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I N   S E N A T E

May 18, 2010

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Introduced by Sen. SCHNEIDERMAN -- read twice and ordered printed, and  
when printed to be committed to the Committee on Judiciary

AN ACT to amend the court of claims act, in relation to claims for  
conviction; and to amend the criminal procedure law, in relation to  
the expungement of criminal records

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

1     Section 1. Subdivision 7 of section 8-b of the court of claims act is  
2     renumbered subdivision 8 and subdivision 4, paragraphs (c) and (d) of  
3     subdivision 5 and subdivision 6, as added by chapter 1009 of the laws of  
4     1984, are amended and two new subdivisions 7 and 9 are added to read as  
5     follows:  
6     4. The claim shall state facts in sufficient detail to permit the  
7     court to find that claimant is likely to succeed at trial in proving  
8     that (a) he did not commit any of the acts [charged in the accusatory  
9     instrument] SUBMITTED TO THE FACTFINDER or his acts or omissions charged  
10    in the accusatory instrument did not constitute a felony or misdemeanor  
11    against the state, and (b) he did not by his own conduct cause or bring  
12    about his conviction. A CONFESSION OR ADMISSION LATER FOUND TO BE  
13    FALSE, OR A PLEA OF GUILTY TO A CRIME THAT THE CLAIMANT DID NOT COMMIT,  
14    DOES NOT CONSTITUTE "CAUSING ONE'S CONVICTION" PURSUANT TO THIS SUBDIVI-  
15    SION. The claim shall be verified by the claimant. If the court finds  
16    after reading the claim that claimant is not likely to succeed at trial,  
17    it shall dismiss the claim, either on its own motion or on the motion of  
18    the state.  
19    (c) he did not commit any of the acts [charged in the accusatory  
20    instrument] SUBMITTED TO THE FACTFINDER or his acts or omissions charged  
21    in the accusatory instrument did not constitute a felony or misdemeanor  
22    against the state; and  
23    (d) he did not by his own conduct cause or bring about his conviction.  
24    CONVICTIONS RESULTING FROM ANY OF THE FOLLOWING SHALL NOT CONSTITUTE  
25    CONDUCT CAUSING OR BRINGING ABOUT HIS CONVICTION UNDER THIS ACT: (I) THE  
26    NEGLIGENCE OF HIS DEFENSE ATTORNEY; (II) A COERCED OR INVOLUNTARY  
27    CONFESSION; (III) THE UNCORROBORATED TESTIMONY OF A PERSON OTHER THAN A

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

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1 LAW ENFORCEMENT OFFICER OF AN ALLEGED ADMISSION OF GUILT BY THE DEFEND-  
2 ANT; OR (IV) A CLAIMANT'S HAVING ENTERED A PLEA OF GUILTY, PROVIDED THAT  
3 THE CLAIMANT IS ABLE TO DEMONSTRATE THAT THE PLEA WAS ENTERED DUE TO THE  
4 NEGLIGENCE OF HIS ATTORNEY OR AS THE RESULT OF DURESS OR COERCION.

