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State of Minnesota  
HOUSE OF REPRESENTATIVES  
NINETIETH SESSION

H. F. No. 3903

03/15/2018 Authored by O'Neill and Hilstrom  
The bill was read for the first time and referred to the Committee on Public Safety and Security Policy and Finance

1.1 A bill for an act  
1.2 relating to judiciary; modifying petition for relief from conviction; amending  
1.3 Minnesota Statutes 2016, sections 590.01, subdivisions 1, 4; 590.02, subdivisions  
1.4 1, 3; 590.03; 590.04, subdivisions 1, 3, by adding a subdivision.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2016, section 590.01, subdivision 1, is amended to read:

1.7 Subdivision 1. **Petition.** (a) Except at a time when direct appellate relief is available, a  
1.8 person convicted of a crime, or whose adjudication of conviction was stayed, who claims  
1.9 that:

1.10 (1) the conviction obtained or the sentence or other disposition made violated the person's  
1.11 rights under the Constitution or laws of the United States or of the state; or

1.12 (2) scientific evidence not available at trial, obtained pursuant to a motion granted under  
1.13 subdivision 1a, establishes the petitioner's actual innocence;

1.14 may commence a proceeding to secure relief by filing a petition in the district court in the  
1.15 county in which the conviction was had to vacate and set aside the judgment and to discharge  
1.16 the petitioner or to resentence the petitioner or grant a new trial or correct the sentence or  
1.17 make other disposition as may be appropriate. This chapter does not apply to  
1.18 probation-revocation or restitution proceedings.

1.19 (b) A petition for postconviction relief after a direct appeal or postconviction proceeding  
1.20 has been completed may not be based on grounds that the petitioner knew or should have  
1.21 known, or that could have been raised or were raised on direct appeal of the conviction or  
1.22 sentence or in previous postconviction proceedings. Nothing contained herein shall prevent  
1.23 the Supreme Court or the Court of Appeals, upon application by a party, from granting a

2.1 stay of a case on appeal for the purpose of allowing an appellant to apply to the district court  
2.2 for an evidentiary hearing under the provisions of this chapter. The proceeding shall conform  
2.3 with sections 590.01 to 590.06.

2.4 After direct appeal or postconviction review, the petitioner must obtain leave of the  
2.5 district court to file a successive petition. The petitioner bears the burden to demonstrate  
2.6 that the court should review the merits of a successive petition because the petitioner did  
2.7 not deliberately or inexcusably fail to raise the issue on direct appeal or in a previous petition  
2.8 and, either:

2.9 (1) the petitioner has presented newly discovered evidence that, if true, establishes by  
2.10 clear and convincing evidence that the petitioner is innocent of the offense or offenses of  
2.11 which the petitioner was convicted; or

2.12 (2) the claim is so novel that its legal basis was not reasonably available to the petitioner  
2.13 when the direct appeal was taken.

2.14 The state may file a response to the request for leave of court, but unless the court grants  
2.15 leave to file a successive petition, the state shall not be required to respond to the merits of  
2.16 the claims raised. If the court denies leave to file a successive petition, it shall not review  
2.17 the merits of the claims raised and may summarily deny a successive petition without a  
2.18 hearing.

2.19 If the court grants leave to file a successive petition, the state may file an answer in  
2.20 accordance with section 590.03.

2.21 Sec. 2. Minnesota Statutes 2016, section 590.01, subdivision 4, is amended to read:

2.22 Subd. 4. **Time limit.** (a) No petition for postconviction relief may be filed more than  
2.23 two years after the later of:

2.24 (1) the entry of judgment of conviction or sentence, or the date adjudication was stayed,  
2.25 if no direct appeal is filed; or

2.26 (2) an appellate court's disposition of petitioner's direct appeal.

2.27 (b) Notwithstanding paragraph (a), a court may hear a petition for postconviction relief  
2.28 if:

2.29 (1) the petitioner establishes that a physical disability or mental disease precluded a  
2.30 timely assertion of the claim;

2.31 (2) for convictions resulting from trial, the petitioner alleges the existence of newly  
2.32 discovered evidence, including scientific evidence, that could not have been ascertained by

3.1 the exercise of due diligence by the petitioner or petitioner's attorney within the two-year  
3.2 time period for filing a postconviction petition, and the evidence is not cumulative to evidence  
3.3 presented at trial, is not for impeachment purposes, and establishes by a clear and convincing  
3.4 standard that the petitioner is innocent of the offense or offenses for which the petitioner  
3.5 was convicted;

3.6 (3) the petitioner asserts a new interpretation of federal or state constitutional or statutory  
3.7 law by either the United States Supreme Court or a Minnesota appellate court and the  
3.8 petitioner establishes that this interpretation is retroactively applicable to the petitioner's  
3.9 case;

3.10 (4) the petition is brought pursuant to subdivision 3; or

3.11 (5) the petitioner establishes to the satisfaction of the court that the petition is not frivolous  
3.12 and is in the interests of justice.

