

# STATE OF NEW YORK

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3978--A

2019-2020 Regular Sessions

## IN ASSEMBLY

January 31, 2019

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Introduced by M. of A. AUBRY -- read once and referred to the Committee on Judiciary -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the court of claims act and the tax law, in relation to claims for unjust conviction; to amend the education law, in relation to establishing wrongful conviction recovery scholarships; and to amend the civil service law, in relation to allowing additional credits for the wrongfully convicted

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

1 Section 1. This act shall be known and may be cited as the "wrongful  
2 conviction recovery act".  
3 § 2. Section 8-b of the court of claims act, as added by chapter 1009  
4 of the laws of 1984, subdivision 2 as amended by chapter 210 of the laws  
5 of 2007, is amended to read as follows:  
6 § 8-b. Claims for unjust conviction [~~and imprisonment~~]. 1. The legis-  
7 lature finds and declares that innocent persons who have been wrongly  
8 convicted of crimes [~~and subsequently imprisoned~~] have been frustrated  
9 in seeking legal redress due to a variety of substantive and technical  
10 obstacles in the law and that such persons should have an available  
11 avenue of redress over and above the existing tort remedies to seek  
12 compensation for damages. The legislature intends by enactment of the  
13 provisions of this section that those innocent persons who can demon-  
14 strate by [~~clear and convincing~~] a preponderance of the evidence that  
15 they were unjustly convicted [~~and imprisoned~~] be able to recover damages  
16 against the state. In light of the substantial burden of proof that must  
17 be carried by such persons, it is the intent of the legislature that the  
18 court, in exercising its discretion as permitted by law regarding the  
19 weight and admissibility of evidence submitted pursuant to this section,  
20 shall, in the interest of justice, give due consideration to difficul-  
21 ties of proof caused by the passage of time, the death or unavailability

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

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1 of witnesses, the destruction of evidence or other factors not caused by  
2 such persons or those acting on their behalf.

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

12 3. In order to present the claim for unjust conviction [~~and imprison-~~  
13 ~~ment~~], claimant must establish by documentary evidence that:

14 (a) he or she has been convicted of one or more felonies or misdemea-  
15 nors against the state [~~and subsequently sentenced to a term of impri-~~  
16 ~~sonment, and has served all or any part of the sentence~~]; and

17 (b) (i) he or she has been pardoned upon the ground of innocence of  
18 the crime or crimes for which he or she was sentenced and which are the  
19 grounds for the complaint; or (ii) his or her judgment of conviction was  
20 reversed or vacated, and the accusatory instrument dismissed or, if a  
21 new trial was ordered, either he or she was found not guilty at the new  
22 trial or he or she was not retried and the accusatory instrument  
23 dismissed; provided that the [~~judgement~~] judgment of conviction was  
24 reversed or vacated, and the accusatory instrument was dismissed, on any  
25 of the following grounds: (A) [~~paragraph (a), (b), (c), (e) or (g) of~~]  
26 subdivision one of section 440.10 of the criminal procedure law; or (B)  
27 [~~subdivision one (where based upon grounds set forth in item (A) hereof,~~  
28 ~~two, three (where the count dismissed was the sole basis for the impri-~~  
29 ~~sonment complained of) or five of~~] section 470.20 of the criminal proce-  
30 dure law; or (C) comparable provisions of the former code of criminal  
31 procedure or subsequent law; or (D) the statute, or application thereof,  
32 on which the accusatory instrument was based violated the constitution  
33 of the United States or the state of New York; and

34 (c) his or her claim is not time-barred by the provisions of subdivi-  
35 sion seven of this section.

36 4. The claim shall state facts in sufficient detail to permit the  
37 court to find that claimant is likely to succeed at trial in proving  
38 that (a) he or she did not commit any of the acts charged in the accusa-  
39 tory instrument or his or her acts or omissions charged in the accusato-  
40 ry instrument did not constitute a felony or misdemeanor against the  
41 state, and (b) he or she did not by his or her own conduct cause or  
42 bring about his or her conviction. The claim shall be verified by the  
43 claimant. If the court finds after reading the claim that claimant is  
44 not likely to succeed at trial, it shall dismiss the claim, either on  
45 its own motion or on the motion of the state.

46 5. In order to obtain a judgment in his or her favor, claimant must  
47 prove by [~~clear and convincing~~] a preponderance of the evidence that:

48 (a) he or she has been convicted of one or more felonies or misdemea-  
49 nors against the state [~~and subsequently sentenced to a term of impri-~~  
50 ~~sonment, and has served all or any part of the sentence~~]; and

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

1 dismissed; provided that the [~~judgement~~] judgment of conviction was  
2 reversed or vacated, and the accusatory instrument was dismissed, on any  
3 of the following grounds: (A) [~~paragraph (a), (b), (c), (e) or (g) of~~]  
4 subdivision one of section 440.10 of the criminal procedure law; or (B)  
5 [~~subdivision one (where based upon grounds set forth in item (A) hereof~~  
6 ~~two, three (where the count dismissed was the sole basis for the impri-~~  
7 ~~sonment complained of) or five of~~] section 470.20 of the criminal proce-  
8 dure law; or (C) comparable provisions of the former code of criminal  
9 procedure or subsequent law; or (D) the statute, or application thereof,  
10 on which the accusatory instrument was based violated the constitution  
11 of the United States or the state of New York; and

12 (c) he or she did not commit any of the acts [~~charged in the accusato-~~  
13 ~~ry instrument or his acts or omissions charged in the accusatory instru-~~  
14 ~~ment~~] or omissions for which he or she was convicted or his or her acts  
15 or omissions did not constitute a felony or misdemeanor against the  
16 state; and

17 (d) he or she did not by his or her own conduct cause or bring about  
18 his or her conviction.

