

1 AN ACT concerning criminal procedure.

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 who  
10 asserts:

11 (1) that in the proceedings which resulted in his  
12 or her conviction there was a substantial denial of his  
13 or her rights under the Constitution of the United States  
14 or of the State of Illinois or both; or

15 (2) in a capital case, there is newly discovered  
16 evidence not available to the person at the time of the  
17 proceeding that resulted in his or her conviction and  
18 that evidence establishes the person's innocence.

19 (a-5) A proceeding under paragraph (2) of subsection (a)  
20 may be commenced at any time after the person's conviction  
21 notwithstanding any other provisions of ~~may--institute-a~~  
22 ~~proceeding-under~~ this Article.

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

1           (c) Except as otherwise provided in subsection (a-5), no  
2 proceedings under this Article shall be commenced more than 6  
3 months after the denial of a petition for leave to appeal or  
4 the date for filing such a petition if none is filed or more  
5 than 45 days after the defendant files his or her brief in  
6 the appeal of the sentence before the Illinois Supreme Court  
7 (or more than 45 days after the deadline for the filing of  
8 the defendant's brief with the Illinois Supreme Court if no  
9 brief is filed) or 3 years from the date of conviction,  
10 whichever is sooner, unless the petitioner alleges facts  
11 showing that the delay was not due to his or her culpable  
12 negligence.

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

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

26 (Source: P.A. 89-284, eff. 1-1-96; 89-609, eff. 1-1-97;  
27 89-684, eff. 6-1-97; 90-14, eff. 7-1-97.)

28           Section 99. Effective date. This Act takes effect upon  
29 becoming law.