



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

HB1764

by Rep. Linda Chapa LaVia

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3.1  
735 ILCS 5/2-1401

from Ch. 38, par. 1005-5-3.1  
from Ch. 110, par. 2-1401

Amends the Unified Code of Corrections. Provides that it is a mitigating factor in sentencing that at the time of the offense, the defendant was suffering from post-partum depression or post-partum psychosis which was either undiagnosed or untreated, or both, and this temporary mental illness tended to excuse or justify the defendant's criminal conduct and the defendant has, after sentencing, been diagnosed as suffering from post-partum depression or post-partum psychosis, or both, by a qualified medical person and the diagnoses or testimony, or both, was not used at trial or sentencing, or both. Amends the Code of Civil Procedure concerning relief from final orders and judgments, after 30 days from the entry of the judgment. Provides that a meritorious claim may be made for that relief if the allegations in the petition establish each of the following by a preponderance of the evidence: (1) the movant was convicted of a forcible felony; (2) the movant's participation in the offense was a direct result of the movant's mental state either suffering from post-partum depression or post-partum psychosis; (3) no evidence of post-partum depression or post-partum psychosis was presented by a qualified medical person at trial or sentencing, or both; (4) the movant was unaware of the mitigating nature of the evidence or if aware was at the time unable to present this defense due to suffering from post-partum depression or post-partum psychosis or at the time of trial or sentencing neither was a recognized mental illness and as such unable to receive proper treatment; and (5) evidence of post-partum depression or post-partum psychosis as suffered by the movant is material and noncumulative to other evidence offered at the time of trial or sentencing and it is of such a conclusive character that it would likely change the sentence imposed by the original court. Defines "post-partum depression" and "post-partum psychosis".

LRB100 04687 RLC 14693 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Unified Code of Corrections is amended by  
5 changing Section 5-5-3.1 as follows:

6 (730 ILCS 5/5-5-3.1) (from Ch. 38, par. 1005-5-3.1)

7 Sec. 5-5-3.1. Factors in mitigation.

8 (a) The following grounds shall be accorded weight in favor  
9 of withholding or minimizing a sentence of imprisonment:

10 (1) The defendant's criminal conduct neither caused  
11 nor threatened serious physical harm to another.

12 (2) The defendant did not contemplate that his criminal  
13 conduct would cause or threaten serious physical harm to  
14 another.

15 (3) The defendant acted under a strong provocation.

16 (4) There were substantial grounds tending to excuse or  
17 justify the defendant's criminal conduct, though failing  
18 to establish a defense.

19 (5) The defendant's criminal conduct was induced or  
20 facilitated by someone other than the defendant.

21 (6) The defendant has compensated or will compensate  
22 the victim of his criminal conduct for the damage or injury  
23 that he sustained.

1           (7) The defendant has no history of prior delinquency  
2 or criminal activity or has led a law-abiding life for a  
3 substantial period of time before the commission of the  
4 present crime.

5           (8) The defendant's criminal conduct was the result of  
6 circumstances unlikely to recur.

7           (9) The character and attitudes of the defendant  
8 indicate that he is unlikely to commit another crime.

9           (10) The defendant is particularly likely to comply  
10 with the terms of a period of probation.

11           (11) The imprisonment of the defendant would entail  
12 excessive hardship to his dependents.

13           (12) The imprisonment of the defendant would endanger  
14 his or her medical condition.

15           (13) The defendant was a person with an intellectual  
16 disability as defined in Section 5-1-13 of this Code.

17           (14) The defendant sought or obtained emergency  
18 medical assistance for an overdose and was convicted of a  
19 Class 3 felony or higher possession, manufacture, or  
20 delivery of a controlled, counterfeit, or look-alike  
21 substance or a controlled substance analog under the  
22 Illinois Controlled Substances Act or a Class 2 felony or  
23 higher possession, manufacture or delivery of  
24 methamphetamine under the Methamphetamine Control and  
25 Community Protection Act.

