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

June 4, 2014

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Lentol) -- (at request of the Department of Law) -- read once and referred to the Committee on Judiciary

AN ACT to amend the court of claims act, in relation to claims for unjust conviction and imprisonment

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

Section 1. This act shall be known and may be cited as the "Unjust Imprisonment Act of 2014".

S 2. Subdivisions 2, 3, 4, 5, 6 and 7 of section 8-b of the court of claims act, subdivision 2 as amended by chapter 210 of the laws of 2007, and subdivisions 3, 4, 5, 6, and 7 as added by chapter 1009 of the laws of 1984, are amended, and a new subdivision 5-a is added to read as follows:

2. Any person convicted and subsequently imprisoned for one or more felonies or misdemeanors against the state which he OR SHE did not commit may, under the conditions hereinafter provided, present a claim for damages against the state. In scheduling court appearances and filing deadlines, the court shall give docket priority at each stage of the proceeding to such claims for damages under this subdivision where the claimant asserts proof of innocence through DNA evidence. Any adjournments granted in the course of such a proceeding should be for as short a time as is practicable.

3. In order to present the claim for unjust conviction and imprisonment, claimant must establish by documentary evidence that:

(a) he OR SHE has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

(b) (i) he OR SHE has been pardoned upon the ground of innocence of the crime or crimes for which he OR SHE was sentenced and which are the grounds for the complaint; or (ii) his OR HER judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he OR SHE was found not guilty at the new trial or he OR SHE was not retried and the accusatory instrument

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

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dismissed; provided that the [judgement] JUDGMENT of conviction was reversed or vacated, and the accusatory instrument was dismissed, on any of the following grounds: (A) paragraph (a), (b), (c), (D), (e) [or], (F), (g), (G-1), OR (H) of subdivision one of section 440.10 of the criminal procedure law; or (B) subdivision one (where based upon grounds set forth in [item (A) hereof] CLAUSE (A) OF THIS SUBPARAGRAPH), two, three (where the count dismissed was the sole basis for the imprisonment complained of) or five of section 470.20 of the criminal procedure law; or (C) comparable provisions of the former code of criminal procedure or subsequent law; or (D) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the state of New York; and

(c) his OR HER claim is not time-barred by the provisions of subdivision seven of this section.

4. The claim shall state facts in sufficient detail to permit the court to find that claimant is likely to succeed at trial in proving that (a) he OR SHE did not commit any of the CRIMINAL acts charged in the accusatory instrument AND SUBMITTED TO THE FACT FINDER, OR CONTAINED IN THE ACCUSATORY INSTRUMENT BEFORE THE COURT THAT ACCEPTED THE CLAIMANT'S PLEA OF GUILTY, AS THE CASE MAY BE, or his OR HER acts or ALLEGED omissions [charged in the accusatory instrument] SO SUBMITTED OR CONTAINED, AS THE CASE MAY BE, did not constitute a felony or misdemeanor against the state, and (b) he OR SHE did not by his OR HER own [conduct] MISCONDUCT cause or bring about his OR HER conviction. FOR PURPOSES OF THIS SUBDIVISION, A CONFESSION, ADMISSION OR PLEA OF GUILTY MADE OR ENTERED BY THE CLAIMANT MAY NOT BE CONSIDERED EVIDENCE OF MISCONDUCT UNLESS SUCH CONFESSION, ADMISSION OR PLEA OF GUILTY WAS MADE OR ENTERED KNOWINGLY, VOLUNTARILY, WITHOUT DURESS AND WITH THE INTENT TO PREVENT THE INVESTIGATION OR PROSECUTION: (I) OF THE CLAIMANT FOR A CRIME UNRELATED TO THE CRIME OR CRIMES THAT WERE THE SUBJECT OF SUCH CONFESSION, ADMISSION OR PLEA OF GUILTY; OR (II) OF ANOTHER PERSON WHO CLAIMANT, AT THE TIME OF SUCH CONFESSION, ADMISSION OR PLEA, BELIEVED TO BE THE PERPETRATOR OF THE CRIME OR CRIMES THAT WERE THE SUBJECT OF SUCH CONFESSION, ADMISSION OR PLEA. The claim shall be verified by the claimant; PROVIDED THAT NOTWITHSTANDING THE PROVISIONS OF ANY OTHER LAW, DISMISSAL FOR FAILURE TO VERIFY A CLAIM PURSUANT TO THIS SUBDIVISION, WHERE SUCH DISMISSAL OCCURS ON OR AFTER THE FIRST DAY OF FEBRUARY, TWO THOUSAND FOURTEEN, SHALL BE WITHOUT PREJUDICE AND THE CLAIMANT SHALL BE GIVEN LEAVE TO AMEND HIS OR HER CLAIM WITHIN SIX MONTHS OF SUCH DISMISSAL WITHOUT PREJUDICE. If the court finds after reading the claim that claimant is not likely to succeed at trial, it shall dismiss the claim, either on its own motion or on the motion of the state.

