

# STATE OF NEW YORK

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6860

2023-2024 Regular Sessions

## IN ASSEMBLY

May 8, 2023

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Introduced by M. of A. AUBRY -- read once and referred to the Committee on Judiciary

AN ACT to amend the court of claims act, 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. Section 8-b of the court of claims act, as added by chapter  
2 1009 of the laws of 1984, subdivision 2 as amended by chapter 210 of the  
3 laws of 2007, is amended to read as follows:

4 § 8-b. Claims for unjust conviction and imprisonment. 1. The legisla-  
5 ture finds and declares that innocent persons who have been wrongly  
6 convicted of crimes and subsequently imprisoned have been frustrated in  
7 seeking legal redress due to a variety of substantive and technical  
8 obstacles in the law and that such persons should have an available  
9 avenue of redress over and above the existing tort remedies to seek  
10 compensation for damages. The legislature intends by enactment of the  
11 provisions of this section that those innocent persons who can demon-  
12 strate by clear and convincing evidence that they were unjustly  
13 convicted and imprisoned be able to recover damages against the state.  
14 In light of the substantial burden of proof that must be carried by such  
15 persons, it is the intent of the legislature that the court, in exercis-  
16 ing its discretion as permitted by law regarding the weight and admissi-  
17 bility of evidence submitted pursuant to this section, shall, in the  
18 interest of justice, give due consideration to difficulties of proof  
19 caused by the passage of time, the death or unavailability of witnesses,  
20 the destruction of evidence or other factors not caused by such persons  
21 or those acting on their behalf.

22 2. Any person convicted and subsequently imprisoned for one or more  
23 felonies or misdemeanors against the state which he or she did not  
24 commit may, under the conditions hereinafter provided, present a claim  
25 for damages against the state. In scheduling court appearances and

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

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1 filing deadlines, the court shall give docket priority at each stage of  
2 the proceeding to such claims for damages under this subdivision where  
3 the claimant asserts proof of innocence through DNA evidence. Any  
4 adjournments granted in the course of such a proceeding should be for as  
5 short a time as is practicable.

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

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

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

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

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

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

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

46 (b) [~~(i)~~] he [~~has been pardoned upon the ground of innocence of the~~  
47 ~~crime or crimes for which he was sentenced and which are the grounds for~~  
48 ~~the complaint, or (ii) his judgment of conviction was reversed or~~  
49 ~~vacated, and the accusatory instrument dismissed or, if a new trial was~~  
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5 ~~based violated the constitution of the United States or the state of New~~  
6 ~~York]~~ or she has had one or more felonies and misdemeanors dismissed  
7 with prejudice following serving all or part of the sentence; and

8 (c) he or she did not commit any of the acts charged in the accusatory  
9 instrument or conviction or his or her acts or omissions charged in the  
10 accusatory instrument or conviction did not constitute a felony or  
11 misdemeanor against the state; and

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

14 6. If the court finds that the claimant is entitled to a judgment, it  
15 shall award damages in such sum of money as the court determines will  
16 fairly and reasonably compensate him or her.

17 7. Any person claiming compensation under this section based on a  
18 pardon that was granted before the effective date of this section or the  
19 dismissal of an accusatory instrument or conviction that occurred before  
20 the effective date of this section shall file his or her claim within  
21 [~~two~~] five years after the effective date of this section. Any person  
22 claiming compensation under this section based on a pardon that was  
23 granted on or after the effective date of this section or the dismissal  
24 of an accusatory instrument or conviction that occurred on or after the  
25 effective date of this section shall file his or her claim within [~~two~~]  
26 five years after the pardon or dismissal.

27 § 2. This act shall take effect immediately.