



Sen. Donne E. Trotter

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09700SB2781sam001

LRB097 16183 JWD 68719 a

1 AMENDMENT TO SENATE BILL 2781

2 AMENDMENT NO. _____. Amend Senate Bill 2781 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by
5 changing Section 2-702 as follows:

6 (735 ILCS 5/2-702)

7 Sec. 2-702. Petition for a certificate of innocence that
8 the petitioner was innocent of all offenses for which he or she
9 was incarcerated.

10 (a) The General Assembly finds and declares that innocent
11 persons who have been wrongly convicted of crimes in Illinois
12 and subsequently imprisoned have been frustrated in seeking
13 legal redress due to a variety of substantive and technical
14 obstacles in the law and that such persons should have an
15 available avenue to obtain a finding of innocence so that they
16 may obtain relief through a petition in the Court of Claims.

1 The General Assembly further finds misleading the current legal
2 nomenclature which compels an innocent person to seek a pardon
3 for being wrongfully incarcerated. It is the intent of the
4 General Assembly that the court, in exercising its discretion
5 as permitted by law regarding the weight and admissibility of
6 evidence submitted pursuant to this Section, shall, in the
7 interest of justice, give due consideration to difficulties of
8 proof caused by the passage of time, the death or
9 unavailability of witnesses, the destruction of evidence or
10 other factors not caused by such persons or those acting on
11 their behalf.

12 (b) Any person convicted and subsequently imprisoned for
13 one or more felonies by the State of Illinois which he or she
14 did not commit may, under the conditions hereinafter provided,
15 file a petition for certificate of innocence in the circuit
16 court of the county in which the person was convicted. The
17 petition shall request a certificate of innocence finding that
18 the petitioner was innocent of all offenses for which he or she
19 was incarcerated.

20 (b-5) The presumption of innocence is restored when: a
21 conviction has been reversed or vacated, and the indictment or
22 information has been dismissed; or a new trial has been ordered
23 and the defendant has been found not guilty at the new trial or
24 he or she has not been retried, and the indictment or
25 information has been dismissed; or the statute, or the
26 application thereof, upon which the indictment or information

1 was based has been found by a court to have violated the
2 Constitution of the United States or the Constitution of the
3 State of Illinois.

4 (c) In order to present the claim for certificate of
5 innocence of an unjust conviction and imprisonment, the
6 petitioner must attach to his or her petition documentation
7 demonstrating that:

8 (1) he or she has been convicted of one or more
9 felonies by the State of Illinois and subsequently
10 sentenced to a term of imprisonment, and has served all or
11 any part of the sentence; and

12 (2) his or her judgment of conviction was reversed or
13 vacated, and the indictment or information dismissed or, if
14 a new trial was ordered, either he or she was found not
15 guilty at the new trial or he or she was not retried and
16 the indictment or information dismissed; or the statute, or
17 application thereof, on which the indictment or
18 information was based violated the Constitution of the
19 United States or the State of Illinois; and

20 (3) his or her claim is not time barred by the
21 provisions of subsection (i) of this Section.

22 (d) The petition shall state facts in sufficient detail to
23 permit the court to find that ~~the petitioner is likely to~~
24 ~~succeed at trial in proving that the petitioner is innocent of~~
25 ~~the offenses charged in the indictment or information or his or~~
26 ~~her acts or omissions charged in the indictment or information~~

1 ~~did not constitute a felony or misdemeanor against the State of~~
2 ~~Illinois,~~ and the petitioner did not by his or her own conduct
3 voluntarily cause or bring about his or her conviction. The
4 petition shall be verified by the petitioner.

5 (e) A copy of the petition shall be served on the Attorney
6 General and the State's Attorney of the county where the
7 conviction was had. The Attorney General and the State's
8 Attorney of the county where the conviction was had shall have
9 the right to intervene as parties.

10 (f) In any hearing seeking a certificate of innocence, the
11 court may take judicial notice of prior sworn testimony or
12 evidence admitted in the criminal proceedings related to the
13 convictions which resulted in the alleged wrongful
14 incarceration, if the petitioner was either represented by
15 counsel at such prior proceedings or the right to counsel was
16 knowingly waived.

17 (g) In order to obtain a certificate of innocence the
18 petitioner must prove by a preponderance of evidence that:

19 (1) the petitioner was convicted of one or more
20 felonies by the State of Illinois and subsequently
21 sentenced to a term of imprisonment, and has served all or
22 any part of the sentence;

23 (2) (A) the judgment of conviction was reversed or
24 vacated, and the indictment or information dismissed or, if
25 a new trial was ordered, either the petitioner was found
26 not guilty at the new trial or the petitioner was not

1 retried and the indictment or information dismissed; or (B)
2 the statute, or application thereof, on which the
3 indictment or information was based violated the
4 Constitution of the United States or the State of Illinois;
5 and

6 ~~(3) the petitioner is innocent of the offenses charged~~
7 ~~in the indictment or information or his or her acts or~~
8 ~~omissions charged in the indictment or information did not~~
9 ~~constitute a felony or misdemeanor against the State; and~~

10 (3) ~~(4)~~ the petitioner did not by his or her own
11 conduct voluntarily cause or bring about his or her
12 conviction.

13 (h) If the court finds that the petitioner is entitled to a
14 judgment, it shall enter a certificate of innocence finding
15 that the petitioner was innocent of all offenses for which he
16 or she was incarcerated. Upon entry of the certificate of
17 innocence or pardon from the Governor stating that such pardon
18 was issued on the ground of innocence of the crime for which he
19 or she was imprisoned, (1) the clerk of the court shall
20 transmit a copy of the certificate of innocence to the clerk of
21 the Court of Claims, together with the claimant's current
22 address; and (2) the court shall enter an order expunging or
23 sealing the record of arrest from the official records of the
24 arresting authority and order that the records of the clerk of
25 the circuit court and Department of State Police be sealed
26 until further order of the court upon good cause shown or as

1 otherwise provided herein, and the name of the defendant
2 obliterated from the official index requested to be kept by the
3 circuit court clerk under Section 16 of the Clerks of Courts
4 Act in connection with the arrest and conviction for the
5 offense but the order shall not affect any index issued by the
6 circuit court clerk before the entry of the order.

7 (i) Any person seeking a certificate of innocence under
8 this Section based on the dismissal of an indictment or
9 information or acquittal that occurred before the effective
10 date of this amendatory Act of the 95th General Assembly shall
11 file his or her petition within 2 years after the effective
12 date of this amendatory Act of the 95th General Assembly. Any
13 person seeking a certificate of innocence under this Section
14 based on the dismissal of an indictment or information or
15 acquittal that occurred on or after the effective date of this
16 amendatory Act of the 95th General Assembly shall file his or
17 her petition within 2 years after the dismissal.

18 (j) The decision to grant or deny a certificate of
19 innocence shall be binding only with respect to claims filed in
20 the Court of Claims and shall not have a res judicata effect on
21 any other proceedings.

22 (Source: P.A. 95-970, eff. 9-22-08; 96-1550, eff. 7-1-11.)

23 Section 99. Effective date. This Act takes effect upon
24 becoming law."