



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB4070

Introduced 1/13/2020, by Rep. La Shawn K. Ford

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/122-1	from Ch. 38, par. 122-1
725 ILCS 5/122-2.1	from Ch. 38, par. 122-2.1

Amends the Code of Criminal Procedure of 1963. Provides that a person who has been convicted of an offense and sentenced to a term of imprisonment for a felony or misdemeanor and who is serving or has served his or her sentence of imprisonment (rather than imprisoned in the penitentiary) may institute a proceeding under the Post-Conviction Hearing Article of the Code.

LRB101 16586 RLC 65970 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 Sections 122-1 and 122-2.1 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 who has been convicted of an offense and  
9 sentenced to a term of imprisonment for a felony or misdemeanor  
10 and who is serving or has served his or her sentence of  
11 imprisonment ~~imprisoned in the penitentiary~~ may institute a  
12 proceeding under this Article if the person 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;

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; or

23 (3) (blank).

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

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

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

1 not filed, no proceedings under this Article shall be commenced  
2 more than 6 months from the date for filing a certiorari  
3 petition, unless the petitioner alleges facts showing that the  
4 delay was not due to his or her culpable negligence.

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

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

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

1 whether it could otherwise have stated some grounds for relief  
2 under this Article.

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

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

21 (Source: P.A. 100-574, eff. 6-1-18; 101-411, eff. 8-16-19.)

22 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

23 Sec. 122-2.1. (a) Within 90 days after the filing and  
24 docketing of each petition, the court shall examine such  
25 petition and enter an order thereon pursuant to this Section.

1           (1) If the petitioner is under sentence of death and is  
2 without counsel and alleges that he is without means to  
3 procure counsel, he shall state whether or not he wishes  
4 counsel to be appointed to represent him. If appointment of  
5 counsel is so requested, the court shall appoint counsel if  
6 satisfied that the petitioner has no means to procure  
7 counsel.

8           (2) If the petitioner is sentenced to imprisonment or  
9 has served his or her sentence of imprisonment and the  
10 court determines the petition is frivolous or is patently  
11 without merit, it shall dismiss the petition in a written  
12 order, specifying the findings of fact and conclusions of  
13 law it made in reaching its decision. Such order of  
14 dismissal is a final judgment and shall be served upon the  
15 petitioner by certified mail within 10 days of its entry.

16           (b) If the petition is not dismissed pursuant to this  
17 Section, the court shall order the petition to be docketed for  
18 further consideration in accordance with Sections 122-4  
19 through 122-6. If the petitioner is under sentence of death,  
20 the court shall order the petition to be docketed for further  
21 consideration and hearing within one year of the filing of the  
22 petition. Continuances may be granted as the court deems  
23 appropriate.

24           (c) In considering a petition pursuant to this Section, the  
25 court may examine the court file of the proceeding in which the  
26 petitioner was convicted, any action taken by an appellate

1 court in such proceeding and any transcripts of such  
2 proceeding.

3 (Source: P.A. 93-605, eff. 11-19-03.)