

STATE OF NEW YORK

5370

2025-2026 Regular Sessions

IN SENATE

February 21, 2025

Introduced by Sen. CLEARE -- 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; 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~~] such person did
5 not commit may, under the conditions hereinafter provided, present a
6 claim 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~~] such claimant has been convicted of one or more felonies or
15 misdemeanors against the state [~~and subsequently sentenced to a term of~~
16 ~~imprisonment, and has served all or any part of the sentence~~]; and

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

35 (c) [~~his~~] their 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~~] such claimant did not commit any of the acts charged in
40 the accusatory instrument or [~~his~~] their acts or omissions charged in
41 the accusatory instrument did not constitute a felony or misdemeanor
42 against the state, and (b) [~~he~~] such claimant did not by [~~his~~] their own
43 conduct cause or bring about [~~his~~] their conviction. The claim shall be
44 verified by the claimant. If the court finds after reading the claim
45 that claimant is not likely to succeed at trial, it shall dismiss the
46 claim, either on its own motion or on the motion of the state.

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

49 (a) [~~he~~] such claimant has been convicted of one or more felonies or
50 misdemeanors against the state [~~and subsequently sentenced to a term of~~
51 ~~imprisonment, and has served all or any part of the sentence~~]; and

52 (b) (i) [~~he~~] such claimant has been pardoned upon the ground of inno-
53 cence of the crime or crimes for which [~~he~~] such claimant was sentenced
54 and which are the grounds for the complaint; or (ii) [~~his~~] their judg-
55 ment of conviction was reversed or vacated, and the accusatory instru-
56 ment dismissed or, if a new trial was ordered, either [~~he~~] the claimant

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

14 (c) ~~[he]~~ such claimant did not commit any of the acts ~~[charged in the~~
15 ~~accusatory instrument or his acts or omissions charged in the accusatory~~
16 ~~instrument]~~ or omissions for which such claimant was convicted or their
17 acts or omissions did not constitute a felony or misdemeanor against the
18 state; and

19 (d) ~~[he]~~ such claimant did not by ~~[his]~~ their own conduct cause or
20 bring about ~~[his]~~ their conviction.

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

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

43 § 3. Subsection (c) of section 612 of the tax law is amended by adding
44 a new paragraph 48 to read as follows:

45 (48) The amount of any damage awards received pursuant to section
46 eight-b of the court of claims act and not excludable from federal
47 adjusted gross income.

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

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

1 unjust conviction shall be eligible to receive a wrongful conviction
2 recovery scholarship.

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

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

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

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

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

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

1 entitled to receive an additional ten points in a competitive examina-
2 tion for original appointment.

3 (b) Such additional credit shall be added to the final earned rating
4 of such successful claimant after such successful claimant has qualified
5 in the competitive examination and shall be granted only at the time of
6 establishment of the resulting eligible list.

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

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

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

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

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

55 4. Withdrawal of application; election to relinquish additional cred-
56 it. An application for additional credit in a competitive examination

1 under this section may be withdrawn by the applicant at any time prior
2 to the establishment of the resulting eligible list. At any time during
3 the term of existence of an eligible list resulting from a competitive
4 examination in which a successful claimant has received the additional
5 credit granted by this section, such successful claimant may elect,
6 prior to permanent original appointment, to relinquish the additional
7 credit theretofore granted to them and accept the lower position on such
8 eligible list to which such successful claimant would otherwise have
9 been entitled; provided, however, that such election shall thereafter be
10 irrevocable. Such election shall be in writing and signed by the
11 successful claimant, and transmitted to the department or the appropri-
12 ate municipal civil service commission.

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

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