3.13 (c) Any petition invoking an exception provided in paragraph (b) must be filed within  
3.14 two years of the date the claim arises.

3.15 Sec. 3. Minnesota Statutes 2016, section 590.02, subdivision 1, is amended to read:

3.16 Subdivision 1. **Petition.** (a) The petition shall be filed in the district court pursuant to  
3.17 section 590.01 shall and shall contain the same caption as the original district court file for  
3.18 the conviction, sentence, or disposition being challenged, except that it shall be entitled in  
3.19 the name of the petitioner versus the respondent state of Minnesota and. The petition shall  
3.20 contain:

3.21 (1) a statement of the facts and the grounds upon which the petition is based and the  
3.22 relief desired. All grounds for relief must be stated in the petition or any amendment thereof  
3.23 unless they could not reasonably have been set forth therein. ~~It shall not contain~~ Argument  
3.24 or citation of authorities shall not be included in the petition, but may be included in a  
3.25 supporting memorandum of law;

3.26 (2) an identification of the proceedings in which the petitioner was convicted including  
3.27 the date of the entry of judgment and sentence or other disposition complained of;

3.28 (3) an identification of any previous proceeding, together with the grounds therein  
3.29 asserted taken on behalf of the petitioner to secure relief from the conviction and sentence  
3.30 or other disposition;

4.1 (4) the name and address of any attorney representing the petitioner. ~~In the event the~~  
 4.2 ~~petitioner is without counsel, the court administrator shall forthwith transmit a copy of the~~  
 4.3 ~~petition to the state public defender and shall advise the petitioner of such referral.~~

4.4 (b) Statements of fact shall be asserted by notarized affidavit unless the petitioner  
 4.5 establishes that it is not reasonably possible to do so. Any affidavits necessary to establish  
 4.6 the petitioner's request for relief or the need for a hearing pursuant to section 590.04 shall  
 4.7 be attached to and filed with the petition.

4.8 (c) Any claim by petitioner of ineffective assistance of counsel shall be deemed a waiver  
 4.9 of the attorney-client privilege as to protected communications relating to that claim.

4.10 (d) No later than ten days after the date of filing the petition, the petitioner shall order  
 4.11 from the reporter all transcripts necessary for resolution of the claims in the petition if those  
 4.12 transcripts are not already in the district court file. The order for transcripts shall comply  
 4.13 with Minnesota Rules of Civil Appellate Procedure, Rule 110.02, subdivision 2, except that  
 4.14 the certificate as to transcript shall be filed with the district court administrator. To proceed  
 4.15 in forma pauperis, the petitioner shall follow the process in Minnesota Rules of Criminal  
 4.16 Procedure, Rule 28.02, subdivision 5.

4.17 Sec. 4. Minnesota Statutes 2016, section 590.02, subdivision 3, is amended to read:

4.18 Subd. 3. **Filing.** ~~When~~ (a) A petition is filed pursuant to section 590.01 it shall be signed  
 4.19 by the petitioner or signed by the petitioner's attorney and shall be filed with proof of service  
 4.20 on the attorney general and county prosecuting attorney. It shall be addressed to the district  
 4.21 court of the judicial district in the county where the conviction or stay of adjudication took  
 4.22 place. The district court may decide matters raised in a petition only if the petitioner complies  
 4.23 with service and filing according to this section.

4.24 (b) If the petitioner is not represented by counsel, the district court administrator shall  
 4.25 forward a copy of the petition to the state public defender and shall advise the petitioner of  
 4.26 the referral. The state public defender shall advise the court, petitioner, and prosecuting  
 4.27 attorney of the petitioner's eligibility for representation as provided in section 590.05.

4.28 ~~In those cases in which the petitioner is represented by counsel or in which the petitioner~~  
 4.29 ~~has filed a written waiver of right to counsel,~~ (c) The district court administrator of the  
 4.30 ~~district court~~ shall immediately direct attention of the filing thereof to the chief judge or  
 4.31 judge acting in the chief judge's behalf who shall promptly assign the matter to a judge in  
 4.32 ~~said~~ the district.

