

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 Sections 114-13, 122-1, 122-2, and 122-3  
6 and by adding Section 122-6.1 as follows:

7 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

8 Sec. 114-13. Discovery in criminal cases.

9 (a) Discovery procedures in criminal cases shall be in  
10 accordance with Supreme Court Rules.

11 (b) Any investigative, law enforcement, or other agency  
12 responsible for investigating any felony offense or  
13 participating in an investigation of any felony offense shall  
14 provide to the authority prosecuting the offense all reports  
15 that have been generated by or have come into the possession  
16 of the investigating agency concerning the offense being  
17 investigated. In addition, the investigating agency shall  
18 provide to the prosecuting authority any material or  
19 information within its possession or control that would tend  
20 to negate the guilt of the accused of the offense charged or  
21 reduce his or her punishment for the offense. Every  
22 investigative and law enforcement agency in this State shall  
23 adopt policies to ensure compliance with these provisions.

24 (Source: Laws 1963, p. 2836.)

25 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

26 Sec. 122-1. Petition in the trial court.

27 (a) Any person imprisoned in the penitentiary who  
28 asserts that in the proceedings which resulted in his or her  
29 conviction there was a substantial denial of his or her  
30 rights under the Constitution of the United States or of the

1 State of Illinois or both may institute a proceeding under  
2 this Article. Under the Constitution of the State of  
3 Illinois, an assertion of substantial denial of rights  
4 pursuant to this Article includes, but is not limited to, an  
5 independent claim of actual innocence based on newly  
6 discovered evidence.

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

16 (c) A proceeding on an independent claim of actual  
17 innocence based on newly discovered evidence must be  
18 commenced within 2 years after the discovery of the new  
19 evidence by the defendant. No other proceedings under this  
20 Article shall be commenced more than 6 months after the  
21 denial of a petition for leave to appeal or the date for  
22 filing such a petition if none is filed or more than 45 days  
23 after the defendant files his or her brief in the appeal of  
24 the sentence before the Illinois Supreme Court (or more than  
25 45 days after the deadline for the filing of the defendant's  
26 brief with the Illinois Supreme Court if no brief is filed)  
27 or 3 years from the date of conviction, whichever is sooner,  
28 unless the petitioner alleges facts showing that the delay  
29 was not due to his or her culpable negligence.

30 (d) A person seeking relief by filing a petition under  
31 this Section must specify in the petition or its heading that  
32 it is filed under this Section. A trial court that has  
33 received a petition complaining of a conviction or sentence  
34 that fails to specify in the petition or its heading that it

1 is filed under this Section need not evaluate the petition to  
2 determine whether it could otherwise have stated some grounds  
3 for relief under this Article.

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

9 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;  
10 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

11 (725 ILCS 5/122-2) (from Ch. 38, par. 122-2)

12 Sec. 122-2. Contents of petition.

13 The petition shall identify the proceeding in which the  
14 petitioner was convicted, give the date of the rendition of  
15 the final judgment complained of, and clearly set forth the  
16 respects in which petitioner's constitutional rights were  
17 violated. If the petition asserts an independent claim of  
18 actual innocence based on newly discovered evidence, it must  
19 set forth the nature of the evidence and demonstrate that:  
20 (i) the new evidence was discovered since the defendant's  
21 trial; and (ii) the new evidence could not have been  
22 discovered prior to trial by the exercise of due diligence.

23 The petition shall have attached thereto affidavits, records,  
24 or other evidence supporting its allegations or shall state  
25 why the same are not attached. The petition shall identify  
26 any previous proceedings that the petitioner may have taken  
27 to secure relief from his conviction. Argument and citations  
28 and discussion of authorities shall be omitted from the  
29 petition.

30 (Source: Laws 1963, p. 2836.)

31 (725 ILCS 5/122-3) (from Ch. 38, par. 122-3)

32 Sec. 122-3. Waiver of claims.

1 Any claim of substantial denial of constitutional rights  
 2 not raised in the original or an amended petition is waived.  
 3 This provision does not apply to independent claims of actual  
 4 innocence based on newly discovered evidence.

5 (Source: Laws 1963, p. 2836.)

6 (725 ILCS 5/122-6.1 new)

7 Sec. 122-6.1. Actual innocence hearing.

8 (a) At a hearing on a petition that asserts an  
 9 independent claim of actual innocence based on newly  
 10 discovered evidence, the burden is on the defendant to prove  
 11 his or her actual innocence. At no time in such a hearing  
 12 shall the defendant be entitled to a presumption of  
 13 innocence. It is presumed that the verdict rendered at the  
 14 trial in which the defendant was convicted was correct, and  
 15 the burden is on the defendant to rebut this presumption.

16 (b) The defendant, at an actual innocence hearing, must  
 17 prove his or her actual innocence by clear and convincing  
 18 evidence.

19 (c) In an actual innocence hearing, the court shall make  
 20 a determination about the reliability and admissibility of  
 21 the newly discovered evidence. Only if the court finds 16at  
 22 the evidence of the defendant's actual innocence is clear and  
 23 convincing and of such a conclusive character that it would  
 24 likely change the result of the defendant's trial shall the  
 25 court order a new trial for the defendant.