

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 122-2.1 as follows:

6 (725 ILCS 5/122-2.1) (from Ch. 38, par. 122-2.1)

7 Sec. 122-2.1. (a) Within 90 days after the filing and
8 docketing of each petition, the court shall examine such
9 petition and enter an order thereon pursuant to this Section.

10 (1) If the petitioner is under sentence of death
11 and is without counsel and alleges that he is without
12 means to procure counsel, he shall state whether or not
13 he wishes counsel to be appointed to represent him. If
14 appointment of counsel is so requested, the court shall
15 appoint counsel if satisfied that the petitioner has no
16 means to procure counsel.

17 (2) If the petitioner is sentenced to imprisonment
18 and the court determines the petition is frivolous or is
19 patently without merit or that the petitioner failed to
20 file the petition within the time limits prescribed in
21 subsection (c) of Section 122-1 and the delay was due to
22 the petitioner's culpable negligence, it shall dismiss
23 the petition in a written order, specifying the findings
24 of fact and conclusions of law it made in reaching its
25 decision. Such order of dismissal is a final judgment
26 and shall be served upon the petitioner by certified mail
27 within 10 days of its entry. If the court determines that
28 the petitioner's failure to file his or her petition was
29 not due to the petitioner's culpable negligence, the
30 petitioner may file a petition seeking relief under this
31 Article within 30 days after the court makes a

1 determination that the delay was not due to the
2 petitioner's culpable negligence.

3 (b) If the petition is not dismissed pursuant to this
4 Section, the court shall order the petition to be docketed
5 for further consideration in accordance with Sections 122-4
6 through 122-6.

7 (c) In considering a petition pursuant to this Section,
8 the court may examine the court file of the proceeding in
9 which the petitioner was convicted, any action taken by an
10 appellate court in such proceeding and any transcripts of
11 such proceeding.

12 (Source: P.A. 86-655; 87-904.)