

1 A bill to be entitled
2 An act relating to compensation for wrongful
3 incarceration; providing that a person who has been
4 wrongfully convicted of a felony offense and incarcerated
5 within the Department of Corrections as a result of that
6 conviction may be financially compensated if determined to
7 be actually innocent; defining the term "actually
8 innocent"; providing conditions which constitute
9 ineligibility for compensation under the act; requiring
10 that the claimant submit specified documents to the
11 Department of Legal Affairs as proof of eligibility for
12 compensation; providing procedures and requirements of the
13 department with respect to the examination and review of a
14 claim; providing criteria for payment of a claim by the
15 Chief Financial Officer; providing for forfeiture and
16 reversion of unpaid amounts under specified circumstances;
17 providing for legislative redress of disputes; requiring
18 an executed release and waiver as a condition precedent to
19 tender of payment; providing requirements of the Chief
20 Financial Officer with respect to the processing and
21 payment of a claim; providing that payment shall be made
22 pursuant to specific appropriation provided to the
23 Department of Legal Affairs; providing legislative intent
24 with respect to such appropriations; providing for waiver
25 of specified tuition and fees for claimants compensated
26 under the act; providing requirements with respect to
27 educational benefits; providing that the Legislature is
28 not deemed to have waived any defense of sovereign

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29 immunity nor increased the limits of liability as a result
30 of the act or the payment of a claim thereunder; providing
31 legislative intent with respect to amounts awarded under
32 the act; authorizing the Legislature to make an official
33 apology; providing an effective date.
34

35 WHEREAS, the Legislature recognizes that no system of
36 justice is impervious to human error, and

37 WHEREAS, *United States v. Hasting*, 461 U.S. 499 (1983),
38 reads, in part, "Given the myriad safeguards provided to assure
39 a fair trial, and taking into account the reality of the human
40 fallibility of the participants, there can be no such thing as
41 an error-free, perfect trial, and . . . the Constitution does
42 not guarantee such a trial.", and

43 WHEREAS, the Legislature acknowledges that the state's
44 system of justice infrequently yields imperfect results which
45 may have tragic consequences, and

46 WHEREAS, this act is based on a moral desire to acknowledge
47 those who are wrongfully convicted of a felony offense,
48 incarcerated as a result of that conviction, and determined to
49 be actually innocent and is not a recognition of a
50 constitutional right or violation, and

51 WHEREAS, the Legislature intends that any compensation made
52 pursuant to this act be the sole compensation to be provided by
53 the state for any and all present and future claims arising out
54 of the factual situation in connection with the claimant's
55 conviction and imprisonment, NOW, THEREFORE,
56

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

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59 Section 1. Claim for compensation for wrongful
 60 incarceration.--

61 (1) A person who has been wrongfully convicted of a felony
 62 offense and incarcerated within the Department of Corrections as
 63 a result of that conviction may be financially compensated if
 64 the claimant is actually innocent.

65 (2) As used in this section, the term "actually innocent"
 66 means:

67 (a) The claimant was charged, by indictment or
 68 information, with the commission of an offense classified as a
 69 felony;

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

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

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

75 (e) The claimant's acts did not constitute a crime; and

76 (f) A court of competent jurisdiction found by clear and
 77 convincing evidence that the claimant is actually innocent as
 78 defined in this act and issued an order vacating, dismissing, or
 79 reversing the conviction and sentence and providing that no
 80 further proceedings can or will be held against the claimant on
 81 any facts and circumstances alleged in the proceedings which
 82 resulted in the conviction.

83 (3) A claimant shall not be eligible for compensation if
 84 the claimant:

85 (a) Pled guilty or nolo contendere to, or was convicted
86 of, regardless of adjudication, a felony prior to payment of a
87 claim pursuant to this act, not including the wrongful
88 incarceration for which compensation is being sought pursuant to
89 this act; or

90 (b) Submits a completed application to the Department of
91 Legal Affairs later than 2 years after the order vacating,
92 reversing, or dismissing the sentence.

