

The New Law in Illinois PA 100-0574: Ground-breaking Legislation

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As of 2018, there is a new law in Illinois, **PA 100-0574**, formerly known as HB 1764, that recognizes postpartum illnesses as a factor in criminal cases. The law is groundbreaking because it is the first criminal law in the nation to reference in any way postpartum illnesses. It makes postpartum depression and postpartum psychosis a mitigating factor in sentencing. It also, for the very first time in Illinois provides for a new sentencing hearing after a valid sentence has been imposed.

Most often, postpartum depression and anxiety disorders (incidence of 10-20%) are extremely responsive to treatment when recognized early and treated by specialists in perinatal mental health. Yet, there are those atypical cases when women have severe postpartum depression or the rare postpartum psychosis (1-2 of 1000 childbearing women), and become involved in the criminal justice system (1 to 4% of women with postpartum psychosis commit infanticide/neonaticide).

There are approximately twenty Illinois women who were convicted and sentenced to life or decades in prison before the effects of this disease were well-known in the legal community. Now that Illinois has passed this new law, these women serving long or life-time sentences will be entitled to a new hearing that allows for re-evaluation and the possibility of a reduced sentence.

This new Illinois law, PA 100-0574 will not only correct a known wrong, but in addition it will be a model for other states in the U.S. to follow. These women need mental health treatment, not long prison sentences or life imprisonment without parole.

Historically, “common law” jurisdictions¹ were not favorable for appeals. Only in the 1500’s did it become possible to challenge an erroneous factual finding on appeal. It was not until the middle of the 20th century in the U.S. that it first became constitutionally required for a state to allow a challenge to a conviction after appeals were completed, known as a “Post-Conviction Petition.” In many states, including Illinois, only one such petition is generally allowed. The Supreme Court’s mandated petition is limited to challenging trial errors that amount to a violation of the constitution. In most states, this specifically meant a sentence could not be changed or challenged. Only a few states have a law permitting reconsidering a validly imposed sentence. In Illinois, this is the first and only law allowing for such a resentencing.

¹ “Common Law” jurisdictions include the United States (except Louisiana) and numerous countries with an English historical background.

The only prior attempt in the entire U.S. to enact a postpartum illness criminal law was an abject failure. In 2009, the Texas legislature refused to pass a bill modeled after the British Infanticide Act of 1938. Although eighty years have passed since The British Act became law, and it has been adopted in over twenty countries, nothing even approaching it has become law in any state in the U.S. until January 8, 2018.

In the U.K and more than 20 other countries (Australia, Austria, Brazil, Canada, Colombia, Finland, Germany, Greece, Hong Kong, India, Italy, Japan, Korea, New Zealand, Norway, Philippines, Sweden, Switzerland and Turkey), a woman who causes the death of her child, in the 12 months following delivery, is assumed to be mentally ill. In lieu of prison or the death sentence, these women receive psychiatric treatment and rehabilitation. The majority of nations that have infanticide laws have followed the British precedent (The British Infanticide Act of 1938) and decrease the penalty for mothers killing children under one year old (Friedman, SR and Resnick, PR. *World Psychiatry*, 2007 Oct; 6(3): 137–141).

Illinois PA 100-0574 specifically names postpartum depression and postpartum psychosis as a mitigating factor. It specifies that a Post-Conviction Petition can be filed even if a prior Petition was filed. If the facts are proven at the Petition stage, a new sentencing hearing results. The sentence can be reduced or remain the same, but not increased.

The door, shut tight for eight decades, has finally been opened by Illinois. Other states have expressed interest in this legislation with plans to follow our lead.

¹ HB 1764 was signed by the governor and became Public Act 100-574 on January 8, 2018

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Articles related to HB1764:

<http://www.chicagonow.com/everythings-political/2017/05/illinois-postpartum-law-will-be-the-first-in-the-nation-call-your-state-senator/>

Lewis, B.M., The Champion Magazine, National Association of Criminal Defense Lawyers, awaiting publication.