

3492--A

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 -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- 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 2014

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

1 Section 1. Short title. This act shall be known as the "actual innocence justice act of 2014".
2
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 presumption
10 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

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

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1 dismiss the accusatory instrument, or order a new trial, or take such
2 other action as is appropriate in the circumstances. IF THE DEFENDANT
3 HAS ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE THAT HE OR SHE IS ACTU-
4 ALLY INNOCENT, IN THAT NO TRIER OF FACT WOULD HAVE CONVICTED THE DEFEND-
5 ANT OF THE OFFENSE OR OFFENSES UNDER A REASONABLE DOUBT STANDARD AND IN
6 LIGHT OF ALL AVAILABLE EVIDENCE, THE COURT SHALL DISMISS THE ACCUSATORY
7 INSTRUMENT.

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

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

14 S 5. This act shall take effect immediately.