

103RD GENERAL ASSEMBLY**State of Illinois****2023 and 2024****SB3629**

Introduced 2/9/2024, by Sen. Karina Villa

SYNOPSIS AS INTRODUCED:

725 ILCS 5/113-8

725 ILCS 5/122-10 new

Amends the Code of Criminal Procedure of 1963. Provides that a defendant who, prior to the effective date of the amendatory Act, had been barred by time limitations from filing a motion to vacate because the court failed to advise the defendant and the defendant shows that conviction of the offense to which the defendant pleaded guilty, guilty but mentally ill, or nolo contendere may have the consequence for the defendant of deportation, exclusion from admission to the United States, or denial of naturalization under the laws of the United States, may pursue the following remedies. Provides that any person, regardless of criminal custody status, may file a petition to vacate a conviction or sentence if the person asserts any of the following reasons: (1) the conviction or sentence is legally invalid due to prejudicial error damaging the petitioner's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence; or (2) newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice. Establishes time periods for filing the petition and establishes when the petitions are not timely filed. Provides that there is a presumption of legal invalidity if the petitioner pleaded guilty or nolo contendere under a statute that provided that, upon completion of specific requirements, the arrest and conviction shall be deemed never to have occurred, if the petitioner complied with these requirements, and if the disposition under the statute has been, or potentially could be, used as a basis for adverse immigration consequences. Provides that crime victims shall be given notice by the State's Attorney's office of petitions filed under this provision as required in the Rights of Crime Victims and Witnesses Act. Provides that remedies under this provision shall apply to convictions and sentences in existence prior to the effective date of the amendatory Act.

LRB103 37510 RLC 69596 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 113-8 and adding Section 122-10 as
6 follows:

7 (725 ILCS 5/113-8)

8 Sec. 113-8. Advisement concerning status as a noncitizen.

9 (a) Before the acceptance of a plea of guilty, guilty but
10 mentally ill, or nolo contendere to a misdemeanor or felony
11 offense, the court shall give the following advisement to the
12 defendant in open court:

13 "If you are not a citizen of the United States, you are
14 hereby advised that conviction of the offense for which you
15 have been charged may have the consequence of deportation,
16 exclusion from admission to the United States, or denial of
17 naturalization under the laws of the United States.".

18 (b) If the defendant is arraigned on or after the
19 effective date of this amendatory Act of the 101st General
20 Assembly, and the court fails to advise the defendant as
21 required by subsection (a) of this Section, and the defendant
22 shows that conviction of the offense to which the defendant
23 pleaded guilty, guilty but mentally ill, or nolo contendere

1 may have the consequence for the defendant of deportation,
2 exclusion from admission to the United States, or denial of
3 naturalization under the laws of the United States, the court,
4 upon the defendant's motion, shall vacate the judgment and
5 permit the defendant to withdraw the plea of guilty, guilty
6 but mentally ill, or nolo contendere and enter a plea of not
7 guilty. A defendant who, prior to the effective date of this
8 amendatory Act of the 103rd General Assembly, had been barred
9 by time limitations from filing a motion to vacate, may pursue
10 remedies under this Section or Section 122-10. ~~The motion~~
11 ~~shall be filed within 2 years of the date of the defendant's~~
12 ~~conviction.~~

13 (Source: P.A. 101-409, eff. 1-1-20; 102-1030, eff. 5-27-22.)

14 (725 ILCS 5/122-10 new)

15 Sec. 122-10. Petition to vacate certain convictions in the
16 trial court.

17 (a) In this Section, "conviction" is defined under 8
18 U.S.C. 1101(a)(48).

19 (b) Any person, regardless of criminal custody status,
20 including imprisonment in a penal institution for a felony,
21 parole, mandatory supervised release, probation, or
22 conditional discharge, may file a petition to vacate a
23 conviction or sentence under this Section if the person
24 asserts any of the following reasons:

25 (1) the conviction or sentence is legally invalid due

1 to prejudicial error damaging the petitioner's ability to
2 meaningfully understand, defend against, or knowingly
3 accept the actual or potential adverse immigration
4 consequences of a conviction or sentence. A finding of
5 legal invalidity may, but need not, include a finding of
6 ineffective assistance of counsel, and includes but is not
7 limited to failure to admonish noncitizens under Section
8 113-8 or Rule 402 of the Illinois Supreme Court; or

9 (2) newly discovered evidence of actual innocence
10 exists that requires vacation of the conviction or
11 sentence as a matter of law or in the interests of justice.

12 (c) (1) Except as provided in paragraph (2) of subsection
13 (b), a petition under paragraph (1) of subsection (b) shall be
14 deemed timely filed at any time notwithstanding any other
15 provision of law. The time limitations for petitions filed in
16 the trial court under Section 122-1 does not apply to a
17 petition filed under paragraph (1) of subsection (b).

18 (2) A petition under paragraph (1) of subsection (b) may
19 be deemed untimely filed if it was not filed with reasonable
20 diligence after the latest of any of the following:

21 (A) the petitioner receives a notice to appear in
22 immigration court or other notice from immigration
23 authorities that asserts the conviction or sentence as a
24 basis for removal or the denial of an application for an
25 immigration benefit, lawful status, or naturalization;

26 (B) the petitioner becomes aware that his or her

1 criminal conviction or sentence has adverse immigration
2 consequences;

3 (C) the petitioner received notice that they have been
4 ordered removed from the United States with a final
5 removal order; or

6 (D) the effective date of this amendatory Act of the
7 103rd General Assembly.

8 (d) A petition under paragraph (2) of subsection (b) shall
9 be filed without undue delay from the date the petitioner
10 discovered, or could have discovered with the exercise of due
11 diligence, the evidence that provides a basis for relief under
12 this Section.

