

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2024

A N A C T

RELATING TO CRIMINAL PROCEDURE -- SECOND LOOK SENTENCING ACT

Introduced By: Senators Kallman, McKenney, Burke, Mack, DiMario, Miller, Zurier,
Bissaillon, Cano, and F. Lombardi

Date Introduced: January 24, 2024

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. The general assembly finds as follows:

2 (1) The number of incarcerated individuals in the State of Rhode Island has increased over
3 four hundred percent (400%) from 1980 to 2020.

4 (2) Over forty percent (40%) of those incarcerated individuals in the State of Rhode Island
5 are serving sentences of ten (10) years or more.

6 (3) Long-term incarceration disproportionately impacts poor communities and
7 communities of color.

8 (4) The costs of long-term incarceration, social, cultural and economic, including a
9 financial cost of sixty-eight thousand dollars (\$68,000) and up to one hundred ten thousand dollars
10 (\$110,000) per inmate annually, cause additional harm to society and above the crime committed.

11 (5) Research indicates that long prison sentences can increase, rather than reduce,
12 recidivism. In addition, the potential for a later reduction in sentence encourages incarcerated
13 individuals to engage in good behavior and take advantage of rehabilitative programming.

14 (6) Sentences are not just served by the incarcerated individual; they are served by their
15 families too. Research indicates that the children of incarcerated parents are six (6) to seven (7)
16 times more likely to end up incarcerated themselves.

17 (7) As the criminal legal system gains insight into the devastating impact of mass
18 incarceration, it has also modified: its charging, plea bargaining and sentencing practices; its
19 policies and law changes that reflect developments in scientific research about the youth brain; the

1 impact of childhood, domestic and sexual abuse; the treatment of addiction and mental illness; and
2 the penalty necessary to achieve the purposes of sentencing.

3 (8) It is time as a society for us to take a bold step to redress the moral stain of people
4 serving long sentences in prison that would not be imposed today, either because the sentence itself
5 is subject to changed rules and procedures, or because the incarcerated individual has exhibited
6 significant rehabilitation warranting of a second chance.

7 SECTION 2. Title 12 of the General Laws entitled "FINANCIAL INSTITUTIONS" is
8 hereby amended by adding thereto the following chapter:

9 CHAPTER 19.4

10 SECOND LOOK SENTENCING ACT

11 **12-19.4-1. Short title.**

12 This chapter shall be known and may be cited as the "Second Look Sentencing Act."

13 **12-19.4-2. Second look for long-term incarcerated individuals.**

14 (a) Notwithstanding any other provision of law, including any applicable mandatory
15 minimum sentence, an incarcerated individual who has served at least ten (10) years of their
16 sentence may petition the sentencing judge or the presiding justice's designee should the sentencing
17 judge be retired, for a reduction of their sentence.

18 (b) Where a petition for a reduction in a sentence under this chapter has been denied, the
19 incarcerated individual may not file a successive petition until at least two (2) years have elapsed
20 after the date of any denial of such a petition; provided, the court may require a longer waiting
21 period, but no more than five (5) years after the date of the denial of any such petition.

22 (c) Where a petition for a reduction in sentence under this chapter has been granted, the
23 incarcerated individual may not file a successive petition until at least five (5) years have elapsed
24 after the date the petition was granted.

25 (d) Notwithstanding this section, an otherwise eligible incarcerated individual shall be
26 deemed eligible to petition for a reduction in sentence upon consent of the department of attorney
27 general.

28 **12-19.4-3. Procedure.**

29 (a) Not more than thirty (30) days after the date on which the tenth year of imprisonment
30 begins for an incarcerated individual sentenced to more than ten (10) years of imprisonment for an
31 offense, the department of corrections shall provide written notice of this chapter to:

32 (1) The incarcerated individual;

33 (2) The sentencing court, the department of attorney general, and the office of the public
34 defender.

1 (b) A petition for a sentence reduction under this chapter may be filed six (6) months after
2 the date on which the tenth year of imprisonment begins for an incarcerated individual sentenced
3 to more than ten (10) years of imprisonment.

4 (c) The petition shall be filed in writing in the superior court for the county in which the
5 sentence was imposed and may include, but need not be limited to, affidavits, declarations, letters,
6 prison records, or other written or electronic material in support of the petition.

