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1 A bill to be entitled
2 An act relating to compensation for wrongful
3 incarceration; amending s. 961.02, F.S.; defining the term
4 "actual innocence" for purposes of the Victims of Wrongful
5 Incarceration Compensation Act; redefining the term
6 "wrongfully incarcerated person" in order to conform;
7 amending s. 961.03, F.S.; requiring that a petition for
8 compensation include clear and convincing evidence of
9 actual innocence; requiring the petitioner to submit
10 fingerprints for criminal history records checks;
11 providing procedures for taking and submitting
12 fingerprints; requiring that the results of the criminal
13 history records checks be submitted to the clerk of the
14 court; providing for use of the results by the court;
15 amending s. 961.05, F.S.; eliminating the requirement that
16 a wrongfully incarcerated person provide certain court
17 records and documentation from the Department of
18 Corrections along with an application for compensation;
19 requiring the Department of Legal Affairs to request
20 certain records from the clerk of the court and the
21 Department of Corrections; amending s. 961.06, F.S.;
22 precluding submission of an application for compensation
23 if the wrongfully incarcerated person has received a prior
24 favorable judgment from a civil action arising out of the
25 wrongful incarceration; providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:
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29 Section 1. Section 961.02, Florida Statutes, is amended to
 30 read:

31 961.02 Definitions.--As used in ss. 961.01-961.07, the
 32 term:

33 (1) "Act" means the Victims of Wrongful Incarceration
 34 Compensation Act.

35 (2) "Actual innocence" means that a person did not commit
 36 the act or the offense that served as the basis for the
 37 conviction and incarceration for which the person seeks
 38 compensation, and that the person did not aid, abet, or act as
 39 an accomplice to a person who committed the act or offense.

40 (3)~~(2)~~ "Department" means the Department of Legal Affairs.

41 (4)~~(3)~~ "Division" means the Division of Administrative
 42 Hearings.

43 (5)~~(4)~~ "Wrongfully incarcerated person" means a person
 44 whose felony conviction and sentence have been vacated by a
 45 court of competent jurisdiction and, with respect to whom
 46 pursuant to the requirements of s. 961.03, the original
 47 sentencing court has issued its order finding that the person
 48 has proven actual innocence by clear and convincing evidence
 49 ~~neither committed the act nor the offense that served as the~~
 50 ~~basis for the conviction and incarceration and that the person~~
 51 ~~did not aid, abet, or act as an accomplice or accessory to a~~
 52 ~~person who committed the act or offense.~~

53 (6)~~(5)~~ "Eligible for compensation" means a person meets
 54 the definition of "wrongfully incarcerated person" and is not
 55 disqualified from seeking compensation under the criteria
 56 prescribed in s. 961.04.

57 | ~~(7)~~~~(6)~~ "Entitled to compensation" means a person meets the
 58 | definition of "eligible for compensation" and satisfies the
 59 | application requirements prescribed in s. 961.05, and may
 60 | receive compensation pursuant to s. 961.06.

61 | Section 2. Section 961.03, Florida Statutes, is amended to
 62 | read:

63 | 961.03 Determination of status as a wrongfully
 64 | incarcerated person; determination of eligibility for
 65 | compensation.--

66 | (1) (a) In order to meet the definition of a "wrongfully
 67 | incarcerated person" and "eligible for compensation," upon entry
 68 | of an order, based upon exonerating evidence, vacating a
 69 | conviction and sentence, a person must set forth the claim of
 70 | wrongful incarceration under oath and with particularity by
 71 | filing a petition with the original sentencing court, with a
 72 | copy of the petition and proper notice to the prosecuting
 73 | authority in the underlying felony for which the person was
 74 | incarcerated. At a minimum, the petition must:

75 | 1. State that clear and convincing ~~verifiable and~~
 76 | ~~substantial~~ evidence of actual innocence exists and state with
 77 | particularity the nature and significance of the clear and
 78 | convincing ~~verifiable and substantial~~ evidence of actual
 79 | innocence; and

80 | 2. State that the person is not disqualified, under ~~the~~
 81 | ~~provisions of~~ s. 961.04, from seeking compensation under this
 82 | act.

