



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB3452

Introduced 2/28/2007, by Rep. Franco Coladipietro

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/122-1

from Ch. 38, par. 122-1

Amends the Code of Criminal Procedure of 1963. Provides that a prisoner seeking to file a second or subsequent post-conviction petition must seek leave of the court by filing a motion when he or she sends his or her proposed petition. Provides that the circuit court must review the motion within 30 days of its receipt by the circuit court clerk. Provides that if the court grants the motion for leave to file the petition, the circuit court clerk shall docket it, and the petition shall proceed as provided in the Post-Conviction Hearing Article of the Code. Provides that if the court denies the motion, the circuit court clerk shall notify the petitioner by certified mail within 10 days of the entry of the order.

LRB095 08532 RLC 28713 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 6 months after the conclusion of  
20 proceedings in the United States Supreme Court, unless the  
21 petitioner alleges facts showing that the delay was not due to  
22 his or her culpable negligence. If a petition for certiorari is  
23 not filed, no proceedings under this Article shall be commenced  
24 more than 6 months from the date for filing a certiorari  
25 petition, unless the petitioner alleges facts showing that the  
26 delay was not due to his or her culpable negligence.

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

15           This limitation does not apply to a petition advancing a  
16 claim of actual innocence.

17           (d) A person seeking relief by filing a petition under this  
18 Section must specify in the petition or its heading that it is  
19 filed under this Section. A trial court that has received a  
20 petition complaining of a conviction or sentence that fails to  
21 specify in the petition or its heading that it is filed under  
22 this Section need not evaluate the petition to determine  
23 whether it could otherwise have stated some grounds for relief  
24 under this Article.

25           (e) A proceeding under this Article may not be commenced on  
26 behalf of a defendant who has been sentenced to death without

1 the written consent of the defendant, unless the defendant,  
2 because of a mental or physical condition, is incapable of  
3 asserting his or her own claim.

4 (f) Only one petition may be filed by a petitioner under  
5 this Article without leave of the court. A petitioner must seek  
6 leave of the court by filing a motion when he or she sends his  
7 or her proposed subsequent petition. The circuit court must  
8 review the motion within 30 days of its receipt by the Circuit  
9 Court Clerk. If the court grants the motion for leave to file  
10 the petition, the Circuit Court Clerk shall docket it, and the  
11 petition shall proceed under Section 122-2.1 of this Article.  
12 If the court denies the motion, the Circuit Court Clerk shall  
13 notify the petitioner by certified mail within 10 days of the  
14 entry of the order. Leave of court may be granted only if a  
15 petitioner demonstrates cause for his or her failure to bring  
16 the claim in his or her initial post-conviction proceedings and  
17 prejudice results from that failure. For purposes of this  
18 subsection (f): (1) a prisoner shows cause by identifying an  
19 objective factor that impeded his or her ability to raise a  
20 specific claim during his or her initial post-conviction  
21 proceedings; and (2) a prisoner shows prejudice by  
22 demonstrating that the claim not raised during his or her  
23 initial post-conviction proceedings so infected the trial that  
24 the resulting conviction or sentence violated due process.

25 (Source: P.A. 93-493, eff. 1-1-04; 93-605, eff. 11-19-03;  
26 93-972, eff. 8-20-04.)