

7868

I N S E N A T E

May 18, 2010

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.

LBD16767-02-0

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.