

# SB3502



## 101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3502

Introduced 2/14/2020, by Sen. Bill Cunningham

### SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-702

Amends the Code of Civil Procedure. Allows any party to intervene and present evidence and argument in opposition to a person seeking a certificate of innocence.

LRB101 19792 LNS 69303 b

A BILL FOR

1 AN ACT concerning civil 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 Civil Procedure is amended by  
5 changing Section 2-702 as follows:

6 (735 ILCS 5/2-702)

7 Sec. 2-702. Petition for a certificate of innocence that  
8 the petitioner was innocent of all offenses for which he or she  
9 was incarcerated.

10 (a) The General Assembly finds and declares that innocent  
11 persons who have been wrongly convicted of crimes in Illinois  
12 and subsequently imprisoned have been frustrated in seeking  
13 legal redress due to a variety of substantive and technical  
14 obstacles in the law and that such persons should have an  
15 available avenue to obtain a finding of innocence so that they  
16 may obtain relief through a petition in the Court of Claims.  
17 The General Assembly further finds misleading the current legal  
18 nomenclature which compels an innocent person to seek a pardon  
19 for being wrongfully incarcerated. It is the intent of the  
20 General Assembly that the court, in exercising its discretion  
21 as permitted by law regarding the weight and admissibility of  
22 evidence submitted pursuant to this Section, shall, in the  
23 interest of justice, give due consideration to difficulties of

1 proof caused by the passage of time, the death or  
2 unavailability of witnesses, the destruction of evidence or  
3 other factors not caused by such persons or those acting on  
4 their behalf.

5 (b) Any person convicted and subsequently imprisoned for  
6 one or more felonies by the State of Illinois which he or she  
7 did not commit may, under the conditions hereinafter provided,  
8 file a petition for certificate of innocence in the circuit  
9 court of the county in which the person was convicted. The  
10 petition shall request a certificate of innocence finding that  
11 the petitioner was innocent of all offenses for which he or she  
12 was incarcerated.

13 (c) In order to present the claim for certificate of  
14 innocence of an unjust conviction and imprisonment, the  
15 petitioner must attach to his or her petition documentation  
16 demonstrating that:

17 (1) he or she has been convicted of one or more  
18 felonies by the State of Illinois and subsequently  
19 sentenced to a term of imprisonment, and has served all or  
20 any part of the sentence; and

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

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

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

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

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

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

26 (g) In order to obtain a certificate of innocence the

1 petitioner must prove by a preponderance of evidence that:

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

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

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

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

20 (h) If the court finds that the petitioner is entitled to a  
21 judgment, it shall enter a certificate of innocence finding  
22 that the petitioner was innocent of all offenses for which he  
23 or she was incarcerated. Upon entry of the certificate of  
24 innocence or pardon from the Governor stating that such pardon  
25 was issued on the ground of innocence of the crime for which he  
26 or she was imprisoned, (1) the clerk of the court shall

1 transmit a copy of the certificate of innocence to the clerk of  
2 the Court of Claims, together with the claimant's current  
3 address; and (2) the court shall enter an order expunging the  
4 record of arrest from the official records of the arresting  
5 authority and order that the records of the clerk of the  
6 circuit court and Department of State Police be sealed until  
7 further order of the court upon good cause shown or as  
8 otherwise provided herein, and the name of the defendant  
9 obliterated from the official index requested to be kept by the  
10 circuit court clerk under Section 16 of the Clerks of Courts  
11 Act in connection with the arrest and conviction for the  
12 offense but the order shall not affect any index issued by the  
13 circuit court clerk before the entry of the order. The court  
14 shall enter the expungement order regardless of whether the  
15 petitioner has prior criminal convictions.

16 All records sealed by the Department of State Police may be  
17 disseminated by the Department only as required by law or to  
18 the arresting authority, the State's Attorney, the court upon a  
19 later arrest for the same or similar offense, or for the  
20 purpose of sentencing for any subsequent felony. Upon  
21 conviction for any subsequent offense, the Department of  
22 Corrections shall have access to all sealed records of the  
23 Department pertaining to that individual.

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

1           (i) Any person seeking a certificate of innocence under  
2 this Section based on the dismissal of an indictment or  
3 information or acquittal that occurred before the effective  
4 date of this amendatory Act of the 95th General Assembly shall  
5 file his or her petition within 2 years after the effective  
6 date of this amendatory Act of the 95th General Assembly. Any  
7 person seeking a certificate of innocence under this Section  
8 based on the dismissal of an indictment or information or  
9 acquittal that occurred on or after the effective date of this  
10 amendatory Act of the 95th General Assembly shall file his or  
11 her petition within 2 years after the dismissal.

12           (j) The decision to grant or deny a certificate of  
13 innocence shall be binding only with respect to claims filed in  
14 the Court of Claims and shall not have a res judicata effect on  
15 any other proceedings. Any party, including, but not limited  
16 to, the State's Attorney of the county with jurisdiction and  
17 the municipality, county, or agency of arrest, may intervene  
18 and present evidence and argument in opposition to the person  
19 seeking a certificate of innocence under this Section.

20           (Source: P.A. 98-133, eff. 1-1-14.)