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CHAMBER ACTION

1 The Justice Appropriations Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5
6 House Concurrent Resolution

7 A concurrent resolution proposing the adoption of Joint
8 Rule 9, Joint Rules of the Florida Legislature, relating
9 to compensation for the wrongfully incarcerated.

10
11 Be It Resolved by the House of Representatives of the State of
12 Florida, the Senate Concurring:

13
14 That Joint Rule 9, Joint Rules of the Legislature, is
15 hereby created to read:

16
17 Joint Rule Nine

18 Compensation for Wrongful Incarceration

19
20 9.1-Eligibility

21 (1) A claim bill shall be allowed for wrongful criminal
22 felony convictions resulting in imprisonment if the claimant has

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23 | been granted judicial relief absolving the claimant of guilt on
 24 | the basis of actual innocence of the crime for which the
 25 | claimant was sentenced.

26 | (2) As used in this Joint Rule, "actual innocence" means:

27 | (a) The claimant was charged, by indictment or
 28 | information, with the commission of an offense classified as a
 29 | felony;

30 | (b) The claimant did not plead guilty or no contest to the
 31 | offense charged or to any lesser included offense, unless the
 32 | claimant was charged with a capital offense;

33 | (c) The claimant was convicted of the offense;

34 | (d) The claimant was sentenced to incarceration for a term
 35 | of imprisonment as a result of the conviction;

36 | (e) The claimant was imprisoned solely on the basis of the
 37 | conviction for the offense;

38 | (f) The claimant did not, by his or her misconduct or
 39 | neglect, bring about the prosecution;

40 | (g) The claimant's acts did not constitute a crime; and

41 | (h) A court of competent jurisdiction found by clear and
 42 | convincing evidence that the offense for which the claimant was
 43 | convicted, sentenced, and imprisoned, including any lesser
 44 | included offenses, was not committed by the claimant and issued
 45 | an order vacating, dismissing, or reversing the conviction and
 46 | sentence and providing that no further proceedings can be or
 47 | will be held against the claimant on any facts and circumstances
 48 | alleged in the proceedings which had resulted in the conviction.

49 | (3) A claimant shall not be eligible for compensation if
 50 | the claimant was also serving a concurrent felony sentence.

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51 (4) The claimant must comply with both the Senate Rules
52 and the Rules of the House of Representatives and shall not file
53 a claim bill later than 2 years after the order vacating,
54 reversing, or dismissing the sentence, except that all other
55 judicial and administrative remedies need not be exhausted.

56

57 9.2-Relief

58 (1) Upon a finding of actual innocence and that all
59 conditions of this Joint Rule have been satisfied, the
60 Legislature may award the claimant relief as specified in Joint
61 Rule 9.3 and Joint Rule 9.4.

62 (2) Any person awarded compensation pursuant to this Joint
63 Rule who is subsequently convicted of a felony shall,
64 immediately upon such conviction, not be eligible to receive any
65 unpaid amounts or benefits from any compensation awarded in the
66 relief act. Any amount from an annuity that is forfeited
67 pursuant to this section shall revert to the state General
68 Revenue Fund.

69 (3) No award for relief pursuant to this Joint Rule shall
70 include punitive damages.

71 (4) The relief act may include an apology made by the
72 Legislature on behalf of the State of Florida.

73

74 9.3-Nonmonetary Compensation

75 (1) HEALTH CARE PLAN.-The relief act may direct the
76 appropriate state agency to purchase a comprehensive health care
77 plan, including dental and mental health coverage.

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78 (2) EDUCATIONAL ASSISTANCE.—The relief act may waive
79 tuition and fees for up to a total of 4 years of instruction at
80 any career center established pursuant to section 1001.44,
81 Florida Statutes, at any community college established under
82 part III of chapter 1004, Florida Statutes, or any state
83 university. The relief act shall state that for any educational
84 benefit made, the claimant shall be required to meet and
85 maintain the regular admission requirements of, and be
86 registered at, such career center, community college, or state
87 university and make satisfactory academic progress as defined by
88 the educational institution in which the claimant is enrolled.

