

# THERE IS A CRISIS OF WRONGFUL CONVICTIONS IN NEW YORK STATE

New York has a serious wrongful conviction problem. More than 300 people have been exonerated in New York since 1989, resulting in a collective 3,068 years of life lost to wrongful convictions. Our state ranks third highest in the number of wrongful convictions in the nation, trailing behind Texas and Illinois.

The **Challenging Wrongful Convictions Act, A.98A (Quart) / S.266 (Myrie)**, overhauls Criminal Procedure Law 440 to ensure that all New Yorkers have a working pathway to exoneration.



## WHY DOES NEW YORK NEED REFORM?

The harm done by a wrongful conviction is permanent

- To take a person away from their family, remove them from their community, and imprison them wrongfully is one of the greatest harms the state can inflict upon the individual.
- Innocent Black people spend an average of 13.8 years wrongly imprisoned – 45% longer than white exonerees.
- People accused of crimes facing jail or prison time routinely make the difficult decision to take a guilty plea, regardless of innocence.
- In New York, 98% of convictions are the result of a plea deal, but the Court of Appeals ruled that people who pled guilty cannot qualify for relief without DNA evidence of innocence.
- New York is 1 of 5 states without a right to counsel in post-conviction cases, behind states like Alabama & Texas.
- Discovery reform passed in 2019 did not provide for post-conviction discovery. This blindfolds people trying to prove their innocence.

In New York, actual  
innocence isn't enough  
for exoneration.

## WHAT WILL THE BILL DO? S.266A (MYRIE) /A.98A (QUART)



1. **Guilty plea fix:** Allow people to apply to overturn wrongful convictions even if they pled guilty, as is the law in other states including Texas.
2. **Post-conviction discovery:** Provide people seeking to clear their names with a chance to review the evidence in the underlying case.
3. **Right to a hearing:** Ensure the right to a hearing before a judge if you have evidence of innocence. Under current law, most people are denied relief without a hearing.
4. **Right to counsel:** Create a right to counsel to help people plead their case before a judge.
5. **Decriminalization fix:** Ensure people convicted of acts that are no longer crimes (such as gravity knife or marijuana possession) can seek vacatur.
6. **Supports immigrant families:** Makes a technical fix to address unanticipated and clearly unintended immigration consequences due to minor mismatches between federal law and New York state sentencing laws.
7. **Remove procedural roadblocks to relief.**

## JOIN THE FIGHT

Help us provide a better pathway to exoneration in New York State.



**Please support the Challenging  
Wrongful Convictions Act  
(A.98/S.266).**

## SUPPORTING ORGANIZATIONS



**INNOCENCE  
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## 440 IN THE NEWS



January 2021

**Commentary: To Protect the Innocent, Reform NY's Post-Conviction Law. January 19, 2021**

"Reforms to New York's post-conviction law will ensure that people who have been wrongfully convicted, as in the Mount Vernon case, finally have a legal remedy to have their convictions overturned and their records cleared. If New York cares about protecting the innocent, we must act to reform Criminal Procedure Law 440."



**Criminal Procedure Law 440: New York Measure Would Correct "Wrongful Convictions." January 22, 2021**

Quoting Assembly Member Dan Quart:

"My legislation would overhaul the rules governing wrongful convictions, Criminal Procedure Law 440. This long-overdue change would remove the discrepancy between defendants who are found guilty at trial and those who plead guilty, force judges to fairly consider claims of actual innocence, and create a right to counsel for those with a claim to wrongful conviction. The bill will also allow people with convictions for offenses that are no longer crimes to clear their records if the offense is later decriminalized."



February 2021

**Opinion: It's Time to Stop Tolerating Wrongful Convictions and How They Undermine Our Legal System. February 1, 2021**

"No matter what the circumstances were, people who have been wrongly convicted in New York deserve a chance to be heard. Their stories and evidence deserve to see the light of day. Denying people that opportunity discredits our entire criminal legal system. 2021 provides a crucial opportunity for New York to address decades of systemic racism against the Black community. Passing the Wrongful Conviction Bill is a long overdue first step."

## 440 IN THE NEWS

March 2021



**NY Lawmakers Push to Pass Wrongful Convictions Act.**

**March 3, 2021.**

Manhattan Assemblyman Dan Quart is pushing to have the Challenging Wrongful Convictions Act passed in Albany. If enacted, anyone with a claim of innocence would be given access to an attorney and a working pathway to exoneration.

The bill provides for the right to counsel in post-conviction cases: "So that individuals who are challenging their convictions have the same counsel, same or better, than they had at the trial," Quart said.



