



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1627

Introduced 2/15/2019, by Sen. Toi W. Hutchinson

SYNOPSIS AS INTRODUCED:

725 ILCS 5/122-1
735 ILCS 5/2-1401

from Ch. 38, par. 122-1
from Ch. 110, par. 2-1401

Amends the Code of Criminal Procedure of 1963. Eliminates the amendatory changes made by Public Act 100-574 to the Code. Amends the Code of Civil Procedure. Provides that a movant may present a meritorious claim under this section if the allegations in the petition establish each of the following by a preponderance of the evidence: (1) she was convicted of a forcible felony; (2) her participation in the offense was a direct result of her 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) she 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 she was unable to receive proper treatment; and (5) evidence of post-partum depression or post-partum psychosis as suffered by the person 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. Provides that the new provision is inoperative 2 years after its effective date. Provides that nothing in the new provision prevents a person from applying for any other relief under the Civil Practice Law or any other law otherwise available to her. Defines "post-partum depression" and "post-partum psychosis".

LRB101 00249 RLC 45253 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 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;

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
17 that establishes a substantial basis to believe that the
18 defendant is actually innocent by clear and convincing
19 evidence; or

20 (3) (blank). ~~by a preponderance of the evidence that~~
21 ~~each of the following allegations in the petition~~
22 ~~establish:~~

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

1 ~~(B) his or her participation in the offense was a~~
2 ~~direct result of the person's mental state either~~
3 ~~suffering from post partum depression or post partum~~
4 ~~psychosis;~~

5 ~~(C) no evidence of post partum depression or~~
6 ~~post partum psychosis was presented by a qualified~~
7 ~~medical person at trial or sentencing, or both;~~

8 ~~(D) he or she was unaware of the mitigating nature~~
9 ~~of the evidence or if aware was at the time unable to~~
10 ~~present this defense due to suffering from post partum~~
11 ~~depression or post partum psychosis or at the time of~~
12 ~~trial or sentencing neither was a recognized mental~~
13 ~~illness and as such unable to receive proper treatment;~~
14 ~~and~~

15 ~~(E) evidence of post partum depression or~~
16 ~~post partum psychosis as suffered by the person is~~
17 ~~material and noncumulative to other evidence offered~~
18 ~~at the time of trial or sentencing and it is of such a~~
19 ~~conclusive character that it would likely change the~~
20 ~~sentence imposed by the original court.~~

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

24 ~~As used in this paragraph (3):~~

25 ~~"Post partum depression" means a mood disorder~~
26 ~~which strikes many women during and after pregnancy~~

1 ~~which usually occurs during pregnancy and up to 12~~
2 ~~months after delivery. This depression can include~~
3 ~~anxiety disorders.~~

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

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

20 (b) The proceeding shall be commenced by filing with the
21 clerk of the court in which the conviction took place a
22 petition (together with a copy thereof) verified by affidavit.
23 Petitioner shall also serve another copy upon the State's
24 Attorney by any of the methods provided in Rule 7 of the
25 Supreme Court. The clerk shall docket the petition for
26 consideration by the court pursuant to Section 122-2.1 upon his

1 or her receipt thereof and bring the same promptly to the
2 attention of the court.

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

14 When a defendant has a sentence other than death, no
15 proceedings under this Article shall be commenced more than 6
16 months after the conclusion of proceedings in the United States
17 Supreme Court, unless the petitioner alleges facts showing that
18 the delay was not due to his or her culpable negligence. If a
19 petition for certiorari is not filed, no proceedings under this
20 Article shall be commenced more than 6 months from the date for
21 filing a certiorari petition, unless the petitioner alleges
22 facts showing that the delay was not due to his or her culpable
23 negligence. If a defendant does not file a direct appeal, the
24 post-conviction petition shall be filed no later than 3 years
25 from the date of conviction, unless the petitioner alleges
26 facts showing that the delay was not due to his or her culpable

1 negligence.

2 This limitation does not apply to a petition advancing a
3 claim of actual innocence.

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

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

17 (f) Only ~~Except for petitions brought under paragraph (3)~~
18 ~~of subsection (a) of this Section, only~~ one petition may be
19 filed by a petitioner under this Article without leave of the
20 court. Leave of court may be granted only if a petitioner
21 demonstrates cause for his or her failure to bring the claim in
22 his or her initial post-conviction proceedings and prejudice
23 results from that failure. For purposes of this subsection (f):
24 (1) a prisoner shows cause by identifying an objective factor
25 that impeded his or her ability to raise a specific claim
26 during his or her initial post-conviction proceedings; and (2)

1 a prisoner shows prejudice by demonstrating that the claim not
2 raised during his or her initial post-conviction proceedings so
3 infected the trial that the resulting conviction or sentence
4 violated due process.

5 (Source: P.A. 100-574, eff. 6-1-18.)

