



438704

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
4/8/2008	.	
	.	
	.	

1 The Committee on Criminal Justice (Aronberg) recommended the
2 following **amendment**:

3
4 **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) "Division" means the Division of Administrative
16 Hearings.



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17 (4) "Wrongfully incarcerated person" means a person whose
18 felony conviction and sentence have been vacated by a court of
19 competent jurisdiction, and with respect to whom, pursuant to the
20 requirements of section 3 of this act, the original sentencing
21 court has issued its order finding that the person neither
22 committed the act nor the offense that served as the basis for
23 the conviction and incarceration and that the person did not aid,
24 abet, or act as an accomplice or accessory to a person who
25 committed the act or offense.

26 (5) "Eligible for compensation" means a person meets the
27 definition of "wrongfully incarcerated person" and is not
28 disqualified from seeking compensation under the criteria
29 prescribed in subsections (1)-(3) of section 4 of this act.

30 (6) "Entitled to compensation" means a person meets the
31 definition of "eligible for compensation" and satisfies the
32 application requirements prescribed in section 5 under this act,
33 and may receive compensation pursuant to section 6 of this act.

34 Section 3. Determination of status as a wrongfully
35 incarcerated person; determination of eligibility for
36 compensation. -

37 (1) (a) In order to meet the definition of a "wrongfully
38 incarcerated person" and "eligible for compensation," upon entry
39 of an order, based upon exonerating evidence, vacating a
40 conviction and sentence, a person must set forth the claim of
41 wrongful incarceration under oath and with particularity by
42 filing a petition with the original sentencing court, with a copy
43 of the petition and proper notice to the prosecuting authority in
44 the underlying felony for which the person was incarcerated. At
45 a minimum, the petition must:



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46 1. State that verifiable and substantial evidence of actual
47 innocence exists and state with particularity the nature and
48 significance of the verifiable and substantial evidence of actual
49 innocence; and

50 2. State that the person is not disqualified, under the
51 provisions of subsections (1)-(3) of section 4, from seeking
52 compensation under this act.

53 (b) The person must file the petition with the court:

54 1. Within 30 days of the entry of the order vacating a
55 conviction and sentence if the person's conviction and sentence
56 is vacated on or after July 1, 2008.

57 2. By July 1, 2010, if the person's conviction and sentence
58 was vacated prior to July 1, 2008.

59 (2) The prosecuting authority must respond to the petition
60 within 30 days. The prosecuting authority may respond:

61 (a) By certifying to the court that, based upon the
62 petition and verifiable and significant evidence of actual
63 innocence, no further criminal proceedings in the case at bar can
64 or will be initiated by the prosecuting authority, that no
65 questions of fact remain as to the petitioner's wrongful
66 incarceration, and that the petitioner is not ineligible from
67 seeking compensation under the provisions of subsections (1)-(3)
68 of section 4 of this act; or

69 (b) By contesting the nature, significance, or effect of
70 the evidence of actual innocence, the facts related to the
71 petitioner's alleged wrongful incarceration, or whether the
72 petitioner is ineligible from seeking compensation under the
73 provisions of subsections (1)-(3) of section 4 of this act.

74 (3) If the prosecuting authority responds as set forth in
75 paragraph (2) (a) of this section, the original sentencing court,



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76 based upon the evidence of actual innocence, the prosecuting
77 authority's certification, and upon the court's finding that the
78 petitioner has presented clear and convincing evidence that the
79 petitioner committed neither the act nor the offense that served
80 as the basis for the conviction and incarceration, and that the
81 petitioner did not aid, abet, or act as an accomplice to a person
82 who committed the act or offense, shall certify to the department
83 that the petitioner is a wrongfully incarcerated person as
84 defined by this act. Based upon the prosecuting authority's
85 certification, the court shall also certify to the department
86 that the petitioner is eligible for compensation under the
87 provisions of subsections (1)-(3) of section 4 of this act.

