[Passed Both Houses]

[Third Reprint]

# SENATE, No. 1036

# STATE OF NEW JERSEY

INTRODUCED MAY 2, 1996

**By Senators RICE, CARDINALE, Kenny,**
**Assemblymen Impreveduto, Steele and Assemblywoman Pou**

**AN ACT** concerning compensation for persons [1]**[**wrongfully**]** mistakenly[1] imprisoned and supplementing Title 52 of the Revised Statutes.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

1. The Legislature finds and declares that innocent persons who have been [1]**[**wrongly**]**[1] convicted of crimes and subsequently imprisoned have been frustrated in seeking legal redress [1]**[**due to a variety of substantive and technical obstacles in the law**]**[1] and that such persons should have an available avenue of redress over and above the existing tort remedies to seek compensation for damages. The Legislature intends by enactment of the provisions of this act that those innocent persons who can demonstrate by clear and convincing evidence that they were [1]**[**unjustly**]** mistakenly[1] convicted and imprisoned be able to recover damages against the State.

In light of the substantial burden of proof that must be carried by such persons, it is the intent of the Legislature that the court, in exercising its discretion as permitted by law regarding the weight and admissibility of evidence submitted pursuant to this section, [1]**[**shall**]** may[1], in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence or other factors not caused by such persons or those acting on their behalf.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**
**Matter enclosed in superscript numerals has been adopted as follows:**
**[1] Senate SJU committee amendments adopted September 19, 1996.**
**[2] Senate floor amendments adopted December 19, 1996.**
**[3] Assembly AJU committee amendments adopted June 12, 1997.**

2. Notwithstanding the provisions of any other law, any person convicted and subsequently imprisoned for one or more crimes which he did not commit may, under the conditions hereinafter provided, bring a suit for damages in Superior Court against the Department of the Treasury.

3. The person (hereinafter titled, "the claimant") shall establish the following by clear and convincing evidence:

a. That he was convicted of a crime and subsequently sentenced to a term of imprisonment, served all or any part of his sentence; and

b. He did not commit the crime for which he was convicted; and

c. He did not by his own conduct cause or bring about his conviction.

4. The suit, accompanied by a statement of the facts concerning the claim for damages, verified in the manner provided for the verification of complaints in civil actions, shall be brought by the claimant within a period of two years after his release from imprisonment, or after the grant of a pardon to him [3]; provided, however, that any eligible claimant released or pardoned during thefive year period prior to May 2, 1996 shall have two years from the effective date of this act to file a suit [3].

[2]5. [3] a.[3] Damages awarded under this act shall not exceed twice the amount of the claimant's income in the year prior to his incarceration or $20,000.00 for each year of incarceration, whichever is greater.[2]

[3] b. In addition to the damages awarded pursuant to subsection a., the claimant shall be entitled to receive reasonable attorney fees. [3]

[2][1]5.] 6.[2] a. A person serving a term of imprisonment for a crime other than a crime of which the person was mistakenly convicted shall not be eligible to file a claim for damages pursuant to the provisions of this act.

b. A person shall not be eligible to file a claim for damages pursuant to the provisions of this act if the sentence for the crime of which the person was mistakenly convicted was served concurrently with the sentence for the conviction of another crime.[1]

[1][5.] [2][6.[1]] 7.[2] This act shall take effect immediately.

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Authorizes lawsuits for damages by persons who have been mistakenly convicted and imprisoned.