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CHAMBER ACTION

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| <u>Senate</u> | . | <u>House</u> |
| Comm: WD | . | |
| 3/25/2008 | . | |
| | . | |
| | . | |

1 The Committee on Judiciary (Diaz de la Portilla) recommended the
2 following **substitute for amendment (541160)**:

Senate Amendment (with title amendment)

5 Delete everything after the enacting clause
6 and insert:

7 Section 1. Short title.--Sections 1-7 of this act may be
8 cited as the "Victims of Wrongful Incarceration Compensation
9 Act."

10 Section 2. Definitions.--As used in sections 1-7 of this
11 act, the term:

12 (1) "Act" means the "Victims of Wrongful Incarceration
13 Compensation Act."

14 (2) "Department" means the Department of Legal Affairs.

15 (3) "Wrongfully incarcerated person" means a person whose
16 felony conviction and sentence of incarceration have been vacated
17 by a court of competent jurisdiction, and with respect to whom



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18 the court has made a finding by clear and convincing evidence
19 that the person did not commit the offense resulting in the
20 conviction and incarceration and that the person did not aid,
21 abet, or act as an accomplice or accessory to a person who
22 committed the offense.

23 Section 3. Finding of wrongful incarceration.--

24 (1) Whenever a court, based on exonerating evidence, enters
25 an order vacating a conviction and sentence, the court shall
26 determine whether the person is a wrongfully incarcerated person.
27 If the court fails to determine whether a person is a wrongfully
28 incarcerated person, the person must file a petition with the
29 court within 30 days of the entry of the order vacating a
30 conviction and sentence for a determination whether the person is
31 a wrongfully incarcerated person in order to apply for
32 compensation under the act.

33 (2) Notwithstanding subsection (1), a person whose
34 conviction and sentence were vacated before July 1, 2008, and who
35 has not subsequently been convicted of the same offense, or any
36 lesser included offense, arising out of the same facts, may
37 petition the court for a determination of whether the person is a
38 wrongfully incarcerated person if the prosecuting authority is
39 given reasonable notice in writing that the person intends to
40 petition the court for such a finding. The person must file the
41 petition with the court by July 1, 2010, for a determination
42 whether the person is a wrongfully incarcerated person in order
43 to apply for compensation under the act.

44 (3) In determining whether a person is a wrongfully
45 incarcerated person, the court must set forth in detail the
46 evidence upon which the finding is based.



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47 Section 4. Eligibility for compensation for wrongful
48 incarceration.--A wrongfully incarcerated person is not eligible
49 for compensation under the act if:

50 (1) Before the person's wrongful conviction and
51 incarceration, the person was convicted of, or pled guilty or
52 nolo contendere to, regardless of adjudication, any felony
53 offense, or a crime committed in another jurisdiction the
54 elements of which would constitute a felony in this state, or a
55 crime committed against the United States which is designated a
56 felony, excluding any delinquency disposition;

57 (2) During the person's wrongful incarceration, the person
58 was also serving a concurrent sentence for another crime for
59 which the person was not wrongfully convicted; or

60 (3) The person initiates his or her application for
61 compensation as required by section 6 of this act more than 2
62 years after a court of competent jurisdiction determines the
63 person is a wrongfully incarcerated person.

64
65 Notwithstanding the conditions set forth in subsection (1), if a
66 wrongfully incarcerated person has only one prior felony
67 conviction, excluding forcible felonies as defined in s. 766.08,
68 and the felony conviction occurred at least 5 years prior to the
69 person's wrongful incarceration, the person shall be eligible for
70 compensation under the act.

