

By the Committees on Criminal Justice; Judiciary; and Senators  
Joyner and Dockery

591-06967-08

2008756c2

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"; providing definitions;  
5           providing a limited method by which a person may seek the  
6           status of a wrongfully incarcerated person who is eligible  
7           and entitled to compensation under the act; requiring a  
8           sworn petition by the claimant; requiring the petitioner  
9           to show verifiable and substantial evidence of actual  
10          innocence; requiring the original prosecuting authority to  
11          respond to the petition; providing for a determination on  
12          the pleadings whether claimant is ineligible for  
13          compensation based on past criminal history; providing for  
14          a contested factual determination before an administrative  
15          law judge if necessary; requiring the original sentencing  
16          court to determine whether a person is a wrongfully  
17          incarcerated person based upon clear and convincing  
18          evidence; providing exceptions and limitations regarding  
19          the eligibility of a wrongfully incarcerated person for  
20          compensation; requiring the original sentencing court to  
21          include a finding of eligibility for compensation in its  
22          order; granting rulemaking authority to the Department of  
23          Legal Affairs; requiring that a wrongfully incarcerated  
24          person seeking compensation apply to the Department of  
25          Legal Affairs; providing application requirements and a  
26          deadline; requiring that the Department of Legal Affairs  
27          review each application and notify the claimant of any  
28          omissions or errors, or the need for additional  
29          information, within a specified period; requiring that the

591-06967-08

2008756c2

30 Department of Legal Affairs process and review each  
31 completed application within a specified period; requiring  
32 that the Department of Legal Affairs notify the claimant  
33 if he or she qualifies for compensation within a specified  
34 period; providing for monetary compensation for certain  
35 wrongfully incarcerated persons; providing for recovery of  
36 reasonable attorney's fees and other costs with  
37 limitations for certain wrongfully incarcerated persons;  
38 providing for tuition waivers for wrongfully incarcerated  
39 persons who meet certain requirements; providing for  
40 administrative expunction of certain records; requiring  
41 that any monetary compensation be paid within a specified  
42 period by specified means; prescribing conditions under  
43 which compensation payments cease; requiring a wrongfully  
44 incarcerated person to report any subsequent felony  
45 convictions; specifying that the estate, personal  
46 representative of, or heirs of the wrongfully incarcerated  
47 person are not entitled to future payments; prescribing  
48 conditions under which an application may not be filed and  
49 compensation may not be awarded; requiring a claimant to  
50 sign a release before receiving such compensation;  
51 providing for a continuing appropriation from the General  
52 Revenue Fund; providing that an award of compensation does  
53 not constitute a waiver of sovereign immunity by the  
54 state; providing for severability; providing an effective  
55 date.

56  
57 Be It Enacted by the Legislature of the State of Florida:  
58

591-06967-08

2008756c2

59           Section 1. Short title.--Sections 1-7 of this act may be  
60 cited as the "Victims of Wrongful Incarceration Compensation  
61 Act."

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

64           (1) "Act" means the Victims of Wrongful Incarceration  
65 Compensation Act.

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

67           (3) "Division" means the Division of Administrative  
68 Hearings.

69           (4) "Wrongfully incarcerated person" means a person whose  
70 felony conviction and sentence have been vacated by a court of  
71 competent jurisdiction and, with respect to whom pursuant to the  
72 requirements of section 3 of this act, the original sentencing  
73 court has issued its order finding that the person neither  
74 committed the act nor the offense that served as the basis for  
75 the conviction and incarceration and that the person did not aid,  
76 abet, or act as an accomplice or accessory to a person who  
77 committed the act or offense.

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

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

86           Section 3. Determination of status as a wrongfully  
87 incarcerated person; determination of eligibility for

591-06967-08

2008756c2

88 compensation.--

89 (1) (a) In order to meet the definition of a "wrongfully  
90 incarcerated person" and "eligible for compensation," upon entry  
91 of an order, based upon exonerating evidence, vacating a  
92 conviction and sentence, a person must set forth the claim of  
93 wrongful incarceration under oath and with particularity by  
94 filing a petition with the original sentencing court, with a copy  
95 of the petition and proper notice to the prosecuting authority in  
96 the underlying felony for which the person was incarcerated. At a  
97 minimum, the petition must:

98 1. State that verifiable and substantial evidence of actual  
99 innocence exists and state with particularity the nature and  
100 significance of the verifiable and substantial evidence of actual  
101 innocence; and

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

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

106 1. Within 30 days after the order vacating a conviction and  
107 sentence becomes final if the person's conviction and sentence is  
108 vacated on or after July 1, 2008.

