

By Senator Joyner

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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  
4           term "actual innocence" for purposes of the Victims of  
5           Wrongful Incarceration Compensation Act; redefining  
6           the term "wrongfully incarcerated person" in order to  
7           conform; amending s. 961.03, F.S.; requiring that a  
8           petition for compensation include clear and convincing  
9           evidence of actual innocence; requiring the petitioner  
10          to submit fingerprints for criminal history records  
11          checks; providing that a failure to submit  
12          fingerprints within the prescribed timeframe does not  
13          warrant denial of compensation under the act;  
14          providing procedures for taking and submitting  
15          fingerprints; requiring that the results of the  
16          criminal history records checks be submitted to the  
17          clerk of the court; providing for use of the results  
18          by the court; specifying who will pay for the criminal  
19          history records checks; amending s. 961.05, F.S.;  
20          eliminating the requirement that a wrongfully  
21          incarcerated person provide certain court records and  
22          documentation from the Department of Corrections along  
23          with an application for compensation; requiring the  
24          Department of Legal Affairs to request certain records  
25          from the clerk of the court and the Department of  
26          Corrections; amending s. 961.06, F.S.; precluding  
27          submission of an application for compensation if the  
28          wrongfully incarcerated person has received a prior  
29          favorable judgment from a civil action arising out of

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30 the wrongful incarceration; providing an effective  
31 date.

32  
33 Be It Enacted by the Legislature of the State of Florida:

34  
35 Section 1. Section 961.02, Florida Statutes, is amended to  
36 read:

37 961.02 Definitions.—As used in ss. 961.01-961.07, the term:

38 (1) "Act" means the Victims of Wrongful Incarceration  
39 Compensation Act.

40 (2) "Actual innocence" means that a person did not commit  
41 the act or the offense that served as the basis for the  
42 conviction and incarceration for which the person seeks  
43 compensation, and that the person did not aid, abet, or act as  
44 an accomplice to a person who committed the act or offense.

45 (3)~~(2)~~ "Department" means the Department of Legal Affairs.

46 (4)~~(3)~~ "Division" means the Division of Administrative  
47 Hearings.

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

58 (6)~~(5)~~ "Eligible for compensation" means a person meets the

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59 definition of "wrongfully incarcerated person" and is not  
60 disqualified from seeking compensation under the criteria  
61 prescribed in s. 961.04.

62 (7)~~(6)~~ "Entitled to compensation" means a person meets the  
63 definition of "eligible for compensation" and satisfies the  
64 application requirements prescribed in s. 961.05, and may  
65 receive compensation pursuant to s. 961.06.

66 Section 2. Section 961.03, Florida Statutes, is amended to  
67 read:

68 961.03 Determination of status as a wrongfully incarcerated  
69 person; determination of eligibility for compensation.—

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

79 1. State that clear and convincing ~~verifiable and~~  
80 ~~substantial~~ evidence of actual innocence exists and state with  
81 particularity the nature and significance of the clear and  
82 convincing ~~verifiable and substantial~~ evidence of actual  
83 innocence; and

84 2. State that the person is not disqualified, under ~~the~~  
85 ~~provisions of~~ s. 961.04, from seeking compensation under this  
86 act.

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

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

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

93 (c)1. Within 30 days after filing the petition, the  
94 petitioner must submit fingerprints for a state and national  
95 criminal history records check. Failure to satisfy this  
96 subparagraph within the prescribed timeframe is not grounds for  
97 denial of compensation under this act.

98 2. The clerk of the court shall inform the petitioner of  
99 the process for having his or her fingerprints taken and  
100 submitted and provide information concerning law enforcement  
101 agencies or service providers that are authorized to submit  
102 fingerprints electronically to the Department of Law  
103 Enforcement.

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

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

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117 national processing shall be absorbed by the Department of Law  
118 Enforcement.

