



## 103RD GENERAL ASSEMBLY

### State of Illinois

2023 and 2024

HB3381

Introduced 2/17/2023, by Rep. Justin Slaughter

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/9-1	from Ch. 38, par. 9-1
720 ILCS 5/9-2	from Ch. 38, par. 9-2
735 ILCS 5/2-1401	from Ch. 110, par. 2-1401

Amends the Criminal Code of 2012. Eliminates the felony murder provisions from the first degree murder statute. Provides that a person commits second degree murder when he or she, acting alone or with one or more participants, commits or attempts to commit a forcible felony, other than first degree murder, and in the course of or in furtherance of the crime or flight from the crime, he or she or another participant causes the death of a person, other than one of the participants. Provides that it is an affirmative defense to the charge that the defendant: (1) was not the only participant in the underlying crime; (2) did not commit the homicidal act or in any way solicit, request, command, importune, cause, or aid in the commission of the crime; (3) was not armed with a deadly weapon; and (4) did not engage himself or herself in or intend to engage in and had no reasonable ground to believe that any other participant intended to engage in conduct likely to result in death or serious bodily injury. Amends the Code of Civil Procedure. Provides for relief from judgment for defendants convicted of first degree murder committed before the effective date of the amendatory Act. Provides that nothing in these provisions prevents a movant from applying for any other relief.

LRB103 25685 RLC 52034 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 9-1 and 9-2 as follows:

6 (720 ILCS 5/9-1) (from Ch. 38, par. 9-1)

7 Sec. 9-1. First degree murder; death penalties;  
8 exceptions; separate hearings; proof; findings; appellate  
9 procedures; reversals.

10 (a) A person who kills an individual without lawful  
11 justification commits first degree murder if, in performing  
12 the acts which cause the death:

13 (1) he or she either intends to kill or do great bodily  
14 harm to that individual or another, or knows that such  
15 acts will cause death to that individual or another; or

16 (2) he or she knows that such acts create a strong  
17 probability of death or great bodily harm to that  
18 individual or another; or

19 (3) (Blank). ~~he or she, acting alone or with one or~~  
20 ~~more participants, commits or attempts to commit a~~  
21 ~~forcible felony other than second degree murder, and in~~  
22 ~~the course of or in furtherance of such crime or flight~~  
23 ~~therefrom, he or she or another participant causes the~~

1 ~~death of a person.~~

2 (b) Aggravating Factors. A defendant who at the time of  
3 the commission of the offense has attained the age of 18 or  
4 more and who has been found guilty of first degree murder may  
5 be sentenced to death if:

6 (1) the murdered individual was a peace officer or  
7 fireman killed in the course of performing his official  
8 duties, to prevent the performance of his or her official  
9 duties, or in retaliation for performing his or her  
10 official duties, and the defendant knew or should have  
11 known that the murdered individual was a peace officer or  
12 fireman; or

13 (2) the murdered individual was an employee of an  
14 institution or facility of the Department of Corrections,  
15 or any similar local correctional agency, killed in the  
16 course of performing his or her official duties, to  
17 prevent the performance of his or her official duties, or  
18 in retaliation for performing his or her official duties,  
19 or the murdered individual was an inmate at such  
20 institution or facility and was killed on the grounds  
21 thereof, or the murdered individual was otherwise present  
22 in such institution or facility with the knowledge and  
23 approval of the chief administrative officer thereof; or

24 (3) the defendant has been convicted of murdering two  
25 or more individuals under subsection (a) of this Section  
26 or under any law of the United States or of any state which

1 is substantially similar to subsection (a) of this Section  
2 regardless of whether the deaths occurred as the result of  
3 the same act or of several related or unrelated acts so  
4 long as the deaths were the result of either an intent to  
5 kill more than one person or of separate acts which the  
6 defendant knew would cause death or create a strong  
7 probability of death or great bodily harm to the murdered  
8 individual or another; or

9 (4) the murdered individual was killed as a result of  
10 the hijacking of an airplane, train, ship, bus, or other  
11 public conveyance; or

