

SB1844



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB1844

Introduced 2/9/2023, by Sen. Elgie R. Sims, Jr.

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-702

Amends the Code of Civil Procedure. Allows a delinquent adjudicated in juvenile court and subsequently imprisoned for one or more felonies by the State which he or she did not commit to file a petition for certificate of innocence in the circuit court of the county in which the delinquent was adjudicated. In a provision regarding the facts that a petitioner must prove by a preponderance of evidence to obtain a certificate of innocence, when proving that the petitioner did not by his or her own conduct cause (rather than voluntarily cause or bring about his or her own conviction, provides that a guilty plea or confession does not alone constitute bringing about one's conviction. Makes conforming changes.

LRB103 28444 LNS 54824 b

A BILL FOR

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

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

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

23 (2) his or her judgment of conviction or delinquency
24 adjudication was reversed or vacated, and the indictment
25 or information dismissed or, if a new trial was ordered,
26 either he or she was found not guilty at the new trial or

1 he or she was not retried and the indictment or
2 information dismissed; or the statute, or application
3 thereof, on which the indictment or information was based
4 violated the Constitution of the United States or the
5 State of Illinois; and

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

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

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

23 (f) In any hearing seeking a certificate of innocence, the
24 court may take judicial notice of prior sworn testimony or
25 evidence admitted in the criminal or juvenile proceedings
26 related to the convictions or adjudications which resulted in

1 the alleged wrongful incarceration, if the petitioner was
2 either represented by counsel at such prior proceedings or the
3 right to counsel was knowingly waived.

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

6 (1) the petitioner or delinquent adjudicated in
7 juvenile court was convicted of one or more felonies by
8 the State of Illinois and subsequently sentenced to a term
9 of imprisonment, and has served all or any part of the
10 sentence;

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

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

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

1 guilty plea or confession does not alone constitute
2 bringing about one's conviction.

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

25 All records sealed by the Illinois State Police may be
26 disseminated by the Department only as required by law or to

1 the arresting authority, the State's Attorney, the court upon
2 a later arrest for the same or similar offense, or for the
3 purpose of sentencing for any subsequent felony. Upon
4 conviction for any subsequent offense, the Department of
5 Corrections shall have access to all sealed records of the
6 Department pertaining to that individual.

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

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

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

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