

# STATE OF NEW YORK

8790

2019-2020 Regular Sessions

## IN ASSEMBLY

November 25, 2019

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

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".

2 § 2. Paragraph (k) of subdivision 1 of section 440.10 of the criminal  
3 procedure law, as added by chapter 132 of the laws of 2019, is amended  
4 and a new paragraph (l) is added to read as follows:

5 (k) The judgment occurred prior to the effective date of this para-  
6 graph and is a conviction for an offense as defined in subparagraph (i)  
7 or (ii) of paragraph (k) of subdivision three of section 160.50 of this  
8 part, in which case the court shall presume that a conviction by plea  
9 for the aforementioned offenses was not knowing, voluntary and intelli-  
10 gent if it has severe or ongoing consequences, including but not limited  
11 to potential or actual immigration consequences, and shall presume that  
12 a conviction by verdict for the aforementioned offenses constitutes  
13 cruel and unusual punishment under section five of article one of the  
14 state constitution, based on those consequences. The people may rebut  
15 these presumptions[-]; or

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

21 § 3. Subdivision 4 of section 440.10 of the criminal procedure law, as  
22 amended by chapter 332 of the laws of 2010, is amended to read as  
23 follows:  
24

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

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1 4. If the court grants the motion, it must, except as provided in  
2 subdivision five or six of this section, vacate the judgment, and must  
3 dismiss the accusatory instrument, or order a new trial, or take such  
4 other action as is appropriate in the circumstances. If the defendant  
5 has established by clear and convincing evidence that he or she is actu-  
6 ally innocent, in that no trier of fact would have convicted the defend-  
7 ant of the offense or offenses under a reasonable doubt standard and in  
8 light of all available evidence, the court shall dismiss the accusatory  
9 instrument.

10 § 4. Section 440.10 of the criminal procedure law is amended by adding  
11 a new subdivision 10 to read as follows:

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

16 § 5. This act shall take effect immediately.