7 (d) Upon the court's receipt of a petition under this chapter, the court shall promptly notify
8 the department of attorney general and provide that department with a copy of the application and
9 any exhibits appended thereto.

10 (e) A petition under this chapter shall be referred for determination to the judge who
11 imposed the original sentence or, if the judge is no longer available, to the presiding justice's
12 designee.

13 (f) After the filing of the petition for a sentencing reduction under this chapter, the court
14 may direct the parties to expand the record by submitting additional materials relating to the
15 petitions. A petition filed under this chapter may be amended with leave of the court, which the
16 court shall grant when justice so requires.

17 (g) No waiver of the right to make an application for a resentencing under this chapter shall
18 be permitted or honored by the sentencing court.

19 **12-19.4-4. Hearing.**

20 (a) The court shall, upon request of the petitioner or the state, conduct a hearing on the
21 petition, at which the petitioner and counsel for the petitioner shall be given an opportunity to
22 present argument in support of the petition. Any such hearing shall be on the record and recorded
23 or transcribed.

24 (b) In a hearing under this section, the court may, but is not required to, allow parties to
25 present evidence that the court deems relevant to the issue of the propriety of a reduction in
26 sentencing. Evidence may include documents, live testimony, tangible objects, or any other class
27 of evidence or information pertinent to sentencing. The court shall have exclusive discretion to
28 determine the relevance of any proposed evidence. At any hearing on a petition, the petitioner shall
29 have the right to testify or to remain silent at their sole discretion.

30 (c) The petitioner shall have the right to be present at any hearing on their petition absent
31 an explicit waiver, in writing, by the petitioner. Alternatively, the petitioner may appear via video
32 conference.

33 **12-19.4-5. Decision - Factors to be considered by the court.**

34 (a) The court, after consideration of the arguments and evidence presented at the hearing

1 on the petition, shall, either in open court or by written decision, or both, provide its decision and
2 reasons for either granting or denying the petition. The court shall consider the following factors:

3 (1) The age of the petitioner at the time of the offense and relevant research regarding
4 development of youth brain;

5 (2) The age of the petitioner at the time of the hearing and relevant research regarding the
6 decline in criminal behavior as individuals age;

7 (3) The nature of the offense, including changing societal attitudes regarding the propriety
8 of criminalizing the offense and the appropriate sentence for the offense;

9 (4) The circumstances of the offense, including the petitioner's role in its commission,
10 whether the petitioner was under the influence of another, or whether the petitioner was the victim
11 of domestic or sexual abuse at the time of the offense, and whether the domestic or sexual abuse
12 was related to the petitioner's participation in the offense and related conduct;

13 (5) The history and characteristics of the petitioner at the time of the hearing, including
14 rehabilitation demonstrated by the petitioner, the petitioner's institutional disciplinary record, and
15 the petitioner's participation in educational, therapeutic, and vocational opportunities while
16 incarcerated;

17 (6) Medical records and reports from physical, mental, or psychiatric examinations of the
18 petitioner conducted by any licensed health care professional;

19 (7) Statements and impact statements provided by any victim or family member of any
20 victim, pursuant to § 12-19.4-7, for which the petitioner is incarcerated.

21 (8) Any evidence concerning whether the petitioner's original sentence was enhanced
22 because a petitioner exercised their right to a trial;

23 (9) Any evidence that the petitioner was denied effective assistance of counsel at any stage
24 of the case leading to the original sentence, including ineffective assistance of counsel at the plea-
25 negotiation stage;

26 (10) Any exculpatory evidence and any evidence that the petitioner is factually innocent of
27 the offense; and

28 (11) Any other evidence that the court deems appropriate to consider before ruling on the
29 petition.

30 (b) In any case in which the petitioner is fifty (50) years of age or older on the date the
31 petition is filed, there shall be a rebuttable presumption that the petitioner shall be released.

32 (c) In calculating the new term to be served, the petitioner shall be credited for any period
33 of incarceration awaiting trial as well as any period of incarceration credited toward the sentence
34 originally imposed.

1 **12-19.4-6. Right to counsel.**

2 (a) A petitioner who is unable to afford counsel is entitled to have counsel from the office
3 of the public defender or other court appointed counsel, at no cost, to represent the petitioner in
4 their application and in the proceedings permitted under this chapter. The right to counsel shall
5 extend to any appeal filed by the petitioner following a denial of their petition.