**NY's Wrongful Conviction Track Record is Horrendous. Asm Quart Wants to Change That. March 8, 2021.**

The so-called Wrongful Conviction Bill (Quart A98/ Myrie S266) would ensure that those seeking to overthrow a conviction will have a right to a hearing, to discovery, or to an appeal. It's currently in committee in both houses of the legislature.

"New York ranks third in the nation in confirmed wrongful convictions. There have been 303 people exonerated since 1989, according to Assemblyman Quart."

November 2021



**Judge Tosses Staten Island Man's Conviction Following NYPD Drug Planting Allegations. November 1, 2021.**

In a court decision on Friday, a Staten Island judge vacated a man's 2018 conviction, citing body camera footage which appears to show an NYPD officer planting marijuana in a car he was riding in.

At the time, police charged the man, Jason Serrano, for drug possession, resisting arrest, and obstructing governmental administration. (cont.)

## 440 IN THE NEWS



### Judge Tosses Staten Island Man's Conviction Following NYPD Drug Planting Allegations. November 1, 2021. (cont.)

Three months later, he decided to plead guilty to the resisting charge to avoid being sent to Rikers Island, unaware of the troubling body camera footage which prosecutors only shared with his attorneys months after his plea.

In her decision, Judge Tamiko Amaker noted that in normal circumstances because of his guilty plea Serrano would be unable to vacate his conviction on the basis of the District Attorney's failures to turn over evidence.

## December 2021

DAILY NEWS

### Opinion: Free NY's Wrongfully Convicted: A Package of Bills Will Rebalance the Scales of Justice. December 12, 2021.

"We want New Yorkers to have the same rights that people in other states have. We mentioned Texas, but other states – like Maryland, Nevada, Virginia, Utah and Wyoming – also allow those who plead guilty to challenge their convictions based on innocence claims. It's particularly important that we act, considering New York has the third-highest number of exonerations in the country.

That's a horrifying statistic, and the second bill in our Wrongful Convictions package helps us get at the root of why New York's record is so abysmal."

## 440 IN THE NEWS



### **Exonerated Five, Others Endorse Legislation to Stop Wrongful Convictions; Another Case Could be Overturned. December 15, 2021.**

Martin Tankleff, who was exonerated in the murder of his parents and was also at Wednesday's rally, spoke afterward about the need for a wide variety of evidence being allowed in hearings that can lead to exonerations.

"You cannot just isolate one piece of evidence," said Tankleff, who is also a practicing attorney. "When we have a system where we've exonerated so many innocent men and women in this country, we need to take a harder look at how this system works."

The legislation is designed to do that, as Raymond Santana, one of the Exonerated Five, said.



### **New York State Lawmakers, Exonerated Five Members Introduce Series of Bills That Challenge Wrongful Convictions. December 19, 2021**

The Challenging Wrongful Convictions Act allows individuals who pleaded guilty to crimes they did not commit to file to have their cases reviewed and possibly get their conviction overturned. This would apply only to individuals whose cases do not have DNA evidence.

According to the Innocence Project, 20 percent of the 2,900 people exonerated since 1989 pleaded guilty to crimes they did not commit in fear of the harsher penalties they would face if they were to take their case to trial.

## 440 IN THE NEWS

The logo for Amsterdam News, featuring the text "NEW YORK" in small letters above "Amsterdam News" in a stylized font, all within a red rectangular background.

### **Criminal Justice Bills Introduced to Address Youth Wrongfully Convicted, with Exonerated Five. December 23, 2021.**

State Sen. Zellnor Myrie addressed the need to reform the criminal justice system in New York, saying that it lacks accountability and transparency, and that it must be overhauled to make our system fair and more just. The first bill he introduced was The Challenging Wrongful Convictions Act, which would allow for post-conviction discovery that will allow counsel to challenge a conviction, and to disallow a guilty plea on other than new DNA evidence that can overturn a conviction.

Myrie said, "We are collectively demanding today that not one more person suffer under any wrongful conviction."



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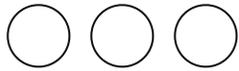
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**OPINION**

# Commentary: Provide tools to prove innocence

**Derrick Hamilton and Roger Clark**

Updated: April 30, 2022 7:56 a.m.





Unbalanced Scales of Justice Behind Bars.

pixhook, Contributor / Getty Images

We spent decades in prison for crimes we didn't commit and it's time the Legislature did something to fix it.

Derrick Hamilton was exonerated after 23 years of successfully litigating his innocence on his own, without the benefit of a post-conviction attorney, and Roger Clark, wrongfully convicted at the age of 20, is still fighting to clear his name. New York's law to vacate convictions, in practice, leaves most applicants with credible claims of innocence in the dust.

