



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB3867

Introduced 10/27/2011, by Rep. Kenneth Dunkin

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-4.05 new
735 ILCS 5/2-1401

from Ch. 110, par. 2-1401

Amends the Unified Code of Corrections. Establishes criteria for the reduction of a sentence imposed for first degree murder in which the murderer was a victim of domestic abuse committed by the murdered person. Provides that if all of the criteria are met, the murderer may submit in writing a petition to the Illinois Supreme Court for reduction of the murderer's sentence to the maximum sentence available for the offense at the time of its commission that was not an extended term sentence. Amends the Code of Civil Procedure to make conforming changes.

LRB097 13395 RLC 58697 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 5-5-4.05 as follows:

6 (730 ILCS 5/5-5-4.05 new)

7 Sec. 5-5-4.05. First degree murder by victim of domestic
8 violence; reduction of sentence.

9 (a) The Supreme Court may reduce the sentence of a person
10 who is serving a term of imprisonment for first degree murder
11 or the prior offense of murder if each of these circumstances
12 exist:

13 (1) the murderer must have been tried, sentenced, or
14 pled guilty to the offense prior to the effective date of
15 the federal Battered Women's Testimony Act of 1992;

16 (2) the murderer must have claimed abuse as defined in
17 Section 112A-3 of the Code of Criminal Procedure of 1963;

18 (3) the murderer must have written documentation of
19 abuse prior to the effective date of this amendatory Act of
20 the 97th General Assembly. Documentation may include, but
21 is not limited to, civil or criminal court records,
22 proceedings, notarized statements, police reports, and
23 witness statements. Abuse must have been claimed but is not

1 required to be proved;

2 (4) the murderer must be incarcerated for the murder of
3 his or her abuser, whether perpetrated by the murderer or
4 whether accountable for the murder under Article 5 of the
5 Criminal Code of 1961;

6 (5) the murderer must not have been previously
7 convicted of first degree murder, a Class X felony, or a
8 Class 1 felony; and

9 (6) the murderer must have been sentenced to a term of
10 imprisonment that is more than the maximum sentence that is
11 not an extended term sentence.

12 (b) If all of the criteria of subsection (a) are met, the
13 murderer may submit in writing a petition to the Illinois
14 Supreme Court for reduction of the murderer's sentence to the
15 maximum sentence available for the offense at the time of its
16 commission that was not an extended term sentence. The petition
17 request must include all documentation required by subsection
18 (a). The Supreme Court, within 60 business days from the date
19 the Court receives the petition, shall review the petition and
20 all submitted documents, and if the Court is satisfied that the
21 criteria of subsection (a) have been met shall reduce the
22 petitioner's sentence to the maximum sentence available for the
23 offense at the time of its commission that was not an extended
24 term sentence.

25 Section 10. The Code of Civil Procedure is amended by

1 changing Section 2-1401 as follows:

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

3 Sec. 2-1401. Relief from judgments.

4 (a) Relief from final orders and judgments, after 30 days
5 from the entry thereof, may be had upon petition as provided in
6 this Section. Writs of error coram nobis and coram vobis, bills
7 of review and bills in the nature of bills of review are
8 abolished. All relief heretofore obtainable and the grounds for
9 such relief heretofore available, whether by any of the
10 foregoing remedies or otherwise, shall be available in every
11 case, by proceedings hereunder, regardless of the nature of the
12 order or judgment from which relief is sought or of the
13 proceedings in which it was entered. Except as provided in
14 Section 6 of the Illinois Parentage Act of 1984, there shall be
15 no distinction between actions and other proceedings,
16 statutory or otherwise, as to availability of relief, grounds
17 for relief or the relief obtainable.

18 (b) The petition must be filed in the same proceeding in
19 which the order or judgment was entered but is not a
20 continuation thereof. The petition must be supported by
21 affidavit or other appropriate showing as to matters not of
22 record. All parties to the petition shall be notified as
23 provided by rule.

24 (c) Except as provided in Section 20b of the Adoption Act
25 and Section 2-32 of the Juvenile Court Act of 1987 or in a

1 petition based upon Section 116-3 of the Code of Criminal
2 Procedure of 1963, the petition must be filed not later than 2
3 years after the entry of the order or judgment. Time during
4 which the person seeking relief is under legal disability or
5 duress or the ground for relief is fraudulently concealed shall
6 be excluded in computing the period of 2 years.

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

9 (e) Unless lack of jurisdiction affirmatively appears from
10 the record proper, the vacation or modification of an order or
11 judgment pursuant to the provisions of this Section does not
12 affect the right, title or interest in or to any real or
13 personal property of any person, not a party to the original
14 action, acquired for value after the entry of the order or
15 judgment but before the filing of the petition, nor affect any
16 right of any person not a party to the original action under
17 any certificate of sale issued before the filing of the
18 petition, pursuant to a sale based on the order or judgment.

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

22 (g) This Section does not apply to petitions filed under
23 Section 5-5-4.05 of the Unified Code of Corrections.

24 (Source: P.A. 95-331, eff. 8-21-07.)