



Rep. Constance A. Howard

Filed: 11/30/2010

09600SB0389ham002

LRB096 06420 RLC 44254 a

1 AMENDMENT TO SENATE BILL 389

2 AMENDMENT NO. _____. Amend Senate Bill 389, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Department of Human Services (Mental Health
6 and Developmental Disabilities) Law of the Civil
7 Administrative Code of Illinois is amended by adding Section
8 1710-125 as follows:

9 (20 ILCS 1710/1710-125 new)

10 Sec. 1710-125. Re-entry services program. The Department
11 of Human Services shall establish a re-entry services program
12 to assist persons wrongfully imprisoned, as defined in Section
13 3-1-2 of the Unified Code of Corrections, in obtaining mental
14 health services, including services for post-traumatic stress,
15 at an agreed-upon mental health facility at no charge. The
16 Department of Human Services shall promulgate rules, no later

1 than July 1, 2011, establishing the eligibility of wrongfully
2 imprisoned persons for the Department's re-entry services
3 program.

4 Section 10. The Unified Code of Corrections is amended by
5 changing Sections 3-1-2 and 3-14-1 as follows:

6 (730 ILCS 5/3-1-2) (from Ch. 38, par. 1003-1-2)

7 Sec. 3-1-2. Definitions.

8 (a) "Chief Administrative Officer" means the person
9 designated by the Director to exercise the powers and duties of
10 the Department of Corrections in regard to committed persons
11 within a correctional institution or facility, and includes the
12 superintendent of any juvenile institution or facility.

13 (a-5) "Sex offense" for the purposes of paragraph (16) of
14 subsection (a) of Section 3-3-7, paragraph (10) of subsection
15 (a) of Section 5-6-3, and paragraph (18) of subsection (c) of
16 Section 5-6-3.1 only means:

17 (i) A violation of any of the following Sections of the
18 Criminal Code of 1961: 10-7 (aiding or abetting child
19 abduction under Section 10-5(b)(10)), 10-5(b)(10) (child
20 luring), 11-6 (indecent solicitation of a child), 11-6.5
21 (indecent solicitation of an adult), 11-15.1 (soliciting
22 for a juvenile prostitute), 11-17.1 (keeping a place of
23 juvenile prostitution), 11-18.1 (patronizing a juvenile
24 prostitute), 11-19.1 (juvenile pimping), 11-19.2

1 (exploitation of a child), 11-20.1 (child pornography),
2 12-14.1 (predatory criminal sexual assault of a child), or
3 12-33 (ritualized abuse of a child). An attempt to commit
4 any of these offenses.

5 (ii) A violation of any of the following Sections of
6 the Criminal Code of 1961: 12-13 (criminal sexual assault),
7 12-14 (aggravated criminal sexual assault), 12-16
8 (aggravated criminal sexual abuse), and subsection (a) of
9 Section 12-15 (criminal sexual abuse). An attempt to commit
10 any of these offenses.

11 (iii) A violation of any of the following Sections of
12 the Criminal Code of 1961 when the defendant is not a
13 parent of the victim:

14 10-1 (kidnapping),
15 10-2 (aggravated kidnapping),
16 10-3 (unlawful restraint),
17 10-3.1 (aggravated unlawful restraint).

18 An attempt to commit any of these offenses.

19 (iv) A violation of any former law of this State
20 substantially equivalent to any offense listed in this
21 subsection (a-5).

22 An offense violating federal law or the law of another
23 state that is substantially equivalent to any offense listed in
24 this subsection (a-5) shall constitute a sex offense for the
25 purpose of this subsection (a-5). A finding or adjudication as
26 a sexually dangerous person under any federal law or law of

1 another state that is substantially equivalent to the Sexually
2 Dangerous Persons Act shall constitute an adjudication for a
3 sex offense for the purposes of this subsection (a-5).

4 (b) "Commitment" means a judicially determined placement
5 in the custody of the Department of Corrections on the basis of
6 delinquency or conviction.

7 (c) "Committed Person" is a person committed to the
8 Department, however a committed person shall not be considered
9 to be an employee of the Department of Corrections for any
10 purpose, including eligibility for a pension, benefits, or any
11 other compensation or rights or privileges which may be
12 provided to employees of the Department.

