

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 122-1 as follows:

6 (725 ILCS 5/122-1) (from Ch. 38, par. 122-1)

7 Sec. 122-1. Petition in the trial court.

8 (a) Any person imprisoned in the penitentiary may institute  
9 a proceeding under this Article if the person asserts that:

10 (1) in the proceedings which resulted in his or her  
11 conviction there was a substantial denial of his or her  
12 rights under the Constitution of the United States or of  
13 the State of Illinois or both; ~~or~~

14 (2) the death penalty was imposed and there is newly  
15 discovered evidence not available to the person at the time  
16 of the proceeding that resulted in his or her conviction  
17 that establishes a substantial basis to believe that the  
18 defendant is actually innocent by clear and convincing  
19 evidence; or ~~or~~

20 (3) by a preponderance of the evidence that each of the  
21 following allegations in the petition establish:

22 (A) he or she was convicted of a forcible felony;

23 (B) his or her participation in the offense was a

1 direct result of the person's mental state either  
2 suffering from post-partum depression or post-partum  
3 psychosis;

4 (C) no evidence of post-partum depression or  
5 post-partum psychosis was presented by a qualified  
6 medical person at trial or sentencing, or both;

7 (D) he or she was unaware of the mitigating nature  
8 of the evidence or if aware was at the time unable to  
9 present this defense due to suffering from post-partum  
10 depression or post-partum psychosis or at the time of  
11 trial or sentencing neither was a recognized mental  
12 illness and as such unable to receive proper treatment;  
13 and

14 (E) evidence of post-partum depression or  
15 post-partum psychosis as suffered by the person is  
16 material and noncumulative to other evidence offered  
17 at the time of trial or sentencing and it is of such a  
18 conclusive character that it would likely change the  
19 sentence imposed by the original court.

20 Nothing in this paragraph (3) prevents a person from  
21 applying for any other relief under this Article or any  
22 other law otherwise available to him or her.

23 As used in this paragraph (3):

24 "Post-partum depression" means a mood disorder  
25 which strikes many women during and after pregnancy  
26 which usually occurs during pregnancy and up to 12

1           months after delivery. This depression can include  
2           anxiety disorders.

3           "Post-partum psychosis" means an extreme form of  
4           post-partum depression which can occur during  
5           pregnancy and up to 12 months after delivery. This can  
6           include losing touch with reality, distorted thinking,  
7           delusions, auditory and visual hallucinations,  
8           paranoia, hyperactivity and rapid speech, or mania.

9           (a-5) A proceeding under paragraph (2) of subsection (a)  
10          may be commenced within a reasonable period of time after the  
11          person's conviction notwithstanding any other provisions of  
12          this Article. In such a proceeding regarding actual innocence,  
13          if the court determines the petition is frivolous or is  
14          patently without merit, it shall dismiss the petition in a  
15          written order, specifying the findings of fact and conclusions  
16          of law it made in reaching its decision. Such order of  
17          dismissal is a final judgment and shall be served upon the  
18          petitioner by certified mail within 10 days of its entry.

19          (b) The proceeding shall be commenced by filing with the  
20          clerk of the court in which the conviction took place a  
21          petition (together with a copy thereof) verified by affidavit.  
22          Petitioner shall also serve another copy upon the State's  
23          Attorney by any of the methods provided in Rule 7 of the  
24          Supreme Court. The clerk shall docket the petition for  
25          consideration by the court pursuant to Section 122-2.1 upon his  
26          or her receipt thereof and bring the same promptly to the

1 attention of the court.

2 (c) Except as otherwise provided in subsection (a-5), if  
3 the petitioner is under sentence of death and a petition for  
4 writ of certiorari is filed, no proceedings under this Article  
5 shall be commenced more than 6 months after the conclusion of  
6 proceedings in the United States Supreme Court, unless the  
7 petitioner alleges facts showing that the delay was not due to  
8 his or her culpable negligence. If a petition for certiorari is  
9 not filed, no proceedings under this Article shall be commenced  
10 more than 6 months from the date for filing a certiorari  
11 petition, unless the petitioner alleges facts showing that the  
12 delay was not due to his or her culpable negligence.

13 When a defendant has a sentence other than death, no  
14 proceedings under this Article shall be commenced more than 6  
15 months after the conclusion of proceedings in the United States  
16 Supreme Court, unless the petitioner alleges facts showing that  
17 the delay was not due to his or her culpable negligence. If a  
18 petition for certiorari is not filed, no proceedings under this  
19 Article shall be commenced more than 6 months from the date for  
20 filing a certiorari petition, unless the petitioner alleges  
21 facts showing that the delay was not due to his or her culpable  
22 negligence. If a defendant does not file a direct appeal, the  
23 post-conviction petition shall be filed no later than 3 years  
24 from the date of conviction, unless the petitioner alleges  
25 facts showing that the delay was not due to his or her culpable  
26 negligence.