12 (5) the defendant committed the murder pursuant to a  
13 contract, agreement, or understanding by which he or she  
14 was to receive money or anything of value in return for  
15 committing the murder or procured another to commit the  
16 murder for money or anything of value; or

17 (6) (blank); or ~~the murdered individual was killed in~~  
18 ~~the course of another felony if:~~

19 ~~(a) the murdered individual:~~

20 ~~(i) was actually killed by the defendant, or~~

21 ~~(ii) received physical injuries personally~~  
22 ~~inflicted by the defendant substantially~~  
23 ~~contemporaneously with physical injuries caused by~~  
24 ~~one or more persons for whose conduct the~~  
25 ~~defendant is legally accountable under Section 5-2~~  
26 ~~of this Code, and the physical injuries inflicted~~

1 ~~by either the defendant or the other person or~~  
2 ~~persons for whose conduct he is legally~~  
3 ~~accountable caused the death of the murdered~~  
4 ~~individual; and~~

5 ~~(b) in performing the acts which caused the death~~  
6 ~~of the murdered individual or which resulted in~~  
7 ~~physical injuries personally inflicted by the~~  
8 ~~defendant on the murdered individual under the~~  
9 ~~circumstances of subdivision (ii) of subparagraph (a)~~  
10 ~~of paragraph (6) of subsection (b) of this Section,~~  
11 ~~the defendant acted with the intent to kill the~~  
12 ~~murdered individual or with the knowledge that his~~  
13 ~~acts created a strong probability of death or great~~  
14 ~~bodily harm to the murdered individual or another; and~~

15 ~~(c) the other felony was an inherently violent~~  
16 ~~crime or the attempt to commit an inherently violent~~  
17 ~~crime. In this subparagraph (c), "inherently violent~~  
18 ~~crime" includes, but is not limited to, armed robbery,~~  
19 ~~robbery, predatory criminal sexual assault of a child,~~  
20 ~~aggravated criminal sexual assault, aggravated~~  
21 ~~kidnapping, aggravated vehicular hijacking, aggravated~~  
22 ~~arson, aggravated stalking, residential burglary, and~~  
23 ~~home invasion; or~~

24 (7) the murdered individual was under 12 years of age  
25 and the death resulted from exceptionally brutal or  
26 heinous behavior indicative of wanton cruelty; or

1           (8) the defendant committed the murder with intent to  
2 prevent the murdered individual from testifying or  
3 participating in any criminal investigation or prosecution  
4 or giving material assistance to the State in any  
5 investigation or prosecution, either against the defendant  
6 or another; or the defendant committed the murder because  
7 the murdered individual was a witness in any prosecution  
8 or gave material assistance to the State in any  
9 investigation or prosecution, either against the defendant  
10 or another; for purposes of this paragraph (8),  
11 "participating in any criminal investigation or  
12 prosecution" is intended to include those appearing in the  
13 proceedings in any capacity such as trial judges,  
14 prosecutors, defense attorneys, investigators, witnesses,  
15 or jurors; or

16           (9) the defendant, while committing an offense  
17 punishable under Sections 401, 401.1, 401.2, 405, 405.2,  
18 407 or 407.1 or subsection (b) of Section 404 of the  
19 Illinois Controlled Substances Act, or while engaged in a  
20 conspiracy or solicitation to commit such offense,  
21 intentionally killed an individual or counseled,  
22 commanded, induced, procured or caused the intentional  
23 killing of the murdered individual; or

24           (10) the defendant was incarcerated in an institution  
25 or facility of the Department of Corrections at the time  
26 of the murder, and while committing an offense punishable

1 as a felony under Illinois law, or while engaged in a  
2 conspiracy or solicitation to commit such offense,  
3 intentionally killed an individual or counseled,  
4 commanded, induced, procured or caused the intentional  
5 killing of the murdered individual; or

