



Rep. Mary E. Flowers

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10300HB1015ham001

LRB103 04736 LNS 58571 a

1 AMENDMENT TO HOUSE BILL 1015

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1015 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Court of Claims Act is amended by changing  
5 Section 11 as follows:

6 (705 ILCS 505/11) (from Ch. 37, par. 439.11)

7 Sec. 11. Filing claims.

8 (a) Except as otherwise provided in subsection (b) of this  
9 Section and subsection (4) of Section 24, the claimant shall  
10 in all cases set forth fully in his petition the claim, the  
11 action thereon, if any, on behalf of the State, what persons  
12 are owners thereof or interested therein, when and upon what  
13 consideration such persons became so interested; that no  
14 assignment or transfer of the claim or any part thereof or  
15 interest therein has been made, except as stated in the  
16 petition; that the claimant is justly entitled to the amount

1 therein claimed from the State of Illinois, after allowing all  
2 just credits; and that claimant believes the facts stated in  
3 the petition to be true. The petition shall be verified, as to  
4 statements of facts, by the affidavit of the claimant, his  
5 agent, or attorney.

6 (b) Whenever a person has served a term of imprisonment  
7 and has received a pardon by the Governor stating that such  
8 pardon was issued on the ground of innocence of the crime for  
9 which he or she was imprisoned, the Prisoner Review Board  
10 shall transmit this information to the clerk of the Court of  
11 Claims, together with the claimant's current address. Whenever  
12 a person has served a term of imprisonment or has been  
13 incarcerated as a pretrial detainee and has received a  
14 certificate of innocence from the Circuit Court as provided in  
15 Section 2-702 of the Code of Civil Procedure, the clerk of the  
16 issuing Circuit Court shall transmit this information to the  
17 clerk of the Court of Claims, together with the claimant's  
18 current address. The clerk of the Court of Claims shall  
19 immediately docket the case for consideration by the Court of  
20 Claims, and shall provide notice to the claimant of such  
21 docketing together with all hearing dates and applicable  
22 deadlines. The Court of Claims shall hear the case and render a  
23 decision within 90 days after its docketing.

24 (Source: P.A. 95-970, eff. 9-22-08; 96-328, eff. 8-11-09.)

25 Section 10. The Code of Civil Procedure is amended by

1 changing Section 2-702 as follows:

2 (735 ILCS 5/2-702)

3 Sec. 2-702. Petition for a certificate of innocence that  
4 the petitioner was innocent of all offenses for which he or she  
5 was incarcerated.

6 (a) The General Assembly finds and declares that innocent  
7 persons who have been wrongly charged with or convicted of  
8 crimes in Illinois and subsequently have been incarcerated  
9 prior to trial or imprisoned have been frustrated in seeking  
10 legal redress due to a variety of substantive and technical  
11 obstacles in the law and that such persons should have an  
12 available avenue to obtain a finding of innocence so that they  
13 may obtain relief through a petition in the Court of Claims.  
14 The General Assembly further finds misleading the current  
15 legal nomenclature which compels an innocent person to seek a  
16 pardon for being wrongfully incarcerated. It is the intent of  
17 the General Assembly that the court, in exercising its  
18 discretion as permitted by law regarding the weight and  
19 admissibility of evidence submitted pursuant to this Section,  
20 shall, in the interest of justice, give due consideration to  
21 difficulties of proof caused by the passage of time, the death  
22 or unavailability of witnesses, the destruction of evidence or  
23 other factors not caused by such persons or those acting on  
24 their behalf.

25 (b) Any person criminally prosecuted and incarcerated

1 prior to trial or convicted and subsequently imprisoned for  
2 one or more felonies by the State of Illinois which he or she  
3 did not commit may, under the conditions hereinafter provided,  
4 file a petition for certificate of innocence in the circuit  
5 court of the county in which the person was convicted or  
6 incarcerated prior to trial. The petition shall request a  
7 certificate of innocence finding that the petitioner was  
8 innocent of all offenses for which he or she was incarcerated.

9 (c) In order to present the claim for certificate of  
10 innocence of an unjust conviction and imprisonment or pretrial  
11 incarceration, the petitioner must attach to his or her  
12 petition documentation demonstrating that:

13 (1) he or she has been convicted of one or more  
14 felonies by the State of Illinois and subsequently  
15 sentenced to a term of imprisonment, and has served all or  
16 any part of the sentence, or he or she was incarcerated  
17 prior to trial for 30 days or longer and the case resulted  
18 in a dismissal or acquittal of the charge or charges, but  
19 did not result in a conviction for a lesser included  
20 offense; and

21 (2) if convicted, his or her judgment of conviction  
22 was reversed or vacated, and the indictment or information  
23 dismissed or, if a new trial was ordered, either he or she  
24 was found not guilty at the new trial or he or she was not  
25 retried and the indictment or information dismissed; or  
26 the statute, or application thereof, on which the