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

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

129 (b) By certifying to the court that questions of fact  
130 remain as to the petitioner's claim of actual innocence, and  
131 that the prosecuting authority contests ~~contesting~~ the nature,  
132 significance, or effect of the evidence of actual innocence, ~~the~~  
133 ~~facts related to the petitioner's alleged wrongful~~  
134 ~~incarceration, or whether the petitioner is ineligible from~~  
135 ~~seeking compensation under the provisions of s. 961.04.~~

136 (3) If the prosecuting authority certifies to the court  
137 that it does not contest the petitioner's claim of actual  
138 innocence, and the court finds that the petitioner has proven  
139 actual innocence by clear and convincing evidence and is  
140 eligible for compensation under s. 961.04 ~~responds as set forth~~  
141 ~~in paragraph (2)(a), the original sentencing court, based upon~~  
142 ~~the evidence of actual innocence, the prosecuting authority's~~  
143 ~~certification, and upon the court's finding that the petitioner~~  
144 ~~has presented clear and convincing evidence that the petitioner~~  
145 ~~committed neither the act nor the offense that served as the~~

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146 ~~basis for the conviction and incarceration, and that the~~  
147 ~~petitioner did not aid, abet, or act as an accomplice to a~~  
148 ~~person who committed the act or offense, the original sentencing~~  
149 ~~court shall certify to the department that the petitioner is a~~  
150 ~~wrongfully incarcerated person who is eligible for compensation~~  
151 ~~as defined by this act. ~~Based upon the prosecuting authority's~~~~  
152 ~~certification, the court shall also certify to the department~~  
153 ~~that the petitioner is eligible for compensation under the~~  
154 ~~provisions of s. 961.04.~~

155 (4) (a) If the prosecuting authority contests the  
156 petitioner's claim of actual innocence ~~responds as set forth in~~  
157 ~~paragraph (2) (b),~~ the original sentencing court shall make a  
158 determination from the pleadings and supporting documentation  
159 whether, ~~by a preponderance of the evidence,~~ the petitioner is  
160 eligible ~~ineligible~~ for compensation under ~~the provisions of s.~~  
161 961.04, regardless of his or her claim of wrongful  
162 incarceration. If the court finds the petitioner ineligible  
163 under ~~the provisions of s. 961.04,~~ it shall dismiss the  
164 petition.

165 (b) If the court determines that the petitioner is eligible  
166 under s. 961.04 ~~prosecuting authority responds as set forth in~~  
167 ~~paragraph (2) (b), and the court determines that the petitioner~~  
168 ~~is eligible under the provisions of s. 961.04,~~ but the  
169 prosecuting authority contests the nature, significance, or  
170 effect of the evidence of actual innocence, ~~or the facts related~~  
171 ~~to the petitioner's alleged wrongful incarceration,~~ the court  
172 shall set forth its findings and transfer the petition to the  
173 division for findings of fact and a recommended determination of  
174 whether the petitioner has proven actual innocence ~~established~~

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175 ~~that he or she is a wrongfully incarcerated person who is~~  
176 ~~eligible for compensation~~ under this act.

177       (5) The petitioner must prove actual innocence before the  
178 administrative law judge by clear and convincing evidence. ~~Any~~  
179 ~~questions of fact, the nature, significance or effect of the~~  
180 ~~evidence of actual innocence, and the petitioner's eligibility~~  
181 ~~for compensation under this act must be established by clear and~~  
182 ~~convincing evidence by the petitioner before an administrative~~  
183 ~~law judge.~~

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

188       (b) The prosecuting authority shall appear for the purpose  
189 of contesting, as necessary, the facts, the nature, and  
190 significance or effect of the evidence of actual innocence as  
191 presented by the petitioner.

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

196       (d) The original sentencing court shall review the findings  
197 and recommendation contained in the order of the administrative  
198 law judge and, within 60 days, shall issue its own order  
199 adopting or declining to adopt the findings and recommendation  
200 of the administrative law judge.

