
**Community Safety, Justice, & Reentry
Committee**

HB 2001

Brief Description: Providing judicial discretion to modify sentences in the interests of justice.

Sponsors: Representatives Simmons, Farivar, Reed, Ormsby, Peterson, Macri, Street, Stearns, Santos and Pollet.

Brief Summary of Bill

- Establishes a process for certain persons convicted of a felony offense to petition the sentencing court for a modification of the original sentence upon meeting specific eligibility criteria.
- Requires the Department of Corrections to provide written notice of the petition process to certain incarcerated persons who are or will become eligible to petition, and other relevant entities in the applicable judicial district.
- Requires a portion of the savings realized as a result of the petition process to be designated to fund the costs associated with such petitions and proceedings, and a portion of the savings to be designated for organizations dedicated to serving and supporting crime survivors.

Hearing Date: 1/23/24

Staff: Corey Patton (786-7388).

Background:

When a person is convicted of a criminal offense, the person generally may not appeal the imposed sentence if it is consistent with the standard sentencing range and other guidelines

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provided in state law. However, the person may appeal other legal errors. Direct appeals must be filed within 30 days, while collateral attacks must typically be filed within one year. A "collateral attack" is any form of postconviction relief other than a direct appeal, and includes personal restraint petitions, habeas corpus petition, motions to vacate judgment, motions to withdraw guilty plea, motions for a new trial, and motions to arrest judgment. There are some exceptions to the one-year time limit on collateral attacks, such as where a collateral attack is based on newly discovered evidence or a significant change in the law.

The prosecutor of a county in which an offender was sentenced for a felony offense may petition the sentencing court or the sentencing court's successor to resentence the offender if the original sentence no longer advances the interests of justice. If the court grants the petition, the court must resentence the defendant in the same manner as if the offender had not previously been sentenced, provided the new sentence is no greater than the initial sentence. The court may consider postconviction factors including, but not limited to, the following:

- the inmate's disciplinary record and record of rehabilitation while incarcerated;
- evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate's risk for future violence; and
- evidence that reflects changed circumstances since the inmate's original sentencing such that the inmate's continued incarceration no longer serves the interests of justice.

The prosecuting attorney must provide victims and survivors of victims access to available victim advocates and other related services, and make reasonable efforts to notify victims and survivors of victims of any petition for resentencing and the date of the resentencing hearing. The court must provide an opportunity for victims and survivors of victims of any crimes for which the offender has been convicted to present a statement personally or by representation. A resentencing does not reopen the defendant's conviction to challenges that would otherwise be barred.

Summary of Bill:

A process is established for certain persons convicted of a felony offense to petition the sentencing court for a modification of the original sentence upon meeting specific eligibility criteria.

Any person under a term of partial or total confinement or subject to conditions of supervision by the Department of Corrections (DOC) for a felony conviction may petition the sentencing court or the sentencing court's successor for a modification of sentence if the original sentence no longer serves the interests of justice and the person meets any of the following criteria:

- the person has served at least 10 years for an offense committed at age 18 or older;
- the person has served at least seven years for an offense committed at age 17 or younger;
- or
- the person has the prosecuting attorney's consent.

The one-year time limit on collateral attacks does not apply to any such petition. The petitioner

may not file the petition any earlier than 180 days prior to the date on which the petitioner will have served the minimum required portion of the petitioner's sentence, unless the prosecuting attorney consents to the petition. The petitioner must file the petition in writing with the sentencing court in the judicial district in which the original sentence was imposed, and serve the prosecuting attorney. The petition may include affidavits, declarations, letters, prison records, or other written or electronic materials. The petition must include a statement that the petitioner meets one or more of the following criteria:

- the petitioner committed the offense at age 24 or younger;
- the petitioner has demonstrated positive, engaged, and productive behavior while in the custody of the DOC that indicates rehabilitation or the potential for rehabilitation;
- the petitioner is age 50 or older;
- the petitioner suffers from a serious medical condition that substantially reduces the risk of future violence; or
- some significant material fact was not known to the petitioner or the petitioner's counsel at the time of conviction.

Upon a substantial showing that the petitioner meets one or more eligibility criteria, the court must grant a hearing to consider the petition and schedule the hearing within 60 days. The hearing may be continued for good cause. The prosecuting attorney must provide victims and survivors of victims access to available victim advocates and other related services, and make reasonable efforts to notify victims and survivors of victims of any petition for modification of sentence and the date of any hearing to consider the petition. The court must provide an opportunity for victims and survivors of victims of any crimes for which the petitioner has been convicted to present a statement personally or by representation at the hearing.

At the hearing to consider the petition, the court may grant the petition and modify the petitioner's original sentence if the court finds that the sentence no longer advances the interests of justice, provided that any new sentence imposed must not be greater than the original sentence. The court may consider the following nonexhaustive factors when making its decision:

- the petitioner's disciplinary record and record of rehabilitation while incarcerated;
- evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the petitioner's risk for future violence;
- evidence of mitigating factors regarding the petitioner's circumstances at the time of offense, or substantial mitigating factors regarding the circumstances of the offense;
- evidence that reflects changed circumstances since imposing the petitioner's original sentence such that the sentence no longer serves the interests of justice; and
- evidence that some significant material fact was not known to the petitioner or the petitioner's counsel at the time of conviction.

The court may impose an exceptional sentence below the standard range based on evidence of significant rehabilitation since the offense or any other applicable mitigating factors.

If the court denies the petition, the petitioner may file a new petition no earlier than two years after the date the previous petition was denied. Denying a petition does not reopen the

petitioner's conviction or sentence to any challenges that would otherwise be barred.

The court may not permit any person to waive the right to petition, and any such waiver is void. An incarcerated person who is eligible to file a petition and who is unable to afford counsel is entitled to have counsel appointed, at no cost, to represent the person for the petition and related proceedings, unless the person expressly waives the right to counsel after being fully advised by the court. A person who files a *pro se* petition, and who subsequently retains or is appointed counsel, is entitled to amend the petition at least once with the assistance of counsel. Subsequent amendments may be permitted by leave of court.

The DOC must provide written notice of the petition process to any incarcerated person sentenced to a term of confinement longer than 10 years, and the applicable sentencing court, prosecuting attorney, and public defense agency for the judicial district in which the person was sentenced, within the following time frames:

- for any person serving an applicable sentence for an offense committed at age 18 or older, the DOC must provide written notice no later than 180 days before the date on which the person's tenth year of confinement begins; and
- for any person serving an applicable sentence for an offense committed at age 17 or younger, the DOC must provide written notice no later than 180 days before the date on which the person's seventh year of confinement begins.

A portion of the savings realized as a result of the newly established petition process, but no less than 25 percent, must be designated to fund the costs associated with such petitions and proceedings. Additionally, a portion of the the savings realized, but no less than 25 percent, must be designated for organizations primarily dedicated to serving and supporting crime survivors.

Appropriation: None.

Fiscal Note: Requested on January 17, 2024.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.