



Rep. Mary E. Flowers

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10300HB1015ham002

LRB103 04736 LNS 58646 a

1 AMENDMENT TO HOUSE BILL 1015

2 AMENDMENT NO. _____. Amend House Bill 1015 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
2 legal nomenclature which compels an innocent person to seek a
3 pardon for being wrongfully incarcerated. It is the intent of
4 the General Assembly that the court, in exercising its
5 discretion as permitted by law regarding the weight and
6 admissibility of evidence submitted pursuant to this Section,
7 shall, in the interest of justice, give due consideration to
8 difficulties of proof caused by the passage of time, the death
9 or 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,
4 if 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,
7 or 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 alleged offenses for which he or she was convicted ~~charged~~
16 ~~in the indictment or information~~ or his or her acts or
17 omissions for which he or she was convicted ~~charged in the~~
18 ~~indictment or information~~ did not constitute a felony or
19 misdemeanor against the State of Illinois, and the petitioner
20 did not by his or her own conduct voluntarily cause or bring
21 about his or her conviction. The petition shall be verified by
22 the petitioner.

23 (e) A copy of the petition shall be served on the Attorney
24 General and the State's Attorney of the county where the
25 conviction was had. The Attorney General and the State's
26 Attorney of the county where the conviction was had shall have

1 the right to intervene as parties.

2 (f) In any hearing seeking a certificate of innocence, the
3 court may take judicial notice of prior sworn testimony or
4 evidence admitted in the criminal proceedings related to the
5 convictions which resulted in the alleged wrongful
6 incarceration, if the petitioner was either represented by
7 counsel at such prior proceedings or the right to counsel was
8 knowingly waived.

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

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

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

24 (3) the petitioner is innocent of the alleged offenses
25 for which he or she was convicted ~~charged in the~~
26 ~~indictment or information~~ or his or her acts or omissions

1 for which he or she was convicted ~~charged in the~~
2 ~~indictment or information~~ did not constitute a felony or
3 misdemeanor against the State; and

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

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

1 the petitioner has prior criminal convictions.

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

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

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

24 (j) The decision to grant or deny a certificate of
25 innocence shall be binding only with respect to claims filed
26 in the Court of Claims and shall not have a res judicata effect

1 on any other proceedings.

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

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