

1 AMENDMENT TO SENATE BILL 251

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 251 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Criminal Procedure of 1963 is  
5 amended by changing Sections 122-1, 122-2, and 122-3 and by  
6 adding Sections 108-15 and 122-6.1 as follows:

7 (725 ILCS 5/108-15 new)

8 Sec. 108-15. Evidence log. Any investigative, law  
9 enforcement, or other agency responsible for investigating  
10 any felony offense or participating in an investigation of  
11 any felony offense shall establish a log onto which shall be  
12 entered a schedule of all evidence and reports, records,  
13 memoranda, or other information, authored by that agency or  
14 that has come into its possession, whether inculpatory,  
15 exculpatory, or neutral. The log shall further specify the  
16 location of all such information or physical evidence. The  
17 log shall be provided to the authority prosecuting the  
18 offense. The investigating agency shall, with specificity,  
19 provide to the prosecuting authority any material or  
20 information within its possession or control that would tend  
21 to negate the guilt of the accused of the offense charged or  
22 reduce his or her punishment for the offense. Every

1 investigative and law enforcement agency in this State shall  
2 adopt policies to ensure compliance with these provisions.  
3 Intentional failure to comply with the provisions of this  
4 Section is a Class A misdemeanor.

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

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

7 (a) Any person imprisoned in the penitentiary who  
8 asserts that in the proceedings which resulted in his or her  
9 conviction there was a substantial denial of his or her  
10 rights under the Constitution of the United States or of the  
11 State of Illinois or both may institute a proceeding under  
12 this Article. Under the Constitution of the State of  
13 Illinois, an assertion of substantial denial of rights  
14 pursuant to this Article includes, but is not limited to, an  
15 independent claim of actual innocence based on newly  
16 discovered evidence.

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

26 (c) A proceeding on an independent claim of actual  
27 innocence based on newly discovered evidence may be commenced  
28 at any time after the discovery of the new evidence. No other  
29 proceedings under this Article shall be commenced more than 6  
30 months after the denial of a petition for leave to appeal or  
31 the date for filing such a petition if none is filed or more  
32 than 45 days after the defendant files his or her brief in  
33 the appeal of the sentence before the Illinois Supreme Court

1 (or more than 45 days after the deadline for the filing of  
2 the defendant's brief with the Illinois Supreme Court if no  
3 brief is filed) or 3 years from the date of conviction,  
4 whichever is sooner, unless the petitioner alleges facts  
5 showing that the delay was not due to his or her culpable  
6 negligence.

7 (d) A person seeking relief by filing a petition under  
8 this Section must specify in the petition or its heading that  
9 it is filed under this Section. A trial court that has  
10 received a petition complaining of a conviction or sentence  
11 that fails to specify in the petition or its heading that it  
12 is filed under this Section need not evaluate the petition to  
13 determine whether it could otherwise have stated some grounds  
14 for relief under this Article.

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

20 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;  
21 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

22 (725 ILCS 5/122-2) (from Ch. 38, par. 122-2)

23 Sec. 122-2. Contents of petition.

24 The petition shall identify the proceeding in which the  
25 petitioner was convicted, give the date of the rendition of  
26 the final judgment complained of, and clearly set forth the  
27 respects in which petitioner's constitutional rights were  
28 violated. If the petition asserts an independent claim of  
29 actual innocence based on newly discovered evidence, it must  
30 set forth the nature of the evidence and demonstrate that:  
31 (i) the new evidence was discovered since the defendant's  
32 trial; and (ii) the new evidence could not have been  
33 discovered prior to trial by the exercise of due diligence.

1 The petition shall have attached thereto affidavits, records,  
2 or other evidence supporting its allegations or shall state  
3 why the same are not attached. The petition shall identify  
4 any previous proceedings that the petitioner may have taken  
5 to secure relief from his conviction. Argument and citations  
6 and discussion of authorities shall be omitted from the  
7 petition.

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

9 (725 ILCS 5/122-3) (from Ch. 38, par. 122-3)

10 Sec. 122-3. Waiver of claims.

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

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

16 (725 ILCS 5/122-6.1 new)

17 Sec. 122-6.1. Actual innocence hearing.

18 (a) At a hearing on a petition that asserts an  
19 independent claim of actual innocence based on newly  
20 discovered evidence, the burden is on the defendant to prove  
21 his or her actual innocence. At no time in such a hearing  
22 shall the defendant be entitled to a presumption of  
23 innocence. It is presumed that the verdict rendered at the  
24 trial in which the defendant was convicted was correct, and  
25 the burden is on the defendant to rebut this presumption.

26 (b) The defendant, at an actual innocence hearing, must  
27 show evidence of such a conclusive character as would  
28 probably change the result on retrial.

29 (c) In an actual innocence hearing, the court shall make  
30 a determination about the reliability and admissibility of  
31 the newly discovered evidence. Only if the court finds that  
32 the evidence of the defendant's actual innocence is of such a

1 conclusive character that it would likely change the result  
2 of the defendant's trial shall the court order a new trial  
3 for the defendant."