

Legislative Analysis



PETITIONS FOR SENTENCING RECONSIDERATION

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4556 as introduced
Sponsor: Rep. Kara Hope

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4557 as introduced
Sponsor: Rep. Cynthia Neeley

House Bill 4558 as introduced
Sponsor: Rep. Jimmie Wilson, Jr.

House Bill 4559 as introduced
Sponsor: Rep. Donovan McKinney

House Bill 4560 as introduced
Sponsor: Rep. Abraham Aiyash

Committee: Criminal Procedure
Complete to 3-18-24

SUMMARY:

House Bills 4556 to 4560 would prescribe procedures for hearings to reconsider the sentences of eligible incarcerated individuals who have served at least 10 years of a sentence or sentences for a conviction or combination of convictions. The package of bills, taken together, is known as the Second Look Sentencing Act.

House Bill 4556 would provide guidelines and procedures for an incarcerated individual to petition the court for resentencing, the timing and other requirements for a resentencing hearing for an eligible individual, and criteria to be considered in a resentencing determination, among other provisions. The bills would amend several mandatory provisions that now apply to sentencing and parole eligibility under certain circumstances (e.g., requiring life without parole eligibility for specified offenses) to provide that those provisions do not apply to a resentencing under HB 4556. The bills also would provide for victim notification of a resentencing hearing. House Bills 4557 to 4560 cannot go into effect unless HB 4556 is also enacted.

House Bill 4556 would amend Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure to allow certain incarcerated individuals to petition the court for resentencing under procedures provided in the bill.

Eligibility to petition

Under the bill, an incarcerated individual who has served at least 10 years of their sentence or sentences for any conviction or combination of convictions could petition the sentencing court for a reduction of any or all of their sentences. For an individual sentenced to more than 10 years of imprisonment, a petition could be filed after the date their tenth year of imprisonment begins. An incarcerated individual who has not yet served 10 years of imprisonment could file a petition for a reduction in sentence with the consent of the applicable prosecuting attorney. The prosecuting attorney would have to make reasonable efforts to consult with the *victim* of the offense for which the petition would be filed before consenting to the petition.

Victim would mean any of the following:

- Except as provided below, an individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime.
- Except for the purpose only of submitting or making an impact statement as provided below, the following individuals other than the defendant if the victim is deceased:
 - The spouse of the deceased victim.
 - A child of the deceased victim if the above does not apply and the child is 18 years of age or older.
 - A parent of the deceased victim if the above do not apply.
 - The guardian or custodian of a child of the deceased victim if the above do not apply and the child is less than 18 years of age.
 - A sibling of the deceased victim if the above do not apply.
 - A grandparent of the deceased victim if the above do not apply.
- A parent, guardian, or custodian of a victim who is less than 18 years of age if the parent, guardian, or custodian so chooses and is neither the defendant nor incarcerated.
- A parent, guardian, or custodian of a victim who is mentally or emotionally unable to participate in the legal process if the parent, guardian, or custodian is neither the defendant nor incarcerated.
- For the purpose only of submitting or making an impact statement, if the individual who suffers direct or threatened physical, financial, or emotional harm as a result of the commission of a crime is deceased, is so mentally incapacitated that he or she cannot meaningfully understand or participate in the legal process, or consents to the individual's designation as a victim, the following individuals other than the defendant:
 - The spouse of the victim.
 - A child of the victim if the child is 18 years of age or older.
 - A parent of the victim.
 - The guardian or custodian of a child of the victim if the child is less than 18 years of age.
 - A sibling of the victim.
 - A grandparent of the victim.
 - A guardian or custodian of the victim if the victim is less than 18 years of age at the time of the commission of the crime and the guardian or custodian is not incarcerated.

Ineligibility

No offense would disqualify an incarcerated individual from relief under the bill, except that an incarcerated individual who was convicted of a **mass shooting offense** would not be eligible to file a petition as described above if the sentencing judge or their successor determines all of the following by clear and convincing evidence:

- The murders resulted in physical, emotional, or psychological injury to a large number of people who were present at the time of the offense.
- The murders significantly increased the burden of victim assistance and compensation for the applicable jurisdiction.
- The murders arose out of an incident where the incarcerated individual brought a firearm and ammunition to a location with the intent to commit murder.

