

3492

2013-2014 Regular Sessions

I N A S S E M B L Y

January 28, 2013

Introduced by M. of A. O'DONNELL -- read once and referred to the  
Committee on Codes

AN ACT to amend the criminal procedure law, in relation to establishing  
the actual innocence justice act of 2013

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

1 Section 1. Short title. This act shall be known as the "actual inno-  
2 cence justice act of 2013".

3 S 2. Subparagraph (ii) of paragraph (i) of subdivision 1 of section  
4 440.10 of the criminal procedure law, as added by chapter 332 of the  
5 laws of 2010, is amended and a new paragraph (j) is added to read as  
6 follows:

7 (ii) official documentation of the defendant's status as a victim of  
8 sex trafficking or trafficking in persons at the time of the offense  
9 from a federal, state or local government agency shall create a presump-  
10 tion that the defendant's participation in the offense was a result of  
11 having been a victim of sex trafficking or trafficking in persons, but  
12 shall not be required for granting a motion under this paragraph[.]; OR

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

18 S 3. Subdivision 4 of section 440.10 of the criminal procedure law, as  
19 amended by chapter 332 of the laws of 2010, is amended to read as  
20 follows:

21 4. If the court grants the motion, it must, except as provided in  
22 subdivision five or six of this section, vacate the judgment, and must  
23 dismiss the accusatory instrument, or order a new trial, or take such  
24 other action as is appropriate in the circumstances. IF THE DEFENDANT  
25 HAS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT HE OR SHE IS ACTU-

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

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1 ALLY INNOCENT, IN THAT NO TRIER OF FACT WOULD HAVE CONVICTED THE DEFEND-  
2 ANT OF THE OFFENSE OR OFFENSES UNDER A REASONABLE DOUBT STANDARD AND IN  
3 LIGHT OF ALL AVAILABLE EVIDENCE, THE COURT SHALL DISMISS THE ACCUSATORY  
4 INSTRUMENT.

5 S 4. Section 440.10 of the criminal procedure law is amended by adding  
6 a new subdivision 9 to read as follows:

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

11 S 5. This act shall take effect immediately.