



Rep. Justin Slaughter

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LRB100 10483 SLF 24273 a

1 AMENDMENT TO HOUSE BILL 3599

2 AMENDMENT NO. _____. Amend House Bill 3599 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Juvenile Court Act of 1987 is amended by
5 adding Section 5-621 as follows:

6 (705 ILCS 405/5-621 new)

7 Sec. 5-621. Post-conviction appeal.

8 (a) A person detained in the Department of Juvenile Justice
9 may institute a proceeding under this Section if the person
10 asserts that:

11 (1) in the proceedings which resulted in his or her
12 adjudication 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) there is newly discovered evidence not available to
16 the person at the time of the proceeding that resulted in

1 his or her adjudication that establishes a substantial
2 basis to believe that the person is actually innocent by
3 clear and convincing evidence.

4 (b) A proceeding under paragraph (1) and (2) of subsection
5 (a) may be commenced within a reasonable period of time after
6 the person's adjudication. In a proceeding regarding actual
7 innocence, if the court determines the petition is frivolous or
8 is patently without merit, the court shall dismiss the petition
9 in a written order, specifying the findings of fact and
10 conclusions of law it made in reaching its decision. An order
11 of dismissal is a final judgment and shall be served upon the
12 petitioner by certified mail within 10 days of its entry.

13 (c) The proceeding shall be commenced by filing with the
14 clerk of the court and with a petition verified by affidavit.
15 The petitioner shall also serve another copy upon the State's
16 Attorney. The clerk shall docket the petition for consideration
17 by the court upon his or her receipt and bring the same
18 promptly to the attention of the court.

19 (d) A person seeking relief by filing a petition under this
20 Section shall specify in the petition or its heading that it is
21 filed under this Section.

22 (e) Only one petition may be filed by a petitioner under
23 this Section without leave of the court.

24 Section 10. The Code of Criminal Procedure of 1963 is
25 amended by changing Section 122-1 as follows:

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

2 Sec. 122-1. Petition in the trial court.

3 (a) Any person imprisoned in the penitentiary or otherwise
4 confined, or subject to confinement by the State, local, or
5 federal government as a result of a State criminal conviction,
6 may institute a proceeding under this Article if the person
7 asserts that:

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

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

18 (a-5) A proceeding under paragraph (2) of subsection (a)
19 may be commenced within a reasonable period of time after the
20 person's conviction notwithstanding any other provisions of
21 this Article. In such a proceeding regarding actual innocence,
22 if the court determines the petition is frivolous or is
23 patently without merit, it shall dismiss the petition in a
24 written order, specifying the findings of fact and conclusions
25 of law it made in reaching its decision. Such order of

1 dismissal is a final judgment and shall be served upon the
2 petitioner by certified mail within 10 days of its entry.

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

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

23 When a defendant has a sentence other than death, no
24 proceedings under this Article shall be commenced more than 6
25 months after the conclusion of proceedings in the United States
26 Supreme Court, unless the petitioner alleges facts showing that

1 the delay was not due to his or her culpable negligence. If a
2 petition for certiorari is not filed, no proceedings under this
3 Article shall be commenced more than 6 months from the date for
4 filing a certiorari petition, unless the petitioner alleges
5 facts showing that the delay was not due to his or her culpable
6 negligence. If a defendant does not file a direct appeal, the
7 post-conviction petition shall be filed no later than 3 years
8 from the date of conviction, unless the petitioner alleges
9 facts showing that the delay was not due to his or her culpable
10 negligence.

11 This limitation does not apply to a petition advancing a
12 claim of actual innocence.

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

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

26 (f) Only one petition may be filed by a petitioner under

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

13 (Source: P.A. 93-493, eff. 1-1-04; 93-605, eff. 11-19-03;
14 93-972, eff. 8-20-04.)".