

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:
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>1/20/2023</i>
<i>Liz Miranda</i>	<i>Second Suffolk</i>	<i>1/20/2023</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>2/15/2023</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>11/15/2023</i>

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:

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

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

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

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

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

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

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

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

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

40 (1)-the name of the petitioner;

41 (2) the name of the incarcerated individual;

42 (3) any case or docket number;

43 (4) any offense of conviction;

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

45 (6) the date of the offense and sentence;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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