



Rep. Christian L. Mitchell

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LRB099 04984 RLC 34269 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.)"