5. In order to obtain a judgment in his OR HER favor, claimant must prove by clear and convincing evidence that:

(a) he OR SHE has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of imprisonment, and has served all or any part of the sentence; and

(b) (i) he OR SHE has been pardoned upon the ground of innocence of the crime or crimes for which he OR SHE was sentenced and which are the grounds for the complaint; or (ii) his OR HER judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either [he] THE CLAIMANT was found not guilty at the new trial or he OR SHE was not retried and the accusatory instrument dismissed; provided that the [judgement] JUDGMENT of conviction was reversed or vacated, and the accusatory instrument was dismissed, on any of the following grounds: (A) paragraph (a), (b), (c), (D), (e) [or],

(F), (g), (G-1) OR (H) of subdivision one of section 440.10 of the criminal procedure law; or (B) subdivision one (where based upon grounds set forth in [item (A) hereof] CLAUSE (A) OF THIS SUBPARAGRAPH), two, three (where the count dismissed was the sole basis for the imprisonment complained of) or five of section 470.20 of the criminal procedure law; or (C) comparable provisions of the former code of criminal procedure or subsequent law; or (D) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the state of New York; and

(c) he OR SHE did not commit any of the CRIMINAL acts charged in the accusatory instrument AND SUBMITTED TO THE FACT FINDER, OR CONTAINED IN THE ACCUSATORY INSTRUMENT BEFORE THE COURT THAT ACCEPTED THE CLAIMANT'S PLEA OF GUILTY, AS THE CASE MAY BE, or his OR HER acts or ALLEGED omissions [charged in the accusatory instrument] SO SUBMITTED OR CONTAINED, AS THE CASE MAY BE, did not constitute a felony or misdemeanor against the state; and

(d) [he] THE CLAIMANT did not by his OR HER own [conduct] MISCONDUCT cause or bring about his OR HER conviction. FOR PURPOSES OF THIS PARAGRAPH, A CONFESSION, ADMISSION OR PLEA OF GUILTY MADE OR ENTERED BY THE CLAIMANT MAY NOT BE CONSIDERED EVIDENCE OF MISCONDUCT UNLESS SUCH CONFESSION, ADMISSION OR PLEA OF GUILTY WAS MADE OR ENTERED KNOWINGLY, VOLUNTARILY, WITHOUT DURESS AND WITH THE INTENT TO PREVENT THE INVESTIGATION OR PROSECUTION: (I) OF THE CLAIMANT FOR A CRIME UNRELATED TO THE CRIME OR CRIMES THAT WERE THE SUBJECT OF SUCH CONFESSION, ADMISSION OR PLEA OF GUILTY; OR (II) OF ANOTHER PERSON WHO CLAIMANT, AT THE TIME OF SUCH CONFESSION, ADMISSION OR PLEA, BELIEVED TO BE THE PERPETRATOR OF THE CRIME OR CRIMES THAT WERE THE SUBJECT OF SUCH CONFESSION, ADMISSION OR PLEA.

5-A. A DETERMINATION OF A CRIMINAL COURT MADE PRIOR TO THE CONVICTION AND IMPRISONMENT OF THE CLAIMANT THAT A WRITTEN OR ORAL CONFESSION, ADMISSION, OR OTHER STATEMENT OR EXPRESSION ALLEGEDLY MADE BY THE CLAIMANT WAS NOT INVOLUNTARILY MADE PURSUANT TO SECTION 60.45 OF THE CRIMINAL PROCEDURE LAW OR OTHERWISE, SHALL NOT BE ADMISSIBLE IN ANY PROCEEDING UNDER THIS SECTION AS EVIDENCE THAT THE CLAIMANT CAUSED OR BROUGHT ABOUT HIS OR HER OWN CONVICTION.

6. If the court finds that the claimant is entitled to a judgment, it shall award damages in such sum of money as the court determines will fairly and reasonably compensate him OR HER.

7. Any person claiming compensation under this section based on a pardon that was granted before the effective date of this section or the dismissal of an accusatory instrument that occurred before the effective date of this section shall file his OR HER claim within two years after the effective date of this section. Any person claiming compensation under this section based on a pardon that was granted on or after the effective date of this section or the dismissal of an accusatory instrument that occurred on or after the effective date of this section shall file his OR HER claim within [two] THREE years after the pardon or dismissal; PROVIDED, HOWEVER, THAT IF RETRIAL IS PERMITTED FOLLOWING SUCH PARDON OR DISMISSAL, THE PERIOD WITHIN WHICH SUCH CLAIM MUST BE FILED SHALL BE TOLLED DURING THE PERIOD IN WHICH SUCH A RETRIAL IS PERMISSIBLE AND PROVIDED, FURTHER, THAT UPON MOTION OR NOTICE BY THE STATE TO THE COURT OF CLAIMS ALLEGING THAT A RETRIAL IS CONTEMPLATED, THE COURT OF CLAIMS MAY HOLD FURTHER PROCEEDINGS ON ANY SUCH CLAIM THAT HAS BEEN FILED IN ABEYANCE UNTIL THE CONCLUSION OF THE RETRIAL OR UNTIL A RETRIAL IS NO LONGER CONTEMPLATED, WHICH EVER FIRST OCCURS.

S 3. This act shall take effect immediately.