6 (11) the murder was committed in a cold, calculated  
7 and premeditated manner pursuant to a preconceived plan,  
8 scheme or design to take a human life by unlawful means,  
9 and the conduct of the defendant created a reasonable  
10 expectation that the death of a human being would result  
11 therefrom; or

12 (12) the murdered individual was an emergency medical  
13 technician - ambulance, emergency medical technician -  
14 intermediate, emergency medical technician - paramedic,  
15 ambulance driver, or other medical assistance or first aid  
16 personnel, employed by a municipality or other  
17 governmental unit, killed in the course of performing his  
18 official duties, to prevent the performance of his  
19 official duties, or in retaliation for performing his  
20 official duties, and the defendant knew or should have  
21 known that the murdered individual was an emergency  
22 medical technician - ambulance, emergency medical  
23 technician - intermediate, emergency medical technician -  
24 paramedic, ambulance driver, or other medical assistance  
25 or first aid personnel; or

26 (13) the defendant was a principal administrator,

1 organizer, or leader of a calculated criminal drug  
2 conspiracy consisting of a hierarchical position of  
3 authority superior to that of all other members of the  
4 conspiracy, and the defendant counseled, commanded,  
5 induced, procured, or caused the intentional killing of  
6 the murdered person; or

7 (14) the murder was intentional and involved the  
8 infliction of torture. For the purpose of this Section  
9 torture means the infliction of or subjection to extreme  
10 physical pain, motivated by an intent to increase or  
11 prolong the pain, suffering or agony of the victim; or

12 (15) the murder was committed as a result of the  
13 intentional discharge of a firearm by the defendant from a  
14 motor vehicle and the victim was not present within the  
15 motor vehicle; or

16 (16) the murdered individual was 60 years of age or  
17 older and the death resulted from exceptionally brutal or  
18 heinous behavior indicative of wanton cruelty; or

19 (17) the murdered individual was a person with a  
20 disability and the defendant knew or should have known  
21 that the murdered individual was a person with a  
22 disability. For purposes of this paragraph (17), "person  
23 with a disability" means a person who suffers from a  
24 permanent physical or mental impairment resulting from  
25 disease, an injury, a functional disorder, or a congenital  
26 condition that renders the person incapable of adequately

1 providing for his or her own health or personal care; or

2 (18) the murder was committed by reason of any  
3 person's activity as a community policing volunteer or to  
4 prevent any person from engaging in activity as a  
5 community policing volunteer; or

6 (19) the murdered individual was subject to an order  
7 of protection and the murder was committed by a person  
8 against whom the same order of protection was issued under  
9 the Illinois Domestic Violence Act of 1986; or

10 (20) the murdered individual was known by the  
11 defendant to be a teacher or other person employed in any  
12 school and the teacher or other employee is upon the  
13 grounds of a school or grounds adjacent to a school, or is  
14 in any part of a building used for school purposes; or

15 (21) the murder was committed by the defendant in  
16 connection with or as a result of the offense of terrorism  
17 as defined in Section 29D-14.9 of this Code; or

18 (22) the murdered individual was a member of a  
19 congregation engaged in prayer or other religious  
20 activities at a church, synagogue, mosque, or other  
21 building, structure, or place used for religious worship.

22 (b-5) Aggravating Factor; Natural Life Imprisonment. A  
23 defendant who has been found guilty of first degree murder and  
24 who at the time of the commission of the offense had attained  
25 the age of 18 years or more may be sentenced to natural life  
26 imprisonment if (i) the murdered individual was a physician,

1 physician assistant, psychologist, nurse, or advanced practice  
2 registered nurse, (ii) the defendant knew or should have known  
3 that the murdered individual was a physician, physician  
4 assistant, psychologist, nurse, or advanced practice  
5 registered nurse, and (iii) the murdered individual was killed  
6 in the course of acting in his or her capacity as a physician,  
7 physician assistant, psychologist, nurse, or advanced practice  
8 registered nurse, or to prevent him or her from acting in that  
9 capacity, or in retaliation for his or her acting in that  
10 capacity.