Like so many other innocent New Yorkers, we were released from prison only after our sentences were served, despite repeated petitions to the court for judicial review. This year, along with the Exonerated Five (also known as the Central Park Five) and other wrongfully convicted people and allies from across the state, we are pushing for passage of the Challenging Wrongful Convictions Act. The bill, sponsored by state Sen. Zellnor Myrie, D-Brooklyn, and Assemblyman Dan Quart, D-Manhattan, would create a working pathway to exoneration for people who are innocent — something that did not exist for us.

New York ranks third in the nation in wrongful convictions, surpassed only by Texas and Illinois. More than 330 innocent people have been exonerated in New York since 1989, representing a collective 3,360 years of life lost behind bars. No one understands this better than us: two Black men from Brooklyn who were wrongfully convicted during the height of mass incarceration. Like almost all

other wrongfully convicted people in New York, we had to navigate the process of challenging our convictions alone, without the assistance of a lawyer. This is because New York, an outlier compared to other states, does not provide people fighting to clear their names with the right to an attorney in these proceedings.

In New York the only path for exoneration is with a successful 440 motion, so-called because it relies on section 440.10 of the criminal procedure law. In New

York, you have no right to an attorney to help you file a 440 motion. If you are a person of means, you can hire a lawyer to file one for you. If you, like the vast majority of people targeted by the criminal legal system, are not wealthy, then you are forced to navigate the process alone. And unlike in other states, you have no right to review the evidence in your case or a right to a hearing. If you are imprisoned, like we were, you are filing these motions by hand, based on outdated law books, without the benefit of private investigators, experienced litigators, or even the internet.

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It doesn't have to be this way. Forty-five states afford people with the right to counsel in post-conviction cases, according to a [recent survey of post-conviction laws](#) by the Supreme Court of Ohio. Two more states, California and Ohio, give poor people post-conviction lawyers in capital cases. Only New York, Georgia and New Hampshire do not. Even red states like Texas, North Carolina and Alabama provide the right to post-conviction counsel. Right next door, New Jersey has provided the right to counsel in these applications [for decades](#). If they can do it, why won't we?

To take a person away from their family, remove them from their community, and imprison them wrongfully is one of the greatest harms the state can inflict upon an individual. When we fought back and challenged the system, we were punished and put in solitary confinement. When we were finally released, we faced the challenges of reentry with the permanent stigma of conviction, despite knowing we were innocent. Worse still, we left behind countless innocent men and women. While incarcerated, they have lost children and parents, access to education, and so much more. Some of them passed away while incarcerated, never knowing the freedom they were so cruelly deprived of. Without this legislation, the innocent will continue to be stuck in limbo, without a meaningful avenue for relief.

We will never get those years back that were taken away from us because of a racist, cruel system. That is why we now dedicate our lives to overhauling that system. The Challenging Wrongful Convictions Act will not end wrongful convictions in our state — so much more reform is needed to do that. But it will ensure that people who are innocent have a working pathway to freedom as exists in most other states. At a minimum, New York must provide that.

*Derrick Hamilton is co-founder of Families and Friends of the Wrongfully Convicted. He was exonerated in 2015. Roger Clark is a community leader at VOCAL-NY and is still fighting to clear his name.*

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Written By

**Derrick Hamilton and Roger Clark**



**TOP**

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## MEMO ON FISCAL IMPLICATIONS OF PASSING S266/A98

- Passage of this law will not initiate a “flood of litigation,” but rather efficiencies created by the reforms could actually ease court congestion.
- Funding demands to implement the bill will not be prohibitive

New York has a wrongful convictions problem. Since 1989, more than 300 New Yorkers have been exonerated, resulting in a collective 3,068 years of life lost to wrongful convictions. Our state has the third highest number of revealed wrongful convictions in the nation, trailing just behind Texas and Illinois, despite insufficient postconviction legal access and one of the most restrictive postconviction relief statutes in the nation, which effectively bars postconviction access to the courts for those who plead guilty and do not have the benefit of DNA evidence in their cases. **The Challenging Wrongful Convictions Act (S266/A98) overhauls Criminal Procedure Law Article 440** to ensure that all wrongfully convicted people have a working pathway to exoneration, and with access to counsel. According to the National Registry of Exonerations, more than 75% of the people exonerated in New York State are Black and brown, and nationally, innocent Black people spend an average of 13.8 years wrongly imprisoned before being exonerated – about 45 percent longer than innocent white people.

