

1 AN ACT in relation to 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 who
9 asserts that in the proceedings which resulted in his or her
10 conviction there was a substantial denial of his or her
11 rights under the Constitution of the United States or of the
12 State of Illinois or both may institute a proceeding under
13 this Article.

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

23 (c) No proceedings under this Article shall be commenced
24 more than 6 months after the denial of a petition for leave
25 to appeal or the date for filing such a petition if none is
26 filed or more than 45 days after the defendant files his or
27 her brief in the appeal of the sentence before the Illinois
28 Supreme Court (or more than 45 days after the deadline for
29 the filing of the defendant's brief with the Illinois Supreme
30 Court if no brief is filed) or 3 years from the date of
31 conviction, whichever is sooner, unless the petitioner

1 alleges facts showing that the delay was not due to his or
2 her culpable negligence.

3 (d) A person seeking relief by filing a petition under
4 this Section must specify in the petition or its heading that
5 it is filed under this Section. A trial court that has
6 received a petition complaining of a conviction or sentence
7 that fails to specify in the petition or its heading that it
8 is filed under this Section need not evaluate the petition to
9 determine whether it could otherwise have stated some grounds
10 for relief under this Article.

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

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

29 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;
30 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)