



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB2961

by Rep. Scott Drury

SYNOPSIS AS INTRODUCED:

725 ILCS 5/122-1	from Ch. 38, par. 122-1
725 ILCS 5/122-2.1	from Ch. 38, par. 122-2.1

Amends the Code of Criminal Procedure of 1963. Allows any defendant convicted of a criminal offense (rather than only those imprisoned on a felony offense) to file a post conviction petition challenging his or her conviction on the grounds there was a substantial denial of his or her rights under the Constitution of the United States or of the State of Illinois. Allows any defendant convicted of a criminal offense (rather than only those under sentence of death) to file a post conviction petition on the basis of newly discovered evidence (rather than newly discovered evidence not available at the time of the proceeding in which he or she was convicted) that establishes a substantial basis to believe that the defendant is actually innocent by clear and convincing evidence. Allows a post conviction petition to be commenced on behalf of any defendant (rather than only a defendant sentenced to death), without the written consent of the defendant, if the defendant, because of a mental or physical condition, is incapable of asserting his or her own claim. Makes conforming changes in the statute on court dismissals of post conviction petitions.

LRB098 09632 MRW 39778 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 Sections 122-1 and 122-2.1 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 convicted of an offense ~~imprisoned in the~~
9 ~~penitentiary~~ may institute a proceeding under this Article if
10 the person asserts that:

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

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

21 (a-5) A proceeding under paragraph (2) of subsection (a)
22 may be commenced within a reasonable period of time after the
23 person's conviction notwithstanding any other provisions of

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

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

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

1 ~~delay was not due to his or her culpable negligence.~~

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

17 This limitation does not apply to a petition advancing a
18 claim of actual innocence.

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

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

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

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

21 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

22 Sec. 122-2.1. (a) Within 90 days after the filing and
23 docketing of each petition, the court shall examine the ~~such~~
24 petition and enter an order thereon under ~~pursuant to~~ this
25 Section.

1 (1) If the petitioner is under sentence of death and is
2 without counsel and alleges that he is without means to
3 procure counsel, he shall state whether or not he wishes
4 counsel to be appointed to represent him. If appointment of
5 counsel is so requested, the court shall appoint counsel if
6 satisfied that the petitioner has no means to procure
7 counsel.

8 (2) If ~~the petitioner is sentenced to imprisonment and~~
9 the court determines the petition is frivolous or is
10 patently without merit, it shall dismiss the petition in a
11 written order, specifying the findings of fact and
12 conclusions of law it made in reaching its decision. This
13 ~~Such~~ order of dismissal is a final judgment and shall be
14 served upon the petitioner by certified mail within 10 days
15 of its entry.

16 (b) If the petition is not dismissed under ~~pursuant to~~ this
17 Section, the court shall order the petition to be docketed for
18 further consideration in accordance with Sections 122-4
19 through 122-6. If the petitioner is under sentence of death,
20 the court shall order the petition to be docketed for further
21 consideration and hearing within one year of the filing of the
22 petition. Continuances may be granted as the court deems
23 appropriate.

24 (c) In considering a petition under ~~pursuant to~~ this
25 Section, the court may examine the court file of the proceeding
26 in which the petitioner was convicted, any action taken by an

1 appellate court in that ~~such~~ proceeding and any transcripts of
2 that ~~such~~ proceeding.

3 (Source: P.A. 93-605, eff. 11-19-03.)