



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB3964

Introduced 2/17/2023, by Rep. Kelly M. Cassidy

#### SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-4.5-120 new

Amends the Unified Code of Corrections. Provides that a person imprisoned in the penitentiary may, after serving 10 years or more of his or her sentence or cumulative sentences, submit a petition for sentencing review in the circuit court of the county in which he or she was originally sentenced. Provides at the sentencing review hearing the court shall consider various mitigating factors. Provides that following the hearing, the court may affirm or reduce the petitioner's sentence and may depart downward from any mandatory minimum or mandatory sentence enhancement, taking into consideration certain factors. Provides that these provisions shall operate retroactively to provide any person incarcerated for a crime or crimes committed, before the effective date of the amendatory Act, with the opportunity to file a motion for resentencing under these provisions under the terms provided in these provisions. Provides that notwithstanding any other provision to the contrary, nothing in these provisions shall be construed to delay parole or mandatory supervised release consideration for petitioners who, prior to the effective date of the amendatory Act, are or will be eligible for release earlier than provided for in these provisions. Provides that the clerk of the court shall transmit copies of the petitions, any amendments to the petition, and the final orders to the Illinois Sentencing Policy Advisory Council. Provides that the Illinois Sentencing Policy Advisory Council shall report to the Governor and the General Assembly on the impact of resentencing motions on the prison population contingent on having sufficient reliable data to support the analysis. Provides that the report shall be filed no later than 3 years after the effective date of the amendatory Act.

LRB103 28832 RLC 55217 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 5-4.5-120 as follows:

6 (730 ILCS 5/5-4.5-120 new)

7 Sec. 5-4.5-120. Sentencing review of incarcerated  
8 individuals. Any person imprisoned in the penitentiary may,  
9 after serving 10 years or more of his or her sentence or  
10 cumulative sentences, submit a petition for sentencing review  
11 in the circuit court of the county in which he or she was  
12 originally sentenced. The procedure for sentencing review  
13 shall occur in the following manner:

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

20 (2) Upon receipt of the petition and assignment to a  
21 judge, the judge has 30 days to determine if the  
22 petitioner has sought filing in the appropriate court and  
23 has served 10 or more years of his or her sentence. If the

1 court determines that either of those factors are not  
2 satisfied, it shall dismiss the petition and notify the  
3 petitioner of the reason for the dismissal. This  
4 notification shall be served upon the petitioner by  
5 certified mail within 10 days of its entry. If the court  
6 determines the petition was appropriately filed, it shall  
7 docket the petition. If the petitioner is without counsel  
8 and alleges in the petition for sentencing review that he  
9 or she is without means to procure counsel, he or she shall  
10 state whether or not he or she wishes counsel to be  
11 appointed to represent him or her. If appointment of  
12 counsel is requested, the court shall appoint counsel if  
13 satisfied that the petitioner has no means to procure  
14 counsel. The clerk of the circuit court shall serve a copy  
15 of the petition to the State's Attorney of that county or  
16 his or her representative.

17 (3) Upon receipt of the petition for sentencing  
18 review, the State's Attorney's Office shall provide the  
19 victim or his or her family, or both, with a copy of the  
20 petition, and notice of any restorative justice programs  
21 available.

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

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

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

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

6                   (A) consider in mitigation the factors listed in  
7                   paragraphs (A) through (K) of paragraph (8) of this  
8                   Section;

9                   (B) consider the evidence, if any, received at  
10                   trial;

11                   (C) consider any presentence reports;

12                   (D) consider the financial impact of incarceration  
13                   based on the financial impact statement filed with the  
14                   clerk of the court by the Department of Corrections;

15                   (E) consider any additional evidence and  
16                   information offered by the parties in aggravation and  
17                   mitigation, including, but not limited to, scientific  
18                   evidence of recidivism;

19                   (F) consider the person's overall record of  
20                   behavior while incarcerated, including disciplinary  
21                   history, participation in educational and vocational  
22                   programs available to the petitioner, including but  
23                   not limited to restorative justice programs, and  
24                   extent of cooperation with staff;

25                   (G) hear arguments as to sentencing alternatives;

26                   (H) afford the petitioner the opportunity to make

1 a statement on his or her behalf without being subject  
2 to cross-examination;

3 (I) afford the victim or families of victims of  
4 the crime, or both, for which the petitioner was  
5 originally sentenced an opportunity to provide a  
6 victim impact statement to the court. The court shall  
7 permit those statements and consider the live  
8 testimony of a victim or a victim representative.