88 (4) (a) If the prosecuting authority responds as set forth
89 in paragraph (2) (b) of this section, the original sentencing
90 court shall make a determination from the pleadings and
91 supporting documentation whether, by a preponderance of the
92 evidence, the petitioner is ineligible for compensation under the
93 provisions of subsections (1)-(3) of section 4 of this act,
94 regardless of his or her claim of wrongful conviction and
95 incarceration. If the court finds the petitioner ineligible under
96 the provisions of subsections (1)-(3) of section 4, it shall
97 dismiss the petition.

98 (b) If the prosecuting authority responds as set forth in
99 paragraph (2) (b) of this section, and the court determines that
100 the petitioner is eligible under the provisions of subsections
101 (1)-(3) of subsection 4, but that the prosecuting authority
102 contests the nature, significance or effect of the evidence of
103 actual innocence, or the facts related to the petitioner's
104 alleged wrongful incarceration, the court shall set forth its
105 findings and transfer the petition to the division for findings



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106 of fact and a recommended determination of whether the petitioner
107 has established that he or she is a wrongfully incarcerated
108 person who is eligible for compensation under this act.

109 (5) Any questions of fact, the nature, significance or
110 effect of the evidence of actual innocence, and the petitioner's
111 eligibility for compensation under this act must be established
112 by clear and convincing evidence by the petitioner before an
113 administrative law judge.

114 (6) (a) Pursuant to division rules and any additional rules
115 set forth by the administrative law judge, a hearing shall be
116 conducted no later than 120 days after the transfer of the
117 petition.

118 (b) The prosecuting authority shall appear for the purpose
119 of contesting, as necessary, the facts, and the nature,
120 significance and effect of the evidence of actual innocence as
121 presented by the petitioner.

122 (c) No later than 45 days after the adjournment of the
123 hearing, the administrative law judge shall issue an order
124 setting forth his or her findings and recommendation and shall
125 file the order with the original sentencing court.

126 (d) The original sentencing court shall review the findings
127 and recommendation contained in the order of the administrative
128 law judge, and within 60 days, shall issue its own order adopting
129 or declining to adopt the findings and recommendation of the
130 administrative law judge.

131 (7) If the court concludes that the petitioner is a
132 wrongfully incarcerated person as defined by this act and is
133 eligible for compensation as defined in this act, the court shall
134 include in its order a certification to the department that:



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135 (a)1. The order of the administrative law judge finds that
136 the petitioner has met his or her burden of establishing by clear
137 and convincing evidence that the petitioner committed neither the
138 act nor the offense that served as the basis for the conviction
139 and incarceration and that the petitioner did not aid, abet, or
140 act as an accomplice to a person who committed the act or
141 offense; or

142 2. That the court has declined to adopt the findings and
143 recommendations of the administrative law judge and finds that
144 the petitioner has met his or her burden of establishing by clear
145 and convincing evidence that the petitioner committed neither the
146 act nor the offense that served as the basis for the conviction
147 and incarceration and that the petitioner did not aid, abet, or
148 act as an accomplice to a person who committed the act or
149 offense; and

150 (b) The original sentencing court determines the findings
151 and recommendations on which its order is based are supported by
152 competent, substantial evidence.

153 (8) The establishment of the method by which a person may
154 seek the status of a wrongfully incarcerated person and a finding
155 as to eligibility for compensation under this act in no way
156 creates any rights of due process beyond those set forth herein,
157 nor is there created any right to further petition or appeal
158 beyond the scope of the method set forth herein.