13 (c-5) "Computer scrub software" means any third-party
14 added software, designed to delete information from the
15 computer unit, the hard drive, or other software, which would
16 eliminate and prevent discovery of browser activity, including
17 but not limited to Internet history, address bar or bars, cache
18 or caches, and/or cookies, and which would over-write files in
19 a way so as to make previous computer activity, including but
20 not limited to website access, more difficult to discover.

21 (d) "Correctional Institution or Facility" means any
22 building or part of a building where committed persons are kept
23 in a secured manner.

24 (e) In the case of functions performed before the effective
25 date of this amendatory Act of the 94th General Assembly,
26 "Department" means the Department of Corrections of this State.

1 In the case of functions performed on or after the effective
2 date of this amendatory Act of the 94th General Assembly,
3 "Department" has the meaning ascribed to it in subsection
4 (f-5).

5 (f) In the case of functions performed before the effective
6 date of this amendatory Act of the 94th General Assembly,
7 "Director" means the Director of the Department of Corrections.
8 In the case of functions performed on or after the effective
9 date of this amendatory Act of the 94th General Assembly,
10 "Director" has the meaning ascribed to it in subsection (f-5).

11 (f-5) In the case of functions performed on or after the
12 effective date of this amendatory Act of the 94th General
13 Assembly, references to "Department" or "Director" refer to
14 either the Department of Corrections or the Director of
15 Corrections or to the Department of Juvenile Justice or the
16 Director of Juvenile Justice unless the context is specific to
17 the Department of Juvenile Justice or the Director of Juvenile
18 Justice.

19 (g) "Discharge" means the final termination of a commitment
20 to the Department of Corrections.

21 (h) "Discipline" means the rules and regulations for the
22 maintenance of order and the protection of persons and property
23 within the institutions and facilities of the Department and
24 their enforcement.

25 (i) "Escape" means the intentional and unauthorized
26 absence of a committed person from the custody of the

1 Department.

2 (j) "Furlough" means an authorized leave of absence from
3 the Department of Corrections for a designated purpose and
4 period of time.

5 (k) "Parole" means the conditional and revocable release of
6 a committed person under the supervision of a parole officer.

7 (l) "Prisoner Review Board" means the Board established in
8 Section 3-3-1(a), independent of the Department, to review
9 rules and regulations with respect to good time credits, to
10 hear charges brought by the Department against certain
11 prisoners alleged to have violated Department rules with
12 respect to good time credits, to set release dates for certain
13 prisoners sentenced under the law in effect prior to the
14 effective date of this Amendatory Act of 1977, to hear requests
15 and make recommendations to the Governor with respect to
16 pardon, reprieve or commutation, to set conditions for parole
17 and mandatory supervised release and determine whether
18 violations of those conditions justify revocation of parole or
19 release, and to assume all other functions previously exercised
20 by the Illinois Parole and Pardon Board.

21 (m) Whenever medical treatment, service, counseling, or
22 care is referred to in this Unified Code of Corrections, such
23 term may be construed by the Department or Court, within its
24 discretion, to include treatment, service or counseling by a
25 Christian Science practitioner or nursing care appropriate
26 therewith whenever request therefor is made by a person subject

1 to the provisions of this Act.

2 (n) "Victim" shall have the meaning ascribed to it in
3 subsection (a) of Section 3 of the Bill of Rights for Victims
4 and Witnesses of Violent Crime Act.

5 (o) "Wrongfully imprisoned person" means a person:

6 (1) who was convicted of one or more felonies by
7 the State of Illinois and subsequently sentenced to a
8 term of imprisonment, and has served all or any part of
9 the sentence;

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

19 (3) who is innocent of the offenses charged in the
20 indictment or information or his or her acts or
21 omissions charged in the indictment or information did
22 not constitute a felony or misdemeanor against the
23 State; and

24 (4) who did not by his or her own conduct
25 voluntarily cause or bring about his or her conviction.

26 (Source: P.A. 96-362, eff. 1-1-10; 96-710, eff. 1-1-10;

1 96-1000, eff. 7-2-10.)

