



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB4847

Introduced 1/27/2022, by Rep. Kelly M. Cassidy

SYNOPSIS AS INTRODUCED:

720 ILCS 5/5-2	from Ch. 38, par. 5-2
720 ILCS 5/7-11	from Ch. 38, par. 7-11
735 ILCS 5/2-1401	from Ch. 110, par. 2-1401

Amends the Criminal Code of 2012. Provides that a person is not accountable for the conduct of another if he or she was subjected to specific and credible coercion, compulsion, duress, or threats. Provides that no offense is excepted from the provision that a person is not guilty of an offense by reason of conduct that he or she performs under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he or she reasonably believes death or great bodily harm will be inflicted upon him or her, or upon his or her spouse or child, if he or she does not perform that conduct. Amends the Code of Civil Procedure. In a provision concerning relief from judgments: Changes the allegations a movant must establish when presenting a meritorious claim to: (1) the movant was convicted of a forcible felony; (2) the movant's participation in the offense was related to experiencing or the effects of gender-based violence; and (3) no substantial evidence or incomplete evidence of gender-based violence against the movant was presented at the movant's sentencing hearing. Changes the term "domestic violence" to "gender-based violence". Removes the definition of "intimate partner". Makes corresponding changes.

LRB102 25342 LNS 34619 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 Criminal Code of 2012 is amended by
5 changing Sections 5-2 and 7-11 as follows:

6 (720 ILCS 5/5-2) (from Ch. 38, par. 5-2)

7 Sec. 5-2. When accountability exists. A person is legally
8 accountable for the conduct of another when:

9 (a) having a mental state described by the statute
10 defining the offense, he or she causes another to perform
11 the conduct, and the other person in fact or by reason of
12 legal incapacity lacks such a mental state;

13 (b) the statute defining the offense makes him or her
14 so accountable; or

15 (c) either before or during the commission of an
16 offense, and with the intent to promote or facilitate that
17 commission, he or she solicits, aids, abets, agrees, or
18 attempts to aid that other person in the planning or
19 commission of the offense.

20 When 2 or more persons engage in a common criminal design
21 or agreement, any acts in the furtherance of that common
22 design committed by one party are considered to be the acts of
23 all parties to the common design or agreement and all are

1 equally responsible for the consequences of those further
2 acts. Mere presence at the scene of a crime does not render a
3 person accountable for an offense; a person's presence at the
4 scene of a crime, however, may be considered with other
5 circumstances by the trier of fact when determining
6 accountability.

7 A person is not so accountable, however, unless the
8 statute defining the offense provides otherwise, if:

9 (1) he or she is a victim of the offense committed;

10 (2) the offense is so defined that his or her conduct
11 was inevitably incident to its commission; ~~or~~

12 (3) before the commission of the offense, he or she
13 terminates his or her effort to promote or facilitate that
14 commission and does one of the following: (i) wholly
15 deprives his or her prior efforts of effectiveness in that
16 commission, (ii) gives timely warning to the proper law
17 enforcement authorities, or (iii) otherwise makes proper
18 effort to prevent the commission of the offense; or

19 (4) he or she was subjected to specific and credible
20 coercion, compulsion, duress, or threats, including
21 coercion, compulsion, duress, or threats related to
22 domestic abuse as defined in Section 103 of the Illinois
23 Domestic Violence Act of 1986.

24 (Source: P.A. 96-710, eff. 1-1-10.)

25 (720 ILCS 5/7-11) (from Ch. 38, par. 7-11)

1 Sec. 7-11. Compulsion.

2 (a) A person is not guilty of an offense, ~~other than an~~
3 ~~offense punishable with death,~~ by reason of conduct that he or
4 she performs under the compulsion of threat or menace of the
5 imminent infliction of death or great bodily harm, if he or she
6 reasonably believes death or great bodily harm will be
7 inflicted upon him or her, or upon his or her spouse or child,
8 if he or she does not perform that conduct. No offense is
9 excepted from this subsection.

10 (b) A married woman is not entitled, by reason of the
11 presence of her husband, to any presumption of compulsion or
12 to any defense of compulsion, except that stated in subsection
13 (a).

14 (Source: P.A. 96-710, eff. 1-1-10.)

15 Section 10. The Code of Civil Procedure is amended by
16 changing Section 2-1401 as follows:

17 (735 ILCS 5/2-1401) (from Ch. 110, par. 2-1401)

18 Sec. 2-1401. Relief from judgments.

19 (a) Relief from final orders and judgments, after 30 days
20 from the entry thereof, may be had upon petition as provided in
21 this Section. Writs of error coram nobis and coram vobis,
22 bills of review, and bills in the nature of bills of review are
23 abolished. All relief heretofore obtainable and the grounds
24 for such relief heretofore available, whether by any of the

1 foregoing remedies or otherwise, shall be available in every
2 case, by proceedings hereunder, regardless of the nature of
3 the order or judgment from which relief is sought or of the
4 proceedings in which it was entered. Except as provided in the
5 Illinois Parentage Act of 2015, there shall be no distinction
6 between actions and other proceedings, statutory or otherwise,
7 as to availability of relief, grounds for relief, or the
8 relief obtainable.

9 (b) The petition must be filed in the same proceeding in
10 which the order or judgment was entered but is not a
11 continuation thereof. The petition must be supported by an
12 affidavit or other appropriate showing as to matters not of
13 record. A petition to reopen a foreclosure proceeding must
14 include as parties to the petition, but is not limited to, all
15 parties in the original action in addition to the current
16 record title holders of the property, current occupants, and
17 any individual or entity that had a recorded interest in the
18 property before the filing of the petition. All parties to the
19 petition shall be notified as provided by rule.

