

# STATE OF NEW YORK

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818

2023-2024 Regular Sessions

## IN ASSEMBLY

January 11, 2023

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Introduced by M. of A. AUBRY, COOK, DICKENS -- read once and referred 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; 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-  
21 ties of proof caused by the passage of time, the death or unavailability

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

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1 of witnesses, the destruction of evidence or other factors not caused by  
2 such persons or those acting on their behalf.

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

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

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

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

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

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

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

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

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

1 dismissed; provided that the [~~judgement~~] judgment of conviction was  
2 reversed or vacated, and the accusatory instrument was dismissed, on any  
3 of the following grounds: (A) [~~paragraph (a), (b), (c), (e) or (g) of~~]  
4 subdivision one of section 440.10 of the criminal procedure law; or (B)  
5 [~~subdivision one (where based upon grounds set forth in item (A) here-~~  
6 ~~of), two, three (where the count dismissed was the sole basis for the~~  
7 ~~imprisonment complained of) or five of~~] section 470.20 of the criminal  
8 procedure law; or (C) comparable provisions of the former code of crimi-  
9 nal procedure or subsequent law; or (D) the statute, or application  
10 thereof, on which the accusatory instrument was based violated the  
11 constitution of the United States or the state of New York; and

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

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

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

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

41 § 3. Subsection (c) of section 612 of the tax law is amended by  
42 adding a new paragraph 47 to read as follows:

43 (47) The amount of any damage awards received pursuant to section  
44 eight-b of the court of claims act and not excludable from federal  
45 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.

2. Amount. (a) The president shall grant annual scholarships to any person eligible pursuant to subdivision one of this section. Recipients shall be granted annual scholarships if they are attending an institution of the city university of New York or an institution of the state university of New York including the statutory colleges at Cornell, the college of environmental science and forestry at Syracuse and the college of ceramics at Alfred. The annual award shall be an amount equal to the tuition charged at such institution provided that, notwithstanding any provision of law to the contrary, the tuition charged to award recipients shall not exceed that charged to state resident students attending 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, less all other scholarships and grants provided by New York state, other states, the federal government, or other governments, and the amount of educational benefits paid under any program that would duplicate the purposes of this program, provided that any scholarships or grants provided to a recipient by the institution which are intended to fund any portion of the difference between the annual state award and the actual costs of attendance at any such institution shall not be considered to duplicate the purposes of this program.

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

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

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

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

§ 85-d. Additional credits allowed for the wrongfully convicted. 1. Additional credit authorized. Additional credits shall be allowed to successful claimants under section eight-b of the court of claims act in competitive examinations for original appointment. (a) On all eligible lists resulting from competitive examinations, the names of eligible persons shall be entered in the order of their respective final earned ratings on examinations, with the name of the eligible person with the highest final earned ratings at the head of such list, provided, however, that for the purpose of determining final earned ratings, successful claimants under section eight-b of the court of claims act shall be entitled to receive an additional ten points in a competitive examination 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 candidate  
11 shall be allowed a period of not less than two months from the date of  
12 the filing of his or her application for examination in which to estab-  
13 lish by appropriate documentary proof his or her eligibility to receive  
14 additional credit under this section. At any time after two months have  
15 elapsed since the final date for filing applications for a competitive  
16 examination for original appointment, the eligible list resulting from  
17 such examination may be established, notwithstanding the fact that a  
18 successful claimant who has applied for additional credit has failed to  
19 establish his or her eligibility to receive such additional credit. A  
20 candidate who fails to establish, by appropriate documentary proof, his  
21 or her eligibility to receive additional credit by the time an eligible  
22 list is established shall not thereafter be granted additional credit on  
23 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.