



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1291

Introduced 2/20/2007, by Rep. Arthur L. Turner

SYNOPSIS AS INTRODUCED:

725 ILCS 5/122-1

from Ch. 38, par. 122-1

Amends the Code of Criminal Procedure of 1963. Provides that if a defendant does not file a direct appeal, a post-conviction petition shall be filed no later than 10 years from the date of sentencing (rather than 3 years from the date of conviction). Provides that if the defendant files a direct appeal, the petition may be filed no later than 10 years after sentencing or 6 months after conclusion of proceedings in the United States Supreme Court or 6 months after the period for filing a certiorari petition if a petition for certiorari is not filed, whichever expires later. Provides that these provisions shall be applied retroactively to petitions for post-conviction relief that were dismissed as untimely before the effective date of the amendatory Act but would have been timely if filed on or after that time. Provides that such a petitioner has 2 years after the effective date of the amendatory Act to file his or her post-conviction petition.

LRB095 10444 RLC 30659 b

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 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 may institute
9 a proceeding under this Article if the person asserts that:

10 (1) in the proceedings which resulted in his or her
11 conviction there was a substantial denial of his or her
12 rights under the Constitution of the United States or of
13 the State of Illinois or both; or

14 (2) the death penalty was imposed and there is newly
15 discovered evidence not available to the person at the time
16 of the proceeding that resulted in his or her conviction
17 that establishes a substantial basis to believe that the
18 defendant is actually innocent by clear and convincing
19 evidence.

20 (a-5) A proceeding under paragraph (2) of subsection (a)
21 may be commenced within a reasonable period of time after the
22 person's conviction notwithstanding any other provisions of
23 this Article. In such a proceeding regarding actual innocence,

1 if the court determines the petition is frivolous or is
2 patently without merit, it shall dismiss the petition in a
3 written order, specifying the findings of fact and conclusions
4 of law it made in reaching its decision. Such order of
5 dismissal is a final judgment and shall be served upon the
6 petitioner by certified mail within 10 days of its entry.

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 affidavit.
10 Petitioner shall also serve another copy upon the State's
11 Attorney by any of the methods provided in Rule 7 of the
12 Supreme Court. The clerk shall docket the petition for
13 consideration by the court pursuant to Section 122-2.1 upon his
14 or her receipt thereof and bring the same promptly to the
15 attention of the court.

16 (c) Except as otherwise provided in subsection (a-5), if
17 the petitioner is under sentence of death and a petition for
18 writ of certiorari is filed, no proceedings under this Article
19 shall be commenced more than 10 years from the date of
20 sentencing or 6 months after the conclusion of proceedings in
21 the United States Supreme Court, whichever expires later,
22 unless the petitioner alleges facts showing that the delay was
23 not due to his or her culpable negligence. If a petition for
24 certiorari is not filed, no proceedings under this Article
25 shall be commenced more than 10 years from the date of
26 sentencing or 6 months from the date for filing a certiorari

1 petition, whichever expires later, unless the petitioner
2 alleges facts showing that the delay was not due to his or her
3 culpable negligence.

4 When a defendant has a sentence other than death, no
5 proceedings under this Article shall be commenced more than 10
6 years from the date of sentencing or 6 months after the
7 conclusion of proceedings in the United States Supreme Court,
8 whichever expires later, unless the petitioner alleges facts
9 showing that the delay was not due to his or her culpable
10 negligence. If a petition for certiorari is not filed, no
11 proceedings under this Article shall be commenced more than 10
12 years from the date of sentencing or 6 months from the date for
13 filing a certiorari petition, whichever expires later, unless
14 the petitioner alleges facts showing that the delay was not due
15 to his or her culpable negligence. If a defendant does not file
16 a direct appeal, the post-conviction petition shall be filed no
17 later than 10 years from the date of sentencing ~~3 years from~~
18 ~~the date of conviction,~~ unless the petitioner alleges facts
19 showing that the delay was not due to his or her culpable
20 negligence.

21 This limitation does not apply to a petition advancing a
22 claim of actual innocence.

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

1 specify in the petition or its heading that it is filed under
2 this Section need not evaluate the petition to determine
3 whether it could otherwise have stated some grounds for relief
4 under this Article.

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

10 (f) Only one petition may be filed by a petitioner under
11 this Article without leave of the court. Leave of court may be
12 granted only if a petitioner demonstrates cause for his or her
13 failure to bring the claim in his or her initial
14 post-conviction proceedings and prejudice results from that
15 failure. For purposes of this subsection (f): (1) a prisoner
16 shows cause by identifying an objective factor that impeded his
17 or her ability to raise a specific claim during his or her
18 initial post-conviction proceedings; and (2) a prisoner shows
19 prejudice by demonstrating that the claim not raised during his
20 or her initial post-conviction proceedings so infected the
21 trial that the resulting conviction or sentence violated due
22 process.

23 (g) A petitioner under this Article whose petition was
24 dismissed as untimely before the effective date of this
25 amendatory Act of the 95th General Assembly but whose petition
26 would have been timely if filed on or after the effective date

1 of this amendatory Act of the 95th General Assembly may file
2 his or her petition within 2 years after the effective date of
3 this amendatory Act of the 95th General Assembly.

4 (Source: P.A. 93-493, eff. 1-1-04; 93-605, eff. 11-19-03;
5 93-972, eff. 8-20-04.)