

**103RD GENERAL ASSEMBLY****State of Illinois****2023 and 2024****SB2258**

Introduced 2/10/2023, by Sen. Robert Peters

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4.5-120 new

Amends the Unified Code of Corrections. Provides that any person imprisoned in the penitentiary may, after serving 10 years or more of his or her sentence or cumulative sentences, submit a petition for sentencing review in the circuit court of the county in which he or she was originally sentenced. Provides that upon receipt of the petition and assignment to a judge, the judge shall determine within 30 days if the petitioner has sought filing in the appropriate court and has served 10 or more years of his or her sentence. If the court determines that either of those factors are not satisfied, it shall dismiss the petition and notify the petitioner of the reason for the dismissal. Provides that the State's Attorney must be afforded an opportunity to respond to the petition and the court shall provide the petitioner with the opportunity to reply to the petition. Provides that within 90 days after the filing of the petition for sentencing review, the court shall set the matter for a hearing. Provides that this date may be extended by motion of either party and at the court's discretion for good cause shown. Provides that at the sentencing review hearing the court shall consider certain factors. Provides that following the hearing, the court may affirm or reduce the petitioner's sentence and shall be authorized to depart downward from any mandatory minimum or mandatory sentence enhancement, taking into consideration certain mitigating factors. Provides that notwithstanding any provisions to the contrary, any offender who has petitioned the circuit court for sentencing review shall not be eligible to submit a second petition until at least 5 years have elapsed since the date on which the circuit court ruled upon the initial petition. Provides that these provisions shall operate retroactively to provide any person incarcerated for a crime or crimes committed, before the effective date of the amendatory Act, with the opportunity to file a motion for resentencing under these provisions under the terms provided in these provisions. Provides that notwithstanding anything else to the contrary, nothing in these provisions shall be construed to delay parole or mandatory supervised release consideration for petitioners who, prior to the effective date of the amendatory Act, are or will be eligible for release earlier than these provisions.

LRB103 28764 RLC 55147 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 Unified Code of Corrections is amended by
5 adding Section 5-4.5-120 as follows:

6 (730 ILCS 5/5-4.5-120 new)

7 Sec. 5-4.5-120. Sentencing review of incarcerated
8 individuals. Any person imprisoned in the penitentiary may,
9 after serving 10 years or more of his or her sentence or
10 cumulative sentences, submit a petition for sentencing review
11 in the circuit court of the county in which he or she was
12 originally sentenced. The procedure for sentencing review
13 shall occur in the following manner:

14 (1) The chief judge of the criminal division of the
15 circuit located in a county of 2,000,000 or more inhabitants,
16 or in counties under 2,000,000 inhabitants, the chief judge of
17 the circuit or a judge assigned by the chief judge, in which
18 the petition is filed, shall assign the matter to any judge.

19 (2) Upon receipt of the petition and assignment to a
20 judge, the judge shall determine within 30 days if the
21 petitioner has sought filing in the appropriate court and has
22 served 10 or more years of his or her sentence. If the court
23 determines that either of those factors are not satisfied, it

1 shall dismiss the petition and notify the petitioner of the
2 reason for the dismissal. This notification shall be served
3 upon the petitioner by certified mail within 10 days of its
4 entry. If the court determines the petition was appropriately
5 filed, it shall docket the petition. If the petitioner is
6 without counsel and alleges in the petition for sentencing
7 review that he or she is without means to procure counsel, he
8 or she shall state whether or not he or she wishes counsel to
9 be appointed to represent him or her. If appointment of
10 counsel is requested, the court shall appoint counsel if
11 satisfied that the petitioner has no means to procure counsel.
12 The clerk of the circuit court shall serve a copy of the
13 petition to the State's Attorney of that county or his or her
14 representative.

15 (3) Upon receipt of the petition for sentencing review,
16 the State's Attorney's Office shall provide the victim or his
17 or her family, or both, with a copy of the petition, and notice
18 of any restorative justice programs available.

19 (4) The petitioner, if pro se, or his or her attorney may
20 amend the petition for sentencing review.

21 (5) The State's Attorney must be afforded an opportunity
22 to respond to the petition and the court shall provide the
23 petitioner with the opportunity to reply to the petition.

24 (6) Within 90 days after the filing of the petition for
25 sentencing review, the court shall set the matter for a
26 hearing. This date may be extended by motion of either party

1 and at the court's discretion for good cause shown.

2 (7) At the sentencing review hearing, the court shall:

3 (A) consider in mitigation the factors listed in
4 paragraphs (A) through (K) of paragraph (8) of this
5 Section;

6 (B) consider the evidence, if any, received at trial;

7 (C) consider any presentence reports;

8 (D) consider the financial impact of incarceration
9 based on the financial impact statement filed with the
10 clerk of the court by the Department of Corrections;

11 (E) consider any additional evidence and information
12 offered by the parties in aggravation and mitigation,
13 including, but not limited to, scientific evidence of
14 recidivism;

15 (F) consider the person's overall record of behavior
16 while incarcerated, including disciplinary history,
17 participation in educational and vocational programs
18 available to the petitioner, including, but not limited
19 to, restorative justice programs, and extent of
20 cooperation with staff;

21 (G) hear arguments as to sentencing alternatives;

22 (H) afford the petitioner the opportunity to make a
23 statement on his or her behalf without being subject to
24 cross-examination;

25 (I) afford the victim or families of victims of the
26 crime, or both, for which the petitioner was originally

1 sentenced an opportunity to provide a victim impact
2 statement to the court. The court shall permit those
3 statements and consider the live testimony of a victim or
4 a victim representative.

