



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3416

Introduced 2/8/2024, by Sen. Javier L. Cervantes

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3.1
730 ILCS 167/31 new

from Ch. 38, par. 1005-5-3.1

Amends the Unified Code of Corrections. Provides that it is a mitigating factor in sentencing that the defendant is convicted of a felony and is a combat veteran who is a qualified service-disabled veteran who has been diagnosed with post-traumatic stress disorder. Amends the Veterans and Servicemembers Court Treatment Act. Provides that if a combat veteran who is a resident of Illinois is a qualified service-disabled veteran and is believed to have committed an offense or is in need of assistance as a result of a suspected incidence of post-traumatic stress disorder, a peace officer or an ambulance service shall transport the veteran to a Department of Veterans Affairs' hospital to be evaluated by a physician, psychiatrist, or clinical psychologist, or other medical professional that the hospital deems qualified to determine whether the veteran is a danger to himself, herself, herself, or others. Provides that if it is determined by the hospital staff who evaluated the veteran that the veteran is not a danger to himself or others, the person shall be released unless that person is subject to law enforcement agency custody for commission of an offense that requires pretrial detention under the Pretrial Release Article of the Code of Criminal Procedure of 1963. If the veteran requires detention, the veteran shall be released to law enforcement agency custody. Provides that if a combat veteran who is a qualified service-disabled veteran is charged with a criminal offense, the case shall be tried by a veterans and servicemembers court located in the veteran's county of residence, or if the veteran's county of residence does not have a veterans and servicemembers court located in that county, the case shall be tried in a veterans and servicemembers court located in the nearest county of the veteran's residence.

LRB103 39005 RLC 69142 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 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
9 favor 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
13 criminal conduct would cause or threaten serious physical
14 harm to another.

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

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

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

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

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

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

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

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

11 (11) (Blank).

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

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

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

25 (15) At the time of the offense, the defendant is or
26 had been the victim of domestic violence and the effects

1 of the domestic violence tended to excuse or justify the
2 defendant's criminal conduct. As used in this paragraph
3 (15), "domestic violence" means abuse as defined in
4 Section 103 of the Illinois Domestic Violence Act of 1986.

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

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

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

25 "Post-partum psychosis" means an extreme form of
26 post-partum depression which can occur during

1 pregnancy and up to 12 months after delivery. This can
2 include losing touch with reality, distorted thinking,
3 delusions, auditory and visual hallucinations,
4 paranoia, hyperactivity and rapid speech, or mania.

5 (18) The defendant is pregnant or is the parent of a
6 child or infant whose well-being will be negatively
7 affected by the parent's absence. Circumstances to be
8 considered in assessing this factor in mitigation include:

9 (A) that the parent is breastfeeding the child;

10 (B) the age of the child, with strong
11 consideration given to avoid disruption of the
12 caregiving of an infant, pre-school or school-age
13 child by a parent;

14 (C) the role of the parent in the day-to-day
15 educational and medical needs of the child;

16 (D) the relationship of the parent and the child;

17 (E) any special medical, educational, or
18 psychological needs of the child;

19 (F) the role of the parent in the financial
20 support of the child;

21 (G) the likelihood that the child will be adjudged
22 a dependent minor under Section 2-4 and declared a
23 ward of the court under Section 2-22 of the Juvenile
24 Court Act of 1987;

25 (H) the best interest of the child.

26 Under this Section, the defendant shall have the right

1 to present a Family Impact Statement at sentencing, which
2 the court shall consider in favor of withholding or
3 minimizing a sentence of imprisonment prior to imposing
4 any sentence and may include testimony from family and
5 community members, written statements, video, and
6 documentation. Unless the court finds that the parent
7 poses a significant risk to the community that outweighs
8 the risk of harm from the parent's removal from the
9 family, the court shall impose a sentence in accordance
10 with subsection (b) that allows the parent to continue to
11 care for the child or children.

