

1 A bill to be entitled
2 An act relating to compensation for wrongful
3 incarceration; creating the "Victims of Wrongful
4 Incarceration Compensation Act"; defining "wrongfully
5 incarcerated person"; providing for determination by the
6 courts of wrongful incarceration of certain defendants
7 upon petition; providing conditions which constitute
8 eligibility and ineligibility for compensation under the
9 act; specifying forms of compensation and benefits to
10 which a wrongfully incarcerated person is entitled;
11 providing requirements with respect to such compensation
12 and benefits; providing procedures and requirements with
13 respect to application by a claimant for compensation and
14 benefits; providing procedures and requirements of the
15 Chief Financial Officer and the Department of Financial
16 Services with respect to the processing of a claimant's
17 application; providing specified notice requirements;
18 providing for the issuance of a warrant by the Chief
19 Financial Officer; requiring a claimant to sign a release
20 and waiver as a precondition to receiving a warrant;
21 requiring the Department of Legal Affairs and the
22 Department of Law Enforcement to judicially and
23 administratively expunge an eligible claimant's criminal
24 record arising from his or her wrongful arrest,
25 conviction, and incarceration; providing for waiver of
26 fees for expunction; authorizing the Department of
27 Financial Services to adopt rules; providing a limitation
28 on attorney's fees and lobbyist's fees; providing that an

29 applicant who rejects an offer to settle his or her claim
 30 for compensation under the act may file suit against the
 31 state for compensation; providing an effective date.

32

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

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35 Section 1. Short title.--This act may be cited as the
 36 "Victims of Wrongful Incarceration Compensation Act."

37 Section 2. Definition; finding of wrongful
 38 incarceration.--

39 (1) As used in this act, the term "wrongfully incarcerated
 40 person" means a person:

41 (a) Whose felony conviction and sentence have been vacated
 42 by a court of competent jurisdiction; and

43 (b) With respect to whom the court has made a finding by
 44 clear and convincing evidence that he or she:

45 1. Did not commit the offense that resulted in his or her
 46 conviction and incarceration; and

47 2. Did not aid, abet, or act as an accomplice or accessory
 48 to a person who committed the offense that resulted in his or
 49 her conviction and incarceration.

50 (2) Whenever a court enters an order vacating a conviction
 51 and sentence, upon petition by the defendant or the defendant's
 52 attorney, the court must determine whether the defendant was
 53 wrongfully incarcerated and set forth in detail the evidence on
 54 which that finding is based.

55 (3) A person whose sentence and conviction have been
 56 vacated as provided in subsection (1), who has not been

57 subsequently convicted of the same offense or any lesser
58 included offense for which the previous sentence and conviction
59 were vacated, who currently has no charges pending against him
60 or her related to the charges for which the previous sentence
61 and conviction were vacated, and against whom no further
62 criminal proceedings can or will be initiated by any
63 prosecutorial authority may petition the court for a
64 determination of whether he or she is a wrongfully incarcerated
65 person if the prosecuting authority is given reasonable notice
66 in writing that the person intends to petition the court for
67 such a finding.

68 Section 3. Compensation for wrongful incarceration.--

69 (1) Except as otherwise provided in this section and
70 subject to the limitations and procedures prescribed in section
71 4, a person who is found to be a wrongfully incarcerated person
72 is entitled to:

73 (a) Monetary compensation for wrongful incarceration,
74 which shall be calculated at a rate of \$50,000 for each year of
75 wrongful incarceration and prorated as necessary to account for
76 portions of years, up to a maximum of \$1,500,000. The annual
77 rate of compensation and maximum total compensation shall be
78 indexed to the annual consumer price index or similar inflation
79 indicators.

80 1. The total amount awarded is subject to specific
81 appropriation made by a separate budget request in addition to
82 the legislative budget request of the Department of Financial
83 Services.

84 2. The total amount awarded shall be used by the
 85 Department of Financial Services to purchase an annuity on
 86 behalf of the petitioner for a term of not less than 10 years.

87 The terms of the annuity shall:

88 a. Provide that the annuity may not be sold, discounted,
 89 or used as security for a loan or mortgage by the applicant.

90 b. Contain beneficiary provisions for the continued
 91 disbursement of the annuity in the event of the death of the
 92 applicant.

93 c. Provide that payment of the annuity reverts to the
 94 state in the event that the applicant is convicted of a felony
 95 after he or she has received an award of compensation under this
 96 act.

97
 98 When an applicant who has received an award of compensation
 99 under this act is convicted of a felony after he or she has
 100 received the award of compensation as described in sub-
 101 subparagraph c., the Attorney General and the applicant must
 102 immediately report the felony conviction to the issuer of the
 103 annuity.

104 (b) A waiver of tuition and fees for up to 120 hours of
 105 instruction at any career center established under s. 1001.44,
 106 Florida Statutes, any community college established under part
 107 III of chapter 1004, Florida Statutes, or any state university,
 108 if the person found to have been wrongfully incarcerated:

109 1. Meets and maintains the regular admission requirements
 110 of such career center, community college, or state university;

111 2. Remains registered at such educational institution; and

112 3. Makes satisfactory academic progress as defined by the
113 educational institution in which the claimant is enrolled.

