

SB1266



104TH GENERAL ASSEMBLY

State of Illinois

2025 and 2026

SB1266

Introduced 1/28/2025, by Sen. Karina Villa

SYNOPSIS AS INTRODUCED:

725 ILCS 5/113-8

725 ILCS 5/Art. 124C heading new

725 ILCS 5/124C-1 new

735 ILCS 5/2-1401

from Ch. 110, par. 2-1401

Amends the Code of Criminal Procedure of 1963. Provides that any person may file a petition to vacate a conviction or sentence, regardless of criminal custody status or citizenship or immigration status, as defined in the Illinois TRUST Act, if the person asserts that: (1) the conviction or sentence is legally invalid due to prejudicial error damaging the petitioner's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence; or (2) newly discovered evidence of actual innocence exists that requires vacation of the conviction or sentence as a matter of law or in the interests of justice. Provides that such a petition shall be deemed timely filed at any time notwithstanding any other provision of law. Provides that the time limitations for petitions filed in the trial court under the Post-Conviction Hearing Article of the Code do not apply to a petition filed under this provision. Amends the Code of Civil Procedure. Provides that a provision granting relief from a final order or judgment entered based on a plea of guilty or nolo contendere and that has potential consequences under federal immigration law applies to orders or judgments entered before, on, or after the effective date of the amendatory Act.

LRB104 06565 RLC 16601 b

A BILL FOR

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 113-8 and by adding Article 124C
6 as follows:

7 (725 ILCS 5/113-8)

8 Sec. 113-8. Advisement concerning status as a noncitizen.

9 (a) Before the acceptance of a plea of guilty, guilty but
10 mentally ill, or nolo contendere to a misdemeanor or felony
11 offense, the court shall give the following advisement to the
12 defendant in open court:

13 "If you are not a citizen of the United States, you are
14 hereby advised that conviction of the offense for which you
15 have been charged may have the consequence of deportation,
16 exclusion from admission to the United States, or denial of
17 naturalization under the laws of the United States.".

18 (b) If the defendant is arraigned on or after the
19 effective date of this amendatory Act of the 101st General
20 Assembly, and the court fails to advise the defendant as
21 required by subsection (a) of this Section, and the defendant
22 shows that conviction of the offense to which the defendant
23 pledged guilty, guilty but mentally ill, or nolo contendere

1 may have the consequence for the defendant of deportation,
2 exclusion from admission to the United States, or denial of
3 naturalization under the laws of the United States, the court,
4 upon the defendant's motion, shall vacate the judgment and
5 permit the defendant to withdraw the plea of guilty, guilty
6 but mentally ill, or nolo contendere and enter a plea of not
7 guilty. A defendant who, prior to the effective date of this
8 amendatory Act of the 104th General Assembly, had been barred
9 by time limitations from filing a motion to vacate, may pursue
10 remedies under this Section or Section 124C-1. The motion
11 ~~shall be filed within 2 years of the date of the defendant's~~
12 ~~conviction.~~

13 (Source: P.A. 101-409, eff. 1-1-20; 102-1030, eff. 5-27-22.)

14 (725 ILCS 5/Art. 124C heading new)

15 ARTICLE 124C. PETITION TO VACATE CERTAIN CONVICTIONS IN THE
16 TRIAL COURT

17 (725 ILCS 5/124C-1 new)

18 Sec. 124C-1. Petition to vacate certain convictions in the
19 trial court.

20 (a) In this Section, "conviction" has the meaning given in
21 8 U.S.C. 1101(a) (48).

22 (b) Any person may file a petition to vacate a conviction
23 or sentence under this Section, regardless of criminal custody
24 status or citizenship or immigration status, as defined in

1 Section 10 of the Illinois TRUST Act, if the person asserts
2 that:

3 (1) the conviction or sentence is legally invalid due
4 to prejudicial error damaging the petitioner's ability to
5 meaningfully understand, defend against, or knowingly
6 accept the actual or potential adverse immigration
7 consequences of a conviction or sentence; a finding of
8 legal invalidity may, but need not, include a finding of
9 ineffective assistance of counsel, and includes but is not
10 limited to failure to admonish noncitizens under Section
11 113-8 of this Code or Illinois Supreme Court Rule 402; or

12 (2) newly discovered evidence of actual innocence
13 exists that requires vacation of the conviction or
14 sentence as a matter of law or in the interests of justice.

