



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB0179

by Rep. Mary E. Flowers

SYNOPSIS AS INTRODUCED:

See Index

Amends the Code of Civil Procedure. Provides that any person criminally prosecuted and incarcerated for 30 days or longer prior to trial for one or more felonies by the State which he or she did not commit may file a petition for a certificate of innocence. Provides that the petitioner must prove that: the petitioner was incarcerated prior to trial in a prosecution which resulted in an acquittal or dismissal; the prosecution did not result in a conviction of a lesser included offense; the petitioner is innocent of the charges on which the petitioner's pretrial detention was based, or the charges did not constitute a felony or misdemeanor; and the petitioner did not by his or her own conduct voluntarily cause or bring about the charges which resulted in his or her pretrial incarceration. Amends the Court of Claims Act. Provides that a person who has been issued a certificate of innocence may file a claim against the State for time unjustly served in pretrial incarceration in a county jail. Provides that the Court of Claims shall award \$50,000 per year during which the person was wrongfully imprisoned and shall prorate that amount for a fraction of a year that the person was wrongfully imprisoned (rather than "the amount of the award is at the discretion of the court; and provided, the court shall make no award in excess of the following amounts: for imprisonment of 5 years or less, not more than \$85,350; for imprisonment of 14 years or less but over 5 years, not more than \$170,000; for imprisonment of over 14 years, not more than \$199,150"). Provides that the court shall include the number of years the person was imprisoned awaiting trial in its determination and an additional \$25,000 for each year served on parole, probation, or registered as a sex offender after imprisonment. Makes corresponding changes. Effective immediately.

LRB101 04664 LNS 49673 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Court of Claims Act is amended by changing
5 Sections 8 and 11 as follows:

6 (705 ILCS 505/8) (from Ch. 37, par. 439.8)

7 Sec. 8. Court of Claims jurisdiction; deliberation
8 periods. The court shall have exclusive jurisdiction to hear
9 and determine the following matters:

10 (a) All claims against the State founded upon any law of
11 the State of Illinois or upon any regulation adopted thereunder
12 by an executive or administrative officer or agency; provided,
13 however, the court shall not have jurisdiction (i) to hear or
14 determine claims arising under the Workers' Compensation Act or
15 the Workers' Occupational Diseases Act, or claims for expenses
16 in civil litigation, or (ii) to review administrative decisions
17 for which a statute provides that review shall be in the
18 circuit or appellate court.

19 (b) All claims against the State founded upon any contract
20 entered into with the State of Illinois.

21 (c) All claims against the State for time unjustly served
22 in prisons of this State or in a county jail when the person
23 imprisoned received a pardon from the governor stating that

1 such pardon is issued on the ground of innocence of the crime
2 for which he or she was imprisoned or he or she received a
3 certificate of innocence from the Circuit Court as provided in
4 Section 2-702 of the Code of Civil Procedure. The court shall
5 make an award of \$50,000 per year during which the person was
6 wrongfully imprisoned and shall prorate that amount for a
7 fraction of a year that the person was wrongfully imprisoned.
8 The court shall fix attorney's fees not to exceed 25% of the
9 award granted. The court shall include the number of years the
10 person was imprisoned awaiting trial in its determination of
11 the award. The court shall include an additional \$25,000 for
12 each year served on parole, probation, or registered as a sex
13 offender after imprisonment. The, provided, the amount of the
14 award is at the discretion of the court; and provided, the
15 court shall make no award in excess of the following amounts:
16 for imprisonment of 5 years or less, not more than \$85,350; for
17 imprisonment of 14 years or less but over 5 years, not more
18 than \$170,000; for imprisonment of over 14 years, not more than
19 \$199,150; and provided further, the court shall fix attorney's
20 fees not to exceed 25% of the award granted. On or after the
21 effective date of this amendatory Act of the 95th General
22 Assembly, the court shall annually adjust the maximum awards
23 authorized by this subsection (c) to reflect the increase, if
24 any, in the Consumer Price Index For All Urban Consumers for
25 the previous calendar year, as determined by the United States
26 Department of Labor, except that no annual increment may exceed

1 5%. For the annual adjustments, if the Consumer Price Index
2 decreases during a calendar year, there shall be no adjustment
3 for that calendar year. The transmission by the Prisoner Review
4 Board or the clerk of the circuit court of the information
5 described in Section 11(b) to the clerk of the Court of Claims
6 is conclusive evidence of the validity of the claim. The
7 changes made by Public Act 95-970 ~~this amendatory Act of the~~
8 ~~95th General Assembly~~ apply to all claims pending on or filed
9 on or after September 22, 2008 (the effective date of Public
10 Act 95-970). The changes made by this amendatory Act of the
11 101st General Assembly apply to all claims pending or filed on
12 or after the effective date of this amendatory Act of the 101st
13 General Assembly.

