



Rep. Christian L. Mitchell

Filed: 4/9/2015

09900HB1117ham001

LRB099 04984 RLC 33659 a

1 AMENDMENT TO HOUSE BILL 1117

2 AMENDMENT NO. _____. Amend House Bill 1117 by replacing
3 everything after the enacting clause with the following:

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

6 (730 ILCS 5/5-5-3.1) (from Ch. 38, par. 1005-5-3.1)

7 Sec. 5-5-3.1. Factors in Mitigation.

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

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

12 (2) The defendant did not contemplate that his criminal
13 conduct would cause or threaten serious physical harm to
14 another.

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

16 (4) There were substantial grounds tending to excuse or

1 justify the defendant's criminal conduct, though failing
2 to establish a defense.

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

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

8 (7) The defendant has no history of prior delinquency
9 or criminal activity or has led a law-abiding life for a
10 substantial period of time before the commission of the
11 present crime.

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

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

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

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

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

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

24 (14) The defendant sought or obtained emergency
25 medical assistance for an overdose and was convicted of a
26 Class 3 felony or higher possession, manufacture, or

1 delivery of a controlled, counterfeit, or look-alike
2 substance or a controlled substance analog under the
3 Illinois Controlled Substances Act or a Class 2 felony or
4 higher possession, manufacture or delivery of
5 methamphetamine under the Methamphetamine Control and
6 Community Protection Act.

7 (15) At the time of the offense, the defendant is or
8 had been the victim of domestic violence and the effects of
9 the domestic violence tended to excuse or justify the
10 defendant's criminal conduct. As used in this paragraph
11 (15), "domestic violence" means abuse as defined in Section
12 103 of the Illinois Domestic Violence Act of 1986.

13 (b) If the court, having due regard for the character of
14 the offender, the nature and circumstances of the offense and
15 the public interest finds that a sentence of imprisonment is
16 the most appropriate disposition of the offender, or where
17 other provisions of this Code mandate the imprisonment of the
18 offender, the grounds listed in paragraph (a) of this
19 subsection shall be considered as factors in mitigation of the
20 term imposed.

21 (Source: P.A. 97-227, eff. 1-1-12; 97-678, eff. 6-1-12; 98-463,
22 eff. 8-16-13.)

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

1 (735 ILCS 5/2-1401) (from Ch. 110, par. 2-1401)

2 Sec. 2-1401. Relief from judgments.

3 (a) Relief from final orders and judgments, after 30 days
4 from the entry thereof, may be had upon petition as provided in
5 this Section. Writs of error coram nobis and coram vobis, bills
6 of review and bills in the nature of bills of review are
7 abolished. All relief heretofore obtainable and the grounds for
8 such relief heretofore available, whether by any of the
9 foregoing remedies or otherwise, shall be available in every
10 case, by proceedings hereunder, regardless of the nature of the
11 order or judgment from which relief is sought or of the
12 proceedings in which it was entered. Except as provided in
13 Section 6 of the Illinois Parentage Act of 1984, there shall be
14 no distinction between actions and other proceedings,
15 statutory or otherwise, as to availability of relief, grounds
16 for relief or the relief obtainable.

17 (b) The petition must be filed in the same proceeding in
18 which the order or judgment was entered but is not a
19 continuation thereof. The petition must be supported by
20 affidavit or other appropriate showing as to matters not of
21 record. All parties to the petition shall be notified as
22 provided by rule.

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

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

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

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

6 (4) the movant was unaware of the mitigating nature of
7 the evidence of the domestic violence at the time of
8 sentencing and could not have learned of its significance
9 sooner through diligence; and

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

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

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

19 "Domestic violence" means abuse as defined in Section
20 103 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 "Intimate partner" means a spouse or former spouse,
24 persons who have or allegedly have had a child in common,
25 or persons who have or have had a dating or engagement
26 relationship.

1 (c) Except as provided in Section 20b of the Adoption Act
2 and Section 2-32 of the Juvenile Court Act of 1987 or in a
3 petition based upon Section 116-3 of the Code of Criminal
4 Procedure of 1963, the petition must be filed not later than 2
5 years after the entry of the order or judgment. Time during
6 which the person seeking relief is under legal disability or
7 duress or the ground for relief is fraudulently concealed shall
8 be excluded in computing the period of 2 years.

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

11 (e) Unless lack of jurisdiction affirmatively appears from
12 the record proper, the vacation or modification of an order or
13 judgment pursuant to the provisions of this Section does not
14 affect the right, title or interest in or to any real or
15 personal property of any person, not a party to the original
16 action, acquired for value after the entry of the order or
17 judgment but before the filing of the petition, nor affect any
18 right of any person not a party to the original action under
19 any certificate of sale issued before the filing of the
20 petition, pursuant to a sale based on the order or judgment.

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

24 (Source: P.A. 95-331, eff. 8-21-07.)"