



Rep. Mary E. Flowers

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LRB098 15638 HEP 55561 a

1 AMENDMENT TO HOUSE BILL 4080

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4080 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Court of Claims Act is amended by changing  
5 Section 8 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

1 for which a statute provides that review shall be in the  
2 circuit or appellate court.

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

5 (c) All claims against the State for time unjustly served  
6 in prisons of this State when the person imprisoned received a  
7 pardon from the governor stating that such pardon is issued on  
8 the ground of innocence of the crime for which he or she was  
9 imprisoned or he or she received a certificate of innocence  
10 from the Circuit Court as provided in Section 2-702 of the Code  
11 of Civil Procedure; provided, the amount of the award is at the  
12 discretion of the court; and provided, the court shall make no  
13 award in excess of the following amounts: for imprisonment of 5  
14 years or less, not more than \$85,350; for imprisonment of 14  
15 years or less but over 5 years, not more than \$170,000; for  
16 imprisonment of over 14 years, not more than \$199,150; and  
17 provided further, the court shall fix and award reasonable  
18 attorney's fees for representation before the Court of Claims  
19 and representation relating to the granting of the certificate  
20 of innocence or the pardon. The award of attorney's fees shall  
21 not ~~not to~~ exceed 25% of the award granted for time unjustly  
22 served in prisons of the State and shall be paid in addition  
23 to, and not reduce, that award. On or after the effective date  
24 of this amendatory Act of the 95th General Assembly, the court  
25 shall annually adjust the maximum awards authorized by this  
26 subsection (c) to reflect the increase, if any, in the Consumer

1 Price Index For All Urban Consumers for the previous calendar  
2 year, as determined by the United States Department of Labor,  
3 except that no annual increment may exceed 5%. For the annual  
4 adjustments, if the Consumer Price Index decreases during a  
5 calendar year, there shall be no adjustment for that calendar  
6 year. The transmission by the Prisoner Review Board or the  
7 clerk of the circuit court of the information described in  
8 Section 11(b) to the clerk of the Court of Claims is conclusive  
9 evidence of the validity of the claim. The changes made by this  
10 amendatory Act of the 95th General Assembly apply to all claims  
11 pending on or filed on or after the effective date.

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

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

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

23 (f) All claims pursuant to the Line of Duty Compensation  
24 Act. A claim under that Act must be heard and determined within  
25 one year after the application for that claim is filed with the  
26 Court as provided in that Act.

1 (g) All claims filed pursuant to the Crime Victims  
2 Compensation Act.

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

7 (i) All claims authorized by subsection (a) of Section  
8 10-55 of the Illinois Administrative Procedure Act for the  
9 expenses incurred by a party in a contested case on the  
10 administrative level.

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

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

14 (735 ILCS 5/2-702)

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

18 (a) The General Assembly finds and declares that innocent  
19 persons who have been wrongly convicted of crimes in Illinois  
20 and subsequently imprisoned have been frustrated in seeking  
21 legal redress due to a variety of substantive and technical  
22 obstacles in the law and that such persons should have an  
23 available avenue to obtain a finding of innocence so that they  
24 may obtain relief through a petition in the Court of Claims.

1 The General Assembly further finds misleading the current legal  
2 nomenclature which compels an innocent person to seek a pardon  
3 for being wrongfully incarcerated. It is the intent of the  
4 General Assembly that the court, in exercising its discretion  
5 as permitted by law regarding the weight and admissibility of  
6 evidence submitted pursuant to this Section, shall, in the  
7 interest of justice, give due consideration to difficulties of  
8 proof caused by the passage of time, the death or  
9 unavailability of witnesses, the destruction of evidence or  
10 other factors not caused by such persons or those acting on  
11 their behalf.

12 (b) Any person convicted and subsequently imprisoned for  
13 one or more felonies by the State of Illinois which he or she  
14 did not commit may, under the conditions hereinafter provided,  
15 file a petition for certificate of innocence in the circuit  
16 court of the county in which the person was convicted. The  
17 petition shall request a certificate of innocence finding that  
18 the petitioner was innocent of all offenses for which he or she  
19 was incarcerated.

