

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 Committee on Judiciary

BILL: SB 662

INTRODUCER: Senator Brandes

SUBJECT: Resentencing

DATE: March 1, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bond	Cibula	JU	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 662 allows a state attorney to file a petition for a new sentencing hearing if the original sentence no longer advances the interests of justice. If granted, the trial court must resentence the offender, and may take into account prison disciplinary records, rehabilitation, recidivism risk, and other changed circumstances. The revised sentence is likely to be shorter, and may not exceed the current sentence. The state attorney must attempt to notify victims, who may appear at the resentencing.

The bill is effective July 1, 2021.

II. Present Situation:

A criminal offender sentenced to Florida prison has little chance at an early release. Parole does not apply to any offense committed after October 1, 1983. Gain time for good behavior, where allowed, is limited to 15 percent of the term.¹ Executive clemency (pardon or commutation of sentence) is uncommon, and there is a considerable backlog.² Conditional medical release is likewise uncommon.³

There are some limited means of relief, for instance: An offender can always move to set aside the conviction and sentence on the grounds of actual innocence. An offender can file a petition

¹ Section 944.275(4)(f), F.S. The 85% rule applies to offenders who committed the offense on or after October 1, 1995. No gain time is awarded to persons sentenced to death or to life imprisonment. No gain time is awarded regarding on offense on or after October 1, 2014, for most sex crimes. Section 944.275(4)(e), F.S. Gain time may apply to minimum mandatory sentences.

² In FY 2019-20, 4,525 clemency applications were filed and 4,244 were cleared. On July 1, 2020, there were 24,400 pending clemency applications. Florida Commission on Offender Review, 2020 Annual Report, at p. 8. There appears to be a backlog of approximately 6 years.

³ In FY 2019-20, 35 inmates were granted conditional medical release. *Id.* At that time, there were approximately 94,000 inmates. Fla. Dept. of Corrections, Strategic Plan & Annual Report 2020-2021, at p. 12.

for modification of sentence, but this may only be filed within 60 days after imposition of sentence or affirmance of the conviction on appeal.⁴ The state attorney may petition for a sentencing reduction for persons who provide substantial assistance in the prosecution of others.⁵ Current law allows an offender to petition the sentencing court to correct an erroneous sentence.⁶ A youthful offender may be granted a sentence modification based on successful participation in the youthful offender program.⁷

There is no apparent current authority for anyone to petition the sentencing court to reduce a prison sentence based on current facts such as extraordinary rehabilitation.

III. Effect of Proposed Changes:

SB 662 allows a state attorney, in his or her discretion, to petition a felony sentencing court for a new sentencing hearing on the grounds that the original sentence no longer advances the interests of justice.

The bill makes legislative findings:

- The intent of the Legislature in this bill is to give prosecutors the discretion to petition a sentencing court to resentence an individual if the individual's sentence no longer advances the interests of justice.
- The purpose of sentencing is to advance public safety through punishment, rehabilitation, and restorative justice.
- When a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense and provide uniformity with the sentences of offenders committing the same offense under similar circumstances.
- By providing a means to reevaluate a sentence after some time has passed, the Legislature intends to provide prosecutors and courts with another tool to ensure these purposes are achieved.

The petition for relief may only be filed by the state attorney on the grounds that the original sentence no longer advances the interests of justice (described in the bullets above). If the trial court grants the petition, it must thereafter conduct a re-sentencing hearing. At re-sentencing, the court may consider postconviction factors, such as:

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

⁴ Fla. R. Crim. Pro. 3.800(c)

⁵ Sections 921.186 (any felony), 790.163(2) and 790.164(2) and 790.165(3) and 790.166(5) (weapons of mass destruction), and 893.135(4), F.S. (drug offenses).

⁶ Direct appeals of the sentence, and Fla. R. Crim. Pro. 3.850 or 3.851.

⁷ Section 958.04(2)(b), F.S.

An offender cannot be harmed by the petition:

- The sentencing court may not impose a new sentence that exceeds the initial sentence.
- The offender must be given credit for time served.

The state attorney filing a petition pursuant to this bill must make reasonable efforts to inform victims, and survivors of victims, of the petition and the hearing date. Victims and survivors may access victim advocates and other related services. Victims and survivors may address the sentencing court, either personally or through a representative.⁸

The bill specifies that a petition for resentencing does not open up or create any grounds for postconviction relief that is otherwise barred.

The effective date of the bill is July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The state constitution requires a separation of powers, prohibiting one branch from exercising any powers of the other.⁹ If a court were to find that the judicial act of resentencing created by this bill is an executive function, the court may limit the application of this bill.

The state constitution vests in the Executive Branch the power of clemency and allows for creation of a “parole and probation commission” by general law.¹⁰ In a case challenging a clemency decision, the Florida Supreme Court found that the courts have no role in clemency decisions. The court ruled:

⁸ The victim rights appear consistent with the requirements of FLA. CONST. art. I, s. 16(b).

⁹ FLA. CONST. art. II, s. 3

¹⁰ FLA. CONST. art. IV, s. 8

[T]he people of this state chose to vest sole, unrestricted, unlimited discretion exclusively in the executive in exercising this act of grace. . . . The principle is well established that, where the Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different manner.¹¹

On the other hand, while the parole power is exercised by the executive branch, it is subject to general law as created by the legislature.¹² Additionally, while the relief created by the bill appears to be similar to clemency or parole, the process in this bill differs in that clemency is generally initiated by a request from the offender and parole generally requires the cooperation of the offender, the process in this bill is initiated only by the state attorney. The state attorney currently may petition for a sentence reduction for substantial assistance. Also, the initial act of sentencing is clearly a judicial function, and a court could rule that resentencing based on authority granted by the Legislature, and on criteria set by the Legislature, is likewise a judicial function.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill uses the terms “offender,” “defendant,” and “inmate” to refer to the same person.

The effective date is unclear as to whether it applies to individuals in incarceration, individuals incarcerated after, individuals convicted, or offenses committed, on or after July 1, 2021.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 921.30, Florida Statutes.

¹¹ *Sullivan v. Askew*, 348 So. 2d 312, 315 (Fla. 1977)

¹² *Ruggirello v. Jones*, 202 So. 3d 935, 938 (Fla. 1st DCA 2016) (“parole is part of the legislative scheme for determining the length of an inmate’s sentence, and is subject to detailed legislative guidance.”)

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

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