89 (3) JOB PREFERENCE.—The relief act may award first
90 preference in employment by the state and its political
91 subdivisions.

92 (a) The relief act must state that the claimant must be
93 otherwise eligible for employment with the hiring agency or
94 political subdivision.

95 (b) The relief act must state that the job preference
96 benefits awarded do not apply to positions that are exempt from
97 the State Career Service System under section 110.205(2),
98 Florida Statutes, positions which are filled by officers elected
99 by popular vote or persons appointed to fill vacancies in such
100 offices, members of boards and commissions, persons employed on
101 a temporary basis without benefits, heads of departments, and
102 positions that require licensure as a physician, osteopathic
103 physician, chiropractic physician, engineer, or membership in
104 The Florida Bar.

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105 (4) WAIVER OF FEES.—The relief act shall waive any
 106 statutory fees required to expunge any arrest or court records
 107 as otherwise subject to expunction by law or court rule and
 108 shall waive any fees for copying costs or other costs of
 109 obtaining public records in furtherance of such expunction.
 110

111 Rule 9.4—Monetary Compensation

112 (1) The relief act may provide compensation in an amount
 113 to be determined by the Legislature.

114 (2) Any compensation computed pursuant to subsection (1)
 115 may be awarded in a lump sum or may be paid in an initial lump
 116 sum equal to 20 percent of the compensation award with the
 117 remaining 80 percent of the principal of the compensation award
 118 to be used by the Chief Financial Officer to purchase an
 119 annuity. If the Legislature directs that an annuity be
 120 purchased, the relief act must state the following:

121 (a) That any annuity purchased shall be purchased from any
 122 A+ rated company, to provide equal monthly installments to the
 123 claimant for a period certain of a stated number of years
 124 commencing no later than 1 year after the effective date of the
 125 appropriation;

126 (b) That the annuity shall provide that it shall not be
 127 sold, discounted, or used as security for loans and mortgages by
 128 the claimant; and

129 (c) That the annuity shall contain beneficiary provisions
 130 providing for the annuity's continued disbursement in the event
 131 of the death of the claimant, subject to the provisions of Joint
 132 Rule 9.2(2).

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134 9.5—Release and Waiver

135 As a condition of receiving any compensation under this
136 Joint Rule, a claimant shall execute a release and waiver on
137 behalf of the claimant or his or her heirs, successors, and/or
138 assigns forever releasing the State of Florida or any agency,
139 instrumentality, officer, employee, or political subdivision
140 thereof, or any other entity subject to the provisions of
141 section 768.28, Florida Statutes, from any and all present or
142 future claims the claimant or his or her heirs, successors,
143 and/or assigns may have against such enumerated entities and
144 arising out of the factual situation in connection with the
145 conviction for which the compensation is being sought under this
146 Joint Rule.

147

148 9.6—Collateral Sources

149 The claimant is not eligible for compensation if the
150 claimant was awarded a final judgment in a court of law, or has
151 received any funds pursuant to a settlement agreement for
152 compensation or damages arising out of the factual situation in
153 connection with the conviction for which compensation is sought
154 under this Joint Rule.

155

156 9.7—Attorney's and Lobbyist's Fees

157 Attorney's and lobbyist's fees are subject to the
158 provisions of section 768.28(8), Florida Statutes. No
159 compensation shall be made for attorney's fees charged for legal

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160 services relating to a finding of actual innocence as defined by
161 this Joint Rule.

162

163 9.8—Sovereign Immunity; Limits of Liability

164 The passage of a relief act pursuant to this Joint Rule
165 shall not be deemed to have waived any defense of sovereign
166 immunity or to have increased the limits of liability on behalf
167 of the state or any person or entity subject to the provisions
168 of section 768.28, Florida Statutes.