20 (b-5) A movant may present a meritorious claim under this
21 Section, regardless of previous filings, if the allegations in
22 the petition establish each of the following by a
23 preponderance of the evidence:

24 (1) the movant was convicted of a forcible felony;

25 (2) the movant's participation in the offense was
26 related to experiencing or the effects of gender-based ~~him~~

1 ~~or her previously having been a victim of domestic~~
2 ~~violence as perpetrated by an intimate partner;~~

3 (3) no substantial evidence or incomplete evidence of
4 gender-based ~~domestic~~ violence against the movant was
5 presented at the movant's sentencing hearing;

6 (4) (blank) ~~the movant was unaware of the mitigating~~
7 ~~nature of the evidence of the domestic violence at the~~
8 ~~time of sentencing and could not have learned of its~~
9 ~~significance sooner through diligence; and~~

10 (5) (blank) ~~the new evidence of domestic violence~~
11 ~~against the movant is material and noncumulative to other~~
12 ~~evidence offered at the sentencing hearing, and is of such~~
13 ~~a conclusive character that it would likely change the~~
14 ~~sentence imposed by the original trial court.~~

15 Nothing in this subsection (b-5) shall prevent a movant
16 from applying for any other relief under this Section or any
17 other law otherwise available to him or her.

18 As used in this subsection (b-5):

19 "Gender-based ~~Domestic~~ violence" means abuse as
20 defined in Section 103 of the Illinois Domestic Violence
21 Act of 1986 or the perpetration of serious harm as defined
22 in Section 10-9 of the Criminal Code of 2012.

23 "Forcible felony" has the meaning ascribed to the term
24 in Section 2-8 of the Criminal Code of 2012.

25 "~~Intimate partner~~" means ~~a spouse or former spouse,~~
26 ~~persons who have or allegedly have had a child in common,~~

1 ~~or persons who have or have had a dating or engagement~~
2 ~~relationship.~~

3 (b-10) A movant may present a meritorious claim under this
4 Section if the allegations in the petition establish each of
5 the following by a preponderance of the evidence:

6 (A) she was convicted of a forcible felony;

7 (B) her participation in the offense was a direct
8 result of her suffering from post-partum depression or
9 post-partum psychosis;

10 (C) no evidence of post-partum depression or
11 post-partum psychosis was presented by a qualified medical
12 person at trial or sentencing, or both;

13 (D) she was unaware of the mitigating nature of the
14 evidence or, if aware, was at the time unable to present
15 this defense due to suffering from post-partum depression
16 or post-partum psychosis, or, at the time of trial or
17 sentencing, neither was a recognized mental illness and as
18 such, she was unable to receive proper treatment; and

19 (E) evidence of post-partum depression or post-partum
20 psychosis as suffered by the person is material and
21 noncumulative to other evidence offered at the time of
22 trial or sentencing, and it is of such a conclusive
23 character that it would likely change the sentence imposed
24 by the original court.

25 Nothing in this subsection (b-10) prevents a person from
26 applying for any other relief under this Article or any other

1 law otherwise available to her.

2 As used in this subsection (b-10):

3 "Post-partum depression" means a mood disorder which
4 strikes many women during and after pregnancy and usually
5 occurs during pregnancy and up to 12 months after
6 delivery. This depression can include anxiety disorders.

7 "Post-partum psychosis" means an extreme form of
8 post-partum depression which can occur during pregnancy
9 and up to 12 months after delivery. This can include
10 losing touch with reality, distorted thinking, delusions,
11 auditory and visual hallucinations, paranoia,
12 hyperactivity and rapid speech, or mania.

13 (c) Except as provided in Section 20b of the Adoption Act
14 and Section 2-32 of the Juvenile Court Act of 1987, ~~or~~ in a
15 petition based upon Section 116-3 of the Code of Criminal
16 Procedure of 1963 or subsection (b-5) or (b-10) of this
17 Section, or in a motion to vacate and expunge convictions
18 under the Cannabis Control Act as provided by subsection (i)
19 of Section 5.2 of the Criminal Identification Act, the
20 petition must be filed not later than 2 years after the entry
21 of the order or judgment. Time during which the person seeking
22 relief is under legal disability or duress or the ground for
23 relief is fraudulently concealed shall be excluded in
24 computing the period of 2 years.

25 (c-5) Any individual may at any time file a petition and
26 institute proceedings under this Section, ~~if~~ if his or her final

1 order or judgment, which was entered based on a plea of guilty
2 or nolo contendere, has potential consequences under federal
3 immigration law.

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

6 (e) Unless lack of jurisdiction affirmatively appears from
7 the record proper, the vacation or modification of an order or
8 judgment pursuant to the provisions of this Section does not
9 affect the right, title, or interest in or to any real or
10 personal property of any person, not a party to the original
11 action, acquired for value after the entry of the order or
12 judgment but before the filing of the petition, nor affect any
13 right of any person not a party to the original action under
14 any certificate of sale issued before the filing of the
15 petition, pursuant to a sale based on the order or judgment.
16 When a petition is filed pursuant to this Section to reopen a
17 foreclosure proceeding, notwithstanding the provisions of
18 Section 15-1701 of this Code, the purchaser or successor
19 purchaser of real property subject to a foreclosure sale who
20 was not a party to the mortgage foreclosure proceedings is
21 entitled to remain in possession of the property until the
22 foreclosure action is defeated or the previously foreclosed
23 defendant redeems from the foreclosure sale if the purchaser
24 has been in possession of the property for more than 6 months.

25 (f) Nothing contained in this Section affects any existing
26 right to relief from a void order or judgment, or to employ any

1 existing method to procure that relief.

2 (Source: P.A. 101-27, eff. 6-25-19; 101-411, eff. 8-16-19;

3 102-639, eff. 8-27-21; revised 11-24-21.)