



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB0458

Introduced 1/17/2017, by Rep. Mary E. Flowers

#### SYNOPSIS AS INTRODUCED:

705 ILCS 505/8	from Ch. 37, par. 439.8
705 ILCS 505/11	from Ch. 37, par. 439.11
735 ILCS 5/2-702	

Amends the Code of Civil Procedure. Provides that any person criminally prosecuted and incarcerated prior to trial for one or more felonies by the State of Illinois which he or she did not commit may file a petition for a certificate of innocence in the circuit court of the county in which the person was incarcerated prior to trial. Provides that the petitioner must prove by a preponderance of evidence that: (1) the petitioner was incarcerated prior to trial in a prosecution which resulted in an acquittal or dismissal; (2) the prosecution did not result in a conviction of a lesser included offense; (3) 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 against the State; and (4) 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 make an award of \$50,000 per year 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 of the award and that the court shall include an additional \$25,000 for each year served on parole, probation, or registered as a sex offender after imprisonment. Makes corresponding changes. Effective immediately.

LRB100 04254 HEP 14260 b

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 the person was wrongfully  
6 imprisoned and shall prorate that amount for a fraction of a  
7 year that the person was wrongfully imprisoned. The court shall  
8 fix attorney's fees not to exceed 25% of the award granted. The  
9 court shall include the number of years the person was  
10 imprisoned awaiting trial in its determination of the award.  
11 The court shall include an additional \$25,000 for each year  
12 served on parole, probation, or registered as a sex offender  
13 after imprisonment.; ~~provided, the amount of the award is at~~  
14 ~~the discretion of the court; and provided, the court shall make~~  
15 ~~no award in excess of the following amounts: for imprisonment~~  
16 ~~of 5 years or less, not more than \$85,350; for imprisonment of~~  
17 ~~14 years or less but over 5 years, not more than \$170,000; for~~  
18 ~~imprisonment of over 14 years, not more than \$199,150; and~~  
19 ~~provided further, the court shall fix attorney's fees not to~~  
20 ~~exceed 25% of the award granted.~~ On or after the effective date  
21 of this amendatory Act of the 100th ~~95th~~ General Assembly, the  
22 court shall annually adjust the maximum awards authorized by  
23 this subsection (c) to reflect the increase, if any, in the  
24 Consumer Price Index For All Urban Consumers for the previous  
25 calendar year, as determined by the United States Department of  
26 Labor, except that no annual increment may exceed 5%. For the

1 annual adjustments, if the Consumer Price Index decreases  
2 during a calendar year, there shall be no adjustment for that  
3 calendar year. The transmission by the Prisoner Review Board or  
4 the clerk of the circuit court of the information described in  
5 Section 11(b) to the clerk of the Court of Claims is conclusive  
6 evidence of the validity of the claim. The changes made by this  
7 amendatory Act of the 100th ~~95th~~ General Assembly apply to all  
8 claims pending on or filed on or after the effective date.

9 (d) All claims against the State for damages in cases  
10 sounding in tort, if a like cause of action would lie against a  
11 private person or corporation in a civil suit, and all like  
12 claims sounding in tort against the Medical Center Commission,  
13 the Board of Trustees of the University of Illinois, the Board  
14 of Trustees of Southern Illinois University, the Board of  
15 Trustees of Chicago State University, the Board of Trustees of  
16 Eastern Illinois University, the Board of Trustees of Governors  
17 State University, the Board of Trustees of Illinois State  
18 University, the Board of Trustees of Northeastern Illinois  
19 University, the Board of Trustees of Northern Illinois  
20 University, the Board of Trustees of Western Illinois  
21 University, or the Board of Trustees of the Illinois  
22 Mathematics and Science Academy; provided, that an award for  
23 damages in a case sounding in tort, other than certain cases  
24 involving the operation of a State vehicle described in this  
25 paragraph, shall not exceed the sum of \$100,000 to or for the  
26 benefit of any claimant. The \$100,000 limit prescribed by this

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

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

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

24 (g) All claims filed pursuant to the Crime Victims  
25 Compensation Act.

26 (h) All claims pursuant to the Illinois National

1 Guardsman's Compensation Act. A claim under that Act must be  
2 heard and determined within one year after the application for  
3 that claim is filed with the Court as provided in that Act.

4 (i) All claims authorized by subsection (a) of Section  
5 10-55 of the Illinois Administrative Procedure Act for the  
6 expenses incurred by a party in a contested case on the  
7 administrative level.

