

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 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.
17 The General Assembly further finds misleading the current
18 legal nomenclature which compels an innocent person to seek a
19 pardon for being wrongfully incarcerated. It is the intent of
20 the General Assembly that the court, in exercising its
21 discretion as permitted by law regarding the weight and
22 admissibility of evidence submitted pursuant to this Section,
23 shall, in the interest of justice, give due consideration to

1 difficulties of proof caused by the passage of time, the death
2 or unavailability of witnesses, the destruction of evidence or
3 other factors not caused by such persons or those acting on
4 their behalf.

5 (b) Any person convicted and subsequently imprisoned for
6 one or more felonies by the State of Illinois which he or she
7 did not commit may, under the conditions hereinafter provided,
8 file a petition for certificate of innocence in the circuit
9 court of the county in which the person was convicted. The
10 petition shall request a certificate of innocence finding that
11 the petitioner was innocent of all offenses for which he or she
12 was incarcerated.

13 (c) In order to present the claim for certificate of
14 innocence of an unjust conviction and imprisonment, the
15 petitioner must attach to his or her petition documentation
16 demonstrating that:

17 (1) he or she has been convicted of one or more
18 felonies by the State of Illinois and subsequently
19 sentenced to a term of imprisonment, and has served all or
20 any part of the sentence; and

21 (2) his or her judgment of conviction was reversed or
22 vacated, and the indictment or information dismissed or,
23 if a new trial was ordered, either he or she was found not
24 guilty at the new trial or he or she was not retried and
25 the indictment or information dismissed; or the statute,
26 or application thereof, on which the indictment or

1 information was based violated the Constitution of the
2 United States or the State of Illinois; and

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

5 (d) The petition shall state facts in sufficient detail to
6 permit the court to find that the petitioner is likely to
7 succeed at trial in proving that the petitioner is innocent of
8 the alleged offenses for which he or she was convicted ~~charged~~
9 ~~in the indictment or information~~ or his or her acts or
10 omissions for which he or she was convicted ~~charged in the~~
11 ~~indictment or information~~ did not constitute a felony or
12 misdemeanor against the State of Illinois, and the petitioner
13 did not by his or her own conduct voluntarily cause or bring
14 about his or her conviction. The petition shall be verified by
15 the petitioner.

16 (e) A copy of the petition shall be served on the Attorney
17 General and the State's Attorney of the county where the
18 conviction was had. The Attorney General and the State's
19 Attorney of the county where the conviction was had shall have
20 the right to intervene as parties.

21 (f) In any hearing seeking a certificate of innocence, the
22 court may take judicial notice of prior sworn testimony or
23 evidence admitted in the criminal proceedings related to the
24 convictions which resulted in the alleged wrongful
25 incarceration, if the petitioner was either represented by
26 counsel at such prior proceedings or the right to counsel was

1 knowingly waived.

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

4 (1) the petitioner was convicted of one or more
5 felonies by the State of Illinois and subsequently
6 sentenced to a term of imprisonment, and has served all or
7 any part of the sentence;

8 (2) (A) the judgment of conviction was reversed or
9 vacated, and the indictment or information dismissed or,
10 if a new trial was ordered, either the petitioner was
11 found not guilty at the new trial or the petitioner was not
12 retried and the indictment or information dismissed; or

13 (B) the statute, or application thereof, on which the
14 indictment or information was based violated the
15 Constitution of the United States or the State of
16 Illinois;

17 (3) the petitioner is innocent of the alleged offenses
18 for which he or she was convicted ~~charged in the~~
19 ~~indictment or information~~ or his or her acts or omissions
20 for which he or she was convicted ~~charged in the~~
21 ~~indictment or information~~ did not constitute a felony or
22 misdemeanor against the State; and

23 (4) the petitioner did not by his or her own conduct
24 voluntarily cause or bring about his or her conviction.

25 (h) If the court finds that the petitioner is entitled to a
26 judgment, it shall enter a certificate of innocence finding

1 that the petitioner was innocent of all offenses for which he
2 or she was incarcerated. Upon entry of the certificate of
3 innocence or pardon from the Governor stating that such pardon
4 was issued on the ground of innocence of the crime for which he
5 or she was imprisoned, (1) the clerk of the court shall
6 transmit a copy of the certificate of innocence to the clerk of
7 the Court of Claims, together with the claimant's current
8 address; and (2) the court shall enter an order expunging the
9 record of arrest from the official records of the arresting
10 authority and order that the records of the clerk of the
11 circuit court and the Illinois State Police be sealed until
12 further order of the court upon good cause shown or as
13 otherwise provided herein, and the name of the defendant
14 obliterated from the official index requested to be kept by
15 the circuit court clerk under Section 16 of the Clerks of
16 Courts Act in connection with the arrest and conviction for
17 the offense but the order shall not affect any index issued by
18 the circuit court clerk before the entry of the order. The
19 court shall enter the expungement order regardless of whether
20 the petitioner has prior criminal convictions.

21 All records sealed by the Illinois State Police may be
22 disseminated by the Department only as required by law or to
23 the arresting authority, the State's Attorney, the court upon
24 a later arrest for the same or similar offense, or for the
25 purpose of sentencing for any subsequent felony. Upon
26 conviction for any subsequent offense, the Department of

1 Corrections shall have access to all sealed records of the
2 Department pertaining to that individual.

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

6 (i) Any person seeking a certificate of innocence under
7 this Section based on the dismissal of an indictment or
8 information or acquittal that occurred before the effective
9 date of this amendatory Act of the 95th General Assembly shall
10 file his or her petition within 2 years after the effective
11 date of this amendatory Act of the 95th General Assembly. Any
12 person seeking a certificate of innocence under this Section
13 based on the dismissal of an indictment or information or
14 acquittal that occurred on or after the effective date of this
15 amendatory Act of the 95th General Assembly shall file his or
16 her petition within 2 years after the dismissal.

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

21 (k) The changes to this Section made by this amendatory
22 Act of the 103rd General Assembly apply to petitions filed on
23 and after September 22, 2008.

24 (Source: P.A. 102-538, eff. 8-20-21.)