5 (8) Following the hearing, the court may affirm or reduce
6 the petitioner's sentence and shall be authorized to depart
7 downward from any mandatory minimum or mandatory sentence
8 enhancement, taking into consideration the following factors:

9 (A) the petitioner's current age, as well as the
10 petitioner's age, impetuosity, and level of maturity at
11 the time of the offense, including the ability to consider
12 risks and consequences of behavior, and the presence of
13 cognitive or developmental disability, if any;

14 (B) whether the petitioner was subjected to outside
15 pressure, including peer pressure, familial pressure, or
16 negative influences;

17 (C) the petitioner's family and community
18 circumstances, home environment, educational and social
19 background, including any history of parental neglect,
20 physical, mental, or sexual abuse, involvement in the
21 child welfare system, or other childhood trauma;

22 (D) the nature and circumstances of the offense;

23 (E) the petitioner's degree of participation and
24 specific role in the offense, including the level of
25 planning by the defendant before the offense;

26 (F) whether the petitioner was able to meaningfully

1 participate in his or her defense;

2 (G) the petitioner's prior juvenile or criminal
3 history;

4 (H) the history and characteristics of the petitioner
5 at the time of the petition, including rehabilitation and
6 maturity demonstrated by the petitioner;

7 (I) any report from a physical, mental, or psychiatric
8 examination of the petitioner conducted by a licensed
9 health professional;

10 (J) any changes to the law governing criminal
11 convictions, dispositions, or length of stay since the
12 time of sentencing; and

13 (K) any other information the court finds relevant and
14 reliable, including an expression of remorse, if
15 appropriate. However, if the petitioner, on advice of
16 counsel chooses not to make a statement, the court shall
17 not consider a lack of an expression of remorse as an
18 aggravating factor. The order following a sentencing
19 review hearing is a final judgment. Any final judgment
20 entered upon the petition shall be reviewed in a manner
21 pursuant to the rules of the Supreme Court.

22 (9) Notwithstanding any provision of this Section to the
23 contrary, any offender who has petitioned the circuit court
24 for sentencing review under this Section shall not be eligible
25 to submit a second petition until at least 5 years have elapsed
26 since the date on which the circuit court ruled upon the

1 initial petition. In considering the second petition, the
2 court shall follow the procedure stated in paragraphs (2)
3 through (8). Following a hearing on the second petition
4 pursuant to this paragraph (9), the court may affirm or reduce
5 the petitioner's sentence. The order following a hearing
6 pursuant to this paragraph is a final judgment.

7 (10) The petitioner may file a motion seeking leave for
8 sentencing review when 5 years have elapsed since the date on
9 which the circuit court ruled on a petition filed pursuant to
10 paragraph (9). The motion must clearly set forth the need for
11 sentencing review, including the efforts the petitioner has
12 made toward rehabilitation and his or her demonstrated
13 maturity.

14 (A) Within 90 days after the filing of this motion,
15 the court shall examine the motion and enter an order
16 thereon. In considering a motion under this paragraph, the
17 court may examine the court file of the proceeding in
18 which the petitioner was convicted, any action taken by an
19 appellate court in that proceeding, any transcripts of
20 that proceeding, and any transcript or court documents
21 from previous proceedings under this Section. If the court
22 determines the motion is frivolous or is patently without
23 merit, it shall deny the motion in a written order,
24 specifying the underlying basis for its decision that
25 continued incarceration is appropriate and necessary. The
26 order is a final judgment and shall be served upon the

1 petitioner by certified mail within 10 days of its entry.

2 (B) If the petition is not dismissed under
3 subparagraph (A), the court shall order the motion for
4 sentencing review to be docketed for further consideration
5 in accordance with the procedure stated in paragraphs (2)
6 through (8).

7 (11) This Section shall operate retroactively to provide
8 any person incarcerated for a crime or crimes committed,
9 before the effective date of this amendatory Act of the 103rd
10 General Assembly, with the opportunity to file a motion for
11 resentencing under this Section under the terms provided in
12 this Section.

13 (12) Notwithstanding anything else to the contrary in this
14 Section, nothing in this Section shall be construed to delay
15 parole or mandatory supervised release consideration for
16 petitioners who, prior to the effective date of this
17 amendatory Act of the 103rd General Assembly, are or will be
18 eligible for release earlier than this Section provides.

19 (13) The clerk of the court shall serve copies of the
20 petitions, any amendments to the petition and the final orders
21 to the Sentencing Policy Advisory Council. The Sentencing
22 Policy Advisory Council shall report on the impact of
23 resentencing motions on the prison population contingent on
24 having sufficient reliable data to support the analysis. The
25 report shall be due 3 years after the effective date of this
26 amendatory Act of the 103rd General Assembly.