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

84 | 1. Within 90 days after the order vacating a conviction

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85 and sentence becomes final if the person's conviction and
86 sentence is vacated on or after July 1, 2008.

87 2. By July 1, 2010, if the person's conviction and
88 sentence was vacated by an order that became final prior to July
89 1, 2008.

90 (c)1. After filing the petition, the petitioner must
91 submit fingerprints for a state and national criminal history
92 records check.

93 2. The clerk of the court shall inform the petitioner of
94 the process for having his or her fingerprints taken and
95 submitted and provide information concerning law enforcement
96 agencies or service providers that are authorized to submit
97 fingerprints electronically to the Department of Law
98 Enforcement.

99 3. The petitioner's fingerprints shall be taken in a
100 manner approved by the Department of Law Enforcement and shall
101 be submitted electronically to the Department of Law Enforcement
102 for state processing for a criminal history records check. The
103 Department of Law Enforcement shall submit the fingerprints to
104 the Federal Bureau of Investigation for national processing. The
105 Department of Law Enforcement shall submit the results of the
106 state and national records check to the clerk of the court. The
107 court shall consider the results in evaluating whether the
108 petitioner is eligible for compensation under s. 961.04.

109 4. The petitioner may not be charged for the cost of
110 conducting the state and national criminal history records
111 checks required under this paragraph.

112 (2) The prosecuting authority must respond to the petition

113 within 30 days. The prosecuting authority may respond:

114 (a) By certifying to the court that, based upon the
 115 petition and ~~verifiable and substantial~~ evidence of actual
 116 innocence, no further criminal proceedings in the case at bar
 117 can or will be initiated by the prosecuting authority, and that
 118 the prosecuting authority does not contest no questions of fact
 119 remain as to the petitioner's actual innocence ~~wrongful~~
 120 ~~incarceration, and that the petitioner is not ineligible from~~
 121 ~~seeking compensation under the provisions of s. 961.04; or~~

122 (b) By certifying to the court that questions of fact
 123 remain as to the petitioner's actual innocence, and that the
 124 prosecuting authority contests ~~contesting~~ the nature,
 125 significance, or effect of the evidence of actual innocence, ~~the~~
 126 ~~facts related to the petitioner's alleged wrongful~~
 127 ~~incarceration, or whether the petitioner is ineligible from~~
 128 ~~seeking compensation under the provisions of s. 961.04.~~

129 (3) If the prosecuting authority responds as set forth in
 130 paragraph (2) (a), the original sentencing court, based upon the
 131 prosecuting authority's certification and the court's finding
 132 that the petitioner has proven actual innocence by clear and
 133 convincing evidence and that the petitioner is eligible for
 134 compensation under s. 961.04 ~~evidence of actual innocence, the~~
 135 ~~prosecuting authority's certification, and upon the court's~~
 136 ~~finding that the petitioner has presented clear and convincing~~
 137 ~~evidence that the petitioner committed neither the act nor the~~
 138 ~~offense that served as the basis for the conviction and~~
 139 ~~incarceration, and that the petitioner did not aid, abet, or act~~
 140 ~~as an accomplice to a person who committed the act or offense,~~

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141 shall certify to the department that the petitioner is a
 142 wrongfully incarcerated person who is eligible for compensation
 143 as defined by this act. ~~Based upon the prosecuting authority's~~
 144 ~~certification, the court shall also certify to the department~~
 145 ~~that the petitioner is eligible for compensation under the~~
 146 ~~provisions of s. 961.04.~~

147 (4) (a) If the prosecuting authority responds as set forth
 148 in paragraph (2) (b), the original sentencing court shall make a
 149 determination from the pleadings and supporting documentation
 150 whether, ~~by a preponderance of the evidence,~~ the petitioner is
 151 eligible ~~ineligible~~ for compensation under ~~the provisions of s.~~
 152 961.04, regardless of his or her claim of wrongful
 153 incarceration. If the court finds the petitioner ineligible
 154 under ~~the provisions of s. 961.04,~~ it shall dismiss the
 155 petition.

