

**SB2737**



**95TH GENERAL ASSEMBLY**

**State of Illinois**

**2007 and 2008**

**SB2737**

Introduced 2/15/2008, by Sen. A. J. Wilhelmi

**SYNOPSIS AS INTRODUCED:**

725 ILCS 5/122-1

from Ch. 38, par. 122-1

Amends the Code of Criminal Procedure of 1963. Makes a technical change in a Section concerning filing a petition for post-conviction relief.

LRB095 19896 RLC 46310 b

**A BILL FOR**

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 ~~the~~ penitentiary may  
9 institute a proceeding under this Article if the person asserts  
10 that:

11 (1) in the proceedings which resulted in his or her  
12 conviction 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) the death penalty was imposed and there is newly  
16 discovered evidence not available to the person at the time  
17 of the proceeding that resulted in his or her conviction  
18 that establishes a substantial basis to believe that the  
19 defendant is actually innocent by clear and convincing  
20 evidence.

21 (a-5) A proceeding under paragraph (2) of subsection (a)  
22 may be commenced within a reasonable period of time after the  
23 person's conviction notwithstanding any other provisions of

1 this Article. In such a proceeding regarding actual innocence,  
2 if the court determines the petition is frivolous or is  
3 patently without merit, it shall dismiss the petition in a  
4 written order, specifying the findings of fact and conclusions  
5 of law it made in reaching its decision. Such order of  
6 dismissal is a final judgment and shall be served upon the  
7 petitioner by certified mail within 10 days of its entry.

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

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

1 delay was not due to his or her culpable negligence.

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

16 This limitation does not apply to a petition advancing a  
17 claim of actual innocence.

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

26 (e) A proceeding under this Article may not be commenced on

1 behalf of a defendant who has been sentenced to death without  
2 the written consent of the defendant, unless the defendant,  
3 because of a mental or physical condition, is incapable of  
4 asserting his or her own claim.

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

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