

# SB1566



## 102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB1566

Introduced 2/26/2021, by Sen. Rachelle Crowe

### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3.1

from Ch. 38, par. 1005-5-3.1

Amends the Unified Code of Corrections. Provides that the grounds accorded weight in favor of withholding or minimizing a sentence of imprisonment include that the defendant is pregnant or is the parent of a child or infant whose well-being will be negatively affected by the parent's absence. Provides that circumstances to be considered in assessing this factor in mitigation include: (1) the likelihood that the child will be adjudged a dependent minor and declared a ward of the court under the Juvenile Court Act of 1987; and (2) the best interest of the child.

LRB102 15059 KMF 20414 b

A BILL FOR

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  
9 favor 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  
13 criminal conduct would cause or threaten serious physical  
14 harm to another.

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

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

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

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

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

25          (15) At the time of the offense, the defendant is or  
26          had been the victim of domestic violence and the effects

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

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

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

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

25 "Post-partum psychosis" means an extreme form of  
26 post-partum depression which can occur during

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

5 (18) The defendant is pregnant or is the parent of a  
6 child or infant whose well-being will be negatively  
7 affected by the parent's absence. Circumstances to be  
8 considered in assessing this factor in mitigation include:

9 (A) that the parent is breastfeeding the child;

10 (B) the age of the child, with strong  
11 consideration given to avoid disruption of the  
12 caregiving of an infant, pre-school or school-age  
13 child by a parent;

14 (C) the role of the parent in the day-to-day  
15 educational and medical needs of the child;

16 (D) the relationship of the parent and the child;

17 (E) any special medical, educational, or  
18 psychological needs of the child;

19 (F) the role of the parent in the financial  
20 support of the child; -

21 (G) the likelihood that the child will be adjudged  
22 a dependent minor under Section 2-4 and declared a  
23 ward of the court under Section 2-22 of the Juvenile  
24 Court Act of 1987;

25 (H) the best interest of the child.

26 Under this Section, the defendant shall have the right

1 to present a Family Impact Statement at sentencing, which  
2 the court shall consider in favor of withholding or  
3 minimizing a sentence of imprisonment prior to imposing  
4 any sentence and may include testimony from family and  
5 community members, written statements, video, and  
6 documentation. Unless the court finds that the parent  
7 poses a significant risk to the community that outweighs  
8 the risk of harm from the parent's removal from the  
9 family, the court shall impose a sentence in accordance  
10 with subsection (b) that allows the parent to continue to  
11 care for the child or children.

12 (19) The defendant serves as the caregiver for a  
13 relative who is ill, disabled, or elderly.

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. 100-574, eff. 6-1-18; 101-471, eff. 1-1-20.)