



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

HB2881

by Rep. Monique D. Davis

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Civil Practice Law of the Code of Civil Procedure. Provides that if a person is released from prison after his or her judgment of conviction was reversed or vacated, and the indictment or information dismissed or, if a new trial was ordered, either he or she was found not guilty at the new trial or he or she was not retried and the indictment or information dismissed; or the statute, or application thereof, on which the indictment or information was based was unconstitutional; the court shall sua sponte enter a certificate of innocence finding that the petitioner was innocent of all offenses for which he or she was incarcerated. Provides that a certificate issued under the new provisions shall be provided to an eligible person upon release from prison, or shall be made available for pickup from the clerk of the circuit court. Provides that upon entry of the certificate: (1) the clerk of the court shall transmit a copy of the certificate to the clerk of the Court of Claims; and (2) the court shall enter an order expunging or sealing the record of arrest and directing that the records of the clerk of the circuit court and Department of State Police be sealed, and that the name of the defendant be obliterated from the official index requested to be kept by the circuit court clerk in connection with the arrest and conviction for the offense, but the order shall not affect any index issued by the circuit court clerk before the entry of the order. Provides that nothing in the new provisions may be construed as preventing a person from filing a petition under the Section allowing a person to file a petition for a certificate of innocence. Makes corresponding changes.

LRB098 10016 HEP 40175 b

FISCAL NOTE ACT  
MAY APPLY

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 Public Employment Office Act is amended by  
5 changing Section 2 as follows:

6 (20 ILCS 1015/2)

7 Sec. 2. Persons unjustly imprisoned; job search and  
8 placement services. Each local office of the Department shall  
9 provide each person to whom this Section applies with job  
10 search and placement services, including assessment, resume  
11 assistance, interview preparation, occupational and labor  
12 market information, referral to employers with job openings to  
13 which the person is suited and referral to such job training  
14 and education program providers as may be appropriate and  
15 available through the partnering agencies with which the local  
16 office is affiliated. This Section applies to a person who has  
17 been discharged from a prison of this State if the person  
18 received a pardon from the Governor stating that such pardon is  
19 issued on the ground of innocence of the crime for which he or  
20 she was imprisoned or he or she has received a certificate of  
21 innocence from the Circuit Court under ~~as provided in~~ Section  
22 2-702 or 2-702.5 of the Code of Civil Procedure.

23 (Source: P.A. 95-970, eff. 9-22-08.)

1 Section 10. The Court of Claims Act is amended by changing  
2 Sections 8, 11, and 22 as follows:

3 (705 ILCS 505/8) (from Ch. 37, par. 439.8)

4 Sec. 8. Court of Claims jurisdiction; deliberation  
5 periods. The court shall have exclusive jurisdiction to hear  
6 and determine the following matters:

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

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

18 (c) All claims against the State for time unjustly served  
19 in prisons of this State when the person imprisoned received a  
20 pardon from the governor stating that such pardon is issued on  
21 the ground of innocence of the crime for which he or she was  
22 imprisoned or he or she received a certificate of innocence  
23 from the Circuit Court under ~~as provided in~~ Section 2-702 or  
24 2-702.5 of the Code of Civil Procedure; provided, the amount of

1 the award is at the discretion of the court; and provided, the  
2 court shall make no award in excess of the following amounts:  
3 for imprisonment of 5 years or less, not more than \$85,350; for  
4 imprisonment of 14 years or less but over 5 years, not more  
5 than \$170,000; for imprisonment of over 14 years, not more than  
6 \$199,150; and provided further, the court shall fix attorney's  
7 fees not to exceed 25% of the award granted. On or after the  
8 effective date of this amendatory Act of the 95th General  
9 Assembly, the court shall annually adjust the maximum awards  
10 authorized by this subsection (c) to reflect the increase, if  
11 any, in the Consumer Price Index For All Urban Consumers for  
12 the previous calendar year, as determined by the United States  
13 Department of Labor, except that no annual increment may exceed  
14 5%. For the annual adjustments, if the Consumer Price Index  
15 decreases during a calendar year, there shall be no adjustment  
16 for that calendar year. The transmission by the Prisoner Review  
17 Board or the clerk of the circuit court of the information  
18 described in Section 11(b) to the clerk of the Court of Claims  
19 is conclusive evidence of the validity of the claim. The  
20 changes made by this amendatory Act of the 95th General  
21 Assembly apply to all claims pending on or filed on or after  
22 the effective date.

