

6234--C

2009-2010 Regular Sessions

I N S E N A T E

October 19, 2009

Introduced by Sens. SCHNEIDERMAN, AUBERTINE, DIAZ, DUANE, HASSELL-THOMPSON, HUNTLEY, KRUEGER, MONTGOMERY, ONORATO, PARKER, PERKINS, SERRANO, STAVISKY, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, in relation to establishing the actual innocence justice act of 2010

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. This act shall be known as the "actual innocence justice
2 act of 2010".
3 S 2. Subdivision 1 of section 440.10 of the criminal procedure law is
4 amended by adding a new paragraph (i) to read as follows:
5 (I) THE DEFENDANT IS ACTUALLY INNOCENT OF THE CRIME OR CRIMES OF WHICH
6 HE OR SHE WAS CONVICTED. FOR PURPOSES OF THIS PARAGRAPH, A DEFENDANT IS
7 ACTUALLY INNOCENT WHERE IT IS ESTABLISHED BY CLEAR AND CONVINCING
8 EVIDENCE THAT NO TRIER OF FACT WOULD HAVE CONVICTED THE DEFENDANT UNDER
9 A REASONABLE DOUBT STANDARD AND IN LIGHT OF ALL AVAILABLE EVIDENCE.
10 S 3. Subdivision 4 of section 440.10 of the criminal procedure law is
11 amended to read as follows:
12 4. If the court grants the motion, it must, except as provided in
13 subdivision five OF THIS SECTION, vacate the judgment, and must dismiss
14 the accusatory instrument, or order a new trial, or take such other
15 action as is appropriate in the circumstances. IF THE DEFENDANT HAS
16 ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT HE OR SHE IS ACTUALLY
17 INNOCENT, IN THAT NO TRIER OF FACT WOULD HAVE CONVICTED THE DEFENDANT OF

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

LBD14838-06-0

1 THE OFFENSE OR OFFENSES UNDER A REASONABLE DOUBT STANDARD AND IN LIGHT
2 OF ALL AVAILABLE EVIDENCE, THE COURT SHALL DISMISS THE ACCUSATORY
3 INSTRUMENT.

4 S 4. Section 440.10 of the criminal procedure law is amended by adding
5 a new subdivision 8 to read as follows:

6 8. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE COURT MUST
7 ADDRESS THE MERITS OF ANY CLAIM FOR RELIEF WHEN THE CLAIMANT CAN SHOW,
8 IN LIGHT OF ALL AVAILABLE EVIDENCE, THAT THERE EXISTS A REASONABLE PROB-
9 ABILITY THAT HE OR SHE IS ACTUALLY INNOCENT.

10 S 5. This act shall take effect immediately.