12 (19) The defendant serves as the caregiver for a
13 relative who is ill, disabled, or elderly.

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

22 (20) The defendant is convicted of a felony and is a
23 combat veteran who is a qualified service-disabled veteran
24 who has been diagnosed with post-traumatic stress
25 disorder.

26 (Source: P.A. 101-471, eff. 1-1-20; 102-211, eff. 1-1-22.)

1 Section 10. The Veterans and Servicemembers Court
2 Treatment Act is amended by adding Section 31 as follows:

3 (730 ILCS 167/31 new)

4 Sec. 31. Combat veterans; post-traumatic stress disorder.

5 (a) In this Section:

6 "Ambulance services" includes medical transportation
7 services provided by means of an ambulance, helicopter,
8 medi-car, service car, or taxi.

9 "Combat veteran" means an Illinois resident who is, or who
10 was honorably discharged as, a member of the Armed Forces of
11 the United States, a member of the Illinois National Guard, or
12 a member of any reserve component of the Armed Forces of the
13 United States and who served on active duty in connection with
14 World War II, the Korean War, Southeast Asia War, Persian Gulf
15 War, Operation Desert Storm, Operation Enduring Freedom,
16 Operation Iraqi Freedom or Operation Iraqi Freedom, or any
17 other foreign military action authorized by the President of
18 the United States, or in which a declaration of war was
19 declared by the Congress of the United States and enacted into
20 law.

21 "Law enforcement agency" means an agency of the State or
22 of a unit of local government charged with enforcement of
23 State, county, or municipal laws or with managing custody of
24 detained persons in the State.

1 "Peace officer" has the meaning ascribed to the term in
2 Section 2-13 of the Criminal Code of 2012.

3 "Post-traumatic stress disorder" means a condition of
4 persistent mental and emotional stress occurring as a result
5 of injury or severe psychological shock, typically involving
6 disturbance of sleep and constant vivid recall of the
7 experience, with dulled responses to others and to the outside
8 world.

9 "Qualified service-disabled veteran" means a veteran who
10 has been found to have 10% or more service-connected
11 disability by the United States Department of Veterans Affairs
12 or the United States Department of Defense.

13 (b) If a combat veteran who is a qualified
14 service-disabled veteran is believed to have committed an
15 offense or is in need of assistance as a result of a suspected
16 incidence of post-traumatic stress disorder, a peace officer
17 or an ambulance service shall transport the veteran to a
18 Department of Veterans Affairs' hospital to be evaluated by a
19 physician, psychiatrist, or clinical psychologist, or other
20 medical professional that the hospital deems qualified to
21 determine whether the veteran is a danger to himself, herself,
22 or others.

23 (c) If it is determined by the hospital staff who
24 evaluated the veteran that the veteran is not a danger to
25 himself, herself, or others, the person shall be released
26 unless that person is subject to law enforcement agency

1 custody for commission of an offense that requires pretrial
2 detention under Article 110 of the Code of Criminal Procedure
3 of 1963. If the veteran requires detention, the veteran shall
4 be released to law enforcement agency custody.

5 (d) If a combat veteran who is a qualified
6 service-disabled veteran resides in this State and is charged
7 with a criminal offense, regardless of the severity of the
8 offense and regardless whether the veteran was in active
9 military service at the time of the commission of the offense,
10 the case shall be tried by a veterans and servicemembers court
11 located in the veteran's county of residence, or if the
12 veteran's county of residence does not have a veterans and
13 servicemembers court located in that county, the case shall be
14 tried in a veterans and servicemembers court located in the
15 nearest county of the veteran's residence.

16 (e) A diagnosis for post-traumatic stress disorder of the
17 combat veteran who is a qualified service-disabled veteran and
18 who is charged with a felony shall be taken into consideration
19 by the State's Attorney and the court trying the veteran and
20 shall be considered by the court as a mitigating factor in
21 sentencing.