

# STATE OF NEW YORK

2074

2019-2020 Regular Sessions

## IN SENATE

January 22, 2019

Introduced by Sen. BENJAMIN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the court of claims act and the tax law, in relation to claims for unjust conviction and imprisonment

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 "wrongfully  
2 convicted 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 legisla-  
7 ture finds and declares that innocent persons who have been wrongly  
8 convicted of crimes and subsequently imprisoned have been frustrated in  
9 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 evidence that they were unjustly  
15 convicted and imprisoned be able to recover damages against the state.  
16 In light of the substantial burden of proof that must be carried by such  
17 persons, it is the intent of the legislature that the court, in exercis-  
18 ing its discretion as permitted by law regarding the weight and admissi-  
19 bility of evidence submitted pursuant to this section, shall, in the  
20 interest of justice, give due consideration to difficulties of proof  
21 caused by the passage of time, the death or unavailability of witnesses,  
22 the destruction of evidence or other factors not caused by such persons  
23 or those acting on their behalf.

24 2. Any person convicted and subsequently imprisoned for one or more  
25 felonies or misdemeanors against the state which he or she did not

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

LBD06085-01-9

1 commit may, under the conditions hereinafter provided, present a claim  
2 for damages against the state. In scheduling court appearances and  
3 filing deadlines, the court shall give docket priority at each stage of  
4 the proceeding to such claims for damages under this subdivision where  
5 the claimant asserts proof of innocence through DNA evidence. Any  
6 adjournments granted in the course of such a proceeding should be for as  
7 short a time as is practicable.

8 3. In order to present the claim for unjust conviction and imprison-  
9 ment, claimant must establish by documentary evidence that:

10 (a) he or she has been convicted of one or more felonies or misdemea-  
11 nors against the state and subsequently sentenced to a term of imprison-  
12 ment, and has served all or any part of the sentence; and

13 (b) (i) he or she has been pardoned upon the ground of innocence of  
14 the crime or crimes for which he or she was sentenced and which are the  
15 grounds for the complaint; or (ii) his or her judgment of conviction was  
16 reversed or vacated, and the accusatory instrument dismissed or, if a  
17 new trial was ordered, either he or she was found not guilty at the new  
18 trial or he or she was not retried and the accusatory instrument  
19 dismissed; provided that the [~~judgement~~] judgment of conviction was  
20 reversed or vacated, and the accusatory instrument was dismissed, on any  
21 of the following grounds: (A) paragraph (a), (b), (c), (e) [~~or~~], (g) or  
22 (g-1) of subdivision one of section 440.10 of the criminal procedure  
23 law; or (B) subdivision one (where based upon grounds set forth in [~~item~~  
24 ~~(A) hereof~~] clause (A) of this subparagraph), two, three (where the  
25 count dismissed was the sole basis for the imprisonment complained of)  
26 or five of section 470.20 of the criminal procedure law; or (C) compara-  
27 ble provisions of the former code of criminal procedure or subsequent  
28 law; or (D) the statute, or application thereof, on which the accusatory  
29 instrument was based violated the constitution of the United States or  
30 the state of New York; and

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

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

43 5. In order to obtain a judgment in his or her favor, claimant must  
44 prove by clear and convincing evidence that:

45 (a) he or she has been convicted of one or more felonies or misdemea-  
46 nors against the state and subsequently sentenced to a term of imprison-  
47 ment, and has served all or any part of the sentence; and

48 (b) (i) he or she has been pardoned upon the ground of innocence of  
49 the crime or crimes for which he or she was sentenced and which are the  
50 grounds for the complaint; or (ii) his or her judgment of conviction was  
51 reversed or vacated, and the accusatory instrument dismissed or, if a  
52 new trial was ordered, either he or she was found not guilty at the new  
53 trial or he or she was not retried and the accusatory instrument  
54 dismissed; provided that the [~~judgement~~] judgment of conviction was  
55 reversed or vacated, and the accusatory instrument was dismissed, on any  
56 of the following grounds: (A) paragraph (a), (b), (c), (e) [~~or~~], (g) or

1 (g-1) of subdivision one of section 440.10 of the criminal procedure  
2 law; or (B) subdivision one (where based upon grounds set forth in [~~item~~  
3 ~~(A) hereof~~] clause (A) of this subparagraph), two, three (where the  
4 count dismissed was the sole basis for the imprisonment complained of)  
5 or five of section 470.20 of the criminal procedure law; or (C) compara-  
6 ble provisions of the former code of criminal procedure or subsequent  
7 law; or (D) the statute, or application thereof, on which the accusatory  
8 instrument was based violated the constitution of the United States or  
9 the state of New York; and