14 (d) All claims against the State for damages in cases
15 sounding in tort, if a like cause of action would lie against a
16 private person or corporation in a civil suit, and all like
17 claims sounding in tort against the Medical Center Commission,
18 the Board of Trustees of the University of Illinois, the Board
19 of Trustees of Southern Illinois University, the Board of
20 Trustees of Chicago State University, the Board of Trustees of
21 Eastern Illinois University, the Board of Trustees of Governors
22 State University, the Board of Trustees of Illinois State
23 University, the Board of Trustees of Northeastern Illinois
24 University, the Board of Trustees of Northern Illinois
25 University, the Board of Trustees of Western Illinois
26 University, or the Board of Trustees of the Illinois

1 Mathematics and Science Academy; provided, that an award for
2 damages in a case sounding in tort, other than certain cases
3 involving the operation of a State vehicle described in this
4 paragraph, shall not exceed the sum of \$100,000 to or for the
5 benefit of any claimant. The \$100,000 limit prescribed by this
6 Section does not apply to an award of damages in any case
7 sounding in tort arising out of the operation by a State
8 employee of a vehicle owned, leased or controlled by the State.
9 The defense that the State or the Medical Center Commission or
10 the Board of Trustees of the University of Illinois, the Board
11 of Trustees of Southern Illinois University, the Board of
12 Trustees of Chicago State University, the Board of Trustees of
13 Eastern Illinois University, the Board of Trustees of Governors
14 State University, the Board of Trustees of Illinois State
15 University, the Board of Trustees of Northeastern Illinois
16 University, the Board of Trustees of Northern Illinois
17 University, the Board of Trustees of Western Illinois
18 University, or the Board of Trustees of the Illinois
19 Mathematics and Science Academy is not liable for the
20 negligence of its officers, agents, and employees in the course
21 of their employment is not applicable to the hearing and
22 determination of such claims.

23 (e) All claims for recoupment made by the State of Illinois
24 against any claimant.

25 (f) All claims pursuant to the Line of Duty Compensation
26 Act. A claim under that Act must be heard and determined within

1 one year after the application for that claim is filed with the
2 Court as provided in that Act.

3 (g) All claims filed pursuant to the Crime Victims
4 Compensation Act.

5 (h) All claims pursuant to the Illinois National
6 Guardsman's Compensation Act. A claim under that Act must be
7 heard and determined within one year after the application for
8 that claim is filed with the Court as provided in that Act.

9 (i) All claims authorized by subsection (a) of Section
10 10-55 of the Illinois Administrative Procedure Act for the
11 expenses incurred by a party in a contested case on the
12 administrative level.

13 (Source: P.A. 95-970, eff. 9-22-08; 96-80, eff. 7-27-09.)

14 (705 ILCS 505/11) (from Ch. 37, par. 439.11)

15 Sec. 11. Filing claims.

16 (a) Except as otherwise provided in subsection (b) of this
17 Section and subsection (4) of Section 24, the claimant shall in
18 all cases set forth fully in his petition the claim, the action
19 thereon, if any, on behalf of the State, what persons are
20 owners thereof or interested therein, when and upon what
21 consideration such persons became so interested; that no
22 assignment or transfer of the claim or any part thereof or
23 interest therein has been made, except as stated in the
24 petition; that the claimant is justly entitled to the amount
25 therein claimed from the State of Illinois, after allowing all

1 just credits; and that claimant believes the facts stated in
2 the petition to be true. The petition shall be verified, as to
3 statements of facts, by the affidavit of the claimant, his
4 agent, or attorney.

5 (b) Whenever a person has served a term of imprisonment and
6 has received a pardon by the Governor stating that such pardon
7 was issued on the ground of innocence of the crime for which he
8 or she was imprisoned, the Prisoner Review Board shall transmit
9 this information to the clerk of the Court of Claims, together
10 with the claimant's current address. Whenever a person has
11 served a term of imprisonment or has been incarcerated as a
12 pretrial detainee and has received a certificate of innocence
13 from the Circuit Court as provided in Section 2-702 of the Code
14 of Civil Procedure, the clerk of the issuing Circuit Court
15 shall transmit this information to the clerk of the Court of
16 Claims, together with the claimant's current address. The clerk
17 of the Court of Claims shall immediately docket the case for
18 consideration by the Court of Claims, and shall provide notice
19 to the claimant of such docketing together with all hearing
20 dates and applicable deadlines. The Court of Claims shall hear
21 the case and render a decision within 90 days after its
22 docketing.

