

SB3166



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB3166

Introduced 2/11/2020, by Sen. Rachelle Crowe

SYNOPSIS AS INTRODUCED:

730 ILCS 5/5-5-3.1

from Ch. 38, par. 1005-5-3.1

Amends the Unified Code of Corrections. Provides that the grounds accorded weight in favor of withholding or minimizing a sentence of imprisonment include that the defendant is pregnant or is the parent of a child or infant whose well-being will be negatively affected by the parent's absence. Provides that circumstances to be considered in assessing this factor in mitigation include: (1) the likelihood that the child will be adjudged a dependent minor and declared a ward of the court under the Juvenile Court Act of 1987; and (2) the best interest of the child.

LRB101 15816 RLC 65171 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 Unified Code of Corrections is amended by
5 changing Section 5-5-3.1 as follows:

6 (730 ILCS 5/5-5-3.1) (from Ch. 38, par. 1005-5-3.1)

7 Sec. 5-5-3.1. Factors in mitigation.

8 (a) The following grounds shall be accorded weight in favor
9 of withholding or minimizing a sentence of imprisonment:

10 (1) The defendant's criminal conduct neither caused
11 nor threatened serious physical harm to another.

12 (2) The defendant did not contemplate that his criminal
13 conduct would cause or threaten serious physical harm to
14 another.

15 (3) The defendant acted under a strong provocation.

16 (4) There were substantial grounds tending to excuse or
17 justify the defendant's criminal conduct, though failing
18 to establish a defense.

19 (5) The defendant's criminal conduct was induced or
20 facilitated by someone other than the defendant.

21 (6) The defendant has compensated or will compensate
22 the victim of his criminal conduct for the damage or injury
23 that he sustained.

1 (7) The defendant has no history of prior delinquency
2 or criminal activity or has led a law-abiding life for a
3 substantial period of time before the commission of the
4 present crime.

5 (8) The defendant's criminal conduct was the result of
6 circumstances unlikely to recur.

7 (9) The character and attitudes of the defendant
8 indicate that he is unlikely to commit another crime.

9 (10) The defendant is particularly likely to comply
10 with the terms of a period of probation.

11 (11) (Blank).

12 (12) The imprisonment of the defendant would endanger
13 his or her medical condition.

14 (13) The defendant was a person with an intellectual
15 disability as defined in Section 5-1-13 of this Code.

16 (14) The defendant sought or obtained emergency
17 medical assistance for an overdose and was convicted of a
18 Class 3 felony or higher possession, manufacture, or
19 delivery of a controlled, counterfeit, or look-alike
20 substance or a controlled substance analog under the
21 Illinois Controlled Substances Act or a Class 2 felony or
22 higher possession, manufacture or delivery of
23 methamphetamine under the Methamphetamine Control and
24 Community Protection Act.

25 (15) At the time of the offense, the defendant is or
26 had been the victim of domestic violence and the effects of

1 the domestic violence tended to excuse or justify the
2 defendant's criminal conduct. As used in this paragraph
3 (15), "domestic violence" means abuse as defined in Section
4 103 of the Illinois Domestic Violence Act of 1986.

5 (16) At the time of the offense, the defendant was
6 suffering from a serious mental illness which, though
7 insufficient to establish the defense of insanity,
8 substantially affected his or her ability to understand the
9 nature of his or her acts or to conform his or her conduct
10 to the requirements of the law.

11 (17) At the time of the offense, the defendant was
12 suffering from post-partum depression or post-partum
13 psychosis which was either undiagnosed or untreated, or
14 both, and this temporary mental illness tended to excuse or
15 justify the defendant's criminal conduct and the defendant
16 has been diagnosed as suffering from post-partum
17 depression or post-partum psychosis, or both, by a
18 qualified medical person and the diagnoses or testimony, or
19 both, was not used at trial. In this paragraph (17):

20 "Post-partum depression" means a mood disorder
21 which strikes many women during and after pregnancy
22 which usually occurs during pregnancy and up to 12
23 months after delivery. This depression can include
24 anxiety disorders.

25 "Post-partum psychosis" means an extreme form of
26 post-partum depression which can occur during

1 pregnancy and up to 12 months after delivery. This can
2 include losing touch with reality, distorted thinking,
3 delusions, auditory and visual hallucinations,
4 paranoia, hyperactivity and rapid speech, or mania.

5 (18) The defendant is pregnant or is the parent of a
6 child or infant whose well-being will be negatively
7 affected by the parent's absence. Circumstances to be
8 considered in assessing this factor in mitigation include:

9 (A) that the parent is breastfeeding the child;

10 (B) the age of the child, with strong consideration
11 given to avoid disruption of the caregiving of an
12 infant, pre-school or school-age child by a parent;

13 (C) the role of the parent in the day-to-day
14 educational and medical needs of the child;

15 (D) the relationship of the parent and the child;

16 (E) any special medical, educational, or
17 psychological needs of the child;

18 (F) the role of the parent in the financial support
19 of the child; -

20 (G) the likelihood that the child will be adjudged
21 a dependent minor under Section 2-4 and declared a ward
22 of the court under Section 2-22 of the Juvenile Court
23 Act of 1987;

24 (H) the best interest of the child.

25 Under this Section, the defendant shall have the right
26 to present a Family Impact Statement at sentencing, which

1 the court shall consider in favor of withholding or
2 minimizing a sentence of imprisonment prior to imposing any
3 sentence and may include testimony from family and
4 community members, written statements, video, and
5 documentation. Unless the court finds that the parent poses
6 a significant risk to the community that outweighs the risk
7 of harm from the parent's removal from the family, the
8 court shall impose a sentence in accordance with subsection
9 (b) that allows the parent to continue to care for the
10 child or children.

11 (19) The defendant serves as the caregiver for a
12 relative who is ill, disabled, or elderly.

13 (b) If the court, having due regard for the character of
14 the offender, the nature and circumstances of the offense and
15 the public interest finds that a sentence of imprisonment is
16 the most appropriate disposition of the offender, or where
17 other provisions of this Code mandate the imprisonment of the
18 offender, the grounds listed in paragraph (a) of this
19 subsection shall be considered as factors in mitigation of the
20 term imposed.

21 (Source: P.A. 100-574, eff. 6-1-18; 101-471, eff. 1-1-20.)