

# STATE OF NEW YORK

3894--B

2017-2018 Regular Sessions

## IN ASSEMBLY

January 30, 2017

Introduced by M. of A. QUART -- Multi-Sponsored by -- M. of A. ABINANTI, DINOWITZ, JOYNER, KIM, RYAN, SEAWRIGHT, SIMON, SIMOTAS, STECK, TITONE, WEPRIN, ZEBROWSKI -- read once and referred to the Committee on Judiciary -- reported and referred to the Committee on Ways and Means -- recommitted to the Committee on Ways and Means in accordance with Assembly Rule 3, sec. 2 -- recommitted to the Committee on Judiciary in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the court of claims act, the public housing law, the correction law, and the civil service law, in relation to the availability of certain benefits to exonerees; and to repeal certain provisions of the court of claims act relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 8-b of the court of claims act is amended by adding  
2 a new subdivision 1-a to read as follows:

3 1-a. When used in this section, unless otherwise required by the  
4 context, or unless a contrary intent is expressly declared in the  
5 provision to be construed, the term "exoneree" shall mean any person who  
6 has been granted a judgment in a claim for unjust conviction and impri-  
7 sonment under this section.

8 § 2. Subparagraphs (i) and (ii) of paragraph (b) of subdivision 5 of  
9 section 8-b of the court of claims act, as added by chapter 1009 of the  
10 laws of 1984, are amended to read as follows:

11 (i) he or she has been pardoned upon the ground of innocence of the  
12 crime or crimes for which he or she was sentenced and which are the  
13 grounds for the complaint; or (ii) his or her judgment of conviction was  
14 reversed or vacated, and the accusatory instrument dismissed or, if a

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

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1 new trial was ordered, either he or she was found not guilty at the new  
2 trial or he or she was not retried and the accusatory instrument  
3 dismissed; provided that the judgement of conviction was reversed or  
4 vacated, and the accusatory instrument was dismissed, on any of the  
5 following grounds: (A) [~~paragraph (a), (b), (c), (e) or (g) of~~] subdivi-  
6 sion one of section 440.10 of the criminal procedure law; or (B) subdivi-  
7 sion [~~one (where based upon grounds set forth in item (A) hereof),~~]  
8 two, three (where the count dismissed was the sole basis for the impri-  
9 sonment complained of) or five of section 470.20 of the criminal proce-  
10 dure law; or (C) comparable provisions of the former code of criminal  
11 procedure or subsequent law; or (D) the statute, or application thereof,  
12 on which the accusatory instrument was based violated the constitution  
13 of the United States or the state of New York; and

14 § 3. Paragraph (c) of subdivision 5 of section 8-b of the court of  
15 claims act, as added by chapter 1009 of the laws of 1984, is amended to  
16 read as follows:

17 (c) he or she did not commit any of the acts [~~charged in the accusato-~~  
18 ~~ry instrument~~] for which he or she was convicted or his or her acts or  
19 omissions charged in the accusatory instrument did not constitute a  
20 felony or misdemeanor against the state; and

21 § 4. Paragraph (d) of subdivision 5 of section 8-b of the court of  
22 claims act, as added by chapter 1009 of the laws of 1984, is amended to  
23 read as follows:

24 (d) he or she did not by his or her own [~~conduct~~] misconduct cause or  
25 bring about his or her conviction. For purposes of this subdivision, a  
26 confession, admission or plea of guilty made or entered by the claimant  
27 may not be considered evidence of misconduct unless such confession,  
28 admission or plea of guilty was made or entered knowingly, voluntarily,  
29 without duress and with the intent to prevent the investigation or pros-  
30 ecution: (i) of the claimant for a crime unrelated to the crime or  
31 crimes that were the subject of such confession, admission or plea of  
32 guilty; or (ii) of another person who the claimant, at the time of such  
33 confession, admission or plea, believed to be the perpetrator of the  
34 crime or crimes that were the subject of such confession, admission or  
35 plea.

36 § 5. Subdivision 7 of section 8-b of the court of claims act is  
37 REPEALED.

38 § 6. Subdivision 6 of section 8-b of the court of claims act, as added  
39 by chapter 1009 of the laws of 1984, is amended to read as follows:

40 6. If the court finds that the claimant is entitled to a judgment, it  
41 shall award damages in such sum of money as the court determines will  
42 fairly and reasonably compensate him or her, as well as any benefits to  
43 which the claimant is entitled under this section.

44 § 7. Section 8-b of the court of claims act is amended by adding ten  
45 new subdivisions 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 to read as  
46 follows:

47 7. Any exoneree shall be entitled to have all records of his or her  
48 conviction sealed pursuant to section 160.50 of the criminal procedure  
49 law.

50 8. No benefits paid pursuant to this article shall be considered gross  
51 income as defined in section six hundred twelve of the tax law, nor  
52 shall they be taxable by any entity.

53 9. No benefits paid pursuant to this article shall be reduced by any  
54 amount to compensate the state for the costs of incarcerating the exon-  
55 eree.

10. A person who properly presents a claim pursuant to subdivisions three and four of this section shall be entitled to receive a payment of ten thousand dollars per month from the state for each month between the time a claim is filed and the final judgement is recorded, provided however that on motion of the attorney general the court may stay such payment on the grounds that such claim is frivolous, that the claimant is unlikely to prevail on the merits, or that the period of wrongful incarceration was so short that significant damages and benefits should not be awarded.

