STATE OF NEW YORK

351

2017-2018 Regular Sessions

IN SENATE

(Prefiled)

January 4, 2017

Introduced by Sen. PERALTA -- read twice and ordered printed, and when printed to be committed 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:

Section 1. Short title. This act shall be known as the "actual innocence justice act of 2017".

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

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

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

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

4. If the court grants the motion, it must, except as provided in subdivision five or six of this section, vacate the judgment, and must dismiss the accusatory instrument, or order a new trial, or take such

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

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other action as is appropriate in the circumstances. **If the defendant has established by clear and convincing evidence that he or she is actually innocent, in that no trier of fact would have convicted the defendant of the offense or offenses under a reasonable doubt standard and in light of all available evidence, the court shall dismiss the accusatory instrument.**

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

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

§ 5. This act shall take effect immediately.