

By the Committee on Judiciary; and 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; providing that an award of compensation does
33 not constitute a waiver of sovereign immunity by the
34 state; authorizing the Department of Financial Services to
35 adopt rules; providing for severability; providing an
36 effective date.

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38 Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

53 (b) Due to the discovery of exonerating evidence that is so
54 probative of innocence that the court determines that a jury
55 likely would have found the defendant not guilty had it known of
56 the exonerating evidence, and the person is, in fact,
57 subsequently acquitted or, due to the exonerating evidence, no

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58 further criminal proceedings can or will be initiated by the
59 prosecutorial authority.

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

70 (3) A person whose sentence and conviction have been
71 vacated and who has not been subsequently convicted of the same
72 offense, or any lesser included offense, for which the previous
73 sentence and conviction were vacated before October 1, 2008, may
74 petition the court for a determination of whether the person is a
75 wrongfully incarcerated person if the prosecuting authority is
76 given reasonable notice in writing that the person intends to
77 petition the court for such a finding. The person must file the
78 petition with the court by October 1, 2010, for a determination
79 whether the person is a wrongfully incarcerated person in order
80 to apply for compensation under this act.

81 Section 3. Compensation for wrongful incarceration.--

82 (1) Except as otherwise provided in this section and
83 subject to the limitations and procedures prescribed in section 4
84 of this act, a person who is found to be a wrongfully
85 incarcerated person is entitled to:

86 (a) Monetary compensation for wrongful incarceration, which

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87 shall be calculated at a rate of \$50,000 for each year of
88 wrongful incarceration, prorated as necessary to account for
89 portions of years. For persons found to be wrongfully
90 incarcerated after December 31, 2008, the Chief Financial Officer
91 may adjust the annual rate of compensation for inflation using
92 the Consumer Price Index starting on January 1, 2009;

93 (b) A waiver of tuition and fees for up to 120 hours of
94 instruction at any career center established under s. 1001.44,
95 Florida Statutes, any community college established under part
96 III of chapter 1004, Florida Statutes, or any state university,
97 if the person found to have been wrongfully incarcerated meets
98 and maintains the regular admission requirements of such career
99 center, community college, or state university; remains
100 registered at such educational institution; and makes
101 satisfactory academic progress as defined by the educational
102 institution in which the claimant is enrolled; and

103 (c) Notwithstanding any provision to the contrary in s.
104 943.0585, Florida Statutes, immediate administrative expunction
105 of the person's criminal record resulting from his or her
106 wrongful arrest, wrongful conviction, and wrongful incarceration.

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

109 (a) The person initiates his or her application to the
110 Department of Financial Services more than 2 years after a court
111 of competent jurisdiction determines that the person is a
112 wrongfully incarcerated person; or

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

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116 Section 4. Application for compensation or benefits for
117 wrongful incarceration.--

118 (1) A wrongfully incarcerated person seeking compensation
119 or benefits as described in section 3 of this act must apply to
120 the Chief Financial Officer for such compensation or benefits.
121 The application must include:

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

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

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

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

133 (e) All documentation maintained by the Department of Law
134 Enforcement related to the person's criminal history or criminal
135 record; and

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

139 (2) Upon receipt of an application for compensation, the
140 Chief Financial Officer shall examine the application and notify
141 the claimant within 30 calendar days of any errors or omissions,
142 and request any additional information relevant to the review of
143 the application. The claimant shall have 30 calendar days to
144 correct any errors or omissions, or submit any additional

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145 information requested by the Chief Financial Officer. The Chief
146 Financial Officer may not deny an application for failure of the
147 claimant to correct an error or omission or supply additional
148 information unless the Chief Financial Officer timely notified
149 the claimant of such errors or omissions or requested such
150 additional information within the 30-day period specified in this
151 subsection. The Department of Financial Services shall process
152 and review each completed application within 90 calendar days. If
153 the department determines that the claim for compensation meets
154 the requirements of sections 1 through 5 of this act, the
155 department shall notify the claimant within 5 business days of
156 that determination.

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

161 (4) Before receiving the state warrant, the claimant must
162 sign a release and waiver on behalf of the claimant and his or
163 her heirs, successors, and assigns, forever releasing the state
164 or any agency, instrumentality, or any political subdivision
165 thereof, or any other entity subject to the provisions of s.
166 768.28, Florida Statutes, from all present or future claims that
167 the claimant or his or her heirs, successors, or assigns may have
168 against such entities arising out of the factual situation in
169 connection with the conviction for which compensation is being
170 sought under sections 1 through 5 of this act.

171 (5) Notwithstanding any provision of s. 943.0585, Florida
172 Statutes, the Department of Legal Affairs and the Department of
173 Law Enforcement shall, upon notification by the Department of

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174 Financial Services that a claimant is eligible for compensation,
175 immediately take all action necessary to administratively expunge
176 the claimant's criminal record arising from his or her wrongful
177 arrest, wrongful conviction, and wrongful incarceration. All fees
178 for this process shall be waived.

179 (6) Any payment made under this act does not constitute a
180 waiver of any defense of sovereign immunity or an increase in the
181 limits of liability on behalf of the state or any person subject
182 to the provisions of s. 768.28, Florida Statutes, or other law.

183 Section 5. The Department of Financial Services, on behalf
184 of the Chief Financial Officer, may adopt rules regarding the
185 forms and procedures related to applications for compensation
186 under the Victims of Wrongful Incarceration Compensation Act.

187 Section 6. If any provision of this act or its application
188 to any person or circumstance is held invalid, the invalidity
189 does not affect other provisions or applications of the act which
190 can be given effect without the invalid provision or application,
191 and to this end the provisions of this act are severable.

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