

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 615 Substantial Assistance  
**SPONSOR(S):** Public Safety & Domestic Security Policy Committee, Brandenburg, and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 874

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Public Safety & Domestic Security Policy Committee	12 Y, 0 N, As CS	Billmeier	Cunningham
2)	Criminal & Civil Justice Policy Council		Billmeier	Havlicak
3)				
4)				
5)				

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**SUMMARY ANALYSIS**

Sections 790.165(3), 817.568(11), and 893.135(4), F.S. provide the state attorney may make a motion for the sentencing court to reduce or suspend the sentence of a person convicted of an offense in each section and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in a violation of that section.

The bill creates s. 921.186, F.S. to provide that the state attorney may move the sentencing court to reduce or suspend the sentence of a defendant convicted of a felony charge if the defendant provides substantial assistance in the identification, arrest, or conviction of any accomplice, accessory, coconspirator, or principal of the defendant; or any other person engaged in felonious criminal activity. The bill provides the arresting agency must be given the opportunity to be heard in aggravation or mitigation of any motion to reduce or suspend a sentence. The bill provides the motion may be held in camera.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **State**

There are a number of provisions in Florida law which permit the state attorney to move the sentencing court to reduce or suspend the sentence of persons who provide "substantial assistance" in the identification, arrest, or conviction of accomplices, accessories, coconspirators, or principals.

Section 893.135(4), F.S. provides the state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of s. 893.135, F.S.<sup>1</sup> and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera<sup>2</sup>. The judge hearing the motion may reduce or suspend the sentence if the judge finds that the defendant rendered such substantial assistance.

Section 790.165(3), F.S. provides the state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section<sup>3</sup> who provides substantial assistance in the identification, arrest, or conviction of any of his or her accomplices, accessories, coconspirators, or principals.

Section 817.568(11), F.S. provides the prosecutor may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section<sup>4</sup> and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in fraudulent possession of use of personal identification information. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera<sup>5</sup>. The judge hearing the motion may reduce or suspend the sentence if the judge finds that the defendant rendered such substantial assistance.

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<sup>1</sup> Section 893.135, F.S. relates to drug trafficking.

<sup>2</sup> "In camera" means the motion may be heard in the privacy of the judge's chambers.

<sup>3</sup> Section 790.165, F.S. relates to planting a "hoax bomb."

<sup>4</sup> Section 817.568, F.S. relates to criminal use of personal identification.

<sup>5</sup> "In camera" means the motion may be heard in the privacy of the judge's chambers.

Other examples where substantial assistance can be used to reduce or suspend a sentence include s. 790.163, F.S., relating false reports about planting a bomb, s. 790.164, F.S., relating to false reports regarding arson, s. 790.165, F.S., relating to planting of hoax bombs, s. 790.166, F.S., relating to weapons of mass destruction, and s. 817.568, F.S., relating to identity theft.

Section 16.56(3), F.S., provides that the statewide prosecutor may move the court to reduce the sentence of a person convicted of drug trafficking who provides substantial assistance.

### ***Federal***

Rule 35 of the Federal Rules of Criminal Procedure provides the court authority to reduce the sentence of a defendant if the government makes a motion within one year of sentencing, if defendant provides substantial assistance in investigating or prosecuting another person. Rule 35 provides that the government may make a motion to reduce sentence more than one year after sentencing if the defendant's substantial assistance involves:

- Information not known to the defendant until one year or more after sentencing;
- Information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until one year after sentencing;
- Information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing and which was promptly provided to the government after its usefulness was reasonably apparent to the defendant.

Rule 35 provides that the court may consider substantial assistance rendered by the defendant before and after sentencing. Rule 35 provides the court authority to reduce the defendant's sentence to a level below federal statutory guidelines.

### **Proposed Changes**

The bill creates s. 921.186, F.S. to provide that the state attorney may move the sentencing court to reduce or suspend the sentence of a defendant convicted of a felony charge if the defendant provides substantial assistance in the identification, arrest, or conviction of any accomplice, accessory, coconspirator, or principal of the defendant; or any other person engaged in felonious criminal activity. The bill provides the arresting agency must be given the opportunity to be heard in aggravation or mitigation of any motion to reduce or suspend a sentence. The bill provides the motion may be held in camera.

#### **B. SECTION DIRECTORY:**

Section 1: Creates s. 921.186, F.S., relating to substantial assistance.

Section 2: Provides an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

None.

##### **2. Expenditures:**

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 2, 2010, the Public Safety & Domestic Security Policy Committee adopted a strike-all amendment to the bill. The amendment provides the arresting agency the opportunity to be heard in aggravation or mitigation of a motion to reduce or suspend a sentence. This analysis reflects the committee substitute.