19 6. If the court finds that the claimant is entitled to a judgment, it  
20 shall award damages in such sum of money as the court determines will  
21 fairly and reasonably compensate him or her, provided, if the claimant  
22 was incarcerated, such sum shall not be less than an award calculated at  
23 a rate of one million dollars per year during which the claimant was  
24 incarcerated and was not under sentence for a separate crime. The court  
25 may also award reasonable attorneys' fees incurred in the claimant's  
26 defense at trial, including any post-trial motions or appeals, in the  
27 process of vacating or reversing his or her criminal conviction, and in  
28 the pursuit of a claim under this section.

29 7. Any person claiming compensation under this section based on a  
30 pardon that was granted before the effective date of this section or the  
31 dismissal of an accusatory instrument that occurred before the effective  
32 date of the chapter of the laws of two thousand nineteen that amended  
33 this section shall file his or her claim within two years after [~~the~~]  
34 such effective date [~~of this section~~]. Any person claiming compensation  
35 under this section based on a pardon that was granted on or after the  
36 effective date of this section or the dismissal of an accusatory instru-  
37 ment that occurred on or after the effective date of the chapter of the  
38 laws of two thousand nineteen that amended this section shall file his  
39 or her claim within [~~two~~] three years after the pardon or dismissal.

40 § 3. Subsection (c) of section 612 of the tax law is amended by  
41 adding a new paragraph 43 to read as follows:

42 (43) The amount of any damage award amounts received pursuant to  
43 section eight-b of the court of claims act and not excludable from  
44 federal adjusted gross income.

45 § 4. The education law is amended by adding a new section 668-h to  
46 read as follows:

47 § 668-h. Wrongful conviction recovery scholarships. 1. Eligible  
48 persons. Notwithstanding subdivisions three and five of section six  
49 hundred sixty-one of this article, individuals pursuant to section  
50 eight-b of the court of claims act that have been determined to be enti-  
51 tled to a judgment for unjust conviction or upon their election any  
52 children of an individual having been determined to be entitled to a  
53 judgment for unjust conviction shall be eligible to receive a wrongful  
54 conviction recovery scholarship.

55 2. Amount. (a) The president shall grant annual scholarships to any  
56 person eligible pursuant to subdivision one of this section. Recipients

1 shall be granted annual scholarships if they are attending an institu-  
2 tion of the city university of New York or an institution of the state  
3 university of New York including the statutory colleges at Cornell, the  
4 college of environmental science and forestry at Syracuse and the  
5 college of ceramics at Alfred. The annual award shall be an amount equal  
6 to the tuition charged at such institution provided that, notwithstand-  
7 ing any provision of law to the contrary, the tuition charged to award  
8 recipients shall not exceed that charged to state resident students  
9 attending such institution; the mandatory fees charged at such institu-  
10 tion; and the non-tuition cost of attendance at such institution or  
11 college, provided that the scholarship shall not exceed an amount that  
12 is equal to the total cost of attendance determined for federal Title IV  
13 student financial aid purposes, less all other scholarships and grants  
14 provided by New York state, other states, the federal government, or  
15 other governments, and the amount of educational benefits paid under any  
16 program that would duplicate the purposes of this program, provided that  
17 any scholarships or grants provided to a recipient by the institution  
18 which are intended to fund any portion of the difference between the  
19 annual state award and the actual costs of attendance at any such insti-  
20 tution shall not be considered to duplicate the purposes of this  
21 program.

22 (b) "Non-tuition cost of attendance", as used in this subdivision,  
23 shall mean: (i) the actual amount charged by the institution for room  
24 and board, and (ii) an allowance for transportation, books and supplies  
25 as determined by the president and as approved by the director of the  
26 budget, provided that such determination shall be made no later than  
27 December first of each year for use in the succeeding academic year. In  
28 the event a student does not incur room or board charges at the institu-  
29 tion, "non-tuition cost of attendance" shall mean an allowance for room  
30 and board as determined by the president and approved by the director of  
31 the budget. In determining allowances pursuant to this subparagraph, the  
32 president may take into consideration the allowances provided for in the  
33 Pell grant program.

34 (c) In no event shall the combination of all student financial aid  
35 received by a student exceed a recipient's total cost of attendance at  
36 the institution being attended.

