



Rep. Linda Chapa LaVia

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1 AMENDMENT TO HOUSE BILL 1764

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 1764 by replacing  
3 everything after the enacting clause with the following:

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 institute  
9 a proceeding under this Article if the person asserts that:

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

14 (2) the death penalty was imposed and there is newly  
15 discovered evidence not available to the person at the time  
16 of the proceeding that resulted in his or her conviction

1 that establishes a substantial basis to believe that the  
2 defendant is actually innocent by clear and convincing  
3 evidence; or -

4 (3) by a preponderance of the evidence that each of the  
5 following allegations in the petition establish:

6 (A) he or she was convicted of a forcible felony;

7 (B) his or her participation in the offense was a  
8 direct result of the person's mental state either  
9 suffering from post-partum depression or post-partum  
10 psychosis;

11 (C) no evidence of post-partum depression or  
12 post-partum psychosis was presented by a qualified  
13 medical person at trial or sentencing, or both;

14 (D) he or she was unaware of the mitigating nature  
15 of the evidence or if aware was at the time unable to  
16 present this defense due to suffering from post-partum  
17 depression or post-partum psychosis or at the time of  
18 trial or sentencing neither was a recognized mental  
19 illness and as such unable to receive proper treatment;  
20 and

21 (E) evidence of post-partum depression or  
22 post-partum psychosis as suffered by the person is  
23 material and noncumulative to other evidence offered  
24 at the time of trial or sentencing and it is of such a  
25 conclusive character that it would likely change the  
26 sentence imposed by the original court.

1           Nothing in this paragraph (3) prevents a person from  
2           applying for any other relief under this Article or any  
3           other law otherwise available to him or her.

4           As used in this paragraph (3):

5           "Post-partum depression" means a mood disorder  
6           which strikes many women during and after pregnancy  
7           which usually occurs during pregnancy and up to 12  
8           months after delivery. This depression can include  
9           anxiety disorders.

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

16           (a-5) A proceeding under paragraph (2) of subsection (a)  
17           may be commenced within a reasonable period of time after the  
18           person's conviction notwithstanding any other provisions of  
19           this Article. In such a proceeding regarding actual innocence,  
20           if the court determines the petition is frivolous or is  
21           patently without merit, it shall dismiss the petition in a  
22           written order, specifying the findings of fact and conclusions  
23           of law it made in reaching its decision. Such order of  
24           dismissal is a final judgment and shall be served upon the  
25           petitioner by certified mail within 10 days of its entry.

26           (b) The proceeding shall be commenced by filing with the

1 clerk of the court in which the conviction took place a  
2 petition (together with a copy thereof) verified by affidavit.  
3 Petitioner shall also serve another copy upon the State's  
4 Attorney by any of the methods provided in Rule 7 of the  
5 Supreme Court. The clerk shall docket the petition for  
6 consideration by the court pursuant to Section 122-2.1 upon his  
7 or her receipt thereof and bring the same promptly to the  
8 attention of the court.

9 (c) Except as otherwise provided in subsection (a-5), if  
10 the petitioner is under sentence of death and a petition for  
11 writ of certiorari is filed, no proceedings under this Article  
12 shall be commenced more than 6 months after the conclusion of  
13 proceedings in the United States Supreme Court, unless the  
14 petitioner alleges facts showing that the delay was not due to  
15 his or her culpable negligence. If a petition for certiorari is  
16 not filed, no proceedings under this Article shall be commenced  
17 more than 6 months from the date for filing a certiorari  
18 petition, unless the petitioner alleges facts showing that the  
19 delay was not due to his or her culpable negligence.

20 When a defendant has a sentence other than death, no  
21 proceedings under this Article shall be commenced more than 6  
22 months after the conclusion of proceedings in the United States  
23 Supreme Court, unless the petitioner alleges facts showing that  
24 the delay was not due to his or her culpable negligence. If a  
25 petition for certiorari is not filed, no proceedings under this  
26 Article shall be commenced more than 6 months from the date for

1 filing a certiorari petition, unless the petitioner alleges  
2 facts showing that the delay was not due to his or her culpable  
3 negligence. If a defendant does not file a direct appeal, the  
4 post-conviction petition shall be filed no later than 3 years  
5 from the date of conviction, unless the petitioner alleges  
6 facts showing that the delay was not due to his or her culpable  
7 negligence.