156 (b) If the prosecuting authority responds as set forth in
 157 paragraph (2) (b), and the court determines that the petitioner
 158 is eligible under ~~the provisions of s. 961.04,~~ but the
 159 prosecuting authority contests the nature, significance, or
 160 effect of the evidence of actual innocence, ~~or the facts related~~
 161 ~~to the petitioner's alleged wrongful incarceration,~~ the court
 162 shall set forth its findings and transfer the petition to the
 163 division for findings of fact and a recommended determination of
 164 whether the petitioner has proven actual innocence ~~established~~
 165 ~~that he or she is a wrongfully incarcerated person who is~~
 166 ~~eligible for compensation~~ under this act.

167 (5) The petitioner must prove actual innocence before the
 168 administrative law judge by clear and convincing evidence. ~~Any~~

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169 ~~questions of fact, the nature, significance or effect of the~~
170 ~~evidence of actual innocence, and the petitioner's eligibility~~
171 ~~for compensation under this act must be established by clear and~~
172 ~~convincing evidence by the petitioner before an administrative~~
173 ~~law judge.~~

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

178 (b) The prosecuting authority shall appear for the purpose
179 of contesting, as necessary, the facts, the nature, and
180 significance or effect of the evidence of actual innocence as
181 presented by the petitioner.

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

186 (d) The original sentencing court shall review the
187 findings and recommendation contained in the order of the
188 administrative law judge and, within 60 days, shall issue its
189 own order adopting or declining to adopt the findings and
190 recommendation of the administrative law judge.

191 (7) If the court concludes that the petitioner is a
192 wrongfully incarcerated person as defined by this act and is
193 eligible for compensation as defined in this act, the court
194 shall include in its order a certification to the department
195 that:

196 (a)1. The order of the administrative law judge finds that

197 the petitioner has met his or her burden of proving actual
 198 innocence ~~establishing~~ by clear and convincing evidence ~~that the~~
 199 ~~petitioner committed neither the act nor the offense that served~~
 200 ~~as the basis for the conviction and incarceration and that the~~
 201 ~~petitioner did not aid, abet, or act as an accomplice to a~~
 202 ~~person who committed the act or offense;~~

203 2. The findings and recommendation of the administrative
 204 law judge on which its order is based are supported by
 205 competent, substantial evidence; and

206 3. The petitioner is a wrongfully incarcerated person who
 207 is eligible for compensation; or

208 (b)2. That The court has declined to adopt the findings
 209 and recommendation ~~recommendations~~ of the administrative law
 210 judge that the petitioner failed to prove actual innocence by
 211 clear and convincing evidence and finds that the petitioner has
 212 met his or her burden of proving actual innocence ~~establishing~~
 213 by clear and convincing evidence, and that the petitioner is a
 214 wrongfully incarcerated person who is eligible for compensation.

215 ~~that the petitioner committed neither the act nor the offense~~
 216 ~~that served as the basis for the conviction and incarceration~~
 217 ~~and that the petitioner did not aid, abet, or act as an~~
 218 ~~accomplice to a person who committed the act or offense; and~~

219 ~~(b) The original sentencing court determines the findings~~
 220 ~~and recommendations on which its order is based are supported by~~
 221 ~~competent, substantial evidence.~~

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

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225 way creates any rights of due process beyond those set forth in
 226 this act ~~herein~~, nor is there created any right to further
 227 petition or appeal beyond the scope of the method set forth in
 228 this act ~~herein~~.