109 2. By July 1, 2010, if the person's conviction and sentence  
110 was vacated by an order that became final prior to July 1, 2008.

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

113 (a) By certifying to the court that, based upon the  
114 petition and verifiable and substantial evidence of actual  
115 innocence, no further criminal proceedings in the case at bar can  
116 or will be initiated by the prosecuting authority, that no

591-06967-08

2008756c2

117 questions of fact remain as to the petitioner's wrongful  
118 incarceration, and that the petitioner is not ineligible from  
119 seeking compensation under the provisions of subsections (1)-(3)  
120 of section 4 of this act; or

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

126 (3) If the prosecuting authority responds as set forth in  
127 paragraph (2) (a), the original sentencing court, based upon the  
128 evidence of actual innocence, the prosecuting authority's  
129 certification, and upon the court's finding that the petitioner  
130 has presented clear and convincing evidence that the petitioner  
131 committed neither the act nor the offense that served as the  
132 basis for the conviction and incarceration, and that the  
133 petitioner did not aid, abet, or act as an accomplice to a person  
134 who committed the act or offense, shall certify to the department  
135 that the petitioner is a wrongfully incarcerated person as  
136 defined by this act. Based upon the prosecuting authority's  
137 certification, the court shall also certify to the department  
138 that the petitioner is eligible for compensation under the  
139 provisions of subsections (1)-(3) of section 4 of this act.

140 (4) (a) If the prosecuting authority responds as set forth  
141 in paragraph (2) (b), the original sentencing court shall make a  
142 determination from the pleadings and supporting documentation  
143 whether, by a preponderance of the evidence, the petitioner is  
144 ineligible for compensation under the provisions of subsections  
145 (1)-(3) of section 4 of this act, regardless of his or her claim

591-06967-08

2008756c2

146 of wrongful incarceration. If the court finds the petitioner  
147 ineligible under the provisions of subsections (1)-(3) of section  
148 4, it shall dismiss the petition.

149 (b) If the prosecuting authority responds as set forth in  
150 paragraph (2)(b), and the court determines that the petitioner is  
151 eligible under the provisions of subsections (1)-(3) of section  
152 4, but the prosecuting authority contests the nature,  
153 significance or effect of the evidence of actual innocence, or  
154 the facts related to the petitioner's alleged wrongful  
155 incarceration, the court shall set forth its findings and  
156 transfer the petition to the division for findings of fact and a  
157 recommended determination of whether the petitioner has  
158 established that he or she is a wrongfully incarcerated person  
159 who is eligible for compensation under this act.

160 (5) Any questions of fact, the nature, significance or  
161 effect of the evidence of actual innocence, and the petitioner's  
162 eligibility for compensation under this act must be established  
163 by clear and convincing evidence by the petitioner before an  
164 administrative law judge.

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

169 (b) The prosecuting authority shall appear for the purpose  
170 of contesting, as necessary, the facts, the nature, and  
171 significance or effect of the evidence of actual innocence as  
172 presented by the petitioner.

173 (c) No later than 45 days after the adjournment of the  
174 hearing, the administrative law judge shall issue an order

591-06967-08

2008756c2

175 setting forth his or her findings and recommendation and shall  
176 file the order with the original sentencing court.

177 (d) The original sentencing court shall review the findings  
178 and recommendation contained in the order of the administrative  
179 law judge and, within 60 days, shall issue its own order adopting  
180 or declining to adopt the findings and recommendation of the  
181 administrative law judge.