201       (7) If the court concludes that the petitioner is a  
202 wrongfully incarcerated person as defined by this act and is  
203 eligible for compensation as defined in this act, the court

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204 shall include in its order a certification to the department  
205 that:

206 (a)1. The order of the administrative law judge finds that  
207 the petitioner has met his or her burden of proving actual  
208 innocence ~~establishing~~ by clear and convincing evidence ~~that the~~  
209 ~~petitioner committed neither the act nor the offense that served~~  
210 ~~as the basis for the conviction and incarceration and that the~~  
211 ~~petitioner did not aid, abet, or act as an accomplice to a~~  
212 ~~person who committed the act or offense;~~

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

216 3. The petitioner is a wrongfully incarcerated person who  
217 is eligible for compensation; or

218 (b)2. That The court has declined to adopt the findings and  
219 recommendation ~~recommendations~~ of the administrative law judge  
220 that the petitioner failed to prove actual innocence by clear  
221 and convincing evidence and finds that the petitioner has met  
222 his or her burden of proving actual innocence ~~establishing~~ by  
223 clear and convincing evidence, and that the petitioner is a  
224 wrongfully incarcerated person who is eligible for compensation.

225 ~~that the petitioner committed neither the act nor the offense~~  
226 ~~that served as the basis for the conviction and incarceration~~  
227 ~~and that the petitioner did not aid, abet, or act as an~~  
228 ~~accomplice to a person who committed the act or offense; and~~

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

232 (8) The establishment of the method by which a person may



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233 seek the status of a wrongfully incarcerated person and a  
234 finding as to eligibility for compensation under this act in no  
235 way creates any rights of due process beyond those set forth in  
236 this act herein, nor is there created any right to further  
237 petition or appeal beyond the scope of the method set forth in  
238 this act herein.

239 Section 3. Section 961.05, Florida Statutes, is amended to  
240 read:

241 961.05 Application for compensation for wrongful  
242 incarceration; administrative expunction; determination of  
243 entitlement to compensation.—

244 (1) A wrongfully incarcerated person who is eligible for  
245 compensation as defined in this act must initiate his or her  
246 application for compensation as required in this section no more  
247 than 2 years after the original sentencing court enters its  
248 order finding that the person meets the definition of a  
249 wrongfully incarcerated person and is eligible for compensation  
250 as defined in this act.

251 (2) A wrongfully incarcerated person who is eligible for  
252 compensation under the act must apply to the Department of Legal  
253 Affairs. No estate of, or personal representative for, a  
254 decedent is entitled to apply on behalf of the decedent for  
255 compensation for wrongful incarceration.

256 (3) The Department of Legal Affairs may adopt rules  
257 regarding the forms and procedures related to applications for  
258 compensation under this act ~~the Victims of Wrongful~~  
259 ~~Incarceration Compensation Act~~.

260 (4) The application must include:

261 (a) Identification of the original sentencing court and the

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262 criminal case number of the case or cases for which the person  
263 was wrongfully incarcerated ~~A certified copy of the order~~  
264 ~~vacating the conviction and sentence;~~

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

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

269 ~~(d) Documentation demonstrating the length of the sentence~~  
270 ~~served, including documentation from the Department of~~  
271 ~~Corrections regarding the person's admission into and release~~  
272 ~~from the custody of the Department of Corrections;~~

273 ~~(b)(e)~~ (b) Positive proof of identification, including ~~two full~~  
274 ~~sets of fingerprints administered by a law enforcement agency~~  
275 ~~and~~ a current form of photo identification, demonstrating that  
276 the person seeking compensation is the same individual who was  
277 wrongfully incarcerated;

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

281 ~~(d)(g)~~ (d) All supporting documentation of any reasonable  
282 attorney's fees and expenses as described in s. 961.06(1)(d);  
283 and

284 ~~(e)(h)~~ (e) Any other documentation, evidence, or information  
285 required by rules adopted by the department.

286 (5) Upon receipt of the application, the department shall:  
287 ~~forward one full set of fingerprints of the applicant to the~~  
288 ~~Department of Law Enforcement for statewide criminal records~~  
289 ~~checks. The Department of Law Enforcement shall forward the~~  
290 ~~second set of fingerprints to the Federal Bureau of~~

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291 ~~Investigation for national criminal records checks. The results~~  
292 ~~of the state and national records checks shall be submitted to~~  
293 ~~the department.~~

294 (a) Request that the clerk of the court provide a certified  
295 copy of the order vacating the conviction and sentence and  
296 certified copies of the original judgment and sentence. The  
297 clerk shall provide these records at no charge.