26           (15) At the time of the offense, the defendant is or

1 had been the victim of domestic violence and the effects of  
2 the domestic violence tended to excuse or justify the  
3 defendant's criminal conduct. As used in this paragraph  
4 (15), "domestic violence" means abuse as defined in Section  
5 103 of the Illinois Domestic Violence Act of 1986.

6 (16) At the time of the offense, the defendant was  
7 suffering from a serious mental illness which, though  
8 insufficient to establish the defense of insanity,  
9 substantially affected his or her ability to understand the  
10 nature of his or her acts or to conform his or her conduct  
11 to the requirements of the law.

12 (17) At the time of the offense, the defendant was  
13 suffering from post-partum depression or post-partum  
14 psychosis which was either undiagnosed or untreated, or  
15 both, and this temporary mental illness tended to excuse or  
16 justify the defendant's criminal conduct and the defendant  
17 has, after sentencing, been diagnosed as suffering from  
18 post-partum depression or post-partum psychosis, or both,  
19 by a qualified medical person and the diagnoses or  
20 testimony, or both, was not used at trial or sentencing, or  
21 both. In this paragraph (17):

22 "Post-partum depression" means a mood disorder  
23 which strikes many women during and after pregnancy  
24 which usually occurs during pregnancy and up to 12  
25 months after delivery. This depression can include  
26 anxiety disorders.

1           "Post-partum psychosis" means an extreme form of  
2           post-partum depression which can occur during  
3           pregnancy and up to 12 months after delivery. This can  
4           include losing touch with reality, distorted thinking,  
5           delusions, auditory and visual hallucinations,  
6           paranoia, hyperactivity and rapid speech, or mania.

7           (b) If the court, having due regard for the character of  
8           the offender, the nature and circumstances of the offense and  
9           the public interest finds that a sentence of imprisonment is  
10          the most appropriate disposition of the offender, or where  
11          other provisions of this Code mandate the imprisonment of the  
12          offender, the grounds listed in paragraph (a) of this  
13          subsection shall be considered as factors in mitigation of the  
14          term imposed.

15          (Source: P.A. 98-463, eff. 8-16-13; 99-143, eff. 7-27-15;  
16          99-384, eff. 1-1-16; 99-642, eff. 7-28-16; 99-877, eff.  
17          8-22-16.)

18          Section 10. The Code of Civil Procedure is amended by  
19          changing Section 2-1401 as follows:

20                 (735 ILCS 5/2-1401) (from Ch. 110, par. 2-1401)

21                 Sec. 2-1401. Relief from judgments.

22                 (a) Relief from final orders and judgments, after 30 days  
23                 from the entry thereof, may be had upon petition as provided in  
24                 this Section. Writs of error coram nobis and coram vobis, bills

1 of review and bills in the nature of bills of review are  
2 abolished. All relief heretofore obtainable and the grounds for  
3 such relief heretofore available, whether by any of the  
4 foregoing remedies or otherwise, shall be available in every  
5 case, by proceedings hereunder, regardless of the nature of the  
6 order or judgment from which relief is sought or of the  
7 proceedings in which it was entered. Except as provided in the  
8 Illinois Parentage Act of 2015, there shall be no distinction  
9 between actions and other proceedings, statutory or otherwise,  
10 as to availability of relief, grounds for relief or the relief  
11 obtainable.

12 (b) The petition must be filed in the same proceeding in  
13 which the order or judgment was entered but is not a  
14 continuation thereof. The petition must be supported by  
15 affidavit or other appropriate showing as to matters not of  
16 record. All parties to the petition shall be notified as  
17 provided by rule.

18 (b-5) A movant may present a meritorious claim under this  
19 Section if the allegations in the petition establish each of  
20 the following by a preponderance of the evidence:

21 (1) the movant was convicted of a forcible felony;

22 (2) the movant's participation in the offense was  
23 related to him or her previously having been a victim of  
24 domestic violence as perpetrated by an intimate partner;

25 (3) no evidence of domestic violence against the movant  
26 was presented at the movant's sentencing hearing;

1 (4) the movant was unaware of the mitigating nature of  
2 the evidence of the domestic violence at the time of  
3 sentencing and could not have learned of its significance  
4 sooner through diligence; and

5 (5) the new evidence of domestic violence against the  
6 movant is material and noncumulative to other evidence  
7 offered at the sentencing hearing, and is of such a  
8 conclusive character that it would likely change the  
9 sentence imposed by the original trial court.

