HOUSE DOCKET, NO. 3611 FILED ON: 1/20/2023

HOUSE . . . . . No. 3955

The Commonwealth of Massachusetts

PRESENTED BY:

Russell E. Holmes and Liz Miranda

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act for second look.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Russell E. Holmes	*6th Suffolk*	*1/20/2023*
Liz Miranda	*Second Suffolk*	*1/20/2023*
Lindsay N. Sabadosa	*1st Hampshire*	*2/15/2023*
Kay Khan	*11th Middlesex*	*11/15/2023*

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HOUSE . . . . . No. 3955

By Representative Holmes of Boston and Senator Miranda, a joint petition (accompanied by bill, House, No. 3955) of Russell E. Holmes, Liz Miranda and Lindsay N. Sabadosa for legislation to provide for second look review of the sentences of certain incarcerated persons. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act for second look.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION. Chapter 279 of the General Laws is hereby amended by adding the following section:-

Section 72. (a) Notwithstanding any other provision of law, an incarcerated individual who was 25 years of age or younger at the time of their offense and who has served at least 10 years in custody, or an individual acting on their behalf as enumerated in this section may petition the incarcerated individual's sentencing judge for a reduction of their sentence under the circumstances and conditions set forth in this section, unless the incarcerated individual is serving a sentence for a loss of life, in such circumstance, the incarcerated individual or an individual acting on their behalf may petition the incarcerated individual's sentencing judge after serving at least 15 years in custody.

(b) Notwithstanding any other provision of law, an incarcerated individual who was 26 years of age or older at the time of their offense and who has served at least 12 years in custody,

or an individual acting on their behalf as enumerated in this section, may petition the incarcerated individual's sentencing judge for a reduction of their sentence under the circumstances and conditions set forth in this section, unless the incarcerated individual is serving a sentence for a loss of life, in such circumstance, the incarcerated individual or an individual acting on their behalf may petition the incarcerated individual's sentencing judge after serving at least 18 years in custody.

(c) Where a petition for a reduction in sentence under this section has been denied, the incarcerated individual or an individual acting on their behalf as enumerated in this section may not file another petition until at least 2 years have elapsed after the date the petition was denied; the court may require a longer waiting period, but no more than 5 years after the date the petition was denied. The court must articulate specific reasons for the denial of any petition, A petitioner may only be denied once for a period between 2 years and up to 5 years, after such denial, the court must set an objective criteria the incarcerated individual is required to meet before filing another petition, when the incarcerated individual has met the objective criteria, another petition may be filed.

(d) After an individual has served 9 years in custody, the department of correction shall, within 30 days, give written notice of this section to the incarcerated individual. The department of correction shall again give written notice of this section; within 30 days, to the incarcerated individual after they have served 14 years in custody, if they remain in custody.

(e) A petition under this section shall be filed by the incarcerated individual, counsel for the incarcerated individual, the district attorney, or by the next friend of the incarcerated individual, if said individual cannot bring the petition themselves and the next friend is acting in

the best interests of the incarcerated individual. Next friends shall include, but are not limited to, the incarcerated individual's next of kin or a licensed health care professional.

(f) The petition shall be filed in writing in the superior court in the county in which the sentence was imposed and may include affidavits, declarations, letters, prison records, or other written and electronic material. The petition shall include, at a minimum:

(1)-the name of the petitioner;

(2) the name of the incarcerated individual;

(3) any case or docket number;

(4) any offense of conviction;

(5) any sentence being served for each case or docket number;

(6) the date of the offense and sentence;

(7) the name of the trial and sentencing judge;

(8) the specific counts for which the petitioner is requesting resentencing;

(9) a factual statement explaining how the incarcerated individual meets the eligibility requirements described in this section; and

(10) if the petition is filed by the next friend of the incarcerated individual: (i) a factual statement explaining the petitioner's relationship to the incarcerated individual; (ii) why the incarcerated individual cannot bring the petition themselves; and (iii) how the next friend is acting in the best interests of the incarcerated individual.

(g) Upon the court's receipt of a petition under this section, the court shall within 30 days provide the district attorney and such incarcerated individual with a copy of the petition, including any attached material.

(h)(1) A petition under this section shall be referred to the judge who imposed the original sentence upon such individuals, unless the petitioner requests otherwise, and the district attorney shall be notified. If; at the time of the application, the original sentencing judge is no longer available, then the petition shall be assigned to that judge's successor. If the petitioner requests that the petition not be heard by the original sentencing judge, the petition shall be assigned by the court to another judge of the same jurisdiction.