11 (c) Consideration of factors in Aggravation and  
12 Mitigation.

13 The court shall consider, or shall instruct the jury to  
14 consider any aggravating and any mitigating factors which are  
15 relevant to the imposition of the death penalty. Aggravating  
16 factors may include but need not be limited to those factors  
17 set forth in subsection (b). Mitigating factors may include  
18 but need not be limited to the following:

19 (1) the defendant has no significant history of prior  
20 criminal activity;

21 (2) the murder was committed while the defendant was  
22 under the influence of extreme mental or emotional  
23 disturbance, although not such as to constitute a defense  
24 to prosecution;

25 (3) the murdered individual was a participant in the  
26 defendant's homicidal conduct or consented to the

1           homicidal act;

2           (4) the defendant acted under the compulsion of threat  
3           or menace of the imminent infliction of death or great  
4           bodily harm;

5           (5) the defendant was not personally present during  
6           commission of the act or acts causing death;

7           (6) the defendant's background includes a history of  
8           extreme emotional or physical abuse;

9           (7) the defendant suffers from a reduced mental  
10          capacity.

11          Provided, however, that an action that does not otherwise  
12          mitigate first degree murder cannot qualify as a mitigating  
13          factor for first degree murder because of the discovery,  
14          knowledge, or disclosure of the victim's sexual orientation as  
15          defined in Section 1-103 of the Illinois Human Rights Act.

16          (d) Separate sentencing hearing.

17          Where requested by the State, the court shall conduct a  
18          separate sentencing proceeding to determine the existence of  
19          factors set forth in subsection (b) and to consider any  
20          aggravating or mitigating factors as indicated in subsection  
21          (c). The proceeding shall be conducted:

22                 (1) before the jury that determined the defendant's  
23                 guilt; or

24                 (2) before a jury impanelled for the purpose of the  
25                 proceeding if:

26                         A. the defendant was convicted upon a plea of

1 guilty; or

2 B. the defendant was convicted after a trial  
3 before the court sitting without a jury; or

4 C. the court for good cause shown discharges the  
5 jury that determined the defendant's guilt; or

6 (3) before the court alone if the defendant waives a  
7 jury for the separate proceeding.

8 (e) Evidence and Argument.

9 During the proceeding any information relevant to any of  
10 the factors set forth in subsection (b) may be presented by  
11 either the State or the defendant under the rules governing  
12 the admission of evidence at criminal trials. Any information  
13 relevant to any additional aggravating factors or any  
14 mitigating factors indicated in subsection (c) may be  
15 presented by the State or defendant regardless of its  
16 admissibility under the rules governing the admission of  
17 evidence at criminal trials. The State and the defendant shall  
18 be given fair opportunity to rebut any information received at  
19 the hearing.

20 (f) Proof.

21 The burden of proof of establishing the existence of any  
22 of the factors set forth in subsection (b) is on the State and  
23 shall not be satisfied unless established beyond a reasonable  
24 doubt.

25 (g) Procedure - Jury.

26 If at the separate sentencing proceeding the jury finds

1 that none of the factors set forth in subsection (b) exists,  
2 the court shall sentence the defendant to a term of  
3 imprisonment under Chapter V of the Unified Code of  
4 Corrections. If there is a unanimous finding by the jury that  
5 one or more of the factors set forth in subsection (b) exist,  
6 the jury shall consider aggravating and mitigating factors as  
7 instructed by the court and shall determine whether the  
8 sentence of death shall be imposed. If the jury determines  
9 unanimously, after weighing the factors in aggravation and  
10 mitigation, that death is the appropriate sentence, the court  
11 shall sentence the defendant to death. If the court does not  
12 concur with the jury determination that death is the  
13 appropriate sentence, the court shall set forth reasons in  
14 writing including what facts or circumstances the court relied  
15 upon, along with any relevant documents, that compelled the  
16 court to non-concur with the sentence. This document and any  
17 attachments shall be part of the record for appellate review.  
18 The court shall be bound by the jury's sentencing  
19 determination.

