

By Senator Joyner

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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; defining the term
5 "wrongfully incarcerated person"; requiring that courts
6 determine whether certain persons are wrongfully
7 incarcerated persons upon petition by such persons or
8 their attorneys; providing requirements for such petition;
9 providing for monetary compensation for certain wrongfully
10 incarcerated persons; providing for tuition waivers for
11 wrongfully incarcerated persons who meet certain
12 requirements; requiring that the criminal record of a
13 wrongfully incarcerated person be expunged; providing
14 exceptions and limitations regarding the eligibility of a
15 wrongfully incarcerated person for compensation or
16 benefits; requiring that a wrongfully incarcerated person
17 seeking compensation or benefits as provided by the act
18 apply with the Chief Financial Officer for such
19 compensation or benefits; providing requirements and a
20 deadline for such application; requiring that the Chief
21 Financial Officer review each application and notify the
22 claimant of any omissions or errors, or the need for
23 additional information, within a specified period;
24 requiring that the Chief Financial Officer process and
25 review each completed application within a specified
26 period; requiring that the Chief Financial Officer notify
27 the claimant if he or she qualifies for benefits within a
28 specified period; requiring that any compensation be paid
29 within a specified period by specified means; requiring

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30 that a claimant receiving compensation sign a release
31 before receiving such compensation; providing the terms of
32 such release; authorizing the Department of Financial
33 Services to adopt rules; providing for severability;
34 providing an effective date.
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36 Be It Enacted by the Legislature of the State of Florida:
37

38 Section 1. Short title.--Sections 1-5 of this act may be
39 cited as the "Victims of Wrongful Incarceration Compensation
40 Act."

41 Section 2. Definition; finding of wrongful incarceration.--

42 (1) As used in sections 1-5 of this act, the term
43 "wrongfully incarcerated person" means a person whose felony
44 conviction and sentence have been vacated by a court of competent
45 jurisdiction:

46 (a) Upon a finding by clear and convincing evidence that
47 the person did not commit the offense resulting in the conviction
48 and incarceration and that the person did not aid, abet, or act
49 as an accomplice or accessory to a person who committed the
50 offense; or

51 (b) Due to the discovery of exonerating evidence that is so
52 probative of innocence that the court determines that a jury
53 likely would have found the defendant not guilty had it known of
54 the exonerating evidence, and the person is, in fact,
55 subsequently acquitted or, due to the exonerating evidence, no
56 further criminal proceedings can or will be initiated by the
57 prosecutorial authority.

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58 (2) Whenever a court, based on exonerating evidence, enters
59 an order vacating a conviction and sentence, upon petition by the
60 defendant or the defendant's attorney, the court must determine
61 whether the defendant was wrongfully convicted and set forth in
62 detail the evidence on which that finding is based. A court must
63 find that a defendant was wrongfully convicted if there is clear
64 and convincing evidence that the person did not commit the
65 offense that resulted in the conviction and incarceration and
66 that the person did not aid, abet, or act as an accomplice to a
67 person who committed the offense.

68 (3) A person whose sentence and conviction have been
69 vacated and who has not been subsequently convicted of the same
70 offense, or any lesser included offense, for which the previous
71 sentence and conviction were vacated before October 1, 2008, may
72 petition the court for a determination of whether the person is a
73 wrongfully incarcerated person if the prosecuting authority is
74 given reasonable notice in writing that the person intends to
75 petition the court for such a finding.

76 Section 3. Compensation for wrongful incarceration.--

77 (1) Except as otherwise provided in this section and
78 subject to the limitations and procedures prescribed in section 4
79 of this act, a person who is found to be a wrongfully
80 incarcerated person is entitled to:

81 (a) Monetary compensation for wrongful incarceration, which
82 shall be calculated at a rate of \$100,000 for each year of
83 wrongful incarceration, prorated as necessary to account for
84 portions of years;

85 (b) A waiver of tuition and fees for up to 120 hours of
86 instruction at any career center established under s. 1001.44,

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87 Florida Statutes, any community college established under part
88 III of chapter 1004, Florida Statutes, or any state university,
89 if the person found to have been wrongfully incarcerated meets
90 and maintains the regular admission requirements of such career
91 center, community college, or state university; remains
92 registered at such educational institution; and makes
93 satisfactory academic progress as defined by the educational
94 institution in which the claimant is enrolled; and

95 (c) Notwithstanding any provision to the contrary in s.
96 943.0585, Florida Statutes, immediate administrative and judicial
97 expunction of the person's criminal record resulting from his or
98 her wrongful arrest, wrongful conviction, and wrongful
99 incarceration.