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

9 (705 ILCS 505/11) (from Ch. 37, par. 439.11)

10 Sec. 11. Filing claims.

11 (a) Except as otherwise provided in subsection (b) of this  
12 Section and subsection (4) of Section 24, the claimant shall in  
13 all cases set forth fully in his petition the claim, the action  
14 thereon, if any, on behalf of the State, what persons are  
15 owners thereof or interested therein, when and upon what  
16 consideration such persons became so interested; that no  
17 assignment or transfer of the claim or any part thereof or  
18 interest therein has been made, except as stated in the  
19 petition; that the claimant is justly entitled to the amount  
20 therein claimed from the State of Illinois, after allowing all  
21 just credits; and that claimant believes the facts stated in  
22 the petition to be true. The petition shall be verified, as to  
23 statements of facts, by the affidavit of the claimant, his  
24 agent, or attorney.

25 (b) Whenever a person has served a term of imprisonment and

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

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

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

21 (735 ILCS 5/2-702)

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

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

20           (b) Any person criminally prosecuted and incarcerated  
21 prior to trial or convicted and subsequently imprisoned for one  
22 or more felonies by the State of Illinois which he or she did  
23 not commit may, under the conditions hereinafter provided, file  
24 a petition for certificate of innocence in the circuit court of  
25 the county in which the person was convicted or incarcerated  
26 prior to trial. The petition shall request a certificate of



1 innocence finding that the petitioner was innocent of all  
2 offenses for which he or she was incarcerated.

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

7 (1) he or she has been convicted of one or more  
8 felonies by the State of Illinois and subsequently  
9 sentenced to a term of imprisonment, and has served all or  
10 any part of the sentence, or he or she was incarcerated  
11 prior to trial and the case resulted in a dismissal or  
12 acquittal of the charge or charges; and

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

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

23 (d) The petition shall state facts in sufficient detail to  
24 permit the court to find that the petitioner is likely to  
25 succeed at trial in proving that the petitioner is innocent of  
26 the offenses charged in the indictment or information or his or

1 her acts or omissions charged in the indictment or information  
2 did not constitute a felony or misdemeanor against the State of  
3 Illinois, and the petitioner did not by his or her own conduct  
4 voluntarily cause or bring about his or her conviction. The  
5 petition shall be verified by the petitioner.

6 (e) A copy of the petition shall be served on the Attorney  
7 General and the State's Attorney of the county where the  
8 conviction was had. The Attorney General and the State's  
9 Attorney of the county where the conviction was had shall have  
10 the right to intervene as parties.

11 (f) In any hearing seeking a certificate of innocence, the  
12 court may take judicial notice of prior sworn testimony or  
13 evidence admitted in the criminal proceedings related to the  
14 charges or convictions which resulted in the alleged wrongful  
15 incarceration, if the petitioner was either represented by  
16 counsel at such prior proceedings or the right to counsel was  
17 knowingly waived.

18 (g) If the petitioner was imprisoned because of a  
19 conviction, in ~~in~~ order to obtain a certificate of innocence  
20 the petitioner must prove by a preponderance of evidence that:

21 (1) the petitioner was convicted of one or more  
22 felonies by the State of Illinois and subsequently  
23 sentenced to a term of imprisonment, and has served all or  
24 any part of the sentence;

25 (2) (A) the judgment of conviction was reversed or  
26 vacated, and the indictment or information dismissed or, if

1 a new trial was ordered, either the petitioner was found  
2 not guilty at the new trial or the petitioner was not  
3 retried and the indictment or information dismissed; or (B)  
4 the statute, or application thereof, on which the  
5 indictment or information was based violated the  
6 Constitution of the United States or the State of Illinois;

7 (3) the petitioner is innocent of the offenses charged  
8 in the indictment or information or his or her acts or  
9 omissions charged in the indictment or information did not  
10 constitute a felony or misdemeanor against the State; and

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

13 (g-5) If the petitioner was incarcerated prior to trial but  
14 not convicted, in order to obtain a certificate of innocence  
15 the petitioner must prove by a preponderance of evidence that:

16 (1) the petitioner was incarcerated prior to trial in a  
17 prosecution which resulted in an acquittal or dismissal;

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

20 (3) the petitioner is innocent of the charges on which  
21 the petitioner's pretrial detention was based, or the  
22 charges did not constitute a felony or misdemeanor against  
23 the State; and

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

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

23 All records sealed by the Department of State Police may be  
24 disseminated by the Department only as required by law or to  
25 the arresting authority, the State's Attorney, the court upon a  
26 later arrest for the same or similar offense, or for the

1 purpose of sentencing for any subsequent felony. Upon  
2 conviction for any subsequent offense, the Department of  
3 Corrections shall have access to all sealed records of the  
4 Department pertaining to that individual.

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

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

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

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

24 Section 99. Effective date. This Act takes effect upon  
25 becoming law.