

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 may
9 institute a proceeding under this Article if the person who
10 asserts that:

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

15 (2) the death penalty was imposed and there is
16 newly discovered evidence not available to the person at
17 the time of the proceeding that resulted in his or her
18 conviction that establishes the person's innocence.

19 (a-5) A proceeding under paragraph (2) of subsection (a)
20 may be commenced at any time after the person's conviction
21 notwithstanding any other provisions of ~~may-institute-a~~
22 ~~proceeding-under~~ this Article. In such a proceeding regarding
23 actual innocence, if the court determines the petition is
24 frivolous or is patently without merit, it shall dismiss the
25 petition in a written order, specifying the findings of fact
26 and conclusions of law it made in reaching its decision.
27 Such order of dismissal is a final judgment and shall be
28 served upon the petitioner by certified mail within 10 days
29 of its entry.

30 (b) The proceeding shall be commenced by filing with the
31 clerk of the court in which the conviction took place a

1 petition (together with a copy thereof) verified by
2 affidavit. Petitioner shall also serve another copy upon the
3 State's Attorney by any of the methods provided in Rule 7 of
4 the Supreme Court. The clerk shall docket the petition for
5 consideration by the court pursuant to Section 122-2.1 upon
6 his or her receipt thereof and bring the same promptly to the
7 attention of the court.

8 (c) Except as otherwise provided in subsection (a-5), if
9 the petitioner is under sentence of death, no proceedings
10 under this Article shall be commenced more than 6 months
11 after the issuance of the mandate by the Supreme Court
12 following affirmance of the defendant's direct appeal of the
13 trial court verdict. In all other cases, no proceedings
14 under this Article shall be commenced more than 6 months
15 after the denial of a petition for leave to appeal or the
16 date for filing such a petition if none is filed or more than
17 45 days after the defendant files his or her brief in the
18 appeal of the sentence before the Illinois Supreme Court (or
19 more than 45 days after the deadline for the filing of the
20 defendant's brief with the Illinois Supreme Court if no brief
21 is filed) or 3 years from the date of conviction, whichever
22 is sooner, unless the petitioner alleges facts showing that
23 the delay was not due to his or her culpable negligence.

24 (d) A person seeking relief by filing a petition under
25 this Section must specify in the petition or its heading that
26 it is filed under this Section. A trial court that has
27 received a petition complaining of a conviction or sentence
28 that fails to specify in the petition or its heading that it
29 is filed under this Section need not evaluate the petition to
30 determine whether it could otherwise have stated some grounds
31 for relief under this Article.

32 (e) A proceeding under this Article may not be commenced
33 on behalf of a defendant who has been sentenced to death
34 without the written consent of the defendant, unless the

1 defendant, because of a mental or physical condition, is
2 incapable of asserting his or her own claim.

3 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;
4 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)