

1 AMENDMENT TO SENATE BILL 1050

2 AMENDMENT NO. _____. Amend Senate Bill 1050 as follows:
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Code of Criminal Procedure of 1963 is
6 amended by changing Sections 114-13, 122-1, 122-2, and 122-3
7 and by adding Section 122-6.1 as follows:

8 (725 ILCS 5/114-13) (from Ch. 38, par. 114-13)

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

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

12 (b) Any investigative, law enforcement, or other agency
13 responsible for investigating any felony offense, or
14 participating in an investigation of any felony offense shall
15 provide to the authority prosecuting the offense all reports
16 that have been generated by or have come into the possession
17 of the investigating agency concerning the offense being
18 investigated. In addition, the investigating agency shall
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 (Source: Laws 1963, p. 2836.)

4 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

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

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

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

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

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

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

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

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

21 (725 ILCS 5/122-2) (from Ch. 38, par. 122-2)

22 Sec. 122-2. Contents of petition.

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

33 The petition shall have attached thereto affidavits, records,

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

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

8 (725 ILCS 5/122-3) (from Ch. 38, par. 122-3)

9 Sec. 122-3. Waiver of claims.

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

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

15 (725 ILCS 5/122-6.1 new)

16 Sec. 122-6.1. Actual innocence hearing.

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

26 (b) The defendant, at an actual innocence hearing, shall
27 be required to prove his or her actual innocence by clear and
28 convincing evidence.

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 clear and

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