23 (d) All claims against the State for damages in cases  
24 sounding in tort, if a like cause of action would lie against a  
25 private person or corporation in a civil suit, and all like  
26 claims sounding in tort against the Medical Center Commission,

1 the Board of Trustees of the University of Illinois, the Board  
2 of Trustees of Southern Illinois University, the Board of  
3 Trustees of Chicago State University, the Board of Trustees of  
4 Eastern Illinois University, the Board of Trustees of Governors  
5 State University, the Board of Trustees of Illinois State  
6 University, the Board of Trustees of Northeastern Illinois  
7 University, the Board of Trustees of Northern Illinois  
8 University, the Board of Trustees of Western Illinois  
9 University, or the Board of Trustees of the Illinois  
10 Mathematics and Science Academy; provided, that an award for  
11 damages in a case sounding in tort, other than certain cases  
12 involving the operation of a State vehicle described in this  
13 paragraph, shall not exceed the sum of \$100,000 to or for the  
14 benefit of any claimant. The \$100,000 limit prescribed by this  
15 Section does not apply to an award of damages in any case  
16 sounding in tort arising out of the operation by a State  
17 employee of a vehicle owned, leased or controlled by the State.  
18 The defense that the State or the Medical Center Commission or  
19 the Board of Trustees of the University of Illinois, the Board  
20 of Trustees of Southern Illinois University, the Board of  
21 Trustees of Chicago State University, the Board of Trustees of  
22 Eastern Illinois University, the Board of Trustees of Governors  
23 State University, the Board of Trustees of Illinois State  
24 University, the Board of Trustees of Northeastern Illinois  
25 University, the Board of Trustees of Northern Illinois  
26 University, the Board of Trustees of Western Illinois

1 University, or the Board of Trustees of the Illinois  
2 Mathematics and Science Academy is not liable for the  
3 negligence of its officers, agents, and employees in the course  
4 of their employment is not applicable to the hearing and  
5 determination of such claims.

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

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

12 (g) All claims filed pursuant to the Crime Victims  
13 Compensation Act.

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

18 (i) All claims authorized by subsection (a) of Section  
19 10-55 of the Illinois Administrative Procedure Act for the  
20 expenses incurred by a party in a contested case on the  
21 administrative level.

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

23 (705 ILCS 505/11) (from Ch. 37, par. 439.11)  
24 Sec. 11. Filing claims.

25 (a) Except as otherwise provided in subsection (b) of this

1 Section and subsection (4) of Section 24, the claimant shall in  
2 all cases set forth fully in his petition the claim, the action  
3 thereon, if any, on behalf of the State, what persons are  
4 owners thereof or interested therein, when and upon what  
5 consideration such persons became so interested; that no  
6 assignment or transfer of the claim or any part thereof or  
7 interest therein has been made, except as stated in the  
8 petition; that the claimant is justly entitled to the amount  
9 therein claimed from the State of Illinois, after allowing all  
10 just credits; and that claimant believes the facts stated in  
11 the petition to be true. The petition shall be verified, as to  
12 statements of facts, by the affidavit of the claimant, his  
13 agent, or attorney.

14 (b) Whenever a person has served a term of imprisonment and  
15 has received a pardon by the Governor stating that such pardon  
16 was issued on the ground of innocence of the crime for which he  
17 or she was imprisoned, the Prisoner Review Board shall transmit  
18 this information to the clerk of the Court of Claims, together  
19 with the claimant's current address. Whenever a person has  
20 served a term of imprisonment and has received a certificate of  
21 innocence from the Circuit Court under ~~as provided in~~ Section  
22 2-702 or 2-702.5 of the Code of Civil Procedure, the clerk of  
23 the issuing Circuit Court shall transmit this information to  
24 the clerk of the Court of Claims, together with the claimant's  
25 current address. The clerk of the Court of Claims shall  
26 immediately docket the case for consideration by the Court of

1 Claims, and shall provide notice to the claimant of such  
2 docketing together with all hearing dates and applicable  
3 deadlines. The Court of Claims shall hear the case and render a  
4 decision within 90 days after its docketing.

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

6 (705 ILCS 505/22) (from Ch. 37, par. 439.22)

7 Sec. 22. Every claim cognizable by the Court and not  
8 otherwise sooner barred by law shall be forever barred from  
9 prosecution therein unless it is filed with the Clerk of the  
10 Court within the time set forth as follows:

11 (a) All claims arising out of a contract must be filed  
12 within 5 years after it first accrues, saving to minors, and  
13 persons under legal disability at the time the claim accrues,  
14 in which cases the claim must be filed within 5 years from the  
15 time the disability ceases.

