

1 AN ACT in relation to 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 adding Section 116-5 as follows:

6 (725 ILCS 5/ 116-5 new)

7 Sec. 116-5. Motion for new capital sentencing hearing
8 based on inadequate trial counsel.

9 (a) In every case in which the death sentence was
10 imposed before March 1, 2001 and the defendant remains under
11 sentence of death on the effective date of this amendatory
12 Act of the 92nd General Assembly, the circuit court that
13 imposed the sentence shall, upon motion of the defendant,
14 which must be made within 6 months from the effective date of
15 this amendatory Act of the 92nd General Assembly, conduct a
16 hearing to determine whether the counsel and co-counsel who
17 represented the defendant in the proceedings leading to the
18 death sentence possessed the qualifications for counsel and
19 co-counsel in the capital litigation trial bar established by
20 Illinois Supreme Court Rule 714(b).

21 (b) If the circuit court determines, following a hearing
22 conducted under subsection (a), that the counsel or
23 co-counsel for the defendant did not possess the
24 qualifications for counsel or co-counsel, respectively, in
25 the capital litigation trial bar or that the defendant was
26 not represented both by a lead counsel and co-counsel, the
27 circuit court shall enter an order vacating the sentence of
28 death imposed upon the defendant.

29 (c) Within 30 days following the entry of an order under
30 subsection (b), the State shall inform the circuit court in
31 writing whether it wishes to conduct a new sentencing hearing

1 in accordance with subsections (c) through (h) of Section 9-1
2 of the Criminal Code of 1961 at which the defendant shall be
3 represented by counsel and co-counsel from the capital
4 litigation trial bar roster. If the State elects a new
5 capital sentencing hearing, the hearing shall be promptly
6 scheduled. If the State does not elect to conduct a new
7 capital sentencing hearing, the court shall sentence the
8 defendant to a term of imprisonment under Chapter V of the
9 Unified Code of Corrections.