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

186 (a)1. The order of the administrative law judge finds that  
187 the petitioner has met his or her burden of establishing by clear  
188 and convincing evidence that the petitioner committed neither the  
189 act nor the offense that served as the basis for the conviction  
190 and incarceration and that the petitioner did not aid, abet, or  
191 act as an accomplice to a person who committed the act or  
192 offense; or

193 2. That the court has declined to adopt the findings and  
194 recommendations of the administrative law judge and finds that  
195 the petitioner has met his or her burden of establishing by clear  
196 and convincing evidence that the petitioner committed neither the  
197 act nor the offense that served as the basis for the conviction  
198 and incarceration and that the petitioner did not aid, abet, or  
199 act as an accomplice to a person who committed the act or  
200 offense; and

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

591-06967-08

2008756c2

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

210       Section 4. Eligibility for compensation for wrongful  
211 incarceration.--A wrongfully incarcerated person is not eligible  
212 for compensation under the act if:

213       (1) Before the person's wrongful conviction and  
214 incarceration, the person was convicted of, or pled guilty or  
215 nolo contendere to, regardless of adjudication, any felony  
216 offense, or a crime committed in another jurisdiction the  
217 elements of which would constitute a felony in this state, or a  
218 crime committed against the United States which is designated a  
219 felony, excluding any delinquency disposition;

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

223       (3) During the person's wrongful incarceration, the person  
224 was also serving a concurrent sentence for another crime for  
225 which the person was not wrongfully convicted.

226       Section 5. Application for compensation for wrongful  
227 incarceration; administrative expunction; determination of  
228 entitlement to compensation.--

229       (1) A wrongfully incarcerated person who is eligible for  
230 compensation as defined in this act must initiate his or her  
231 application for compensation as required in this section no more  
232 than 2 years after the original sentencing court enters its order



591-06967-08

2008756c2

233 finding that the person meets the definition of wrongfully  
234 incarcerated person and is eligible for compensation as defined  
235 in this act.

236 (2) A wrongfully incarcerated person who is eligible for  
237 compensation under the act must apply to the Department of Legal  
238 Affairs. No estate of, or personal representative for, a decedent  
239 is entitled to apply on behalf of the decedent for compensation  
240 for wrongful incarceration.

241 (3) The Department of Legal Affairs may adopt rules  
242 regarding the forms and procedures related to applications for  
243 compensation under the Victims of Wrongful Incarceration  
244 Compensation Act.

245 (4) The application must include:

246 (a) A certified copy of the order vacating the conviction  
247 and sentence;

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

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

252 (d) Documentation demonstrating the length of the sentence  
253 served, including documentation from the Department of  
254 Corrections regarding the person's admission into and release  
255 from the custody of the Department of Corrections;

256 (e) Positive proof of identification, including  
257 fingerprints and a current form of photo identification,  
258 demonstrating that the person seeking compensation is the same  
259 individual who was wrongfully incarcerated;

260 (f) All information necessary for the department to obtain  
261 through the Department of Law Enforcement the person's criminal

591-06967-08

2008756c2

262 history or criminal record;

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

266 (h) All supporting documentation of any reasonable  
267 attorney's fees and expenses as described in paragraph (1)(d) of  
268 section 6; and

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

271 (5) Upon receipt of an application, the department shall  
272 examine the application and notify the claimant within 30  
273 calendar days of any errors or omissions, and request any  
274 additional information relevant to the review of the application.  
275 The claimant shall have 15 days after proper notification of any  
276 existing errors or omissions to supplement the application. The  
277 department may not deny an application for failure of the  
278 claimant to correct an error or omission or supply additional  
279 information unless the department timely notified the claimant of  
280 such errors or omissions or requested the additional information  
281 within the 30-day period specified in this subsection. The  
282 department shall process and review each completed application  
283 within 90 calendar days. Once the department determines whether a  
284 claim for compensation meets the requirements of this act, the  
285 department shall notify the claimant within 5 business days of  
286 that determination.

287 (6) If the department determines that a claimant meets the  
288 requirements of this act, the wrongfully incarcerated person who  
289 is the subject of the claim becomes entitled to compensation,  
290 subject to the provisions in section 6 of this act.