5.1 (d) If the petitioner has not had a direct appeal or a prior review by postconviction  
 5.2 proceeding of the conviction, sentence, or disposition and elects to proceed without counsel,  
 5.3 the district court shall obtain from the petitioner a waiver of counsel that complies with  
 5.4 Minnesota Rules of Criminal Procedure, Rule 5.04, subdivision 1, before making a decision  
 5.5 on the petition.

5.6 Sec. 5. Minnesota Statutes 2016, section 590.03, is amended to read:

5.7 **590.03 PLEADINGS AND PRACTICE AFTER FILING A POSTCONVICTION**  
 5.8 **PETITION.**

5.9 ~~Within 20~~ No later than 60 days after the date of filing of the petition pursuant to section  
 5.10 ~~590.01~~ or within ~~such~~ any additional time as the assigned judge to whom the matter has  
 5.11 ~~been assigned~~ may fix, the county prosecuting attorney, or the attorney general, on behalf  
 5.12 of the state, shall respond to the petition by answer or motion which shall be filed with the  
 5.13 district court administrator of district court and served on the petitioner if unrepresented or  
 5.14 on the petitioner's attorney. No further pleadings are necessary except as the court may  
 5.15 order. ~~The court may~~ At any time prior to its decision on the merits the court may permit:  
 5.16 a withdrawal of the petition, may permit; and amendments ~~thereto,~~ to the petition and to  
 5.17 the answer. The court shall liberally construe the petition and any amendments ~~thereto~~ to  
 5.18 the petition and shall look to the substance ~~thereof~~ of the petition and waive any irregularities  
 5.19 or defects in form.

5.20 Sec. 6. Minnesota Statutes 2016, section 590.04, subdivision 1, is amended to read:

5.21 Subdivision 1. **Early hearing.** ~~Unless~~ If the petition and the files and records ~~of the~~  
 5.22 ~~proceeding conclusively show that the petitioner is entitled to no relief~~ demonstrate that the  
 5.23 petitioner is entitled to a hearing, the court shall promptly set an early hearing on the petition  
 5.24 and response ~~thereto~~ to the petition, and promptly determine the issues, make findings of  
 5.25 fact and conclusions of law with respect ~~thereto~~ to the petition, and either deny the petition  
 5.26 or enter an order granting appropriate relief.

5.27 Sec. 7. Minnesota Statutes 2016, section 590.04, is amended by adding a subdivision to  
 5.28 read:

5.29 Subd. 1a. **Rules for hearing.** (a) Twenty-one days or more before the hearing, the  
 5.30 petitioner shall disclose to the respondent:

6.1 (1) the name, address, and telephone number of any witness who may be called to testify,  
6.2 along with any written or recorded statements, written summaries of oral statements, and  
6.3 the substance of oral statements of the witness;

6.4 (2) any document or tangible object to be relied upon at the hearing, to include at a  
6.5 minimum exhibits or transcripts already in the district court records; and

6.6 (3) reports of physical or mental examinations, scientific tests, experiments, or  
6.7 comparisons made that will be offered at the hearing.

6.8 (b) Seven days or more before the hearing, the respondent shall disclose to the petitioner  
6.9 all matters listed in paragraph (a).

6.10 Sec. 8. Minnesota Statutes 2016, section 590.04, subdivision 3, is amended to read:

6.11 Subd. 3. **Hearing.** The court may order the petitioner to be present at the hearing. If the  
6.12 petitioner is represented by an attorney, the attorney shall be present at any hearing.

6.13 A verbatim record of any hearing shall be made and kept.

6.14 Unless otherwise ordered by the court, the burden of proof of the facts alleged in the  
6.15 petition shall be upon the petitioner to establish the facts by a fair preponderance of the  
6.16 evidence.

6.17 In the discretion of the court, it may receive evidence in the form of affidavit, deposition,  
6.18 or oral testimony. The court may inquire into and decide any grounds for relief, even though  
6.19 not raised by the petitioner.

6.20 ~~The court may summarily deny a second or successive petition for similar relief on~~  
6.21 ~~behalf of the same petitioner and may summarily deny a petition when the issues raised in~~  
6.22 ~~it have previously been decided by the Court of Appeals or the Supreme Court in the same~~  
6.23 ~~case.~~