8 This limitation does not apply to a petition advancing a  
9 claim of actual innocence.

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

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

23 (f) Except for petitions brought under paragraph (3) of  
24 subsection (a) of this Section, only ~~only~~ one petition may be  
25 filed by a petitioner under this Article without leave of the  
26 court. Leave of court may be granted only if a petitioner

1 demonstrates cause for his or her failure to bring the claim in  
2 his or her initial post-conviction proceedings and prejudice  
3 results from that failure. For purposes of this subsection (f):  
4 (1) a prisoner shows cause by identifying an objective factor  
5 that impeded his or her ability to raise a specific claim  
6 during his or her initial post-conviction proceedings; and (2)  
7 a prisoner shows prejudice by demonstrating that the claim not  
8 raised during his or her initial post-conviction proceedings so  
9 infected the trial that the resulting conviction or sentence  
10 violated due process.

11 (Source: P.A. 93-493, eff. 1-1-04; 93-605, eff. 11-19-03;  
12 93-972, eff. 8-20-04.)

13 Section 10. The Unified Code of Corrections is amended by  
14 changing Section 5-5-3.1 as follows:

15 (730 ILCS 5/5-5-3.1) (from Ch. 38, par. 1005-5-3.1)

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

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

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

21 (2) The defendant did not contemplate that his criminal  
22 conduct would cause or threaten serious physical harm to  
23 another.

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

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

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

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

9           (7) The defendant has no history of prior delinquency  
10 or criminal activity or has led a law-abiding life for a  
11 substantial period of time before the commission of the  
12 present crime.

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

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

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

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

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

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

25           (14) The defendant sought or obtained emergency  
26 medical assistance for an overdose and was convicted of a

1 Class 3 felony or higher possession, manufacture, or  
2 delivery of a controlled, counterfeit, or look-alike  
3 substance or a controlled substance analog under the  
4 Illinois Controlled Substances Act or a Class 2 felony or  
5 higher possession, manufacture or delivery of  
6 methamphetamine under the Methamphetamine Control and  
7 Community Protection Act.

8 (15) At the time of the offense, the defendant is or  
9 had been the victim of domestic violence and the effects of  
10 the domestic violence tended to excuse or justify the  
11 defendant's criminal conduct. As used in this paragraph  
12 (15), "domestic violence" means abuse as defined in Section  
13 103 of the Illinois Domestic Violence Act of 1986.

14 (16) At the time of the offense, the defendant was  
15 suffering from a serious mental illness which, though  
16 insufficient to establish the defense of insanity,  
17 substantially affected his or her ability to understand the  
18 nature of his or her acts or to conform his or her conduct  
19 to the requirements of the law.

20 (17) At the time of the offense, the defendant was  
21 suffering from post-partum depression or post-partum  
22 psychosis which was either undiagnosed or untreated, or  
23 both, and this temporary mental illness tended to excuse or  
24 justify the defendant's criminal conduct and the defendant  
25 has been diagnosed as suffering from post-partum  
26 depression or post-partum psychosis, or both, by a



1 qualified medical person and the diagnoses or testimony, or  
2 both, was not used at trial. In this paragraph (17):

3 "Post-partum depression" means a mood disorder  
4 which strikes many women during and after pregnancy  
5 which usually occurs during pregnancy and up to 12  
6 months after delivery. This depression can include  
7 anxiety disorders.

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

14 (b) If the court, having due regard for the character of  
15 the offender, the nature and circumstances of the offense and  
16 the public interest finds that a sentence of imprisonment is  
17 the most appropriate disposition of the offender, or where  
18 other provisions of this Code mandate the imprisonment of the  
19 offender, the grounds listed in paragraph (a) of this  
20 subsection shall be considered as factors in mitigation of the  
21 term imposed.

22 (Source: P.A. 98-463, eff. 8-16-13; 99-143, eff. 7-27-15;  
23 99-384, eff. 1-1-16; 99-642, eff. 7-28-16; 99-877, eff.  
24 8-22-16.)".