurrences
 199 described in this act are waived.

200 Section 5. The amount awarded under this act is intended

HB 6507

2018

201 to provide the sole compensation for all present and future
202 claims arising out of the factual situation described in the
203 preamble to this act. The total amount paid for attorney fees,
204 lobbying fees, costs, and other similar expenses relating to
205 this claim may not exceed 25 percent of the total amount awarded
206 under this act.

207 Section 6. This act shall take effect upon becoming a law.