71 Section 5. Compensation for wrongful incarceration.--

72 (1) Except as otherwise provided in the act and subject to
73 the limitations and procedures prescribed in section 6 of this
74 act, a person who is found to be a wrongfully incarcerated person
75 is entitled to:



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76 (a) Monetary compensation equal to 125 percent of the
77 Florida per capita personal income as reported by the Office of
78 Economic and Demographic Research for the year in which the court
79 vacates the conviction and sentence multiplied by the number of
80 years of wrongful incarceration, prorated as necessary to account
81 for a portion of a year;

82 (b) A waiver of tuition and fees for up to 120 hours of
83 instruction at any career center established under s. 1001.44,
84 Florida Statutes, any community college established under part
85 III of chapter 1004, Florida Statutes, or any state university,
86 if the wrongfully incarcerated person meets and maintains the
87 regular admission requirements of such career center, community
88 college, or state university; remains registered at such
89 educational institution; and makes satisfactory academic progress
90 as defined by the educational institution in which the claimant
91 is enrolled;

92 (c) The amount of any fine, penalty or court costs imposed
93 and paid by the wrongfully incarcerated person; and

94 (d) The amount of any reasonable attorney fees and expenses
95 incurred and paid by the wrongfully incarcerated person in
96 connection with all criminal proceedings and appeals regarding
97 the wrongful conviction, to be calculated by the department based
98 upon the supporting documentation submitted as specified in
99 section 6.

100
101 The total compensation awarded under paragraphs (a), (c), and (d)
102 may not exceed \$2,000,000. No further award for attorney's fees,
103 lobbying fees, costs, or other similar expenses shall be made by
104 the state.



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105 (2) In calculating monetary compensation under paragraph
106 (1) (a), a wrongfully incarcerated person who is placed on parole
107 or community supervision while serving the sentence resulting
108 from the wrongful conviction and commits anything less than a
109 felony law violation that results in revocation of the parole or
110 community supervision shall be eligible for compensation for the
111 total number of years incarcerated. A wrongfully incarcerated
112 person who commits a felony law violation that results in
113 revocation of the parole or community supervision shall be
114 ineligible for any compensation under subsection (1).

115 Section 6. Application for compensation for wrongful
116 incarceration.--

117 (1) A wrongfully incarcerated person seeking compensation
118 under the act must apply to the department. No estate of, or
119 personal representative for, a decedent is entitled to apply, on
120 behalf of the decedent, for compensation for wrongful
121 incarceration.

122 (2) The application must include:

123 (a) A certified copy of the order vacating the conviction
124 and sentence and the order finding the claimant to be a
125 wrongfully incarcerated person;

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

127 (c) Documentation demonstrating the length of the sentence
128 served, including documentation from the Department of
129 Corrections regarding the person's admission into and release
130 from the custody of the Department of Corrections;

131 (d) Positive proof of identification, including
132 fingerprints and a current form of photo identification,
133 demonstrating that the person seeking compensation is the same
134 individual who was wrongfully incarcerated;



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135 (e) All information necessary for the department to obtain
136 through the Department of Law Enforcement the person's criminal
137 history or criminal record;

138 (f) All supporting documentation of any fine, penalty, or
139 court costs imposed and paid by the wrongfully incarcerated
140 person as described in section 5, paragraph (1)(c); and

141 (g) All supporting documentation of any reasonable
142 attorney's fees and expenses as described in section 5, paragraph
143 (1)(d).

144 (3) Upon receipt of an application, the department shall
145 examine the application and notify the claimant within 30
146 calendar days of any errors or omissions, and request any
147 additional information relevant to the review of the application.
148 The department may not deny an application for failure of the
149 claimant to correct an error or omission or supply additional
150 information unless the department timely notified the claimant of
151 such errors or omissions or requested the additional information
152 within the 30-day period specified in this subsection. The
153 department shall process and review each completed application
154 within 90 calendar days. Once the department determines whether a
155 claim for compensation meets the requirements of the act, the
156 department shall notify the claimant within 5 business days of
157 that determination.

158 (4) Within 15 calendar days after issuing notice to the
159 claimant that his or her claim satisfies all of the requirements
160 under the act, the department shall notify the Chief Financial
161 Officer to draw warrants from the General Revenue Fund or another
162 source designated by the Legislature in law payable to the
163 claimant based on the total amount determined by the department
164 under section 5 of this act.



