

HB0395/332915/1

BY: House Judiciary Committee

AMENDMENTS TO HOUSE BILL 395

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 6, after “trial” insert “or vacate a conviction”; strike beginning with “defining” in line 7 down through the semicolon in line 8; in line 11, strike “defining a certain term;” and substitute “authorizing a court to order a new trial or vacate a conviction under certain circumstances for certain classes of persons who file a petition for writ of actual innocence; authorizing an appeal to be taken by certain persons under certain circumstances;”; and in line 21, strike “8-301(a)” and substitute “8-301”.

AMENDMENT NO. 2

On page 2, strike in their entirety lines 6 through 10, inclusive; in line 11, strike “(4)” and substitute “(3)”; in lines 12 and 21, in each instance, strike the brackets; and in the same lines, strike “(5)” and “(6)”, respectively.

AMENDMENT NO. 3

On page 3, in line 13, strike “(e)” and substitute “(F)”; in the same line, after “section,” insert “IF A PETITIONER WAS CONVICTED AS THE RESULT OF A TRIAL, A GUILTY PLEA, AN ALFORD PLEA, OR A PLEA OF NOLO CONTENDERE,”.

AMENDMENT NO. 4

On page 4, in line 17, strike “If” and substitute “IF THE PETITIONER WAS CONVICTED AS THE RESULT OF A TRIAL AND”; in line 24, strike the brackets; strike beginning with “IN” in line 25 down through “TRIAL,” in line 26; and strike beginning with the semicolon in line 28 down through “TRIAL” in line 33.

On page 5, after line 3, insert:

(Over)

“(4) (I) IF THE PETITIONER WAS CONVICTED AS THE RESULT OF A GUILTY PLEA, AN ALFORD PLEA, OR A PLEA OF NOLO CONTENDERE, THE COURT MAY GRANT A NEW TRIAL OR VACATE THE CONVICTION IF THE COURT DETERMINES THAT THE DNA TEST RESULTS ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THE PETITIONER’S ACTUAL INNOCENCE OF THE OFFENSE OR OFFENSES THAT ARE THE SUBJECT OF THE PETITIONER’S MOTION.

(II) WHEN ASSESSING THE IMPACT OF THE DNA TEST RESULTS ON THE STRENGTH OF THE STATE’S CASE AGAINST THE PETITIONER AT THE TIME THE PLEA WAS ENTERED, THE COURT MAY CONSIDER, IN ADDITION TO EVIDENCE THAT WAS PRESENTED AS PART OF THE FACTUAL SUPPORT OF THE PLEA, ADMISSIBLE EVIDENCE SUBMITTED BY EITHER PARTY THAT WAS CONTAINED IN LAW ENFORCEMENT FILES IN EXISTENCE AT THE TIME THE PLEA WAS ENTERED.

(III) WHEN DETERMINING WHETHER TO GRANT A NEW TRIAL OR VACATE THE CONVICTION, THE COURT MAY CONSIDER ANY ADDITIONAL ADMISSIBLE EVIDENCE SUBMITTED BY EITHER PARTY THAT CAME INTO EXISTENCE AFTER THE PLEA WAS ENTERED AND IS RELEVANT TO THE PETITIONER’S CLAIM OF ACTUAL INNOCENCE.”;

in line 4, strike “(4)” and substitute “(5)”; in line 20, strike the bracket; and strike beginning with the closing bracket in line 32 down through “SECTION” in line 35.

AMENDMENT NO. 5

On page 7, strike beginning with “(1)” in line 14 down through “(2)” in line 19; in lines 23 and 30, in each instance, strike the brackets; in the same lines, strike “(I)” and “(II)”, respectively; in lines 23 and 26, strike “1.” and “2.”, respectively, and substitute “(I)” and “(II)”, respectively; strike beginning with “SUBSTANTIALLY” in line 27 down through “AGREEMENT” in line 29 and substitute “WHEN CONSIDERED WITH

ADMISSIBLE EVIDENCE IN ADDITION TO THE EVIDENCE THAT WAS PRESENTED AS PART OF THE FACTUAL SUPPORT OF THE PLEA THAT WAS CONTAINED IN LAW ENFORCEMENT FILES IN EXISTENCE AT THE TIME THE PLEA WAS ENTERED, ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THE PETITIONER'S ACTUAL INNOCENCE OF THE OFFENSE OR OFFENSES THAT ARE THE SUBJECT OF THE PETITIONER'S MOTION"; and after line 31, insert:

(b) A petition filed under this section shall:

- (1) be in writing;
- (2) state in detail the grounds on which the petition is based;
- (3) describe the newly discovered evidence;
- (4) contain or be accompanied by a request for hearing if a hearing is sought; and
- (5) distinguish the newly discovered evidence claimed in the petition from any claims made in prior petitions.

