

1 A bill to be entitled
2 An act relating to compensation for wrongful
3 incarceration; authorizing certain individuals
4 to petition a court to determine whether they
5 were actually innocent; requiring clear and
6 convincing evidence to establish that a person
7 was actually innocent; providing criteria for
8 determining whether a person was actually
9 innocent; creating exceptions to the
10 authorization for compensation; authorizing an
11 actually innocent person to apply to the
12 Department of Financial Services for
13 compensation; providing for application
14 procedures; authorizing a compensation amount
15 per year of imprisonment and authorizing a
16 tuition waiver for instruction at state
17 universities, community colleges, and career
18 centers; providing for compensation exceeding a
19 certain amount to be paid in installments over
20 a 10-year period; providing for the forfeiture
21 of unpaid installments upon the conviction of a
22 felony; requiring the release and waiver of any
23 claims against the state prior to payment of
24 compensation; requiring payments of
25 compensation to be processed by the Chief
26 Financial Officer; requiring the Department of
27 Financial Services to request a specific
28 appropriation for funds to pay compensation
29 installments in its legislative budget
30 requests; authorizing the Department of
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1 Financial Services to adopt rules; providing an
2 effective date.

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4 WHEREAS, the Legislature recognizes that no system of
5 justice is impervious to human error, and WHEREAS, United
6 States v. Hasting, 461 U.S. 499 (1983), states, in part,
7 "Given the myriad safeguards provided to assure a fair trial,
8 and taking into account the reality of the human fallibility
9 of the participants, there can be no such thing as an
10 error-free, perfect trial, and . . . the Constitution does not
11 guarantee such a trial.", and

12 WHEREAS, the Legislature acknowledges that the state's
13 system of justice infrequently yields imperfect results that
14 may have tragic consequences, and this act is based on a moral
15 desire to acknowledge those who are wrongfully convicted of a
16 felony offense, incarcerated as a result of that conviction,
17 and determined to be actually innocent and is not a
18 recognition of a constitutional right or violation, and

19 WHEREAS, the Legislature finds that persons who are
20 actually innocent and were incarcerated have been deprived of
21 their liberty, and

22 WHEREAS, the Legislature intends that any compensation
23 made pursuant to this act be the sole compensation to be
24 provided by the state for any and all present and future
25 claims arising out of the factual situation in connection with
26 the claimant's conviction and imprisonment, NOW, THEREFORE,

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

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30 Section 1. Claim for compensation for wrongful
31 incarceration.--

1 (1) A person who has been wrongfully convicted of a
2 felony offense and incarcerated within the Department of
3 Corrections as a result of that conviction may be financially
4 compensated if the claimant is found to be actually innocent
5 by a court.

6 (2) A person may petition a court to determine whether
7 he or she was actually innocent of a felony conviction. As a
8 prerequisite to the petition, the court must issue an order
9 vacating, dismissing, or reversing the conviction and sentence
10 and providing that no further proceedings can or will be held
11 against the person on any facts and circumstances alleged in
12 the proceedings that resulted in the conviction.

13 (3) As used in this section, a claimant is actually
14 innocent if a court has found by clear and convincing evidence
15 that:

16 (a) The claimant was charged, by indictment or
17 information, with the commission of an offense classified as a
18 felony;

19 (b) The claimant was convicted of the offense;

20 (c) The claimant was sentenced to incarceration for a
21 term of imprisonment as a result of the conviction;

22 (d) The claimant was imprisoned solely on the basis of
23 the conviction for the offense;

24 (e) The claimant did not commit the offense that
25 resulted in the conviction and incarceration or that the
26 claimant's acts did not constitute a crime; and

27 (f) The claimant did not aid, abet, or act as an
28 accomplice to a person who committed the offense.

29 (4) A claimant is not eligible for compensation if the
30 claimant:

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1 (a) Pled guilty or nolo contendere to, or was
2 convicted of, regardless of adjudication, a felony prior to
3 payment of a claim pursuant to this act, not including the
4 wrongful incarceration for which compensation is being sought
5 pursuant to this act; or

6 (b) Submits a completed application to the Department
7 of Financial Services after October 1, 2008, or more than 2
8 years after the order vacating, reversing, or dismissing the
9 sentence, whichever is later.

