



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB5460

by Rep. Kenneth Dunkin

SYNOPSIS AS INTRODUCED:

720 ILCS 5/7-1	from Ch. 38, par. 7-1
725 ILCS 5/116-2.2 new	
725 ILCS 120/4.5	
730 ILCS 5/5-5-3.1	from Ch. 38, par. 1005-5-3.1

Amends the Criminal Code of 2012. Provides that a person is also justified in the use of deadly force if he or she is or has been the victim of domestic violence and the effects of the domestic violence cause him or her to have a reasonable belief that the force is necessary to prevent the perpetrator of the domestic violence from causing death or great bodily harm to himself or herself or another. Defines "domestic violence". Amends the Code of Criminal Procedure of 1963. Permits a motion for sentence modification for domestic violence victims. Amends the Rights of Crime Victims and Witnesses Act to provide for notification by the office of the State's Attorney upon request of the crime victim of any request for resentencing filed by the defendant and of the date, time, and place of any hearing concerning the motion. Amends the Unified Code of Corrections. Provides that it is a mitigating factor in sentencing if at the time of the offense, the defendant was or had been the victim of domestic violence and the effect of the domestic violence tended to excuse or justify the defendant's criminal conduct.

LRB098 17596 RLC 52707 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 Criminal Code of 2012 is amended by changing
5 Section 7-1 as follows:

6 (720 ILCS 5/7-1) (from Ch. 38, par. 7-1)

7 Sec. 7-1. Use of force in defense of person.

8 (a) A person is justified in the use of force against
9 another when and to the extent that he or she reasonably
10 believes that such conduct is necessary to defend himself or
11 herself or another against such other's imminent use of
12 unlawful force. However, he or she is justified in the use of
13 force which is intended or likely to cause death or great
14 bodily harm only if (i) he or she reasonably believes that such
15 force is necessary to prevent imminent death or great bodily
16 harm to himself or herself or another, or the commission of a
17 forcible felony, or if (ii) he or she is or has been the victim
18 of domestic violence and the effects of the domestic violence
19 cause him or her to have a reasonable belief that the force is
20 necessary to prevent the perpetrator of the domestic violence
21 from causing death or great bodily harm to himself or herself
22 or another. A "reasonable belief" under clause (ii) of this
23 subsection (a) means a belief that would be held by an

1 individual in that person's situation. For the purposes of
2 clause (ii), "domestic violence" means "abuse" as defined in
3 Section 103 of the Illinois Domestic Violence Act of 1986.

4 (b) In no case shall any act involving the use of force
5 justified under this Section give rise to any claim or
6 liability brought by or on behalf of any person acting within
7 the definition of "aggressor" set forth in Section 7-4 of this
8 Article, or the estate, spouse, or other family member of such
9 a person, against the person or estate of the person using such
10 justified force, unless the use of force involves willful or
11 wanton misconduct.

12 (Source: P.A. 93-832, eff. 7-28-04.)

13 Section 10. The Code of Criminal Procedure of 1963 is
14 amended by adding Section 116-2.2 as follows:

15 (725 ILCS 5/116-2.2 new)

16 Sec. 116-2.2. Motion for sentence modification for
17 domestic violence victims.

18 (a) As used in this Section:

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

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

23 (b) A defendant may make a motion for resentencing in the
24 circuit court of the county in which he or she was originally

1 sentenced, when the conviction was for a forcible felony or for
2 solicitation, attempt, or conspiracy to commit a forcible
3 felony; provided that:

4 (1) at the time of the offense the defendant was or had
5 been the victim of domestic violence;

6 (2) the effects of the domestic violence tended to
7 excuse or justify the defendant's criminal conduct; and

8 (3) the motion shall state why the facts giving rise to
9 this motion were not presented at sentencing, and shall be
10 made with due diligence, after the defendant has ceased to
11 be a victim of domestic violence or has sought services for
12 victims of domestic violence, subject to reasonable
13 concerns for the safety of the defendant, family members of
14 the defendant, or other victims of the domestic violence
15 that may be jeopardized by the bringing of the motion, or
16 for other reasons consistent with the purpose of this
17 Section.

