



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

**HB3238**

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.

LRB098 09746 MRW 39895 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 98th 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 or the Criminal Code of 2012;

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.)