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

8 (735 ILCS 5/2-1401) (from Ch. 110, par. 2-1401)

9 Sec. 2-1401. Relief from judgments.

10 (a) Relief from final orders and judgments, after 30 days
11 from the entry thereof, may be had upon petition as provided in
12 this Section. Writs of error coram nobis and coram vobis, bills
13 of review and bills in the nature of bills of review are
14 abolished. All relief heretofore obtainable and the grounds for
15 such relief heretofore available, whether by any of the
16 foregoing remedies or otherwise, shall be available in every
17 case, by proceedings hereunder, regardless of the nature of the
18 order or judgment from which relief is sought or of the
19 proceedings in which it was entered. Except as provided in the
20 Illinois Parentage Act of 2015, there shall be no distinction
21 between actions and other proceedings, statutory or otherwise,
22 as to availability of relief, grounds for relief or the relief
23 obtainable.

24 (b) The petition must be filed in the same proceeding in

1 which the order or judgment was entered but is not a
2 continuation thereof. The petition must be supported by
3 affidavit or other appropriate showing as to matters not of
4 record. A petition to reopen a foreclosure proceeding must
5 include as parties to the petition, but is not limited to, all
6 parties in the original action in addition to the current
7 record title holders of the property, current occupants, and
8 any individual or entity that had a recorded interest in the
9 property before the filing of the petition. All parties to the
10 petition shall be notified as provided by rule.

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

- 14 (1) the movant was convicted of a forcible felony;
- 15 (2) the movant's participation in the offense was
16 related to him or her previously having been a victim of
17 domestic violence as perpetrated by an intimate partner;
- 18 (3) no evidence of domestic violence against the movant
19 was presented at the movant's sentencing hearing;
- 20 (4) the movant was unaware of the mitigating nature of
21 the evidence of the domestic violence at the time of
22 sentencing and could not have learned of its significance
23 sooner through diligence; and
- 24 (5) the new evidence of domestic violence against the
25 movant is material and noncumulative to other evidence
26 offered at the sentencing hearing, and is of such a

1 conclusive character that it would likely change the
2 sentence imposed by the original trial court.

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

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

7 "Domestic violence" means abuse as defined in Section
8 103 of the Illinois Domestic Violence Act of 1986.

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

11 "Intimate partner" means a spouse or former spouse,
12 persons who have or allegedly have had a child in common,
13 or persons who have or have had a dating or engagement
14 relationship.

15 (b-10) A movant may present a meritorious claim under this
16 Section if the allegations in the petition establish each of
17 the following by a preponderance of the evidence:

18 (A) she was convicted of a forcible felony;

19 (B) her participation in the offense was a direct
20 result of her suffering from post-partum depression or
21 post-partum psychosis;

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

25 (D) she was unaware of the mitigating nature of the
26 evidence or, if aware, was at the time unable to present

1 this defense due to suffering from post-partum depression
2 or post-partum psychosis, or, at the time of trial or
3 sentencing, neither was a recognized mental illness and as
4 such, she was unable to receive proper treatment; and

5 (E) evidence of post-partum depression or post-partum
6 psychosis as suffered by the person is material and
7 noncumulative to other evidence offered at the time of
8 trial or sentencing, and it is of such a conclusive
9 character that it would likely change the sentence imposed
10 by the original court.

11 Nothing in this subsection (b-10) prevents a person from
12 applying for any other relief under this Article or any other
13 law otherwise available to her.

14 This subsection (b-10) is inoperative 2 years after the
15 effective date of this amendatory Act of the 101st General
16 Assembly.

17 As used in this subsection (b-10):

18 "Post-partum depression" means a mood disorder which
19 strikes many women during and after pregnancy and usually
20 occurs during pregnancy and up to 12 months after delivery.
21 This depression can include anxiety disorders.

22 "Post-partum psychosis" means an extreme form of
23 post-partum depression which can occur during pregnancy
24 and up to 12 months after delivery. This can include losing
25 touch with reality, distorted thinking, delusions,
26 auditory and visual hallucinations, paranoia,

1 hyperactivity and rapid speech, or mania.

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

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

13 (e) Unless lack of jurisdiction affirmatively appears from
14 the record proper, the vacation or modification of an order or
15 judgment pursuant to the provisions of this Section does not
16 affect the right, title or interest in or to any real or
17 personal property of any person, not a party to the original
18 action, acquired for value after the entry of the order or
19 judgment but before the filing of the petition, nor affect any
20 right of any person not a party to the original action under
21 any certificate of sale issued before the filing of the
22 petition, pursuant to a sale based on the order or judgment.
23 When a petition is filed pursuant to this Section to reopen a
24 foreclosure proceeding, notwithstanding the provisions of
25 Section 15-1701 of this Code, the purchaser or successor
26 purchaser of real property subject to a foreclosure sale who

1 was not a party to the mortgage foreclosure proceedings is
2 entitled to remain in possession of the property until the
3 foreclosure action is defeated or the previously foreclosed
4 defendant redeems from the foreclosure sale if the purchaser
5 has been in possession of the property for more than 6 months.

6 (f) Nothing contained in this Section affects any existing
7 right to relief from a void order or judgment, or to employ any
8 existing method to procure that relief.

9 (Source: P.A. 99-85, eff. 1-1-16; 99-384, eff. 1-1-16; 99-642,
10 eff. 7-28-16; 100-1048, eff. 8-23-18.)