

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"; providing that a person
5 who has been wrongfully convicted of a felony offense and
6 incarcerated within the Department of Corrections as a
7 result of that conviction may be financially compensated
8 if determined to be eligible; providing conditions which
9 constitute eligibility for compensation under the act;
10 defining the term "actually innocent"; providing for
11 judicial finding of eligibility, amount of compensation,
12 and disbursement of funds; providing for a separate
13 judicial finding regarding attorney's fees and costs;
14 providing criteria for judicial findings; providing duties
15 of the Department of Financial Services and the Chief
16 Financial Officer; requiring a specific request regarding
17 release of funds; authorizing the Department of Financial
18 Services to make specified payments; providing that
19 payment shall be made pursuant to specific appropriation
20 provided to the Department of Financial Services;
21 requiring an executed release and waiver as a condition
22 precedent to tender of payment; providing procedures and
23 requirements with respect to payment; providing for
24 legislative redress; providing for waiver of specified
25 tuition and fees for claimants compensated under the act;
26 providing requirements with respect to educational
27 benefits; authorizing the appointment of a public defender
28 to assist with the process of expunging specified records;

29 prohibiting government entities from charging fees for the
30 implementation of the expunction provisions; providing
31 that the Legislature is not deemed to have waived any
32 defense of sovereign immunity or increased the limits of
33 liability as a result of the act or the payment of a claim
34 thereunder; providing legislative intent with respect to
35 amounts awarded under the act; providing an effective
36 date.

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

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

46 WHEREAS, the Legislature acknowledges that the state's
47 system of justice infrequently yields imperfect results which
48 may have tragic consequences, and

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

54 WHEREAS, the Legislature intends that any compensation made
55 pursuant to this act acknowledges the fact that the claimant
56 suffered significant damages unique to the claimant which

57 | resulted from his or her physical restraint and the deprivation
 58 | of freedom, and

59 | WHEREAS, the Legislature intends that any compensation made
 60 | pursuant to this act be the sole compensation to be provided by
 61 | the state for any and all present and future claims arising out
 62 | of the factual situation in connection with the claimant's
 63 | conviction and imprisonment, NOW, THEREFORE,

64 |

65 | Be It Enacted by the Legislature of the State of Florida:

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

69 | Section 2. Eligibility for compensation for wrongful
 70 | incarceration.--

71 | (1) A person who has been wrongfully convicted of a felony
 72 | offense and incarcerated in a prison within the Florida
 73 | Department of Corrections as a result of that conviction is
 74 | eligible for compensation if:

75 | (a) The conviction and sentence has been vacated,
 76 | dismissed, or reversed by a court of competent jurisdiction;

77 | (b) No further proceedings can or will be held against the
 78 | claimant on any facts and circumstances alleged in the
 79 | proceedings which resulted in the conviction;

80 | (c) The claimant petitions the court for a finding of
 81 | eligibility and amount of compensation no more than 6 months
 82 | after the order vacating, reversing, or dismissing the sentence;

83 | (d) The claimant has no other suits pending in state or
 84 | federal court requesting compensation arising out of the factual

85 situation in connection with the conviction for which
86 compensation is being sought under this act;

87 (e) The claimant has not been found guilty of any felony
88 offenses other than the conviction which was dismissed,
89 reversed, or vacated that is the basis for the claim for
90 wrongful incarceration and no felony offenses are currently
91 pending;

92 (f) A claim bill has not been filed relating to the
93 claimant's conviction and incarceration that is the basis for
94 compensation under this act; and

95 (g) The court has made a finding by clear and convincing
96 evidence that the claimant is actually innocent.

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

99 (a) The claimant's acts did not constitute a crime;

100 (b) The claimant did not commit the offense that resulted
101 in his or her conviction and incarceration; and

102 (c) The claimant did not aid, abet, or act as an
103 accomplice or accessory to a person who committed the offense
104 that resulted in his or her conviction and incarceration.

105 Section 3. Judicial finding of eligibility and amount of
106 compensation; findings as to attorney's fees.--

107 (1) The claimant may petition the same court that issued
108 the order vacating, reversing, or dismissing the claimant's
109 conviction and sentence to determine whether the claimant is
110 eligible for compensation pursuant to this act. Such petition
111 may be filed contemporaneously with the motion to vacate,
112 reverse, or dismiss, but may not be filed more than 6 months

113 after the order vacating, reversing, or dismissing the
114 conviction and sentence has been issued. Upon a finding that the
115 claimant is eligible for compensation pursuant to this act, the
116 court shall also make a finding regarding the amount of
117 compensation using the factors set forth in this act.

118 (2) In making a finding regarding the amount of
119 compensation for an eligible claimant, the court shall consider
120 the following factors:

121 (a) The claimant's earning capacity;

122 (b) The claimant's need for drug counseling, alcohol
123 counseling, or both;

124 (c) The claimant's need for mental health counseling;

125 (d) The claimant's need for health insurance; and

126 (e) The claimant's need for housing.

127 (3) For determinations made in 2008, compensation may not
128 exceed a rate of \$50,000 per year of incarceration after
129 conviction, prorated as necessary to account for portions of
130 years, up to a maximum of \$1,500,000. For determinations made
131 after 2008, the court may adjust the annual rate of compensation
132 and maximum amount of compensation for inflation using the
133 Consumer Price Index starting in 2008.