Mass shooting offense would mean an offense that resulted in convictions for three or more counts of first degree premeditated murder arising out of a single incident.

Filing and contents of petition

A petition described above would have to be filed in writing in the judicial circuit where the sentence was imposed by one of the following:

- The incarcerated individual.
- Counsel for the incarcerated individual.
- The prosecuting attorney.
- The next friend of the incarcerated individual (for example, their next of kin or a qualified medical professional), if the incarcerated individual cannot bring the petition and the next friend is acting in the incarcerated individual's best interests.

The petition would have to include at least all of the following:

- The petitioner's name.
- The incarcerated individual's name.
- The applicable case number or numbers.
- The offense or offenses of conviction.
- The current sentence or sentences being served for each case number.
- The date of the offense and sentence.
- The name of the trial and sentencing judge.
- The specific offenses the petitioner is requesting resentencing for.
- A factual statement explaining how the incarcerated individual meets the eligibility requirements described above.
- If the petition is filed by the incarcerated individual's next friend, a factual statement explaining the petitioner's relationship to the incarcerated individual, why the incarcerated individual cannot bring the petition on their own behalf, and how the next friend is acting in the incarcerated individual's best interests.

The petition could include affidavits, declarations, letters, prison records, or other written and electronic material.

General authority of the court

A sentencing court receiving a petition for resentencing could reduce a sentence or deny the petition. The court could not increase a sentence as a result of a petition. The court could reduce a mandatory sentence or a sentence imposed as the result of a binding plea or sentencing agreement.

Process of the court

Within 30 days after receiving a petition, the court would have to provide the prosecuting attorney and the incarcerated individual with a copy of the petition, including any attached written or electronic material. The court could direct the parties to expand the record by submitting additional materials relating to the petition. A petition could be freely amended at any time before a hearing.

A petition would have to be assigned, for determination, to the judge who imposed the original sentence on the incarcerated individual or to that judge's successor.

Initial determination

Upon receiving a petition for resentencing, the sentencing court would have to determine whether the incarcerated individual qualifies for a sentence reduction by confirming all of the following:

- The individual has served at least 10 years in prison.¹
- The individual is not time-barred by a previous petition. (See “Timing of subsequent petitions,” below.)
- The individual is not excluded from eligibility because of a mass shooting conviction.

If the court determines that the incarcerated individual does not meet the above requirements, the court would have to enter an order denying the petition, with copies to the petitioner and to the incarcerated individual (if they are not the petitioner).

If the court determines that the incarcerated individual meets the above requirements, the court would have to set a date for a resentencing hearing as described below. However, the court would not be required to grant a sentence reduction hearing, but could do so or not at its own discretion, if an individual who meets the above requirements is seeking a reduced sentence in connection with a conviction for any of the following offenses:

- A violation of section 520b or 520c of the Michigan Penal Code (criminal sexual conduct in the first or second degree) committed against a victim under 13 years of age.²
- A violation of section 81(4) or (5) of the Michigan Penal Code (domestic assault or assault of a pregnant individual with a prior conviction or convictions).³
- A violation of section 81a(3) of the Michigan Penal Code (aggravated domestic assault with prior convictions).⁴
- A violation of section 145c(2)(b) of the Michigan Penal Code (aggravated producing of child sexually abusive activity or material).⁵
- A violation of section 462c, 462d, or 462e of the Michigan Penal Code (human trafficking violations involving debt bondage, forced labor, or commercial sexual activity or forced labor of a minor).⁶

If the court determines that the individual meets the above requirements and the matter is subsequently reassigned to a successor judge, that judge could not reconsider the sufficiency of the petition or decline to set a hearing.⁷

¹ The bill does not have an exception from this requirement for an incarcerated individual who has served less than 10 years of imprisonment and is filing a petition with the prosecutor’s consent.

