

HB0043



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB0043

Introduced 1/12/2023, by Rep. La Shawn K. Ford

SYNOPSIS AS INTRODUCED:

| | |
|--------------------|---------------------------|
| 725 ILCS 5/122-1 | from Ch. 38, par. 122-1 |
| 725 ILCS 5/122-2.1 | from Ch. 38, par. 122-2.1 |

Amends the Code of Criminal Procedure of 1963. Provides that a person who has been convicted of an offense and sentenced to a term of imprisonment for a felony or misdemeanor and who is serving or has served his or her sentence of imprisonment (rather than imprisoned in the penitentiary) may institute a proceeding under the Post-Conviction Hearing Article of the Code.

LRB103 03519 RLC 48525 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 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 who has been convicted of an offense and
9 sentenced to a term of imprisonment for a felony or
10 misdemeanor and who is serving or has served his or her
11 sentence of imprisonment ~~imprisoned in the penitentiary~~ may
12 institute a proceeding under this Article if the person
13 asserts that:

14 (1) in the proceedings which resulted in his or her
15 conviction there was a substantial denial of his or her
16 rights under the Constitution of the United States or of
17 the State of Illinois or both;

18 (2) the death penalty was imposed and there is newly
19 discovered evidence not available to the person at the
20 time of the proceeding that resulted in his or her
21 conviction that establishes a substantial basis to believe
22 that the defendant is actually innocent by clear and
23 convincing evidence; or

1 (3) (blank).

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

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

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

1 his or her culpable negligence. If a petition for certiorari
2 is not filed, no proceedings under this Article shall be
3 commenced more than 6 months from the date for filing a
4 certiorari petition, unless the petitioner alleges facts
5 showing that the delay was not due to his or her culpable
6 negligence.

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

21 This limitation does not apply to a petition advancing a
22 claim of actual innocence.

23 (d) A person seeking relief by filing a petition under
24 this Section must specify in the petition or its heading that
25 it is filed under this Section. A trial court that has received
26 a petition complaining of a conviction or sentence that fails

1 to specify in the petition or its heading that it is filed
2 under this Section need not evaluate the petition to determine
3 whether it could otherwise have stated some grounds for relief
4 under this Article.

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

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

23 (Source: P.A. 101-411, eff. 8-16-19; 102-639, eff. 8-27-21.)

24 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

25 Sec. 122-2.1. (a) Within 90 days after the filing and

1 docketing of each petition, the court shall examine such
2 petition and enter an order thereon pursuant to this Section.

3 (1) If the petitioner is under sentence of death and
4 is without counsel and alleges that he is without means to
5 procure counsel, he shall state whether or not he wishes
6 counsel to be appointed to represent him. If appointment
7 of counsel is so requested, the court shall appoint
8 counsel if satisfied that the petitioner has no means to
9 procure counsel.

10 (2) If the petitioner is sentenced to imprisonment or
11 has served his or her sentence of imprisonment and the
12 court determines the petition is frivolous or is patently
13 without merit, it shall dismiss the petition in a written
14 order, specifying the findings of fact and conclusions of
15 law it made in reaching its decision. Such order of
16 dismissal is a final judgment and shall be served upon the
17 petitioner by certified mail within 10 days of its entry.

18 (b) If the petition is not dismissed pursuant to this
19 Section, the court shall order the petition to be docketed for
20 further consideration in accordance with Sections 122-4
21 through 122-6. If the petitioner is under sentence of death,
22 the court shall order the petition to be docketed for further
23 consideration and hearing within one year of the filing of the
24 petition. Continuances may be granted as the court deems
25 appropriate.

26 (c) In considering a petition pursuant to this Section,

1 the court may examine the court file of the proceeding in which
2 the petitioner was convicted, any action taken by an appellate
3 court in such proceeding and any transcripts of such
4 proceeding.

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