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**REPORT BY THE  
CORRECTIONS AND COMMUNITY REENTRY COMMITTEE  
AND THE CRIMINAL COURTS COMMITTEE**

**A PROPOSAL TO AMEND § 8-b OF THE COURT OF CLAIMS ACT**

It is widely recognized that a significant number of people are wrongly convicted and imprisoned and that these people should be entitled to compensation.<sup>1</sup> In New York, Court of Claims Act § 8-b, known as the “Unjust Conviction and Imprisonment Act” (“UCIA”), provides a cause of action that permits people who have been wrongly convicted and imprisoned to seek compensation. But, as written, the statute excludes many deserving persons before they even get in the courthouse door. To correct this problem, the Committee on Corrections and Community Reentry and the Criminal Courts Committee jointly recommend amending the UCIA in two ways. The first amendment would insure that, so long as all statutory requirements are met, including a showing of innocence, an individual whose conviction is reversed on any ground will be eligible to recover. Similarly, the second amendment would insure that anyone who pled guilty or made a false inculpatory statement despite his or her innocence is also eligible to recover, so long as all other statutory requirements are met.

**AMENDING SECTIONS 8-B (3)(B)(I) AND (5)(B)(II)**

As the statute now stands, as a starting matter, all potential claimants must prove by clear and convincing evidence that they were convicted of a crime and imprisoned and that they did not commit the acts charged or that the acts charged did not constitute a crime.<sup>2</sup> All individuals who meet those criteria and who were pardoned are entitled to recovery.<sup>3</sup> Those whose convictions were reversed and who were then retried and acquitted can also recover. But those whose convictions were reversed and the accusatory instrument then dismissed can only recover

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<sup>1</sup> The Corrections Committee and the Committee on Capital Punishment previously issued a comprehensive report on compensation for the wrongly convicted. See “Undoing Time: A Proposal for Compensation for Wrongful Imprisonment of Innocent Individuals” (October 2010), available at <http://www.nycbar.org/pdf/report/uploads/20072010-UndoingTimeAProposalforCompensationforWrongfulImprisonment.pdf>.

<sup>2</sup> Thus, for example, someone who was arrested and held in jail for two years and released but was never convicted would not be eligible.

<sup>3</sup> A fourth condition, that the individual did not bring about his or her own conviction, is discussed below.

if the reversal was on certain grounds.<sup>4</sup> The permitted grounds, set out in full in the margin below, include lack of jurisdiction, certain types of judicial and prosecutorial misconduct, newly-discovered evidence, and legal insufficiency.<sup>5</sup> Thus, when the accusatory instrument was dismissed and the reversal was based on a non-enumerated ground, the person may not recover - even if he or she can show innocence. Non-enumerated grounds include that the conviction was reversed because the defendant's constitutional rights were violated, because of jury-tampering, and because DNA evidence proved that the person was actually innocent.<sup>6</sup>

The problem with the statute is exemplified by a May 9, 2013, New York Law Journal article that highlighted two cases, in one of which the defendant recovered and in the other of which the defendant was barred from recovering.<sup>7</sup> The defendant who recovered presented new

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<sup>4</sup> To the extent that the statute could be read to require that the convictions of those who were retried and acquitted were on these grounds too, the Court of Appeals has held otherwise. *Ivey v. State*, 80 N.Y.2d 474 (1992).

<sup>5</sup> The allowed grounds derived from C.P.L. § 440.10, the statute that allows a defendant to challenge his or her conviction based on new facts, are:

1. that the court did not have jurisdiction (subdivision a);
2. that the judgment was "procured by duress, misrepresentation or fraud on the part of the court or a prosecutor or a person acting for or in behalf of a court or a prosecutor" (subdivision b);
3. that "[m]aterial evidence adduced at a trial resulting in the judgment was false and was, prior to the entry of the judgment, known by the prosecutor or by the court to be false" (subdivision c);
4. that because of "mental disease or defect" the defendant was "incapable of understanding or participating" in the proceedings (subdivision e);
5. that new evidence was discovered and had that evidence been "received at trial the verdict would have been more favorable to the defendant" (subdivision g).

Allowed grounds also include that the evidence was insufficient (C.P.L. § 470.20(2), (3)); that the verdict was against the weight of the evidence (C.P.L. § 470.20(5)); and that the statute creating the crime that the defendant was convicted of, or the application of that statute to the defendant, was held to be unconstitutional under either state or federal law. § 8-b(3)(b)(ii)(D); § 8-b(5)(b)(ii)(D).

<sup>6</sup> The disallowed C.P.L. § 440.10 grounds are:

1. that "[m]aterial evidence adduced by the people at a trial resulting in the judgment was procured in violation of the defendant's rights under the constitution of this state or of the United States" (subdivision d);
2. that "[i]mproper and prejudicial conduct not appearing in the record occurred during a trial resulting in the judgment which conduct, if it had appeared in the record, would have required a reversal of the judgment upon an appeal therefrom" (subdivision f);
3. that DNA testing done after sentencing indicates that, where the defendant pled guilty, a substantial probability that he or she was innocent and, where the defendant was convicted after trial, a reasonable probability that the result would have been more favorable to the defendant (subdivision g-i);
4. that "[t]he judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States" (subdivision h); and
5. that the defendant was convicted of prostitution and the defendant's participation in the offense was the result of sex trafficking (subdivision i).