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165 (5)(a) If the wrongfully incarcerated person was
166 incarcerated for a period of time equal to or greater than 10
167 years, the compensation awarded under section 5 of this act shall
168 be distributed in an initial lump sum equal to 20 percent of the
169 total compensation awarded, with the remaining 80 percent
170 distributed in annual equal installments over a 10-year period.
171 The Chief Financial Officer shall issue the 20 percent lump-sum
172 payment within 30 days after receiving notice from the department
173 as required in subsection (4). The Chief Financial Officer shall
174 issue the first installment payment on the one-year anniversary
175 of the lump-sum payment, with subsequent installments issued in
176 subsequent years on the anniversary date of the lump-sum payment.

177 (b) If the wrongfully incarcerated person was incarcerated
178 for a period of time less than 10 years, the compensation awarded
179 under section 5 of this act shall be distributed in equal annual
180 installments over the number of years the wrongfully incarcerated
181 person was incarcerated, not including a portion of a year. The
182 Chief Financial Officer shall issue the first installment within
183 30 days after receiving notice from the department as required in
184 subsection (4), with subsequent installments issued in subsequent
185 years on the anniversary date of the first installment payment.

186 (6) Before receiving the first warrant, the claimant must
187 sign a release and waiver on behalf of the claimant and his or
188 her heirs, successors, and assigns, forever releasing the state
189 or any agency, instrumentality, or any political subdivision
190 thereof, or any other entity subject to the provisions of s.
191 768.28, Florida Statutes, from all present or future claims that
192 the claimant or his or her heirs, successors, or assigns may have
193 against such entities arising out of the facts in connection with
194 the wrongful conviction for which compensation is being sought



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195 under the act. The release and waiver must be provided to the
196 department prior to the issuance of the first warrant of payment
197 by the Chief Financial Officer.

198 (7) (a) A wrongfully incarcerated person may not submit an
199 application for compensation under the act if the person has a
200 lawsuit pending in state or federal court requesting compensation
201 arising out of the facts in connection with the claimant's
202 conviction and incarceration.

203 (b) A wrongfully incarcerated person may not submit an
204 application for compensation under the act if the person is the
205 subject of a claim bill pending for claims arising out of the
206 facts in connection with the claimant's conviction and
207 incarceration.

208 (c) Once an application is filed under the act, a
209 wrongfully incarcerated person may not pursue recovery under a
210 claim bill until the final disposition of the application.

211 (d) Any amount awarded under the act is intended to provide
212 the sole compensation for any and all present and future claims
213 arising out of the facts in connection with the claimant's
214 conviction and incarceration. Upon notification by the department
215 that an application meets the requirements of the act as required
216 in subsection (3), a wrongfully incarcerated person may not
217 recover under a claim bill.

218 (e) Any compensation awarded under a claim bill shall be
219 the sole redress for claims arising out of the facts in
220 connection with the claimant's conviction and incarceration, and
221 upon any award of compensation to a wrongfully incarcerated
222 person under a claim bill, the person may not receive
223 compensation under the act.



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224 (8) Any payment made under the act does not constitute a
225 waiver of any defense of sovereign immunity or an increase in the
226 limits of liability on behalf of the state or any person subject
227 to the provisions of s. 768.28, Florida Statutes, or other law.

228 (9) Payments under the act shall immediately cease:

229 (a) If the wrongfully incarcerated person is convicted of,
230 or pleads guilty or nolo contendere to, regardless of
231 adjudication, any felony offense, or a crime committed in another
232 jurisdiction the elements of which would constitute a felony in
233 this state, or a crime committed against the United States which
234 is designated a felony; or

235 (b) Upon the death of the wrongfully incarcerated person.
236 The estate of, the personal representative for, and the heirs,
237 successors, and assigns of the wrongfully incarcerated person
238 shall have no right to receive future payments the person was
239 entitled to receive under the act.

