

1 AN ACT in relation to criminal 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 Criminal Procedure of 1963 is  
5 amended by changing Section 122-1 as follows:

6 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)  
7 Sec. 122-1. Petition in the trial court.

8 (a) Any person imprisoned in the penitentiary who  
9 asserts that in the proceedings which resulted in his or her  
10 conviction there was a substantial denial of his or her  
11 rights under the Constitution of the United States or of the  
12 State of Illinois or both may institute a proceeding under  
13 this Article.

14 (b) The proceeding shall be commenced by filing with the  
15 clerk of the court in which the conviction took place a  
16 petition (together with a copy thereof) verified by  
17 affidavit. Petitioner shall also serve another copy upon the  
18 State's Attorney by any of the methods provided in Rule 7 of  
19 the Supreme Court. The clerk shall docket the petition for  
20 consideration by the court pursuant to Section 122-2.1 upon  
21 his or her receipt thereof and bring the same promptly to the  
22 attention of the court.

23 (c) If the petitioner is under sentence of death, a  
24 proceeding under this Article may not be commenced more than  
25 6 months after the issuance of the mandate by the Supreme  
26 Court following affirmance of the defendant's direct appeal  
27 of the trial court verdict. In all other cases, no  
28 proceedings under this Article shall be commenced more than 6  
29 months after the denial of a petition for leave to appeal or  
30 the date for filing such a petition if none is filed or more  
31 than 45 days after the defendant files his or her brief in

1 the appeal of the sentence before the Illinois Supreme Court  
2 (or more than 45 days after the deadline for the filing of  
3 the defendant's brief with the Illinois Supreme Court if no  
4 brief is filed) or 3 years from the date of conviction,  
5 whichever is sooner, unless the petitioner alleges facts  
6 showing that the delay was not due to his or her culpable  
7 negligence.

8 (d) A person seeking relief by filing a petition under  
9 this Section must specify in the petition or its heading that  
10 it is filed under this Section. A trial court that has  
11 received a petition complaining of a conviction or sentence  
12 that fails to specify in the petition or its heading that it  
13 is filed under this Section need not evaluate the petition to  
14 determine whether it could otherwise have stated some grounds  
15 for relief under this Article.

16 (e) A proceeding under this Article may not be commenced  
17 on behalf of a defendant who has been sentenced to death  
18 without the written consent of the defendant, unless the  
19 defendant, because of a mental or physical condition, is  
20 incapable of asserting his or her own claim.

21 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;  
22 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)