STATE OF NEW YORK

1003

2019-2020 Regular Sessions

IN ASSEMBLY

January 14, 2019

Introduced by M. of A. QUART, KIM, ZEBROWSKI, SIMOTAS, RYAN, WEPRIN, SEAWRIGHT, SIMON, STECK, JOYNER, DINOWITZ, LAVINE -- Multi-Sponsored by -- M. of A. ABINANTI -- read once and referred to the Committee on Judiciary

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:

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

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

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

(i) he **or she** has been pardoned upon the ground of innocence of the crime or crimes for which he **or she** was sentenced and which are the grounds for the complaint; or (ii) his **or her** judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either he **or she** was found not guilty at the new trial or he **or she** was not retried and the accusatory instrument dismissed; provided that the judgement of conviction was reversed or vacated, and the accusatory instrument was dismissed, on any of the following grounds: (A) [~~paragraph (a), (b), (c), (e) or (g) of~~] subdivision one of section 440.10 of the criminal procedure law; or (B) subdivision [~~one (where based upon grounds set forth in item (A) hereof),~~]

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

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two, three (where the count dismissed was the sole basis for the imprisonment complained of) or five of section 470.20 of the criminal procedure law; or (C) comparable provisions of the former code of criminal procedure or subsequent law; or (D) the statute, or application thereof, on which the accusatory instrument was based violated the constitution of the United States or the state of New York; and

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

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

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

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

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

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

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

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

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

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

9. No benefits paid pursuant to this article shall be reduced by any amount to compensate the state for the costs of incarcerating the exoneree.

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.

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

4. Every inmate who has received mental health treatment pursuant to this article within three years of his or her anticipated release date from a state correctional facility and every exoneree, as defined in subdivision one-a of section eight-b of the court of claims act, shall be provided with mental health discharge planning and, when necessary,

an appointment with a mental health professional in the community who can prescribe medications following discharge and sufficient mental health medications and prescriptions to bridge the period between discharge and such time as such mental health professional may assume care of the patient. Inmates who have refused mental health treatment may also be provided mental health discharge planning and any necessary appointment with a mental health professional.

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

2. The contract or contracts shall provide for health benefits for retired employees of the state and of the state colleges of agriculture, home economics, industrial labor relations and veterinary medicine, the state agricultural experiment station at Geneva, and any other institution or agency under the management and control of Cornell university as the representative of the board of trustees of the state university of New York, and the state college of ceramics under the management and control of Alfred university as the representative of the board of trustees of the state university of New York, and their spouses and dependent children as defined by the regulations of the president, **and exonerees as defined in subdivision one-a of section eight-b of the court of claims act,** on such terms as the president may deem appropriate, and the president may authorize the inclusion in the plan of the employees and retired employees of public authorities, public benefit corporations, school districts, special districts, district corporations, municipal corporations excluding active employees and retired employees of cities having a population of one million or more inhabitants whose compensation is or was before retirement paid out of the city treasury, or other appropriate agencies, subdivisions or quasi-public organizations of the state, including active members of volunteer fire and volunteer ambulance companies serving one or more municipal corporations pursuant to subdivision seven of section ninety-two-a of the general municipal law, and their spouses and dependent children as defined by the regulations of the president. Any such corporation, district, agency or organization electing to participate in the plan shall be required to pay its proportionate share of the expenses of administration of the plan in such amounts and at such times as determined and fixed by the president. All amounts payable for such expenses of administration shall be paid to the commissioner of taxation and finance and shall be applied to the reimbursement of funds previously advanced for such purposes. Neither the state nor any other participant in the plan shall be charged with the particular experience attributable to the employees of the participant, and all dividends or retroactive rate credits shall be distributed pro-rata based upon the number of employees of such participant covered by the plan.

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