298 (b) Request that the Department of Corrections provide  
299 documentation demonstrating the length of the sentence served,  
300 including the dates of the wrongfully incarcerated person's  
301 admission into and release from the custody of the Department of  
302 Corrections. The Department of Corrections shall provide this  
303 documentation at no charge.

304 ~~(c)(6) Upon receipt of an application, the department shall~~  
305 ~~Examine the application and notify the wrongfully incarcerated~~  
306 ~~person claimant within 30 calendar days of any errors or~~  
307 ~~omissions, and request any additional information relevant to~~  
308 ~~the review of the application. The wrongfully incarcerated~~  
309 ~~person claimant shall have 15 days after proper notification of~~  
310 ~~any existing errors or omissions to supplement the application.~~  
311 ~~The department may not deny an application for failure of the~~  
312 ~~wrongfully incarcerated person claimant to correct an error or~~  
313 ~~omission or supply additional information unless the department~~  
314 ~~timely notified the person claimant of such errors or omissions~~  
315 ~~or requested the additional information within the 30-day period~~  
316 ~~specified in this subsection. The department shall process and~~  
317 ~~review each completed application within 90 calendar days. Once~~  
318 ~~the department determines whether a claim for compensation meets~~  
319 ~~the requirements of this act, the department shall notify the~~

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320 wrongfully incarcerated person claimant within 5 business days  
321 of that determination.

322 (6)~~(7)~~ If the department determines that a wrongfully  
323 incarcerated person claimant meets the requirements of this act,  
324 the wrongfully incarcerated person ~~who is the subject of the~~  
325 ~~claim~~ becomes entitled to compensation, subject to ~~the~~  
326 ~~provisions in~~ s. 961.06.

327 Section 4. Section 961.06, Florida Statutes, is amended to  
328 read:

329 961.06 Compensation for wrongful incarceration.—

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

334 (a) Monetary compensation for wrongful incarceration, which  
335 shall be calculated at a rate of \$50,000 for each year of  
336 wrongful incarceration, prorated as necessary to account for a  
337 portion of a year. For persons found to be wrongfully  
338 incarcerated after December 31, 2008, the Chief Financial  
339 Officer may adjust the annual rate of compensation for inflation  
340 using the change in the December-to-December "Consumer Price  
341 Index for All Urban Consumers" of the Bureau of Labor Statistics  
342 of the Department of Labor;

343 (b) A waiver of tuition and fees for up to 120 hours of  
344 instruction at any career center established under s. 1001.44,  
345 any community college as defined in s. 1000.21(3), or any state  
346 university as defined in s. 1000.21(6), if the wrongfully  
347 incarcerated person meets and maintains the regular admission  
348 requirements of such career center, community college, or state

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349 university; remains registered at such educational institution;  
350 and makes satisfactory academic progress as defined by the  
351 educational institution in which the wrongfully incarcerated  
352 person claimant is enrolled;

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

355 (d) The amount of any reasonable attorney's fees and  
356 expenses incurred and paid by the wrongfully incarcerated person  
357 in connection with all criminal proceedings and appeals  
358 regarding the wrongful conviction, to be calculated by the  
359 department based upon the supporting documentation submitted as  
360 specified in s. 961.05; and

361 (e) Notwithstanding any provision to the contrary in s.  
362 943.0585, immediate administrative expunction of the wrongfully  
363 incarcerated person's criminal record resulting from his or her  
364 wrongful arrest, wrongful conviction, and wrongful  
365 incarceration. The Department of Legal Affairs and the  
366 Department of Law Enforcement shall, upon a determination that a  
367 person claimant is entitled to compensation, immediately take  
368 all action necessary to administratively expunge the person's  
369 ~~claimant's~~ criminal record arising from his or her wrongful  
370 arrest, wrongful conviction, and wrongful incarceration. All  
371 fees for this process shall be waived.

