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House Concurrent Resolution

A concurrent resolution proposing the adoption of Joint Rule 9, Joint Rules of the Florida Legislature, relating to compensation for the wrongfully incarcerated.

Be It Resolved by the House of Representatives of the State of Florida, the Senate Concurring:

That Joint Rule 9, Joint Rules of the Legislature, is hereby created to read:

Joint Rule Nine

Compensation for Wrongful Incarceration

9.1-Eligibility

(1) A claim bill shall be allowed for wrongful criminal felony convictions resulting in imprisonment if the claimant has been granted judicial relief absolving the claimant of guilt on the basis of actual innocence of the crime for which the claimant was sentenced.

(2) As used in this Joint Rule, "actual innocence" means:

(a) The claimant was charged, by indictment or information, with the commission of an offense classified as a felony;

(b) The claimant did not plead guilty or no contest to the offense charged or to any lesser included offense, unless the claimant was charged with a capital offense;

(c) The claimant was convicted of the offense;

29 (d) The claimant was sentenced to incarceration for a term  
 30 of imprisonment as a result of the conviction;

31 (e) The claimant was imprisoned solely on the basis of the  
 32 conviction for the offense;

33 (f) The claimant did not, by his or her misconduct or  
 34 neglect, bring about the prosecution;

35 (g) The claimant's acts did not constitute a crime; and

36 (h) A court of competent jurisdiction found by clear and  
 37 convincing evidence that the offense for which the claimant was  
 38 convicted, sentenced, and imprisoned, including any lesser  
 39 included offenses, was not committed by the claimant and issued  
 40 an order vacating, dismissing, or reversing the conviction and  
 41 sentence and providing that no further proceedings can be or  
 42 will be held against the claimant on any facts and circumstances  
 43 alleged in the proceedings which had resulted in the conviction.

44 (3) A claimant shall not be eligible for compensation if  
 45 the claimant was also serving a concurrent felony sentence.

46 (4) The claimant must comply with both the Senate Rules  
 47 and the Rules of the House of Representatives and shall not file  
 48 a claim bill later than 2 years after the order vacating,  
 49 reversing, or dismissing the sentence, except that all other  
 50 judicial and administrative remedies need not be exhausted.

51  
 52 9.2-Relief

53 (1) Upon a finding of actual innocence and that all  
 54 conditions of this Joint Rule have been satisfied, the  
 55 Legislature may award the claimant relief as specified in Joint  
 56 Rule 9.3 or 9.4, but not both.

57 (2) Any person awarded compensation pursuant to this Joint  
58 Rule who is subsequently convicted of a felony shall,  
59 immediately upon such conviction, not be eligible to receive any  
60 unpaid amounts or benefits from any compensation awarded in the  
61 relief act. Any amount from an annuity that is forfeited  
62 pursuant to this section shall revert to the state General  
63 Revenue Fund.

64 (3) No award for relief pursuant to this Joint Rule shall  
65 include punitive damages.

66 (4) The relief act may include an apology made by the  
67 Legislature on behalf of the State of Florida.

68

69 9.3—Nonmonetary Compensation

70 (1) HEALTH CARE PLAN.—The relief act may direct the  
71 appropriate state agency to purchase a comprehensive health care  
72 plan, including dental and mental health coverage.

73 (2) EDUCATIONAL ASSISTANCE.—The relief act may waive  
74 tuition and fees for up to a total of 4 years of instruction at  
75 any career center established pursuant to section 1001.44,  
76 Florida Statutes, at any community college established under  
77 part III of chapter 1004, Florida Statutes, or any state  
78 university. The relief act shall state that for any educational  
79 benefit made, the claimant shall be required to meet and  
80 maintain the regular admission requirements of, and be  
81 registered at, such career center, community college, or state  
82 university and make satisfactory academic progress as defined by  
83 the educational institution in which the claimant is enrolled.