(2) No waiver of the right to petition for a resentencing under this section shall be permitted or honored by the sentencing court

(3) Upon receiving the petition, the sentencing court shall determine whether the facts establishing eligibility stated in subsection (f) shown by a preponderance of evidence or uncontested.

(4) Upon receiving the petition the sentencing court shall appoint counsel, unless the petitioner requests otherwise.

(i)(1) After the filing of a petition for a sentencing reduction under this section, the court may direct the parties to expand the record by submitting additional materials relating to the motion. A petition filed under this section may be amended with leave of court, which the court shall grant when justice so requires.

(2) If the court determines that the facts stated in the petition or amended petition are insufficient, the court shall enter an order denying the petition and shall cause a copy of the order to be provided to the petitioner and, if the incarcerated individual is not the petitioner; the incarcerated individual. The petitioner or incarcerated person may appeal this denial pursuant to the provisions of this section.

(3) If the court determines that the facts stated in the petition establish eligibility for resentencing under this section the court shall set a resentencing hearing:

(i) within 45 days of the date the petition is filed with the court, unless the court finds good cause to hold the hearing at a later date or at the request of the petitioner, if:

(A) the incarcerated individual has 1 or more medical conditions leading to major limitations in activities of daily living, including but not limited to serious mental illness or an intellectual or developmental disability;

(B) the incarcerated individual has 1 or more medical conditions that make them more likely to contract an illness or disease while incarcerated that could lead to death or cause the person to develop a medical condition that prevents the performance of 1 or more activities of daily living without assistance. Such conditions include, but are not limited to any condition related to a weakened immune system, including human immunodeficiency virus (HIV) or acquired immune deficiency syndrome (AIDS); debilitating health conditions that occur as a result of dementia, Alzheimer's disease, or similar degenerative brain disorders; cardiovascular disease; chronic lung disease or asthma; diabetes; hepatitis C; seizure disorders; the need for life-sustaining care such as feeding tubes or colostomy bags; disabling neurological disorders such as

multiple sclerosis (MS) or amyotrophic lateral sclerosis (ALS); or any condition that requires or is expected to require specialty care or recurrent hospitalizations; or

(C) the petition is filed by the district attorney;

(ii) within 90 days of the date the petition is filed with the court, unless the court finds good cause to hold the hearing at a later date or at the request of the petitioner, if the petition does not meet the criteria set forth under this section and the incarcerated individual has served over 20 years of the petitioner's sentence and the incarcerated individual is over 55 years of age;

(iii) within 180 days of the date the petition is filed with the court, unless the court finds good cause to hold the hearing at a later date, if the petition does not meet the criteria set forth under this section. ·

(j) If the court determines that the facts stated in the petition establish eligibility for resentencing under this section and the case is subsequently assigned to a successor judge, the court shall not reconsider the sufficiency of the petition or decline to set a hearing.

(k) When the court sets a resentencing hearing under this section, the court shall notify the petitioner, the incarcerated person, the department of correction and the district attorney of the hearing date.

(l) In a hearing under this section, the court may allow parties to present any evidence that the court deems relevant to the issue of the propriety of a reduction in sentencing. Such evidence may include documents, live testimony, tangible objects or any other class of evidence or information pertinent to sentencing. The court has exclusive discretion to determine the

relevance of any proposed evidence. At such a hearing, the incarcerated person shall have the right to testify or to remain silent at the incarcerated person’s sole discretion.

(m) At a hearing under this section, the incarcerated person shall be present unless the incarcerated person waives the right to be present. The requirement under this subsection may be satisfied by the incarcerated person appearing by video teleconference if such person consents to video appearance.

(n) Any hearing under this section shall be recorded or transcribed.

(o)(1) The sentencing court shall consider all evidence relevant to the propriety of a reduction in sentencing, which shall include, but is not limited to:

(i) the history and characteristics of the incarcerated person at the time of the petition for a reduction in sentence, including rehabilitation demonstrated by the incarcerated person, the incarcerated person's disciplinary record while incarcerated, and the incarcerated person's efforts to participate in educational, therapeutic and vocational opportunities while incarcerated;

(ii) the age of the incarcerated individual at the time of the offense and relevant research regarding child, adolescent, and young adult brain development, urban trauma, Post Traumatic Stress Disorder (PTSD), Adverse Childhood Experiences (ACE's), racial and ethnic inequalities, epigenetic inheritances, domestic abuse, and socio-economic disadvantages;

(iii) the age of the incarcerated person at the time of the sentence modification petition and relevant research regarding the decline in criminal behavior as individuals grow older;

(iv) the nature of the offense, including changing societal attitudes regarding the propriety of criminalizing the offense and the appropriate sentence for the offense;