20 If after weighing the factors in aggravation and  
21 mitigation, one or more jurors determines that death is not  
22 the appropriate sentence, the court shall sentence the  
23 defendant to a term of imprisonment under Chapter V of the  
24 Unified Code of Corrections.

25 (h) Procedure - No Jury.

26 In a proceeding before the court alone, if the court finds

1 that none of the factors found in subsection (b) exists, the  
2 court shall sentence the defendant to a term of imprisonment  
3 under Chapter V of the Unified Code of Corrections.

4 If the Court determines that one or more of the factors set  
5 forth in subsection (b) exists, the Court shall consider any  
6 aggravating and mitigating factors as indicated in subsection  
7 (c). If the Court determines, after weighing the factors in  
8 aggravation and mitigation, that death is the appropriate  
9 sentence, the Court shall sentence the defendant to death.

10 If the court finds that death is not the appropriate  
11 sentence, the court shall sentence the defendant to a term of  
12 imprisonment under Chapter V of the Unified Code of  
13 Corrections.

14 (h-5) Decertification as a capital case.

15 In a case in which the defendant has been found guilty of  
16 first degree murder by a judge or jury, or a case on remand for  
17 resentencing, and the State seeks the death penalty as an  
18 appropriate sentence, on the court's own motion or the written  
19 motion of the defendant, the court may decertify the case as a  
20 death penalty case if the court finds that the only evidence  
21 supporting the defendant's conviction is the uncorroborated  
22 testimony of an informant witness, as defined in Section  
23 115-21 of the Code of Criminal Procedure of 1963, concerning  
24 the confession or admission of the defendant or that the sole  
25 evidence against the defendant is a single eyewitness or  
26 single accomplice without any other corroborating evidence. If

1 the court decertifies the case as a capital case under either  
2 of the grounds set forth above, the court shall issue a written  
3 finding. The State may pursue its right to appeal the  
4 decertification pursuant to Supreme Court Rule 604(a)(1). If  
5 the court does not decertify the case as a capital case, the  
6 matter shall proceed to the eligibility phase of the  
7 sentencing hearing.

8 (i) Appellate Procedure.

9 The conviction and sentence of death shall be subject to  
10 automatic review by the Supreme Court. Such review shall be in  
11 accordance with rules promulgated by the Supreme Court. The  
12 Illinois Supreme Court may overturn the death sentence, and  
13 order the imposition of imprisonment under Chapter V of the  
14 Unified Code of Corrections if the court finds that the death  
15 sentence is fundamentally unjust as applied to the particular  
16 case. If the Illinois Supreme Court finds that the death  
17 sentence is fundamentally unjust as applied to the particular  
18 case, independent of any procedural grounds for relief, the  
19 Illinois Supreme Court shall issue a written opinion  
20 explaining this finding.

21 (j) Disposition of reversed death sentence.

22 In the event that the death penalty in this Act is held to  
23 be unconstitutional by the Supreme Court of the United States  
24 or of the State of Illinois, any person convicted of first  
25 degree murder shall be sentenced by the court to a term of  
26 imprisonment under Chapter V of the Unified Code of

1 Corrections.

2 In the event that any death sentence pursuant to the  
3 sentencing provisions of this Section is declared  
4 unconstitutional by the Supreme Court of the United States or  
5 of the State of Illinois, the court having jurisdiction over a  
6 person previously sentenced to death shall cause the defendant  
7 to be brought before the court, and the court shall sentence  
8 the defendant to a term of imprisonment under Chapter V of the  
9 Unified Code of Corrections.

10 (k) Guidelines for seeking the death penalty.

11 The Attorney General and State's Attorneys Association  
12 shall consult on voluntary guidelines for procedures governing  
13 whether or not to seek the death penalty. The guidelines do not  
14 have the force of law and are only advisory in nature.

15 (Source: P.A. 100-460, eff. 1-1-18; 100-513, eff. 1-1-18;  
16 100-863, eff. 8-14-18; 101-223, eff. 1-1-20; 101-652, eff.  
17 7-1-21.)