229 Section 3. Section 961.05, Florida Statutes, is amended to
 230 read:

231 961.05 Application for compensation for wrongful
 232 incarceration; administrative expunction; determination of
 233 entitlement to compensation.--

234 (1) A wrongfully incarcerated person who is eligible for
 235 compensation as defined in this act must initiate his or her
 236 application for compensation as required in this section no more
 237 than 2 years after the original sentencing court enters its
 238 order finding that the person meets the definition of a
 239 wrongfully incarcerated person and is eligible for compensation
 240 as defined in this act.

241 (2) A wrongfully incarcerated person who is eligible for
 242 compensation under the act must apply to the Department of Legal
 243 Affairs. No estate of, or personal representative for, a
 244 decedent is entitled to apply on behalf of the decedent for
 245 compensation for wrongful incarceration.

246 (3) The Department of Legal Affairs may adopt rules
 247 regarding the forms and procedures related to applications for
 248 compensation under this act ~~the Victims of Wrongful~~
 249 ~~Incarceration Compensation Act~~.

250 (4) The application must include:

251 (a) Identification of the original sentencing court and
 252 the criminal case number of the case or cases for which the

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253 person was wrongfully incarcerated ~~A certified copy of the order~~
254 ~~vacating the conviction and sentence;~~

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

258 ~~(c) Certified copies of the original judgment and~~
259 ~~sentence;~~

260 ~~(d) Documentation demonstrating the length of the sentence~~
261 ~~served, including documentation from the Department of~~
262 ~~Corrections regarding the person's admission into and release~~
263 ~~from the custody of the Department of Corrections;~~

264 (b)(e) Positive proof of identification, including ~~two~~
265 ~~full sets of fingerprints administered by a law enforcement~~
266 ~~agency and a current form of photo identification, demonstrating~~
267 ~~that the person seeking compensation is the same individual who~~
268 ~~was wrongfully incarcerated;~~

269 (c)(f) All supporting documentation of any fine, penalty,
270 or court costs imposed and paid by the wrongfully incarcerated
271 person as described in s. 961.06(1)(c);

272 (d)(g) All supporting documentation of any reasonable
273 attorney's fees and expenses as described in s. 961.06(1)(d);
274 and

275 (e)(h) Any other documentation, evidence, or information
276 required by rules adopted by the department.

277 (5) Upon receipt of the application, the department shall:
278 ~~forward one full set of fingerprints of the applicant to the~~
279 ~~Department of Law Enforcement for statewide criminal records~~
280 ~~checks. The Department of Law Enforcement shall forward the~~

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281 ~~second set of fingerprints to the Federal Bureau of~~
282 ~~Investigation for national criminal records checks. The results~~
283 ~~of the state and national records checks shall be submitted to~~
284 ~~the department.~~

285 (a) Request that the clerk of the court provide a
286 certified copy of the order vacating the conviction and sentence
287 and certified copies of the original judgment and sentence. The
288 clerk shall provide these records at no charge.

289 (b) Request that the Department of Corrections provide
290 documentation demonstrating the length of the sentence served,
291 including the dates of the wrongfully incarcerated person's
292 admission into and release from the custody of the Department of
293 Corrections. The Department of Corrections shall provide this
294 documentation at no charge.

295 ~~(c)(6) Upon receipt of an application, the department~~
296 ~~shall~~ Examine the application and notify the wrongfully
297 incarcerated person claimant within 30 calendar days of any
298 errors or omissions, and request any additional information
299 relevant to the review of the application. The wrongfully
300 incarcerated person claimant shall have 15 days after proper
301 notification of any existing errors or omissions to supplement
302 the application. The department may not deny an application for
303 failure of the wrongfully incarcerated person claimant to
304 correct an error or omission or supply additional information
305 unless the department timely notified the person claimant of
306 such errors or omissions or requested the additional information
307 within the 30-day period specified in this subsection. The
308 department shall process and review each completed application

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309 within 90 calendar days. Once the department determines whether
 310 a claim for compensation meets the requirements of this act, the
 311 department shall notify the wrongfully incarcerated person
 312 ~~claimant~~ within 5 business days of that determination.

