

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 that
15 proceedings are intended to be nonadversarial; providing
16 duties of the Department of Financial Services and the
17 Chief Financial Officer; requiring a specific request
18 regarding release of funds; authorizing the Department of
19 Financial Services to make specified payments; requiring
20 an executed release and waiver as a condition precedent to
21 tender of payment; providing procedures and requirements
22 with respect to payment; providing for legislative
23 redress; providing for waiver of specified tuition and
24 fees for claimants compensated under the act; providing
25 requirements with respect to educational benefits;
26 authorizing the appointment of a public defender to assist
27 with the process of expunging specified records;
28 prohibiting government entities from charging fees for the

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

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

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

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

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

53 WHEREAS, the Legislature intends that any compensation made
54 pursuant to this act acknowledges the fact that the claimant
55 suffered significant damages unique to the claimant which
56 resulted from his or her physical restraint and the deprivation

57 | of freedom, and

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

63 |

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

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

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

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

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

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

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

82 | (d) The claimant has no other suits pending in state or
83 | federal court requesting compensation arising out of the factual
84 | situation in connection with the conviction for which

85 compensation is being sought under this act;

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

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

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

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

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

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

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

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

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

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

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

120 (a) The claimant's earning capacity;

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

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

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

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

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

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

138 (5) The court shall make a separate finding regarding the
139 amount of attorney's fees and reasonable costs. The court may
140 not award attorney's fees that exceed a total of 25 percent of

141 the court's finding regarding the amount of compensation to the
142 claimant, or \$1,000, whichever is greater. The finding shall
143 state with specificity the fees for each of the named attorneys,
144 as limited by this act. The court shall make a separate finding
145 as to the amount of their costs.

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

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

155 (8) The proceedings regarding judicial findings as
156 provided for by this section are intended to be nonadversarial.

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

159 (1) No later than 10 days after receiving the court's
160 findings regarding the amount of compensation, the Chief
161 Financial Officer shall request release of funds pursuant to
162 chapter 216, Florida Statutes, if funds have been appropriated
163 in a qualified expenditure category in the General
164 Appropriations Act for the purposes specified in this act. In
165 addition, if any such appropriation is insufficient to satisfy
166 the claim, the Chief Financial Officer shall request the balance
167 in the agency's next legislative budget request or amended
168 legislative budget request submission. If there is no

169 appropriation for this purpose, the entirety of the claim shall
170 be requested in the agency's next legislative budget request or
171 amended legislative budget request submission.

172 (2) Subject to specific appropriation and upon release of
173 the requested funds by the Legislative Budget Commission, the
174 Department of Financial Services shall pay the amount of
175 compensation as determined by the court pursuant to section 3.
176 The Department of Financial Services is directed to execute all
177 necessary agreements to implement this act, including the
178 purchase of an annuity, or make such other payment as determined
179 by the court. Payment shall not be made until delivery by the
180 claimant to the Chief Financial Officer of an executed release
181 and waiver on behalf of the claimant and his or her parents,
182 heirs, successors, and assigns forever releasing the State of
183 Florida and any agency, instrumentality, officer, employee, or
184 political subdivision thereof, or any other entity subject to
185 the provisions of s. 768.28, Florida Statutes, from any and all
186 present or future claims or declaratory relief the claimant or
187 any of his or her parents, heirs, successors, or assigns may
188 have against such enumerated entities and arising out of the
189 factual situation in connection with the conviction for which
190 compensation is awarded. However, declaratory action to obtain
191 judicial expunction of the claimant's judicial and executive
192 branch records as otherwise provided by law is not prohibited by
193 this act.

194 (3) After receiving a certified finding from the court
195 that a claimant is eligible for compensation, including a
196 finding regarding the amount of compensation and a finding

197 regarding attorney's fees and costs, and after release of funds
198 pursuant to this section, the Department of Financial Services
199 shall issue separate warrants to the named attorneys for the
200 amounts set out in the court's findings regarding attorney's
201 fees and costs.

202 Section 5. If the claimant has not executed the release
203 and waiver pursuant to section 4(2), the claimant is not
204 precluded from filing a claim bill in accordance with the
205 current Rules of the Florida House of Representatives and the
206 Rules of the Florida Senate, which shall be the sole redress of
207 any dispute regarding any part of this act.

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

219 Section 7. Notwithstanding any provision of s. 943.0585,
220 Florida Statutes, any claimant who is compensated pursuant to
221 this act shall have a public defender appointed from the circuit
222 in which the claimant currently resides to provide legal
223 assistance with any action required to judicially and
224 administratively expunge the claimant's nonjudicial criminal

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225 record arising from his or her wrongful conviction. If the
226 claimant does not wish to use the services of a public defender,
227 the appointment of the public defender shall cease immediately.
228 A government entity may not charge or impose a fee for the
229 implementation of any part of this section.

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

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

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