

# STATE OF NEW YORK

4689

2017-2018 Regular Sessions

## IN ASSEMBLY

February 3, 2017

Introduced by M. of A. O'DONNELL, RICHARDSON -- 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 2017

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 2017".

2 § 2. Subparagraph (ii) of paragraph (i) of subdivision 1 of section  
3 440.10 of the criminal procedure law, as amended by chapter 368 of the  
4 laws of 2015, is amended and a new paragraph (j) is added to read as  
5 follows:  
6

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

14 (j) The defendant is actually innocent of the crime or crimes of which  
15 he or she was convicted. For purposes of this paragraph, a defendant is  
16 actually innocent where it is established by clear and convincing  
17 evidence that no trier of fact would have convicted the defendant under  
18 a reasonable doubt standard and in light of all available evidence.

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

22 4. If the court grants the motion, it must, except as provided in  
23 subdivision five or six of this section, vacate the judgment, and must  
24 dismiss the accusatory instrument, or order a new trial, or take such  
25 other action as is appropriate in the circumstances. If the defendant

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

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1 has established by clear and convincing evidence that he or she is actu-  
2 ally innocent, in that no trier of fact would have convicted the defend-  
3 ant of the offense or offenses under a reasonable doubt standard and in  
4 light of all available evidence, the court shall dismiss the accusatory  
5 instrument.

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

8 9. Notwithstanding any other provision of this section, the court must  
9 address the merits of any claim for relief when the claimant can show,  
10 in light of all available evidence, that there exists a reasonable prob-  
11 ability that he or she is actually innocent.

12 § 5. This act shall take effect immediately.