9 (8) Following the hearing, the court may affirm or  
10 reduce the petitioner's sentence and shall be authorized  
11 to depart downward from any mandatory minimum or mandatory  
12 sentence enhancement, taking into consideration the  
13 following factors:

14 (A) the petitioner's current age, as well as the  
15 petitioner's age, impetuosity, and level of maturity  
16 at the time of the offense, including the ability to  
17 consider risks and consequences of behavior, and the  
18 presence of cognitive or developmental disability, if  
19 any;

20 (B) whether the petitioner was subjected to  
21 outside pressure, including peer pressure, familial  
22 pressure, or negative influences;

23 (C) the petitioner's family and community  
24 circumstances, home environment, educational and  
25 social background, including any history of parental  
26 neglect, physical, mental, or sexual abuse,

1 involvement in the child welfare system, or other  
2 childhood trauma;

3 (D) the nature and circumstances of the offense;

4 (E) the petitioner's degree of participation and  
5 specific role in the offense, including the level of  
6 planning by the defendant before the offense;

7 (F) whether the petitioner was able to  
8 meaningfully participate in his or her defense;

9 (G) the petitioner's prior juvenile or criminal  
10 history;

11 (H) the history and characteristics of the  
12 petitioner at the time of the petition, including  
13 rehabilitation and maturity demonstrated by the  
14 petitioner;

15 (I) any report from a physical, mental, or  
16 psychiatric examination of the petitioner conducted by  
17 a licensed health professional;

18 (J) any changes to the law governing criminal  
19 convictions, dispositions, or length of stay since the  
20 time of sentencing; and

21 (K) any other information the court finds relevant  
22 and reliable, including an expression of remorse, if  
23 appropriate. However, if the petitioner, on advice of  
24 counsel chooses not to make a statement, the court  
25 shall not consider a lack of an expression of remorse  
26 as an aggravating factor.

1           The order following a sentencing review hearing is a  
2           final judgment. Any final judgment entered upon the  
3           petition shall be reviewed in a manner pursuant to the  
4           rules of the Supreme Court.

5           (9) Notwithstanding any provision of this Section to  
6           the contrary, any offender who has petitioned the circuit  
7           court for sentencing review pursuant to this Section shall  
8           not be eligible to submit a second petition until at least  
9           5 years have elapsed since the date on which the circuit  
10          court ruled upon the initial petition. In considering the  
11          second petition, the court shall follow the procedure  
12          stated in paragraphs (2) through (8) of this Section.  
13          Following a hearing on the second petition pursuant to  
14          this paragraph (9), the court may affirm or reduce the  
15          petitioner's sentence. The order following a hearing  
16          pursuant to this paragraph is a final judgment.

17          (10) The petitioner may file a motion seeking leave  
18          for sentencing review when 5 years have elapsed since the  
19          date on which the circuit court ruled on a petition filed  
20          pursuant to paragraph (9) of this section. The motion must  
21          clearly set forth the need for sentencing review,  
22          including the efforts the petitioner has made towards  
23          rehabilitation and his or her demonstrated maturity.

24                (A) Within 90 days after the filing of this  
25                motion, the court shall examine the motion and enter  
26                an order thereon. In considering a motion under this

1 paragraph, the court may examine the court file of the  
2 proceeding in which the petitioner was convicted, any  
3 action taken by an appellate court in that proceeding,  
4 any transcripts of that proceeding, and any transcript  
5 or court documents from previous proceedings under  
6 this Section. If the court determines the motion is  
7 frivolous or is patently without merit, it shall deny  
8 the motion in a written order, specifying the  
9 underlying basis for its decision that continued  
10 incarceration is appropriate and necessary. The order  
11 is a final judgment and shall be served upon the  
12 petitioner by certified mail within 10 days of its  
13 entry.

14 (B) If the petition is not dismissed under  
15 subparagraph (A), the court shall order the motion for  
16 sentencing review to be docketed for further  
17 consideration in accordance with the procedure stated  
18 in paragraphs (2) through (8) of this Section.

19 (11) This Section shall operate retroactively to  
20 provide any person incarcerated for a crime or crimes  
21 committed, before the effective date of this amendatory  
22 Act of the 103rd General Assembly, with the opportunity to  
23 file a motion for resentencing under this Section under  
24 the terms provided in this Section.

25 (12) Notwithstanding any other provision of this  
26 Section to the contrary, nothing in this Section shall be



1 construed to delay parole or mandatory supervised release  
2 consideration for petitioners who, prior to the effective  
3 date of this amendatory Act of the 103rd General Assembly,  
4 are or will be eligible for release earlier than this  
5 Section provides.

6 (13) The clerk of the court shall transmit copies of  
7 the petitions, any amendments to the petition, and the  
8 final orders to the Illinois Sentencing Policy Advisory  
9 Council. The Illinois Sentencing Policy Advisory Council  
10 shall report to the Governor and the General Assembly on  
11 the impact of resentencing motions on the prison  
12 population contingent on having sufficient reliable data  
13 to support the analysis. The report shall be filed no  
14 later than 3 years after the effective date of this  
15 amendatory Act of the 103rd General Assembly.