159 Section 4. Compensation for wrongful incarceration;
160 disqualification.--A wrongfully incarcerated person is not
161 eligible for compensation under the act if:

162 (1) Before the person's wrongful conviction and
163 incarceration, the person was convicted of, or pled guilty or



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164 | nolo contendere to, regardless of adjudication, any of the
165 | following felony offenses:
166 | (a) Homicide;
167 | (b) Sexual battery;
168 | (c) Lewd or lascivious offenses set forth in s. 800.04;
169 | (d) Robbery;
170 | (e) Burglary, except those offenses listed in s.
171 | 810.02(4)(a) or (b), F.S.;
172 | (f) Arson;
173 | (g) Aggravated assault;
174 | (h) Aggravated battery;
175 | (i) Kidnapping;
176 | (j) Escape;
177 | (k) Aircraft piracy;
178 | (l) Aggravated child abuse;
179 | (m) Aggravated abuse of an elderly person or disabled
180 | adult;
181 | (n) Unlawful throwing, placing, or discharging of a
182 | destructive device or bomb;
183 | (o) Carjacking;
184 | (p) Home-invasion robbery;
185 | (q) Aggravated stalking;
186 | (r) Possession of a firearm by a convicted felon; or
187 | (s) Trafficking in cannabis, trafficking in cocaine,
188 | capital importation of cocaine, trafficking in illegal drugs,
189 | capital importation of illegal drugs, trafficking in
190 | phencyclidine, capital importation of phencyclidine, trafficking
191 | in methaqualone, capital importation of methaqualone, trafficking
192 | in amphetamine, capital importation of amphetamine, trafficking
193 | in flunitrazepam, trafficking in gamma-hydroxybutyric acid (GHB),



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194 trafficking in 1,4-Butanediol, trafficking in Phenethylamines, or
195 other violation of s. 893.135(1); or

196
197 a crime committed in another jurisdiction the elements of which
198 would constitute one of the felonies listed in this subsection in
199 this state, or a crime committed against the United States which
200 is designated a felony the elements of which would constitute one
201 of the felonies listed in this subsection, excluding any
202 delinquency disposition; or

203 (2) During the person's wrongful incarceration, the person
204 was convicted of, or pled guilty or nolo contendere to,
205 regardless of adjudication, any offense listed in subsection (1)
206 of this section; or

207 (3) During the person's wrongful incarceration, the person
208 was also serving a concurrent sentence for a separate offense for
209 which the person was not wrongfully convicted and which is not
210 listed in subsection (1), except that the person may receive
211 compensation for those years of wrongful incarceration that
212 exceed the number of years of the concurrent sentence.

213 Section 5. Application for compensation for wrongful
214 incarceration; administrative expunction; determination of
215 entitlement to compensation. -

216 (1) A wrongfully incarcerated person who is eligible for
217 compensation as defined in this act must initiate his or her
218 application for compensation as required in this section no more
219 than 2 years after the original sentencing court enters its order
220 finding that the person meets the definition of wrongfully
221 incarcerated person and is eligible for compensation as defined
222 in this act.



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223 (2) A wrongfully incarcerated person who is eligible for
224 compensation under the act must apply to the Department of Legal
225 Affairs. No estate of, or personal representative for, a decedent
226 is entitled to apply on behalf of the decedent, for compensation
227 for wrongful incarceration.

228 (3) The Department of Legal Affairs may adopt rules
229 regarding the forms and procedures related to applications for
230 compensation under the Victims of Wrongful Incarceration
231 Compensation Act.

232 (4) The application must include:

233 (a) A certified copy of the order vacating the conviction
234 and sentence;

235 (b) A certified copy of the original sentencing court's
236 order finding the claimant to be a wrongfully incarcerated person
237 who is eligible for compensation under this act;

238 (c) Certified copies of the original judgment and sentence;

239 (d) Documentation demonstrating the length of the sentence
240 served, including documentation from the Department of
241 Corrections regarding the person's admission into and release
242 from the custody of the Department of Corrections;

243 (e) Positive proof of identification, including
244 fingerprints and a current form of photo identification,
245 demonstrating that the person seeking compensation is the same
246 individual who was wrongfully incarcerated;

247 (f) All information necessary for the department to obtain
248 through the Department of Law Enforcement the person's criminal
249 history or criminal record;

250 (g) All supporting documentation of any fine, penalty, or
251 court costs imposed and paid by the wrongfully incarcerated
252 person as described in section 6, paragraph (1)(c);



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253 (h) All supporting documentation of any reasonable
254 attorney's fees and expenses as described in section 6, paragraph
255 (1) (d); and

256 (i) Any other documentation, evidence, or information
257 required by rules adopted by the Department of Legal Affairs.