114 (c) Reimbursement for up to a maximum of 52 hours of
115 psychological counseling services by a licensed psychologist or
116 psychiatrist.

117 (d) Reimbursement for health insurance premiums for up to
118 5 years after cessation of incarceration if the claimant is not
119 employed or if the claimant is employed but health insurance is
120 not provided by his or her employer.

121 (2) A wrongfully incarcerated person is not eligible for
122 compensation or benefits under this act if:

123 (a) The person submits his or her application to the
124 Department of Financial Services more than 2 years after a court
125 of competent jurisdiction determines the person's wrongful
126 incarceration; or

127 (b) Prior to his or her wrongful conviction and
128 incarceration, the person was a convicted felon.

129 Section 4. Application for compensation and benefits for
130 wrongful incarceration.--

131 (1) A wrongfully incarcerated person seeking compensation
132 and benefits as described in section 3 must apply to the Chief
133 Financial Officer for such compensation and benefits. The
134 application must include:

135 (a) A certified copy of the order finding the claimant to
136 be a wrongfully incarcerated person;

137 (b) Certified copies of the original judgment and
138 sentence;

139 (c) Documentation demonstrating the length of the sentence
140 served, including documentation obtained from the Department of
141 Corrections regarding the person's admission into and release
142 from the department's custody;

143 (d) Positive proof of identification, including
144 fingerprints and a current form of photo identification,
145 demonstrating that the person seeking compensation is the same
146 individual who was wrongfully incarcerated;

147 (e) All documentation maintained by the Department of Law
148 Enforcement related to the person's criminal history or criminal
149 record; and

150 (f) Any other documentation, evidence, or information
151 required by rules adopted by the Department of Financial
152 Services on behalf of the Chief Financial Officer pursuant to
153 section 5.

154 (2) Upon receipt of an application for compensation, the
155 Chief Financial Officer shall examine the application and notify
156 the claimant within 30 calendar days of receipt thereof of any
157 errors or omissions and request any additional information
158 relevant to the review of the application. The Chief Financial
159 Officer may not deny an application for failure of the claimant
160 to correct an error or omission or supply additional information
161 unless the Chief Financial Officer timely notifies the claimant
162 of such errors or omissions or requests such additional
163 information within the 30-day period specified in this
164 subsection. The Department of Financial Services shall process
165 and review each completed application within 90 calendar days of
166 receipt of the application. If the department determines that

HB 1025

2008

167 the claim for compensation meets the requirements of this act,
168 the department shall notify the claimant within 5 business days
169 of that determination.

170 (3) Within 30 calendar days after the issuance of notice
171 to the claimant under subsection (2), the Chief Financial
172 Officer shall draw and issue a state warrant for the entire
173 amount of the claim from the General Revenue Fund or any other
174 available state funds.

175 (4) Before receiving a state warrant under subsection (3),
176 the claimant must sign a release and waiver on behalf of the
177 claimant, and his or her heirs, successors, and assigns, forever
178 releasing the state or any agency, instrumentality, or political
179 subdivision thereof, or any other entity subject to the
180 provisions of s. 768.28, Florida Statutes, from all present or
181 future claims that the claimant or his or her heirs, successors,
182 or assigns may have against such entities arising out of the
183 factual situation in connection with the conviction for which
184 compensation is sought under this act.

185 (5) Notwithstanding any provision of s. 943.0585, Florida
186 Statutes, the Department of Legal Affairs and the Department of
187 Law Enforcement shall, upon notification by the Department of
188 Financial Services that a claimant is eligible for compensation,
189 immediately take all action necessary to judicially and
190 administratively expunge the claimant's criminal record arising
191 from his or her wrongful arrest, wrongful conviction, and
192 wrongful incarceration. All fees for this process shall be
193 waived.

HB 1025

2008

194 Section 5. Rules.--The Department of Financial Services,
195 on behalf of the Chief Financial Officer, may adopt rules
196 regarding the forms and procedures related to applications for
197 compensation under this act.

198 Section 6. Limitations on attorney's fees and lobbyist's
199 fees.--An attorney, advocate, lobbyist, or any other entity
200 acting in a similar capacity is prohibited from receiving
201 compensation in excess of 25 percent of the total award under
202 this act, or \$1,000, whichever is greater, for providing
203 assistance to, representing, or acting on behalf of a wrongfully
204 accused person.

205 Section 7. Rejection of offer to settle; suit against
206 state.--If the applicant rejects the offer to settle his or her
207 claim for compensation pursuant to this chapter, the applicant
208 may file suit against the state for compensation in the circuit
209 court in which the applicant was convicted pursuant to s.
210 768.28, Florida Statutes.

211 Section 8. This act shall take effect July 1, 2008.