² <http://legislature.mi.gov/doc.aspx?mcl-750-520b> and <http://legislature.mi.gov/doc.aspx?mcl-750-520c>

³ <http://legislature.mi.gov/doc.aspx?mcl-750-81>

⁴ <http://legislature.mi.gov/doc.aspx?mcl-750-81a>

⁵ <http://legislature.mi.gov/doc.aspx?mcl-750-145c>

⁶ <http://legislature.mi.gov/doc.aspx?mcl-750-462c>, <http://legislature.mi.gov/doc.aspx?mcl-750-462d>, and <http://legislature.mi.gov/doc.aspx?mcl-750-462e>

⁷ The bill does not authorize the successor judge to exercise the discretion otherwise provided to the court to either grant or decline a hearing related to a conviction for an offense listed above.

Timing and notice of resentencing hearing

Unless the court finds good cause to hold the hearing at a later date or the petitioner requests a delay of the hearing, the court would have to set a resentencing hearing as follows:

- If one or more of the following apply, no more than 45 days after the petition is filed:
 - The incarcerated individual has one or more medical conditions leading to major limitations in activities of daily living, including a serious mental illness or an intellectual or developmental disability.
 - The incarcerated individual has one or more medical conditions that make them more likely to contract an illness or disease while incarcerated that could lead to death or cause them to develop a medical condition that prevents the performance of one or more activities of daily living without assistance, including any of the following:
 - Any condition related to a weakened immune system, such as HIV or 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 or amyotrophic lateral sclerosis.
 - Any condition that requires or is expected to require specialty care or recurrent hospitalizations.
 - The petition is filed by the prosecuting attorney.
- If the above does not apply, but one or more of the following do, no more than 90 days after the petition is filed:
 - The incarcerated individual has served over 20 years of the incarcerated individual's sentence.
 - The incarcerated individual is over 55 years of age.
- If neither of the above apply, no more than 180 days after the petition is filed.

When the court sets a resentencing hearing, it would have to provide notice to the incarcerated individual, counsel for the incarcerated individual, the Department of Corrections, the prosecuting attorney, and, if applicable, the next friend of the incarcerated individual.

Notification to victim

Once a date for a resentencing hearing has been set, the prosecuting attorney would have to promptly notify the victim of the offense for which the petition was filed by first-class mail to the victim's last known address. The victim or the victim's designee has the right to appear and the right, as otherwise provided by law, to make a statement at the resentencing hearing regarding the impact of the offense conduct on the victim.

If the incarcerated individual's underlying conviction is homicide, the prosecuting attorney would have to consult with the victim's family before making any filing in relation to a petition for resentencing.

Resentencing hearing procedures

A resentencing hearing would have to be conducted on the record. The court could allow parties to present any evidence that the court deems relevant to the issue of the propriety of a reduction in sentence. The evidence could include documents, live testimony, tangible objects, or any other class of evidence or information relevant to sentencing. The court would have exclusive discretion to determine the relevance of any proposed evidence.

The incarcerated individual would have to be present during a resentencing hearing unless they waive the right to be present. Their appearance by video teleconference, with their consent, would meet this requirement. The incarcerated individual would have to be allowed to testify or to remain silent at the hearing.

The sentencing court would have to consider all relevant evidence, which would include at least all of the following:

- The age of the incarcerated individual at the time of the offense and relevant research regarding child, adolescent, and young adult brain development.
- The age of the incarcerated individual at the time of the petition and relevant research regarding the decline in criminal behavior as individuals age.
- The nature of the offense, including changing societal attitudes regarding the propriety of criminalizing the offense and the appropriate sentence for the offense.
- The history and characteristics of the incarcerated individual at the time of the petition, including demonstrated rehabilitation, their disciplinary record while incarcerated, and their efforts to participate in educational, therapeutic, and vocational opportunities while incarcerated.
- Any oral or written statements provided by the victim's representative.⁸
- The circumstances of the offense, including the incarcerated individual's role in its commission, whether they were under the influence of another, and the proportionality of their sentence compared to that received by other parties to the offense.
- The circumstances of the incarcerated individual's incarceration, including their conditions of confinement, the impact of their incarceration on the community, and any evidence that they have been subjected to physical, sexual, or psychological abuse while incarcerated.
- Any evidence concerning the incarcerated individual's current physical or mental health and their health at the time of the offense.
- Any evidence concerning plea offers by the prosecuting attorney.
- Any evidence that the incarcerated individual was denied effective assistance of counsel at any stage in the case resulting in the original sentence, including during plea bargaining.
- Any evidence that the incarcerated individual was wrongfully convicted.
- Any evidence that the incarcerated individual was subjected to human trafficking and that the victimization was a contributing factor to their criminal behavior.