258 (5) Upon receipt of an application, the department shall
259 examine the application and notify the claimant within 30
260 calendar days of any errors or omissions, and request any
261 additional information relevant to the review of the application.
262 The claimant shall have 15 days after proper notification of any
263 existing errors or omissions to supplement the application. The
264 department may not deny an application for failure of the
265 claimant to correct an error or omission or supply additional
266 information unless the department timely notified the claimant of
267 such errors or omissions or requested the additional information
268 within the 30-day period specified in this subsection. The
269 department shall process and review each completed application
270 within 90 calendar days. Once the department determines whether a
271 claim for compensation meets the requirements of the act, the
272 department shall notify the claimant within 5 business days of
273 that determination.

274 (6) If the department determines that a claimant meets the
275 requirements of the act, the wrongfully incarcerated person who
276 is the subject of the claim becomes entitled to compensation,
277 subject to the provisions in section 6 of the act.

278 Section 6. Compensation for wrongful incarceration.--

279 (1) Except as otherwise provided in the act and subject to
280 the limitations and procedures prescribed in this section, a
281 person who is found to be entitled to compensation under the
282 provisions of this act is entitled to:



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283 (a) Monetary compensation for wrongful incarceration, which
284 shall be calculated at a rate of \$50,000 for each year of
285 wrongful incarceration, prorated as necessary to account for a
286 portion of a year. For persons found to be wrongfully
287 incarcerated after December 31, 2008, the Chief Financial Officer
288 may adjust the annual rate of compensation for inflation using
289 the change in the December-to-December "Consumer Price Index for
290 All Urban Consumers" of the Bureau of Labor Statistics of the
291 Department of Labor.

292 (b) A waiver of tuition and fees for up to 120 hours of
293 instruction at any career center established under s. 1001.44,
294 Florida Statutes, any community college as defined in s.
295 1000.21(3), or any state university as defined in 1000.21(6), if
296 the wrongfully incarcerated person meets and maintains the
297 regular admission requirements of such career center, community
298 college, or state university; remains registered at such
299 educational institution; and makes satisfactory academic progress
300 as defined by the educational institution in which the claimant
301 is enrolled;

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

304 (d) The amount of any reasonable attorney fees and expenses
305 incurred and paid by the wrongfully incarcerated person in
306 connection with all criminal proceedings and appeals regarding
307 the wrongful conviction, to be calculated by the department based
308 upon the supporting documentation submitted as specified in
309 section 5; and

310 (e) Notwithstanding any provision to the contrary in s.
311 943.0585, Florida Statutes, immediate administrative expunction
312 of the person's criminal record resulting from his or her



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313 wrongful arrest, wrongful conviction, and wrongful incarceration.
314 The Department of Legal Affairs and the Department of Law
315 Enforcement shall, upon a determination that a claimant is
316 entitled to compensation, immediately take all action necessary
317 to administratively expunge the claimant's criminal record
318 arising from his or her wrongful arrest, wrongful conviction, and
319 wrongful incarceration. All fees for this process shall be
320 waived.

321
322 The total compensation awarded under paragraphs (a), (c), and (d)
323 may not exceed \$2,000,000. No further award for attorney's fees,
324 lobbying fees, costs, or other similar expenses shall be made by
325 the state.

326 (2) In calculating monetary compensation under paragraph
327 (1) (a), a wrongfully incarcerated person who is placed on parole
328 or community supervision while serving the sentence resulting
329 from the wrongful conviction and who commits anything less than a
330 felony law violation that results in revocation of the parole or
331 community supervision shall be eligible for compensation for the
332 total number of years incarcerated. A wrongfully incarcerated
333 person who commits a felony law violation that results in
334 revocation of the parole or community supervision shall be
335 ineligible for any compensation under subsection (1).

