

# HB1312



## 99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB1312

by Rep. La Shawn K. Ford

### SYNOPSIS AS INTRODUCED:

725 ILCS 5/122-1

from Ch. 38, par. 122-1

Amends the Code of Criminal Procedure of 1963. Authorizes persons who are subject to being confined by the State, local, or federal government as a result of a State criminal conviction to seek a post-conviction hearing in the trial court.

LRB099 06991 RLC 27073 b

A BILL FOR

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 or otherwise  
9 confined, or subject to being confined by the State, local, or  
10 federal government as a result of a State criminal conviction,  
11 may institute a proceeding under this Article if the person  
12 asserts that:

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

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

23 (a-5) A proceeding under paragraph (2) of subsection (a)

1 may be commenced within a reasonable period of time after the  
2 person's conviction notwithstanding any other provisions of  
3 this Article. In such a proceeding regarding actual innocence,  
4 if the court determines the petition is frivolous or is  
5 patently without merit, it shall dismiss the petition in a  
6 written order, specifying the findings of fact and conclusions  
7 of law it made in reaching its decision. Such order of  
8 dismissal is a final judgment and shall be served upon the  
9 petitioner by certified mail within 10 days of its entry.

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

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

1 more than 6 months from the date for filing a certiorari  
2 petition, unless the petitioner alleges facts showing that the  
3 delay was not due to his or her culpable negligence.

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

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

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

1 under this Article.

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

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

20 (Source: P.A. 93-493, eff. 1-1-04; 93-605, eff. 11-19-03;  
21 93-972, eff. 8-20-04.)