84 (3) JOB PREFERENCE.—The relief act may award first  
 85 preference in employment by the state and its political  
 86 subdivisions.

87 (a) The relief act must state that the claimant must be  
 88 otherwise eligible for employment with the hiring agency or  
 89 political subdivision.

90 (b) The relief act must state that the job preference  
 91 benefits awarded do not apply to positions that are exempt from  
 92 the State Career Service System under section 110.205(2),  
 93 Florida Statutes, positions which are filled by officers elected  
 94 by popular vote or persons appointed to fill vacancies in such  
 95 offices, members of boards and commissions, persons employed on  
 96 a temporary basis without benefits, heads of departments, and  
 97 positions that require licensure as a physician, osteopathic  
 98 physician, chiropractic physician, engineer, or membership in  
 99 The Florida Bar.

100 (4) WAIVER OF FEES.—The relief act shall waive any  
 101 statutory fees required to expunge any arrest or court records  
 102 as otherwise subject to expunction by law or court rule and  
 103 shall waive any fees for copying costs or other costs of  
 104 obtaining public records in furtherance of such expunction.

105  
 106 Rule 9.4—Monetary Compensation

107 (1) The relief act may provide compensation in an amount  
 108 not to exceed \$200,000.

109 (2) Any compensation computed pursuant to subsection (1)  
 110 may be awarded in a lump sum or may be paid in an initial lump  
 111 sum equal to 20 percent of the compensation award with the

112 remaining 80 percent of the principal of the compensation award  
 113 to be used by the Chief Financial Officer to purchase an  
 114 annuity. If the Legislature directs that an annuity be  
 115 purchased, the relief act must state the following:

116 (a) That any annuity purchased shall be purchased from any  
 117 A+ rated company, to provide equal monthly installments to the  
 118 claimant for a period certain of a stated number of years  
 119 commencing no later than 1 year after the effective date of the  
 120 appropriation;

121 (b) That the annuity shall provide that it shall not be  
 122 sold, discounted, or used as security for loans and mortgages by  
 123 the claimant; and

124 (c) That the annuity shall contain beneficiary provisions  
 125 providing for the annuity's continued disbursement in the event  
 126 of the death of the claimant, subject to the provisions of Joint  
 127 Rule 9.2(2).

128

129 9.5—Release and Waiver

130 As a condition of receiving any compensation under this  
 131 Joint Rule, a claimant shall execute a release and waiver on  
 132 behalf of the claimant or his or her heirs, successors, and/or  
 133 assigns forever releasing the State of Florida or any agency,  
 134 instrumentality, officer, employee, or political subdivision  
 135 thereof, or any other entity subject to the provisions of  
 136 section 768.28, Florida Statutes, from any and all present or  
 137 future claims the claimant or his or her heirs, successors,  
 138 and/or assigns may have against such enumerated entities and  
 139 arising out of the factual situation in connection with the

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140 conviction for which the compensation is being sought under this  
141 Joint Rule.

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143 9.6—Collateral Sources

144 The claimant is not eligible for compensation if the  
145 claimant was awarded a final judgment in a court of law, or has  
146 received any funds pursuant to a settlement agreement for  
147 compensation or damages arising out of the factual situation in  
148 connection with the conviction for which compensation is sought  
149 under this Joint Rule.

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151 9.7—Attorney's and Lobbyist's Fees

152 Attorney's and lobbyist's fees are subject to the  
153 provisions of section 768.28(8), Florida Statutes. No  
154 compensation shall be made for attorney's fees charged for legal  
155 services relating to a finding of actual innocence as defined by  
156 this Joint Rule.

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158 9.8—Sovereign Immunity; Limits of Liability

159 The passage of a relief act pursuant to this Joint Rule  
160 shall not be deemed to have waived any defense of sovereign  
161 immunity or to have increased the limits of liability on behalf  
162 of the state or any person or entity subject to the provisions  
163 of section 768.28, Florida Statutes.