18 (c) The burden of proof is on the defendant to establish,
19 by a preponderance of the evidence, that at the time of the
20 offense the defendant was or had been the victim of domestic
21 violence, and that the effects of the domestic violence tended
22 to excuse or justify the defendant's criminal conduct. Evidence
23 of the domestic violence may include, but is not limited to:

24 (1) civil or criminal court records, proceedings,
25 pre-sentence reports, social services records, hospital
26 records, sworn statements from a witness, law enforcement

1 records, domestic incident reports, police reports,
2 witness statements prepared or elicited by law enforcement
3 officers, or orders of protection;

4 (2) local and Department of Corrections records; or

5 (3) verification of consultation with a licensed
6 medical or mental health care provider, employee of a court
7 acting within the scope of his or her employment, clergy,
8 attorney, social worker, or rape crisis counselor,
9 advocate from an agency assisting victims of domestic
10 violence, or other professional from whom the defendant has
11 sought assistance in addressing the trauma associated with
12 domestic violence.

13 Alternatively, the court may consider any other evidence it
14 deems of sufficient credibility and probative value in
15 determining whether the defendant was or had been the victim of
16 domestic violence at the time of the offense, and whether the
17 effects of the domestic violence tended to excuse or justify
18 the defendant's criminal conduct. This other evidence may
19 include but is not limited to the court file of the proceeding
20 in which the defendant was convicted, any action taken by an
21 appellate court in the proceeding, and any transcripts of the
22 proceeding. In its discretion the court may order the defendant
23 brought before the court for the hearing.

24 (d) Within 90 days after the filing and docketing of a
25 motion, the court shall examine the motion and enter an order
26 on the motion under this Section.

1 (1) If the defendant is without counsel and alleges
2 that he or she is without means to procure counsel, he or
3 she shall state whether or not he or she wishes counsel to
4 be appointed to represent the defendant. If appointment of
5 counsel is requested, the court shall appoint counsel if
6 satisfied that the defendant has no means to procure
7 counsel.

8 (2) If the court determines the motion is frivolous or
9 is patently without merit, it shall dismiss the motion in a
10 written order, specifying the findings of fact and
11 conclusions of law it made in reaching its decision. The
12 order of dismissal is a final judgment and shall be served
13 upon the defendant by certified mail within 10 days of its
14 entry.

15 (3) If the motion is not dismissed under this Section,
16 the court shall order the motion to be docketed for further
17 consideration and hearing within 180 days of the filing of
18 the motion. Continuances may be granted as the court deems
19 appropriate.

20 (e) Within 30 days after the making of an order under
21 paragraph (3) of subsection (d) or within any further time as
22 the court may set, the State shall answer or move to dismiss.
23 In the event that a motion to dismiss is filed and denied, the
24 State must file an answer within 20 days after the denial. No
25 other or further pleadings shall be filed except as the court
26 may order on its own motion or on that of either party. The

1 court may in its discretion grant leave, at any stage of the
2 proceeding prior to entry of judgment, to withdraw the
3 defendant's motion. The court may in its discretion make the
4 order as to amendment of the motion or any other pleading, or
5 as to pleading over, or filing further pleadings, or extending
6 the time of filing any pleading other than the original motion,
7 as shall be appropriate, just, and reasonable and as generally
8 provided in civil cases.

9 (f) The court may grant the motion if it determines that at
10 the time of the offense the defendant was or had been the
11 victim of domestic violence, and the effects of the domestic
12 violence tended to excuse or justify the defendant's criminal
13 conduct.

14 (g) If the court finds in favor of the defendant, it may
15 reduce the sentence in accordance with the current factors in
16 mitigation in sentencing under Section 5-5-3.1 of the Unified
17 Code of Corrections, as may be necessary and proper.

