

HB5646



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5646

Introduced 2/9/2024, by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-1401

from Ch. 110, par. 2-1401

Amends the Code of Civil Procedure. Provides a conviction that was the result of a negotiated plea may be challenged under the post-judgment relief provisions that require evidence of a forcible felony, domestic violence, or gender-based violence.

LRB103 37587 JRC 67713 b

A BILL FOR

1 AN ACT concerning civil 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 Civil Procedure is amended by
5 changing Section 2-1401 as follows:

6 (735 ILCS 5/2-1401) (from Ch. 110, par. 2-1401)

7 Sec. 2-1401. Relief from judgments.

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

22 (b) The petition must be filed in the same proceeding in
23 which the order or judgment was entered but is not a

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

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

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

14 (2) the movant's participation in the offense was
15 related to him or her previously having been a victim of
16 domestic violence or gender-based violence;

17 (3) there is substantial evidence of domestic violence
18 or gender-based violence against the movant that was not
19 presented at the movant's sentencing hearing;

20 (4) (blank); and

21 (5) the evidence of domestic violence or gender-based
22 violence against the movant is material and noncumulative
23 to other evidence offered at the sentencing hearing, or
24 previous hearing under this Section filed on or after the
25 effective date of this amendatory Act of the 103rd General
26 Assembly, and is of such a conclusive character that it

1 would likely change the sentence imposed by the original
2 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. This subsection
6 (b-5) applies to all eligible convictions, including, but not
7 limited to, if the judge renders the sentence based on a
8 negotiated plea agreement. Relief under this Section allows
9 for the modification of the length of sentence without
10 affecting the conviction.

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

12 "Domestic violence" means abuse as defined in Section
13 103 of the Illinois Domestic Violence Act of 1986.

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

16 "Gender-based violence" includes evidence of
17 victimization as a trafficking victim, as defined by
18 paragraph (10) of subsection (a) of Section 10-9 of the
19 Criminal Code of 2012, evidence of victimization under the
20 Illinois Domestic Violence Act of 1986, evidence of
21 victimization under the Stalking No Contact Order Act, or
22 evidence of victimization of any offense under Article 11
23 of the Criminal Code of 2012, irrespective of criminal
24 prosecution or conviction.

25 "Intimate partner" means a spouse or former spouse,
26 persons who have or allegedly have had a child in common,

1 or persons who have or have had a dating or engagement
2 relationship.

3 "Substantial evidence" means evidence that a
4 reasonable mind might accept as adequate to support a
5 conclusion.

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

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

10 (B) her participation in the offense was a direct
11 result of her suffering from postpartum ~~post-partum~~
12 depression or postpartum ~~post-partum~~ psychosis;

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

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

23 (E) evidence of postpartum ~~post-partum~~ depression or
24 postpartum ~~post-partum~~ psychosis as suffered by the person
25 is material and noncumulative to other evidence offered at
26 the time of trial or sentencing, and it is of such a

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

3 Nothing in this subsection (b-10) prevents a person from
4 applying for any other relief under this Article or any other
5 law otherwise available to her. This subsection (b-10) applies
6 to all eligible convictions, including, but not limited to, if
7 the judge renders the sentence based on a negotiated plea
8 agreement. Relief under this Section allows for the
9 modification of the length of sentence without affecting the
10 conviction.

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

12 "Postpartum ~~Post-partum~~ depression" means a mood
13 disorder which strikes many women during and after
14 pregnancy and usually occurs during pregnancy and up to 12
15 months after delivery. This depression can include anxiety
16 disorders.

17 "Postpartum ~~Post-partum~~ psychosis" means an extreme
18 form of postpartum ~~post-partum~~ depression which can occur
19 during pregnancy and up to 12 months after delivery. This
20 can include losing touch with reality, distorted thinking,
21 delusions, auditory and visual hallucinations, paranoia,
22 hyperactivity and rapid speech, or mania.

23 (c) Except as provided in Section 20b of the Adoption Act
24 and Section 2-32 of the Juvenile Court Act of 1987, in a
25 petition based upon Section 116-3 of the Code of Criminal
26 Procedure of 1963 or subsection (b-5) or (b-10) of this

1 Section, or in a motion to vacate and expunge convictions
2 under the Cannabis Control Act as provided by subsection (i)
3 of Section 5.2 of the Criminal Identification Act, the
4 petition must be filed not later than 2 years after the entry
5 of the order or judgment. Time during which the person seeking
6 relief is under legal disability or duress or the ground for
7 relief is fraudulently concealed shall be excluded in
8 computing the period of 2 years.

9 (c-5) Any individual may at any time file a petition and
10 institute proceedings under this Section if his or her final
11 order or judgment, which was entered based on a plea of guilty
12 or nolo contendere, has potential consequences under federal
13 immigration law.

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 When a petition is filed pursuant to this Section to reopen a

1 foreclosure proceeding, notwithstanding the provisions of
2 Section 15-1701 of this Code, the purchaser or successor
3 purchaser of real property subject to a foreclosure sale who
4 was not a party to the mortgage foreclosure proceedings is
5 entitled to remain in possession of the property until the
6 foreclosure action is defeated or the previously foreclosed
7 defendant redeems from the foreclosure sale if the purchaser
8 has been in possession of the property for more than 6 months.

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

12 (Source: P.A. 102-639, eff. 8-27-21; 102-813, eff. 5-13-22;
13 103-403, eff. 1-1-24.)