16 (b) All claims cognizable against the State by vendors of  
17 goods or services under "The Illinois Public Aid Code",  
18 approved April 11, 1967, as amended, must file within one year  
19 after the accrual of the cause of action, as provided in  
20 Section 11-13 of that Code.

21 (c) All claims arising under paragraph (c) of Section 8 of  
22 this Act must be automatically heard by the court within 120  
23 days after the person asserting such claim is either issued a  
24 certificate of innocence from the Circuit Court under ~~as~~  
25 ~~provided in~~ Section 2-702 or 2-702.5 of the Code of Civil



1 Procedure, or is granted a pardon by the Governor, whichever  
2 occurs later, without the person asserting the claim being  
3 required to file a petition under Section 11 of this Act,  
4 except as otherwise provided by the Crime Victims Compensation  
5 Act. Any claims filed by the claimant under paragraph (c) of  
6 Section 8 of this Act must be filed within 2 years after the  
7 person asserting such claim is either issued a certificate of  
8 innocence under ~~as provided in~~ Section 2-702 or 2-702.5 of the  
9 Code of Civil Procedure, or is granted a pardon by the  
10 Governor, whichever occurs later.

11 (d) All claims arising under paragraph (f) of Section 8 of  
12 this Act must be filed within the time set forth in Section 3  
13 of the Line of Duty Compensation Act.

14 (e) All claims arising under paragraph (h) of Section 8 of  
15 this Act must be filed within one year of the date of the death  
16 of the guardsman or militiaman as provided in Section 3 of the  
17 "Illinois National Guardsman's and Naval Militiaman's  
18 Compensation Act", approved August 12, 1971, as amended.

19 (f) All claims arising under paragraph (g) of Section 8 of  
20 this Act must be filed within one year of the crime on which a  
21 claim is based as provided in Section 6.1 of the "Crime Victims  
22 Compensation Act", approved August 23, 1973, as amended.

23 (g) All claims arising from the Comptroller's refusal to  
24 issue a replacement warrant pursuant to Section 10.10 of the  
25 State Comptroller Act must be filed within 5 years after the  
26 issue date of such warrant.

1           (h) All other claims must be filed within 2 years after it  
2 first accrues, saving to minors, and persons under legal  
3 disability at the time the claim accrues, in which case the  
4 claim must be filed within 2 years from the time the disability  
5 ceases.

6           (i) The changes made by this amendatory Act of 1989 shall  
7 apply to all warrants issued within the 5 year period preceding  
8 the effective date of this amendatory Act of 1989.

9           (j) All time limitations established under this Act and the  
10 rules promulgated under this Act shall be binding and  
11 jurisdictional, except upon extension authorized by law or rule  
12 and granted pursuant to a motion timely filed.

13           (Source: P.A. 95-928, eff. 8-26-08; 95-970, eff. 9-22-08;  
14 96-328, eff. 8-11-09.)

15           Section 15. The Unified Code of Corrections is amended by  
16 changing Section 3-1-2 as follows:

17           (730 ILCS 5/3-1-2) (from Ch. 38, par. 1003-1-2)

18           Sec. 3-1-2. Definitions.

19           (a) "Chief Administrative Officer" means the person  
20 designated by the Director to exercise the powers and duties of  
21 the Department of Corrections in regard to committed persons  
22 within a correctional institution or facility, and includes the  
23 superintendent of any juvenile institution or facility.

24           (a-5) "Sex offense" for the purposes of paragraph (16) of

1 subsection (a) of Section 3-3-7, paragraph (10) of subsection  
2 (a) of Section 5-6-3, and paragraph (18) of subsection (c) of  
3 Section 5-6-3.1 only means:

4 (i) A violation of any of the following Sections of the  
5 Criminal Code of 1961 or the Criminal Code of 2012: 10-7  
6 (aiding or abetting child abduction under Section  
7 10-5(b)(10)), 10-5(b)(10) (child luring), 11-6 (indecent  
8 solicitation of a child), 11-6.5 (indecent solicitation of  
9 an adult), 11-14.4 (promoting juvenile prostitution),  
10 11-15.1 (soliciting for a juvenile prostitute), 11-17.1  
11 (keeping a place of juvenile prostitution), 11-18.1  
12 (patronizing a juvenile prostitute), 11-19.1 (juvenile  
13 pimping), 11-19.2 (exploitation of a child), 11-20.1  
14 (child pornography), 11-20.1B or 11-20.3 (aggravated child  
15 pornography), 11-1.40 or 12-14.1 (predatory criminal  
16 sexual assault of a child), or 12-33 (ritualized abuse of a  
17 child). An attempt to commit any of these offenses.