18 Section 15. The Rights of Crime Victims and Witnesses Act
19 is amended by changing Section 4.5 as follows:

20 (725 ILCS 120/4.5)

21 Sec. 4.5. Procedures to implement the rights of crime
22 victims. To afford crime victims their rights, law enforcement,
23 prosecutors, judges and corrections will provide information,
24 as appropriate of the following procedures:

1 (a) At the request of the crime victim, law enforcement
2 authorities investigating the case shall provide notice of the
3 status of the investigation, except where the State's Attorney
4 determines that disclosure of such information would
5 unreasonably interfere with the investigation, until such time
6 as the alleged assailant is apprehended or the investigation is
7 closed.

8 (a-5) When law enforcement authorities re-open a closed
9 case to resume investigating, they shall provide notice of the
10 re-opening of the case, except where the State's Attorney
11 determines that disclosure of such information would
12 unreasonably interfere with the investigation.

13 (b) The office of the State's Attorney:

14 (1) shall provide notice of the filing of information,
15 the return of an indictment by which a prosecution for any
16 violent crime is commenced, or the filing of a petition to
17 adjudicate a minor as a delinquent for a violent crime;

18 (2) shall provide notice of the date, time, and place
19 of trial;

20 (3) or victim advocate personnel shall provide
21 information of social services and financial assistance
22 available for victims of crime, including information of
23 how to apply for these services and assistance;

24 (3.5) or victim advocate personnel shall provide
25 information about available victim services, including
26 referrals to programs, counselors, and agencies that

1 assist a victim to deal with trauma, loss, and grief;

2 (4) shall assist in having any stolen or other personal
3 property held by law enforcement authorities for
4 evidentiary or other purposes returned as expeditiously as
5 possible, pursuant to the procedures set out in Section
6 115-9 of the Code of Criminal Procedure of 1963;

7 (5) or victim advocate personnel shall provide
8 appropriate employer intercession services to ensure that
9 employers of victims will cooperate with the criminal
10 justice system in order to minimize an employee's loss of
11 pay and other benefits resulting from court appearances;

12 (6) shall provide information whenever possible, of a
13 secure waiting area during court proceedings that does not
14 require victims to be in close proximity to defendant or
15 juveniles accused of a violent crime, and their families
16 and friends;

17 (7) shall provide notice to the crime victim of the
18 right to have a translator present at all court proceedings
19 and, in compliance with the federal Americans with
20 Disabilities Act of 1990, the right to communications
21 access through a sign language interpreter or by other
22 means;

23 (8) in the case of the death of a person, which death
24 occurred in the same transaction or occurrence in which
25 acts occurred for which a defendant is charged with an
26 offense, shall notify the spouse, parent, child or sibling

1 of the decedent of the date of the trial of the person or
2 persons allegedly responsible for the death;

3 (9) shall inform the victim of the right to have
4 present at all court proceedings, subject to the rules of
5 evidence, an advocate or other support person of the
6 victim's choice, and the right to retain an attorney, at
7 the victim's own expense, who, upon written notice filed
8 with the clerk of the court and State's Attorney, is to
9 receive copies of all notices, motions and court orders
10 filed thereafter in the case, in the same manner as if the
11 victim were a named party in the case;

12 (9.5) shall inform the victim of (A) the victim's right
13 under Section 6 of this Act to make a victim impact
14 statement at the sentencing hearing; (B) the right of the
15 victim's spouse, guardian, parent, grandparent and other
16 immediate family and household members under Section 6 of
17 this Act to present an impact statement at sentencing; and
18 (C) if a presentence report is to be prepared, the right of
19 the victim's spouse, guardian, parent, grandparent and
20 other immediate family and household members to submit
21 information to the preparer of the presentence report about
22 the effect the offense has had on the victim and the
23 person;

24 (10) at the sentencing hearing shall make a good faith
25 attempt to explain the minimum amount of time during which
26 the defendant may actually be physically imprisoned. The

