

# HOUSE BILL REPORT

## SB 6164

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**As Reported by House Committee On:**  
Public Safety

**Title:** An act relating to prosecutorial discretion to seek resentencing.

**Brief Description:** Concerning prosecutorial discretion to seek resentencing.

**Sponsors:** Senators Dhingra, Wilson, C., McCoy, Das, Darneille, Kuderer and Randall.

**Brief History:**

**Committee Activity:**

Public Safety: 2/25/20, 2/27/20 [DPA].

**Brief Summary of Bill**  
**(As Amended by Committee)**

- Authorizes a prosecuting attorney to petition the sentencing court to resentence a defendant if the original sentence no longer advances the interests of justice.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass as amended. Signed by 11 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, 2nd Vice Chair; Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham, Griffey, Lovick, Orwall, Pellicciotti and Pettigrew.

**Staff:** Kelly Leonard (786-7147).

**Background:**

*Sentencing Laws.* The Sentencing Reform Act (SRA) generally controls the term of confinement for adults convicted of felony offenses. The SRA is a determinate sentencing system in which a judge selects a particular sentence from a standard range. The standard range is determined by reference to a statutory grid, which is based on the defendant's criminal history (converted into an offender score) and the severity of the offense (according to designated seriousness levels). While the standard range is presumed to be appropriate,

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additional sentencing policies can increase or decrease a sentence. This includes, for example, exceptional sentences and enhancements.

The Legislature regularly makes changes to the SRA, effectively modifying sentences for certain offenses and classes of offenders. These changes are typically prospective.

*Sentencing and Appeals.* When a defendant is convicted of a criminal offense, the sentencing laws in place at the time of an offense apply to the sentencing proceedings. There are some exceptions, including when changes to sentencing laws are based in constitutional requirements or were expressly remedial and favorable to defendants. Before imposing a sentence, the court must conduct a sentencing hearing where it considers presentence reports, criminal history, arguments from the prosecuting attorney and defense attorney, and any victim statements.

A sentence within the standard range is generally not appealable, though a defendant may appeal other legal errors. Direct appeals must be filed within 30 days. Collateral attacks to convictions, including writs of habeas corpus and personal restraint petitions, must be filed within one year, with some exceptions. These exceptions include, for example, circumstances involving newly discovered evidence or new constitutional rulings. If an appellate court finds an error in a conviction or sentence, the court may overturn a conviction or otherwise remand the case to the trial court for additional proceedings. A defendant may be released, retried, and/or resentenced at the direction of the appellate court. In some cases, statute may direct resentencing of certain classes of defendants.

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### **Summary of Amended Bill:**

A county prosecuting attorney may petition the sentencing court to resentence a defendant convicted of a felony offense if the original sentence no longer advances the interests of justice. The court may grant or deny a petition. If the court grants a petition, the court must resentence the defendant in the same manner as if the defendant had not previously been sentenced, provided the new sentence, if any, is no greater than the initial sentence.

The court may consider postconviction factors including, but not limited to: the defendant's disciplinary record and record of rehabilitation while incarcerated; evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the defendant's risk for future violence; and evidence that reflects changed circumstances since the defendant's original sentencing such that his or her continued incarceration no longer serves the interests of justice.

The prosecuting attorney must make reasonable efforts to notify victims and survivors of victims of the petition for resentencing and the date of the resentencing hearing. The prosecuting attorney must also provide victims and survivors of victims access to available victim advocates and other related services. The court must provide an opportunity for victims and survivors of victims of any crimes for which the defendant has been convicted to present a statement personally or by representation.

Credit must be given for time served. Resentencing does not reopen the defendant's conviction to challenges that would otherwise be barred.

**Amended Bill Compared to Original Bill:**

The authority to petition for resentencing is limited to felony offenses only (rather than allowing the prosecuting attorney to petition for resentencing for any type of offense as provided in the underlying bill). The court has discretion to grant or deny a petition for resentencing (rather than requiring the court to resentence an offender upon receipt of a petition). Language is added requiring the prosecuting attorney to make reasonable efforts to notify victims and survivors of victims of a petition for resentencing and the date of the resentencing hearing. The prosecuting attorney must also provide victims and survivors of victims access to available victim advocates and other related services.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Prosecutors have a unique role in the criminal justice system. Prosecutors are bound by the highest ethical standards in the legal community, as they have immense discretion in criminal justice matters. Prosecutors have an obligation to serve the interests of justice for both victims and defendants. It is not just about convictions. In recent years, practitioners and experts have learned more about human behavior and implicit bias, and it is clear that some past practices and decisions did not serve the interests of justice.

There have been several changes to sentencing laws, and this bill would allow a prosecutor to petition for resentencing when a sentence no longer serves the interests of justice. This is an opportunity to right past wrongs. There are checks and balances built into the sentencing system. There would be a hearing and a decision made by the judge. All parties and victims would be involved in this process. The process proposed in this bill is already occurring in some counties, but it would be preferable to have express statutory authority for it.

Many stakeholders support post-conviction review and release to address racial disparity and past mistakes in the criminal justice system. The system is not perfect. It is time to move forward and address these serious issues, especially for three-strike cases and other similar cases.

There have been several proposals in recent years regarding post-conviction review and release. Some stakeholders are opposed to those proposals. This bill is different. This would create an appropriate mechanism to review sentences that no longer fit societal values, but it does this through the criminal justice system with elected judges and prosecuting

attorneys. This makes more sense than channeling reviews through an appointed board that is not accountable to the public.

(Opposed) None.

(Other) Prosecutors have a wide range of opinions on this legislation. Most support the concept and would like an opportunity to revisit old cases. However, there are some concerns that this process could open the door to new appellate challenges and legal issues. There may also be issues with resentencing persons under old laws where judges may not be able to impose reentry-oriented programming and conditions.

**Persons Testifying:** (In support) Senator Dhingra, prime sponsor; James McMahan, Washington Association of Sheriffs and Police Chiefs; Carla Lee, King County Prosecuting Attorney's Office; Waldo Waldron-Ramsey, Washington Community Action Network; and Gerald Hankerson, National Association for the Advancement of Colored People.

(Other) Russell Brown, Washington Association of Prosecuting Attorneys.

**Persons Signed In To Testify But Not Testifying:** None.