**The Challenging Wrongful Convictions Act would bring New York’s only legal mechanism for exoneration – Criminal Procedure Law 440 – in line with other states.** The bill ensures that people who pled guilty to a crime- without the benefit of DNA evidence - can seek vacatur of their convictions pursuant to CPL 440. With the threat of a considerably longer prison sentence hanging over their head, people accused of crimes routinely make the difficult but rational decision to plead guilty for a shorter sentence, regardless of innocence. Indeed, according to the National Registry of Exonerations, a full 20% of the nearly 3000 people who have been exonerated of crimes they did not commit in America pled guilty despite being innocent. Yet in *People v. Tiger*, the New York Court of Appeals held that people who pled guilty cannot challenge their convictions unless they have DNA evidence to support their claim.<sup>1</sup> As 98 percent of convictions in New York are obtained through the plea bargain process, this ruling excluded most people from every clearing their names. It is no surprise that states like Maryland, Nevada, Texas, Virginia, Utah and Wyoming have all recently changed their law to allow people to file claims of innocence even if they pled guilty.<sup>2</sup> Other states like New Jersey never had a guilty plea bar to relief and high courts in other jurisdictions, like Illinois, explicitly rejected the *Tiger* decision.<sup>3</sup>

In addition to fixing the guilty plea bar problem, the Challenging Wrongful Convictions Act will force courts to examine claims of actual innocence; allow for vacatur of offenses that have since been decriminalized (such as a gravity knife possession); and enhance due process by creating a right to post-conviction discovery and counsel.

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<sup>1</sup> *People v. Tiger*, 32 N.Y.3d 91 (N.Y. 2018).

<sup>2</sup> **Maryland:** MD Code, Criminal Procedure, § 8-301; **Nevada:** N.R.S. T. 3, Ch. 34 **Texas:** C.C.P. Art. 11.073 & Ex Parte Elizondo, 947 S.W.2d 202 (1996); **Utah** Utah Code Ann. §78B-9-401 et.seq. **Wyoming:** 2018 Wyoming Laws Ch. 77 (H.B. 26) W.S. 7–12–401 through 7–12–407.

<sup>3</sup> See New Jersey Courts Rule 3-22 “Post-Conviction Relief,” available at <https://www.njcourts.gov/attorneys/assets/rules/r3-22.pdf>. See also *People v. Shaw*, 143 N.E. 3d 228 (Ill. 2019).

**We estimate that New York can create a meaningful pathway to exoneration and overhaul our post-conviction process for \$10,000,000** – a small fraction of the amount that taxpayers will save by preventing unnecessarily long periods of wrongful incarceration. In addition to the cost of incarceration, juries typically award the wrongfully convicted hundreds of thousands of dollars per year of wrongful incarceration. The \$10,000,000 would be allocated to create a right to counsel for people filing for post-conviction relief. This figure is based on the experience of New Jersey, a state that has provided the right to counsel in first-time post-conviction applications for decades.<sup>4</sup> Indeed, New York is one of only five states in the country that does not provide indigent people seeking post-conviction relief with the right to counsel.<sup>5</sup>

**A working pathway to exoneration does not mean the opening of the floodgates.** We can look to the experience of New Jersey, our neighbor across the river, to see that enhanced due process does not lead to overrun courts. New York is 2.4 times the size of New Jersey, based on both number of residents and prison population. New Jersey provides free post-conviction counsel to people in 500-700 cases every year.<sup>6</sup> Accordingly, we estimate that New York would need to provide counsel to around 1500 people in post-conviction applications every year. In New Jersey, 40 percent of people who seek counsel end up resolving their claims without court intervention. Fewer than 10 percent of New Jersey petitioners are ultimately afforded a hearing, which is what New York’s post-conviction experts estimate would be the case if the amendments proposed in the Challenging Wrongful Convictions Act become law. Similarly, the Innocence Project monitors the implementation of innocence laws across the country and notes that their researchers found fewer than 100 claims of actual innocence filed across seven states when those states removed the guilty plea bar to relief. **Rather than flooding the courts, other states have found that providing a right to counsel streamlines judicial economy and ensures a fairer chance at exoneration for the innocent.**

*Questions? Contact Andrea Nieves, Senior Policy Attorney at New York County Defender Services at [anieves@nycds.org](mailto:anieves@nycds.org).*

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<sup>4</sup> N.J. Courts Rule 3-22, id.

<sup>5</sup> The Supreme Court of Ohio, Task Force on Conviction Integrity and Postconviction Review, *Postconviction Relief Petitions and Conviction Integrity: 50 State Survey* (2020), available at <https://www.supremecourt.ohio.gov/Boards/CIPR/materials/2020/October/survey.pdf>.

<sup>6</sup> New Jersey Office of the Public Defender, *Performance Indicators – FY2022 Materials*, available at <https://www.nj.gov/transparency/performance/defender/>.