18 (ii) A violation of any of the following Sections of  
19 the Criminal Code of 1961 or the Criminal Code of 2012:  
20 11-1.20 or 12-13 (criminal sexual assault), 11-1.30 or  
21 12-14 (aggravated criminal sexual assault), 11-1.60 or  
22 12-16 (aggravated criminal sexual abuse), and subsection  
23 (a) of Section 11-1.50 or subsection (a) of Section 12-15  
24 (criminal sexual abuse). An attempt to commit any of these  
25 offenses.

26 (iii) A violation of any of the following Sections of

1 the Criminal Code of 1961 or the Criminal Code of 2012 when  
2 the defendant is not a parent of the victim:

3 10-1 (kidnapping),  
4 10-2 (aggravated kidnapping),  
5 10-3 (unlawful restraint),  
6 10-3.1 (aggravated unlawful restraint).

7 An attempt to commit any of these offenses.

8 (iv) A violation of any former law of this State  
9 substantially equivalent to any offense listed in this  
10 subsection (a-5).

11 An offense violating federal law or the law of another  
12 state that is substantially equivalent to any offense listed in  
13 this subsection (a-5) shall constitute a sex offense for the  
14 purpose of this subsection (a-5). A finding or adjudication as  
15 a sexually dangerous person under any federal law or law of  
16 another state that is substantially equivalent to the Sexually  
17 Dangerous Persons Act shall constitute an adjudication for a  
18 sex offense for the purposes of this subsection (a-5).

19 (b) "Commitment" means a judicially determined placement  
20 in the custody of the Department of Corrections on the basis of  
21 delinquency or conviction.

22 (c) "Committed Person" is a person committed to the  
23 Department, however a committed person shall not be considered  
24 to be an employee of the Department of Corrections for any  
25 purpose, including eligibility for a pension, benefits, or any  
26 other compensation or rights or privileges which may be

1 provided to employees of the Department.

2 (c-5) "Computer scrub software" means any third-party  
3 added software, designed to delete information from the  
4 computer unit, the hard drive, or other software, which would  
5 eliminate and prevent discovery of browser activity, including  
6 but not limited to Internet history, address bar or bars, cache  
7 or caches, and/or cookies, and which would over-write files in  
8 a way so as to make previous computer activity, including but  
9 not limited to website access, more difficult to discover.

10 (d) "Correctional Institution or Facility" means any  
11 building or part of a building where committed persons are kept  
12 in a secured manner.

13 (e) In the case of functions performed before the effective  
14 date of this amendatory Act of the 94th General Assembly,  
15 "Department" means the Department of Corrections of this State.  
16 In the case of functions performed on or after the effective  
17 date of this amendatory Act of the 94th General Assembly,  
18 "Department" has the meaning ascribed to it in subsection  
19 (f-5).

20 (f) In the case of functions performed before the effective  
21 date of this amendatory Act of the 94th General Assembly,  
22 "Director" means the Director of the Department of Corrections.  
23 In the case of functions performed on or after the effective  
24 date of this amendatory Act of the 94th General Assembly,  
25 "Director" has the meaning ascribed to it in subsection (f-5).

26 (f-5) In the case of functions performed on or after the

1 effective date of this amendatory Act of the 94th General  
2 Assembly, references to "Department" or "Director" refer to  
3 either the Department of Corrections or the Director of  
4 Corrections or to the Department of Juvenile Justice or the  
5 Director of Juvenile Justice unless the context is specific to  
6 the Department of Juvenile Justice or the Director of Juvenile  
7 Justice.

8 (g) "Discharge" means the final termination of a commitment  
9 to the Department of Corrections.

10 (h) "Discipline" means the rules and regulations for the  
11 maintenance of order and the protection of persons and property  
12 within the institutions and facilities of the Department and  
13 their enforcement.

14 (i) "Escape" means the intentional and unauthorized  
15 absence of a committed person from the custody of the  
16 Department.

17 (j) "Furlough" means an authorized leave of absence from  
18 the Department of Corrections for a designated purpose and  
19 period of time.

20 (k) "Parole" means the conditional and revocable release of  
21 a committed person under the supervision of a parole officer.