15 (c) Notwithstanding any other provision of law, a petition
16 under subsection (b) shall be deemed timely filed at any time.
17 The time limitations for petitions filed in the trial court
18 under Section 122-1 do not apply to a petition filed under
19 subsection (b).

20 (d) A petition filed under this Section shall identify the
21 proceeding in which the petitioner was convicted or sentenced,
22 give the date of the rendition of the final judgment
23 complained of, and clearly set forth the respects in which
24 either the petitioner asserts that his or her rights were
25 violated under subsection (b) or that newly discovered
26 evidence of actual innocence exists that requires vacation of

1 the conviction or sentence as a matter of law or in the
2 interest of justice. The petition may have attached to it
3 affidavits, records, or other evidence supporting its
4 allegations or may state why the same are not attached.

5 (e) If the petition alleges that the petitioner is unable
6 to pay the costs of the proceeding, the court may order that
7 the petitioner be permitted to proceed as a poor person and
8 order a transcript of the proceedings delivered to petitioner
9 in accordance with Illinois Supreme Court Rules. If the
10 petitioner is without counsel and alleges being without means
11 to procure counsel, the petitioner shall state whether
12 appointment of counsel is being requested. If appointment of
13 counsel is being requested, the court shall appoint counsel if
14 satisfied that the petitioner has no means to procure counsel.

15 (f) All petitions filed under this Section shall be
16 entitled to a hearing. Upon the request of the petitioner, the
17 court may hold the hearing without the personal presence of
18 the petitioner if it finds good cause as to why the petitioner
19 cannot be present. If the State's Attorney for the
20 jurisdiction in which the petition is filed does not file an
21 objection to the petition, the court may grant the petition to
22 vacate the conviction or sentence without a hearing.

23 (1) Within 90 days after the filing and docketing of
24 each petition, the court shall examine the petition and
25 enter an order on the petition setting for calendar a
26 hearing date on the petition, except that this timeline

1 shall be 45 days in any case in which the petitioner is in
2 the custody of Immigration and Customs Enforcement or
3 otherwise faces imminent removal from the United States.

4 (2) Within 30 days after the entry of an order under
5 paragraph (1) of this subsection (f), or within such
6 further time as the court may set, the State may file an
7 answer.

8 No other or further pleadings shall be filed except as the
9 court may order on its own motion or on that of either party.
10 The court may in its discretion grant leave, at any stage of
11 the proceeding prior to entry of judgment, to withdraw the
12 petition. The court may in its discretion make such order as to
13 amendment of the petition or any other pleading, or as to
14 pleading over, or filing further pleadings, or extending the
15 time of filing any pleading other than the original petition,
16 as shall be appropriate, just, and reasonable and as is
17 generally provided in civil cases.

18 (g) When ruling on the petition:

19 (1) The court shall grant the petition to vacate the
20 conviction or sentence if the petitioner establishes, by a
21 preponderance of the evidence, the existence of any of the
22 grounds for relief specified in subsection (b). For a
23 motion made under paragraph (1) of subsection (b), the
24 petitioner shall also establish that the conviction or
25 sentence being challenged is currently causing or has the
26 potential to cause removal or the denial of an application

1 for an immigration benefit, lawful status, or
2 naturalization.

3 (2) A court's judicial admonishment under Section
4 113-8 at the time of the conviction or sentencing at issue
5 in the petition shall not be considered:

6 (A) a sufficient basis to cure or correct the
7 prejudicial error damaging the petitioner's ability to
8 meaningfully understand, defend against, or knowingly
9 accept the actual or potential adverse immigration
10 consequences of a conviction or sentence;

11 (B) mitigation for a finding of ineffective
12 assistance of counsel relating to the same conviction
13 or sentencing under this Section; or

14 (C) dispositive as to whether the petitioner was
15 aware that the petitioner's criminal conviction or
16 sentence has adverse immigration consequences for
17 purposes of paragraph (2) of subsection (b).

18 (3) There is a presumption of legal invalidity for the
19 purposes of paragraph (1) of subsection (b) if the
20 petitioner pleaded guilty or nolo contendere under a
21 statute that provided that, upon completion of specific
22 requirements, proceedings would be dismissed without
23 judgment if the petitioner complied with these
24 requirements, and if the disposition under the statute has
25 been, or potentially could be, used as a basis for adverse
26 immigration consequences.

1 (4) If the court grants the petition to vacate a
2 conviction or sentence obtained through a plea of guilty
3 or nolo contendere, the court shall allow the petitioner
4 to withdraw the plea.