100 (2) A wrongfully incarcerated person is not eligible for
101 compensation or benefits as listed in this section if:

102 (a) The person initiates his or her application to the
103 Department of Financial Services more than 2 years after a court
104 of competent jurisdiction determines the person's wrongful
105 incarceration; or

106 (b) Before his or her wrongful conviction and
107 incarceration, the person has previously been designated as a
108 violent career criminal pursuant to s. 775.084, Florida Statutes

109 Section 4. Application for compensation or benefits for
110 wrongful incarceration.--

111 (1) A wrongfully incarcerated person seeking compensation
112 or benefits as described in section 3 of this act must apply to
113 the Chief Financial Officer for such compensation or benefits.

114 The application must include:

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115 (a) A certified copy of the order finding the claimant to
116 be a wrongfully incarcerated person;

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

118 (c) Documentation demonstrating the length of the sentence
119 served, including documentation obtained from the Department of
120 Corrections regarding the person's admission into and release
121 from the department's custody;

122 (d) Positive proof of identification, including
123 fingerprints and a current form of photo identification,
124 demonstrating that the person seeking compensation is the same
125 individual who was wrongfully incarcerated;

126 (e) All documentation maintained by the Department of Law
127 Enforcement related to the person's criminal history or criminal
128 record; and

129 (f) Any other documentation, evidence, or information
130 required by rules adopted by the Department of Financial Services
131 on behalf of the Chief Financial Officer.

132 (2) Upon receipt of an application for compensation, the
133 Chief Financial Officer shall examine the application and notify
134 the claimant within 30 calendar days of any errors or omissions,
135 and request any additional information relevant to the review of
136 the application. The Chief Financial Officer may not deny an
137 application for failure of the claimant to correct an error or
138 omission or supply additional information unless the Chief
139 Financial Officer timely notified the claimant of such errors or
140 omissions or requested such additional information within the 30-
141 day period specified in this subsection. The Department of
142 Financial Services shall process and review each completed
143 application within 90 calendar days. If the department determines

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144 that the claim for compensation meets the requirements of
145 sections 1 through 5 of this act, the department shall notify the
146 claimant within 5 business days of that determination.

147 (3) Within 30 calendar days after issuing notice to the
148 claimant, the Chief Financial Officer shall draw and issue a
149 state warrant for the entire amount of the claim from the General
150 Revenue Fund or any other available state funds.

151 (4) Before receiving the state warrant, the claimant must
152 sign a release and waiver on behalf of the claimant and his or
153 her heirs, successors, and assigns, forever releasing the state
154 or any agency, instrumentality, or any political subdivision
155 thereof, or any other entity subject to the provisions of s.
156 768.28, Florida Statutes, from all present or future claims that
157 the claimant or his or her heirs, successors, or assigns may have
158 against such entities arising out of the factual situation in
159 connection with the conviction for which compensation is being
160 sought under sections 1 through 5 of this act.

161 (5) Notwithstanding any provision of s. 943.0585, Florida
162 Statutes, the Department of Legal Affairs and the Department of
163 Law Enforcement shall, upon notification by the Department of
164 Financial Services that a claimant is eligible for compensation,
165 immediately take all action necessary to judicially and
166 administratively expunge the claimant's criminal record arising
167 from his or her wrongful arrest, wrongful conviction, and
168 wrongful incarceration. All fees for this process shall be
169 waived.

170 Section 5. The Department of Financial Services, on behalf
171 of the Chief Financial Officer, may adopt rules regarding the

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172 forms and procedures related to applications for compensation
173 under the Victims of Wrongful Incarceration Compensation Act.

174 Section 6. If any provision of this act or its application
175 to any person or circumstance is held invalid, the invalidity
176 does not affect other provisions or applications of the act which
177 can be given effect without the invalid provision or application,
178 and to this end the provisions of this act are severable.

179 Section 7. This act shall take effect October 1, 2008.