S T A T E O F N E W Y O R K

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I N A S S E M B L Y

January 20, 2010

Introduced by M. of A. ESPAILLAT, POWELL, MENG, CASTRO -- Multi-Sponsored by -- M. of A. BOYLAND, COOK, GIBSON, GOTTFRIED, JOHN, PERRY, REILLY, TOWNS -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, 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:

Section 1. This act shall be known as the "actual innocence justice act of 2010".

S 2. Subdivision 1 of section 440.10 of the criminal procedure law is amended by adding a new paragraph (i) to read as follows:

(I) THE DEFENDANT IS ACTUALLY INNOCENT OF THE CRIME OR CRIMES OF WHICH HE OR SHE WAS CONVICTED. FOR PURPOSES OF THIS PARAGRAPH, A DEFENDANT IS ACTUALLY INNOCENT WHERE IT IS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT NO TRIER OF FACT WOULD HAVE CONVICTED THE DEFENDANT UNDER A REASONABLE DOUBT STANDARD AND IN LIGHT OF ALL AVAILABLE EVIDENCE.

S 3. Subdivision 4 of section 440.10 of the criminal procedure law is amended to read as follows:

4. If the court grants the motion, it must, except as provided in subdivision five OF THIS SECTION, vacate the judgment, and must dismiss the accusatory instrument, or order a new trial, or take such other action as is appropriate in the circumstances. IF THE DEFENDANT HAS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT HE OR SHE IS ACTUALLY INNOCENT, IN THAT NO TRIER OF FACT WOULD HAVE CONVICTED THE DEFENDANT OF THE OFFENSE OR OFFENSES UNDER A REASONABLE DOUBT STANDARD AND IN LIGHT OF ALL AVAILABLE EVIDENCE, THE COURT SHALL DISMISS THE ACCUSATORY INSTRUMENT.

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

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

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

S 5. This act shall take effect immediately.