5 (5) When ruling on a petition under this Section, the
6 court shall specify the basis for its conclusion. For
7 petitions under paragraph (1) of subsection (b), the only
8 finding that the court is required to make is whether the
9 conviction is legally invalid due to prejudicial error
10 damaging the petitioner's ability to meaningfully
11 understand, defend against, or knowingly accept the actual
12 or potential adverse immigration consequences of a
13 conviction or sentence.

14 (h) An order granting or denying the petition is
15 appealable, and any final judgment entered upon the petition
16 shall be reviewed in the manner provided under the rules of the
17 Supreme Court.

18 (i) A court may issue a specific finding of ineffective
19 assistance of counsel as a result of a motion brought under
20 paragraph (1) of subsection (b) only if the attorney found to
21 be ineffective was given, under Illinois Supreme Court Rule
22 102, timely advance notice of the petition hearing by the
23 petitioner or the State's Attorney for the jurisdiction in
24 which the petition is filed.

25 (j) If the court finds in favor of the petitioner, it shall
26 enter an appropriate order with respect to the judgment or

1 sentence in the former proceedings and such supplementary
2 orders as to rearraignment, retrial, custody, conditions of
3 pretrial release or discharge as may be necessary and proper.

4 (k) Crime victims shall be given notice by the State's
5 Attorney's office of petitions filed under this Section as
6 required in Section 4.5 of the Rights of Crime Victims and
7 Witnesses Act.

8 (l) Remedies under this Section shall apply to convictions
9 and sentences entered before, on, or after the effective date
10 of this amendatory Act of the 104th General Assembly.

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

14 (735 ILCS 5/2-1401) (from Ch. 110, par. 2-1401)

15 Sec. 2-1401. Relief from judgments.

16 (a) Relief from final orders and judgments, after 30 days
17 from the entry thereof, may be had upon petition as provided in
18 this Section. Writs of error coram nobis and coram vobis,
19 bills of review, and bills in the nature of bills of review are
20 abolished. All relief heretofore obtainable and the grounds
21 for such relief heretofore available, whether by any of the
22 foregoing remedies or otherwise, shall be available in every
23 case, by proceedings hereunder, regardless of the nature of
24 the order or judgment from which relief is sought or of the

1 proceedings in which it was entered. Except as provided in the
2 Illinois Parentage Act of 2015, there shall be no distinction
3 between actions and other proceedings, statutory or otherwise,
4 as to availability of relief, grounds for relief, or the
5 relief obtainable.

6 (b) The petition must be filed in the same proceeding in
7 which the order or judgment was entered but is not a
8 continuation thereof. The petition must be supported by an
9 affidavit or other appropriate showing as to matters not of
10 record. A petition to reopen a foreclosure proceeding must
11 include as parties to the petition, but is not limited to, all
12 parties in the original action in addition to the current
13 record title holders of the property, current occupants, and
14 any individual or entity that had a recorded interest in the
15 property before the filing of the petition. All parties to the
16 petition shall be notified as provided by rule.

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

- 20 (1) the movant was convicted of a forcible felony;
- 21 (2) the movant's participation in the offense was
22 related to him or her previously having been a victim of
23 domestic violence or gender-based violence;
- 24 (3) there is substantial evidence of domestic violence
25 or gender-based violence against the movant that was not
26 presented at the movant's sentencing hearing;

(4) (blank); and

(5) the evidence of domestic violence or gender-based violence against the movant is material and noncumulative to other evidence offered at the sentencing hearing, or previous hearing under this Section filed on or after the effective date of this amendatory Act of the 103rd General Assembly, and is of such a conclusive character that it would likely change the sentence imposed by the original trial court.

Nothing in this subsection (b-5) shall prevent a movant from applying for any other relief under this Section or any other law otherwise available to him or her. This subsection (b-5) applies to all eligible convictions, including, but not limited to, if the judge renders the sentence based on a negotiated plea agreement. Relief under this Section allows for the modification of the length of sentence without affecting the conviction.

As used in this subsection (b-5):

"Domestic violence" means abuse as defined in Section 103 of the Illinois Domestic Violence Act of 1986.

"Forcible felony" has the meaning ascribed to the term in Section 2-8 of the Criminal Code of 2012.

"Gender-based violence" includes evidence of victimization as a trafficking victim, as defined by paragraph (10) of subsection (a) of Section 10-9 of the Criminal Code of 2012, evidence of victimization under the Illinois Domestic Violence

1 Act of 1986, evidence of victimization under the Stalking No
2 Contact Order Act, or evidence of victimization of any offense
3 under Article 11 of the Criminal Code of 2012, irrespective of
4 criminal prosecution or conviction.

