



751248

CHAMBER ACTION

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

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

3
4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause
6 and insert:

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

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

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

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

16 (3) "Wrongfully incarcerated person" means a person whose
17 felony conviction and sentence of incarceration have been vacated



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

24 Section 3. Finding of wrongful incarceration.--

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

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

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



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

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

58 (2) During the person's wrongful incarceration, the person
59 was convicted of, or pled guilty or nolo contendere to,
60 regardless of adjudication, any felony offense;

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

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

68 Section 5. Compensation for wrongful incarceration.--

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

73 (a) Monetary compensation equal to the Florida per capita
74 personal income as reported by the Office of Economic and
75 Demographic Research for the year in which the court vacates the
76 conviction and sentence multiplied by the number of years of



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77 wrongful incarceration, prorated as necessary to account for a
78 portion of a year;

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

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

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

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

102 (2) In calculating monetary compensation under paragraph
103 (1) (a), a wrongfully incarcerated person who is placed on parole
104 or community supervision while serving the sentence resulting
105 from the wrongful conviction and commits anything less than a
106 felony law violation that results in revocation of the parole or



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107 community supervision shall be eligible for compensation for the
108 total number of years incarcerated. A wrongfully incarcerated
109 person who commits a felony law violation that results in
110 revocation of the parole or community supervision shall be
111 ineligible for any compensation under subsection (1).

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

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

119 (2) The application must include:

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

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

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;



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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, paragraph
140 (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 application.
145 The department may not deny an application for failure of the
146 claimant to correct an error or omission or supply additional
147 information unless the department timely notified the claimant of
148 such errors or omissions or requested the additional information
149 within the 30-day period specified in this subsection. The
150 department shall process and review each completed application
151 within 90 calendar days. Once the department determines whether a
152 claim for compensation meets the requirements of the act, the
153 department shall notify the claimant within 5 business days of
154 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 another
159 source designated by the Legislature in law payable to the
160 claimant based on the total amount determined by the department
161 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 shall



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165 be distributed in an initial lump sum equal to 20 percent of the
166 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 department
170 as required in subsection (4). The Chief Financial Officer shall
171 issue the first installment payment on the one-year anniversary
172 of the lump-sum payment, with subsequent installments issued in
173 subsequent years on the anniversary date of the lump-sum payment.

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

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



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

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

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

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

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

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



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225 (9) Payments under the act shall immediately cease:
226 (a) If the wrongfully incarcerated person is convicted of,
227 or pleads guilty or nolo contendere to, regardless of
228 adjudication, any felony offense, or a crime committed in another
229 jurisdiction the elements of which would constitute a felony in
230 this state, or a crime committed against the United States which
231 is designated a felony; or
232 (b) Upon the death of the wrongfully incarcerated person.
233 The estate of, the personal representative for, and the heirs,
234 successors, and assigns of the wrongfully incarcerated person
235 shall have no right to receive future payments the person was
236 entitled to receive under the act.
237 (10) Upon any conviction of a felony in this state or
238 another jurisdiction after submission of an application under
239 this section, a wrongfully incarcerated person must immediately
240 report the felony conviction to the department. The department,
241 in conjunction with the Chief Financial Officer, shall determine
242 annually, before a warrant is issued for that year, whether a
243 wrongfully incarcerated person remains eligible for compensation
244 under the act by reviewing state and national criminal history
245 databases, as well as vital statistic records of the state.
246 Section 7. Continuing appropriation.--Beginning in fiscal
247 year 2008-2009 and continuing each fiscal year thereafter, a sum
248 sufficient to pay the approved payments under the act is
249 appropriated from the General Revenue Fund.
250 Section 8. If any provision of this act or its application
251 to any person or circumstance is held invalid, the invalidity
252 does not affect other provisions or applications of the act which
253 can be given effect without the invalid provision or application,
254 and to this end the provisions of the act are severable.



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

256

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

258 And the title is amended as follows:

259 Delete everything before the enacting clause
260 and insert:

261 A bill to be entitled

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



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