1 Office of the State's Attorney shall further notify the
2 crime victim of the right to request from the Prisoner
3 Review Board information concerning the release of the
4 defendant under subparagraph (d) (1) of this Section;

5 (11) shall request restitution at sentencing and shall
6 consider restitution in any plea negotiation, as provided
7 by law; and

8 (12) shall, upon the court entering a verdict of not
9 guilty by reason of insanity, inform the victim of the
10 notification services available from the Department of
11 Human Services, including the statewide telephone number,
12 under subparagraph (d) (2) of this Section.

13 (c) At the written request of the crime victim, the office
14 of the State's Attorney shall:

15 (1) provide notice a reasonable time in advance of the
16 following court proceedings: preliminary hearing, any
17 hearing the effect of which may be the release of defendant
18 from custody, or to alter the conditions of bond and the
19 sentencing hearing. The crime victim shall also be notified
20 of the cancellation of the court proceeding in sufficient
21 time, wherever possible, to prevent an unnecessary
22 appearance in court;

23 (2) provide notice within a reasonable time after
24 receipt of notice from the custodian, of the release of the
25 defendant on bail or personal recognizance or the release
26 from detention of a minor who has been detained for a

1 violent crime;

2 (3) explain in nontechnical language the details of any
3 plea or verdict of a defendant, or any adjudication of a
4 juvenile as a delinquent for a violent crime;

5 (4) where practical, consult with the crime victim
6 before the Office of the State's Attorney makes an offer of
7 a plea bargain to the defendant or enters into negotiations
8 with the defendant concerning a possible plea agreement,
9 and shall consider the written victim impact statement, if
10 prepared prior to entering into a plea agreement;

11 (5) provide notice of the ultimate disposition of the
12 cases arising from an indictment or an information, or a
13 petition to have a juvenile adjudicated as a delinquent for
14 a violent crime;

15 (6) provide notice of any appeal taken by the defendant
16 and information on how to contact the appropriate agency
17 handling the appeal;

18 (7) provide notice of any request for post-conviction
19 review filed by the defendant under Article 122 of the Code
20 of Criminal Procedure of 1963, and of the date, time and
21 place of any hearing concerning the petition. Whenever
22 possible, notice of the hearing shall be given in advance;

23 (7.5) provide notice of any request for resentencing
24 filed by the defendant under Section 116-2.2 of the Code of
25 Criminal Procedure of 1963, and of the date, time, and
26 place of any hearing concerning the motion;

1 (8) forward a copy of any statement presented under
2 Section 6 to the Prisoner Review Board to be considered by
3 the Board in making its determination under subsection (b)
4 of Section 3-3-8 of the Unified Code of Corrections.

5 (d) (1) The Prisoner Review Board shall inform a victim or
6 any other concerned citizen, upon written request, of the
7 prisoner's release on parole, aftercare release, mandatory
8 supervised release, electronic detention, work release,
9 international transfer or exchange, or by the custodian of the
10 discharge of any individual who was adjudicated a delinquent
11 for a violent crime from State custody and by the sheriff of
12 the appropriate county of any such person's final discharge
13 from county custody. The Prisoner Review Board, upon written
14 request, shall provide to a victim or any other concerned
15 citizen a recent photograph of any person convicted of a
16 felony, upon his or her release from custody. The Prisoner
17 Review Board, upon written request, shall inform a victim or
18 any other concerned citizen when feasible at least 7 days prior
19 to the prisoner's release on furlough of the times and dates of
20 such furlough. Upon written request by the victim or any other
21 concerned citizen, the State's Attorney shall notify the person
22 once of the times and dates of release of a prisoner sentenced
23 to periodic imprisonment. Notification shall be based on the
24 most recent information as to victim's or other concerned
25 citizen's residence or other location available to the
26 notifying authority.