20 (c) In order to present the claim for certificate of  
21 innocence of an unjust conviction and imprisonment, the  
22 petitioner must attach to his or her petition documentation  
23 demonstrating that:

24 (1) he or she has been convicted of one or more  
25 felonies by the State of Illinois and subsequently  
26 sentenced to a term of imprisonment, and has served all or

1 any part of the sentence; and

2 (2) his or her judgment of conviction was reversed or  
3 vacated, and the indictment or information dismissed or, if  
4 a new trial was ordered, either he or she was found not  
5 guilty at the new trial or he or she was not retried and  
6 the indictment or information dismissed; or the statute, or  
7 application thereof, on which the indictment or  
8 information was based violated the Constitution of the  
9 United States or the State of Illinois; and

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

12 (d) The petition shall state facts in sufficient detail to  
13 permit the court to find that the petitioner is likely to  
14 succeed at trial in proving that the petitioner is innocent of  
15 the offenses charged in the indictment or information or his or  
16 her acts or omissions charged in the indictment or information  
17 did not constitute a felony or misdemeanor against the State of  
18 Illinois, and the petitioner did not by his or her own conduct  
19 voluntarily cause or bring about his or her conviction. The  
20 petition shall be verified by the petitioner.

21 (e) A copy of the petition shall be served on the Attorney  
22 General and the State's Attorney of the county where the  
23 conviction was had. The Attorney General and the State's  
24 Attorney of the county where the conviction was had shall have  
25 the right to intervene as parties.

26 (f) In any hearing seeking a certificate of innocence, the

1 court may take judicial notice of prior sworn testimony or  
2 evidence admitted in the criminal proceedings related to the  
3 convictions which resulted in the alleged wrongful  
4 incarceration, if the petitioner was either represented by  
5 counsel at such prior proceedings or the right to counsel was  
6 knowingly waived.

7 (g) In order to obtain a certificate of innocence the  
8 petitioner must prove by a preponderance of evidence that:

9 (1) the petitioner was convicted of one or more  
10 felonies by the State of Illinois and subsequently  
11 sentenced to a term of imprisonment, and has served all or  
12 any part of the sentence;

13 (2) (A) the judgment of conviction was reversed or  
14 vacated, and the indictment or information dismissed or, if  
15 a new trial was ordered, either the petitioner was found  
16 not guilty at the new trial or the petitioner was not  
17 retried and the indictment or information dismissed; or (B)  
18 the statute, or application thereof, on which the  
19 indictment or information was based violated the  
20 Constitution of the United States or the State of Illinois;

21 (3) the petitioner is innocent of the offenses charged  
22 in the indictment or information or his or her acts or  
23 omissions charged in the indictment or information did not  
24 constitute a felony or misdemeanor against the State; and

25 (4) the petitioner did not voluntarily commit or suborn  
26 perjury or fabricate evidence to cause or bring about his



1        or her conviction; however, neither a confession nor  
2        admission later found to be false constitutes bringing  
3        about his or her own conviction under this Code ~~by his or~~  
4        ~~her own conduct voluntarily cause or bring about his or her~~  
5        ~~conviction.~~

6        (h) If the court finds that the petitioner is entitled to a  
7        judgment, it shall enter a certificate of innocence finding  
8        that the petitioner was innocent of all offenses for which he  
9        or she was incarcerated. Upon entry of the certificate of  
10       innocence or pardon from the Governor stating that such pardon  
11       was issued on the ground of innocence of the crime for which he  
12       or she was imprisoned, (1) the clerk of the court shall  
13       transmit a copy of the certificate of innocence to the clerk of  
14       the Court of Claims, together with the claimant's current  
15       address; and (2) the court shall enter an order expunging the  
16       record of arrest from the official records of the arresting  
17       authority and order that the records of the clerk of the  
18       circuit court and Department of State Police be sealed until  
19       further order of the court upon good cause shown or as  
20       otherwise provided herein, and the name of the defendant  
21       obliterated from the official index requested to be kept by the  
22       circuit court clerk under Section 16 of the Clerks of Courts  
23       Act in connection with the arrest and conviction for the  
24       offense but the order shall not affect any index issued by the  
25       circuit court clerk before the entry of the order. The court  
26       shall enter the expungement order regardless of whether the

1 petitioner has prior criminal convictions.

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

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

13 (i) Any person seeking a certificate of innocence under  
14 this Section based on the dismissal of an indictment or  
15 information or acquittal that occurred before the effective  
16 date of this amendatory Act of the 95th General Assembly shall  
17 file his or her petition within 2 years after the effective  
18 date of this amendatory Act of the 95th General Assembly. Any  
19 person seeking a certificate of innocence under this Section  
20 based on the dismissal of an indictment or information or  
21 acquittal that occurred on or after the effective date of this  
22 amendatory Act of the 95th General Assembly shall file his or  
23 her petition within 2 years after the dismissal.

24 (j) The decision to grant or deny a certificate of  
25 innocence shall be binding only with respect to claims filed in  
26 the Court of Claims and shall not have a res judicata effect on

- 1 any other proceedings.
- 2 (Source: P.A. 98-133, eff. 1-1-14.)".