13 (e) The petition shall identify the proceeding in which
14 the petitioner was convicted or sentenced, give the date of
15 the rendition of the final judgment complained of, and clearly
16 set forth the respects in which petitioner's rights were
17 violated under subsection (b). The petition may have attached
18 thereto affidavits, records, or other evidence supporting its
19 allegations or may state why the same are not attached.

20 (f) If the petition alleges that the petitioner is unable
21 to pay the costs of the proceeding, the court may order that
22 the petitioner be permitted to proceed as a poor person and
23 order a transcript of the proceedings delivered to petitioner
24 in accordance with Rule of the Supreme Court. If the
25 petitioner is without counsel and alleges that he is without
26 means to procure counsel, he shall state whether or not he

1 wishes counsel to be appointed to represent him. If
2 appointment of counsel is so requested, the court shall
3 appoint counsel if satisfied that the petitioner has no means
4 to procure counsel.

5 (g) All petitions filed under this Section shall be
6 entitled to a hearing. Upon the request of the petitioner, the
7 court may hold the hearing without the personal presence of
8 the petitioner provided that it finds good cause as to why the
9 petitioner cannot be present. If the State's Attorney for the
10 jurisdiction in which the petition is filed does not file an
11 objection to the petition, the court may grant the petition to
12 vacate the conviction or sentence without a hearing.

13 (1) Within 90 days after the filing and docketing of each
14 petition, the court shall examine such petition and enter an
15 order thereon setting for calendar a hearing date on the
16 petition, except that this timeline shall be 45 days in any
17 case in which the petitioner is in the custody of Immigration
18 and Customs Enforcement or otherwise faces imminent removal
19 from the United States.

20 (2) Within 30 days after the making of an order under
21 paragraph (1) of subsection (g), or within such further time
22 as the court may set, the State may file an answer. No other or
23 further pleadings shall be filed except as the court may order
24 on its own motion or on that of either party. The court may in
25 its discretion grant leave, at any stage of the proceeding
26 prior to entry of judgment, to withdraw the petition. The

1 court may in its discretion make such order as to amendment of
2 the petition or any other pleading, or as to pleading over, or
3 filing further pleadings, or extending the time of filing any
4 pleading other than the original petition, as shall be
5 appropriate, just and reasonable and as is generally provided
6 in civil cases.

7 (h) When ruling on the petition:

8 (1) The court shall grant the petition to vacate the
9 conviction or sentence if the petitioner establishes, by a
10 preponderance of the evidence, the existence of any of the
11 grounds for relief specified in subsection (b). For a
12 motion made under paragraph (1) of subsection (b), the
13 petitioner shall also establish that the conviction or
14 sentence being challenged is currently causing or has the
15 potential to cause removal or the denial of an application
16 for an immigration benefit, lawful status, or
17 naturalization.

18 (2) A court's judicial admonishment under Section
19 113-8 at the time of the conviction or sentencing at issue
20 in the petition shall not be considered a sufficient basis
21 to cure or correct the prejudicial error damaging the
22 petitioner's ability to meaningfully understand, defend
23 against, or knowingly accept the actual or potential
24 adverse immigration consequences of a conviction or
25 sentence. Nor does this admonishment mitigate a finding of
26 ineffective assistance of counsel relating to the same

1 conviction or sentencing under this Section.

2 (3) There is a presumption of legal invalidity for the
3 purposes of paragraph (1) of subsection (b) if the
4 petitioner pleaded guilty or nolo contendere under a
5 statute that provided that, upon completion of specific
6 requirements, the arrest and conviction shall be deemed
7 never to have occurred, if the petitioner complied with
8 these requirements, and if the disposition under the
9 statute has been, or potentially could be, used as a basis
10 for adverse immigration consequences.

11 (4) If the court grants the petition to vacate a
12 conviction or sentence obtained through a plea of guilty
13 or nolo contendere, the court shall allow the petitioner
14 to withdraw the plea.

15 (5) When ruling on a petition under paragraph (1) of
16 subsection (b), the only finding that the court is
17 required to make is whether the conviction is legally
18 invalid due to prejudicial error damaging the petitioner's
19 ability to meaningfully understand, defend against, or
20 knowingly accept the actual or potential adverse
21 immigration consequences of a conviction or sentence. When
22 ruling on a petition under paragraph (2) of subsection
23 (b), the court shall specify the basis for its conclusion.

24 (i) An order granting or denying the petition is
25 appealable and any final judgment entered upon such petition
26 shall be reviewed in a manner under the rules of the Supreme

1 Court.

2 (j) A court may only issue a specific finding of
3 ineffective assistance of counsel as a result of a motion
4 brought under paragraph (1) of subsection (b) if the attorney
5 found to be ineffective was given timely advance notice of the
6 petition hearing by the petitioner or the State's Attorney for
7 the jurisdiction in which the petition is filed, under Rule
8 102 of the Illinois Supreme Court Rules.

9 (k) If the court finds in favor of the petitioner, it shall
10 enter an appropriate order with respect to the judgment or
11 sentence in the former proceedings and such supplementary
12 orders as to rearraignment, retrial, custody, conditions of
13 pretrial release or discharge as may be necessary and proper.

14 (l) Crime victims shall be given notice by the State's
15 Attorney's office of petitions filed under this Section as
16 required in Section 4.5 of the Rights of Crime Victims and
17 Witnesses Act.

18 (m) Remedies under this Section shall apply to convictions
19 and sentences in existence prior to the effective date of this
20 amendatory Act of the 103rd General Assembly.