

Unlawful Detention Civil Remedy Act

A bill to be entitled

An act relating to civil remedies; creating s. 768.295, Florida Statutes; providing a short title; providing legislative findings; providing definitions; creating a civil cause of action for a person detained without charge against a custodial agency, detention facility, or responsible official; providing statutory, actual, and punitive damages; abrogating sovereign and qualified immunity as to this cause of action, with exceptions; requiring attorney fees and costs for a prevailing plaintiff; providing a statute of limitations; providing for severability; providing an effective date.

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

Section 1. Section 768.295, Florida Statutes, is created to read:

768.295 Civil action for detention without charge.—

(1) SHORT TITLE.—This section may be cited as the “Unlawful Detention Civil Remedy Act.”

(2) LEGISLATIVE FINDINGS.—The Legislature finds that a person unlawfully detained without charge needs a meaningful financial remedy, and that immunity doctrines have historically prevented individuals from being held accountable for prolonging unlawful detention.

(3) DEFINITIONS.—As used in this section, the term:

- (a) “Custodial agency” and “detention facility” have the same meaning as provided in s. 901.245, if in effect, or, if not, mean, respectively, a law enforcement or correctional agency of this state or a political subdivision with physical custody of a person, and a jail, prison, civil commitment facility, or other facility holding a person in custody, including one operated under contract with this state, but excluding a facility operated exclusively by and under the exclusive custodial authority of the United States.
- (b) “Responsible official” means an officer, employee, director, warden, or administrator of a custodial agency or detention facility who has authority over, or personal knowledge of and the ability to remedy, the continued unlawful detention of a person.

(4) CAUSE OF ACTION.—A person detained without a formal charge or lawful commitment order beyond the time allowed by law has a civil cause of action against the responsible custodial agency or detention facility, and against any responsible official, in that official’s individual capacity, who knowingly or with reckless disregard permitted the unlawful detention to continue.

(5) DAMAGES.—A plaintiff who prevails under this section is entitled to recover:

- (a) Statutory damages of \$500 for each day, or portion of a day, of unlawful detention;

- (b) Actual damages, including for physical harm, lost wages, and emotional distress; and
- (c) Where the violation was willful or in reckless disregard of the plaintiff's rights, punitive damages against a responsible official found individually liable.

(6) ATTORNEY FEES.—A court shall award reasonable attorney fees and costs to a plaintiff who prevails on a claim under this section. The court may not award attorney fees or costs to a defendant unless it finds the claim was filed in bad faith.

(7) IMMUNITY.—Neither sovereign immunity under s. 768.28 nor qualified immunity as recognized under state common law bars a claim under this section. This subsection does not abrogate the immunity of a judge acting within the judge's judicial capacity, a legislator acting within the legislator's legislative capacity, or a prosecutor acting within the scope of prosecutorial discretion to charge or decline to charge an offense.

(8) LIMITATIONS.—An action under this section must be commenced within 4 years after the date the unlawful detention ceased.

Section 2. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications that can be given effect without the invalid provision, and the provisions of this act are declared severable.

Section 3. This act shall take effect July 1, 2027.