



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB4828

by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

725 ILCS 5/116-2.2 new

Amends the Code of Criminal Procedure of 1963. Provides that a person serving a sentence for any criminal offense under the Criminal Code of 1961 or the Criminal Code of 2012 or a similar local ordinance for which the statutory penalty has been subsequently reduced or altered may petition the trial court that entered the judgment of conviction to request resentencing or dismissal in accordance with the statutory penalty in effect at the time of the filing of the petition. Provides that upon verified petition for resentencing by the defendant, the trial court that entered the judgment of conviction in a defendant's case may order resentencing at any time after 30 days have passed following the imposition of a sentence under a guilty verdict or a finding of guilt for any criminal offense under the Criminal Code of 1961 or the Criminal Code of 2012 or a similar local ordinance provided: (1) the State's Attorney or other prosecuting attorney is given at least 30-day notice of the filing of the petition seeking resentencing; (2) the statutory penalty for the offense for which the defendant was found guilty or convicted, since his or her plea of guilty or conviction, has been subsequently reduced or altered in a manner that includes, but is not limited to: (A) reducing the minimum or maximum sentence for the offense; (B) granting the court more discretion over the range of penalties available for the offense; or (C) changing the penalties associated with the offense or conduct underlying the offense in any way.

LRB100 19210 RLC 34476 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

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 adding Section 116-2.2 as follows:

6 (725 ILCS 5/116-2.2 new)

7 Sec. 116-2.2. Petition to resentence; statutory penalty
8 reduction.

9 (a) A person serving a sentence for any criminal offense
10 under the Criminal Code of 1961 or the Criminal Code of 2012 or
11 a similar local ordinance for which the statutory penalty has
12 been subsequently reduced or altered may petition the trial
13 court that entered the judgment of conviction to request
14 resentencing or dismissal in accordance with the statutory
15 penalty in effect at the time of the filing of the petition.

16 (b) Upon verified petition for resentencing by the
17 defendant, the trial court that entered the judgment of
18 conviction in a defendant's case may order resentencing at any
19 time after 30 days have passed following the imposition of a
20 sentence under a guilty verdict or a finding of guilt for any
21 criminal offense under the Criminal Code of 1961 or the
22 Criminal Code of 2012 or a similar local ordinance provided:

23 (1) the State's Attorney or other prosecuting attorney

1 is given at least 30-day notice of the filing of the
2 petition seeking resentencing; and

3 (2) the statutory penalty for the offense for which the
4 defendant was found guilty or convicted, since his or her
5 plea of guilty or conviction, has been subsequently reduced
6 or altered in a manner that includes, but is not limited
7 to:

8 (A) reducing the minimum or maximum sentence for
9 the offense;

10 (B) granting the court more discretion over the
11 range of penalties available for the offense; or

12 (C) changing the penalties associated with the
13 offense or conduct underlying the offense in any way.

14 (c) In determining whether to grant a petition under this
15 Section, the court shall determine whether the petitioner
16 satisfies the criteria in subsection (b). If the petitioner
17 satisfies the criteria in subsection (b), the court shall
18 resentence the defendant in a manner that is consistent with
19 the penalty the defendant would have received if the statutory
20 penalty in effect at the time of the filing of the petition was
21 in effect on the date when the offense was committed or the
22 original sentence was imposed, unless the court, in its
23 discretion, determines that resentencing the petitioner would
24 pose an unreasonable risk of danger to public safety. In
25 exercising its discretion, the court may consider any of the
26 following:

1 (1) the petitioner's criminal conviction history,
2 including the type of offenses committed, the extent of
3 injury to victims, the length of prior prison commitments,
4 and the remoteness of the offenses;

5 (2) the petitioner's disciplinary record and record of
6 rehabilitation while incarcerated; and

7 (3) any other evidence the court, within its
8 discretion, determines to be relevant in deciding whether a
9 new sentence would result in an unreasonable risk of danger
10 to public safety.

11 In this subsection (c), "unreasonable risk of danger to
12 public safety" means an unreasonable risk that the petitioner
13 will commit a new violent felony under the Criminal Code of
14 2012.

15 (d) A person who is resentenced under subsection (b) shall
16 be given credit for time served and shall be subject to parole
17 or mandatory supervised release for one year following
18 completion of his or her sentence, unless the court, in its
19 discretion, as part of its resentencing order, releases the
20 person from parole or mandatory supervised release.

21 (e) Resentencing under this Section may not result in the
22 imposition of a term of imprisonment longer than the original
23 sentence.

24 (f) A person who has completed his or her sentence for a
25 conviction of a felony who would have been guilty of a
26 misdemeanor if the current law was in effect on the date when

1 the offense was committed or the original sentence was imposed,
2 may petition the trial court that entered the judgment of
3 conviction in his or her case to have the felony conviction
4 designated as a misdemeanor.

5 (g) If the petition satisfies the criteria in subsection
6 (f), the court shall designate the felony offense as a
7 misdemeanor.

8 (h) A person who has completed his or her sentence for a
9 conviction of a felony who would not have been guilty of an
10 offense if the statutory penalty in effect at the time of the
11 filing of the petition was in effect on the date when the
12 offense was committed or the original sentence was imposed, may
13 file an application before the trial court that entered the
14 judgment of conviction in his or her case to have the
15 conviction dismissed and sealed.