

2008756e1

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; providing for state and national criminal  
27          records checks; requiring that the Department of Legal  
28          Affairs review each application and notify the claimant of  
29          any omissions or errors, or the need for additional

2008756e1

30 information, within a specified period; requiring that the  
31 Department of Legal Affairs process and review each  
32 completed application within a specified period; requiring  
33 that the Department of Legal Affairs notify the claimant  
34 if he or she qualifies for compensation within a specified  
35 period; providing for monetary compensation for certain  
36 wrongfully incarcerated persons; providing for recovery of  
37 reasonable attorney's fees and other costs with  
38 limitations for certain wrongfully incarcerated persons;  
39 providing for tuition waivers for wrongfully incarcerated  
40 persons who meet certain requirements; providing for  
41 administrative expunction of certain records; requiring  
42 that any monetary compensation be paid within a specified  
43 period; directing the Chief Financial Officer to purchase  
44 an annuity on behalf of the claimant; prescribing the  
45 terms of the annuity; prescribing conditions under which  
46 an application may not be filed and compensation may not  
47 be awarded; requiring a claimant to sign a release before  
48 receiving such compensation; providing for a continuing  
49 appropriation from the General Revenue Fund; providing  
50 that an award of compensation does not constitute a waiver  
51 of sovereign immunity by the state; providing for  
52 severability; providing an effective date.

53  
54 Be It Enacted by the Legislature of the State of Florida:

55  
56 Section 1. Short title.--Sections 1-7 of this act may be  
57 cited as the "Victims of Wrongful Incarceration Compensation  
58 Act."

2008756e1

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

61           (1) "Act" means the Victims of Wrongful Incarceration  
62 Compensation Act.

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

64           (3) "Division" means the Division of Administrative  
65 Hearings.

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

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

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

83           Section 3. Determination of status as a wrongfully  
84 incarcerated person; determination of eligibility for  
85 compensation.--

86           (1) (a) In order to meet the definition of a "wrongfully  
87 incarcerated person" and "eligible for compensation," upon entry

2008756e1

88 of an order, based upon exonerating evidence, vacating a  
89 conviction and sentence, a person must set forth the claim of  
90 wrongful incarceration under oath and with particularity by  
91 filing a petition with the original sentencing court, with a copy  
92 of the petition and proper notice to the prosecuting authority in  
93 the underlying felony for which the person was incarcerated. At a  
94 minimum, the petition must:

95 1. State that verifiable and substantial evidence of actual  
96 innocence exists and state with particularity the nature and  
97 significance of the verifiable and substantial evidence of actual  
98 innocence; and

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

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

103 1. Within 90 days after the order vacating a conviction and  
104 sentence becomes final if the person's conviction and sentence is  
105 vacated on or after July 1, 2008.

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

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

110 (a) By certifying to the court that, based upon the  
111 petition and verifiable and substantial evidence of actual  
112 innocence, no further criminal proceedings in the case at bar can  
113 or will be initiated by the prosecuting authority, that no  
114 questions of fact remain as to the petitioner's wrongful  
115 incarceration, and that the petitioner is not ineligible from  
116 seeking compensation under the provisions of subsections (1)-(3)

2008756e1

117 of section 4 of this act; or

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

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

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

2008756e1

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

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

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

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

170 (c) No later than 45 days after the adjournment of the  
171 hearing, the administrative law judge shall issue an order  
172 setting forth his or her findings and recommendation and shall  
173 file the order with the original sentencing court.

174 (d) The original sentencing court shall review the findings

2008756e1

175 and recommendation contained in the order of the administrative  
176 law judge and, within 60 days, shall issue its own order adopting  
177 or declining to adopt the findings and recommendation of the  
178 administrative law judge.

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

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

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

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

201 (8) The establishment of the method by which a person may  
202 seek the status of a wrongfully incarcerated person and a finding  
203 as to eligibility for compensation under this act in no way

2008756e1

204 creates any rights of due process beyond those set forth herein,  
205 nor is there created any right to further petition or appeal  
206 beyond the scope of the method set forth herein.

207 Section 4. Eligibility for compensation for wrongful  
208 incarceration.--A wrongfully incarcerated person is not eligible  
209 for compensation under the act if:

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

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

220 (3) During the person's wrongful incarceration, the person  
221 was also serving a concurrent sentence for another felony for  
222 which the person was not wrongfully convicted.