1 (2) When the defendant has been committed to the Department
2 of Human Services pursuant to Section 5-2-4 or any other
3 provision of the Unified Code of Corrections, the victim may
4 request to be notified by the releasing authority of the
5 approval by the court of an on-grounds pass, a supervised
6 off-grounds pass, an unsupervised off-grounds pass, or
7 conditional release; the release on an off-grounds pass; the
8 return from an off-grounds pass; transfer to another facility;
9 conditional release; escape; death; or final discharge from
10 State custody. The Department of Human Services shall establish
11 and maintain a statewide telephone number to be used by victims
12 to make notification requests under these provisions and shall
13 publicize this telephone number on its website and to the
14 State's Attorney of each county.

15 (3) In the event of an escape from State custody, the
16 Department of Corrections or the Department of Juvenile Justice
17 immediately shall notify the Prisoner Review Board of the
18 escape and the Prisoner Review Board shall notify the victim.
19 The notification shall be based upon the most recent
20 information as to the victim's residence or other location
21 available to the Board. When no such information is available,
22 the Board shall make all reasonable efforts to obtain the
23 information and make the notification. When the escapee is
24 apprehended, the Department of Corrections or the Department of
25 Juvenile Justice immediately shall notify the Prisoner Review
26 Board and the Board shall notify the victim.

1 (4) The victim of the crime for which the prisoner has been
2 sentenced shall receive reasonable written notice not less than
3 30 days prior to the parole or aftercare release hearing and
4 may submit, in writing, on film, videotape or other electronic
5 means or in the form of a recording or in person at the parole
6 or aftercare release hearing or if a victim of a violent crime,
7 by calling the toll-free number established in subsection (f)
8 of this Section, information for consideration by the Prisoner
9 Review Board. The victim shall be notified within 7 days after
10 the prisoner has been granted parole or aftercare release and
11 shall be informed of the right to inspect the registry of
12 parole or aftercare release decisions, established under
13 subsection (g) of Section 3-3-5 of the Unified Code of
14 Corrections. The provisions of this paragraph (4) are subject
15 to the Open Parole Hearings Act.

16 (5) If a statement is presented under Section 6, the
17 Prisoner Review Board shall inform the victim of any order of
18 discharge entered by the Board pursuant to Section 3-3-8 of the
19 Unified Code of Corrections.

20 (6) At the written request of the victim of the crime for
21 which the prisoner was sentenced or the State's Attorney of the
22 county where the person seeking parole or aftercare release was
23 prosecuted, the Prisoner Review Board shall notify the victim
24 and the State's Attorney of the county where the person seeking
25 parole or aftercare release was prosecuted of the death of the
26 prisoner if the prisoner died while on parole or aftercare

1 release or mandatory supervised release.

2 (7) When a defendant who has been committed to the
3 Department of Corrections, the Department of Juvenile Justice,
4 or the Department of Human Services is released or discharged
5 and subsequently committed to the Department of Human Services
6 as a sexually violent person and the victim had requested to be
7 notified by the releasing authority of the defendant's
8 discharge, conditional release, death, or escape from State
9 custody, the releasing authority shall provide to the
10 Department of Human Services such information that would allow
11 the Department of Human Services to contact the victim.

12 (8) When a defendant has been convicted of a sex offense as
13 defined in Section 2 of the Sex Offender Registration Act and
14 has been sentenced to the Department of Corrections or the
15 Department of Juvenile Justice, the Prisoner Review Board shall
16 notify the victim of the sex offense of the prisoner's
17 eligibility for release on parole, aftercare release,
18 mandatory supervised release, electronic detention, work
19 release, international transfer or exchange, or by the
20 custodian of the discharge of any individual who was
21 adjudicated a delinquent for a sex offense from State custody
22 and by the sheriff of the appropriate county of any such
23 person's final discharge from county custody. The notification
24 shall be made to the victim at least 30 days, whenever
25 possible, before release of the sex offender.