11. An exoneree found by the court to have served a period of wrongful incarceration of more than one year or to have experienced significant hardship resulting from such incarceration shall be ordered by the court to be enrolled in the health benefit plan established pursuant to section one hundred sixty-one of the civil service law, the supplementary health benefit plan established pursuant to section one hundred sixty-three-a of the civil service law, and the dental insurance plan established pursuant to section one hundred sixty of the civil service law. The full cost of premium or subscription charges for such coverage shall be paid by the state.

12. The exoneree shall be entitled to reasonable attorney's fees incurred in the process of vacating or reversing the judgment against him or her. The exoneree shall petition the court of claims in seeking reasonable attorney's fees as against the state. Any award of attorney's fees shall be reimbursable by the state.

13. An exoneree who enrolls at any institution of the city university of New York or any institution of the state university of New York shall be eligible for a tuition award in an amount equal to the tuition charged at such institution, the mandatory fees charged at such institution and the non-tuition cost of attendance at such institution or college, provided that the scholarship shall not exceed an amount that is equal to the total cost of attendance determined for federal Title IV student financial aid purposes.

14. Any and all benefits made available to parolees through the division of parole shall also be made available to exonerees. Any state contract with a service provider for parolees must also require the service provider to also serve exonerees.

15. Nothing in this act shall be construed to prevent an exoneree from pursuing further civil lawsuits against any state agencies or employees for any reason, including in connection with the wrongful conviction.

16. (a) Any person claiming compensation and additional benefits under this section based on a pardon that was granted on or after the effective date of this subdivision or the dismissal of an accusatory instrument that occurred on or after the effective date of this subdivision shall file his or her claim within three years after the pardon or dismissal.

(b) Any person who obtained a judgment under this section prior to the effective date may file for additional benefits under this section within two years after such effective date.

§ 8. Subdivision 1 of section 156 of the public housing law is amended by adding a new paragraph c to read as follows:

c. also for any exoneree as defined in subdivision one-a of section eight-b of the court of claims act. Any benefits due to such exoneree shall not be included in the calculation of probable aggregate income used to determine eligibility for these dwellings. Exonerees shall be assigned the highest need-based priority for placement in a dwelling unit.

1     § 9. Subdivision 4 of section 404 of the correction law, as added by  
2 chapter 548 of the laws of 2014, is amended to read as follows:

3     4. Every inmate who has received mental health treatment pursuant to  
4 this article within three years of his or her anticipated release date  
5 from a state correctional facility and every exoneree, as defined in  
6 subdivision one-a of section eight-b of the court of claims act, shall  
7 be provided with mental health discharge planning and, when necessary,  
8 an appointment with a mental health professional in the community who  
9 can prescribe medications following discharge and sufficient mental  
10 health medications and prescriptions to bridge the period between  
11 discharge and such time as such mental health professional may assume  
12 care of the patient. Inmates who have refused mental health treatment  
13 may also be provided mental health discharge planning and any necessary  
14 appointment with a mental health professional.

15     § 10. Subdivision 2 of section 163 of the civil service law, as  
16 amended by section 4 of part T of chapter 56 of the laws of 2010, is  
17 amended to read as follows:

18     2. The contract or contracts shall provide for health benefits for  
19 retired employees of the state and of the state colleges of agriculture,  
20 home economics, industrial labor relations and veterinary medicine, the  
21 state agricultural experiment station at Geneva, and any other institu-  
22 tion or agency under the management and control of Cornell university as  
23 the representative of the board of trustees of the state university of  
24 New York, and the state college of ceramics under the management and  
25 control of Alfred university as the representative of the board of trus-  
26 tees of the state university of New York, and their spouses and depend-  
27 ent children as defined by the regulations of the president, and exoner-  
28 ees as defined in subdivision one-a of section eight-b of the court of  
29 claims act, on such terms as the president may deem appropriate, and the  
30 president may authorize the inclusion in the plan of the employees and  
31 retired employees of public authorities, public benefit corporations,  
32 school districts, special districts, district corporations, municipal  
33 corporations excluding active employees and retired employees of cities  
34 having a population of one million or more inhabitants whose compen-  
35 sation is or was before retirement paid out of the city treasury, or  
36 other appropriate agencies, subdivisions or quasi-public organizations  
37 of the state, including active members of volunteer fire and volunteer  
38 ambulance companies serving one or more municipal corporations pursuant  
39 to subdivision seven of section ninety-two-a of the general municipal  
40 law, and their spouses and dependent children as defined by the regu-  
41 lations of the president. Any such corporation, district, agency or  
42 organization electing to participate in the plan shall be required to  
43 pay its proportionate share of the expenses of administration of the  
44 plan in such amounts and at such times as determined and fixed by the  
45 president. All amounts payable for such expenses of administration shall  
46 be paid to the commissioner of taxation and finance and shall be applied  
47 to the reimbursement of funds previously advanced for such purposes.  
48 Neither the state nor any other participant in the plan shall be charged  
49 with the particular experience attributable to the employees of the  
50 participant, and all dividends or retroactive rate credits shall be  
51 distributed pro-rata based upon the number of employees of such partic-  
52 ipant covered by the plan.

53     § 11. This act shall take effect immediately and, except as otherwise  
54 expressly provided in this act, shall apply to convictions entered  
55 before, on or after such effective date.