313 (6)(7) If the department determines that a wrongfully
 314 incarcerated person ~~claimant~~ meets the requirements of this act,
 315 the wrongfully incarcerated person ~~who is the subject of the~~
 316 ~~claim~~ becomes entitled to compensation, subject to ~~the~~
 317 ~~provisions in~~ s. 961.06.

318 Section 4. Section 961.06, Florida Statutes, is amended to
 319 read:

320 961.06 Compensation for wrongful incarceration.--

321 (1) Except as otherwise provided in this act and subject
 322 to the limitations and procedures prescribed in this section, a
 323 person who is found to be entitled to compensation under ~~the~~
 324 ~~provisions of~~ this act is entitled to:

325 (a) Monetary compensation for wrongful incarceration,
 326 which shall be calculated at a rate of \$50,000 for each year of
 327 wrongful incarceration, prorated as necessary to account for a
 328 portion of a year. For persons found to be wrongfully
 329 incarcerated after December 31, 2008, the Chief Financial
 330 Officer may adjust the annual rate of compensation for inflation
 331 using the change in the December-to-December "Consumer Price
 332 Index for All Urban Consumers" of the Bureau of Labor Statistics
 333 of the Department of Labor;

334 (b) A waiver of tuition and fees for up to 120 hours of
 335 instruction at any career center established under s. 1001.44,
 336 any community college as defined in s. 1000.21(3), or any state

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337 university as defined in s. 1000.21(6), if the wrongfully
338 incarcerated person meets and maintains the regular admission
339 requirements of such career center, community college, or state
340 university; remains registered at such educational institution;
341 and makes satisfactory academic progress as defined by the
342 educational institution in which the wrongfully incarcerated
343 person claimant is enrolled;

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

346 (d) The amount of any reasonable attorney's fees and
347 expenses incurred and paid by the wrongfully incarcerated person
348 in connection with all criminal proceedings and appeals
349 regarding the wrongful conviction, to be calculated by the
350 department based upon the supporting documentation submitted as
351 specified in s. 961.05; and

352 (e) Notwithstanding any provision to the contrary in s.
353 943.0585, immediate administrative expunction of the wrongfully
354 incarcerated person's criminal record resulting from his or her
355 wrongful arrest, wrongful conviction, and wrongful
356 incarceration. The Department of Legal Affairs and the
357 Department of Law Enforcement shall, upon a determination that a
358 person claimant is entitled to compensation, immediately take
359 all action necessary to administratively expunge the person's
360 ~~claimant's~~ criminal record arising from his or her wrongful
361 arrest, wrongful conviction, and wrongful incarceration. All
362 fees for this process shall be waived.

363

364 The total compensation awarded under paragraphs (a), (c), and

365 (d) may not exceed \$2 million. No further award for attorney's
 366 fees, lobbying fees, costs, or other similar expenses shall be
 367 made by the state.

368 (2) In calculating monetary compensation under paragraph
 369 (1) (a), a wrongfully incarcerated person who is placed on parole
 370 or community supervision while serving the sentence resulting
 371 from the wrongful conviction and who commits anything less than
 372 a felony law violation that results in revocation of the parole
 373 or community supervision is eligible for compensation for the
 374 total number of years incarcerated. A wrongfully incarcerated
 375 person who commits a felony law violation that results in
 376 revocation of the parole or community supervision is ineligible
 377 for any compensation under subsection (1).

378 (3) Within 15 calendar days after issuing notice to the
 379 wrongfully incarcerated person ~~claimant~~ that his or her claim
 380 satisfies all of the requirements under this act, the department
 381 shall notify the Chief Financial Officer to draw a warrant from
 382 the General Revenue Fund or another source designated by the
 383 Legislature in law for the purchase of an annuity for the
 384 wrongfully incarcerated person ~~claimant~~ based on the total
 385 amount determined by the department under this act.