18 (720 ILCS 5/9-2) (from Ch. 38, par. 9-2)

19 Sec. 9-2. Second degree murder.

20 (a) A person commits the offense of second degree murder  
21 when:

22 (.01) he or she, acting alone or with one or more  
23 participants, commits or attempts to commit a forcible  
24 felony, other than first degree murder, and in the course  
25 of or in furtherance of the crime or flight from the crime,

1 he or she or another participant causes the death of a  
2 person, other than one of the participants; or

3 (.02) he or she commits the offense of first degree  
4 murder as defined in paragraph (1) or (2) of subsection  
5 (a) of Section 9-1 of this Code and either of the following  
6 mitigating factors are present:

7 (A) ~~(1)~~ at the time of the killing he or she is  
8 acting under a sudden and intense passion resulting  
9 from serious provocation by the individual killed or  
10 another whom the offender endeavors to kill, but he or  
11 she negligently or accidentally causes the death of  
12 the individual killed; or

13 (B) ~~(2)~~ at the time of the killing he or she  
14 believes the circumstances to be such that, if they  
15 existed, would justify or exonerate the killing under  
16 the principles stated in Article 7 of this Code, but  
17 his or her belief is unreasonable.

18 (b) Serious provocation is conduct sufficient to excite an  
19 intense passion in a reasonable person provided, however, that  
20 an action that does not otherwise constitute serious  
21 provocation cannot qualify as serious provocation because of  
22 the discovery, knowledge, or disclosure of the victim's sexual  
23 orientation as defined in Section 1-103 of the Illinois Human  
24 Rights Act.

25 (c) When evidence of either of the mitigating factors  
26 defined in subsection (a) of this Section has been presented,

1 the burden of proof is on the defendant to prove either  
2 mitigating factor by a preponderance of the evidence before  
3 the defendant can be found guilty of second degree murder. The  
4 burden of proof, however, remains on the State to prove beyond  
5 a reasonable doubt each of the elements of first degree murder  
6 and, when appropriately raised, the absence of circumstances  
7 at the time of the killing that would justify or exonerate the  
8 killing under the principles stated in Article 7 of this Code.

9 (d) Sentence. Second degree murder is a Class 1 felony.

10 (e) It is an affirmative defense to a charge of violating  
11 paragraph (.01) of subsection (a) that the defendant:

12 (1) was not the only participant in the underlying  
13 crime;

14 (2) did not commit the homicidal act or in any way  
15 solicit, request, command, importune, cause, or aid in the  
16 commission of the crime;

17 (3) was not armed with a deadly weapon; and

18 (4) did not engage himself or herself in or intend to  
19 engage in and had no reasonable ground to believe that any  
20 other participant intended to engage in conduct likely to  
21 result in death or serious bodily injury.

22 (Source: P.A. 100-460, eff. 1-1-18.)

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

1 (735 ILCS 5/2-1401) (from Ch. 110, par. 2-1401)

2 Sec. 2-1401. Relief from judgments.

3 (a) Relief from final orders and judgments, after 30 days  
4 from the entry thereof, may be had upon petition as provided in  
5 this Section. Writs of error coram nobis and coram vobis,  
6 bills of review, and bills in the nature of bills of review are  
7 abolished. All relief heretofore obtainable and the grounds  
8 for such relief heretofore available, whether by any of the  
9 foregoing remedies or otherwise, shall be available in every  
10 case, by proceedings hereunder, regardless of the nature of  
11 the order or judgment from which relief is sought or of the  
12 proceedings in which it was entered. Except as provided in the  
13 Illinois Parentage Act of 2015, there shall be no distinction  
14 between actions and other proceedings, statutory or otherwise,  
15 as to availability of relief, grounds for relief, or the  
16 relief obtainable.