37 3. Duration. Awards under this section shall be payable for each of  
38 not more than four academic years of undergraduate study or five academ-  
39 ic years if a program normally requires five years, as defined by the  
40 commissioner pursuant to article thirteen of this title.

41 § 5. The civil service law is amended by adding a new section 85-d to  
42 read as follows:

43 § 85-d. Additional credits allowed for the wrongfully convicted. 1.  
44 Additional credit authorized. Additional credits shall be allowed to  
45 successful claimants under section eight-b of the court of claims act in  
46 competitive examinations for original appointment. (a) On all eligible  
47 lists resulting from competitive examinations, the names of eligible  
48 persons shall be entered in the order of their respective final earned  
49 ratings on examinations, with the name of the eligible person with the  
50 highest final earned ratings at the head of such list, provided, howev-  
51 er, that for the purpose of determining final earned ratings, successful  
52 claimants under section eight-b of the court of claims act shall be  
53 entitled to receive an additional ten points in a competitive examina-  
54 tion for original appointment.

55 (b) Such additional credit shall be added to the final earned rating  
56 of such successful claimant after he or she has qualified in the compet-

1 itive examination and shall be granted only at the time of establishment  
2 of the resulting eligible list.

3 2. Application for additional credit; proof of eligibility; establish-  
4 ment of eligible list. Any candidate, believing himself or herself  
5 entitled to additional credit in a competitive examination as provided  
6 in this section, may make application for such additional credit at any  
7 time between the date of his or her application for examination and the  
8 date of the establishment of the resulting eligible list. Such candi-  
9 dates shall be allowed a period of not less than two months from the  
10 date of the filing of his or her application for examination in which to  
11 establish by appropriate documentary proof his or her eligibility to  
12 receive additional credit under this section. At any time after two  
13 months have elapsed since the final date for filing applications for a  
14 competitive examination for original appointment, the eligible list  
15 resulting from such examination may be established, notwithstanding the  
16 fact that a successful claimant who has applied for additional credit  
17 has failed to establish his or her eligibility to receive such addi-  
18 tional credit. A candidate who fails to establish, by appropriate docu-  
19 mentary proof, his or her eligibility to receive additional credit by  
20 the time an eligible list is established shall not thereafter be granted  
21 additional credit on such eligible list.

22 3. Use of additional credit. (a) Except as otherwise provided in this  
23 subdivision, no person who has received a permanent original appointment  
24 in the civil service of the state or of any city or civil division ther-  
25 eof from an eligible list on which he or she was allowed the additional  
26 credit granted by this section as a successful claimant, shall thereaft-  
27 er be entitled to any additional credit under this section as a success-  
28 ful claimant.

29 (b) Where, at the time of establishment of an eligible list, the posi-  
30 tion of a successful claimant on such list has not been affected by the  
31 addition of credits granted under this section, the appointment of such  
32 successful claimant from such eligible list shall not be deemed to have  
33 been made from an eligible list on which he or she was allowed the addi-  
34 tional credit granted by this section.

35 (c) If, at the time of appointment from an eligible list, a successful  
36 claimant is in the same relative standing among the eligible persons who  
37 are willing to accept appointment as if he or she had not been granted  
38 the additional credits as provided by this section, his or her appoint-  
39 ment from such eligible persons shall not be deemed to have been made  
40 from an eligible list on which he or she was allowed such additional  
41 credits.

42 (d) Where a successful claimant has been originally appointed from an  
43 eligible list on which he or she was allowed such additional credit, but  
44 such appointment is thereafter terminated either at the end of the  
45 probationary term or by resignation at or before the end of the proba-  
46 tionary term, he or she shall not be deemed to have been appointed, as  
47 the case may be, from an eligible list on which he or she is allowed  
48 additional credit, and such appointment shall not affect his or her  
49 eligibility for additional credit in other examinations.

50 4. Withdrawal of application; election to relinquish additional cred-  
51 it. An application for additional credit in a competitive examination  
52 under this section may be withdrawn by the applicant at any time prior  
53 to the establishment of the resulting eligible list. At any time during  
54 the term of existence of an eligible list resulting from a competitive  
55 examination in which a successful claimant has received the additional  
56 credit granted by this section, such successful claimant may elect,

1 prior to permanent original appointment, to relinquish the additional  
2 credit theretofore granted to him or her and accept the lower position  
3 on such eligible list to which he or she would otherwise have been enti-  
4 tled; provided, however, that such election shall thereafter be irrev-  
5 ocable. Such election shall be in writing and signed by the successful  
6 claimant, and transmitted to the department or the appropriate municipal  
7 civil service commission.

8 5. Roster. The department and each municipal commission shall estab-  
9 lish and maintain in its office a roster of all such successful claim-  
10 ants appointed as a result of additional credits granted by this section  
11 to positions under its jurisdiction. The appointment of a successful  
12 claimant as a result of additional credits shall be void if such  
13 successful claimant, prior to such appointment, had been appointed as a  
14 result of additional credits granted by this section.

15 § 6. This act shall take effect immediately and shall apply to claims  
16 filed on and after such date.