93 (4) The claimant must submit to the Department of Legal
94 Affairs for review and processing the following documents as an
95 application package, as proof of the person's eligibility for
96 compensation:

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

99 (b) A set of the claimant's fingerprints, prepared by the
100 sheriff of the county in which the person resides and taken
101 within 6 months before the date on which the claim is filed;

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

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

106 (e) A record from the Department of Corrections showing
107 the actual dates of the claimant's incarceration and a
108 photograph of the person taken by the department; and

109 (f) A brief sworn statement reciting the facts upon which
110 the claim for compensation is based and showing that the
111 claimant is actually innocent and in compliance with all
112 requirements of this act.

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113 (5) (a) Upon receipt of an application, the Department of
114 Legal Affairs shall examine the application. Within 30 days
115 after receipt of the application, the department shall notify
116 the applicant of any apparent errors or omissions and request
117 any additional information the department is permitted by law to
118 require. The department shall not deny a claim for failure to
119 correct an error or omission or supply additional information
120 unless the department timely notified the claimant within the
121 30-day period specified in this paragraph.

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

125 (6) If the department determines that the claim for
126 compensation is supported by sufficient proof, the department
127 must forward a request for payment to the Chief Financial
128 Officer who shall pay the claim according to the recommendation.
129 Payment shall be as follows:

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

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

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

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141 (d) If the claimant has not executed the release and
142 waiver pursuant to paragraph (7) (a), the claimant is not
143 precluded from filing a claim bill in accordance with the
144 current Rules of the House of Representatives and the Rules of
145 the Senate, which shall be the sole redress of any dispute
146 regarding any part of this act.

147 (7) (a) Before payment is tendered pursuant this act, the
148 claimant must present to the Chief Financial Officer an executed
149 release and waiver on behalf of the claimant or his or her
150 heirs, successors, and assigns, forever releasing the state or
151 any agency, instrumentality, officer, or employee, or any
152 political subdivision thereof, or any other entity subject to
153 the provisions of s. 768.28, Florida Statutes, from any and all
154 present or future claims the claimant or his or her heirs,
155 successors, and assigns may have against such enumerated
156 entities and arising out of the factual situation in connection
157 with the conviction for which compensation is being sought under
158 this act.

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

162 (8) (a) The Chief Financial Officer shall process and pay a
163 claim under this act according to the request for payment made
164 by the Department of Legal Affairs within a reasonable time
165 after receiving the department's request which may not exceed 90
166 days.

167 (b) Payment shall be made pursuant to specific
168 appropriation provided to the Department of Legal Affairs.

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169 (c) In the event that payments are prorated pursuant to
170 this act, the Department of Legal Affairs shall include in its
171 annual legislative budget request a specific appropriation for
172 funds sufficient to make prorated payments payable under this
173 act during each relevant fiscal year. It is the intent of the
174 Legislature that any amounts appropriated pursuant to authority
175 granted by this act shall be from recurring funds for a
176 sufficient length of time to cover the obligation.

177 (9) Any claimant who is compensated pursuant to this act
178 shall also have tuition and fees waived for up to a total of 120
179 hours of instruction at any career center established pursuant
180 to s. 1001.44, Florida Statutes, any community college
181 established under part III of chapter 1004, Florida Statutes, or
182 any state university. For any educational benefit made, the
183 claimant is required to meet and maintain the regular admission
184 requirements of, and be registered at, such career center,
185 community college, or state university and make satisfactory
186 academic progress as defined by the educational institution in
187 which the claimant is enrolled.

188 (10) The Legislature shall not be deemed by this act or by
189 the payment of any claim to have waived any defense of sovereign
190 immunity or to have increased the limits of liability on behalf
191 of the state or any person subject to the provisions of s.
192 768.28, Florida Statutes, or any other law.

193 (11) Any amount awarded by this act is intended to provide
194 the sole compensation for any and all present and future claims
195 arising out of the factual situation in connection with the
196 claimant's conviction and imprisonment. No further award for

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197 attorney's fees, lobbying fees, costs, or other similar expenses
198 shall be made by the state.

199 (12) The Legislature is authorized to make an official
200 apology to a claimant under this act on behalf of the State of
201 Florida.

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