17 (b) The petition must be filed in the same proceeding in  
18 which the order or judgment was entered but is not a  
19 continuation thereof. The petition must be supported by an  
20 affidavit or other appropriate showing as to matters not of  
21 record. A petition to reopen a foreclosure proceeding must  
22 include as parties to the petition, but is not limited to, all  
23 parties in the original action in addition to the current  
24 record title holders of the property, current occupants, and  
25 any individual or entity that had a recorded interest in the  
26 property before the filing of the petition. All parties to the

1 petition shall be notified as provided by rule.

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

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

6 (2) the movant's participation in the offense was  
7 related to him or her previously having been a victim of  
8 domestic violence as perpetrated by an intimate partner;

9 (3) no evidence of domestic violence against the  
10 movant was presented at the movant's sentencing hearing;

11 (4) the movant was unaware of the mitigating nature of  
12 the evidence of the domestic violence at the time of  
13 sentencing and could not have learned of its significance  
14 sooner through diligence; and

15 (5) the new evidence of domestic violence against the  
16 movant is material and noncumulative to other evidence  
17 offered at the sentencing hearing, and is of such a  
18 conclusive character that it would likely change the  
19 sentence imposed by the original trial court.

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

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

24 "Domestic violence" means abuse as defined in Section  
25 103 of the Illinois Domestic Violence Act of 1986.

26 "Forcible felony" has the meaning ascribed to the term

1 in Section 2-8 of the Criminal Code of 2012.

2 "Intimate partner" means a spouse or former spouse,  
3 persons who have or allegedly have had a child in common,  
4 or persons who have or have had a dating or engagement  
5 relationship.

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

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

10 (B) her participation in the offense was a direct  
11 result of her suffering from post-partum depression or  
12 post-partum psychosis;

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

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

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

1 by the original court.

2 Nothing in this subsection (b-10) prevents a person from  
3 applying for any other relief under this Article or any other  
4 law otherwise available to her.

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

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

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

16 (b-15) A movant may present a meritorious claim under this  
17 Section if the allegations in the petition establish each of  
18 the following by a preponderance of the evidence:

19 (1) the movant was convicted of a first degree felony  
20 murder under paragraph (3) of subsection (a) of Section  
21 9-1 of the Criminal Code of 2012 committed before the  
22 effective date of this amendatory Act of the 103rd General  
23 Assembly; and

24 (2) the movant was not prosecuted under paragraph (1)  
25 or (2) of subsection (a) of Section 9-1 of the Criminal  
26 Code of 2012.

1       Nothing in this subsection (b-15) prevents a movant from  
2       applying for any other relief under this Section or any other  
3       law otherwise available to him or her.

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

16      (c-5) Any individual may at any time file a petition and  
17      institute proceedings under this Section if his or her final  
18      order or judgment, which was entered based on a plea of guilty  
19      or nolo contendere, has potential consequences under federal  
20      immigration law.

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

23      (e) Unless lack of jurisdiction affirmatively appears from  
24      the record proper, the vacation or modification of an order or  
25      judgment pursuant to the provisions of this Section does not  
26      affect the right, title, or interest in or to any real or

1 personal property of any person, not a party to the original  
2 action, acquired for value after the entry of the order or  
3 judgment but before the filing of the petition, nor affect any  
4 right of any person not a party to the original action under  
5 any certificate of sale issued before the filing of the  
6 petition, pursuant to a sale based on the order or judgment.  
7 When a petition is filed pursuant to this Section to reopen a  
8 foreclosure proceeding, notwithstanding the provisions of  
9 Section 15-1701 of this Code, the purchaser or successor  
10 purchaser of real property subject to a foreclosure sale who  
11 was not a party to the mortgage foreclosure proceedings is  
12 entitled to remain in possession of the property until the  
13 foreclosure action is defeated or the previously foreclosed  
14 defendant redeems from the foreclosure sale if the purchaser  
15 has been in possession of the property for more than 6 months.

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

19 (Source: P.A. 101-27, eff. 6-25-19; 101-411, eff. 8-16-19;  
20 102-639, eff. 8-27-21; 102-813, eff. 5-13-22.)