⁸ It is unclear whether specifying that these statements are provided by the victim's representative would preclude a statement made by the victim themselves as described elsewhere in the bill.

- Any evidence that the incarcerated individual was subjected to physical, sexual, or psychological abuse by an intimate partner or a family or household member and that the victimization was a contributing factor to their criminal behavior.
- The incarcerated individual's parole guidelines score.
- The incarcerated individual's family and home environment at the time of the offense, including any evidence of childhood abuse or neglect, lack of adequate parenting or education, prior exposure to violence, and susceptibility to psychological damage or emotional disturbance.
- Any evidence about whether the incarcerated individual might have been charged with and convicted of a lesser offense if not for an incompetency associated with youth, intellectual disability, or mental illness, including any evidence of their inability to engage with police officers or prosecutors or incapacity to assist defense counsel.
- Any other information the court determines relevant to its decision.

At the end of the hearing, if the sentencing court finds that the petitioner has shown by a preponderance of the evidence that it is in the interest of justice to reduce the incarcerated individual's sentence, the court would have to resentence the incarcerated individual to an appropriate reduced sentence.

The court would have to set forth the reasons for granting or denying a resentencing petition, either on the record or in writing within 30 days of the hearing.

New sentence

In imposing the new term to be served by the incarcerated individual, the court would have to credit the incarcerated individual for any jail time credited toward the subject conviction and for any period of incarceration served under the sentence originally imposed.

If the incarcerated individual has served less than 10 years of imprisonment and filed their petition with the consent of the prosecutor as described above, there would be a rebuttable presumption that the incarcerated individual's sentence must be reduced to time served.

If the court finds that the incarcerated individual no longer poses a meaningful risk to the community, there would be a rebuttable presumption that their sentence must be reduced by at least 20% or to no longer than five years of incarceration from the date the petition was filed, whichever results in a shorter period of incarceration.

If the prosecuting attorney is the petitioner, the new term of incarceration could not exceed the petitioner's recommendation. However, the court could impose a shorter term of incarceration than recommended by the petitioner, including by ordering immediate release.

In imposing the new term to be served by the incarcerated individual, the court would have to impose a sentence of time served, immediate parole, or a term of years. The court could not impose life with possibility of parole.

The prosecuting attorney would have to promptly notify the victim of any new sentence imposed under the bill.

Appeal from resentencing

An appeal from a resentencing could be taken by the incarcerated individual, petitioner, or prosecuting authority. An appeal from resentencing would be in the same manner, either by right or by leave, as a first appeal from an initial sentence at the time of conviction.

An appeal from a denial of resentencing could be taken by the incarcerated individual or the petitioner. An appeal from a denial of resentencing would be in the same manner, either by right or by leave, as a first appeal from an initial sentence at the time of conviction.

Timing of subsequent petitions

If a petition is denied, the individual would have to wait at least two years after the denial before filing another petition, although the court could require a longer waiting period of up to five years. If a petition is granted and the total sentence to be served is reduced by 25% or more, the individual would have to wait at least five years after the denial before filing a petition for a second sentencing reduction.⁹

Notification of eligibility

Within 30 days after the date beginning an incarcerated individual's ninth year of incarceration, the Department of Corrections would have to give written notice of the individual's eligibility to file a petition for a reduction of sentence to all of the following:

- The incarcerated individual.
- The sentencing court.
- The applicable prosecuting attorney.
- Any public defense authority in the judicial circuit in which the sentence was imposed.