23 (Source: P.A. 95-970, eff. 9-22-08; 96-328, eff. 8-11-09.)

24 Section 10. The Code of Civil Procedure is amended by
25 changing Section 2-702 as follows:

1 (735 ILCS 5/2-702)

2 Sec. 2-702. Petition for a certificate of innocence that
3 the petitioner was innocent of all offenses for which he or she
4 was incarcerated.

5 (a) The General Assembly finds and declares that innocent
6 persons who have been wrongly charged with or convicted of
7 crimes in Illinois and subsequently have been incarcerated
8 prior to trial or imprisoned have been frustrated in seeking
9 legal redress due to a variety of substantive and technical
10 obstacles in the law and that such persons should have an
11 available avenue to obtain a finding of innocence so that they
12 may obtain relief through a petition in the Court of Claims.
13 The General Assembly further finds misleading the current legal
14 nomenclature which compels an innocent person to seek a pardon
15 for being wrongfully incarcerated. It is the intent of the
16 General Assembly that the court, in exercising its discretion
17 as permitted by law regarding the weight and admissibility of
18 evidence submitted pursuant to this Section, shall, in the
19 interest of justice, give due consideration to difficulties of
20 proof caused by the passage of time, the death or
21 unavailability of witnesses, the destruction of evidence or
22 other factors not caused by such persons or those acting on
23 their behalf.

24 (b) Any person criminally prosecuted and incarcerated
25 prior to trial or convicted and subsequently imprisoned for one

1 or more felonies by the State of Illinois which he or she did
2 not commit may, under the conditions hereinafter provided, file
3 a petition for certificate of innocence in the circuit court of
4 the county in which the person was convicted or incarcerated
5 prior to trial. The petition shall request a certificate of
6 innocence finding that the petitioner was innocent of all
7 offenses for which he or she was incarcerated.

8 (c) In order to present the claim for certificate of
9 innocence of an unjust conviction and imprisonment or pretrial
10 incarceration, the petitioner must attach to his or her
11 petition documentation demonstrating that:

12 (1) he or she has been convicted of one or more
13 felonies by the State of Illinois and subsequently
14 sentenced to a term of imprisonment, and has served all or
15 any part of the sentence, or he or she was incarcerated
16 prior to trial for 30 days or longer and the case resulted
17 in a dismissal or acquittal of the charge or charges, but
18 did not result in a conviction for a lesser included
19 offense; and

20 (2) if convicted, his or her judgment of conviction was
21 reversed or vacated, and the indictment or information
22 dismissed or, if a new trial was ordered, either he or she
23 was found not guilty at the new trial or he or she was not
24 retried and the indictment or information dismissed; or the
25 statute, or application thereof, on which the indictment or
26 information was based violated the Constitution of the

1 United States or the State of Illinois; and

2 (3) his or her claim is not time barred by the
3 provisions of subsection (i) of this Section.

4 (d) The petition shall state facts in sufficient detail to
5 permit the court to find that the petitioner is likely to
6 succeed at trial in proving that the petitioner is innocent of
7 the offenses charged in the indictment or information or his or
8 her acts or omissions charged in the indictment or information
9 did not constitute a felony or misdemeanor against the State of
10 Illinois, and the petitioner did not by his or her own conduct
11 voluntarily cause or bring about his or her conviction. The
12 petition shall be verified by the petitioner.

13 (e) A copy of the petition shall be served on the Attorney
14 General and the State's Attorney of the county where the
15 conviction was had. The Attorney General and the State's
16 Attorney of the county where the conviction was had shall have
17 the right to intervene as parties.

18 (f) In any hearing seeking a certificate of innocence, the
19 court may take judicial notice of prior sworn testimony or
20 evidence admitted in the criminal proceedings related to the
21 charges or convictions which resulted in the alleged wrongful
22 incarceration, if the petitioner was either represented by
23 counsel at such prior proceedings or the right to counsel was
24 knowingly waived.