134 (4) The court shall determine whether the compensation
135 shall be payable to the claimant in one single disbursement,
136 through the purchase of an annuity, or through any other
137 combination thereof and shall make specific findings regarding
138 disbursement of funds.

139 (5) The court shall make a separate finding regarding the
140 amount of attorney's fees and reasonable costs. The court may

141 not award attorney's fees that exceed a total of 25 percent of
 142 the court's finding regarding the amount of compensation to the
 143 claimant, or \$1,000, whichever is greater. The finding shall
 144 state with specificity the fees for each of the named attorneys,
 145 as limited by this act. The court shall make a separate finding
 146 as to the amount of their costs.

147 (6) The court shall not make any findings pursuant to this
 148 section regarding fault, liability, or damages.

149 (7) Findings by the court regarding eligibility, the
 150 amount of compensation, and the amount of attorney's fees are
 151 not appealable. If the claimant chooses not to accept the
 152 court's findings, the claimant's sole recourse is the filing of
 153 a legislative claim bill in accordance with the current Rules of
 154 the Florida House of Representatives and the Rules of the
 155 Florida Senate.

156 Section 4. Duties of the Department of Financial Services
 157 and the Chief Financial Officer.--

158 (1) No later than 10 days after receiving the court's
 159 findings regarding the amount of compensation, the Chief
 160 Financial Officer shall request release of funds pursuant to
 161 chapter 216, Florida Statutes.

162 (2) Upon release of the requested funds by the Legislative
 163 Budget Commission, the Department of Financial Services shall
 164 pay the amount of compensation as determined by the court
 165 pursuant to section 3. The Department of Financial Services is
 166 directed to execute all necessary agreements to implement this
 167 act.

168 (3) Subject to specific appropriation made to the

169 Department of Financial Services, the Chief Financial Officer
170 shall purchase an annuity or make such other payment as required
171 by this act upon delivery by the claimant to the Chief Financial
172 Officer of an executed release and waiver on behalf of the
173 claimant and his or her parents, heirs, successors, and assigns
174 forever releasing the State of Florida and any agency,
175 instrumentality, officer, employee, or political subdivision
176 thereof, or any other entity subject to the provisions of s.
177 768.28, Florida Statutes, from any and all present or future
178 claims or declaratory relief the claimant or any of his or her
179 parents, heirs, successors, or assigns may have against such
180 enumerated entities and arising out of the factual situation in
181 connection with the conviction for which compensation is
182 awarded. However, declaratory action to obtain judicial
183 expunction of the claimant's judicial and executive branch
184 records as otherwise provided by law is not prohibited by this
185 act.

186 (4) No later than 90 days after receiving a certified
187 finding from the court that a claimant is eligible for
188 compensation, including a finding regarding the amount of
189 compensation and a finding regarding attorney's fees and costs,
190 the Department of Financial Services shall issue separate
191 warrants to the named attorneys for the amounts set out in the
192 court's findings regarding attorney's fees and costs.

193 (5) There is hereby appropriated recurring general revenue
194 to the Department of Financial Services in an amount sufficient
195 to make payments as provided under this section. The department
196 shall request the release of funds pursuant to chapter 216,

197 Florida Statutes.

198 (6) The Department of Financial Services shall purchase an
 199 annuity or make such other payment as required by this act
 200 pursuant to authority granted by the Legislature for the benefit
 201 of the claimant. Purchase of an annuity or other payment as
 202 required by this act shall be made within 90 days after the
 203 appropriation has become effective.

204 Section 5. If the claimant has not executed the release
 205 and waiver pursuant to section 4(3), the claimant is not
 206 precluded from filing a claim bill in accordance with the
 207 current Rules of the Florida House of Representatives and the
 208 Rules of the Florida Senate, which shall be the sole redress of
 209 any dispute regarding any part of this act.

210 Section 6. Any claimant who is compensated pursuant to
 211 this act shall also have tuition and fees waived for up to a
 212 total of 120 hours of instruction at any career center
 213 established pursuant to s. 1001.44, Florida Statutes, any
 214 community college established under part III of chapter 1004,
 215 Florida Statutes, or any state university. For any educational
 216 benefit provided, the claimant is required to meet and maintain
 217 the regular admission requirements of, and be registered at,
 218 such career center, community college, or state university and
 219 make satisfactory academic progress as defined by the
 220 educational institution in which the claimant is enrolled.

221 Section 7. Notwithstanding any provision of s. 943.0585,
 222 Florida Statutes, any claimant who is compensated pursuant to
 223 this act shall have a public defender appointed from the circuit
 224 in which the claimant currently resides to provide legal

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225 assistance with any action required to judicially and
226 administratively expunge the claimant's nonjudicial criminal
227 record arising from his or her wrongful conviction. If the
228 claimant does not wish to use the services of a public defender,
229 the appointment of the public defender shall cease immediately.
230 A government entity may not charge or impose a fee for the
231 implementation of any part of this section.

232 Section 8. The Legislature shall not be deemed by this act
233 or by the payment of any claim under this act to have waived any
234 defense of sovereign immunity or to have increased the limits of
235 liability on behalf of the state or any person subject to the
236 provisions of s. 768.28, Florida Statutes, or any other law.

237 Section 9. Any amount awarded by this act is intended to
238 provide the sole compensation for any and all present and future
239 claims arising out of the factual situation in connection with
240 the claimant's conviction and imprisonment. No further award for
241 attorney's fees, lobbying fees, costs, or other similar expenses
242 shall be made by the state.

243 Section 10. This act shall take effect July 1, 2008.