336 (3) Within 15 calendar days after issuing notice to the
337 claimant that his or her claim satisfies all of the requirements
338 under the act, the department shall notify the Chief Financial
339 Officer to draw warrants from the General Revenue Fund or another
340 source designated by the Legislature in law payable to the
341 claimant based on the total amount determined by the department
342 under section 5 of this act.



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343 (4) (a) If the wrongfully incarcerated person was
344 incarcerated for a period of time equal to or greater than 10
345 years, the compensation awarded under this section shall be
346 distributed in an initial lump sum equal to 20 percent of the
347 total compensation awarded, with the remaining 80 percent
348 distributed in annual equal installments over a 10-year period.
349 The Chief Financial Officer shall issue the 20 percent lump-sum
350 payment within 30 days after receiving notice from the department
351 as required in subsection (3). The Chief Financial Officer shall
352 issue the first installment payment on the one-year anniversary
353 of the lump-sum payment, with subsequent installments issued in
354 subsequent years on the anniversary date of the lump-sum payment.

355 (b) If the wrongfully incarcerated person was incarcerated
356 for a period of time less than 10 years, the compensation awarded
357 under this section shall be distributed in equal annual
358 installments over the number of years the wrongfully incarcerated
359 person was incarcerated, not including a portion of a year. The
360 Chief Financial Officer shall issue the first installment within
361 30 days after receiving notice from the department as required in
362 subsection (3), with subsequent installments issued in subsequent
363 years on the anniversary date of the first installment payment.

364 (5) Before receiving the first warrant, the claimant must
365 sign a release and waiver on behalf of the claimant and his or
366 her heirs, successors, and assigns, forever releasing the state
367 or any agency, instrumentality, or any political subdivision
368 thereof, or any other entity subject to the provisions of s.
369 768.28, Florida Statutes, from all present or future claims that
370 the claimant or his or her heirs, successors, or assigns may have
371 against such entities arising out of the facts in connection with
372 the wrongful conviction for which compensation is being sought



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373 under the act. The release and waiver must be provided to the
374 department prior to the issuance of the first warrant of payment
375 by the Chief Financial Officer.

376 (6) (a) A wrongfully incarcerated person may not submit an
377 application for compensation under the act if the person has a
378 lawsuit pending against the state or any agency, instrumentality,
379 or any political subdivision thereof, or any other entity subject
380 to the provisions of s. 768.28, Florida Statutes, in state or
381 federal court requesting compensation arising out of the facts in
382 connection with the claimant's conviction and incarceration.

383 (b) A wrongfully incarcerated person may not submit an
384 application for compensation under the act if the person is the
385 subject of a claim bill pending for claims arising out of the
386 facts in connection with the claimant's conviction and
387 incarceration.

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

391 (d) Any amount awarded under the act is intended to provide
392 the sole compensation for any and all present and future claims
393 arising out of the facts in connection with the claimant's
394 conviction and incarceration. Upon notification by the department
395 that an application meets the requirements of the act as required
396 in subsection (5), a wrongfully incarcerated person may not
397 recover under a claim bill.

398 (e) Any compensation awarded under a claim bill shall be
399 the sole redress for claims arising out of the facts in
400 connection with the claimant's conviction and incarceration, and
401 upon any award of compensation to a wrongfully incarcerated



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402 person under a claim bill, the person may not receive
403 compensation under the act.

404 (7) Any payment made under the act does not constitute a
405 waiver of any defense of sovereign immunity or an increase in the
406 limits of liability on behalf of the state or any person subject
407 to the provisions of s. 768.28, Florida Statutes, or other law.

408 (8) Payments under the act shall immediately cease:

409 (a) If the wrongfully incarcerated person is convicted of,
410 or pleads guilty or nolo contendere to, regardless of
411 adjudication, any felony offense, or a crime committed in another
412 jurisdiction the elements of which would constitute a felony in
413 this state, or a crime committed against the United States which
414 is designated a felony; or

415 (b) Upon the death of the wrongfully incarcerated person.
416 The estate of, the personal representative for, and the heirs,
417 successors, and assigns of the wrongfully incarcerated person
418 shall have no right to receive future payments the person was
419 entitled to receive under the act.

