



Sen. Donne E. Trotter

Filed: 5/22/2014

09800HB4080sam001

LRB098 15638 HEP 59046 a

1 AMENDMENT TO HOUSE BILL 4080

2 AMENDMENT NO. _____. Amend House Bill 4080 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Section 2-702 as follows:

6 (735 ILCS 5/2-702)

7 Sec. 2-702. Petition for a certificate of innocence that
8 the petitioner was innocent of all offenses for which he or she
9 was incarcerated.

10 (a) The General Assembly finds and declares that innocent
11 persons who have been wrongly convicted of crimes in Illinois
12 and subsequently imprisoned have been frustrated in seeking
13 legal redress due to a variety of substantive and technical
14 obstacles in the law and that such persons should have an
15 available avenue to obtain a finding of innocence so that they
16 may obtain relief through a petition in the Court of Claims.

1 The General Assembly further finds misleading the current legal
2 nomenclature which compels an innocent person to seek a pardon
3 for being wrongfully incarcerated. It is the intent of the
4 General Assembly that the court, in exercising its discretion
5 as permitted by law regarding the weight and admissibility of
6 evidence submitted pursuant to this Section, shall, in the
7 interest of justice, give due consideration to difficulties of
8 proof caused by the passage of time, the death or
9 unavailability of witnesses, the destruction of evidence or
10 other factors not caused by such persons or those acting on
11 their behalf.

12 (b) Any person convicted and subsequently imprisoned for
13 one or more felonies by the State of Illinois which he or she
14 did not commit may, under the conditions hereinafter provided,
15 file a petition for certificate of innocence in the circuit
16 court of the county in which the person was convicted. The
17 petition shall request a certificate of innocence finding that
18 the petitioner was innocent of all offenses for which he or she
19 was incarcerated.

20 (c) In order to present the claim for certificate of
21 innocence of an unjust conviction and imprisonment, the
22 petitioner must attach to his or her petition documentation
23 demonstrating that:

24 (1) he or she has been convicted of one or more
25 felonies by the State of Illinois and subsequently
26 sentenced to a term of imprisonment, and has served all or

1 any part of the sentence; and

2 (2) his or her judgment of conviction was reversed or
3 vacated, and the indictment or information dismissed or, if
4 a new trial was ordered, either he or she was found not
5 guilty at the new trial or he or she was not retried and
6 the indictment or information dismissed; or the statute, or
7 application thereof, on which the indictment or
8 information was based violated the Constitution of the
9 United States or the State of Illinois; and

10 (3) his or her claim is not time barred by the
11 provisions of subsection (i) of this Section.

12 (d) The petition shall state facts in sufficient detail to
13 permit the court to find that the petitioner is likely to
14 succeed at trial in proving that the petitioner is innocent of
15 the offenses charged in the indictment or information or his or
16 her acts or omissions charged in the indictment or information
17 did not constitute a felony or misdemeanor against the State of
18 Illinois, and the petitioner did not by his or her own conduct
19 voluntarily cause or bring about his or her conviction. The
20 petition shall be verified by the petitioner.

21 (e) A copy of the petition shall be served on the Attorney
22 General and the State's Attorney of the county where the
23 conviction was had. The Attorney General and the State's
24 Attorney of the county where the conviction was had shall have
25 the right to intervene as parties.

26 (f) In any hearing seeking a certificate of innocence, the

1 court may take judicial notice of prior sworn testimony or
2 evidence admitted in the criminal proceedings related to the
3 convictions which resulted in the alleged wrongful
4 incarceration, if the petitioner was either represented by
5 counsel at such prior proceedings or the right to counsel was
6 knowingly waived.

7 (g) In order to obtain a certificate of innocence the
8 petitioner must prove by a preponderance of evidence that:

9 (1) the petitioner was convicted of one or more
10 felonies by the State of Illinois and subsequently
11 sentenced to a term of imprisonment, and has served all or
12 any part of the sentence;

13 (2) (A) the judgment of conviction was reversed or
14 vacated, and the indictment or information dismissed or, if
15 a new trial was ordered, either the petitioner was found
16 not guilty at the new trial or the petitioner was not
17 retried and the indictment or information dismissed; or (B)
18 the statute, or application thereof, on which the
19 indictment or information was based violated the
20 Constitution of the United States or the State of Illinois;

21 (3) the petitioner is innocent of the offenses charged
22 in the indictment or information or his or her acts or
23 omissions charged in the indictment or information did not
24 constitute a felony or misdemeanor against the State; and

25 (4) the petitioner did not, l by his or her own conduct, l
26 voluntarily cause or bring about his or her conviction. A

1 person does not voluntarily cause or bring about his or her
2 conviction by submitting a false admission or confession
3 obtained through coercion, force, or intimidation. A
4 person does voluntarily cause or bring about his or her
5 conviction when the person submits a false admission or
6 confession as an intentional attempt to manipulate or
7 mislead the court or law enforcement for the benefit of the
8 person or for the benefit of a third party.

9 (h) If the court finds that the petitioner is entitled to a
10 judgment, it shall enter a certificate of innocence finding
11 that the petitioner was innocent of all offenses for which he
12 or she was incarcerated. Upon entry of the certificate of
13 innocence or pardon from the Governor stating that such pardon
14 was issued on the ground of innocence of the crime for which he
15 or she was imprisoned, (1) the clerk of the court shall
16 transmit a copy of the certificate of innocence to the clerk of
17 the Court of Claims, together with the claimant's current
18 address; and (2) the court shall enter an order expunging the
19 record of arrest from the official records of the arresting
20 authority and order that the records of the clerk of the
21 circuit court and Department of State Police be sealed until
22 further order of the court upon good cause shown or as
23 otherwise provided herein, and the name of the defendant
24 obliterated from the official index requested to be kept by the
25 circuit court clerk under Section 16 of the Clerks of Courts
26 Act in connection with the arrest and conviction for the

1 offense but the order shall not affect any index issued by the
2 circuit court clerk before the entry of the order. The court
3 shall enter the expungement order regardless of whether the
4 petitioner has prior criminal convictions.

5 All records sealed by the Department of State Police may be
6 disseminated by the Department only as required by law or to
7 the arresting authority, the State's Attorney, the court upon a
8 later arrest for the same or similar offense, or for the
9 purpose of sentencing for any subsequent felony. Upon
10 conviction for any subsequent offense, the Department of
11 Corrections shall have access to all sealed records of the
12 Department pertaining to that individual.

13 Upon entry of the order of expungement, the clerk of the
14 circuit court shall promptly mail a copy of the order to the
15 person whose records were expunged and sealed.

16 (i) Any person seeking a certificate of innocence under
17 this Section based on the dismissal of an indictment or
18 information or acquittal that occurred before the effective
19 date of this amendatory Act of the 95th General Assembly shall
20 file his or her petition within 2 years after the effective
21 date of this amendatory Act of the 95th General Assembly. Any
22 person seeking a certificate of innocence under this Section
23 based on the dismissal of an indictment or information or
24 acquittal that occurred on or after the effective date of this
25 amendatory Act of the 95th General Assembly shall file his or
26 her petition within 2 years after the dismissal.

1 (j) The decision to grant or deny a certificate of
2 innocence shall be binding only with respect to claims filed in
3 the Court of Claims and shall not have a res judicata effect on
4 any other proceedings.

5 (Source: P.A. 98-133, eff. 1-1-14.)".