A bill to be entitled

An act relating to second look sentencing act; amending Chapter 921 of the 2021 State Statutes to add s. 921.1403; making individuals serving long sentences eligible for sentence review; setting forth the procedure and standard for such sentence review; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

1 Chapter 921 of the 2021 State Statutes is amended by inserting after s. 921.1402 the following new subdivision, s. 921.1403, entitled Second Look for Longterm Incarcerated Individuals Act:

1. An individual shall be eligible for second look sentencing under the following circumstances:

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 ten years in custody, or an individual acting on their behalf as enumerated in Subsection 2(b), may petition the court of original jurisdiction for a reduction under the circumstances and conditions set forth in this Act. A petition for a sentence reduction under this Act pursuant to this Subsection may be filed after the individual serves nine years of imprisonment.

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 has served at least fifteen in custody, or an individual acting on their behalf as enumerated in Subsection 2(b), may petition the court of original jurisdiction for a reduction of their sentence under the circumstances and conditions set forth in this Act. A petition for a sentence reduction under this Act pursuant this Subsection may be filed after the individual serves fourteen years of imprisonment.

c. Where a petition for a reduction in sentence under this Act that has been denied, the incarcerated individual or an individual acting on their behalf as enumerated in Subsection 2(b) may not file another petition until at least two years have elapsed after the date the petition was denied; the court may require a longer waiting period, but no more than five years after the date the petition was denied.

d. Where a petition for a reduction in sentence under this Act has been granted, the incarcerated individual or an individual acting on their behalf as enumerated in Subsection 2(b) may not file a petition for a second sentencing reduction until at least five years have elapsed after the date the petition was granted.

e. Notwithstanding any other provision of law, an otherwise ineligible incarcerated individual shall be deemed eligible to petition for a reduction in sentence upon consent of the prosecuting attorney, regardless of their number of years in custody.

2. The following procedure shall apply to second look sentencing petitions:

a. After an individual has served 9 years in custody, the Florida Department of Corrections shall, within 30 days, give written notice of this Act to the incarcerated individual. The Florida Department of Corrections shall again give written notice of this Act, within 30 days, to the individual after they have served 14 years in custody, if they remain in custody.

b. The petition shall be filed by the incarcerated individual, counsel for the individual, the prosecuting attorney, or by the next friend of the individual, if said individual cannot bring the petition themselves and the next friend is acting in the best interests of the individual. Next friends shall include, but are not limited to, the incarcerated individual's next of kin or a licensed healthcare professional.

c. The petition shall be filed in writing in the judicial circuit in which the sentence was imposed and may include affidavits, declarations, letters, prison records, or other written and electronic material. The petition must include, at a minimum:
(1) the name of the petitioner;
(2) the name of the incarcerated individual;
(3) the case number(s);
(4) the offense(s) of conviction;
(5) the current sentence(s) being served for that case number;
(6) the date of the offense(s) and sentence(s);
(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 Subsection 1; and
(10 if the petition is filed by the next friend of the incarcerated individual, a factual statement explaining the petitioner's relationship to the incarcerated individual, why the incarcerated individual cannot file the petition themselves, and how the next friend is acting in the best interests of the incarcerated individual.

d. Upon the court's receipt of a petition under this Section, the court shall within 30 days provide the prosecuting attorney and such incarcerated individual with a copy of the petition, including any attached material.

e. A petition under this Section shall be referred to the judge who imposed the original sentence upon such individuals, and the prosecuting attorney for the relevant jurisdiction 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.

f. No waiver of the right to petition for a resentencing under this Section shall be permitted or honored by the sentencing court.

3. Hearings under this Section shall be conducted according to the following provisions:

a. Upon receiving the petition, the sentencing court shall determine whether the facts establishing eligibility stated in Subsection 1 are shown by a preponderance of evidence or uncontested.

b. Upon receiving the petition, the sentencing court shall appoint counsel, unless the petitioner requests otherwise.

c. After the filing of a petition under this Section, the court may direct the parties to expand the record by submitting additional materials relating to the petition. A petition filed under this Section may be amended by counsel following appointment.

d. If the court determines that the facts stated in the petition are insufficient to establish eligibility under Subsection 1, 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 Subsection 13.