2 (730 ILCS 5/3-14-1) (from Ch. 38, par. 1003-14-1)

3 Sec. 3-14-1. Release from the Institution.

4 (a) Upon release of a person on parole, mandatory release,
5 final discharge or pardon the Department shall return all
6 property held for him, provide him with suitable clothing and
7 procure necessary transportation for him to his designated
8 place of residence and employment. It may provide such person
9 with a grant of money for travel and expenses which may be paid
10 in installments. The amount of the money grant shall be
11 determined by the Department.

12 (a-1) The Department shall, before a wrongfully imprisoned
13 person, as defined in Section 3-1-2 of this Code, is discharged
14 from the Department, provide him or her with any documents
15 necessary after discharge, including an identification card
16 under subsection (e) of this Section.

17 (a-2) The Department of Corrections may establish and
18 maintain, in any institution it administers, revolving funds to
19 be known as "Travel and Allowances Revolving Funds". These
20 revolving funds shall be used for advancing travel and expense
21 allowances to committed, paroled, and discharged prisoners.
22 The moneys paid into such revolving funds shall be from
23 appropriations to the Department for Committed, Paroled, and
24 Discharged Prisoners.

25 (b) (Blank).

1 (c) Except as otherwise provided in this Code, the
2 Department shall establish procedures to provide written
3 notification of any release of any person who has been
4 convicted of a felony to the State's Attorney and sheriff of
5 the county from which the offender was committed, and the
6 State's Attorney and sheriff of the county into which the
7 offender is to be paroled or released. Except as otherwise
8 provided in this Code, the Department shall establish
9 procedures to provide written notification to the proper law
10 enforcement agency for any municipality of any release of any
11 person who has been convicted of a felony if the arrest of the
12 offender or the commission of the offense took place in the
13 municipality, if the offender is to be paroled or released into
14 the municipality, or if the offender resided in the
15 municipality at the time of the commission of the offense. If a
16 person convicted of a felony who is in the custody of the
17 Department of Corrections or on parole or mandatory supervised
18 release informs the Department that he or she has resided,
19 resides, or will reside at an address that is a housing
20 facility owned, managed, operated, or leased by a public
21 housing agency, the Department must send written notification
22 of that information to the public housing agency that owns,
23 manages, operates, or leases the housing facility. The written
24 notification shall, when possible, be given at least 14 days
25 before release of the person from custody, or as soon
26 thereafter as possible.

1 (c-1) (Blank).

2 (c-5) If a person on parole or mandatory supervised release
3 becomes a resident of a facility licensed or regulated by the
4 Department of Public Health, the Illinois Department of Public
5 Aid, or the Illinois Department of Human Services, the
6 Department of Corrections shall provide copies of the following
7 information to the appropriate licensing or regulating
8 Department and the licensed or regulated facility where the
9 person becomes a resident:

10 (1) The mittimus and any pre-sentence investigation
11 reports.

12 (2) The social evaluation prepared pursuant to Section
13 3-8-2.

14 (3) Any pre-release evaluation conducted pursuant to
15 subsection (j) of Section 3-6-2.

16 (4) Reports of disciplinary infractions and
17 dispositions.

18 (5) Any parole plan, including orders issued by the
19 Prisoner Review Board, and any violation reports and
20 dispositions.

21 (6) The name and contact information for the assigned
22 parole agent and parole supervisor.

23 This information shall be provided within 3 days of the
24 person becoming a resident of the facility.

25 (c-10) If a person on parole or mandatory supervised
26 release becomes a resident of a facility licensed or regulated

1 by the Department of Public Health, the Illinois Department of
2 Public Aid, or the Illinois Department of Human Services, the
3 Department of Corrections shall provide written notification
4 of such residence to the following:

5 (1) The Prisoner Review Board.

6 (2) The chief of police and sheriff in the municipality
7 and county in which the licensed facility is located.

8 The notification shall be provided within 3 days of the
9 person becoming a resident of the facility.

10 (d) Upon the release of a committed person on parole,
11 mandatory supervised release, final discharge or pardon, the
12 Department shall provide such person with information
13 concerning programs and services of the Illinois Department of
14 Public Health to ascertain whether such person has been exposed
15 to the human immunodeficiency virus (HIV) or any identified
16 causative agent of Acquired Immunodeficiency Syndrome (AIDS).

