

Committee Substitute for Committee Substitute for
Committee Substitute for Senate Bill No. 756

An act relating to compensation for wrongful incarceration; creating the “Victims of Wrongful Incarceration Compensation Act”; providing definitions; providing a limited method by which a person may seek the status of a wrongfully incarcerated person who is eligible and entitled to compensation under the act; requiring a sworn petition by the claimant; requiring the petitioner to show verifiable and substantial evidence of actual innocence; requiring the original prosecuting authority to respond to the petition; providing for a determination on the pleadings whether claimant is ineligible for compensation based on past criminal history; providing for a contested factual determination before an administrative law judge if necessary; requiring the original sentencing court to determine whether a person is a wrongfully incarcerated person based upon clear and convincing evidence; providing exceptions and limitations regarding the eligibility of a wrongfully incarcerated person for compensation; requiring the original sentencing court to include a finding of eligibility for compensation in its order; granting rulemaking authority to the Department of Legal Affairs; requiring that a wrongfully incarcerated person seeking compensation apply to the Department of Legal Affairs; providing application requirements and a deadline; providing for state and national criminal records checks; requiring that the Department of Legal Affairs review each application and notify the claimant of any omissions or errors, or the need for additional information, within a specified period; requiring that the Department of Legal Affairs process and review each completed application within a specified period; requiring that the Department of Legal Affairs notify the claimant if he or she qualifies for compensation within a specified period; providing for monetary compensation for certain wrongfully incarcerated persons; providing for recovery of reasonable attorney’s fees and other costs with limitations for certain wrongfully incarcerated persons; providing for tuition waivers for wrongfully incarcerated persons who meet certain requirements; providing for administrative expunction of certain records; requiring that any monetary compensation be paid within a specified period; directing the Chief Financial Officer to purchase an annuity on behalf of the claimant; prescribing the terms of the annuity; prescribing conditions under which an application may not be filed and compensation may not be awarded; requiring a claimant to sign a release before receiving such compensation; providing for a continuing appropriation from the General Revenue Fund; providing that an award of compensation does not constitute a waiver of sovereign immunity by the state; providing for severability; providing an effective date.

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

Section 1. Short title.—Sections 1-7 of this act may be cited as the “Victims of Wrongful Incarceration Compensation Act.”

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

(1) “Act” means the Victims of Wrongful Incarceration Compensation Act.

(2) “Department” means the Department of Legal Affairs.

(3) “Division” means the Division of Administrative Hearings.

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

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

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

Section 3. Determination of status as a wrongfully incarcerated person; determination of eligibility for compensation.—

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

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

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

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

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

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

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

(a) By certifying to the court that, based upon the petition and verifiable and substantial evidence of actual innocence, no further criminal proceedings in the case at bar can or will be initiated by the prosecuting authority, that no questions of fact remain as to the petitioner's wrongful incarceration, and that the petitioner is not ineligible from seeking compensation under the provisions of subsections (1)-(3) of section 4 of this act; or

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

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

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

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

(5) Any questions of fact, the nature, significance or effect of the evidence of actual innocence, and the petitioner's eligibility for compensation under

this act must be established by clear and convincing evidence by the petitioner before an administrative law judge.

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5. Application for compensation for wrongful incarceration; administrative expunction; determination of entitlement to compensation.—

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

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

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

(4) The application must include:

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

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

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

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

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

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

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

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

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

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

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

Section 6. Compensation for wrongful incarceration.—

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

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

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

as defined in 1000.21(6), Florida Statutes, if the wrongfully incarcerated person meets and maintains the regular admission requirements of such career center, community college, or state university; remains registered at such educational institution; and makes satisfactory academic progress as defined by the educational institution in which the claimant is enrolled;

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

(d) The amount of any reasonable attorney's fees and expenses incurred and paid by the wrongfully incarcerated person in connection with all criminal proceedings and appeals regarding the wrongful conviction, to be calculated by the department based upon the supporting documentation submitted as specified in section 5; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor May 28, 2008.

Filed in Office Secretary of State May 28, 2008.