

Prepared Remarks:

Good morning, and thank you, Jeremy, for that very kind introduction. Jeremy Travis is a good friend, one of my best and most respected advisors. And he is a leader in criminal justice policy throughout America and far, far beyond. It is an honor to be here with you this morning.

John Jay College is a very important institution in our city, not just as a training ground for future leaders in the field of criminal justice, but for the groundbreaking work the college does in research and policy on how to make our criminal justice system more effective and more just for all New Yorkers and all Americans.

Today's program is particularly important to me, both as New York State Attorney General and as an attorney and a New Yorker who cares about equal justice under law.

I have been working for most of my career on issues relating to criminal justice policy. After I graduated college, before law school, I spent two years working as a deputy sheriff in Massachusetts, where I wrote a grant proposal and got a grant to set up the first drug and alcohol treatment program for inmates in the Berkshire County jail.

Then I went to law school, clerked in the Federal District Court for the Southern District of New York and went into private practice for 16 years. I did complex fraud litigation. Some white-collar stuff. But as my practice evolved, I started doing more and more public interest work.

And I found the pro bono work more satisfying than my regular practice so I decided to go into public service. I served for 12 years as a state senator, where I served on and eventually chaired the Codes Committee, which deals with issues of criminal justice and criminal procedures. In that capacity – after a long, hard organizing effort by thousands of activists – I was finally able to repeal New York's draconian Rockefeller drug laws.

While in the Senate, I also sponsored legislation to put an end to prison-based gerrymandering and I tried to pass legislation seeking justice for people wrongfully sent to prison for crimes they didn't commit.

The issues we are here to discuss today are critically important, both to the people wrongly convicted by our criminal justice system and to our own future as a just society.

As attorney general, as I often have and will continue to note, my guiding principle is equal justice under law. This is our most quintessentially American ideal. It is the underpinning of our democracy. And when there is injustice, it is my obligation as the state's top law enforcement officer to try to remedy that injustice.

It is hard to imagine an injustice worse than someone being sent to prison for a crime they did not commit. Not only is the innocent person wrongly denied freedom, the victims of the crime are denied justice and the real perpetrator is still free.

For the wrongly accused, a lengthy prison sentence can be devastating. Their careers are destroyed; they lose years of income. They lose time from their families and loved ones. They miss years of their lives – time that can never be reclaimed.

That is why Section 8-b of the New York State Court of Claims Act allows people who are found guilty of a crime, imprisoned, and later have the conviction overturned, to present a claim for damages against the State. This makes sense. People who are wrongfully convicted should be able to seek compensation for their unnecessary sacrifice, and to help them put their lives back together.

But certain people are excluded under Section 8-b from suing the state after having been wrongfully convicted and incarcerated. Section 8-b allows such claims only if the person, and I quote, "did not by his own conduct cause or

bring about his conviction.”

This has been interpreted to restrict claims by those who falsely confessed – or made admissions or pleaded guilty to crimes they did not commit – but who cannot prove their confession or admission or plea was the result of coercion or duress.

The statute as written includes this overly broad exclusion that disregards certain extenuating – but all too common – circumstances for a false confession. It doubly victimizes people who acted out of fear, had a serious mental or psychological problem, or were simply too young to know better, that they admitted doing something they did not do.

A statute that allows some wrongfully convicted individuals to seek restitution but denies that legal right to others is an unjust and unequal application of the law.

Today, I am announcing that my office will be submitting for introduction by the Legislature a bill – the Unjust Imprisonment Act – that would change our state statute so that someone who falsely confesses or pleads guilty and later has that conviction overturned may still pursue a claim for damages – even if the person cannot prove the confession or plea was coerced.

The bill will be sponsored by Assemblymember Joe Lentol, who has been a tireless advocate for changing harmful practices that lead to wrongful convictions. I had the pleasure of working with him on these and other important issues when I served in the State Legislature, and I look forward to working with him again to get this legislation enacted into law.