420 (9) Upon any conviction of a felony in this state or
421 another jurisdiction after submission of an application under
422 this section, a wrongfully incarcerated person must immediately
423 report the felony conviction to the department. The department,
424 in conjunction with the Chief Financial Officer, shall determine
425 annually, before a warrant is issued for that year, whether a
426 wrongfully incarcerated person remains eligible for compensation
427 under the act by reviewing state and national criminal history
428 databases, as well as vital statistic records of the state.

429 Section 7. Continuing appropriation.--Beginning in fiscal
430 year 2008-2009 and continuing each fiscal year thereafter, a sum
431 sufficient to pay the approved payments under the act is



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432 appropriated from the General Revenue Fund to the Chief Financial
433 Officer, which sum is further appropriated for expenditure
434 pursuant to the provisions of this act.

435 Section 8. If any provision of this act or its application
436 to any person or circumstance is held invalid, the invalidity
437 does not affect other provisions or applications of the act which
438 can be given effect without the invalid provision or application,
439 and to this end the provisions of this act are severable.

440 Section 9. This act shall take effect July 1, 2008.

441
442 ===== T I T L E A M E N D M E N T =====

443 And the title is amended as follows:

444 Delete everything before the enacting clause
445 and insert:

446 A bill to be entitled
447 An act relating to compensation for wrongful
448 incarceration; creating the Victims of Wrongful
449 Incarceration Compensation Act; providing definitions;
450 providing a limited method by which a person may seek the
451 status of a wrongfully incarcerated person who is eligible
452 and entitled to compensation under this act; requiring a
453 sworn petition by the claimant; requiring the petitioner
454 to show verifiable and substantial evidence of actual
455 innocence; requiring the original prosecuting authority to
456 respond to the petition; providing for a determination on
457 the pleadings whether claimant is ineligible for
458 compensation based on past criminal history; providing for
459 a contested factual determination before an administrative
460 law judge if necessary; requiring the original sentencing
461 court to determine whether a person is a wrongfully



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462 | incarcerated person based upon clear and convincing
463 | evidence; providing exceptions and limitations regarding
464 | the eligibility of a wrongfully incarcerated person for
465 | compensation; requiring the original sentencing court to
466 | include a finding of eligibility for compensation in its
467 | order; granting rule-making authority to the Department of
468 | Legal Affairs; requiring that a wrongfully incarcerated
469 | person seeking compensation apply to the Department of
470 | Legal Affairs; providing application requirements and a
471 | deadline; requiring that the Department of Legal Affairs
472 | review each application and notify the claimant of any
473 | omissions or errors, or the need for additional
474 | information, within a specified period; requiring that the
475 | Department of Legal Affairs process and review each
476 | completed application within a specified period; requiring
477 | that the Department of Legal Affairs notify the claimant
478 | if he or she qualifies for compensation within a specified
479 | period; providing for monetary compensation for certain
480 | wrongfully incarcerated persons; providing for recovery of
481 | reasonable attorney's fees and other costs with
482 | limitations for certain wrongfully incarcerated persons;
483 | providing for tuition waivers for wrongfully incarcerated
484 | persons who meet certain requirements; providing for
485 | administrative expunction of certain records; requiring
486 | that any monetary compensation be paid within a specified
487 | period by specified means; prescribing conditions under
488 | which compensation payments cease; requiring a wrongfully
489 | incarcerated person to report any subsequent felony
490 | convictions; specifying that the estate, personal
491 | representative of, or heirs of the wrongfully incarcerated



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492 | person are not entitled to future payments; prescribing
493 | conditions under which an application may not be filed and
494 | compensation may not be awarded; requiring a claimant to
495 | sign a release before receiving such compensation;
496 | providing for a continuing appropriation from the General
497 | Revenue Fund; providing that an award of compensation does
498 | not constitute a waiver of sovereign immunity by the
499 | state; providing for severability; providing an effective
500 | date.