5 6. If the court finds that the claimant is entitled to a judgment, [it  
6 shall award damages in such sum of money as the court determines will  
7 fairly and reasonably compensate him.] THE CLAIMANT MAY ELECT AS COMPEN-  
8 SATION TO RECEIVE A FIXED SUM OF SEVENTY-FIVE THOUSAND DOLLARS FOR EACH  
9 YEAR THAT HE OR SHE WAS INCARCERATED, THE TOTAL TO BE COMPUTED BY MULTI-  
10 PLYING THE NUMBER OF YEARS OF INCARCERATION AND FRACTION THEREOF TIMES  
11 SEVENTY-FIVE THOUSAND DOLLARS. THIS FIGURE SHALL BE ADJUSTED TO THE YEAR  
12 OF EXONERATION IN ACCORDANCE WITH CHANGES IN THE COST OF LIVING, USING  
13 THE CONSUMER PRICE INDEX (FOR ALL URBAN CONSUMERS, CPU-I, U.S., CITY  
14 AVERAGE, ALL ITEMS, 1982-84=100) PUBLISHED BY THE UNITED STATES BUREAU  
15 OF LABOR STATISTICS. THE ADJUSTMENT SHALL BE COMPUTED BY MULTIPLYING  
16 SEVENTY-FIVE THOUSAND DOLLARS TIMES THE CONSUMER PRICE INDEX AVERAGE FOR  
17 THE YEAR OF EXONERATION DIVIDED BY THE CONSUMER PRICE INDEX AVERAGE FOR  
18 TWO THOUSAND TEN, WHICH IS THE YEAR OF ENACTMENT OF THIS SECTION. IN  
19 THE ALTERNATIVE, THE CLAIMANT MAY WAIVE HIS OR HER RIGHT TO RECEIVE THE  
20 FIXED ANNUAL SUM SO COMPUTED AND, IN LIEU THEREOF, HE OR SHE MAY ELECT  
21 TO HAVE THE COURT ASSESS HIS OR HER DAMAGES, IN WHICH CASE THE COURT  
22 SHALL AWARD DAMAGES IN SUCH SUM AS THE COURT DETERMINES WILL FAIRLY AND  
23 REASONABLY COMPENSATE HIM OR HER. IN DETERMINING COMPENSATION BY EITHER  
24 METHOD, THERE SHALL BE NO OFFSET OR ADJUSTMENT TO THE TOTAL COMPENSATION  
25 AWARDED FOR ANY EXPENSES INCURRED RELATED TO SECURING OR MAINTAINING THE  
26 CLAIMANT'S CUSTODY OR ANY EXPENSES RELATED TO PROVIDING FOOD, CLOTHING,  
27 OR MEDICAL SERVICES TO THE CLAIMANT. IN DETERMINING THE RELEVANT PERIOD  
28 OF INCARCERATION, ANY PORTION OF THE PERIOD OF INCARCERATION THAT WAS  
29 ATTRIBUTABLE TO A SEPARATE AND LAWFUL CONVICTION RESULTING IN A CONCUR-  
30 RENT TERM OF IMPRISONMENT SHALL BE EXCLUDED. IN ADDITION TO AWARDED  
31 DAMAGES BY ONE OF THE METHODS SET FORTH ABOVE, THE COURT SHALL ORDER THE  
32 IMMEDIATE SEALING, AT THE EXPENSE OF THE STATE OF NEW YORK, OF ANY AND  
33 ALL CRIMINAL RECORDS RELATED TO THE WRONGFUL ARREST, CONVICTION, AND  
34 SENTENCE OF THE CLAIMANT. SUCH RECORDS SHALL BE MADE AVAILABLE ONLY TO  
35 THE CLAIMANT AND THE STATE IN ANY UNJUST CONVICTION AND IMPRISONMENT  
36 CLAIM UPON AN APPLICATION TO THE COURT.

37 7. UPON THE ENTRY OF JUDGMENT IN FAVOR OF THE CLAIMANT FOR WRONGFUL  
38 CONVICTION OR A PARDON BASED ON WRONGFUL CONVICTION, THE STATE OF NEW  
39 YORK SHALL, BASED ON THE CLAIMANT'S NEED, IMMEDIATELY MAKE AVAILABLE TO  
40 THE CLAIMANT SUBSISTENCE FUNDS AND REENTRY SERVICES. REENTRY SERVICES  
41 AVAILABLE UNDER THIS SECTION SHALL BE AT A MINIMUM THE SAME AS THOSE  
42 RECEIVED BY FELONS UPON RELEASE, AND INCLUDE BUT ARE NOT LIMITED TO JOB  
43 TRAINING, EDUCATION, HEALTH CARE, AND ASSISTANCE IN ACQUIRING AFFORDABLE  
44 HOUSING AND CHILD CUSTODY.

45 9. IF A DECEASED PERSON WOULD BE ENTITLED TO COMPENSATION UNDER THIS  
46 SECTION IF LIVING, INCLUDING A PERSON WHO RECEIVED A POSTHUMOUS PARDON,  
47 THE PERSON'S HEIRS, LEGAL REPRESENTATIVES, AND ESTATE ARE ENTITLED TO  
48 SUCH COMPENSATION.

49 S 2. The criminal procedure law is amended by adding a new section  
50 440.70 to read as follows:  
51 S 440.70 EXPUNGEMENT OF CRIMINAL RECORDS.

52 IN THE EVENT THAT A DEFENDANT HAS BEEN ENTITLED TO A JUDGMENT IN HIS  
53 FAVOR UNDER SUBDIVISION FIVE OF SECTION EIGHT-B OF THE COURT OF CLAIMS  
54 ACT, THE COURT IN WHICH HIS CONVICTION WAS REVERSED OR VACATED OR IN  
55 WHICH THE ACCUSATORY INSTRUMENT WAS DISMISSED SHALL ORDER THE EXPUNGE-  
56 MENT OF ALL CRIMINAL RECORDS RELATED TO THE WRONGFUL ARREST, CONVICTION,

1 AND SENTENCE AT THE EXPENSE OF THE STATE. SUCH RECORDS SHALL BE AVAIL-  
2 ABLE ONLY TO A CLAIMANT AND THE STATE IN AN UNJUST CONVICTION AND IMPRI-  
3 SONMENT CLAIM UPON APPLICATION TO THE COURT.  
4 S 3. This act shall take effect on the one hundred eightieth day after  
5 it shall have become a law.