10 (5) The claimant must submit to the Department of
11 Financial Services for review and processing the following
12 documents as an application package as proof of the person's
13 eligibility for compensation:

14 (a) A certified copy of the judgment and sentence in
15 the case, including fingerprints;

16 (b) A set of the claimant's fingerprints, prepared by
17 the sheriff of the county in which the person resides and
18 taken within 6 months before the date on which the claim is
19 submitted;

20 (c) A recent photograph of the claimant in a format no
21 larger than 2 inches by 3 inches;

22 (d) A certified copy of the order vacating,
23 dismissing, or reversing the conviction;

24 (e) A certified copy of the court order finding that
25 the claimant is actually innocent;

26 (f) A record from the Department of Corrections
27 showing the actual dates of the claimant's incarceration and a
28 photograph of the person taken by the department; and

29 (g) A brief statement reciting the facts upon which
30 the claim for compensation is based and showing that the
31 claimant is in compliance with all requirements of this act.

1 (6)(a) Upon receipt of an application, the Department
2 of Financial Services shall examine the application. Within 30
3 days after receipt of the application, the department shall
4 notify the applicant of any apparent errors or omissions and
5 request any additional information the department is permitted
6 by law to require. The department shall not deny a claim for
7 failure to correct an error or omission or supply additional
8 information unless the department timely notified the claimant
9 within the 30-day period specified in this paragraph.

10 (b) The department shall process and review the claim
11 within a reasonable period of time after receiving a completed
12 application, which may not exceed 90 days.

13 (7) If the department determines that the claim for
14 compensation is supported by sufficient proof, the department
15 must forward a request for payment to the Chief Financial
16 Officer, who shall pay the claim according to the
17 recommendation. Payment shall be as follows:

18 (a) At the rate of \$50,000 for each year of wrongful
19 incarceration, prorated as necessary to compensate for
20 portions of years.

21 (b) For sums exceeding \$500,000, payments shall be
22 made in equal annual installments prorated over 10 years.

23 (c) Any person who receives prorated payments pursuant
24 to paragraph (b) and who subsequently pleads guilty or nolo
25 contendere to, or is convicted of, regardless of adjudication,
26 a felony shall, immediately upon conviction, be ineligible to
27 receive any unpaid amounts or benefits pursuant to this act.
28 Any amount forfeited shall revert to the General Revenue Fund.

29 (8)(a) Before payment is tendered pursuant to this
30 act, the claimant must present to the Chief Financial Officer
31 an executed release and waiver on behalf of the claimant, or

1 his or her heirs, successors, and assigns, forever releasing
2 the state or any agency, instrumentality, officer, employee,
3 or political subdivision thereof, or any other entity subject
4 to the provisions of s. 768.28, Florida Statutes, from any and
5 all present or future claims that the claimant or his or her
6 heirs, successors, and assigns may have against such
7 enumerated entities and arising out of the factual situation
8 in connection with the conviction for which compensation is
9 being sought under this act.

10 (b) Declaratory action to obtain judicial expungement
11 of the claimant's judicial and executive branch records as
12 otherwise provided by law is not prohibited by this act.

13 (9)(a) The Chief Financial Officer shall process and
14 pay a claim under this act according to the request for
15 payment made by the Department of Financial Services within a
16 reasonable time after receiving the request, which may not
17 exceed 90 days.

18 (b) Payment shall be made pursuant to specific
19 appropriation provided to the Department of Financial
20 Services.

21 (c) In the event that payments must be made for a
22 10-year period under paragraph (7)(b), the Department of
23 Financial Services shall include in its annual legislative
24 budget request a specific appropriation for funds sufficient
25 to make payments payable under this act during each relevant
26 fiscal year. It is the intent of the Legislature that any
27 amounts appropriated pursuant to authority granted by this act
28 be from recurring funds for a sufficient length of time to
29 cover the obligation.

30 (10) Any claimant who is compensated pursuant to this
31 act shall also have tuition and fees waived for up to a total

1 of 120 hours of instruction at any career center established
2 pursuant to s. 1001.44, Florida Statutes, any community
3 college established under part III of chapter 1004, Florida
4 Statutes, or any state university. For any educational benefit
5 made, the claimant shall meet and maintain the regular
6 admission requirements of, and be registered at, such career
7 center, community college, or state university and make
8 satisfactory academic progress as defined by the educational
9 institution in which the claimant is enrolled.

10 (11) The Legislature shall not be deemed by this act
11 or by the payment of any claim to have waived any defense of
12 sovereign immunity or to have increased the limits of
13 liability on behalf of the state or any person subject to the
14 provisions of s. 768.28, Florida Statutes, or any other law.

15 (12) Any amount awarded by this act is intended to
16 provide the sole compensation for any and all present and
17 future claims arising out of the factual situation in
18 connection with the claimant's conviction and imprisonment. No
19 further award for attorney's fees, lobbying fees, costs, or
20 other similar expenses shall be made by the state.

21 (13) The Department of Financial Services may adopt
22 rules under ss. 120.536(1) and 120.54, Florida Statutes,
23 governing the forms and procedures related to applications for
24 compensation.

25 Section 2. This act shall take effect October 1,
26 2006.