



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB5750

Introduced 2/16/2012, 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.

LRB097 18591 RLC 63823 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 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.)