

Bill No. SB 756



541160

CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: WD	.	
3/25/2008	.	
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1 The Committee on Judiciary (Webster) recommended the following  
 2 **amendment:**

**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.



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15       (3) "Wrongfully incarcerated person" means a person whose  
16 felony conviction and sentence of incarceration have been  
17 vacated by a court of competent jurisdiction, and with respect  
18 to whom the court has made a finding by clear and convincing  
19 evidence that the person did not commit the offense resulting in  
20 the conviction and incarceration and that the person did not  
21 aid, 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,  
25 enters an order vacating a conviction and sentence, the court  
26 shall determine whether the person is a wrongfully incarcerated  
27 person. If the court fails to determine whether a person is a  
28 wrongfully incarcerated person, the person must file a petition  
29 with the court within 30 days of the entry of the order vacating  
30 a conviction and sentence for a determination whether the person  
31 is 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  
35 who has not subsequently been convicted of the same offense, or  
36 any lesser included offense, arising out of the same facts, may  
37 petition the court for a determination of whether the person is  
38 a 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

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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.

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 convicted of, or pled guilty or nolo contendere to,  
59 regardless of adjudication, any felony offense;

60 (3) During the person's wrongful incarceration, the person  
61 was also serving a concurrent sentence for another crime for  
62 which the person was not wrongfully convicted; or

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

67 Section 5. Compensation for wrongful incarceration.--

68 (1) Except as otherwise provided in the act and subject to  
69 the limitations and procedures prescribed in section 6 of this

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70 act, a person who is found to be a wrongfully incarcerated  
71 person is entitled to:

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

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

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

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

96



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

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

111 Section 6. Application for compensation for wrongful  
112 incarceration.--

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

118 (2) The application must include:

119 (a) A certified copy of the order vacating the conviction  
120 and sentence and the order finding the claimant to be a  
121 wrongfully incarcerated person;

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

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

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

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

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

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

141 (3) Upon receipt of an application, the department shall  
142 examine the application and notify the claimant within 30  
143 calendar days of any errors or omissions, and request any  
144 additional information relevant to the review of the  
145 application. The department may not deny an application for  
146 failure of the claimant to correct an error or omission or  
147 supply additional information unless the department timely  
148 notified the claimant of such errors or omissions or requested  
149 the additional information within the 30-day period specified in  
150 this subsection. The department shall process and review each  
151 completed application within 90 calendar days. Once the

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152 department determines whether a claim for compensation meets the  
153 requirements of the act, the department shall notify the  
154 claimant within 5 business days of that determination.

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

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

175 (b) If the wrongfully incarcerated person was incarcerated  
176 for a period of time less than 10 years, the compensation  
177 awarded under section 5 of this act shall be distributed in  
178 equal annual installments over the number of years the  
179 wrongfully incarcerated person was incarcerated, not including a



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180 portion of a year. The Chief Financial Officer shall issue the  
181 first installment within 30 days after receiving notice from the  
182 department as required in subsection (4), with subsequent  
183 installments issued in subsequent years on the anniversary date  
184 of the first installment payment.

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

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

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





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

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

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

223       (8) Any payment made under the act does not constitute a  
224 waiver of any defense of sovereign immunity or an increase in  
225 the limits of liability on behalf of the state or any person  
226 subject to the provisions of s. 768.28, Florida Statutes, or  
227 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  
232 another jurisdiction the elements of which would constitute a  
233 felony in this state, or a crime committed against the United  
234 States which is designated a felony; or



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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.

253       Section 8. If any provision of this act or its application  
 254 to any person or circumstance is held invalid, the invalidity  
 255 does not affect other provisions or applications of the act  
 256 which can be given effect without the invalid provision or  
 257 application, and to this end the provisions of the act are  
 258 severable.

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

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

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263 And the title is amended as follows:

264 Delete everything before the enacting clause  
265 and insert:

266 A bill to be entitled

267 An act relating to compensation for wrongful  
268 incarceration; providing a short title; creating the  
269 Victims of Wrongful Incarceration Compensation Act;  
270 providing definitions; requiring a court to determine  
271 whether a person is a wrongfully incarcerated person;  
272 providing for a petition for determination of wrongful  
273 incarceration; providing exceptions and limitations  
274 regarding the eligibility of a wrongfully incarcerated  
275 person for compensation; providing for monetary  
276 compensation for certain wrongfully incarcerated persons;  
277 providing for recovery of reasonable attorney's fees and  
278 other costs with limitations for certain wrongfully  
279 incarcerated persons; providing for tuition waivers for  
280 wrongfully incarcerated persons who meet certain  
281 requirements; requiring that a wrongfully incarcerated  
282 person seeking compensation apply to the Department of  
283 Legal Affairs; providing application requirements and a  
284 deadline; requiring that the Department of Legal Affairs  
285 review each application and notify the claimant of any  
286 omissions or errors, or the need for additional  
287 information, within a specified period; requiring that the  
288 Department of Legal Affairs process and review each  
289 completed application within a specified period; requiring  
290 that the Department of Legal Affairs notify the claimant



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291 | if he or she qualifies for compensation within a specified  
292 | period; requiring that any monetary compensation be paid  
293 | within a specified period by specified means; prescribing  
294 | conditions under which compensation payments cease;  
295 | requiring a wrongfully incarcerated person to report any  
296 | subsequent felony convictions; specifying that the estate,  
297 | personal representative of, or heirs of the wrongfully  
298 | incarcerated person are not entitled to future payments;  
299 | prescribing conditions under which an application may not  
300 | be filed and compensation may not be awarded; requiring a  
301 | claimant to sign a release before receiving such  
302 | compensation; providing for a continuing appropriation  
303 | from the General Revenue Fund; providing that an award of  
304 | compensation does not constitute a waiver of sovereign  
305 | immunity by the state; providing for severability;  
306 | providing an effective date.