
Community Safety Committee

HB 1125

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

Sponsors: Representatives Simmons, Obras, Scott, Stearns, Ryu, Taylor, Peterson, Reeves, Tharinger, Fey, Morgan, Alvarado, Macri, Ormsby, Stonier, Doglio, Berg, Fosse, Reed, Berry, Duerr, Kloba, Goodman, Farivar, Street, Donaghy, Pollet, Bernbaum, Nance, Ortiz-Self, Ramel, Mena, Gregerson, Wylie, Hill and Salahuddin.

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 Office of Public Defense to provide representation for eligible petitioners within existing resources.
- Requires the Office of Crime Victims Advocacy to establish a flexible fund for certain affected victims, contract with prosecuting attorney's offices to offer related victim advocacy services, and contract with an entity with expertise in victim services to provide related training for victim advocates.
- Requires the Department of Corrections (DOC) 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 the DOC to make an individual reentry plan and the resources necessary to complete the plan available to incarcerated petitioners within six months of their expected release dates from total confinement.

Hearing Date: 1/23/25

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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 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 petitions, 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 total confinement for a felony conviction, other than a person sentenced as a persistent offender or for Aggravated Murder in the first degree, 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 either has the prosecuting

attorney's consent or, beginning on the date indicated, meets any of the following criteria:

Date	Eligibility Criteria to Petition
Beginning July 1, 2026	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; or • is terminally ill or has a permanent or degenerative medical condition.
Beginning July 1, 2027	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; • committed offense at age 18-24, and served at least 20 years; or • is terminally ill or has a permanent or degenerative medical condition.
Beginning July 1, 2028	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; • committed offense at age 18-24, and served at least 13 years; or • is terminally ill or has a permanent or degenerative medical condition.
Beginning July 1, 2029	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; • committed offense at age 18-24, and served at least 13 years; • committed offense at age 25 or older, and served at least 20 years; or • is terminally ill or has a permanent or degenerative medical condition.
Beginning July 1, 2030	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; • committed offense at age 18-24, and served at least 10 years; • committed offense at age 25 or older, and served at least 17 years; or • is terminally ill or has a permanent or degenerative medical condition.
Beginning July 1, 2031	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; • committed offense at age 18-24, and served at least 10 years; • committed offense at age 25 or older, and served at least 13 years; or • is terminally ill or has a permanent or degenerative medical condition.
Beginning July 1, 2032	<ul style="list-style-type: none"> • committed offense at age 17 or younger, and served at least seven years; • committed offense at age 18 or older, and served at least 10 years; or • is terminally ill or has a permanent or degenerative medical condition.

The one-year time limit on collateral attacks does not apply to any such 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 by the petitioner and supporting documentation demonstrating that the petitioner meets at least one of the following criteria:

- positive, engaged, and productive behavior while in the custody of the Department of Corrections (DOC) that indicates substantial rehabilitation; or
- a minimal risk of reoffense, which may include, but is not limited to, a demonstration of medical frailty.

Upon request, the DOC must assist in compiling the petitioner's disciplinary record and record of rehabilitation at no cost to the petitioner.

If the court determines by a preponderance of the evidence that the petitioner meets one or more eligibility criteria, the court must grant a hearing to consider the petition and hold the hearing within 120 days, unless continued for good cause. The prosecuting attorney must make reasonable efforts to notify specified victims and survivors of victims of any petition for modification of sentence and the date of any hearing to consider the petition.

At the hearing to consider the petition, the court must review the original sentence de novo and 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. The court may grant the petition and modify the petitioner's original sentence if the sentence no longer advances the interests of justice, provided that any new sentence imposed must not be greater than the original sentence and must be consistent with the following limitations:

- if the petitioner's original sentence is an indeterminate sentence imposed for certain sex offenses, the court may modify the minimum term of the sentence but may not modify the maximum term of the sentence or order the petitioner's release from custody;
- if the petitioner's original sentence includes a mandatory minimum term for certain class A felony offenses, the court may not modify the sentence below the mandatory minimum term required by law; and
- the soonest allowable release date from total confinement may be no sooner than six months after the date of the hearing to consider the petition.

The court may consider the following nonexhaustive list of 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 regarding the petitioner's level of culpability for 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
- demonstration of an extraordinary adverse impact of release on the victim or survivors of the victim of the offense for which the petitioner is incarcerated, with special consideration given to the impact of release on any victims of sex offenses or domestic violence offenses committed against an intimate partner.

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 petitioner's original sentence included one or more specified mandatory sentencing enhancements, the court may impose a sentence below the enhancement term.

If the court denies the petition, or grants a hearing but declines to modify the petitioner's sentence at the hearing, the court must state the basis for its decision on the record and provide a written order explaining its decision. The petitioner may, upon a showing of a change in circumstances, file a new petition no earlier than three years after the date of the court's decision, unless the court authorizes an earlier date. The petitioner may appeal the denial of a hearing or an order entered pursuant to a resentencing hearing, but denying a petition does not reopen the

petitioner's conviction or sentence to any other 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, who the court has determined meets eligibility criteria, and who is unable to afford counsel is entitled to have counsel appointed at no cost, unless the person expressly waives the right to counsel after being fully advised by the court. The Office of Public Defense must provide representation within available resources and prioritize representation based on indicated eligibility criteria and timelines. A person who files a pro se petition and subsequently retains or is appointed counsel may amend the petition at least once with the assistance of counsel. Subsequent amendments may be permitted by leave of court.

The Office of Crime Victims Advocacy (OCVA) must:

- create a flexible fund to serve certain affected victims and survivors of victims, which may be used for purposes including relocation assistance related to a change in safety planning associated with the petitioner's resentencing, traveling to and from court for resentencing hearings, and out-of-pocket expenses for psychotherapy associated with the committed offense or resentencing;
- contract with prosecuting attorney's offices to offer victim advocacy services for affected victims, including legal advocacy to understand the resentencing process and how victims can exercise their rights, safety planning, options to participate in a restorative justice program with the petitioner, and case management to address needs that may arise as a result of resentencing; and
- contract with an entity with expertise in victim services to provide training for victim advocates embedded within prosecutor's offices regarding safety planning and other case management services for affected victims.

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.

The DOC must make an individual reentry plan and the resources necessary to complete the plan available when any person granted a modified sentence is within six months of the person's expected release date from total confinement.

Appropriation: None.

Fiscal Note: Requested on January 15, 2025.

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