e. If the court determines that the facts stated in the petition establish eligibility under Subsection 1(a) or 1(b) the court shall set a hearing:
    1. 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: the incarcerated individual has one or more medical conditions leading to major limitations in activities of daily living, including but not limited to terminal illness and serious mental illness or an intellectual or developmental disability; has one or more medical conditions that make them more likely to contract an illness or disease while incarcerated that could lea to death or cause the person to develop a medical condition that prevents the performance of one or more activities of daily living without assistance.

f. If the court determines that the facts stated in the petition establish eligibility under Subsection 1(a) or 1(b) 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.

g. When the court sets a hearing under Subsection 3, the court shall notify the petitioner, the incarcerated person, the Department of Corrections, the prosecuting attorney, and the victim, if applicable, of the hearing date.

h. 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

individual shall have the right to testify or to remain silent at the incarcerated individual's sole discretion.

i. 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 clause may be satisfied by the incarcerated person appearing by video teleconference if such person consents to video appearance.

j. Any hearing under this Section shall be recorded or transcribed.

4. During a hearing under this Section, the court shall assess whether the individual merits a reduction in sentence based on the proportionality of their sentence and their current risk to the community. The court shall consider all evidence relevant to the propriety of a reduction in sentence, which shall include, but is not limited to the history and characteristics of the person at the time of the petition, including rehabilitative efforts and participation in educational, therapeutic, and vocational opportunities while imprisoned, if available.

5. 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.

6. 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.

7. If the petition meets the criteria of Subsection 3(e)(1) of this Act, there shall be a rebuttable presumption that the incarcerated person's sentence shall be reduced to time served.

8. If the court finds that the incarcerated person does not pose a significant risk to the community, there shall be a rebuttable presumption that the sentence shall be reduced by at least 20% or to no longer than five years of incarceration following the date of the filing of the petition, whichever is shorter.

9. If the prosecuting attorney is the petitioner, the new term of incarceration to be served shall not exceed the recommendation of the petitioner.

10. In calculating the new term to be served, the court shall impose a sentence of time served, immediate parole, or a term of years. The court shall not impose life with parole.

11. This Section does not authorize the sentencing court to increase the incarcerated person's sentence under any circumstance.

12. This Act shall be applied in a manner consistent with the rights of crime victims articulated in Article 1 section 16 of the Florida Constitution.

a. Upon receipt of a petition for resentencing, the Florida Department of Corrections shall promptly notify the victim of the petition and of the hearing date, once calendared.
b. The prosecuting attorney shall consult with the victim prior to making any filing in relation to a petition under this Act.
c. If the incarcerated individual would be otherwise ineligible for relief, except pursuant to the prosecuting attorney's consent under Subsection 1(e), the prosecuting attorney shall consult with the victim, if practicable, prior to consenting to the petition.
d. The victim or the victim's designee has the right to appear and the right, as otherwise provided by law, to make an impact statement, oral or written, at the sentencing of the incarcerated individual regarding the impact of the offense conduct on the victim. No victim shall be subject to questioning by counsel when giving an impact statement.
e. The court shall not, in modifying a sentence, disturb any restitution awarded at the original sentencing.
f. The victim shall be notified of any decision by the sentencing court in advance of the incarcerated person's release.

13. An appeal from a proceeding under this Act may be taken by the incarcerated individual, petitioner, or the prosecuting 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 proportionality of their sentence and their current risk to the community. The petitioner or incarcerated individual may also appeal on the ground that the petitioner's request for a hearing was unlawfully denied. An appeal pursuant to this Section shall be filed with the Florida Supreme Court.

14. This Section shall not be construed to abridge or modify any existing remedy for relief under Rule 3.850 of the Florida Rules of Criminal Procedure, habeas corpus, statutory or judicial postconviction relief, or any other legal framework.

15. A petition under this Act shall not impact or be impacted in any way by any pending petitions under Rule 3.850 of the Florida Rules of Criminal Procedure, habeas corpus, or other post conviction proceeding, nor shall the denial of a petition under this Act preclude the availability of such remedies.

16. In the course of concurrent or subsequent parole or post-conviction relief hearings, the Florida Commission on Offender Review or sentencing court shall not construe as evidence against the incarcerated person the filing of a petition for relief under this Section, a denial of relief under this Section, or new evidence produced in support of an application for relief under this Section, or any findings of the court pursuant to a petition under this Section.

17. Relief under this Section shall be available to all individuals with convictions prior or subsequent to the date of enactment of this statute.