591-06967-08

2008756c2

291       Section 6. Compensation for wrongful incarceration.--

292       (1) Except as otherwise provided in this act and subject to  
293 the limitations and procedures prescribed in this section, a  
294 person who is found to be entitled to compensation under the  
295 provisions of this act is entitled to:

296       (a) Monetary compensation for wrongful incarceration, which  
297 shall be calculated at a rate of \$50,000 for each year of  
298 wrongful incarceration, prorated as necessary to account for a  
299 portion of a year. For persons found to be wrongfully  
300 incarcerated after December 31, 2008, the Chief Financial Officer  
301 may adjust the annual rate of compensation for inflation using  
302 the change in the December-to-December "Consumer Price Index for  
303 All Urban Consumers" of the Bureau of Labor Statistics of the  
304 Department of Labor;

305       (b) A waiver of tuition and fees for up to 120 hours of  
306 instruction at any career center established under s. 1001.44,  
307 Florida Statutes, any community college as defined in s.  
308 1000.21(3), Florida Statutes, or any state university as defined  
309 in 1000.21(6), Florida Statutes, if the wrongfully incarcerated  
310 person meets and maintains the regular admission requirements of  
311 such career center, community college, or state university;  
312 remains registered at such educational institution; and makes  
313 satisfactory academic progress as defined by the educational  
314 institution in which the claimant is enrolled;

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

317       (d) The amount of any reasonable attorney's fees and  
318 expenses incurred and paid by the wrongfully incarcerated person  
319 in connection with all criminal proceedings and appeals regarding

591-06967-08

2008756c2

320 the wrongful conviction, to be calculated by the department based  
321 upon the supporting documentation submitted as specified in  
322 section 5; and

323 (e) Notwithstanding any provision to the contrary in s.  
324 943.0585, Florida Statutes, immediate administrative expunction  
325 of the person's criminal record resulting from his or her  
326 wrongful arrest, wrongful conviction, and wrongful incarceration.  
327 The Department of Legal Affairs and the Department of Law  
328 Enforcement shall, upon a determination that a claimant is  
329 entitled to compensation, immediately take all action necessary  
330 to administratively expunge the claimant's criminal record  
331 arising from his or her wrongful arrest, wrongful conviction, and  
332 wrongful incarceration. All fees for this process shall be  
333 waived.

334  
335 The total compensation awarded under paragraphs (a), (c), and (d)  
336 may not exceed \$2 million. No further award for attorney's fees,  
337 lobbying fees, costs, or other similar expenses shall be made by  
338 the state.

339 (2) In calculating monetary compensation under paragraph  
340 (1) (a), a wrongfully incarcerated person who is placed on parole  
341 or community supervision while serving the sentence resulting  
342 from the wrongful conviction and who commits anything less than a  
343 felony law violation that results in revocation of the parole or  
344 community supervision is eligible for compensation for the total  
345 number of years incarcerated. A wrongfully incarcerated person  
346 who commits a felony law violation that results in revocation of  
347 the parole or community supervision is ineligible for any  
348 compensation under subsection (1).

591-06967-08

2008756c2

349       (3) Within 15 calendar days after issuing notice to the  
350 claimant that his or her claim satisfies all of the requirements  
351 under this act, the department shall notify the Chief Financial  
352 Officer to draw warrants from the General Revenue Fund or another  
353 source designated by the Legislature in law payable to the  
354 claimant based on the total amount determined by the department  
355 under section 5 of this act.

356       (4) (a) If the wrongfully incarcerated person was  
357 incarcerated for a period of time equal to or greater than 10  
358 years, the compensation awarded under this section shall be  
359 distributed in an initial lump sum equal to 20 percent of the  
360 total compensation awarded, with the remaining 80 percent  
361 distributed in annual equal installments over a 10-year period.  
362 The Chief Financial Officer shall issue the 20 percent lump-sum  
363 payment within 30 days after receiving notice from the department  
364 as required in subsection (3). The Chief Financial Officer shall  
365 issue the first installment payment on the 1-year anniversary of  
366 the lump-sum payment, with subsequent installments issued in  
367 subsequent years on the anniversary date of the lump-sum payment.