(v) the circumstances of the offense, including the incarcerated person's role in its commission, whether the incarcerated person was under the influence of another, and the proportionality of the incarcerated person’s sentence compared to that received by other parties to the offense;

(vi) the circumstances of the incarcerated person's incarceration, including the incarcerated person's conditions of confinement, the impact of the incarcerated person's incarceration on the community, and any evidence of the incarcerated person was subjected to physical, sexual or psychological abuse while incarcerated;

(vii) any evidence concerning the incarcerated person's current physical or mental health and the incarcerated person's health at the time of the offense;

(viii) any evidence that the incarcerated person was denied effective assistance of counsel at any stage in the case leading to the original sentencing including ineffective assistance of counsel during plea bargaining;

(ix) any evidence that the incarcerated person was wrongfully convicted;

(x) any evidence that the incarcerated person was subjected to human trafficking and that such victimization was a contributing factor to the incarcerated person's criminal behavior;

(xi) any evidence that the incarcerated person was subjected to physical, sexual or psychological abuse by an intimate partner or a family or household member and that such victimization was a contributing factor to the incarcerated person's criminal behavior; and

(xii) any other information the court determines relevant to the decision of the court.

(2) The court shall set forth, either in open court on the day of the hearing or in writing within 30 days of the hearing the reasons for granting or denying a petition under this section; except where the court has

set an objective criteria to be met by the incarcerated individual, as enumerated under this section, the court shall grant a sentence reduction when the incarcerated individual has met the objective criteria.

(p)(1) In calculating the new term to be served, the court shall credit the incarcerated person for any jail time credited towards the subject conviction as well as any period of incarceration credited toward the sentence originally imposed.

(2) If the petition meets criteria of this section, there shall be a rebuttable presumption that the incarcerated persons sentence shall be reduced to time served.

(3) Unless the court finds that the incarcerated person poses a significant risk of violent recidivism or that the incarcerated person has not demonstrated rehabilitation, there should be a rebuttable presumption that the incarcerated person's sentence shall be reduced by at least 20 per cent or to no longer than 5 years of incarceration following the date of the filing petition. The court shall apply whichever standard is shorter.

(4) If the district attorney is the petitioner, the new term of incarceration to be served by the incarcerated person shall not exceed the reputation of the petitioner.

(5) In calculating the new term to be served by the incarcerated person, the court shall impose a sentence of time served, immediate parole or a term of years. The court shall not impose life with parole.

(6) This section does not authorize the sentencing court to increase the incarcerated person's sentence in any circumstance.

(q)(1) Upon receipt of a petition for resentencing the department of correction shall promptly notify the victim of the incarcerated individual of the hearing date, once calendared. For the purposes of this section the term victim shall have the same meaning as the definition of victim set forth in section 1 of chapter 258B.

(2) The district attorney shall consult with the victim prior to making any filing in relation to a petition under this section. At least 30 days prior to the sentencing hearing, the district attorney shall inform the petitioner whether the victim supports or opposes the petition, if applicable.

(3) The victim or the victim's guardian or representative has the right to appear and the right as otherwise provided by law, to make an impact statement, oral or written, at the resentencing of the incarcerated person regarding the impact of the offense conduct on the victim.

(4) The court shall not, in modifying a sentence, disturb any restitution awarded to a victim at the original sentencing.

(5) The victim shall be informed by district attorney of the final disposition of the resentencing petition, including, where applicable, an exclamation of the type of sentence imposed by the court and a copy of the court order setting forth the conditions of release.

(6) Nothing in this section shall abridge or modify any existing right under section 3 of chapter 258B.

(r) An appeal from a resentencing proceeding under this section may be taken by the incarcerated individual, petitioner, or the district attorney on the grounds that the resentence is unlawful or was imposed in an unlawful manner. The petitioner or incarcerated individual may also appeal on the ground that the sentence is otherwise inappropriate in light of the present purposes of sentencing as enunciated in the General Laws. The petitioner or incarcerated individual may also appeal on the ground that the petitioners request for a hearing was unlawfully denied. The right to appeal from a sentence modification under this section shall be as of right on the same terms as a first appeal from an initial sentence at the time of conviction.

(s)(1) This section shall not be construed to abridge or modify any existing remedy an incarcerated person may have under habeas corpus, statutory or judicial post victor conviction relief, or any other legal framework.

(2) A petition under this section shall not impact in any way or be impacted in any way by any pending petitions under habeas corpus, or other postconviction proceedings, nor shall the denial of a petition under this section preclude such remedies from being pursued or granted.

SECTION 2. Relief under this act shall be available to all individuals with convictions prior to, on or subsequent to, the effective date of this act.