

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 a condition which constitutes  
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; requiring the department to make  
16          a legislative budget request; providing for legislative  
17          redress of disputes; requiring an executed release and  
18          waiver as a condition precedent to tender of payment;  
19          providing requirements with respect to the processing and  
20          payment of a claim; providing that payment shall be made  
21          pursuant to specific appropriation provided to the  
22          Department of Legal Affairs; providing for waiver of  
23          specified tuition and fees for claimants compensated under  
24          the act; providing requirements with respect to  
25          educational benefits; providing that the Legislature is  
26          not deemed to have waived any defense of sovereign  
27          immunity nor increased the limits of liability as a result  
28          of the act or the payment of a claim thereunder; providing

29 legislative intent with respect to amounts awarded under  
 30 the act; authorizing the Legislature to make an official  
 31 apology; providing an effective date.

32  
 33 WHEREAS, the Legislature recognizes that no system of  
 34 justice is impervious to human error, and

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

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

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

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

54  
 55 Be It Enacted by the Legislature of the State of Florida:  
 56

57           Section 1. Claim for compensation for wrongful  
58 incarceration.--

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

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

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

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

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

71           (d) The claimant's acts did not constitute a crime; and

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

79           (3) A claimant shall not be eligible for compensation if  
80 the claimant submits a completed application to the Department  
81 of Legal Affairs later than 2 years after the order vacating,  
82 reversing, or dismissing the sentence.

83           (4) The claimant must submit to the Department of Legal  
84 Affairs for review and processing the following documents as an

85 application package, as proof of the claimant's eligibility for  
86 compensation:

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

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

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

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

96 (e) A record from the Department of Corrections showing  
97 the actual dates of the claimant's incarceration and a  
98 photograph of the claimant taken by the department; and

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

103 (5) (a) Upon receipt of an application, the Department of  
104 Legal Affairs shall examine the application. Within 30 days  
105 after receipt of the application, the department shall notify  
106 the applicant of any apparent errors or omissions and request  
107 any additional information the department is permitted by law to  
108 require. The department shall not deny a claim for failure to  
109 correct an error or omission or supply additional information  
110 unless the department timely notified the claimant within the  
111 30-day period specified in this paragraph.

112 (b) The department shall process and review the claim

113 within a reasonable period of time after receiving a completed  
114 application, which may not exceed 90 days.

115 (6) If the Department of Legal Affairs determines that the  
116 claim for compensation is supported by sufficient proof, the  
117 department must forward a request for payment to the Chief  
118 Financial Officer who shall pay the claim according to the  
119 recommendation, subject to a specific appropriation made by the  
120 Legislature pursuant to subsection (8).

121 (a) The department shall recommend compensation at the  
122 rate of \$50,000 for each year of wrongful incarceration,  
123 prorated as necessary to compensate for portions of years.

124 (b) The department shall request sufficient funding in its  
125 legislative budget request pursuant to chapter 216, Florida  
126 Statutes, to make payments that it recommends pursuant to the  
127 provisions of this act.

128 (c) If the claimant has not executed the release and  
129 waiver pursuant to paragraph (7) (a), the claimant is not  
130 precluded from filing a claim bill in accordance with the  
131 current Rules of the House of Representatives and the Rules of  
132 the Senate, which shall be the sole redress of any dispute  
133 regarding any part of this act.

134 (7) (a) Before payment is tendered pursuant to this act,  
135 the claimant must present to the Chief Financial Officer an  
136 executed release and waiver on behalf of the claimant or his or  
137 her heirs, successors, and assigns, forever releasing the state  
138 or any agency, instrumentality, officer, or employee, or any  
139 political subdivision thereof, or any other entity subject to  
140 the provisions of s. 768.28, Florida Statutes, from any and all

141 present or future claims the claimant or his or her heirs,  
142 successors, and assigns may have against such enumerated  
143 entities and arising out of the factual situation in connection  
144 with the conviction for which compensation is being sought under  
145 this act.

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

149 (8) Payment shall be made to a claimant pursuant to  
150 specific appropriation to the Department of Legal Affairs made  
151 by the Legislature for the benefit of the claimant. Payment  
152 shall be made within 90 days after the appropriation has become  
153 effective.

154 (9) Any claimant who is compensated pursuant to this act  
155 shall also have tuition and fees waived for up to a total of 120  
156 hours of instruction at any career center established pursuant  
157 to s. 1001.44, Florida Statutes, any community college  
158 established under part III of chapter 1004, Florida Statutes, or  
159 any state university. For any educational benefit made, the  
160 claimant is required to meet and maintain the regular admission  
161 requirements of, and be registered at, such career center,  
162 community college, or state university and make satisfactory  
163 academic progress as defined by the educational institution in  
164 which the claimant is enrolled.

165 (10) The Legislature shall not be deemed by this act or by  
166 the payment of any claim to have waived any defense of sovereign  
167 immunity or to have increased the limits of liability on behalf  
168 of the state or any person subject to the provisions of s.

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169 768.28, Florida Statutes, or any other law.

170 (11) Any amount awarded by this act is intended to provide  
171 the sole compensation for any and all present and future claims  
172 arising out of the factual situation in connection with the  
173 claimant's conviction and imprisonment. No further award for  
174 attorney's fees, lobbying fees, costs, or other similar expenses  
175 shall be made by the state.

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

179 Section 2. This act shall take effect October 1, 2007.