26 (e) The officials named in this Section may satisfy some or

1 all of their obligations to provide notices and other
2 information through participation in a statewide victim and
3 witness notification system established by the Attorney
4 General under Section 8.5 of this Act.

5 (f) To permit a victim of a violent crime to provide
6 information to the Prisoner Review Board for consideration by
7 the Board at a parole or aftercare release hearing of a person
8 who committed the crime against the victim in accordance with
9 clause (d)(4) of this Section or at a proceeding to determine
10 the conditions of mandatory supervised release of a person
11 sentenced to a determinate sentence or at a hearing on
12 revocation of mandatory supervised release of a person
13 sentenced to a determinate sentence, the Board shall establish
14 a toll-free number that may be accessed by the victim of a
15 violent crime to present that information to the Board.

16 (Source: P.A. 97-457, eff. 1-1-12; 97-572, eff. 1-1-12; 97-813,
17 eff. 7-13-12; 97-815, eff. 1-1-13; 98-372, eff. 1-1-14; 98-558,
18 eff. 1-1-14; revised 9-24-13.)

19 Section 20. The Unified Code of Corrections is amended by
20 changing Section 5-5-3.1 as follows:

21 (730 ILCS 5/5-5-3.1) (from Ch. 38, par. 1005-5-3.1)
22 Sec. 5-5-3.1. Factors in Mitigation.

23 (a) The following grounds shall be accorded weight in favor
24 of withholding or minimizing a sentence of imprisonment:

1 (1) The defendant's criminal conduct neither caused
2 nor threatened serious physical harm to another.

3 (2) The defendant did not contemplate that his criminal
4 conduct would cause or threaten serious physical harm to
5 another.

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

7 (4) There were substantial grounds tending to excuse or
8 justify the defendant's criminal conduct, though failing
9 to establish a defense.

10 (5) The defendant's criminal conduct was induced or
11 facilitated by someone other than the defendant.

12 (6) The defendant has compensated or will compensate
13 the victim of his criminal conduct for the damage or injury
14 that he sustained.

15 (7) The defendant has no history of prior delinquency
16 or criminal activity or has led a law-abiding life for a
17 substantial period of time before the commission of the
18 present crime.

19 (8) The defendant's criminal conduct was the result of
20 circumstances unlikely to recur.

21 (9) The character and attitudes of the defendant
22 indicate that he is unlikely to commit another crime.

23 (10) The defendant is particularly likely to comply
24 with the terms of a period of probation.

25 (11) The imprisonment of the defendant would entail
26 excessive hardship to his dependents.

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

3 (13) The defendant was intellectually disabled as
4 defined in Section 5-1-13 of this Code.

5 (14) The defendant sought or obtained emergency
6 medical assistance for an overdose and was convicted of a
7 Class 3 felony or higher possession, manufacture, or
8 delivery of a controlled, counterfeit, or look-alike
9 substance or a controlled substance analog under the
10 Illinois Controlled Substances Act or a Class 2 felony or
11 higher possession, manufacture or delivery of
12 methamphetamine under the Methamphetamine Control and
13 Community Protection Act.

14 (15) At the time of the offense, the defendant was or
15 had been the victim of domestic violence and the effects of
16 the domestic violence tended to excuse or justify the
17 defendant's criminal conduct. As used in this paragraph
18 (15), "domestic violence" means "abuse" as defined in
19 Section 103 of the Illinois Domestic Violence Act of 1986.

20 (b) If the court, having due regard for the character of
21 the offender, the nature and circumstances of the offense and
22 the public interest finds that a sentence of imprisonment is
23 the most appropriate disposition of the offender, or where
24 other provisions of this Code mandate the imprisonment of the
25 offender, the grounds listed in paragraph (a) of this
26 subsection shall be considered as factors in mitigation of the

1 term imposed.

2 (Source: P.A. 97-227, eff. 1-1-12; 97-678, eff. 6-1-12; 98-463,

3 eff. 8-16-13.)