22 (l) "Prisoner Review Board" means the Board established in  
23 Section 3-3-1(a), independent of the Department, to review  
24 rules and regulations with respect to good time credits, to  
25 hear charges brought by the Department against certain  
26 prisoners alleged to have violated Department rules with

1 respect to good time credits, to set release dates for certain  
2 prisoners sentenced under the law in effect prior to the  
3 effective date of this Amendatory Act of 1977, to hear requests  
4 and make recommendations to the Governor with respect to  
5 pardon, reprieve or commutation, to set conditions for parole  
6 and mandatory supervised release and determine whether  
7 violations of those conditions justify revocation of parole or  
8 release, and to assume all other functions previously exercised  
9 by the Illinois Parole and Pardon Board.

10 (m) Whenever medical treatment, service, counseling, or  
11 care is referred to in this Unified Code of Corrections, such  
12 term may be construed by the Department or Court, within its  
13 discretion, to include treatment, service or counseling by a  
14 Christian Science practitioner or nursing care appropriate  
15 therewith whenever request therefor is made by a person subject  
16 to the provisions of this Act.

17 (n) "Victim" shall have the meaning ascribed to it in  
18 subsection (a) of Section 3 of the Bill of Rights for Victims  
19 and Witnesses of Violent Crime Act.

20 (o) "Wrongfully imprisoned person" means a person who has  
21 been discharged from a prison of this State and has received:

22 (1) a pardon from the Governor stating that such pardon  
23 is issued on the ground of innocence of the crime for which  
24 he or she was imprisoned; or

25 (2) a certificate of innocence from the Circuit Court  
26 under ~~as provided in~~ Section 2-702 or 702.5 of the Code of

1 Civil Procedure.

2 (Source: P.A. 96-362, eff. 1-1-10; 96-710, eff. 1-1-10;  
3 96-1000, eff. 7-2-10; 96-1550, eff. 7-1-11; 96-1551, eff.  
4 7-1-11; 97-1109, eff. 1-1-13; 97-1150, eff. 1-25-13.)

5 Section 20. The Code of Civil Procedure is amended by  
6 adding Section 2-702.5 as follows:

7 (735 ILCS 5/2-702.5 new)

8 Sec. 2-702.5. Automatic issuance of certificate of  
9 innocence.

10 (a) If a person is released from prison after his or her  
11 judgment of conviction was reversed or vacated, and the  
12 indictment or information dismissed or, if a new trial was  
13 ordered, either he or she was found not guilty at the new trial  
14 or he or she was not retried and the indictment or information  
15 dismissed; or the statute, or application thereof, on which the  
16 indictment or information was based violated the Constitution  
17 of the United States or the Constitution of the State of  
18 Illinois; the court shall sua sponte enter a certificate of  
19 innocence finding that the petitioner was innocent of all  
20 offenses for which he or she was incarcerated.

21 (b) A certificate of innocence issued under this Section  
22 shall be provided to an eligible person upon his or her release  
23 from prison, or shall be made available for pickup from the  
24 clerk of the circuit court within a reasonable time after the



1 person's release from prison.

2 (c) Upon entry of the certificate of innocence: (1) the  
3 clerk of the court shall transmit a copy of the certificate of  
4 innocence to the clerk of the Court of Claims, together with  
5 the claimant's current address; and (2) the court shall enter  
6 an order expunging or sealing the record of arrest from the  
7 official records of the arresting authority and directing that  
8 the records of the clerk of the circuit court and Department of  
9 State Police be sealed until further order of the court upon  
10 good cause shown or as otherwise provided by law, and that the  
11 name of the defendant be obliterated from the official index  
12 requested to be kept by the circuit court clerk under Section  
13 16 of the Clerks of Courts Act in connection with the arrest  
14 and conviction for the offense, but the order shall not affect  
15 any index issued by the circuit court clerk before the entry of  
16 the order.

17 (d) Nothing in this Section may be construed as preventing  
18 a person from filing a petition under Section 2-702 of this  
19 Code.

1 INDEX

2 Statutes amended in order of appearance

3 20 ILCS 1015/2

4 705 ILCS 505/8 from Ch. 37, par. 439.8

5 705 ILCS 505/11 from Ch. 37, par. 439.11

6 705 ILCS 505/22 from Ch. 37, par. 439.22

7 730 ILCS 5/3-1-2 from Ch. 38, par. 1003-1-2

8 735 ILCS 5/2-702.5 new