



Sen. Donne E. Trotter

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09700SB2781sam002

LRB097 16183 JWD 69912 a

1 AMENDMENT TO SENATE BILL 2781

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2781 by replacing  
3 everything after the enacting clause with the following:

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.

1 The General Assembly further finds misleading the current legal  
2 nomenclature which compels an innocent person to seek a pardon  
3 for being wrongfully incarcerated. It is the intent of the  
4 General Assembly that the court, in exercising its discretion  
5 as permitted by law regarding the weight and admissibility of  
6 evidence submitted pursuant to this Section, shall, in the  
7 interest of justice, give due consideration to difficulties of  
8 proof caused by the passage of time, the death or  
9 unavailability of witnesses, the destruction of evidence or  
10 other factors not caused by such persons or those acting on  
11 their behalf.

12 (b) Any person convicted and subsequently imprisoned for  
13 one or more felonies by the State of Illinois which he or she  
14 did not commit may, under the conditions hereinafter provided,  
15 file a petition for certificate of innocence in the circuit  
16 court of the county in which the person was convicted. The  
17 petition shall request a certificate of innocence finding that  
18 the petitioner was innocent of all offenses for which he or she  
19 was incarcerated.

20 (b-5) The presumption of legal innocence is restored when:  
21 a conviction has been reversed or vacated, and the indictment  
22 or information has been dismissed; or if a new trial was  
23 ordered and the defendant was found not guilty at the new trial  
24 or he or she was not retried, and the indictment or information  
25 was dismissed; or the statute, or the application thereof, upon  
26 which the indictment or information was based has been found by

1 a court to have violated the Constitution of the United States  
2 or the Constitution of the State of Illinois.

3 (c) In order to present the claim for certificate of  
4 innocence of an unjust conviction and imprisonment, the  
5 petitioner must attach to his or her petition documentation  
6 demonstrating that:

7 (1) he or she has been convicted of one or more  
8 felonies by the State of Illinois and subsequently  
9 sentenced to a term of imprisonment, and has served all or  
10 any part of the sentence; and

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

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

21 (d) The petition shall state facts in sufficient detail to  
22 permit the court to find that the petitioner is likely to  
23 succeed at trial in proving that the petitioner is innocent of  
24 the offenses charged in the indictment or information or his or  
25 her acts or omissions charged in the indictment or information  
26 did not constitute a felony or misdemeanor against the State of

1 Illinois, and the petitioner did not by his or her own conduct  
2 voluntarily cause or bring about his or her conviction. The  
3 petition shall be verified by the petitioner.

4 (e) A copy of the petition shall be served on the Attorney  
5 General and the State's Attorney of the county where the  
6 conviction was had. The Attorney General and the State's  
7 Attorney of the county where the conviction was had shall have  
8 the right to intervene as parties.

9 (f) In any hearing seeking a certificate of innocence, the  
10 court may take judicial notice of prior sworn testimony or  
11 evidence admitted in the criminal proceedings related to the  
12 convictions which resulted in the alleged wrongful  
13 incarceration, if the petitioner was either represented by  
14 counsel at such prior proceedings or the right to counsel was  
15 knowingly waived.

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

18 (1) the petitioner was convicted of one or more  
19 felonies by the State of Illinois and subsequently  
20 sentenced to a term of imprisonment, and has served all or  
21 any part of the sentence;

22 (2) (A) the judgment of conviction was reversed or  
23 vacated, and the indictment or information dismissed or, if  
24 a new trial was ordered, either the petitioner was found  
25 not guilty at the new trial or the petitioner was not  
26 retried and the indictment or information dismissed; or (B)

1 the statute, or application thereof, on which the  
2 indictment or information was based violated the  
3 Constitution of the United States or the State of Illinois;

4 (3) the petitioner is innocent of the offenses charged  
5 in the indictment or information or his or her acts or  
6 omissions charged in the indictment or information did not  
7 constitute a felony or misdemeanor against the State; and

8 (4) the petitioner did not by his or her own conduct  
9 voluntarily cause or bring about his or her conviction. A  
10 confession made as a result of a custodial interrogation  
11 that was either challenged prior to trial, or repudiated at  
12 trial, shall not be considered conduct that voluntarily  
13 caused or brought about the conviction. A petitioner whose  
14 conviction is brought about by a guilty plea that is later  
15 vacated based on new evidence of innocence shall not be  
16 automatically barred from obtaining a certificate of  
17 innocence. In those cases, the court shall consider the  
18 totality of the circumstances in determining whether the  
19 petitioner voluntarily caused or brought about the  
20 conviction.

21 (h) If the court finds that the petitioner is entitled to a  
22 judgment, it shall enter a certificate of innocence finding  
23 that the petitioner was innocent of all offenses for which he  
24 or she was incarcerated. Upon entry of the certificate of  
25 innocence or pardon from the Governor stating that such pardon  
26 was issued on the ground of innocence of the crime for which he

1 or she was imprisoned, (1) the clerk of the court shall  
2 transmit a copy of the certificate of innocence to the clerk of  
3 the Court of Claims, together with the claimant's current  
4 address; and (2) the court shall enter an order expunging or  
5 sealing the record of arrest from the official records of the  
6 arresting authority and order that the records of the clerk of  
7 the circuit court and Department of State Police be sealed  
8 until further order of the court upon good cause shown or as  
9 otherwise provided herein, and the name of the defendant  
10 obliterated from the official index requested to be kept by the  
11 circuit court clerk under Section 16 of the Clerks of Courts  
12 Act in connection with the arrest and conviction for the  
13 offense but the order shall not affect any index issued by the  
14 circuit court clerk before the entry of the order.

15 (i) Any person seeking a certificate of innocence under  
16 this Section based on the dismissal of an indictment or  
17 information or acquittal that occurred before the effective  
18 date of this amendatory Act of the 95th General Assembly shall  
19 file his or her petition within 2 years after the effective  
20 date of this amendatory Act of the 95th General Assembly. Any  
21 person seeking a certificate of innocence under this Section  
22 based on the dismissal of an indictment or information or  
23 acquittal that occurred on or after the effective date of this  
24 amendatory Act of the 95th General Assembly shall file his or  
25 her petition within 2 years after the dismissal.

26 (j) The decision to grant or deny a certificate of

1 innocence shall be binding only with respect to claims filed in  
2 the Court of Claims and shall not have a res judicata effect on  
3 any other proceedings.

4 (Source: P.A. 95-970, eff. 9-22-08; 96-1550, eff. 7-1-11.)

5 Section 99. Effective date. This Act takes effect upon  
6 becoming law.".