368       (b) If the wrongfully incarcerated person was incarcerated  
369 for a period of time less than 10 years, the compensation awarded  
370 under this section shall be distributed in equal annual  
371 installments over the number of years the wrongfully incarcerated  
372 person was incarcerated, not including a portion of a year. The  
373 Chief Financial Officer shall issue the first installment within  
374 30 days after receiving notice from the department as required in  
375 subsection (3), with subsequent installments issued in subsequent  
376 years on the anniversary date of the first installment payment.

377       (5) Before receiving the first warrant, the claimant must

591-06967-08

2008756c2

378 sign a release and waiver on behalf of the claimant and his or  
379 her heirs, successors, and assigns, forever releasing the state  
380 or any agency, instrumentality, or any political subdivision  
381 thereof, or any other entity subject to the provisions of s.  
382 768.28, Florida Statutes, from all present or future claims that  
383 the claimant or his or her heirs, successors, or assigns may have  
384 against such entities arising out of the facts in connection with  
385 the wrongful conviction for which compensation is being sought  
386 under the act. The release and waiver must be provided to the  
387 department prior to the issuance of the first warrant of payment  
388 by the Chief Financial Officer.

389 (6) (a) A wrongfully incarcerated person may not submit an  
390 application for compensation under this act if the person has a  
391 lawsuit pending against the state or any agency, instrumentality,  
392 or any political subdivision thereof, or any other entity subject  
393 to the provisions of s. 768.28, Florida Statutes, in state or  
394 federal court requesting compensation arising out of the facts in  
395 connection with the claimant's conviction and incarceration.

396 (b) A wrongfully incarcerated person may not submit an  
397 application for compensation under this act if the person is the  
398 subject of a claim bill pending for claims arising out of the  
399 facts in connection with the claimant's conviction and  
400 incarceration.

401 (c) Once an application is filed under this act, a  
402 wrongfully incarcerated person may not pursue recovery under a  
403 claim bill until the final disposition of the application.

404 (d) Any amount awarded under this act is intended to  
405 provide the sole compensation for any and all present and future  
406 claims arising out of the facts in connection with the claimant's

591-06967-08

2008756c2

407 conviction and incarceration. Upon notification by the department  
408 that an application meets the requirements of this act as  
409 required in subsection (5), a wrongfully incarcerated person may  
410 not recover under a claim bill.

411 (e) Any compensation awarded under a claim bill shall be  
412 the sole redress for claims arising out of the facts in  
413 connection with the claimant's conviction and incarceration and,  
414 upon any award of compensation to a wrongfully incarcerated  
415 person under a claim bill, the person may not receive  
416 compensation under this act.

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

421 (8) Payments under this act shall immediately cease:

422 (a) If the wrongfully incarcerated person is convicted of,  
423 or pleads guilty or nolo contendere to, regardless of  
424 adjudication, any felony offense, or a crime committed in another  
425 jurisdiction the elements of which would constitute a felony in  
426 this state, or a crime committed against the United States which  
427 is designated a felony; or

428 (b) Upon the death of the wrongfully incarcerated person.  
429 The estate of, the personal representative for, and the heirs,  
430 successors, and assigns of the wrongfully incarcerated person  
431 shall have no right to receive future payments the person was  
432 entitled to receive under this act.

433 (9) Upon any conviction of a felony in this state or  
434 another jurisdiction after submission of an application under  
435 this act, a wrongfully incarcerated person must immediately

591-06967-08

2008756c2

436 report the felony conviction to the department. The department,  
437 in conjunction with the Chief Financial Officer, shall determine  
438 annually, before a warrant is issued for that year, whether a  
439 wrongfully incarcerated person remains eligible for compensation  
440 under this act by reviewing state and national criminal history  
441 databases, as well as vital statistic records of the state.

442 Section 7. Continuing appropriation.--Beginning in the  
443 2008-2009 fiscal year and continuing each fiscal year thereafter,  
444 a sum sufficient to pay the approved payments under this act is  
445 appropriated from the General Revenue Fund to the Chief Financial  
446 Officer, which sum is further appropriated for expenditure  
447 pursuant to the provisions of this act.

448 Section 8. If any provision of this act or its application  
449 to any person or circumstance is held invalid, the invalidity  
450 does not affect other provisions or applications of the act which  
451 can be given effect without the invalid provision or application,  
452 and to this end the provisions of this act are severable.

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