223 Section 5. Application for compensation for wrongful  
224 incarceration; administrative expunction; determination of  
225 entitlement to compensation.--

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



2008756e1

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

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

242       (4) The application must include:

243       (a) A certified copy of the order vacating the conviction  
244 and sentence;

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

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

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

253       (e) Positive proof of identification, including two full  
254 sets of fingerprints administered by a law enforcement agency and  
255 a current form of photo identification, demonstrating that the  
256 person seeking compensation is the same individual who was  
257 wrongfully incarcerated;

258       (f) All supporting documentation of any fine, penalty, or  
259 court costs imposed and paid by the wrongfully incarcerated  
260 person as described in paragraph (1)(c) of section 6;

261       (g) All supporting documentation of any reasonable

2008756e1

262 attorney's fees and expenses as described in paragraph (1)(d) of  
263 section 6; and

264 (h) Any other documentation, evidence, or information  
265 required by rules adopted by the department.

266 (5) The department shall forward one full set of  
267 fingerprints of the applicant to the Department of Law  
268 Enforcement for statewide criminal records checks. The  
269 Department of Law Enforcement shall forward the second set of  
270 fingerprints to the Federal Bureau of Investigation for national  
271 criminal records checks. The results of the state and national  
272 records checks shall be submitted to the department.

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

289 (7) If the department determines that a claimant meets the  
290 requirements of this act, the wrongfully incarcerated person who

2008756e1

291 is the subject of the claim becomes entitled to compensation,  
292 subject to the provisions in section 6 of this act.

293 Section 6. Compensation for wrongful incarceration.--

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

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

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

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

319 (d) The amount of any reasonable attorney's fees and

2008756e1

320 expenses incurred and paid by the wrongfully incarcerated person  
321 in connection with all criminal proceedings and appeals regarding  
322 the wrongful conviction, to be calculated by the department based  
323 upon the supporting documentation submitted as specified in  
324 section 5; and

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

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

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

2008756e1

349 the parole or community supervision is ineligible for any  
350 compensation under subsection (1).

351 (3) Within 15 calendar days after issuing notice to the  
352 claimant that his or her claim satisfies all of the requirements  
353 under this act, the department shall notify the Chief Financial  
354 Officer to draw a warrant from the General Revenue Fund or  
355 another source designated by the Legislature in law for the  
356 purchase of an annuity for the claimant based on the total amount  
357 determined by the department under this act.

358 (4) The Chief Financial Officer shall purchase an annuity  
359 on behalf of the claimant for a term of not less than 10 years.  
360 The terms of the annuity shall:

361 (a) Provide that the annuity may not be sold, discounted,  
362 or used as security for a loan or mortgage by the applicant.

363 (b) Contain beneficiary provisions for the continued  
364 disbursement of the annuity in the event of the death of the  
365 applicant.

366 (5) Before the Chief Financial Officer draws the warrant  
367 for the purchase of the annuity, the claimant must sign a release  
368 and waiver on behalf of the claimant and his or her heirs,  
369 successors, and assigns, forever releasing the state or any  
370 agency, instrumentality, or any political subdivision thereof, or  
371 any other entity subject to the provisions of s. 768.28, Florida  
372 Statutes, from all present or future claims that the claimant or  
373 his or her heirs, successors, or assigns may have against such  
374 entities arising out of the facts in connection with the wrongful  
375 conviction for which compensation is being sought under the act.  
376 The release and waiver must be provided to the department prior  
377 to the issuance of the warrant by the Chief Financial Officer.

2008756e1

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

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

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

393       (d) Any amount awarded under this act is intended to  
394 provide the sole compensation for any and all present and future  
395 claims arising out of the facts in connection with the claimant's  
396 conviction and incarceration. Upon notification by the department  
397 that an application meets the requirements of this act, a  
398 wrongfully incarcerated person may not recover under a claim  
399 bill.

400       (e) Any compensation awarded under a claim bill shall be  
401 the sole redress for claims arising out of the facts in  
402 connection with the claimant's conviction and incarceration and,  
403 upon any award of compensation to a wrongfully incarcerated  
404 person under a claim bill, the person may not receive  
405 compensation under this act.

406       (7) Any payment made under this act does not constitute a

2008756e1

407 waiver of any defense of sovereign immunity or an increase in the  
408 limits of liability on behalf of the state or any person subject  
409 to the provisions of s. 768.28, Florida Statutes, or other law.

410 Section 7. Continuing appropriation.--Beginning in the  
411 2008-2009 fiscal year and continuing each fiscal year thereafter,  
412 a sum sufficient to pay the approved payments under this act is  
413 appropriated from the General Revenue Fund to the Chief Financial  
414 Officer, which sum is further appropriated for expenditure  
415 pursuant to the provisions of this act.

416 Section 8. If any provision of this act or its application  
417 to any person or circumstance is held invalid, the invalidity  
418 does not affect other provisions or applications of the act which  
419 can be given effect without the invalid provision or application,  
420 and to this end the provisions of this act are severable.

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