



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

SB1829

Introduced 2/20/2015, by Sen. Don Harmon

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4.5-110 new

Amends the Unified Code of Corrections. Provides that a person who was under 18 years of age at the time of an offense, may, after serving 15 years of his or her sentence of either a term of natural life imprisonment or a term or cumulative term of 40 years or more of imprisonment, submit a petition for sentencing review in the circuit court of the county in which he or she was originally sentenced. Establishes procedures for sentencing review. Provides that following the sentencing review hearing, the court may affirm or reduce the petitioner's sentence. Provides that any offender who has petitioned the circuit court for sentencing review shall not be eligible to submit a second petition until at least 10 years have elapsed since the date on which the circuit court ruled upon the initial petition. Provides that the circuit court shall have discretion at the time of making its ruling to extend the period for filing the second petition up to an additional 10 years if the circuit court finds there to be no reasonable likelihood that the interests of justice will require another petition for sentencing review within 10 years.

LRB099 04964 RLC 24993 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 5-4.5-110 as follows:

6 (730 ILCS 5/5-4.5-110 new)

7 Sec. 5-4.5-110. SENTENCING REVIEW OF PERSONS UNDER THE AGE
8 OF 18 AT THE TIME OF THE COMMISSION OF AN OFFENSE. Any person
9 who was under 18 years of age at the time of the commission of
10 an offense may, after serving 15 years or more of his or her
11 sentence of either a term of natural life imprisonment or a
12 term or cumulative term of 40 years or more of imprisonment,
13 submit a petition for sentencing review in the circuit court of
14 the county in which he or she was originally sentenced. The
15 procedure for sentencing review shall occur in the following
16 manner:

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

23 (2) Upon receipt of the petition and assignment to a

1 judge, the judge shall docket the petition. If the
2 petitioner is without counsel and alleges in the petition
3 for sentencing review that he or she is without means to
4 procure counsel, he or she shall state whether or not he or
5 she wishes counsel to be appointed to represent him or her.
6 If appointment of counsel is requested, the court shall
7 appoint counsel if satisfied that the petitioner has no
8 means to procure counsel. The clerk of the circuit court
9 shall serve a copy of the petition to the State's Attorney
10 of that county or his or her representative.

11 (3) Upon receipt of the petition for sentencing review,
12 the State's Attorney's Office shall provide the victim or
13 the victim's family, or both, with a copy of the petition.

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

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

19 (6) Within 90 days after the filing of the petition for
20 sentencing review, the court shall set the matter for a
21 hearing. This date may be extended by motion of either
22 party and at the court's discretion for good cause shown.

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

24 (A) consider in mitigation the factors listed in
25 subparagraphs (A) through (I) of paragraph (8) of this
26 Section;

1 (B) consider the evidence, if any, received upon
2 the trial;

3 (C) consider any presentence reports;

4 (D) consider the financial impact of incarceration
5 based on the financial impact statement filed with the
6 clerk of the court by the Department of Corrections;

7 (E) consider any additional evidence and
8 information offered by the parties in aggravation and
9 mitigation, including, but not limited to, scientific
10 evidence of recidivism;

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

17 (G) consider the petitioner's acceptance of
18 responsibility for the offense or expressions of
19 remorse, or both. However, nothing in this
20 subparagraph (6) shall be construed against a
21 petitioner who avers a good faith claim of innocence;

22 (H) hear arguments as to sentencing alternatives;

23 (I) afford the petitioner the opportunity to make a
24 statement in his or her own behalf; and

25 (J) afford the victim or families of victims of the
26 offense or both, for which the petitioner was

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

6 (8) Following the hearing, the court may affirm or
7 reduce the petitioner's sentence, taking into
8 consideration the following factors:

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

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

17 (C) the person's family, home environment,
18 educational and social background, including any
19 history of parental neglect, physical abuse, or other
20 childhood trauma;

21 (D) the person's potential for rehabilitation;

22 (E) the circumstances of the offense;

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

26 (G) whether the person was able to meaningfully

1 participate in his or her defense;

2 (H) the person's prior juvenile or criminal
3 history; and

4 (I) any other information the court finds relevant
5 and reliable, including an expression of remorse, if
6 appropriate. However, if the person, on advice of
7 counsel chooses not to make a statement, the court
8 shall not consider a lack of an expression of remorse
9 as an aggravating factor.

10 The order following a sentencing review hearing is a
11 final judgment.

12 (9) Notwithstanding any provision of this Section to
13 the contrary, any offender who has petitioned the circuit
14 court for sentencing review under this Section shall not be
15 eligible to submit a second petition until at least 10
16 years have elapsed since the date on which the circuit
17 court ruled upon the initial petition. The circuit court
18 may at the time of its ruling under paragraph (8) extend
19 the period for filing the second petition up to an
20 additional 10 years if the court finds there to be no
21 reasonable likelihood that the interests of justice will
22 require another petition for sentencing review within 10
23 years. In considering the second petition, the court shall
24 follow the procedure under paragraphs (2) through (7) of
25 this Section. Following a hearing on the second petition
26 under this paragraph (9), the court may affirm or reduce

1 the petitioner's sentence. The order following a hearing
2 under this paragraph is a final judgment.

3 (10) The petitioner may file a motion seeking leave for
4 sentencing review when 10 years have elapsed since the date
5 on which the circuit court ruled on a petition filed under
6 paragraph (9) of this Section. The motion must clearly set
7 forth the need for sentencing review, including the efforts
8 the petitioner has made towards rehabilitation and his or
9 her demonstrated maturity.

10 (A) Within 90 days after the filing of this motion,
11 the court shall examine the motion and enter an order
12 on the motion. In considering a motion under this
13 paragraph (10), the court may examine the court file of
14 the proceeding in which the petitioner was convicted,
15 any action taken by an appellate court regarding that
16 proceeding, any transcripts of that proceeding, and
17 any transcript or court documents from previous
18 proceedings under this Section. If the court
19 determines the motion is frivolous or is patently
20 without merit, it shall deny the motion in a written
21 order, specifying the underlying basis for its
22 decision that continued incarceration is appropriate
23 and necessary. The order is a final judgment and shall
24 be served upon the petitioner by certified mail within
25 10 days of its entry.

26 (B) If the motion is not dismissed under

1 subparagraph (A), the court shall order the motion for
2 sentencing review to be docketed for further
3 consideration in accordance with the procedure stated
4 in paragraphs (2) through (7) of this Section.

5 (11) This Section shall apply retroactively to provide
6 any person incarcerated for an offense committed when he or
7 she was under the age of 18 years and serving a term of
8 natural life imprisonment or a term or cumulative term of
9 40 years or more of imprisonment and was committed before
10 the effective date of this amendatory Act of the 99th
11 General Assembly with the opportunity to file a petition or
12 motion for resentencing under this Section under the terms
13 provided in this Section.

14 (12) Notwithstanding anything to the contrary in this
15 Section, nothing in this Section shall be construed to
16 delay parole or mandatory supervised release consideration
17 for petitioners who, prior to the effective date of this
18 amendatory Act of the 99th General Assembly, are or will be
19 eligible for release earlier than this Section provides.