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1
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

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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.

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

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

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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

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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)

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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.

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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

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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

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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.

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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

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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

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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

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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

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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.

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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

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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.