17 (e) Upon the release of a committed person on parole,
18 mandatory supervised release, final discharge, ~~or~~ pardon, or
19 who has been wrongfully imprisoned, the Department shall
20 provide the person who has met the criteria established by the
21 Department with an identification card identifying the person
22 as being on parole, mandatory supervised release, final
23 discharge, ~~or~~ pardon, or wrongfully imprisoned, as the case may
24 be. The Department, in consultation with the Office of the
25 Secretary of State, shall prescribe the form of the
26 identification card, which may be similar to the form of the

1 standard Illinois Identification Card. The Department shall
2 inform the committed person that he or she may present the
3 identification card to the Office of the Secretary of State
4 upon application for a standard Illinois Identification Card in
5 accordance with the Illinois Identification Card Act. The
6 Department shall require the committed person to pay a \$1 fee
7 for the identification card.

8 For purposes of a committed person receiving an
9 identification card issued by the Department under this
10 subsection, the Department shall establish criteria that the
11 committed person must meet before the card is issued. It is the
12 sole responsibility of the committed person requesting the
13 identification card issued by the Department to meet the
14 established criteria. The person's failure to meet the criteria
15 is sufficient reason to deny the committed person the
16 identification card. An identification card issued by the
17 Department under this subsection shall be valid for a period of
18 time not to exceed 30 calendar days from the date the card is
19 issued. The Department shall not be held civilly or criminally
20 liable to anyone because of any act of any person utilizing a
21 card issued by the Department under this subsection.

22 The Department shall adopt rules governing the issuance of
23 identification cards to committed persons being released on
24 parole, mandatory supervised release, final discharge, or
25 pardon.

26 (Source: P.A. 94-163, eff. 7-11-05.)

1 Section 15. The Code of Civil Procedure is amended by
2 changing Section 2-702 as follows:

3 (735 ILCS 5/2-702)

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

7 (a) The General Assembly finds and declares that innocent
8 persons who have been wrongly convicted of crimes in Illinois
9 and subsequently 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 legal
15 nomenclature which compels an innocent person to seek a pardon
16 for being wrongfully incarcerated. It is the intent of the
17 General Assembly that the court, in exercising its discretion
18 as permitted by law regarding the weight and admissibility of
19 evidence submitted pursuant to this Section, shall, in the
20 interest of justice, give due consideration to difficulties of
21 proof caused by the passage of time, the death or
22 unavailability of witnesses, the destruction of evidence or
23 other factors not caused by such persons or those acting on
24 their behalf.

1 (b) Any person 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. The
6 petition shall request a certificate of innocence finding that
7 the petitioner was innocent of all offenses for which he or she
8 was incarcerated.

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

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

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

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

10 (e) A copy of the petition shall be served on the Attorney
11 General and the State's Attorney of the county where the
12 conviction was had. The Attorney General and the State's
13 Attorney of the county where the conviction was had shall have
14 the right to intervene as parties.

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

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

24 (1) the petitioner was convicted of one or more
25 felonies by the State of Illinois and subsequently
26 sentenced to a term of imprisonment, and has served all or

1 any part of the sentence;

2 (2) (A) the judgment of conviction was reversed or
3 vacated, and the indictment or information dismissed or, if
4 a new trial was ordered, either the petitioner was found
5 not guilty at the new trial or the petitioner was not
6 retried and the indictment or information dismissed; or (B)
7 the statute, or application thereof, on which the
8 indictment or information was based violated the
9 Constitution of the United States or the State of Illinois;

10 (3) the petitioner is innocent of the offenses charged
11 in the indictment or information or his or her acts or
12 omissions charged in the indictment or information did not
13 constitute a felony or misdemeanor against the State; and

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

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

1 arresting authority and order that the records of the clerk of
2 the circuit court and Department of State Police be sealed
3 until further order of the court upon good cause shown or as
4 otherwise provided herein, and the name of the defendant
5 obliterated from the official index requested to be kept by the
6 circuit court clerk under Section 16 of the Clerks of Courts
7 Act in connection with the arrest and conviction for the
8 offense but the order shall not affect any index issued by the
9 circuit court clerk before the entry of the order.

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

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

25 (Source: P.A. 95-970, eff. 9-22-08.)

1 Section 99. Effective date. This Act takes effect July 1,
2 2011.".