372  
373 The total compensation awarded under paragraphs (a), (c), and  
374 (d) may not exceed \$2 million. No further award for attorney's  
375 fees, lobbying fees, costs, or other similar expenses shall be  
376 made by the state.

377 (2) In calculating monetary compensation under paragraph

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378 (1) (a), a wrongfully incarcerated person who is placed on parole  
379 or community supervision while serving the sentence resulting  
380 from the wrongful conviction and who commits anything less than  
381 a felony law violation that results in revocation of the parole  
382 or community supervision is eligible for compensation for the  
383 total number of years incarcerated. A wrongfully incarcerated  
384 person who commits a felony law violation that results in  
385 revocation of the parole or community supervision is ineligible  
386 for any compensation under subsection (1).

387 (3) Within 15 calendar days after issuing notice to the  
388 wrongfully incarcerated person claimant that his or her claim  
389 satisfies all of the requirements under this act, the department  
390 shall notify the Chief Financial Officer to draw a warrant from  
391 the General Revenue Fund or another source designated by the  
392 Legislature in law for the purchase of an annuity for the  
393 wrongfully incarcerated person claimant based on the total  
394 amount determined by the department under this act.

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

398 (a) Provide that the annuity may not be sold, discounted,  
399 or used as security for a loan or mortgage by the wrongfully  
400 incarcerated person applicant.

401 (b) Contain beneficiary provisions for the continued  
402 disbursement of the annuity in the event of the death of the  
403 wrongfully incarcerated person applicant.

404 (5) Before the Chief Financial Officer draws the warrant  
405 for the purchase of the annuity, the wrongfully incarcerated  
406 person claimant must sign a release and waiver on behalf of the

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407 wrongfully incarcerated person claimant and his or her heirs,  
408 successors, and assigns, forever releasing the state or any  
409 agency, instrumentality, or any political subdivision thereof,  
410 or any other entity subject to ~~the provisions of~~ s. 768.28, from  
411 all present or future claims that the wrongfully incarcerated  
412 person claimant or his or her heirs, successors, or assigns may  
413 have against such entities arising out of the facts in  
414 connection with the wrongful conviction for which compensation  
415 is being sought under the act. The release and waiver must be  
416 provided to the department prior to the issuance of the warrant  
417 by the Chief Financial Officer.

418 (6) (a) A wrongfully incarcerated person may not submit an  
419 application for compensation under this act if the person has a  
420 civil action lawsuit pending against the state or any agency,  
421 instrumentality, or any political subdivision thereof, or any  
422 other entity subject to ~~the provisions of~~ s. 768.28, in state or  
423 federal court requesting compensation arising out of ~~the facts~~  
424 ~~in connection with~~ the wrongfully incarcerated person's  
425 ~~claimant's~~ conviction and incarceration.

426 (b) A wrongfully incarcerated person may not submit an  
427 application for compensation under this act if the person has  
428 received a prior judgment in his or her favor in a civil action  
429 against the state or any agency, instrumentality, or any  
430 political subdivision thereof, or against any other entity  
431 subject to s. 768.28, in state or federal court arising out of  
432 the wrongfully incarcerated person's conviction and  
433 incarceration.

434 (c) ~~(b)~~ A wrongfully incarcerated person may not submit an  
435 application for compensation under this act if the person is the

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436 subject of a claim bill pending for claims arising out of ~~the~~  
437 ~~facts in connection with~~ the wrongfully incarcerated person's  
438 ~~claimant's~~ conviction and incarceration.

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

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

449 (f)~~(e)~~ Any compensation awarded under a claim bill shall be  
450 the sole redress for claims arising out of ~~the facts in~~  
451 ~~connection with~~ the wrongfully incarcerated person's ~~claimant's~~  
452 conviction and incarceration and, upon any award of compensation  
453 to a wrongfully incarcerated person under a claim bill, the  
454 person may not receive compensation under this act.

455 (7) Any payment made under this act does not constitute a  
456 waiver of any defense of sovereign immunity or an increase in  
457 the limits of liability on behalf of the state or any person  
458 subject to ~~the provisions of~~ s. 768.28 or other law.

459 Section 5. This act shall take effect July 1, 2010.