

1 AN ACT concerning 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 Sections 114-13, 122-1, 122-2, and 122-3
6 and by adding Section 122-6.1 as follows:

7 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

8 Sec. 114-13. Discovery in criminal cases.

9 (a) Discovery procedures in criminal cases shall be in
10 accordance with Supreme Court Rules.

11 (b) Any investigative, law enforcement, or other agency
12 responsible for investigating any felony offense, or
13 participating in an investigation of any felony offense shall
14 provide to the authority prosecuting the offense all reports
15 that have been generated by or have come into the possession
16 of the investigating agency concerning the offense being
17 investigated. In addition, the investigating agency shall
18 provide to the prosecuting authority any material or
19 information within its possession or control that would tend
20 to negate the guilt of the accused of the offense charged or
21 reduce his or her punishment for the offense. Every
22 investigative and law enforcement agency in this State shall
23 adopt policies to ensure compliance with these provisions.

24 (Source: Laws 1963, p. 2836.)

25 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

26 Sec. 122-1. Petition in the trial court.

27 (a) Any person imprisoned in the penitentiary who
28 asserts that in the proceedings which resulted in his or her
29 conviction there was a substantial denial of his or her
30 rights under the Constitution of the United States or of the

1 State of Illinois or both may institute a proceeding under
2 this Article. Under the Constitution of the State of
3 Illinois, an assertion of substantial denial of rights
4 pursuant to this Article includes, but is not limited to, an
5 independent claim of actual innocence based on newly
6 discovered evidence.

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

16 (c) A proceeding on an independent claim of actual
17 innocence based on newly discovered evidence must be
18 commenced within 6 months after the discovery of the new
19 evidence by the defendant. No other proceedings under this
20 Article shall be commenced more than 6 months after the
21 denial of a petition for leave to appeal or the date for
22 filing such a petition if none is filed or more than 45 days
23 after the defendant files his or her brief in the appeal of
24 the sentence before the Illinois Supreme Court (or more than
25 45 days after the deadline for the filing of the defendant's
26 brief with the Illinois Supreme Court if no brief is filed)
27 or 3 years from the date of conviction, whichever is sooner,
28 unless the petitioner alleges facts showing that the delay
29 was not due to his or her culpable negligence.

30 (d) A person seeking relief by filing a petition under
31 this Section must specify in the petition or its heading that
32 it is filed under this Section. A trial court that has
33 received a petition complaining of a conviction or sentence
34 that fails to specify in the petition or its heading that it

1 is filed under this Section need not evaluate the petition to
2 determine whether it could otherwise have stated some grounds
3 for relief under this Article.

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

9 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;
10 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

11 (725 ILCS 5/122-2) (from Ch. 38, par. 122-2)

12 Sec. 122-2. Contents of petition.

13 The petition shall identify the proceeding in which the
14 petitioner was convicted, give the date of the rendition of
15 the final judgment complained of, and clearly set forth the
16 respects in which petitioner's constitutional rights were
17 violated. If the petition asserts an independent claim of
18 actual innocence based on newly discovered evidence, it must
19 set forth the nature of the evidence and demonstrate that:
20 (i) the new evidence was discovered since the defendant's
21 trial; and (ii) the new evidence could not have been
22 discovered prior to trial by the exercise of due diligence.

23 The petition shall have attached thereto affidavits, records,
24 or other evidence supporting its allegations or shall state
25 why the same are not attached. The petition shall identify
26 any previous proceedings that the petitioner may have taken
27 to secure relief from his conviction. Argument and citations
28 and discussion of authorities shall be omitted from the
29 petition.

30 (Source: Laws 1963, p. 2836.)

31 (725 ILCS 5/122-3) (from Ch. 38, par. 122-3)

32 Sec. 122-3. Waiver of claims.

1 Any claim of substantial denial of constitutional rights
2 not raised in the original or an amended petition is waived.
3 This provision shall not apply to independent claims of
4 actual innocence based on newly discovered evidence.

5 (Source: Laws 1963, p. 2836.)

6 (725 ILCS 5/122-6.1 new)

7 Sec. 122-6.1. Actual innocence hearing.

8 (a) At a hearing on a petition that asserts an
9 independent claim of actual innocence based on newly
10 discovered evidence, the burden shall be on the defendant to
11 prove his or her actual innocence. At no time in such a
12 hearing shall the defendant be entitled to a presumption of
13 innocence. It shall be presumed that the verdict rendered at
14 the trial in which the defendant was convicted was correct,
15 and the burden shall be on the defendant to rebut this
16 presumption.

17 (b) The defendant, at an actual innocence hearing, shall
18 be required to prove his or her actual innocence by clear and
19 convincing evidence.

20 (c) In an actual innocence hearing, the court shall make
21 a determination about the reliability and admissibility of
22 the newly discovered evidence. Only if the court finds that
23 the evidence of the defendant's actual innocence is clear and
24 convincing and of such a conclusive character that it would
25 likely change the result of the defendant's trial shall the
26 court order a new trial for the defendant.