6 (b) A petitioner may be permitted to waive the right to counsel after being fully advised of
7 their right to have counsel by the court.

8 (c) A petitioner who proceeds without counsel and files a petition pro se but who
9 subsequently retains or is appointed counsel by the court, shall be entitled to amend the petition at
10 least once, as of right, with the assistance of counsel. Subsequent amendments may be permitted
11 by leave of the court pursuant to § 12-19.4-3.

12 **12-19.4-7. Victims' rights.**

13 (a) Upon receipt of any petition, the department of attorney general shall notify the victim
14 or victim's family and provide them a copy of the petition and all exhibits appended thereto.

15 (b) The department of attorney general shall, if practicable, consult with victims in a
16 homicide case prior to making any filing in relation to a petition filed under this chapter or
17 consenting to the petition of an otherwise eligible petitioner.

18 (c) The victim or victim's family shall have a right to be present at any hearing held
19 pursuant to this chapter and shall be permitted to provide statements, oral or written or both,
20 regarding the impact of the offense and their position as to whether the petition should be granted
21 or not.

22 (d) If the court grants the petition and modifies the petitioner's sentence, it shall not disturb
23 any order of restitution entered by the court at the original sentencing.

24 **12-19.4-8. Right to appeal.**

25 (a) An appeal from the court's decision under this chapter may be taken by the petitioner
26 or the department of attorney general on the following bases:

27 (1) The resentencing was unlawful;

28 (2) The modified sentence was imposed in an unlawful manner or was too lenient; or

29 (3) The sentence is otherwise inappropriate in light of the purposes of sentencing, which
30 include, but are not limited to, imposing appropriate punishment, providing educational and
31 rehabilitative services to the defendant and individual and societal deterrence.

32 (b) The right to appeal from a sentence modification under this section shall be as of right
33 and on the same terms as a first appeal from an initial sentence at the time of conviction.

34 **12-19.4-9. Reinvestment.**

1 (a) Twenty-five percent (25%) of savings realized as a result of this act, shall be designated
2 to fund prison-based and community-based programs designed to counter recidivism through
3 education, therapeutic intervention, maintenance of familial and social networks, restorative justice
4 and successful post-custodial re-entry to society.

5 (b) Ten percent (10%) of the savings realized as a result of this chapter shall be designated
6 to fund dedicated personnel in the offices of the department of attorney general and the office of
7 the public defender to represent, respectively, the state and any petitioners in proceedings under
8 this chapter.

9 **19-19.4-10. Construction with habeas corpus and other remedies.**

10 (a) This chapter shall not be construed to abridge or modify any existing remedy an
11 incarcerated individual may have under habeas corpus, statutory or judicial post-conviction relief
12 or any other legal framework.

13 (b) A petition under this chapter shall not impact in any way or be impacted in any way by
14 any pending habeas or other post-conviction proceeding, nor shall the denial of a petition under
15 this chapter preclude such remedies being granted.

16 SECTION 3. Section 8-2-17 of the General Laws in Chapter 8-2 entitled "Superior Court"
17 is hereby amended to read as follows:

18 **8-2-17. Jurisdiction of appeals, statutory proceedings, and probate matters.**

19 The superior court shall have jurisdiction of:

20 (a) Such ~~sueh~~ appeals and statutory proceedings as may be provided by law, and may
21 exercise general probate jurisdiction in all cases brought before it on appeal from probate courts,
22 or when such jurisdiction is properly involved in suits in equity; and

23 (b) Motions brought pursuant to § 12-19.4-3, or motions brought for relief of sentences
24 imposed pursuant to chapter 19.2 of title 12.

25 SECTION 4. This act shall take effect upon passage and shall have both retroactive and
26 prospective application. Any applicable sentences imposed before or after its enactment date shall
27 be eligible for consideration by the court.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO CRIMINAL PROCEDURE -- SECOND LOOK SENTENCING ACT

1 This act would establish the second look act and would permit incarcerated individuals to
2 petition the sentencing court to consider a motion to reduce a sentence after the defendant has
3 served at least ten (10) years of the sentence and would provide the superior court with jurisdiction
4 to address motions to modify sentences under § 8-2-17.

5 This act would take effect upon passage and shall have both retroactive and prospective
6 application. Any applicable sentences imposed before or after its enactment date shall be eligible
7 for consideration by the court.

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