5 "Intimate partner" means a spouse or former spouse,
6 persons who have or allegedly have had a child in common, or
7 persons who have or have had a dating or engagement
8 relationship.

9 "Substantial evidence" means evidence that a reasonable
10 mind might accept as adequate to support a conclusion.

11 (b-10) A movant may present a meritorious claim under this
12 Section if the allegations in the petition establish each of
13 the following by a preponderance of the evidence:

14 (A) she was convicted of a forcible felony;

15 (B) her participation in the offense was a direct
16 result of her suffering from postpartum depression or
17 postpartum psychosis;

18 (C) no evidence of postpartum depression or postpartum
19 psychosis was presented by a qualified medical person at
20 trial or sentencing, or both;

21 (D) she was unaware of the mitigating nature of the
22 evidence or, if aware, was at the time unable to present
23 this defense due to suffering from postpartum depression
24 or postpartum psychosis, or, at the time of trial or
25 sentencing, neither was a recognized mental illness and as
26 such, she was unable to receive proper treatment; and

(E) evidence of postpartum depression or postpartum psychosis as suffered by the person is material and noncumulative to other evidence offered at the time of trial or sentencing, and it is of such a conclusive character that it would likely change the sentence imposed by the original court.

Nothing in this subsection (b-10) prevents a person from applying for any other relief under this Article or any other law otherwise available to her. This subsection (b-10) applies to all eligible convictions, including, but not limited to, if the judge renders the sentence based on a negotiated plea agreement. Relief under this Section allows for the modification of the length of sentence without affecting the conviction.

As used in this subsection (b-10):

"Postpartum depression" means a mood disorder which strikes many women during and after pregnancy and usually occurs during pregnancy and up to 12 months after delivery. This depression can include anxiety disorders.

"Postpartum psychosis" means an extreme form of postpartum depression which can occur during pregnancy and up to 12 months after delivery. This can include losing touch with reality, distorted thinking, delusions, auditory and visual hallucinations, paranoia, hyperactivity and rapid speech, or mania.

(c) Except as provided in Section 20b of the Adoption Act

1 and Section 2-32 of the Juvenile Court Act of 1987, in a
2 petition based upon Section 116-3 of the Code of Criminal
3 Procedure of 1963 or subsection (b-5), ~~or~~ (b-10), or (c-5) of
4 this Section, or in a motion to vacate and expunge convictions
5 under the Cannabis Control Act as provided by subsection (i)
6 of Section 5.2 of the Criminal Identification Act, the
7 petition must be filed not later than 2 years after the entry
8 of the order or judgment. Time during which the person seeking
9 relief is under legal disability or duress or the ground for
10 relief is fraudulently concealed shall be excluded in
11 computing the period of 2 years.

12 (c-5) Any individual may at any time file a petition and
13 institute proceedings under this Section if the individual's
14 ~~his or her~~ final order or judgment, which was entered based on
15 a plea of guilty or nolo contendere, has potential
16 consequences under federal immigration law. This subsection
17 applies to orders or judgments entered before, on, or after
18 the effective date of this amendatory Act of the 104th General
19 Assembly.

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

22 (e) Unless lack of jurisdiction affirmatively appears from
23 the record proper, the vacation or modification of an order or
24 judgment pursuant to the provisions of this Section does not
25 affect the right, title, or interest in or to any real or
26 personal property of any person, not a party to the original

1 action, acquired for value after the entry of the order or
2 judgment but before the filing of the petition, nor affect any
3 right of any person not a party to the original action under
4 any certificate of sale issued before the filing of the
5 petition, pursuant to a sale based on the order or judgment.
6 When a petition is filed pursuant to this Section to reopen a
7 foreclosure proceeding, notwithstanding the provisions of
8 Section 15-1701 of this Code, the purchaser or successor
9 purchaser of real property subject to a foreclosure sale who
10 was not a party to the mortgage foreclosure proceedings is
11 entitled to remain in possession of the property until the
12 foreclosure action is defeated or the previously foreclosed
13 defendant redeems from the foreclosure sale if the purchaser
14 has been in possession of the property for more than 6 months.

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

18 (Source: P.A. 102-639, eff. 8-27-21; 102-813, eff. 5-13-22;
19 103-403, eff. 1-1-24; 103-968, eff. 1-1-25.)