25 (g) If the petitioner was imprisoned because of a
26 conviction, in ~~in~~ order to obtain a certificate of innocence

1 the petitioner must prove by a preponderance of evidence that:

2 (1) the petitioner was convicted of one or more
3 felonies by the State of Illinois and subsequently
4 sentenced to a term of imprisonment, and has served all or
5 any part of the sentence;

6 (2) (A) the judgment of conviction was reversed or
7 vacated, and the indictment or information dismissed or, if
8 a new trial was ordered, either the petitioner was found
9 not guilty at the new trial or the petitioner was not
10 retried and the indictment or information dismissed; or (B)
11 the statute, or application thereof, on which the
12 indictment or information was based violated the
13 Constitution of the United States or the State of Illinois;

14 (3) the petitioner is innocent of the offenses charged
15 in the indictment or information or his or her acts or
16 omissions charged in the indictment or information did not
17 constitute a felony or misdemeanor against the State; and

18 (4) the petitioner did not by his or her own conduct
19 voluntarily cause or bring about his or her conviction.

20 (g-5) If the petitioner was incarcerated prior to trial for
21 30 days or longer but not convicted of any of the charged
22 offenses or a lesser included offense, in order to obtain a
23 certificate of innocence the petitioner must prove by a
24 preponderance of evidence that:

25 (1) the petitioner was incarcerated prior to trial for
26 30 days or longer in a prosecution which resulted in an

1 acquittal or dismissal;

2 (2) the prosecution did not result in a conviction of a
3 lesser included offense;

4 (3) the petitioner is innocent of the charges on which
5 the petitioner's pretrial detention was based, or the
6 charges did not constitute a felony or misdemeanor; and

7 (4) the petitioner did not by his or her own conduct
8 voluntarily cause or bring about the charges which resulted
9 in his or her pretrial incarceration.

10 (h) If the court finds that the petitioner is entitled to a
11 judgment, it shall enter a certificate of innocence finding
12 that the petitioner was innocent of all offenses for which he
13 or she was incarcerated. Upon entry of the certificate of
14 innocence or pardon from the Governor stating that such pardon
15 was issued on the ground of innocence of the crime for which he
16 or she was incarcerated prior to trial or imprisoned, (1) the
17 clerk of the court shall transmit a copy of the certificate of
18 innocence to the clerk of the Court of Claims, together with
19 the claimant's current address; and (2) the court shall enter
20 an order expunging the record of arrest from the official
21 records of the arresting authority and order that the records
22 of the clerk of the circuit court and Department of State
23 Police be sealed until further order of the court upon good
24 cause shown or as otherwise provided herein, and the name of
25 the defendant obliterated from the official index requested to
26 be kept by the circuit court clerk under Section 16 of the

1 Clerks of Courts Act in connection with the arrest and
2 conviction for the offense but the order shall not affect any
3 index issued by the circuit court clerk before the entry of the
4 order. The court shall enter the expungement order regardless
5 of whether the petitioner has prior criminal convictions.

6 All records sealed by the Department of State Police may be
7 disseminated by the Department only as required by law or to
8 the arresting authority, the State's Attorney, the court upon a
9 later arrest for the same or similar offense, or for the
10 purpose of sentencing for any subsequent felony. Upon
11 conviction for any subsequent offense, the Department of
12 Corrections shall have access to all sealed records of the
13 Department pertaining to that individual.

14 Upon entry of the order of expungement, the clerk of the
15 circuit court shall promptly mail a copy of the order to the
16 person whose records were expunged and sealed.

17 (i) Any person seeking a certificate of innocence under
18 this Section based on the dismissal of an indictment or
19 information or acquittal that occurred before September 22,
20 2008 (the effective date of Public Act 95-970) ~~this amendatory~~
21 ~~Act of the 95th General Assembly~~ shall file his or her petition
22 within 2 years after September 22, 2008 ~~the effective date of~~
23 ~~this amendatory Act of the 95th General Assembly~~. Any person
24 seeking a certificate of innocence under this Section based on
25 the dismissal of an indictment or information or acquittal that
26 occurred on or after September 22, 2008 ~~the effective date of~~

1 ~~this amendatory Act of the 95th General Assembly~~ shall file his
2 or her petition within 2 years after the dismissal.

3 (j) The decision to grant or deny a certificate of
4 innocence shall be binding only with respect to claims filed in
5 the Court of Claims and shall not have a res judicata effect on
6 any other proceedings.

7 (Source: P.A. 98-133, eff. 1-1-14.)

8 Section 99. Effective date. This Act takes effect upon
9 becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 705 ILCS 505/8 from Ch. 37, par. 439.8

4 705 ILCS 505/11 from Ch. 37, par. 439.11

5 735 ILCS 5/2-702