386 (4) The Chief Financial Officer shall purchase an annuity
 387 on behalf of the wrongfully incarcerated person ~~claimant~~ for a
 388 term of not less than 10 years. The terms of the annuity shall:

389 (a) Provide that the annuity may not be sold, discounted,
 390 or used as security for a loan or mortgage by the wrongfully
 391 incarcerated person ~~applicant~~.

392 (b) Contain beneficiary provisions for the continued

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393 disbursement of the annuity in the event of the death of the
394 wrongfully incarcerated person applicant.

395 (5) Before the Chief Financial Officer draws the warrant
396 for the purchase of the annuity, the wrongfully incarcerated
397 person claimant must sign a release and waiver on behalf of the
398 wrongfully incarcerated person claimant and his or her heirs,
399 successors, and assigns, forever releasing the state or any
400 agency, instrumentality, or any political subdivision thereof,
401 or any other entity subject to ~~the provisions of~~ s. 768.28, from
402 all present or future claims that the wrongfully incarcerated
403 person claimant or his or her heirs, successors, or assigns may
404 have against such entities arising out of the facts in
405 connection with the wrongful conviction for which compensation
406 is being sought under the act. The release and waiver must be
407 provided to the department prior to the issuance of the warrant
408 by the Chief Financial Officer.

409 (6) (a) A wrongfully incarcerated person may not submit an
410 application for compensation under this act if the person has a
411 civil action lawsuit pending against the state or any agency,
412 instrumentality, or any political subdivision thereof, or any
413 other entity subject to ~~the provisions of~~ s. 768.28, in state or
414 federal court requesting compensation arising out of ~~the facts~~
415 ~~in connection with~~ the wrongfully incarcerated person's
416 claimant's conviction and incarceration.

417 (b) A wrongfully incarcerated person may not submit an
418 application for compensation under this act if the person has
419 received a prior judgment in his or her favor in a civil action
420 against the state or any agency, instrumentality, or any

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421 political subdivision thereof, or against any other entity
422 subject to s. 768.28, in state or federal court arising out of
423 the wrongfully incarcerated person's conviction and
424 incarceration.

425 (c)~~(b)~~ A wrongfully incarcerated person may not submit an
426 application for compensation under this act if the person is the
427 subject of a claim bill pending for claims arising out of ~~the~~
428 ~~facts in connection with~~ the wrongfully incarcerated person's
429 ~~claimant's~~ conviction and incarceration.

430 (d)~~(e)~~ Once an application is filed under this act, a
431 wrongfully incarcerated person may not pursue recovery under a
432 claim bill until the final disposition of the application.

433 (e)~~(d)~~ Any amount awarded under this act is intended to
434 provide the sole compensation for any and all present and future
435 claims arising out of ~~the facts in connection with~~ the
436 wrongfully incarcerated person's ~~claimant's~~ conviction and
437 incarceration. Upon notification by the department that an
438 application meets the requirements of this act, a wrongfully
439 incarcerated person may not recover under a claim bill.

440 (f)~~(e)~~ Any compensation awarded under a claim bill shall
441 be the sole redress for claims arising out of ~~the facts in~~
442 ~~connection with~~ the wrongfully incarcerated person's ~~claimant's~~
443 conviction and incarceration and, upon any award of compensation
444 to a wrongfully incarcerated person under a claim bill, the
445 person may not receive compensation under this act.

446 (7) Any payment made under this act does not constitute a
447 waiver of any defense of sovereign immunity or an increase in
448 the limits of liability on behalf of the state or any person

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449 subject to ~~the provisions of~~ s. 768.28 or other law.

450 Section 5. This act shall take effect July 1, 2009.