(c) (1) A petitioner shall notify the State in writing of the filing of a petition under this section.

(2) The State may file a response to the petition within 90 days after receipt of the notice required under this subsection or within the period of time that the court orders.

(d) (1) Before a hearing is held on a petition filed under this section, the victim or victim's representative shall be notified of the hearing as provided under § 11-104 or § 11-503 of this article.

(Over)

(2) A victim or victim's representative has the right to attend a hearing on a petition filed under this section as provided under § 11-102 of this article.

(e) (1) Except as provided in paragraph (2) of this subsection, the court shall hold a hearing on a petition filed under this section if the petition satisfies the requirements of subsection (b) of this section and a hearing was requested.

(2) The court may dismiss a petition without a hearing if the court finds that the petition fails to assert grounds on which relief may be granted.

(f) (1) [In] IF THE CONVICTION RESULTED FROM A TRIAL, IN ruling on a petition filed under this section, the court may set aside the verdict, resentence, grant a new trial, or correct the sentence, as the court considers appropriate.

(2) (I) IF THE CONVICTION RESULTED FROM A GUILTY PLEA, AN ALFORD PLEA, OR A PLEA OF NOLO CONTENDERE, WHEN ASSESSING THE IMPACT OF THE NEWLY DISCOVERED EVIDENCE ON THE STRENGTH OF THE STATE'S CASE AGAINST THE PETITIONER AT THE TIME OF THE PLEA, THE COURT MAY CONSIDER ADMISSIBLE EVIDENCE SUBMITTED BY EITHER PARTY IN ADDITION TO THE EVIDENCE THAT WAS PRESENTED AS PART OF THE FACTUAL SUPPORT OF THE PLEA THAT WAS CONTAINED IN LAW ENFORCEMENT FILES IN EXISTENCE AT THE TIME THE PLEA WAS ENTERED.

(II) IF THE COURT DETERMINES THAT THE NEWLY DISCOVERED EVIDENCE ESTABLISHES BY CLEAR AND CONVINCING EVIDENCE THE PETITIONER'S ACTUAL INNOCENCE OF THE OFFENSE OR OFFENSES THAT ARE THE SUBJECT OF THE PETITIONER'S MOTION, THE COURT MAY:

1. ALLOW THE PETITIONER TO WITHDRAW THE GUILTY PLEA, ALFORD PLEA, OR PLEA OF NOLO CONTENDERE; AND

2. GRANT A NEW TRIAL OR VACATE THE CONVICTION.

(III) WHEN DETERMINING THE APPROPRIATE REMEDY, THE COURT MAY ALLOW BOTH PARTIES TO PRESENT ANY ADMISSIBLE EVIDENCE THAT CAME INTO EXISTENCE AFTER THE PLEA WAS ENTERED AND IS RELEVANT TO THE PETITIONER'S CLAIM OF ACTUAL INNOCENCE.

[(2)](3) The court shall state the reasons for its ruling on the record.

(g) A petitioner in a proceeding under this section has the burden of proof.

(H) IF THE PETITIONER WAS CONVICTED AS A RESULT OF A GUILTY PLEA, AN ALFORD PLEA, OR A PLEA OF NOLO CONTENDERE, AN APPEAL MAY BE TAKEN EITHER BY THE STATE OR THE PETITIONER FROM AN ORDER ENTERED UNDER THIS SECTION.

[(h)] (I) On written request by the petitioner, the State's Attorney may certify that a conviction was in error, if:

(1) the court grants a petition for relief under this section;

(2) in ruling on a petition under this section, the court sets aside the verdict or grants a new trial; and

(3) the State's Attorney declines to prosecute the petitioner because the State's Attorney determines that the petitioner is innocent."