Effect of resentencing

Resentencing as provided above would not abridge or modify any existing remedy an incarcerated individual may have for habeas corpus or other postconviction relief as provided by court rule or law or any other legal framework. A petition filed as described above would neither affect nor be affected by any pending petitions for habeas corpus or other postconviction proceedings provided for by court rule or law, and the denial of a petition would not preclude such remedies from being granted. Resentencing as provided above would not disturb any restitution awarded at the original sentencing.

Other provisions

A court could not allow or honor a waiver of the right to petition for a resentencing.

Finally, the bill would amend other provisions in Chapter IX that apply to sentencing and parole eligibility for certain criminal defendants to specify that those provisions do not apply to the resentencing of an individual as provided above. The relevant provisions deal with previous felony convictions and individuals sentenced to life without possibility of parole for an offense committed before they were 18 years old.

MCL 769.12 and 769.25 and proposed MCL 769.27a et seq.

⁹ While the bill addresses the time frame for the filing of subsequent petitions by both individuals whose previous petition was denied and individuals whose sentence was reduced by 25% or more, it does not address the time frame for individuals granted a reduction of less than 25%.

House Bill 4557 would amend the Corrections Code to require the Department of Corrections to develop parole guidelines for use in a resentencing hearing under the provisions of HB 4556.

The bill also would require the department to provide a prisoner whose minimum term of imprisonment is 10 or more years with notice of their eligibility to file a petition for a reduction of sentence as provided in HB 4556 and described under “Notification of Eligibility,” above.

Finally, the code now provides that an individual sentenced to imprisonment for life for certain listed offenses is ineligible for parole. Under the bill, an individual sentenced to imprisonment for life for any of those offenses would be ineligible for parole *except as provided in HB 4556*.

MCL 791.233e and 791.234

House Bill 4558 would amend the William Van Regenmorter Crime Victim’s Rights Act to specify that the requirement that a prosecuting attorney give notice to a victim of the time and place of a sentencing proceeding and the victim’s right to make an impact statement at that proceeding also includes a resentencing hearing under HB 4556. These provisions would apply in relation to adult defendants convicted of felonies; juveniles from 14 to 17 years old charged on a criminal complaint with a specified juvenile violation; and juvenile adjudications in the family division of circuit court. It would not apply in relation to adult offenders convicted of serious misdemeanors.

MCL 780.763 and 780.791

House Bill 4559 would amend the Public Health Code, which provides that a person is subject to imprisonment without possibility of parole if they knowingly or recklessly do either of the following with the intent to kill or to cause serious impairment of a body function of two or more individuals and the violation results in death:

- Adulterate, misbrand, remove, or substitute a drug or device knowing or intending that the drug or device will be used.
- Sell, offer for sale, possess for sale, cause to be sold, or manufacture for sale an adulterated or misbranded drug.

The bill would provide that the mandatory sentence of life without parole eligibility does not apply to a resentencing under HB 4556.

MCL 333.17764

House Bill 4560 would amend the Michigan Penal Code, which provides for mandatory sentences for several crimes, such as a specified term of imprisonment (i.e., not a minimum-maximum range) or a penalty of imprisonment for life without possibility of parole. The bill would provide that these determinate or mandatory sentences do not apply to a resentencing under HB 4556. The provisions the bill would amend address sentences for first-degree murder, certain first degree criminal sexual conduct offenses, certain offenses involving possession of a firearm while committing a felony, and certain offenses involving adulterated drugs, explosives, poison, hazardous substances, or acts of terrorism that resulted in someone’s death.

MCL 750.16 et seq.

FISCAL IMPACT:

The bills would have an indeterminate fiscal impact on local court funding units and on the state. Costs to local courts would be incurred depending on the number of petitions filed for reductions in sentences, and, subsequently, the number of resentencing hearings that would occur for incarcerated individuals found to be eligible for resentencing. It is difficult to project the actual fiscal impact to courts due to variables such as judicial discretion and complexity of cases.

Under the bills, depending on the number of individuals that would have sentences reduced or dismissed, the result would be a decrease in costs for the state. Reduced sentences would result in reduced costs related to the state correctional system. In fiscal year 2023, the average cost of prison incarceration in a state facility was roughly \$48,700 per prisoner, a figure that includes various fixed administrative and operational costs. Those costs are financed with general fund/general purpose revenue.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.