

# STATE OF NEW YORK

2074--A

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 -- 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-

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

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1 ties of proof caused by the passage of time, the death or unavailability  
2 of witnesses, the destruction of evidence or other factors not caused by  
3 such persons or those acting on their behalf.

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

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

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

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

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

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

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

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

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

1 trial or he or she was not retried and the accusatory instrument  
2 dismissed; provided that the [~~judgement~~] judgment of conviction was  
3 reversed or vacated, and the accusatory instrument was dismissed, on any  
4 of the following grounds: (A) [~~paragraph (a), (b), (c), (e) or (g) of~~]  
5 subdivision one of section 440.10 of the criminal procedure law; or (B)  
6 [~~subdivision one (where based upon grounds set forth in item (A) hereof~~  
7 ~~two, three (where the count dismissed was the sole basis for the impri-~~  
8 ~~sonment complained of) or five of~~] section 470.20 of the criminal proce-  
9 dure law; or (C) comparable provisions of the former code of criminal  
10 procedure or subsequent law; or (D) the statute, or application thereof,  
11 on which the accusatory instrument was based violated the constitution  
12 of the United States or the state of New York; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (b) Such additional credit shall be added to the final earned rating  
2 of such successful claimant after he or she has qualified in the compet-  
3 itive examination and shall be granted only at the time of establishment  
4 of the resulting eligible list.

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

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

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

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

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

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

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

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

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