10 (c) he or she did not commit any of the acts he or she was convicted  
11 of or his or her acts or omissions charged in the accusatory instrument  
12 or [~~his acts or omissions charged in the accusatory instrument~~] that any  
13 such acts did not constitute a felony or misdemeanor against the state;  
14 [~~and~~]

15 (d) he or she did not by his or her own conduct cause or bring about  
16 his or her conviction; and

17 (e) he or she was not under sentence for a separate crime during the  
18 period of time for which compensation is sought.

19 6. If the court finds that the claimant is entitled to a judgment, it  
20 shall award damages in [~~such~~] the sum of [~~money~~] not less than one  
21 million dollars for each year of incarceration and such additional  
22 damages as the court determines will fairly and reasonably compensate  
23 him or her. Such additional damages may include, but need not be limit-  
24 ed to the following:

25 (a) compensation for lost wages;

26 (b) reimbursement for legal fees expended for the defense of the  
27 convicted person at trial and upon appeal;

28 (c) medical expenses, including therapy;

29 (d) enrollment in the health benefit plan established pursuant to  
30 section one hundred sixty-one of the civil service law. The full cost of  
31 premium or subscription charges for such coverage shall be paid by the  
32 state;

33 (e) educational assistance including:

34 (i) free tuition for the claimant and for any of the claimant's chil-  
35  dren for attending a state university or college;

36 (ii) free tuition or reimbursement of tuition for the claimant and for  
37 any of the claimant's children for attending a CUNY university or  
38 college; and

39 (iii) free tuition at a state funded vocational program and/or job  
40 skills program for the claimant and for any of the claimant's children;

41 (f) reimbursement of any child-support arrears that accrued and were  
42 paid, including reimbursement to the custodial parent of the amount he  
43 or she was receiving prior to the incarceration if it was modified by  
44 virtue of the claimant's incarceration;

45 (g) treatment as veterans for purposes of receiving the following  
46 benefits:

47 (i) access to the Homes for Veterans Program, which offers fixed-rate  
48 mortgages with interest rates one-half percent below the interest rates  
49 charged on SONYMA mortgages, with closing cost assistance; and

50 (ii) eligibility for appointment to non-competitive state employment  
51 positions pursuant to sections fifty-five-b and fifty-five-c of the  
52 civil service law. Those employees hired under this subparagraph shall  
53 be afforded the same opportunity to take promotional examinations as  
54 provided to employees in the competitive class.

55 7. Any person claiming compensation under this section based on a  
56 pardon that was granted before the effective date of this section or the

1 dismissal of an accusatory instrument that occurred before the effective  
2 date of the chapter of the laws of two thousand nineteen that amended  
3 this section shall file his or her claim within two years after [~~the~~  
4 such effective date [~~of this section~~]. Any person claiming compensation  
5 under this section based on a pardon that was granted on or after the  
6 effective date of this section or the dismissal of an accusatory instru-  
7 ment that occurred on or after the effective date of the chapter of the  
8 laws of two thousand nineteen that amended this section shall file his  
9 or her claim within [~~two~~] three years after the pardon or dismissal.

10 8. The claimant shall be entitled to reasonable attorney's fees  
11 incurred in the process of vacating or reversing his or her criminal  
12 conviction. The claimant may petition the court of claims in seeking  
13 reasonable attorney's fees against the state pursuant to this section.  
14 Any award of attorney's fees shall be reimbursable by the state.

15 9. Any award of damages pursuant to the provisions of this section  
16 shall be exempt from income tax to the extent provided in section thir-  
17 teen-a of the tax law.

18 § 3. The tax law is amended by adding a new section 13-a to read as  
19 follows:

20 § 13-a. Exemption from taxation for persons wrongfully convicted and  
21 imprisoned. Notwithstanding any provision of law to the contrary, damage  
22 award amounts received, including accumulated interest, by persons  
23 wrongfully convicted and imprisoned as provided in section eight-b of  
24 the court of claims act, whether or not includable in income for federal  
25 income tax purposes, shall be exempt from all state and local taxes  
26 imposed on or measured by income; provided however, that this exemption  
27 shall not apply to amounts received from assets acquired with such  
28 assets or with the proceeds from the sale of such assets.

29 § 4. This act shall take effect immediately.