1           This limitation does not apply to a petition advancing a  
2 claim of actual innocence.

3           (d) A person seeking relief by filing a petition under this  
4 Section must specify in the petition or its heading that it is  
5 filed under this Section. A trial court that has received a  
6 petition complaining of a conviction or sentence that fails to  
7 specify in the petition or its heading that it is filed under  
8 this Section need not evaluate the petition to determine  
9 whether it could otherwise have stated some grounds for relief  
10 under this Article.

11           (e) A proceeding under this Article may not be commenced on  
12 behalf of a defendant who has been sentenced to death without  
13 the written consent of the defendant, unless the defendant,  
14 because of a mental or physical condition, is incapable of  
15 asserting his or her own claim.

16           (f) Except for petitions brought under paragraph (3) of  
17 subsection (a) of this Section, only ~~Only~~ one petition may be  
18 filed by a petitioner under this Article without leave of the  
19 court. Leave of court may be granted only if a petitioner  
20 demonstrates cause for his or her failure to bring the claim in  
21 his or her initial post-conviction proceedings and prejudice  
22 results from that failure. For purposes of this subsection (f):  
23 (1) a prisoner shows cause by identifying an objective factor  
24 that impeded his or her ability to raise a specific claim  
25 during his or her initial post-conviction proceedings; and (2)  
26 a prisoner shows prejudice by demonstrating that the claim not

1 raised during his or her initial post-conviction proceedings so  
2 infected the trial that the resulting conviction or sentence  
3 violated due process.

4 (Source: P.A. 93-493, eff. 1-1-04; 93-605, eff. 11-19-03;  
5 93-972, eff. 8-20-04.)

6 Section 10. The Unified Code of Corrections is amended by  
7 changing Section 5-5-3.1 as follows:

8 (730 ILCS 5/5-5-3.1) (from Ch. 38, par. 1005-5-3.1)

9 Sec. 5-5-3.1. Factors in mitigation.

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

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

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

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

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

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

23 (6) The defendant has compensated or will compensate  
24 the victim of his criminal conduct for the damage or injury

1           that he sustained.

2           (7) The defendant has no history of prior delinquency  
3           or criminal activity or has led a law-abiding life for a  
4           substantial period of time before the commission of the  
5           present crime.

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

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

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

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

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

16          (13) The defendant was a person with an intellectual  
17          disability as defined in Section 5-1-13 of this Code.

18          (14) The defendant sought or obtained emergency  
19          medical assistance for an overdose and was convicted of a  
20          Class 3 felony or higher possession, manufacture, or  
21          delivery of a controlled, counterfeit, or look-alike  
22          substance or a controlled substance analog under the  
23          Illinois Controlled Substances Act or a Class 2 felony or  
24          higher possession, manufacture or delivery of  
25          methamphetamine under the Methamphetamine Control and  
26          Community Protection Act.

1           (15) At the time of the offense, the defendant is or  
2 had been the victim of domestic violence and the effects of  
3 the domestic violence tended to excuse or justify the  
4 defendant's criminal conduct. As used in this paragraph  
5 (15), "domestic violence" means abuse as defined in Section  
6 103 of the Illinois Domestic Violence Act of 1986.

7           (16) At the time of the offense, the defendant was  
8 suffering from a serious mental illness which, though  
9 insufficient to establish the defense of insanity,  
10 substantially affected his or her ability to understand the  
11 nature of his or her acts or to conform his or her conduct  
12 to the requirements of the law.

13           (17) At the time of the offense, the defendant was  
14 suffering from post-partum depression or post-partum  
15 psychosis which was either undiagnosed or untreated, or  
16 both, and this temporary mental illness tended to excuse or  
17 justify the defendant's criminal conduct and the defendant  
18 has been diagnosed as suffering from post-partum  
19 depression or post-partum psychosis, or both, by a  
20 qualified medical person and the diagnoses or testimony, or  
21 both, was not used at trial. In this paragraph (17):

22           "Post-partum depression" means a mood disorder  
23 which strikes many women during and after pregnancy  
24 which usually occurs during pregnancy and up to 12  
25 months after delivery. This depression can include  
26 anxiety disorders.



1           "Post-partum psychosis" means an extreme form of  
2           post-partum depression which can occur during  
3           pregnancy and up to 12 months after delivery. This can  
4           include losing touch with reality, distorted thinking,  
5           delusions, auditory and visual hallucinations,  
6           paranoia, hyperactivity and rapid speech, or mania.

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

15          (Source: P.A. 98-463, eff. 8-16-13; 99-143, eff. 7-27-15;  
16          99-384, eff. 1-1-16; 99-642, eff. 7-28-16; 99-877, eff.  
17          8-22-16.)