

100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4362

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 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; 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 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 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 17496 HEP 32665 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 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.; ~~provided, the amount of the award~~
14 ~~is at the discretion of the court; and provided, the court~~
15 ~~shall make no award in excess of the following amounts: for~~
16 ~~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 100th ~~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 this amendatory Act of the 100th ~~95th~~ General
8 Assembly apply to all claims pending on or filed on or after
9 the effective date.

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

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

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

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

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

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

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

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

10 (705 ILCS 505/11) (from Ch. 37, par. 439.11)

11 Sec. 11. Filing claims.

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

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

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

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

22 (735 ILCS 5/2-702)

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

1 was incarcerated.

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

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

1 prior to trial. The petition shall request a certificate of
2 innocence finding that the petitioner was innocent of all
3 offenses for which he or she was incarcerated.

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

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

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

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

26 (d) The petition shall state facts in sufficient detail to

1 permit the court to find that the petitioner is likely to
2 succeed at trial in proving that the petitioner is innocent of
3 the offenses charged in the indictment or information or his or
4 her acts or omissions charged in the indictment or information
5 did not constitute a felony or misdemeanor against the State of
6 Illinois, and the petitioner did not by his or her own conduct
7 voluntarily cause or bring about his or her conviction. The
8 petition shall be verified by the petitioner.

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

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

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

24 (1) the petitioner was 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;

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

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

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

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

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

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

26 (3) the petitioner is innocent of the charges on which

1 the petitioner's pretrial detention was based, or the
2 charges did not constitute a felony or misdemeanor; and

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

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 incarcerated prior to trial or imprisoned, (1) the
13 clerk of the court shall transmit a copy of the certificate of
14 innocence to the clerk of the Court of Claims, together with
15 the claimant's current address; and (2) the court shall enter
16 an order expunging the record of arrest from the official
17 records of the arresting authority and order that the records
18 of the clerk of the circuit court and Department of State
19 Police be sealed until further order of the court upon good
20 cause shown or as otherwise provided herein, and the name of
21 the defendant obliterated from the official index requested to
22 be kept by the circuit court clerk under Section 16 of the
23 Clerks of Courts Act in connection with the arrest and
24 conviction for the offense but the order shall not affect any
25 index issued by the circuit court clerk before the entry of the
26 order. The court shall enter the expungement order regardless

1 of whether the 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.)

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