

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: CS/SB 874

INTRODUCER: Criminal Justice Committee and Senator Aronberg

SUBJECT: Substantial Assistance

DATE: April 6, 2010                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	<b>Fav/CS</b>
2.	Anderson	Maclure	JU	<b>Favorable</b>
3.			JA	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

This bill provides that the state attorney may file a motion requesting that the sentencing court 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 of any other person engaged in felonious criminal activity. The bill provides that the motion may be filed and heard in camera (privately, generally in the judge's chambers). The bill also provides for the arresting agency to be heard on the motion.

This bill creates section 921.186, Florida Statutes.

**II. Present Situation:**

**Substantial Assistance under Florida Law**

Prosecutors use the ability to offer a defendant their help by asking that the sentencing judge recognize that the defendant has provided substantial assistance to law enforcement or the prosecutor. This substantial assistance can be in the form of information but is just as likely to

require sworn testimony, perhaps at the trial of a person who has been arrested and charged with a crime, based in part on the assistance given. Substantial assistance is often used in cases in which a “little fish” assists in the netting of “bigger fish.”

Currently state attorneys are authorized by statute to file a motion requesting that a court suspend or reduce the sentence of a person convicted of a felony if he or she provides substantial assistance to law enforcement or the prosecutor in one or more other felony specific types of cases. Substantial assistance in the identification, arrest, or conviction of the person’s coconspirator, accomplice, accessory, or principal in the crime he or she has been convicted of committing is what is required in order for the state attorney to file the motion on behalf of the convicted person.

Current law limits the authority of the state attorney to cases in which the person offering the assistance has been convicted of drug trafficking,<sup>1</sup> planting a hoax bomb,<sup>2</sup> or identity theft.<sup>3</sup> There is no apparent time limitation for filing the motion in the current statutes. For good cause, the motion may be filed and heard in camera, and the arresting agency is given an opportunity to be heard in aggravation or mitigation. If the court finds that substantial assistance was in fact rendered by the convicted person, it may reduce or suspend his or her sentence.

### **Substantial Assistance under Federal Law**

Federal criminal law is somewhat different in that the procedures relating to substantial assistance are governed by the Federal Rules of Criminal Procedure (FRCP). The FRCP provides the court authority to reduce the sentence of a defendant if the government makes a motion within one year of sentencing, if the defendant provides substantial assistance in investigating or prosecuting another person.<sup>4</sup>

The FRCP provides that the government may make a motion to reduce the 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.<sup>5</sup>

Also, the FRCP provides that a court may consider substantial assistance rendered by the defendant before and after sentencing.<sup>6</sup> The FRCP provides the court authority to reduce the defendant’s sentence to a level below federal statutory guidelines.<sup>7</sup>

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<sup>1</sup> Section 893.135(4), F.S.

<sup>2</sup> Section 790.165(3), F.S.

<sup>3</sup> Section 817.568(11), F.S. Also note that in cases of drug trafficking and identity theft, the convicted person may offer substantial assistance not only with regard to other people involved in the case for which he or she was convicted, but also as to any other drug trafficking or identity theft.

<sup>4</sup> Fed. R. Crim. P. 35(b)(1).

<sup>5</sup> Fed. R. Crim. P. 35(b)(2).

**III. Effect of 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 of any other person engaged in felonious criminal activity. The bill provides the motion may, for good cause shown, be held in camera. It also provides that the arresting agency may be heard in mitigation or aggravation on the motion.

This bill proposes an extension of current practice, in that it allows the state attorney to request leniency of the court on behalf of all persons convicted of any type of felony if they provide substantial assistance in the prosecution of anyone in any type of felony case.

This bill takes effect on July 1, 2010.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference considered the identical House bill (CS/HB 615) at its meeting on February 23, 2010, and decided that the prison bed impact was indeterminate.<sup>8</sup>

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<sup>6</sup> Fed. R. Crim. P. 35(b)(3).

<sup>7</sup> Fed. R. Crim. P. 35(b)(4).

<sup>8</sup> Office of Economic and Demographic Research, The Florida Legislature, *Criminal Justice Impact Conference 2010 Legislature* (Updated through Mar. 17, 2010), available at

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on March 18, 2010:**

- The committee substitute deletes the language that specified that the state attorney may file the motion with the court *at any time*.
- The committee substitute inserts a provision allowing for the arresting agency to be heard in support of or against the motion for the court to suspend or reduce a defendant's sentence for providing substantial assistance.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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