

HB3375



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB3375

Introduced 2/17/2023, by Rep. Lilian Jiménez

SYNOPSIS AS INTRODUCED:

725 ILCS 5/122-1

from Ch. 38, par. 122-1

Amends the Code of Criminal Procedure of 1963. Provides that the provision of the Post-Conviction Hearing Article of the Code that a prisoner shows cause by identifying an objective factor that impeded his or her ability to raise a specific claim during his or her initial post-conviction proceedings shall bar a claim under the proportionate penalties clause of the Illinois Constitution brought in a successive post-conviction petition by any person who was convicted of a felony offense committed when that person was under 18 years of age.

LRB103 28506 RLC 54887 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 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
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;

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

21 (3) (blank).

22 (a-5) A proceeding under paragraph (2) of subsection (a)
23 may be commenced within a reasonable period of time after the

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

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

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

1 certiorari petition, unless the petitioner alleges facts
2 showing that the delay was not due to his or her culpable
3 negligence.

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

18 This limitation does not apply to a petition advancing a
19 claim of actual innocence.

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

1 under this Article.

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

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

20 (g) Clause (1) of subsection (f) shall bar a claim under
21 Section 11 of Article I of the Illinois Constitution brought
22 in a successive post-conviction petition by any person who was
23 convicted of a felony offense committed when that person was
24 under 18 years of age.

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