240 (10) Upon any conviction of a felony in this state or
241 another jurisdiction after submission of an application under
242 this section, a wrongfully incarcerated person must immediately
243 report the felony conviction to the department. The department,
244 in conjunction with the Chief Financial Officer, shall determine
245 annually, before a warrant is issued for that year, whether a
246 wrongfully incarcerated person remains eligible for compensation
247 under the act by reviewing state and national criminal history
248 databases, as well as vital statistic records of the state.

249 Section 7. Continuing appropriation.--Beginning in fiscal
250 year 2008-2009 and continuing each fiscal year thereafter, a sum
251 sufficient to pay the approved payments under the act is
252 appropriated from the General Revenue Fund.



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253 Section 8. Subsection (17) is added to Section 775.15,
254 Florida Statutes, to read:

255 775.15 Time limitations; general time limitations;
256 exceptions.--

257 (17) Notwithstanding any statute of limitation applicable
258 under this section or the speedy trial rule, the state attorney
259 may, upon vacation of a person's conviction and sentence based on
260 exonerating evidence, pursue prosecution of any other offense,
261 arising from the facts that formed the basis of the conviction,
262 the charges for which the state has filed a nolle prosequi, or
263 has filed a nolle prosequi as a condition of the person's entry
264 of a plea of guilty or nolo contendere on the offense for which
265 he or she was subsequently exonerated.

266 Section 9. To the extent that it is in conflict with the
267 revisions made by this act to s. 775.15, Florida Statutes,
268 Florida Rule of Criminal Procedure 3.191 is hereby repealed.

269 Section 10. If any provision of this act or its application
270 to any person or circumstance is held invalid, the invalidity
271 does not affect other provisions or applications of the act which
272 can be given effect without the invalid provision or application,
273 and to this end the provisions of the act are severable.

274 Section 11. This act shall take effect July 1, 2008.

276 ===== T I T L E A M E N D M E N T =====

277 And the title is amended as follows:

278 Delete everything before the enacting clause
279 and insert:

280 A bill to be entitled
281 An act relating to wrongful incarceration; providing a
282 short title; creating the Victims of Wrongful



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283 Incarceration Compensation Act; providing definitions;
284 requiring a court to determine whether a person is a
285 wrongfully incarcerated person; providing for a petition
286 for determination of wrongful incarceration; providing
287 exceptions and limitations regarding the eligibility of a
288 wrongfully incarcerated person for compensation; providing
289 for monetary compensation for certain wrongfully
290 incarcerated persons; providing for recovery of reasonable
291 attorney's fees and other costs with limitations for
292 certain wrongfully incarcerated persons; providing for
293 tuition waivers for wrongfully incarcerated persons who
294 meet certain requirements; requiring that a wrongfully
295 incarcerated person seeking compensation apply to the
296 Department of Legal Affairs; providing application
297 requirements and a deadline; requiring that the Department
298 of Legal Affairs review each application and notify the
299 claimant of any omissions or errors, or the need for
300 additional information, within a specified period;
301 requiring that the Department of Legal Affairs process and
302 review each completed application within a specified
303 period; requiring that the Department of Legal Affairs
304 notify the claimant if he or she qualifies for
305 compensation within a specified period; requiring that any
306 monetary compensation be paid within a specified period by
307 specified means; prescribing conditions under which
308 compensation payments cease; requiring a wrongfully
309 incarcerated person to report any subsequent felony
310 convictions; specifying that the estate, personal
311 representative of, or heirs of the wrongfully incarcerated
312 person are not entitled to future payments; prescribing



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313 | conditions under which an application may not be filed and
314 | compensation may not be awarded; requiring a claimant to
315 | sign a release before receiving such compensation;
316 | providing for a continuing appropriation from the General
317 | Revenue Fund; providing that an award of compensation does
318 | not constitute a waiver of sovereign immunity by the
319 | state; authorizing prosecution of certain claims arising
320 | from the facts associated with a wrongful conviction;
321 | providing for severability; providing an effective date.