

Proposed amendments to Florida Rule of Criminal Procedure 3.802 (Review of Sentences for Juvenile Offenders)

The Criminal Procedure Rules Committee, in Case No. SC2024-1171, has submitted to the Florida Supreme Court a report proposing amendments to Florida Rule of Criminal Procedure 3.802 (Review of Sentences for Juvenile Offenders). The proposal adds new subdivision (e) (Rehearing) to expressly allow for rehearing on any order addressing a motion filed under rule 3.802.

The Court invites all interested persons to comment on the proposed amendments, which are below and reproduced in full online at <https://www.floridasupremecourt.org/Case-Information/Rules-Cases-Proposed-Amendments>. All comments must be filed with the Court on or before November 1, 2024, with a certificate of service verifying that a copy has been served on the Committee Chair, Honorable Laura E. Ward, Thirteenth Judicial Circuit, 800 East Twiggs Street, Suite 526, Tampa, Florida 33602, wardle@fljud13.org, and on the Bar Staff Liaison to the Committee, Michael Hodges, 651 East Jefferson Street, Tallahassee, Florida 32399-2300, rules@floridabar.org, as well as a separate request for oral argument if the person filing the comment wishes to participate in oral argument, which may be scheduled in this case. The Committee Chair has until November 22, 2024, to file a response to any comments filed with the Court. If filed by an attorney in good standing with The Florida Bar, the comment must be electronically filed via the Florida Courts E-Filing Portal (Portal). If filed by a nonlawyer or a lawyer not licensed to practice in Florida, the comment may be, but is not required to be, filed via the Portal. Any person unable to submit a comment electronically must mail or hand-deliver the originally signed comment to the Florida Supreme Court, Office of the Clerk, 500 South Duval Street, Tallahassee, Florida 32399-1927.

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO FLORIDA RULE OF CRIMINAL
PROCEDURE 3.802, CASE NO. SC2024-1171**

**RULE 3.802. REVIEW OF SENTENCES FOR JUVENILE
OFFENDERS**

(a) Application. A juvenile offender, as defined in section 921.1402(1), Florida Statutes, may seek a modification of sentence pursuant to ~~under~~ section 921.1402, Florida Statutes, by submitting an application to the trial court requesting a sentence review hearing.

(b) Time for Filing. An application for sentence review may not be filed until the juvenile offender becomes eligible pursuant to ~~under~~ section 921.1402(2), Florida Statutes. A juvenile offender becomes eligible:

(1) after 25 years, if the juvenile offender is sentenced to life under section 775.082(1)(b)1., Florida Statutes, or to a term of more than 25 years under sections 775.082(3)(a)5.a. or 775.082(3)(b)2.a., Florida Statutes; or

(2) – (3) [No Change]

(c) [No Change]

(d) Procedure; Evidentiary Hearing; Disposition. ~~Upon~~On application from an eligible juvenile offender, the trial court ~~shall~~must hold a sentence review hearing to determine whether the juvenile offender's sentence should be modified. If the application, files, and records in the case conclusively show that the applicant does not qualify as a juvenile offender under section 921.1402(1), Florida Statutes, or that the application is premature, the court may deny the application without a hearing, and ~~shall~~must attach such documents to the order. If an application is denied as premature, the denial ~~shall~~must be without prejudice.

(1) At the sentence review hearing, the court ~~shall~~must consider the following factors when determining if it is appropriate to modify the juvenile offender's sentence:

(A) – (J) [No Change]

(2) If the court determines at a sentence review hearing that the juvenile offender has been rehabilitated and is reasonably believed to be fit to reenter society, the court ~~shall~~must modify the sentence and impose a term of probation of at least 5 years. If the court determines that the juvenile offender has not demonstrated rehabilitation, or is not fit to reenter society, the court ~~shall~~must issue a written order stating the reasons why the sentence is not being modified.

(e) Rehearing. Any party may file a motion for rehearing of any order addressing a motion under this rule within 15 days of the date of service of the order. A motion for rehearing is not required to preserve any issue for review in the appellate court. A motion for rehearing must be based on a good faith belief that the court has overlooked a previously argued issue of fact or law or an argument based on a legal precedent or statute not available prior to the court's ruling. A response may be filed within 10 days of service of the motion. The trial court's order disposing of the motion for rehearing must be filed within 15 days of the response but not later than 40 days from the date of the order of which rehearing is sought. If the trial court does not enter an order ruling on a timely motion for rehearing within 40 days from the date of the order of which rehearing is sought, then the motion is deemed denied.

(ef) Successive Applications. A second or successive application ~~shall~~must be denied without a hearing, except under the following circumstances:

(1) [No Change]

(2) ~~pursuant to~~under section 921.1402(2)(d), Florida Statutes, the initial application was submitted by a juvenile offender sentenced to a term of 20 years or more under section

775.082(3)(c), Florida Statutes, and more than 10 years has elapsed since the initial sentence review hearing.

(fg) Jurisdiction. The sentencing court ~~shall~~retains original jurisdiction for the duration of the sentence for the purpose of a sentence review hearing.

(gh) Right to Counsel. A juvenile offender who is eligible for a sentence review hearing under section 921.1402(5), Florida Statutes, is entitled to be represented by counsel, and the court ~~shall~~must appoint a public defender to represent the juvenile offender if the juvenile offender cannot afford an attorney.