

SB2079



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2079

Introduced 2/9/2023, by Sen. Robert Peters

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4.5-95 rep.
735 ILCS 5/2-1401

from Ch. 110, par. 2-1401

Amends the Unified Code of Corrections. Repeals the general recidivism provisions of the Code. Amends the Code of Civil Procedure. Provides that a movant may present a meritorious claim for relief from judgment if the allegations in the petition establish the following by a preponderance of the evidence that, prior to the effective date of the amendatory Act, the movant was sentenced to natural life imprisonment under the general recidivism provisions of the Unified Code of Corrections. Provides that nothing in this provision prevents a movant from applying for any other relief under the relief from judgments provision or any other law otherwise available to him or her.

LRB103 25688 RLC 52037 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 (730 ILCS 5/5-4.5-95 rep.)

5 Section 5. The Unified Code of Corrections is amended by
6 repealing Section 5-4.5-95.

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

9 (735 ILCS 5/2-1401) (from Ch. 110, par. 2-1401)

10 Sec. 2-1401. Relief from judgments.

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

1 as to availability of relief, grounds for relief, or the
2 relief obtainable.

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

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

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

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

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

23 (4) the movant was unaware of the mitigating nature of
24 the evidence of the domestic violence at the time of
25 sentencing and could not have learned of its significance
26 sooner through diligence; and

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

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

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

10 "Domestic violence" means abuse as defined in Section
11 103 of the Illinois Domestic Violence Act of 1986.

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

14 "Intimate partner" means a spouse or former spouse,
15 persons who have or allegedly have had a child in common,
16 or persons who have or have had a dating or engagement
17 relationship.

18 (b-10) 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 (A) she was convicted of a forcible felony;

22 (B) her participation in the offense was a direct
23 result of her suffering from post-partum depression or
24 post-partum psychosis;

25 (C) no evidence of post-partum depression or
26 post-partum psychosis was presented by a qualified medical

1 person at trial or sentencing, or both;

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

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

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

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
21 delivery. 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
25 losing touch with reality, distorted thinking, delusions,
26 auditory and visual hallucinations, paranoia,

1 hyperactivity and rapid speech, or mania.

2 (b-15) A movant may present a meritorious claim under this
3 Section if the allegations in the petition establish the
4 following by a preponderance of the evidence that, prior to
5 the effective date of this amendatory Act of the 103rd General
6 Assembly, the movant was sentenced to natural life
7 imprisonment under Section 5-4.5-95 of the Unified Code of
8 Corrections. Nothing in this subsection (b-15) prevents a
9 movant from applying for any other relief under this Section
10 or any other law otherwise available to him or her.

11 (c) Except as provided in Section 20b of the Adoption Act
12 and Section 2-32 of the Juvenile Court Act of 1987, in a
13 petition based upon Section 116-3 of the Code of Criminal
14 Procedure of 1963 or subsection (b-10) of this Section, or in a
15 motion to vacate and expunge convictions under the Cannabis
16 Control Act as provided by subsection (i) of Section 5.2 of the
17 Criminal Identification Act, the petition must be filed not
18 later than 2 years after the entry of the order or judgment.
19 Time during which the person seeking relief is under legal
20 disability or duress or the ground for relief is fraudulently
21 concealed shall be excluded in computing the period of 2
22 years.

23 (c-5) Any individual may at any time file a petition and
24 institute proceedings under this Section if his or her final
25 order or judgment, which was entered based on a plea of guilty
26 or nolo contendere, has potential consequences under federal

1 immigration law.

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

4 (e) Unless lack of jurisdiction affirmatively appears from
5 the record proper, the vacation or modification of an order or
6 judgment pursuant to the provisions of this Section does not
7 affect the right, title, or interest in or to any real or
8 personal property of any person, not a party to the original
9 action, acquired for value after the entry of the order or
10 judgment but before the filing of the petition, nor affect any
11 right of any person not a party to the original action under
12 any certificate of sale issued before the filing of the
13 petition, pursuant to a sale based on the order or judgment.
14 When a petition is filed pursuant to this Section to reopen a
15 foreclosure proceeding, notwithstanding the provisions of
16 Section 15-1701 of this Code, the purchaser or successor
17 purchaser of real property subject to a foreclosure sale who
18 was not a party to the mortgage foreclosure proceedings is
19 entitled to remain in possession of the property until the
20 foreclosure action is defeated or the previously foreclosed
21 defendant redeems from the foreclosure sale if the purchaser
22 has been in possession of the property for more than 6 months.

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

26 (Source: P.A. 101-27, eff. 6-25-19; 101-411, eff. 8-16-19;

1 102-639, eff. 8-27-21; 102-813, eff. 5-13-22.)