The bill also will eliminate other procedural barriers that impose undue burdens on those who seek to file claims against the State after having been victims of unjust conviction and imprisonment.

Our proposed reforms will extend the statute of limitations for filing these claims from two to three years. Most other claims in the Court of Claims Act have three-year statutes of limitations.

We should not impose an additional restriction on the wrongfully incarcerated. And we will allow persons whose cases were dismissed for constitutional violations or for certain serious defects in the criminal proceedings to now be eligible to seek relief.

These changes should have been made long ago. I introduced a number of bills related to wrongful convictions when I was a state senator, including legislation similar to this bill.

That was back in 2010, and there is even more of a need today than there was four years ago.

In fact, one of the most vocal supporters for the reform of Section 8-b was Fernando Bermudez, who served more than 18 years for murder before he was exonerated. Today, Mr. Bermudez is seeking damages from the State for being wrongly locked up for 18 years – and because of a fundamentally unjust technicality in this law, I am obligated to fight his claim.

This is a fight the New York State Attorney General should not be required to engage in. I believe Mr. Bermudez should have his day in court.

The problem is that there is a stricter verification requirement for filing a claim against the State for unjust conviction and imprisonment than for any other type of case. Because Mr. Bermudez seeks to recover under Section 8-b for unjust conviction and imprisonment, he had to verify the claim himself, rather than have his attorney verify the claim. But Mr. Bermudez’s claim did not comply with this requirement – and it is now my job under law to argue that his claim must be dismissed.

If the changes I am proposing were in effect today, Mr. Bermudez would have an opportunity to correct his attorney's mistake and get his day in court.

Mr. Bermudez is not the only one doubly victimized by this unjust law.

New York State is number 3 in the nation in the number of convictions overturned by DNA evidence. According to the Innocence Project, since the year 1991, 27 people have had their convictions overturned because of DNA evidence in New York State – and 10 of them had also falsely confessed to crimes they didn't commit. One of these people was Jeffrey Deskovic, who will be participating in the panel discussion a little later in the program. These 27 people served an average of 11 years in prison.

According to the Innocence Project and the National Registry of Exonerations of the University of Michigan Law School and Northwestern University's School of Law, 37 percent of those whose convictions were overturned through DNA evidence in New York had made a false confession or incriminating statement. 37 percent!

The reasons for these false confessions and admissions of guilt are complex and as varied as the defendants themselves. Some involve young people who are easily intimidated or unaware of their rights. Some defendants were clearly suffering from some mental defect or disability.

But that's totally beside the point when talking about Section 8-b. All of those who are barred by 8-b from pursuing claims against the State have already persuaded a court of law to vacate or reverse their convictions, or were retried and found not guilty, or had the original charges thrown out. You can't proceed under 8-b unless you were convicted, did time, and the conviction was somehow overturned.

Now, we all realize that the State cannot be opened up to litigation for every overturned conviction. That would be unfair to taxpayers who bear no responsibility for courtroom proceedings but who would have to foot a very steep bill. And it would be irresponsible for me, as guardian of the public fisc, to promote such a broad expansion of liability.

As I noted earlier, it is my office that must defend the State against claims brought by those who seek to prove that they have been wrongfully convicted. So this is not an issue I raise lightly.

But as a state and as a society, we must deal fairly with people who have been dealt with most unfairly by our State's criminal justice system.

Just as we demand that people take responsibility for their actions, we as a society must take responsibility for fighting injustice.

Our criminal justice system has changed over time to accommodate new technologies, new understandings of the workings of the mind, evolutions in legal theory.

We make exceptions for all types of extenuating circumstances. Now, we must allow the law to reflect greater wisdom and compassion for those who, for a variety of reasons, act against their own interests. We must fix this fundamentally flawed and outdated statute that – as currently written – stands in the way of justice.

These people paid a debt they didn't owe; New York State must make good on the debt we owe them.

Thank you.