10 Nothing in this subsection (b-5) shall prevent a movant  
11 from applying for any other relief under this Section or any  
12 other law otherwise available to him or her.

13 As used in this subsection (b-5):

14 "Domestic violence" means abuse as defined in Section  
15 103 of the Illinois Domestic Violence Act of 1986.

16 "Forcible felony" has the meaning ascribed to the term  
17 in Section 2-8 of the Criminal Code of 2012.

18 "Intimate partner" means a spouse or former spouse,  
19 persons who have or allegedly have had a child in common,  
20 or persons who have or have had a dating or engagement  
21 relationship.

22 (b-6) A movant may present a meritorious claim under this  
23 Section if the allegations in the petition establish each of  
24 the following by a preponderance of the evidence:

25 (1) the movant was convicted of a forcible felony;

26 (2) the movant's participation in the offense was a

1 direct result of the movant's mental state either suffering  
2 from post-partum depression or post-partum psychosis;

3 (3) no evidence of post-partum depression or  
4 post-partum psychosis was presented by a qualified medical  
5 person at trial or sentencing, or both;

6 (4) the movant was unaware of the mitigating nature of  
7 the evidence or if aware was at the time unable to present  
8 this defense due to suffering from post-partum depression  
9 or post-partum psychosis or at the time of trial or  
10 sentencing neither was a recognized mental illness and as  
11 such unable to receive proper treatment; and

12 (5) evidence of post-partum depression or post-partum  
13 psychosis as suffered by the movant is material and  
14 noncumulative to other evidence offered at the time of  
15 trial or sentencing and it is of such a conclusive  
16 character that it would likely change the sentence imposed  
17 by the original court.

18 Nothing in this subsection (b-6) shall prevent a movant  
19 from applying for any other relief under this Section or any  
20 other law otherwise available to him or her.

21 As used in this subsection (b-6):

22 "Post-partum depression" means a mood disorder which  
23 strikes many women during and after pregnancy which usually  
24 occurs during pregnancy and up to 12 months after delivery.  
25 This depression can include anxiety disorders.

26 "Post-partum psychosis" means an extreme form of



1 post-partum depression which can occur during pregnancy  
2 and up to 12 months after delivery. This can include losing  
3 touch with reality, distorted thinking, delusions,  
4 auditory and visual hallucinations, paranoia,  
5 hyperactivity and rapid speech, or mania.

6 (c) Except as provided in Section 20b of the Adoption Act  
7 and Section 2-32 of the Juvenile Court Act of 1987 or in a  
8 petition based upon Section 116-3 of the Code of Criminal  
9 Procedure of 1963, the petition must be filed not later than 2  
10 years after the entry of the order or judgment. Time during  
11 which the person seeking relief is under legal disability or  
12 duress or the ground for relief is fraudulently concealed shall  
13 be excluded in computing the period of 2 years.

14 (d) The filing of a petition under this Section does not  
15 affect the order or judgment, or suspend its operation.

16 (e) Unless lack of jurisdiction affirmatively appears from  
17 the record proper, the vacation or modification of an order or  
18 judgment pursuant to the provisions of this Section does not  
19 affect the right, title or interest in or to any real or  
20 personal property of any person, not a party to the original  
21 action, acquired for value after the entry of the order or  
22 judgment but before the filing of the petition, nor affect any  
23 right of any person not a party to the original action under  
24 any certificate of sale issued before the filing of the  
25 petition, pursuant to a sale based on the order or judgment.

26 (f) Nothing contained in this Section affects any existing

1 right to relief from a void order or judgment, or to employ any  
2 existing method to procure that relief.

3 (Source: P.A. 99-85, eff. 1-1-16; 99-384, eff. 1-1-16; 99-642,  
4 eff. 7-28-16.)