All grounds that might result in reversal on appeal that do not fall within the grounds listed in footnote 5 above, such as incorrect jury instructions, prosecutorial summation misconduct, and evidentiary errors, also are disallowed.

<sup>7</sup> Stashenko, "Two Cases Test Parameters of Awards of Unjust Convictions," N.Y.L.J., p. 1, col. 3 (5/9/13).

evidence showing that someone else was responsible for the crime, and the indictment was dismissed. The conviction of the defendant who did not recover was reversed because his lawyer provided ineffective assistance of counsel. The prosecution chose not to retry him (the evidence at trial was said to be remarkably weak and he had almost completed his sentence) and the indictment was also dismissed. Thus, he was barred from recovering because the reversal was based on a constitutional violation - ineffective assistance of counsel, a non-enumerated ground. But, even with that basis for reversal, had the prosecution retried him and he been acquitted, he would have been eligible to recover.

To eliminate these anomalous results, we propose eliminating the distinction between grounds for reversal when the accusatory instrument is dismissed. We propose that the statute permit recovery by anyone whose conviction is reversed who is ultimately acquitted or against whom the charges are dismissed, so long as he or she establishes innocence by clear and convincing evidence.<sup>8</sup>

This change can be accomplished by striking the language creating these distinctions in sections 8-b(3)(b)(ii) and (5)(b)(i) of the statute, as shown in the accompanying proposed bill. It should be emphasized that this change does not insure recovery by any new category of persons, but only permits a claimant to meet the threshold required to bring a case. At the pleadings stage, the person must present “documentary evidence” (§ 8-b[3]), showing that he or she is “likely to succeed at trial.” § 8-b(4). If the court finds that the claimant has not met that test, it must dismiss. § 8-b(4). Given these strict requirements, no additional screening mechanisms are needed to prevent individuals whose criminal convictions were reversed but who are actually guilty from recovering. Moreover, the provisions that we propose eliminating do not accomplish that task. Rather, they are arbitrary. They lead, as shown, to anomalous results. And they deny just compensation to claimants who were wronged and whose wrongs the legislature seemingly intended to right.

Once an individual’s conviction has been expunged and the person establishes that he or she is actually innocent, by definition that person has shown that he or she was unjustly convicted and therefore should be entitled to compensation under New York’s statute. The proposed amendment will cleanly fix this problem.

#### **AMENDING SECTION 8-B(5)(D)**

As currently written, section 8-b(5)(d)(1) requires that a claimant show that “he did not by his own conduct cause or bring about his conviction.” The Committees are concerned that this provision is insufficiently clear because the phrase “by his own conduct” could be read to prohibit a claim by an actually innocent person whose false inculpatory statements or guilty plea contributed to his conviction. This is problematic because DNA exonerations have demonstrated that innocent persons often make false inculpatory statements and plead guilty (almost always to avoid the higher sentence that awaits them if convicted at trial, despite their innocence). Of the Innocence Project’s 303 exonerations based on post-conviction DNA testing, nearly 25% of

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<sup>8</sup> Someone whose conviction is reversed and dismissed on the ground of actual innocence would thus automatically satisfy this requirement.

those proven-innocent defendants made incriminating statements, delivered outright confessions, or pled guilty.

Case law accords with the Committees' proposed amendment. In *Warney v. State*, 16 N.Y.3d 428, 436 (2011), the New York Court of Appeals held that, even under the current statute, false confessions do not bar recovery under the UCIA because a coerced confession cannot be deemed the claimant's "own conduct." Other courts have also considered claims by individuals who pled guilty and did not find that the guilty plea barred recovery. See e.g., *Britt v. State*, 260 A.D.2d 6 (1st Dep't 1999) (denying claim, but not because claimant pled guilty); *Chalmers v. State*, 246 A.D.2d 620 (2d Dep't 1998) (same).

The Committees suggest adding a clarifying clause so that the statute unambiguously conforms with this case law. This clause would state that, "notwithstanding the provisions of this subsection, a court may find that a confession or admission later found to be false, or a plea of guilty to a crime that the claimant did not commit, does not constitute 'causing or bringing about his conviction' pursuant to this subsection." As with the first proposed amendment, this change would insure that all those who are innocent and who were wrongly convicted and imprisoned would be entitled to recover.

## **CONCLUSION**

Because the Unjust Conviction and Imprisonment Act now arbitrarily bars legitimate claimants from obtaining relief, the Corrections and Community Reentry Committee and the Criminal Courts Committee have proposed amending the statute. A proposed bill is attached.

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