



Rep. Scott Drury

Filed: 3/22/2013

09800HB2961ham001

LRB098 09632 RLC 43768 a

1 AMENDMENT TO HOUSE BILL 2961

2 AMENDMENT NO. _____. Amend House Bill 2961 by replacing
3 everything after the enacting clause with the following:

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 convicted or adjudicated delinquent of an
9 offense for which either a sentence of imprisonment was imposed
10 or another form of detention resulted ~~imprisoned in the~~
11 ~~penitentiary~~ may institute a proceeding under this Article if
12 the person asserts that:

13 (1) in the proceedings which resulted in his or her
14 conviction or delinquency adjudication there was a
15 substantial denial of his or her rights under the
16 Constitution of the United States or of the State of

1 Illinois or both; or

2 (2) ~~the death penalty was imposed and there is newly~~
3 ~~discovered evidence not available to the person at the time~~
4 ~~of the proceeding that resulted in his or her conviction~~
5 that establishes a substantial basis to believe that the
6 defendant is actually innocent by clear and convincing
7 evidence.

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

19 (b) The proceeding shall be commenced by filing with the
20 clerk of the court in which the conviction or delinquency
21 adjudication took place a petition (together with a copy
22 thereof) verified by affidavit. Petitioner shall also serve
23 another copy upon the State's Attorney by any of the methods
24 provided in Rule 7 of the Supreme Court. The clerk shall docket
25 the petition for consideration by the court pursuant to Section
26 122-2.1 upon his or her receipt thereof and bring the same

1 promptly to the attention of the court.

2 (c) ~~Except as otherwise provided in subsection (a-5), if~~
3 ~~the petitioner is under sentence of death and a petition for~~
4 ~~writ of certiorari is filed, no proceedings under this Article~~
5 ~~shall be commenced more than 6 months after the conclusion of~~
6 ~~proceedings in the United States Supreme Court, unless the~~
7 ~~petitioner alleges facts showing that the delay was not due to~~
8 ~~his or her culpable negligence. If a petition for certiorari is~~
9 ~~not filed, no proceedings under this Article shall be commenced~~
10 ~~more than 6 months from the date for filing a certiorari~~
11 ~~petition, unless the petitioner alleges facts showing that the~~
12 ~~delay was not due to his or her culpable negligence.~~

13 Except as otherwise provided in subsection (a-5) ~~When a~~
14 ~~defendant has a sentence other than death, no proceedings under~~
15 ~~this Article shall be commenced more than 6 months after the~~
16 ~~conclusion of proceedings in the United States Supreme Court,~~
17 ~~unless the petitioner alleges facts showing that the delay was~~
18 ~~not due to his or her culpable negligence. If a petition for~~
19 ~~certiorari is not filed, no proceedings under this Article~~
20 ~~shall be commenced more than 6 months from the date for filing~~
21 ~~a certiorari petition, unless the petitioner alleges facts~~
22 ~~showing that the delay was not due to his or her culpable~~
23 ~~negligence. If a defendant does not file a direct appeal, the~~
24 ~~post-conviction petition shall be filed no later than 3 years~~
25 ~~from the date of conviction or delinquency adjudication, unless~~
26 ~~the petitioner alleges facts showing that the delay was not due~~

1 to his or her culpable negligence.

2 This limitation does not apply to a petition advancing a
3 claim of actual innocence.

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

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

17 (f) Only one petition may be filed by a petitioner under
18 this Article without leave of the court. Leave of court may be
19 granted ~~only~~ if a petitioner demonstrates:

20 (1) cause for his or her failure to bring the claim in
21 his or her initial post-conviction proceedings and
22 prejudice results from that failure; or

23 (2) that there has been a fundamental miscarriage of
24 justice.

25 For purposes of this subsection (f):

26 (A) ~~(1)~~ a petitioner ~~prisoner~~ shows cause by

1 identifying an objective factor that impeded his or her
2 ability to raise a specific claim during his or her initial
3 post-conviction proceedings; ~~and~~

4 (B) ~~(2)~~ a petitioner ~~prisoner~~ shows prejudice by
5 demonstrating that the claim not raised during his or her
6 initial post-conviction proceedings so infected the trial
7 that the resulting conviction or sentence violated due
8 process; and ~~and~~

9 (C) a petitioner demonstrates a miscarriage of justice
10 by showing there is newly discovered evidence that
11 establishes that it is more likely than not that the
12 petitioner is actually innocent by clear and convincing
13 evidence.

14
15 (Source: P.A. 93-493, eff. 1-1-04; 93-605, eff. 11-19-03;
16 93-972, eff. 8-20-04.)

17 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

18 Sec. 122-2.1. (a) Within 90 days after the filing and
19 docketing of each petition, the court shall examine the ~~such~~
20 petition and enter an order thereon under ~~pursuant to~~ this
21 Section.

22 (1) If the petitioner is under sentence of death and is
23 without counsel and alleges that he is without means to
24 procure counsel, he shall state whether or not he wishes
25 counsel to be appointed to represent him. If appointment of

1 counsel is so requested, the court shall appoint counsel if
2 satisfied that the petitioner has no means to procure
3 counsel.

4 (2) If ~~the petitioner is sentenced to imprisonment and~~
5 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
8 conclusions of law it made in reaching its decision. This
9 ~~Such~~ order of dismissal is a final judgment and shall be
10 served upon the petitioner by certified mail within 10 days
11 of its entry.

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

20 (c) In considering a petition under ~~pursuant to~~ this
21 Section, the court may examine the court file of the proceeding
22 in which the petitioner was convicted, any action taken by an
23 appellate court in that ~~such~~ proceeding and any transcripts of
24 that ~~such~~ proceeding.

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