



## 102ND GENERAL ASSEMBLY

### State of Illinois

### 2021 and 2022

### HB0087

Introduced 1/14/2021, 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 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 that 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 that 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.

LRB102 03670 LNS 13683 b

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

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

22 (c) All claims against the State for time unjustly  
23 served in prisons of this State or in a county jail when

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

1 increase, if any, in the Consumer Price Index For All  
2 Urban Consumers for the previous calendar year, as  
3 determined by the United States Department of Labor,  
4 except that no annual increment may exceed 5%. For the  
5 annual adjustments, if the Consumer Price Index decreases  
6 during a calendar year, there shall be no adjustment for  
7 that calendar year. The transmission by the Prisoner  
8 Review Board or the clerk of the circuit court of the  
9 information described in Section 11(b) to the clerk of the  
10 Court of Claims is conclusive evidence of the validity of  
11 the claim. The changes made by Public Act 95-970 ~~this~~  
12 ~~amendatory Act of the 95th General Assembly~~ apply to all  
13 claims pending on or filed on or after September 22, 2008  
14 (the effective date of Public Act 95-970). The changes  
15 made by this amendatory Act of the 102nd General Assembly  
16 apply to all claims pending or filed on or after the  
17 effective date of this amendatory Act of the 102nd General  
18 Assembly.

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

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

1 is not liable for the negligence of its officers, agents,  
2 and employees in the course of their employment is not  
3 applicable to the hearing and determination of such  
4 claims. The changes to this Section made by this  
5 amendatory Act of the 100th General Assembly apply only to  
6 claims filed on or after July 1, 2015.

7 The court shall annually adjust the maximum awards  
8 authorized by this subsection to reflect the increase, if  
9 any, in the Consumer Price Index For All Urban Consumers  
10 for the previous calendar year, as determined by the  
11 United States Department of Labor. The Comptroller shall  
12 make the new amount resulting from each annual adjustment  
13 available to the public via the Comptroller's official  
14 website by January 31 of every year.

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

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

21 (g) All claims filed pursuant to the Crime Victims  
22 Compensation Act.

23 (h) All claims pursuant to the Illinois National  
24 Guardsman's Compensation Act. A claim under that Act must  
25 be heard and determined within one year after the  
26 application for that claim is filed with the Court as

1 provided in that Act.

2 (i) All claims authorized by subsection (a) of Section  
3 10-55 of the Illinois Administrative Procedure Act for the  
4 expenses incurred by a party in a contested case on the  
5 administrative level.

6 (Source: P.A. 100-1124, eff. 11-27-18.)

7 (705 ILCS 505/11) (from Ch. 37, par. 439.11)

8 Sec. 11. Filing claims.

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

23 (b) Whenever a person has served a term of imprisonment  
24 and has received a pardon by the Governor stating that such  
25 pardon was issued on the ground of innocence of the crime for

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

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

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

19 (735 ILCS 5/2-702)

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

23 (a) The General Assembly finds and declares that innocent  
24 persons who have been wrongly charged with or convicted of



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

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

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

5 (1) he or she has been convicted of one or more  
6 felonies by the State of Illinois and subsequently  
7 sentenced to a term of imprisonment, and has served all or  
8 any part of the sentence, or he or she was incarcerated  
9 prior to trial for 30 days or longer and the case resulted  
10 in a dismissal or acquittal of the charge or charges, but  
11 did not result in a conviction for a lesser included  
12 offense; and

13 (2) if convicted, his or her judgment of conviction  
14 was 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  
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  
21 Illinois; and

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

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

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

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

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

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

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

26 (2) (A) the judgment of conviction was reversed or

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

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

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

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

20 (1) the petitioner was incarcerated prior to trial for  
21 30 days or longer in a prosecution that resulted in an  
22 acquittal or dismissal;

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

25 (3) the petitioner is innocent of the charges on which  
26 the petitioner's pretrial detention was based, or the

1 charges did not constitute a felony or misdemeanor; and

2 (4) the petitioner did not by his or her own conduct  
3 voluntarily cause or bring about the charges that resulted  
4 in his or her pretrial incarceration.

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

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

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

12 (i) Any person seeking a certificate of innocence under  
13 this Section based on the dismissal of an indictment or  
14 information or acquittal that occurred before September 22,  
15 2008 (the effective date of Public Act 95-970) ~~this amendatory~~  
16 ~~Act of the 95th General Assembly~~ shall file his or her petition  
17 within 2 years after September 22, 2008 ~~the effective date of~~  
18 ~~this amendatory Act of the 95th General Assembly~~. Any person  
19 seeking a certificate of innocence under this Section based on  
20 the dismissal of an indictment or information or acquittal  
21 that occurred on or after September 22, 2008 ~~the effective~~  
22 ~~date of this amendatory Act of the 95th General Assembly~~ shall  
23 file his or 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  
26 in the Court of Claims and shall not have a res judicata effect

1 on any other proceedings.

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

3 Section 99. Effective date. This Act takes effect upon  
4 becoming law.