1 indictment or information was based violated the  
2 Constitution of the United States or the State of  
3 Illinois; and

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

6 (d) The petition shall state facts in sufficient detail to  
7 permit the court to find that the petitioner is likely to  
8 succeed at trial in proving that the petitioner is innocent of  
9 the offenses charged in the indictment or information or his  
10 or her acts or omissions charged in the indictment or  
11 information did not constitute a felony or misdemeanor against  
12 the State of Illinois, and the petitioner did not by his or her  
13 own conduct voluntarily cause or bring about his or her  
14 conviction. The petition shall be verified by the petitioner.

15 (e) A copy of the petition shall be served on the Attorney  
16 General and the State's Attorney of the county where the  
17 conviction was had. The Attorney General and the State's  
18 Attorney of the county where the conviction was had shall have  
19 the right to intervene as parties.

20 (f) In any hearing seeking a certificate of innocence, the  
21 court may take judicial notice of prior sworn testimony or  
22 evidence admitted in the criminal proceedings related to the  
23 charges or convictions which resulted in the alleged wrongful  
24 incarceration, if the petitioner was either represented by  
25 counsel at such prior proceedings or the right to counsel was  
26 knowingly waived.

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

3 (1) the petitioner was convicted of one or more  
4 felonies by the State of Illinois and subsequently  
5 sentenced to a term of imprisonment, and has served all or  
6 any part of the sentence;

7 (2) (A) the judgment of conviction was reversed or  
8 vacated, and the indictment or information dismissed or,  
9 if a new trial was ordered, either the petitioner was  
10 found not guilty at the new trial or the petitioner was not  
11 retried and the indictment or information dismissed; or

12 (B) the statute, or application thereof, on which the  
13 indictment or information was based violated the  
14 Constitution of the United States or the State of  
15 Illinois;

16 (3) the petitioner is innocent of the offenses charged  
17 in the indictment or information or his or her acts or  
18 omissions charged in the indictment or information did not  
19 constitute a felony or misdemeanor against the State; and

20 (4) the petitioner did not by his or her own conduct  
21 voluntarily cause or bring about his or her conviction.

22 (g-1) If the petitioner was incarcerated prior to trial  
23 for 30 days or longer but not convicted of any of the charged  
24 offenses or a lesser included offense, in order to obtain a  
25 certificate of innocence, the petitioner must prove by a  
26 preponderance of evidence that:

1           (1) the petitioner was incarcerated prior to trial for  
2           30 days or longer in a prosecution that resulted in an  
3           acquittal or dismissal;

4           (2) the prosecution did not result in a conviction of  
5           a lesser included offense;

6           (3) the petitioner is innocent of the charges on which  
7           the petitioner's pretrial detention was based, or the  
8           charges did not constitute a felony or misdemeanor; and

9           (4) the petitioner did not by his or her own conduct  
10           voluntarily cause or bring about the charges that resulted  
11           in his or her pretrial incarceration.

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

1 defendant obliterated from the official index requested to be  
2 kept by the circuit court clerk under Section 16 of the Clerks  
3 of Courts Act in connection with the arrest and conviction for  
4 the offense but the order shall not affect any index issued by  
5 the circuit court clerk before the entry of the order. The  
6 court shall enter the expungement order regardless of whether  
7 the petitioner has prior criminal convictions.

8 All records sealed by the Illinois State Police may be  
9 disseminated by the Department only as required by law or to  
10 the arresting authority, the State's Attorney, the court upon  
11 a later arrest for the same or similar offense, or for the  
12 purpose of sentencing for any subsequent felony. Upon  
13 conviction for any subsequent offense, the Department of  
14 Corrections shall have access to all sealed records of the  
15 Department pertaining to that individual.

16 Upon entry of the order of expungement, the clerk of the  
17 circuit court shall promptly mail a copy of the order to the  
18 person whose records were expunged and sealed.

19 (i) Any person seeking a certificate of innocence under  
20 this Section based on the dismissal of an indictment or  
21 information or acquittal that occurred before the effective  
22 date of this amendatory Act of the 95th General Assembly shall  
23 file his or her petition within 2 years after the effective  
24 date of this amendatory Act of the 95th General Assembly. Any  
25 person seeking a certificate of innocence under this Section  
26 based on the dismissal of an indictment or information or



1 acquittal that occurred on or after the effective date of this  
2 amendatory Act of the 95th General Assembly shall file his or  
3 her petition within 2 years after the dismissal.

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

8 (Source: P.A. 102-538, eff. 8-20-21.)

9 Section 99. Effective date. This Act takes effect upon  
10 becoming law."